



Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking

Conference Report

Helsinki, 23-24 September 2004



Ministry for Foreign Affairs
of Finland



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Designed by Pebekom, Piła, Poland

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The conference organizers would especially like to thank Minister Johannes Koskinen, Finnish Minister of Justice; Ambassador Aleksi Härkönen, Permanent Representative of Finland to the OSCE; Ambassador Christian Strohal, ODIHR Director; and Dr Helga Konrad, OSCE Special Representative on Combating Trafficking in Human Beings, for their participation, for making the issue of trafficking in human beings a priority, and for setting the tone for subsequent discussions.

In addition, we are grateful for the high level of attendance of governmental bodies, as well as international and non-governmental organizations, 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

Every year, international organizations, governments, and NGOs make numerous efforts to combat trafficking in human beings, and vast funding is poured into anti-trafficking activities. During recent years, the international legal framework has continued to develop. More OSCE participating States have ratified 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. At the European Union level, the Council Directive on Short-Term Residence Permits was adopted in 2004. The OSCE adopted its Action Plan to Combat Trafficking in Human Beings in 2003, while the Council of Europe drafted the European Convention on Action against Trafficking in Human Beings.

Although trafficking in human beings is a problem for both countries of origin and destination and, although international treaties are addressed to all countries, anti-trafficking efforts have mainly been directed at countries of origin. At the same time, anti-trafficking responses in countries of destination have been rather limited. As a result, the great majority of trafficked persons are not being identified; instead, they are treated as illegal migrants, deported to their home countries, and exposed to the risk of being re-trafficked.

This conference was a follow-up to the Berlin conference “Europe against Trafficking in Persons”, which was organized by the ODIHR and the German Ministry for Foreign Affairs in 2001. Its main purpose was to review and discuss the implementation of the recommendations that resulted from the Berlin conference. There was a high level of participation, bringing together government representatives and NGOs, from both countries of destination and origin, as well as various international organizations. Discussions focused on finding new strategies to address issues relating to the protection of the human rights of trafficked persons. The conference also provided a forum for participants to exchange good practices in relevant fields, with the aim of identifying practical measures that should be taken in order to implement the OSCE Action Plan in countries of destination.

The conference took place in Helsinki on 23-24 September 2004 and focused on the following issues:

- Protecting the human rights of trafficked persons in countries of destination, with particular attention paid to identification; access to medical, psychological, and legal assistance; reflection delays; and residence permits;
- National and regional initiatives to improve victim protection in countries of destination;
- Implementation of National Referral Mechanisms, i.e. models for co-operation between law enforcement and civil society; and
- Challenges and opportunities regarding European and global instruments to strengthen the rights of trafficked persons.

Participants reiterated that victims of trafficking in human beings have the right to safety, the right to recover from trauma and to start a process of rehabilitation, the right to residence status, the right to criminal proceedings, the right to compensation for material and moral damages, the right to data protection, the right to social integration in both the country of destination and origin. OSCE participating States were called on to make a firmer commitment to anti-trafficking and the protection of victims, and to implementing existing international standards and best practices for victim protection.

For this purpose, it was recommended that co-operation be enhanced between government agencies and civil society through the implementation of National Referral Mechanisms. Such co-operation

should extend across borders and bring together both countries of origin and destination. In this context, participants recommended that Western European countries should make use of experiences and lessons learned in South-Eastern European countries, in particular in the development of national plans of action. Joint efforts are the key to success for achieving positive results in combating trafficking in human beings and in assisting trafficked persons to regain control over their lives.

Furthermore, the OSCE Action Plan to Combat Trafficking in Human Beings was recognized as an instrument that provides clear guidance to OSCE participating States and identifies the ways in which various parts of the organization, its institutions, and field missions can better contribute to combating trafficking. The Action Plan contains progressive provisions for protection and assistance to victims of trafficking, further developed in the ODIHR's *National Referral Mechanisms: A Practical Handbook*. These documents should continue to play an important role for OSCE participating States in implementing their anti-trafficking commitments, and it is hoped that the conference underscored the extent of the work that still remains to be done.

2. AGENDA

Day 1: 23 September, Thursday

9.00 - 10.00: Registration

10.00 - 11.00: Opening

- **Mr. Johannes Koskinen**, Finnish Minister of Justice
- **Ms. Helga Konrad**, OSCE Special Representative on Trafficking in Human Beings
- **Ms. Rita Süßmuth**, Chair of the German Experts Council for Immigration and Integration, Member of the Global Commission on International Migration
- **Mr. Hanno Hartig**, Head of the Department for Media, Equality and Minorities, Council of Europe

Moderator: **Amb. Christian Strohal**, Director of the OSCE's Office for Democratic Institutions and Human Rights

11.00 - 11.30: Coffee Break

11.30 - 12.00: Keynote speech: **Ms. Maria Grazia Giammarinaro**, Judge, Criminal Court, Rome, Italy

12.00 - 12.30: Discussion

12.30 - 14.00: Lunch Break

14.00 - 15.30: **Panel Discussion A: Trafficking in human beings in countries of destination: new challenges in policy developments**

- Trafficking in human beings as a threat to human security:
Mr. Mark Richardson, Policy Officer, International Crime and Terrorism Division, Department of Foreign Affairs, Canada
- Gaps in human rights protection of victims of trafficking in countries of destination: **Ms. Jaana Kauppinen**, Director, Pro-tukipiste, Finland
- Special needs of trafficked children in countries of destination: **Mr. Mike Dottridge**, Author of the Terre des Hommes report on child trafficking "Kids as Commodities"?
- The role of civil society in ensuring victim protection – good practices and challenges: **Mr. Marco Bufo**, General Co-ordinator, On the Road, Italy
- The effects of EU enlargement on trafficking in human beings within the European Union: **Ms. Stana Buchowska**, Director, La Strada, Poland

Moderator: **Mr. Vladimir Shkolnikov**, Head of Democratization Section, ODIHR

15.30 - 16.00: Coffee Break

16.00 - 17.30: **Panel Discussion B: Efforts to improve victim protection: national and regional initiatives**

- The UN Palermo Protocol and the global programme: **Ms. Riikka Puttonen**, Crime Prevention and Criminal Justice Expert, UNODC
- Best practices in victim protection: **Ms. Ann Jordan**, Director, Initiative Against Trafficking in Persons, Global Rights, United States

- Promoting the implementation of National Referral Mechanisms: **Ms. Bärbel Uhl**, Expert on Anti-Trafficking Issues, ODIHR
- The drafting of the European Convention: **Mr. Hanno Hartig**, Head of the Department for Media, Equality and Minorities, Council of Europe
- Initiatives in the European Union: **Ms. Marjo Crompvoets**, Policy Advisor on Human Trafficking, Ministry for Foreign Affairs of the Netherlands

Moderator: **Ms. Eva Biaudet**, Member of Parliament, Finland

18.30 - 20.00: Reception
Vanha Raatihuone, Aleksanterinkatu 20, Helsinki

Day 2: 24 September, Friday

WORKING GROUP 1: Towards a rights-based approach to protect trafficked persons

9.00 - 11.00: **Working Group Session 1**

Chair: **Ms. Madeleine Rees**, Chief of the Office of the High Commissioner for Human Rights, Bosnia and Herzegovina

- Interventions
- Identification and self-identification of victims of trafficking
Ms. Mara Radovanovic, President, LARA, Bosnia and Herzegovina
 - Standards on assistance
Mr. Marco Bufo, General Co-ordinator, On the Road, Italy
 - Residence regimes
Mr. Dejan Keserovic, Counter-Trafficking Project Manager, IOM Belgrade
 - Data protection
Ms. Waltraut Kotschy, Executive Member of the Austrian Data Protection Commission

Rapporteur **Ms. Annette Lyth**, Deputy Head of Human Rights Section, ODIHR

11.00 - 11.30: Coffee Break

11.30 - 13.30: **Working Group Session 2**

Chair: **Ms. Madeleine Rees**, Chief of the Office of the High Commissioner for Human Rights, Bosnia and Herzegovina

- Interventions
- Social inclusion of trafficked persons
Ms. Petra Burčiková, Director, La Strada, Czech Republic
 - Compensation of trafficked persons
Ms. Ann Jordan, Director, Initiative Against Trafficking in Persons, Global Rights, USA
 - Protection in criminal proceedings
Ms. Maria Grazia Giammarinaro, Judge, Criminal Court, Rome, Italy

Rapporteur **Ms. Annette Lyth**, Deputy Head of Human Rights Section, ODIHR

WORKING GROUP 2: Implementation of National Referral Mechanisms: co-operation models of law enforcement and civil society

9.00 - 11.00: **Working Group Session 1**

- Chair: **Ms. Johanna Suurpää**, Head of the Unit for Human Rights Policy, Ministry for Foreign Affairs of Finland
- Interventions
- Role of civil society in victim protection
Ms. Stana Buchowska, Director, La Strada Poland
 - Best practices in co-operation models
Ms. Isabel Lorenz, Desk Officer, Human Rights Division, German Ministry of Foreign Affairs
 - Multidisciplinary roundtables and the role of a national co-ordinator
Ms. Jamie Factor, Head of Democratisation Department, OSCE Mission to Serbia and Montenegro
- Rapporteur **Ms. Alina Braşoveanu**, Officer on Anti-Trafficking Issues, ODIHR
- 11.00 - 11.30:** Coffee Break
- 11.30 - 13.30:** **Working Group Session 2**
- Chair: **Ms. Johanna Suurpää**, Director of the Unit for Human Rights Affairs, Ministry for Foreign Affairs of Finland
- Interventions
- Access by trafficked persons to assistance services
Ms. Barbara Limanowska, Consultant, SEE RIGHTS
 - Confiscation of criminal assets and compensation of trafficked persons
Ms. Jola Vollebregt, Police Affairs Officer, OSCE Strategic Police Matters Unit
- Rapporteur **Ms. Alina Braşoveanu**, Officer on Anti-Trafficking Issues, ODIHR

WORKING GROUP 3: European instruments to strengthen the rights of trafficked persons: challenges and opportunities

- 9.00 - 11.00:** **Working Group Session 1**
- Chair: **Ms. Helga Konrad**, OSCE Special Representative on Trafficking in Human Beings
- Interventions
- European Convention to Combat Trafficking, Council of Europe
Mr. Hanno Hartig, Head of the Department for Media, Equality and Minorities, Council of Europe
 - OSCE Action Plan
Ms. Mette Kongshem, Norwegian Ambassador to the OSCE
 - EU NGOs: Standards Protocol for Identification of Trafficked Persons
Ms. Iveta Bartunková, Trafficking Programme Officer, Anti-Slavery International
- Rapporteur **Ms. Marta Achler-Szelenbaum**, Legal Expert, ODIHR
- 11.00 - 11.30:** Coffee Break
- 11.30 - 13.30:** **Working Group Session 2**
- Chair: **Ms. Mette Kongshem**, Norwegian Ambassador to the OSCE
- Interventions
- Trafficking in Persons Reporting Mechanism
Ms. Maureen Walsh, General Counsel, US Helsinki Commission
 - National and regional rapporteurs on trafficking in human beings
Ms. Anna G. Korvinus, Dutch Rapporteur on Trafficking in Human Beings
 - EU Council Directive
Mr. Bernhard Bogensperger, External Relations Directorate-General, European Commission
- Rapporteur **Ms. Marta Achler-Szelenbaum**, Legal Expert, ODIHR

13.30 - 14.30: Lunch Break

14.30 - 16.00: Plenary: Recommendations and Conclusion

- **Amb. Christian Strohal**, ODIHR Director
- **Ms. Elisabeth Rehn**, Chair of the Working Table 1 on Human Rights and Democratization, Stability Pact for South Eastern Europe;
Former UN Under-Secretary General

3. ANNOTATED AGENDA



Ministry for Foreign Affairs
of Finland

Annotated Agenda for the Helsinki Conference

Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking

Panel Discussion A: Trafficking in human beings in countries of destination

The Berlin Conference “Europe against Trafficking in Persons”, organized by the ODIHR and the German Ministry of Foreign Affairs in 2001, addressed the situation of trafficked persons in countries of destination. The conference concluded with a comprehensive list of recommendations to OSCE participating States on the human rights protection of trafficked persons. Three years later, notwithstanding these recommendations, the human rights protection afforded to trafficked persons still contains gaps. Trafficked persons are often not even identified as having been trafficked. Therefore, as regards State response, they often share the fate of illegal migrants and face the same negative consequences. Even for acknowledged victims, in many countries the provision of adequate medical and psychological treatment is problematic. Most notably, it is rare for a victim to be permitted to remain, even temporarily, on the territory of the destination country. It is also noteworthy that many victims risk being re-trafficked after repatriation to their country of origin, an occurrence which prompts the need for better protection measures to be offered to victims in countries of destination.

As stated in the OSCE Maastricht Ministerial Declaration, trafficking in persons is a serious human rights abuse and a risk to security throughout the OSCE region. Measures to combat this crime and abuse of human rights must be adopted in countries of destination as well as in countries of origin.

While resources and expertise to combat trafficking in human beings rightly aim at legal, infrastructural and political capacity-building in countries of origin, greater attention must be paid to introducing and implementing protection measures for victims of trafficking in countries of destination. As a consequence of increasingly scarce resources, specialized counselling centres for trafficked persons in many Western European countries have closed down or limited their range of services. Furthermore, despite the UN protocol having been adopted in 2000, some Western European countries have gaps in their existing legislation with regard to the criminalization of trafficking and many have yet to incorporate the UN definition of trafficking into their domestic legislation.

Topics for discussion:

- trafficking in human beings as a threat to human security
- abuses and violations of the human rights of trafficked persons
- gaps in human rights protection in countries of destination
- special needs of trafficked children in countries of destination
- the effects of EU enlargement on trafficking in human beings within the European Union

Panel Discussion B: Efforts to improve victim protection in countries of destination: national and regional initiatives

In 2003, as a follow-up to the Berlin conference, the ODIHR, together with Anti-Slavery International, developed an advocacy campaign with Western European NGOs in order to identify human rights violations committed against victims of trafficking in countries of destination and to prioritize common approaches for advocacy efforts. Moreover, the ODIHR developed and published a handbook on the implementation of National Referral Mechanisms in order to assist OSCE participating States in ensuring the protection of the rights of trafficked persons as well as to successfully prosecute the traffickers.

Most recently, the OSCE CiO appointed the OSCE Special Representative on Trafficking in Human Beings who is tasked with co-operating with national mechanisms established by the OSCE participating States for co-ordinating and monitoring the anti-trafficking activities of State institutions.

Furthermore, a European Convention on action against trafficking in human beings is being drafted in the framework of the Council of Europe. This Convention will complement the UN Convention against Transnational Organized Crime and its Protocols. It is intended that the Convention should contain legally binding victim protection provisions which will constitute an important step towards granting rights, assistance and protection for trafficked persons in countries of destination.

The European Union in 2003 established a consultative body to the European Commission for the purpose of developing a comprehensive EU policy to combat trafficking. Among other activities, this European Experts Group on Trafficking in Human Beings is to produce a report for the Commission by the end of 2004. On the basis of this report, the Commission is to issue a Communication in early 2005 that will include concrete action for implementation by the Member States and EU Institutions.

Topics for discussion:

- UN Palermo Protocol and the UN Global Programme (UNODC);
- best practices in victim protection in countries of destination;
- promoting the implementation of National Referral Mechanisms (OSCE/ODIHR);
- the draft European Convention on action against trafficking (Council of Europe);
- initiatives of the European Union (EC/JHA).

Working Group 1: Towards a rights-based approach to protecting trafficked persons

Identification of trafficked persons remains a central concern. Even though some destination countries have adopted laws protecting trafficked persons, implementation has been fragmented. Implementing the necessary measures to ensure proper identification of victims of trafficking as persons who have suffered violations of their human rights, and as persons who require protection and assistance, is difficult but must remain a primary goal. Proper identification means that victims of trafficking will avoid being mistakenly categorized as having irregular immigration status and being treated as “undocumented”, “tolerated” or “illegal migrants”, or as “illegal workers in the sex industry” or workers in other informal/unprotected labour sectors. Furthermore, proper identification will ensure that victims do not face the negative consequences faced by irregular status migrants, which may include, for example, being housed in immigration holding facilities. Additionally, proper identification will result in the victims being informed of their rights and will facilitate access to the required assistance. Finally,

if trafficked persons are properly identified as victims of a serious crime, they can assist in the prosecution of the perpetrators and therefore, contribute to combating this human rights abuse.

The lack of residence regimes available for trafficked persons in many countries of destination hinders the provision of necessary assistance and protection to them. A crucial aspect of residency status is the immediate period of recovery, the “reflection delay” or “reflection period”, which enables victims to receive the assistance and counselling they require, while also giving them time to come to terms with their situation as victims. Further, it affords them time to make an informed decision as to whether or not they wish to co-operate with the authorities responsible for criminal proceedings. The reflection period also allows the authorities time to consider whether or not a victim of trafficking is indeed pivotal to the prosecution of the perpetrators, in the role of a witness.

Furthermore, in criminal proceedings, the victim often acts only as a witness of a crime rather than acting also as a plaintiff in civil proceedings to seek compensation for the harm, damage and exploitation suffered. Consequently, either for this reason or as a result of being deported, the trafficked person is frequently denied access to justice.

Topics for discussion:

- identification and self-identification
- standards for assistance and protection
- residence regimes
- data protection
- social inclusion of trafficked persons
- access to justice and compensation for trafficked persons
- protection before, during, and after court proceedings

Working group 2: Implementation of National Referral Mechanisms: co-operation models between law enforcement and civil society

A National Referral Mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-coordinating their efforts in a strategic partnership with civil society.

By providing guidance on how to design and implement sustainable structures that prosecute traffickers and support victims, an NRM suggests roles for governmental institutions and civil society which engage in a transparent, participatory process to identify trafficked persons, to refer them to the appropriate services and to protect their rights. In addition to a strong foundation of co-operation, this approach requires frequent communication, monitoring and reform.

The OSCE’s Action Plan to Combat Trafficking in Human Beings, endorsed at the Maastricht Ministerial Council meeting, recommends that OSCE participating States establish NRMs by building partnerships between civil society and law enforcement, creating guidelines to properly identify trafficked persons, and establishing cross-sector and multidisciplinary teams to develop and monitor policies.

Topics for discussion:

- the role of civil society in ensuring victim protection;
- best practices in co-operation models;

- anti-trafficking institutional frameworks;
- access for trafficked persons to assistance services;
- confiscation of criminal assets;
- establishment of victim compensation funds.

Working group 3: European and global instruments to strengthen the rights of trafficked persons: challenges and opportunities

Intergovernmental and international organizations have recently established additional mechanisms in order to co-ordinate and monitor anti-trafficking activities and to ensure that the issue is placed high on the political agenda. In 2004, the OSCE Special Representative on Combating Trafficking in Human Beings was appointed. The UN Commission for Human Rights also established the post of Special Rapporteur on trafficking. The Council of Europe plans to create a group to monitor the implementation of the new European Convention. The EU has set up a European Experts Group to advise the European Commission.

Additionally, at the national level, the Hague EU Ministerial Declaration of 1997 recommends that EU countries appoint national rapporteurs on trafficking. Some States have already moved to establish such institutions and others are again encouraged to follow suit.

Besides institution-building, a number of European and international legal documents and declarations designed to strengthen mechanisms to protect the rights of trafficked persons have been enacted.

If these new international and national mechanisms are to be truly effective and relevant, it is vital that they are accessible and amenable to the input of grassroots experts as well as affected persons themselves.

Topics for discussion:

- OSCE Action Plan to combat trafficking in human beings;
- relevant EU instruments;
- the role of national rapporteurs versus an inter-agency model;
- the roles of regional rapporteurs and special representatives on trafficking.

4. OPENING REMARKS

Amb. Christian Strohal

Director of the OSCE's Office for Democratic Institutions and Human Rights

Introduction

I am glad to have this opportunity to welcome you to this conference. I would like to express our gratitude to the Government of Finland for the great support offered by hosting the conference and for having put a great deal of effort into its preparation. Finland's strong human-rights interest and policy will undoubtedly help us in ensuring concrete follow-up to our conference.

Background and context

This conference is about a particularly awful human-rights abuse and about the need to effectively protect victims of a crime that all too often results in slavery or slavery-like practice. This conference is about shared responsibilities – the responsibilities of governments not only to fight against trafficking in human beings but also to fight for the protection of victims.

It concentrates on countries of destination, as they are a major factor in breaking the cycle of trafficking, in preventing the “recycling” of victims. It is about finding concrete answers for action against the background of certain parameters, which I would like to summarize briefly:

- The conference comes as a follow-up to the conference organized in October 2001 in Berlin by the ODIHR, together with the German Ministry for Foreign Affairs, “Europe against Trafficking in Persons”;
- The Berlin conference was one of the first significant events addressing anti-trafficking policies in countries of destination that resulted in a comprehensive set of recommendations in the areas of prevention, protection, and prosecution;
- We should take the general recommendations for follow-up made during the Berlin conference as background for our discussions. Those recommendations included that the OSCE participating States should:
 - Ratify relevant international documents, most importantly, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, also known as the Palermo Protocol;
 - Incorporate provisions on human-rights protection into any anti-trafficking legislation, including addressing the issues of compensation and temporary residence permits, as well as anti-corruption requirements;
 - Appoint an individual or agency to co-ordinate national anti-trafficking activities;
 - Enhance prevention measures, such as awareness-raising, and address push factors of trafficking and reconsider migration policies;
 - Support relevant NGOs in their work to combat trafficking and assist trafficked persons;
 - Increase co-operation for the successful prosecution of those responsible for trafficking in human beings, adopt minimum penalties to criminalize trafficking, and improve the mechanisms for effective prosecution that takes into consideration necessary witness-protection measures; and
 - Ensure action at the EU level to further develop guidelines.

Progress and achievements

It is time for us to assess what we have achieved since the conference in Berlin, where we stand now, what still needs to be done, and how to prioritize our work. In terms of the achievements since the Berlin conference in 2001, we can present a lot of progress:

- First of all, the OSCE has adopted an Action Plan to Combat Trafficking in Human Beings. As a comprehensive document outlining recommendations and concrete action in all three areas of the OSCE's work – **prevention** of trafficking in human beings, **prosecution** of perpetrators, and **protection** of victims of trafficking – the Action Plan is also a valuable tool for defining our priorities, co-operation, and future action in the anti-trafficking field;
- I am pleased that the experience and expertise of the ODIHR in this field has been recognized in the Action Plan and that the mandate and scope of the ODIHR have been reinforced by this document;
- Earlier this year, the OSCE appointed **Helga Konrad** as Special Representative of the OSCE Chairman-in-Office on Combating Trafficking in Human Beings. We are honoured that Minister Konrad is here with us;
- Another important forum covering countries of destination is the **European Commission Expert Group** on trafficking in human beings. We are glad that our Expert on Anti-Trafficking Issues, Ms. Baerbel Uhl, was appointed as a member of this group and can contribute to its work with the human-rights approach of our office;
- As another significant development, the **Council of Europe** Committee of Ministers established an *ad hoc* Committee on Action against Trafficking in Human Beings (**CAHTEH**) in order to prepare a European Convention on Action against Trafficking in Human Beings. The ODIHR has been participating in the negotiations of the CAHTEH as an observer. The Council of Europe has reiterated that the new convention will focus on tools and rules that reinforce the human-rights protection of trafficked persons and that provide the corresponding legal framework for the OSCE Action Plan to Combat Trafficking in Human Beings. All OSCE participating States should accede to the Council of Europe Convention on Action against Trafficking in Human Beings once its drafting is completed;
- The Office of the **UN High Commissioner for Human Rights** has developed “Recommended principles and guidelines on human rights and human trafficking” (2002). They provide a comprehensive instrument for states to adopt a human rights approach in their efforts to combat trafficking;
- All these efforts are complemented by the **handbook on National Referral Mechanisms** that was recently published by the ODIHR. The handbook describes how to design, implement, and monitor a National Referral Mechanism, which is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons in co-ordination and strategic partnership with civil society and other actors dealing with trafficking. The ODIHR, together with the Special Representative, will continue to support OSCE participating States in establishing National Referral Mechanisms and making them operational.

Persistent problems

- Notwithstanding these achievements and all the efforts undertaken by governments and civil society to find the most efficient ways to combat trafficking in human beings, it must be noted with regret that **human-rights abuses are still all too common**;
- Victims of trafficking are too often not properly identified and referred by the authorities to NGOs; not all countries have clear rules on granting a reflection delay and short-term residence permits

to victims; countries lack appropriate legislation to prosecute traffickers, or if it is adopted, it is not in line with the Palermo Protocol;

- Besides this, trends point to shrinking funds available to NGOs in countries of destination that have been providing assistance to victims of trafficking for years. At the same time, just a handful of countries have created a special agency or appointed an individual to co-ordinate national anti-trafficking activities.

The ODIHR's future focus on anti-trafficking with a strong human-rights approach

- In addition to further developing the concept of National Referral Mechanisms and seeing to their establishment and operation in practice, we will continue to administer the Anti-Trafficking Project Fund. We will also continue with awareness-raising activities and assisting national legislative frameworks. As an integral element of our work in support of OSCE field operations, we will build our anti-trafficking work into our general human dimension support for missions. Special focus areas in our future anti-trafficking work will be trial-monitoring and women's rights – two areas that will also highlight the general human-rights aspects of the fight against trafficking;
- We have decided to incorporate the ODIHR's anti-trafficking work into our general human-rights programme. This will strengthen the human rights aspects of our anti-trafficking work. It will also decrease the risk of duplication of the work of the newly established OSCE Special Representative; instead, it will complement and support her work. At the same time, a special effort will be made to build future work on the basis of what has already been accomplished and on the networks that have already been created;
- In conclusion, I am looking forward to the wealth of very concrete expertise and dedication that we could assemble here with you all. I am convinced that your recommendations will be concrete; and I assure you of my Office's full readiness and support for helping to translate them into practice.

Johannes Koskinen

Finnish Minister of Justice

Mr. Chairman, Excellencies, ladies and gentlemen,

Let me first welcome you all, on behalf of the Government of Finland, to Helsinki and this conference. The issue at stake is one that my government and myself find particularly important. It is therefore a great pleasure to note that the theme of the Conference has generated such interest and that we are today able to open the event in the presence of such extensive expertise, from various member states, from international organizations as well as non-governmental organizations specializing in various aspects of trafficking in human beings.

Let me also take this opportunity to thank the OSCE's Office for Democratic Institutions and Human Rights for taking the initiative to organize this conference. It has been a pleasure for the Finnish team to work together with the skilful and enthusiastic ODIHR team.

Mr. Chairman,

Let me briefly describe the points of departure the Finnish Government has had with regard to this Conference. They can be characterized by four points.

Firstly, a human rights-based approach.

Trafficking is a major human rights challenge, globally and also in this part of the world. The vulnerable position of the victim is exploited in various ways. The victim is in practice deprived of his or her – often her – very basic rights.

Secondly, a victim-centered approach.

It is essential to realize that the victim of trafficking is indeed a victim, who should not be sanctioned or penalized but assisted. A practical consideration is also that unless we manage to attend to the rights of the victims adequately, we shall not be able to prosecute the perpetrators either. Victims will simply be too afraid to co-operate and testify.

Thirdly, take up the situation in the countries of destination.

The situation in the countries of origin and transit may so far have received more attention than the situation in the countries of destination. To work at this end is however also extremely important. Various concrete measures are under discussion. We can also try to determine how best to reduce the demand that fuels the different forms of trafficking in human beings in our countries.

And fourthly, look at the cycle of trafficking.

As the title of this conference puts it, the cycle of trafficking needs to be broken. This means that we need to look at each stage of the entire process: from prevention to prosecution and rehabilitation. We know that unless the rights of the victim are guaranteed, returned victims risk being re-trafficked. The cycle thus risks repeating itself.

Mr. Chairman,

Finland has also emphasized that this conference needs to be concrete and action-oriented. To recognize the gravity of the problem is no longer enough: we need to see what the various players can in fact do.

Trafficking in human beings is not an easy issue to deal with: it is transnational by nature, and those involved tend to do their best to prevent it from coming to light. We therefore need to get to the grass-roots, where we have the possibility of identifying potential and actual victims of trafficking. Finding these cases requires that the definition of trafficking is widely known and that the approach of those who are in contact with victims – police officials, social workers, NGO-representatives – are sufficiently proactive. The victims are normally not aware of their rights, and contact with a possible victim will have to be one of confidence-building.

Quite comprehensive legal reform concerning trafficking in human beings has recently come into force in Finland. We now have a clear criminalization of trafficking in our Penal Code, as well as adequate enforcement measures to accompany the penalization.

However, measures related to criminal law will certainly not be enough. In Finland we are presently drafting a national plan of action, together with several Ministries, NGOs and academic experts. The action plan will identify policy guidelines, services needed and other measures to take to combat trafficking and to protect the rights of the victims. Dissemination of information on the different forms of trafficking will certainly be among the measures proposed.

Mr. Chairman,

I believe we are still in a common learning process, all of us, as regards the best ways to respond to the challenge of trafficking in human beings. The Finnish side is looking forward to a concrete input from this seminar for our national deliberations.

But, above all, since trafficking is a common challenge transcending national boundaries, I hope that this seminar will create opportunities for building alliances for change. It is certainly a valuable resource to have participation from so many different backgrounds and yet with a common purpose: breaking the cycle of trafficking.

Mr. Chairman, ladies and gentlemen,

With these words I wish you a successful seminar.

Helga Konrad

OSCE Special Representative on Trafficking in Human Beings

In our fight against trafficking in human beings we must put an end to the complicity of silence, to the complicity of indifference; we must put an end to any complicity in trivializing and relativizing, by declaring – it is not so bad in our case – it is worse elsewhere. It is our task to make the unacceptable impracticable and to make sure that people who engage in human trafficking cannot continue to do so.

This was what the American Ambassador to the OSCE said on the occasion of my inauguration as OSCE Special Representative on Combating Trafficking in Human Beings. And he was perfectly right.

So I am particularly grateful to the Finnish Government and its Foreign Ministry as well as to our own Institution – the OSCE Office for Democratic Institutions and Human Rights – for having convened and for hosting this international meeting on Breaking the Cycle.

This conference comes at a good time, for I believe that we are at a crossroads in our efforts to contain human trafficking in Europe and beyond.

If we take the unveiling of the UN Protocol against Trafficking in Persons as the starting point of the modern era of confronting human trafficking, trafficking for several years now has been the object of concerted international attention.

It is now realized that effective action against human trafficking is going to require comprehensive and integrated approaches in the countries of origin, transit and destination. It is now recognized that interventions must address root causes – we must understand demand as well as supply factors – raise awareness of the risks, develop adequate assistance and protection measures for the victims, monitor recruitment and transporting systems, and also monitor conditions in the destination countries – the latter being one of the main priorities of this conference.

Since the recent enlargement of the EU, fears have been articulated that in its wake trafficking in human beings will increase dramatically. Recently, I have been repeatedly invited to panel discussions and meetings on subjects such as “security policy and migration – evil at the border”. These discussions have tended to criminalize migration and to equate it with human trafficking. They proceed from the assumption that “Fortress Europe” would all of a sudden be wide open to various criminal invasions.

We must be aware that, according to figures from Europol, more than 3,000 mafia/criminal organizations with over 30,000 members – among them traffickers and their accomplices – are actually already in our midst. Consequently, it is high time we did our homework.

We have to be aware that human trafficking takes place and works quite smoothly across relatively open borders – such as within the EU – and that restrictive immigration and migration policies do not pose serious obstacles to it. On the contrary: concentration on border controls, deterrence and immediate repatriation of trafficked persons is often merely the beginning of a vicious circle.

In contrast to free movement of goods and capital, free movement of persons has remained a sensitive political and social issue, even though more and more countries are beginning to realize that they will need foreign labour if they wish to maintain their growth rates and in response to demographic developments.

Recent intergovernmental co-operation in the field of anti-trafficking management has focused primarily on stepping up border controls and preventing irregular migration and illegal immigration by concluding and implementing readmission and repatriation agreements and by means of other restrictive measures.

As a rule, migrants in general and irregular and undocumented migrants in particular are at the mercy of traffickers and their accomplices. Most of them are exploited, have no access to health care, are unaware of their rights, are exposed to physical and mental abuse, are underpaid or have their wages withheld by middlemen.

Traffickers take ruthless advantage of the complete lack of social and legal protection for victims of trafficking. Therefore, the legalization of the status of victims of trafficking is a must. But instead of providing appropriate protection and assistance to the victims – one of the main points of discussion is an extended stay, a temporary or permanent residence permit for trafficked persons – they are usually deported and returned as soon as possible to their home countries. This attitude is also influenced by the assumption that the offer of an extended stay would attract more migrants and be abused.

Studies confirm that a large number of those immediately expelled are reintroduced into the criminal cycle, or as we say “recycled”. Instead of realizing that such measures are short-sighted, it is stubbornly held that they are an effective means of self-protection serving the interests of national security.

Offering trafficked people an extended stay in the country, assisting and protecting them – as in any case would be the duty of States and governments under human-rights norms – is not only called for from the human rights perspective, but would also be a major contribution to national security.

Once they and their closest relatives are safe and secure, victims of trafficking will be more inclined to support the prosecution of traffickers and to help dismantle their networks.

However, when we look into the practice of many European countries it becomes quite obvious that the protection of the fundamental rights of victims of trafficking takes second place to the promotion of state interests.

So what is urgently called for – and from the practical experience I have, I feel compelled to keep emphasizing and reiterating this – is a shift in perspective, if we wish to be successful in the fight against human trafficking.

If we want to reduce human trafficking, it must not be seen primarily or exclusively from the perspective of national security; it must not be seen only as a fight against organized crime and illegal migration. It is first and foremost a horrendous violation of human rights. And it is shameful to accept this form of slavery amongst us in the 21st century.

The fact that migration is more and more often linked to organized crime and criminality has an increasingly negative impact on how victims of trafficking are approached and treated. It is, therefore, indispensable to raise awareness of the fact that trafficking in human beings is both a security issue and a human rights concern, and that it is not a question of either/or. Both issues must be tackled together, if we wish to be successful in our struggle against human trafficking.

We must overcome what remains of the outdated view that the rights and needs of trafficking victims are incompatible with effective law enforcement. The tendency to view human trafficking primarily or

exclusively as a national security issue has detrimental implications for the rights and needs of trafficking victims. It tends to divert attention away from a victim-centered approach to a strictly and nearly exclusively law enforcement strategy. This is both inappropriate and counterproductive.

I am very glad that this conference has made it its business to review the assumptions on which we have based our fight against human trafficking. I do hope that we will be able to deliver the message that human trafficking is about the plight and suffering of human beings and not simply about criminal transactions in soulless goods. After all, we are dealing with people and not in stolen cars.

With this in mind, I hope we can be successful in our deliberations.

Prof. Rita Süßmuth

*Chair of the German Experts Council for
Immigration and Integration
Member of the Global Commission on
International Migration*

Ladies and Gentlemen,
Dear participants,

I think it is a great opportunity that both international organizations and national representatives have come together today to discuss the important issue of human trafficking. It is also important that not only the countries of destination, but also the countries of origin are represented at this conference. Strong co-operation between source, transit and destination countries is the key to combating human trafficking. We will not be successful in fighting human trafficking without this co-operation.

Secondly, it is important to note that many anti-trafficking initiatives have come from international organizations; national initiatives have often lagged behind international action. This includes international initiatives such as the UN Protocol on fighting human trafficking, the many initiatives of the OSCE which follow the tradition of the Helsinki Commission on Human Rights, the Council of Europe's work on the anti-trafficking Convention and the EU Framework to counter human trafficking, to name but a few. National legislation on fighting human trafficking sometimes lacks the spirit of the UN Protocol and international efforts to curb human trafficking. My own country for instance has not yet ratified the UN Protocol. Ratification is still stuck in the legislation process. Ms. Helga Konrad is right in saying that anti-human trafficking policy at the national level is structured according to national security policy, aimed at bringing organized criminals to justice, rather than oriented towards human rights protection.

As both a member of the Global Commission and Chair of the German Independent Council of Experts on Migration and Integration, my colleagues and I are often confronted with political discourse and reporting on human smuggling and trafficking that lumps together and refers to these discrete issues as one and the same with no distinction drawn between them. Often these two issues are thrown together in one sentence with no further comment made on the differences between human trafficking and smuggling. I urge you to not acquiesce in this type of discourse and reporting on the issue of human trafficking. If you allow the two issues to remain undifferentiated, you are implying that trafficking and smuggling are a single issue. That is wrong.

If we do not reach a clear understanding of human trafficking, namely that human trafficking is primarily a violation of human rights, our efforts to counter human trafficking will pursue exactly the wrong policy initiative. Above all we will deal with this issue in the context of smuggling, migration and the prosecution of criminals, often treating trafficking victims as criminals who have violated immigration regulations.

There is also another point to be made. In my view, with respect to the problem of protection the following question must be asked. It regards whether we give victims of trafficking the right of residence in our countries so that they can really escape from the vicious circle of trafficking, exploitation and violence. I think that a victim of extreme human rights violations should have a right to human rights protection, including a residence permit if necessary. At the moment, in many OSCE countries of

destination, access to a residence permit is conditional upon the readiness of victims to testify against their traffickers and is limited to the duration of the criminal proceedings against them. I know that there is a long way to go to gain acceptance for the protection of victims of trafficking through residency beyond the duration of the criminal proceedings against a trafficker, but this is already established practice in some countries and is a measure that the international community supports. Introducing such practice as standard in the OSCE would be a step forward.

I want also to raise questions which are important within the migration process. Of course human smuggling and trafficking are part of the migration process, but trafficking is more than an issue of irregular migration involving as it does massive violations of human rights. Therefore, be careful not to view human trafficking as irregular migration. Lumping human trafficking together with human smuggling is the predominant policy approach. When you group trafficking victims into one category with irregular migrants, then according to the existing migration mechanism victims of trafficking will be returned to their country of origin. This practice results in a vicious circle of “victim re-cycling” which cannot be broken. Once victims are repatriated without reintegration and without an opportunity to support themselves, they are often targeted by traffickers and once again become victims of human trafficking.

The OSCE Action Plan to fight human trafficking draws a clear distinction between the issue of irregular migration and human trafficking. It is very important to have a broad discussion of these issues so the new OSCE publication on National Referral Mechanisms is very important in this regard. It sets out a different mechanism, methodology of how to approach counter-trafficking and distinguishes between irregular immigrants and trafficked persons. It also outlines the kind of actors that should be involved in fighting human trafficking. When you look at the core groups that formulate and implement anti-trafficking policy, it is important to determine who is sitting around the table and who is involved in the process. Police forces, for example, often do not have the tools and training required to distinguish a trafficked person from an irregular immigrant. The police need more information, training, and better victim identification methods.

The Convention of the Council of Europe includes important guidelines for developing the correct understanding of and approach to fighting human trafficking. The fight against human trafficking must address the entire chain of trafficking, from recruitment, transport, and harbouring of victims to their exploitation in the destination country. At this point the controversy as to whether to include those who are the consumers of victims’ services as part of the trafficking chain must be addressed. Human trafficking is, in part, a question of supply and demand. You have to include the consumers. The planned reform of anti-trafficking laws in Germany, envisaged for October of this year, does not address the issue of human trafficking in the form of consuming the services of trafficking victims, because the debate about whether consumers should be punished and how it can be proved they knew that they were part of an illegal, exploitative process is still a live one. But I believe there is another reason behind this controversy. Prostitution, in the history of mankind, is a primarily female story. However, there is always the supply and demand aspect that fuels human trafficking. Therefore, you have to include the consumers as part of the trafficking chain. Otherwise, you will never break out of the cycle of human traffickers supplying consumers with the services of exploited persons.

It is important not to isolate the issue of democracy-building from the importance of combating human trafficking, especially in fledgling democracies. This applies to the activities of citizens of all nations at home and also those living abroad in newly established democracies. One important message of the OSCE handbook on National Referral Mechanisms is that democracy-building and upholding the

human rights of every individual as well as fighting human trafficking are key factors for the stability and prosperity of all OSCE countries.

Fighting human trafficking successfully is not only a question of finding the right policy approach to the issue. Anti-trafficking initiatives cannot be effective if only some NGOs or political leaders deal with the issue in isolation. It is important to have networks of institutions and political actors who deal with counter-trafficking based on a common human rights approach.

My last remark relates to the global migration policy. The Global Commission follows the same human rights-based approach as the UN and the OSCE to fighting human trafficking. I am not sure that the best answer to fighting human trafficking lies purely in “internationalising” the issue, or in creating new international bodies to counter human trafficking. We need more co-ordination and more co-operation. It is important to have universal anti-trafficking standards at the European and at the international level. But trafficking has to be dealt with primarily at the local, regional and national level. It is essential that we improve our intelligence on what is happening in each country and in each community concerning trafficking. Unless we can make maximise the use of all these levels of action, we will not be able to fight human trafficking effectively.

Thank you very much for your commitment and good luck with your conference.

Dr Hanno Hartig

Head of the Department for Media, Equality and Minorities, Directorate General of Human Rights Council of Europe

Ladies and Gentlemen,

Trafficking in human beings is a grave violation of human rights and a very serious criminal offence. This “business” is believed to be growing fastest in Central and Eastern Europe and the former Soviet Union. Europol estimates that the industry is now worth several billion dollars a year. This is also alarming because illicit profits are frequently used for corruption and other criminal activities. It is therefore urgent that this crime is properly prosecuted and that preventive measures are taken to avoid it spreading any further.

Trafficking in human beings constitutes a violation of the human rights of its victims and is an offence to the dignity and integrity of the human being. From East to West, from South to North, people, especially women and girls, are attracted by the prospect of well-paid jobs as domestic servants, waitresses or factory workers. Another cause is the demand in destination countries for sex services and cheap labour.

Over the past decade, trafficking in human beings has reached epidemic proportions. No country is immune. The search for work abroad has been fuelled by economic disparity, high unemployment and the disruption of traditional livelihoods.

Traffickers face few risks and can earn huge profits by taking advantage of large numbers of potential immigrants. In many cases, trafficking patterns are also related to conflict situations as combatants create a market for the services of victims, and the effects of conflict erode the capacity of law enforcement and other authorities to tackle the problem.

What must be done to guarantee effective protection?

We first need to ensure that trafficked persons are recognised and treated as victims. Trafficked persons are vulnerable people trying to survive or improve their situations, far from their countries and their families, deceived by intermediaries, trapped by their “users”, abandoned by a legal and social system which fails to protect them and is incapable of opening the gates of their imprisonment.

This is a first, obvious – but essential – step. However, instead of that missing step, there is very often an abyss into which victims fall and where traffickers hide to continue their trade with complete impunity. Trafficked persons are victims of violations of their fundamental rights. They are therefore entitled to adequate protection. Compensation for the suffering caused and effective protection of the victim from any future harm constitute additional and important steps which, unfortunately, most of our systems have so far failed to take.

By its very nature, trafficking nearly always involves several States. To address the question effectively, international co-operation is vital. Many initiatives have been taken to fight trafficking. All international organizations represented in this room have addressed this issue. We have elaborated recommendations and action plans (both at international and national levels), reviewed national legislations, implemented assistance programmes, launched awareness-raising campaigns and monitored progress. We are all convinced that fighting trafficking means prevention, prosecution, awareness-raising and last, but not least, protection of the victims.

And yet, so far, international legal co-operation has concentrated mainly on the measures needed to identify and prosecute the criminals, seize their assets, break up their networks and eradicate the problem. These measures are indeed important but are they enough? The answer is no. Our values are not effectively protected if we fail to protect and assist the direct victims of trafficking.

The 45 member States of the Council of Europe have of course ratified the European Convention on Human Rights, as well as numerous other texts which prohibit slavery, torture and inhuman and degrading treatment. It is then only natural that they are determined today to address the question of the victims of trafficking, by means of a legally binding instrument: a Council of Europe Convention on action against trafficking in human beings. The Convention should build on the United Nations' achievements in this field in a European context and facilitate the implementation of the existing international legal instruments dealing with trafficking in human beings.

For the first time, countries of origin, transit and destination have decided to use a binding instrument to develop a common policy against trafficking which pays due regard to the victims and which includes a monitoring mechanism.

Individual countries address the question from different angles, use different tools and achieve different results. International co-operation means re-thinking the whole national system and the necessary changes may sometimes encounter major obstacles (ranging from social perceptions to legal traditions and economic realities).

Despite all of this, the Council of Europe's member States are drafting provisions which are both more far-reaching and precise than any other existing international binding instrument. I am confident of their ability to reach the highest possible level of commitment. This Convention should go beyond existing international texts, but should also reflect much more than the minimum common denominator of the various national policies.

At this stage, the Council of Europe committee responsible for drafting the Convention has completed the first reading of the draft Convention. It is expected that the draft Convention will be finalized by the end of the year in order that it may be opened for signature at the 3rd summit of Heads of State and Government of the Council of Europe to take place in Warsaw in the spring of 2005.

We are working in close collaboration with other intergovernmental and non-governmental organizations as we wish the draft Convention to be subject to broad consultation, involving civil society actors. Many partners are already involved in the negotiation process but we are exploring further ways to ensure a broader participation.

The negotiation of this new treaty gives all Council of Europe member States the opportunity to contribute on an equal footing and to enhance the provisions of existing treaties in this field, particularly the UN Palermo Protocol.

We must go beyond our minimum common denominator; we must go beyond our national laws, no matter how perfect they may be. We must be brave and set up a legal and regulatory framework but we need to make sure that the victims remain at the heart of our system and that we build our Convention around them.

Thank you for your attention

5. KEYNOTE SPEECH

Maria Grazia Giammarinaro

Judge, Criminal Court Rome, Italy

1. GENERAL REMARKS

I would like to start with some general remarks.

What point have we arrived at in this matter?

Undoubtedly, at least over the past 5 years, the International community has made great strides in the struggle against trafficking. There is an increasing awareness, both within the public institutions and civil society, of the gravity of the phenomenon and the need for more effective action.

New international instruments have been adopted, above all the Palermo Convention and Protocol on Trafficking, and more recently, the EU Directive on the Residence Permit. The negotiation for the Convention of the Council of Europe is underway in Strasbourg. The process of harmonization of national legislation is going on over all the OSCE area, in conformity with the standards established in the Protocol. The OSCE and the Stability Pact Task Force on trafficking have been playing an important role in several countries.

However, I want to point out with the greatest concern that there is a gap still to be bridged between our efforts and concrete results.

Most victims of trafficking are still being not identified as such, are treated as illegal aliens and/or prostitutes, sometimes as criminals, and are summarily deported. When they return to their countries of origin, they are often re-targeted and re-victimized. This happens as a matter of course, day by day, almost everywhere.

The truth is that the vast majority of victims of trafficking do not receive any kind of support or help.

I'd like to thank the OSCE and the government of Finland for this opportunity to discuss and exchange ideas and opinions concerning this problem, to find new approaches and solutions, to implement OSCE – ODIHR strategies.

First of all, what reasons lie behind the gap between good intentions and results?

I think there are two main issues to be dealt with:

- Action against trafficking is still deeply influenced by restrictive policies on immigration at a national level. As a matter of fact, compared to the haste with which any illegal alien found on national territory is deported, the struggle against trafficking is not a priority. Therefore, cases of trafficking, and consequently victims of trafficking, are not identified in most cases.
- The lack of an effective identification process is also detrimental to prosecution. We should be aware that prosecution itself is not successful without a co-ordinated social policy strategy. This strategy requires a combination of different actions and policies, which includes protection and

support for victims, favourable legislation on residence status, and permanent co-operation between police, prosecution and support agencies.

In order to overcome all these difficulties – this is my essential point – a human rights- centred approach is needed.

Above all, consistency is needed between statements and real commitments.

In this approach, we should take make headway concerning a sort of cultural pre-condition.

Trafficking is a very complex phenomenon, both from the social and the criminal point of view. From the outset, we have defined trafficking by trying to associate it with some specific aspects of the trafficking process, such as prostitution, and illegal immigration.

I will try to show how these conceptual connections have influenced policies on trafficking and their results. And I'll try to show why we should now move from an approach based on prostitution and immigration to an approach based on the protection of the human rights of trafficked persons.

2. THE CONNECTION BETWEEN TRAFFICKING AND PROSTITUTION

Historically, in all European Countries, the connection between trafficking and prostitution has been the primary concern, and consequently the primary conceptual approach.

In fact the first International Documents on Trafficking focus on action to prevent and combat trafficking for the purpose of sexual exploitation. This is the area covered by the The Hague Ministerial Declaration of 24-26 April 1997, the two Joint Actions adopted by the Council of the European Union on 29 November 1996 and on 24 February 1997, and the Recommendation N. R (2000) 11 adopted by the Committee of Ministers of the Council of Europe on 19 May 2000.

So far, enforced prostitution is statistically the main phenomenon. But unfortunately other, no less serious forms of trafficking exist in our countries, and it is imperative to pay more attention to these.

In some countries there are huge movements of children or young men trafficked for the purpose of forced labour in factories, in slavery-like conditions.

We should also look more closely into domestic servitude. This phenomenon stems from the dependency involved in any domestic labour based on cohabitation, and in this way it shares common features with domestic violence. The person is falsely represented as being part of the family. In fact there is no negotiation about work conditions, working hours, holidays, and sometimes the salary, under the pretext that the employer must be compensated for the expenses he/she incurred for the flight ticket. This is not yet trafficking, but trafficking exists when there is no salary at all, or a very small amount of money, insufficient for survival or for sending anything home, when there are no days off during the week, and the person is obliged to be permanently available for the needs of the owner, and when in addition the person is treated like a slave, insulted, humiliated, beaten, or sexually abused. This is exactly what servitude is, as defined by the Palermo Protocol.

However, the existence of other forms of trafficking is not the only reason why it is useless to focus policies against trafficking mainly on prostitution.

European countries vary in their legislation concerning prostitution, mostly criminalizing not prostitution in itself, but only the practice of favouring and exploiting it. Sweden punishes clients in addition to exploiters. The Netherlands and Germany have legalized prostitution, but few countries regard prostitution *per se* a crime. When it is considered a crime, certainly the fear of being prosecuted is an additional factor that deters victims from coming forward and reporting the traffickers. However, so far there is no strong evidence that any of the other approaches produces better or worse results in the fight against trafficking.

Therefore, emphasizing the connection between trafficking and prostitution does not help to establish legislation on prostitution; legislation could have a more effective impact effect on the struggle against trafficking.

I would like to point out that trafficking must be clearly identified as such, in conformity with the definition in the Palermo Protocol, and identified as a priority. It is possible and necessary to join forces and carry on the struggle against trafficking, in the context of differing national legislation concerning prostitution.

In this approach, prostitution and sexual exploitation in general is considered as one, just one of the possible objectives of traffickers. Women, men, children do not become victims of trafficking because of their sex or sexuality. They become victims of trafficking because of the enormous profits that traffickers can make through the exploitation of sexual or other kinds of services.

In the light of a human rights approach, and in terms of prevention, one of the main problems we have yet to deal with, is how to reduce, and in the longer term, how to eradicate the demand for both sexual services and labour services in slavery-like conditions.

3. THE CONNECTION BETWEEN TRAFFICKING AND ILLEGAL MIGRATION

The second traditional conceptual connection is between trafficking and illegal migration.

During the negotiation of the UN Convention on organized crime, the trafficking issue was originally included in the Protocol on illegal migration. However, during the negotiation of the Convention and the Protocol it became clear that the subject should have been treated separately.

At the end of the negotiation, the difference between trafficking and smuggling of migrants was clearly defined.

According to the definition in the Protocol, trafficking in human beings consists of three elements:

1. Movement of people from one place to another place, not necessarily another country, not necessarily through illegally crossing borders. Therefore, trafficking is not a crime either against the State, or against immigration laws. It is a crime against the person, and, under the Statute of the International Criminal Court, it is a crime against humanity. However, removal of victims is a factor in their being reduced to slavery-like conditions. Their removal from their families and their social environments is an essential component of isolation and vulnerability.
2. The means used by the traffickers. These involve the use of force, coercion, threats, fraud or abuse. The definition includes the important concept of the abuse of a position of vulnerability. The

travaux préparatoires clarify that this kind of abuse is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.

3. The purpose of the exploitation. Exploitation can be of different types, including slavery, servitude, forced labour, exploitation of prostitution or other forms of sexual exploitation.

The second and third elements of the definition show the main difference between trafficking and smuggling. In the case of smuggling, the person consents to illegal migration. It is possible that, at an early stage, a case of trafficking starts as a case of smuggling, and if violence or coercion is used subsequently becomes a case of trafficking. The distinction of course can be more problematic if abusive means are used.

However, the third element always makes the difference in identifying the type of offence. The purpose of the smuggler does not go beyond the payment of the costs of travel and illegal entry, which can be – and normally is – exploitative in itself. In any case, the relationship between smuggler and migrant ends at this point.

In a case of trafficking, however, the ulterior motive of the trafficker is to exploit the person once she/he has arrived in the country of destination. The story does not end with arrival. This is merely the beginning of what can be a hellish ordeal.

Despite the fact that the distinction should be clear, trafficking is often considered by governments merely as a form of smuggling. Despite the fact that in smuggling there is a person who consents to illegal migration, whereas in trafficking there is subjection and slavery-like conditions, governments still tend to deal with trafficking in the same context and using the same criteria as those found in policies aimed at tackling illegal migration.

To be more precise, policies concerning trafficking are still dominated by the concern that favourable provisions for the victims of trafficking could be used instrumentally to get around provisions on illegal migration, with the much-feared result that this would cause an increase of irregular migrants, and of people allowed to stay on the territory of the receiving State.

In the Italian experience, it must be pointed out that all these concerns are certainly exaggerated.

Since trafficking is typically a phenomenon involving the systematic use of violence or abuse, and therefore a serious criminal phenomenon, it is a very small area within illegal migration.

In Italy, since the enforcement of legislation concerning residence permits for victims of trafficking, passed in 1998, there has not been any negative impact on the figures and assessments of illegal immigration, nor on the figures concerning the regularization of people that originally entered the country illegally. In Italy, between 1998 and June 2004, 3,870 victims of trafficking were granted a residence permit on social protection grounds. It is an extraordinary result from the point of view of the support of victims, but it is nothing compared to the figures of illegal immigration to Italy.

Moreover, if the law establishes a good system of support and assistance for trafficked persons, including language training, vocational training etc., it is neither easy nor probable that the provisions concerning residence permits would be used instrumentally.

4. THE APPROACH BASED ON THE PROTECTION OF THE HUMAN RIGHTS OF THE VICTIM

Now, I'm going to present some arguments to support the idea that we should move from the traditional connection between trafficking and prostitution, trafficking and illegal migration, to an approach based on the priority of the protection of the human rights of the victim. This approach is consistent with a strong emphasis on the criminal character of the phenomenon, which is often controlled by organized crime, and often involves a condition of exploitation and subjection of the victim, comparable to slavery or slavery-like conditions.

This last statement needs some clarification. The notion of slavery-like conditions should not imply the total lack of self-determination and freedom of movement of the trafficked person. Abusive means are increasingly used by traffickers, also in response to successful prosecution. Slavery-like conditions exist, for example, when the trafficker allows the victim to send small amounts of money home, or go somewhere with other girls, or even when he treats her as a girlfriend, sometimes adopting an affectionate manner, occasionally beating her up as in a violent relationship. A situation which is not incompatible with slavery-like conditions occurs, when all these concessions are granted and advantage taken of the situation of vulnerability and isolation of the victim, and when, above all, these concessions are arbitrarily withdrawn by the traffickers. What must be determined is whether the person has a real and acceptable opportunity to leave or not. Normally, when the victim wants to escape, she/he is prevented from doing so by the use of force or threats, very often against children and relatives in the country of origin.

There is strong evidence that an approach based on the protection of the rights of trafficked persons is not only consistent with the relevant international legal documents, but is also the most effective means of combating traffickers. For this reason I've been asked to talk about the Italian system, which clearly assumes victims' rights as the focus of the policies against trafficking.

5. THE ITALIAN MODEL

In the Italian model victims' rights are protected unconditionally, at least at an early stage of the procedure.

This is an aspect that I would like to stress. In Italy we have had very good results in the struggle against trafficking through a set of social provisions, concerning residence status and support for victims, and not through criminal provisions, because the new criminal law was passed only in 2003.

In Italy we have provisions aimed at encouraging the collaboration of those accused of mafia-related offences with the judicial authorities. But these provisions have not worked for victims of trafficking. Therefore, when we drafted the new legislation (art. 18 of the Law on Immigration) we decided, simply, to reverse the traditional approach to the provisions concerning the so-called "pentiti" of the mafia.

In the case of those accused of mafia-related offences, the approach is: the State gives you something (in terms of attenuating circumstances, lower penalties, police protection), on condition that you collaborate with the judicial authorities.

In the case of trafficking the approach is exactly the opposite: firstly, the State protects you, and allows you to stay in its territory, because you are a victim of a serious crime, which infringes fundamental

rights and the human dignity of the person. Then, the State asks you to co-operate in the prosecution of the perpetrators.

This approach has been shown to work in practice. In fact, in the two years since the law was passed, we have had ten times more criminal proceedings for trafficking.

The Italian model is based on the idea that, as a priority, public institutions have to take care of the basic needs of trafficked persons. Identifying such basic needs has been possible because at that time, during the government led by Mr Romano Prodi, there was a permanent exchange of information and opinions between our Ministries of Equal Opportunities and Social Affairs and NGOs working in the field of prostitution and drug addiction, both catholic and feminist associations.

There are three elements I would like to emphasize in the Italian Model:

- When a person claims to be a victim of trafficking, she/he has two possible courses of action. The person can report to the police as a first step. In this case, the police will provide the person with assistance by accompanying her/him to a shelter run by an officially recognized NGO. Since criminal proceedings start immediately, the Prosecutor asks for a residence permit for the victim, if she/he considers the statements of the victim potentially a useful source of evidence. This is the so called “judicial path”. The alternative is the most innovative mechanism in Italian law, the so called “social path”. The person may claim to be a victim of trafficking and ask for help and assistance from a social worker of an NGO, normally of an NGO working with street units to support prostitutes. In this case, the NGO immediately shelters the person, and asks for a residence permit on behalf of the victim. The police authority must check if the person’s claim that she/he is a victim is corroborated, and issue a residence permit of 6 months, which is renewable. Pending issuance of the residence permit, the person is allowed to stay on national territory.
- The residence permit is issued on “social protection grounds”, not just on judicial grounds. In fact, in following the “social path”, at least as a first stage of the procedure, the trafficked person must be assisted and protected, but not necessarily on condition that she/he reports the exploiters.
- In spite of some difficulties concerning the enforcement of the law, I would like to point out that the system by and large works. This is due to an element of the Italian model, that I would like to emphasize here: the recognition of the role played by NGOs. The law provides for the formal registration of a list of NGOs qualified to carry on support activities for victims of trafficking, and funded by the government and city councils. The setting-up of an institutional mechanism for co-operation among NGOs, police, prosecution, and city council services has allowed confidence-building to develop since the law came into effect. This process has not been easy. In some cities or regions it was the first time that this sort of co-operation had existed. However, the mechanism of co-operation has strengthened the position of NGOs, has required highly professional skills from them, and has made them completely reliable in the eyes of the police and the prosecution, without affecting their autonomy.
- The last element that I would like to stress consists of the opportunity for regularization given to the victim of trafficking. The person is allowed to follow a regular course of study, or to work during the period the permit is valid. Before the expiry of the permit issued on social protection grounds, it can be converted into a residence permit for work or education. This means that the trafficked person can stay on Italian soil under the same conditions as anyone who has migrated to Italy legally.
- In addition, the possibility of renewal or conversion of the residence permit is totally independent of the result of criminal proceedings. This means that the victim can obtain the renewal or conversion of the residence permit even though the defendant has been acquitted in criminal proceedings, for example as a result of insufficient or contradictory evidence.

Some figures may better explain the current situation in Italy.

- Between March 2000 and February 2001, that is in one year of enforcement, 1,185 victims were sheltered and supported through the assistance and social integration programmes.
- From 1998 to June 2004, 3,870 residence permits were issued, and 150 people voluntarily returned, and were assisted through special programmes of repatriation.
- Before 2000, about 200 cases of trafficking had been prosecuted.

In 2001, according to the figures provided by the National Anti-Mafia Directorate there were 2,930 criminal proceedings for trafficking and 6,074 for smuggling.

In total, there were 7,585 defendants and their nationalities were as follows:

Italians	32.18%,
Albanians	29.83%
Chinese	6.69%
Romanians	4.52%
Nigerians	4.46%

About 16% of the defendants were women.

Victims in trafficking cases amounted to 2,741; of these:

Albanians	23.86%
Nigerians	8.39%
Ukrainians	5.58%
Moldavians	5.25%

In trafficking cases 80.88% of victims were women. In smuggling cases, just 14.08% were women.

This means that trafficking is still largely a matter of the exploitation of women, and requires a gender-based approach.

What is the difference between the Italian system and the reflection period, which I would like to call recovery and reflection period?

In principle, there is no opposition between the Italian model and the model based on the reflection period provided for in Belgium and the Netherlands and now in the EU Directive on residence permits. The recovery and reflection period implies a fixed period of time. The main problem is that this period must be adequate, at least for the first phase of the recovery process. Experience has shown that 30 or 45 days are not enough.

Although the EU Directive does not establish a minimum reflection period, national legislation should provide for an adequate period, preferably three months, as suggested by the Stability Pact countries.

In the Italian model there is more flexibility.

Once the person is sheltered, even though the residence permit has not yet been issued, she/he cannot be deported until the competent authorities have completed the identification of the person as a victim of trafficking.

In this identification process NGOs play an essential role, because social workers evaluate the situation of the person seeking help, and assesses whether the person meets the legal requirements for applying for the residence permit.

Regardless of whether or not the person has already decided to report or make a statement in criminal proceedings, she/he can obtain a residence permit of six months, which is then renewable.

In addition, the time when the victim is really in a position to make a reliable statement or to act as a witness is normally assessed by the police, the prosecutor and the NGO sheltering the victim acting in conjunction.

Therefore, concerning the comparison between the two systems – reflection period and Italian model – an essential point must be stressed. Both can work provided that there is a confidence-building process, leading to co-operation, on a regular basis between institutional and social actors.

Of course, the Italian system is far from being an ideal model.

For example, we need a better identification process for children. According to the definition in the Protocol, every exploited child is a trafficked child. So, in every single case, the family must be located, and in order to adopt the best possible decision in the child's interest, an investigation must be carried out into the reasons why the child has been travelling, and whether the family has any responsibility in the trafficking process, for example because the family has sold the child.

In addition, the identification process, connected with the immediate sheltering of the person, should be started even when the person does not admit that she/he has been trafficked, but the competent authorities have grounds to suspect that there is an underlying pattern of trafficking, as in the case of the collective deportation of prostitutes.

Nevertheless, the Italian system has so far proved the more effective of the two.

I'm convinced that the Italian model is difficult to manage – and so difficult to export – precisely on account of its merits. Firstly, it requires permanent and loyal co-operation between institutional and social actors. Secondly, the whole process is oriented towards the recovery and social integration of the trafficked person, and not mainly, or even necessarily, at co-operation with the judicial authorities. I am increasingly of the opinion that these are the decisive elements of effective protection of the rights of victims; elements that are not yet adequately dealt with by national legislation and international instruments.

6. THE HUMAN RIGHTS OF THE TRAFFICKED PERSON

Finally, by way of summary, I offer a list of fundamental human rights of trafficked persons, which States must protect, in conformity with relevant International Instruments, and decisions of the European Court of Human Rights:

Right to safety.

In conformity with decisions of the International Court of Human rights based on art. 2, art. 3, and art. 8 of the European Convention of Human Rights, the victim of a crime has a right to safety. In the case *A. versus UK* – 22.9.98 under art. 8, the Court established a responsibility on the part of the State for violations committed by private individuals. The Court stressed that the States are obliged to ensure that people under their jurisdiction are prevented from being subject to serious forms of offence against their physical integrity.

The CoE Recommendation on Protection of Victims and Witness from Intimidation should be also mentioned in this respect.

Right to recover from trauma and to start a process of rehabilitation.

It must be stressed that, according to the recent decisions of the European Court of Human Rights, which has widened the notion of torture, in my view the trauma suffered by a trafficked person can be considered as a form of torture.

In the case of torture, States also have a legal responsibility to prevent torture or inhuman treatment inflicted not only by State officials, but also by private individuals.

Right to residence status.

In the prominent case *H.R.L. versus France* – 29.4.97, the Court stated that deportation is not admissible when the person is exposed to retaliation by individuals in the country of origin. The principle, established in the case of a convicted person involved in drug-trafficking, may of course be applied with even greater reason to victims of trafficking in human beings.

Right to criminal proceedings.

Through different decisions, especially under art. 2 of the European Convention, the Court has stated that the victim has a right to an adequate, effective, and speedy investigation. A list of rights of the victim concerning participation in criminal proceedings should stem from this important principle.

Right to compensation.

The right to compensation is provided for, in a binding form, in the Palermo Protocol. The next step forward should be to establish specific means to ensure that the victim receives effective and adequate compensation.

Social integration both in the country of origin and destination.

This is the final goal. None of the previous rights have any meaning if they are not aimed at social integration. The entire system should ensure that the victim has another opportunity to build her/his life, in a way which is consistent with her/his own personality, beliefs, and hopes.

I would like to end my speech by recalling something that concerns the history of slavery.

Ronald Dworkin wrote on this subject:

“Cardinal in that (*sic*) culture is a belief in individual human dignity: that people have the moral right – and the moral responsibility – to confront for themselves, answering to their own consciences and convictions, the most fundamental questions touching the meaning and of their own lives. That assumption was the engine of emancipation and racial equality, for example. The most powerful arguments against slavery before the Civil War, and for equal protection after it, were framed in the language of dignity: the cruelest aspect of slavery, for the abolitionists, both religious and secular, was its failure to recognize a slave’s right to decide issues of value for himself or herself. Indeed, the most basic premise of our entire constitutional system – that our governmental shall be republican rather than despotic – embodies a commitment to that conception of dignity”.

(Freedom’s Law. The Moral Reading of the American Constitution, Cambridge, Harvard University Press, 1996)

In modern forms of slavery as well, what matters is not only the deprivation of essential material goods, or liberty of movement, or even the most severe forms of exploitation. What is really intolerable is the offence to human dignity.

In the EU Charter of Fundamental Rights, and in the EU constitutional process, human dignity has an essential place, as a concept implying self-determination and equal value of every person, regardless of differences in wealth, power, gender, race, religion, opinion or beliefs.

In her latest very inspiring book, concerning emotions and the law (*Hiding from Humanity: Disgust, Shame, and the Law*, Princeton, Princeton University Press, 2004), Martha Nussbaum showed the necessity of including the experience and the concept of vulnerability in the legal paradigm. After all, the law exists to protect us when we are at our most vulnerable. Trafficking unfortunately is an example of an area where coherence is needed between statements of principle and hellish reality, as far as the protection of human dignity is concerned.

6. PANEL DISCUSSIONS

6.1 Panel Discussion A: Trafficking in Human Beings in Countries of Destination: new challenges in policy development

Mark Richardson

*Policy Officer, International Crime and Terrorism Division
Department for Foreign Affairs, Canada*

Trafficking in human beings as a threat to human security

I have been asked to say a few words to explain the Canadian approach to Human Security generally and touch on its relationship to human trafficking in particular.

Canada's human security agenda focuses on increasing **people's safety from the threat of violence** (or "**freedom from fear**"). Our promotion of human security entails a people-centred approach to foreign policy which recognizes that lasting global and state security cannot be achieved until people are protected from violent threats to their rights, safety or lives. The human security agenda thus extends the meaning of security beyond a narrow focus on the state to include the point of view of the individual. Placing people at the centre of global security policy complements the traditional emphasis on the security of the state as well as international efforts to protect human rights and promote human development.

The term Human Security has been around since at least 1994 when it was used in that year's Human Development Report. It is a concept that developed in response to the particular challenges of the post-Cold War era and is particularly pertinent to the post-September 11th world. A world that has:

- more wars within states
- new forces driving conflict
- greater role for non-state actors
- civilians increasingly targeted
- and at the same time new pressure on the state to act to preclude future disasters (Kosovo, Rwanda-Darfur)

The end of the Cold War was hailed as the beginning of an era of peace and prosperity. There was a widespread optimism that with the easing of the grip of the ideological divide, the world community would be freer than at any time in the past to turn its attention to global problems such as under-development, poverty and the environment. The reality of the past decade or so has been more sobering: we have seen a wide range of new security threats emerge. These include international terrorism, the proliferation of civil wars and problems such as transnational crime (including human trafficking, international drug trafficking), pollution, and the proliferation of weapons of mass destruction and small arms.

In recent decades, armed conflict has taken on a different shape, often rooted in religious or ethnic discord. While the number of armed conflicts between states has declined over the last 25 years, the

number of intra-state conflicts has increased. The vast majority of wars since the end of the Cold War have been fought within rather than between states. The crises in the Great Lakes region of Africa, in Bosnia and Kosovo, in East Timor, Sierra Leone, and most recently in the Sudan are only some of the more noted examples in a series of conflicts with tragic implications for the affected populations.

Individuals are increasingly the principal victims, targets and instruments of modern conflict. Civilians are paying the heaviest price, from the rise in intra-state conflict and from failed states.

Threats to individual security are not limited to situations of violent conflict. For all its promise, globalization has also shown a dark underside. Transnational phenomena – terrorism, transnational crime (human trafficking, illicit drugs, illegal weapons, corruption), environmental degradation and infectious disease, financial and economic instability – put all of us at risk. Indeed, they have already caused tremendous suffering.

Instantaneous communications, rapid transportation, increasingly porous borders, and rising business, cultural and academic ties have undeniably and unalterably merged all our lives into a common destiny. The security or insecurity of others has become very much our own security or insecurity.

The Concept of Human Security

Canada's promotion of human security is a response to these new global realities. Human security is a condition or state of being characterized by freedom from pervasive threats to people's rights, safety or even their lives. As I mentioned before, "freedom from fear".

Rethinking the meaning of security saw a growth industry throughout the 1990s. In large measure these efforts have focussed on expanding the list of threats to security to include issues such as human trafficking, narcotics, environmental threats, refugees and migration and infectious diseases. To the degree that these challenges are increasingly inter-related, demanding comprehensive integrated responses, broadening the range of threats is considered absolutely essential. From the Canadian perspective, however, more significant than widening the definition of security, is changing its principal focus. In essence, human security is about safety for people from threats to their rights, their security and even their lives.

The focus on the safety of individuals raises the question about the relationship between human security and national security. Contrary to some claims, human security and state security are not incompatible. When states act in the security interests of their people, state security and human security are mutually supportive. Building an effective, democratic state that values its own people and protects minorities is central to promoting human security. At the same time, improving the human security of its people strengthens the legitimacy, stability and security of a state. The importance of effective states is clear, for where human security exists as a fact rather than an aspiration, that situation can be attributed in large measure to the effective governance.

States, however, are not necessarily guarantors of human security. When states are externally aggressive, internally repressive or too weak to govern effectively, they threaten the security of people. In the face of massive state-sponsored murders, appalling violations of human rights and the calculated brutalization of people, the humanitarian imperative to act cannot be ignored and can outweigh concerns about state sovereignty. Ultimately, state sovereignty is not an end in itself – it exists to serve citizens and to protect their security. This is why Canada is a strong proponent of the Responsibility to

Protect. We will be making “R2P”, as we call it, our main theme for UN reform at this year’s General Assembly and for the Secretary General’s High level Panel on UN reform.

As I mentioned, the key principle for Canada is **freedom from fear**. The rest of our human security thinking flows from this.

The Canadian Approach

The Canadian approach follows five major themes:

1. Conflict Prevention (small arms, economic dimensions of conflict)
2. Governance and Accountability (International Criminal Court, security sector reform)
3. Peace Support Operations (expert deployment)
4. Protection of Civilians (war affected populations, Responsibility to Protect)
5. Public Safety (terrorism, transnational crime); human trafficking

The Public safety theme has the most direct link to human trafficking of our five principles. However, they all touch on the conflicts and failures that lead to problems like transnational crime and terrorism. Among the many challenges of globalization is the increasingly international nature of threats to global safety and prosperity. The benefits of greater movement of information, people and goods are mirrored in the ease with which problems originating elsewhere can cross borders. The traffic in human beings, Terrorism, cybercrime, illicit drugs, and money laundering do not respect borders, and directly affect people’s safety and livelihoods.

Now, post-September 11th, a human security approach is more necessary than ever:

- Provides comprehensive approach to security
- Continuing role for traditional security measures (peacekeeping, intelligence, border controls, domestic measures)
- From the Canadian perspective, security is not something that affects those abroad. Insecurity overseas becomes insecurity at home.
- The nature of today’s threats, especially their effect on civilians, means that prevention, intervention and rebuilding must involve cooperation at every level of society.

Human Security Program

But how have we supported our principles?

- We have provided funding through the Human Security Program of CAD10 million every year since 2000. These funds are designated to activities in four key areas:
 - Domestic (in Canada) capacity-building (Cdn, NGOs, academics, policy development)
 - Diplomatic leadership and advocacy (meetings, activities, training that advances an HS issue). Possibly this meeting.
 - Strengthening multilateral mechanisms (expert deployment, capacity-building of international organizations)
 - Country-specific initiatives (short-term, targeted actions, policy advocacy)

Examples of anti-trafficking projects:

1. Justice Canada- Anti-Trafficking Pamphlet, total of \$36,488 (\$17,513 in 2002-2003 FY and \$18,975 in 2003-2004 FY).

2. International Organization on Migration-Dissemination of information on the Risks and Consequences of Trafficking in the Dominican Republic; total of \$40,480

I am also pleased to be able to confirm that our Minister of Foreign Affairs, Pierre Pettigrew, has approved CAD 100,000 from our Human Security Fund for the OSCE Public-Private Co-operation in the Prevention of Trafficking in Human Beings. This project is in partnership with Respect and the International Organization for Migration and we are currently working with the Secretariat to finalize the details.

A related project that we help fund with our Human Security Program is a Canada-UK Gender Training Initiative (GTI) for military and civilian personnel involved in peace support operations. This initiative provides material for a three-day course on gender sensitization, complete with thematic overview and geographic case studies. The GTI was piloted for a Canadian mixed military and civilian audience in Spring 2002 and has since been transformed into an online interactive web site.

Human Security Network

I would like to say a few words about another initiative that Canada worked hard to establish. The Human Security Network (HSN) is a group of like-minded countries from all regions of the world that, at the level of Foreign Ministers, maintains dialogue on questions pertaining to human security. The Network includes Austria, Canada, Chile, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Switzerland, Slovenia, Thailand, and, as an observer, South Africa. The Network has a unique inter-regional and multiple agenda perspective with strong links to civil society and academia.

The Human Security Network is a flexible mechanism that identifies concrete areas for collective action. It pursues security policies that focus on the protection and security requirement of the individual and society through promoting freedom from fear. The Network plays a catalytic role by bringing new and emerging issues to international attention. By applying a human security perspective to international problems, the Network aims to energize political processes aimed at preventing or solving conflicts and promoting peace and development.

Canadian Efforts Against Human Trafficking

Canada sees a direct link between ensuring human security and preventing and combating human trafficking. States that cannot provide good governance, states that do not or cannot provide security and freedom from fear for their peoples, states that oppress and attack their own people all provide the conditions that allow for human trafficking to occur. We combat human trafficking because we believe that we must protect victims. We must also combat human trafficking and bolster human security because we know that this crime and others are spawned from a lack of human security and can easily cross borders and affect Canadians. In fact, human trafficking is one of the clearest examples of how conflict, instability and fear lead to transnational problems.

Canada takes the issue of human trafficking very seriously. We have pursued a balanced approach to combating human trafficking, one which recognizes and protects the human rights of the victims and prosecutes those who perpetrate and facilitate this crime.

From the international perspective, we see human trafficking as a global problem that requires global responses. That is why Canada took on an active role in the elaboration of the UN Convention against

Transnational Organized Crime (TOC), and its Trafficking and Smuggling Protocols. Canada is also party to a variety of other instruments with the UN and with organizations like the International Labour Organisation. We are also members of the Regional Conference on Migration or Puebla Process which involves North and Central America.

We have also established a senior level working group involving 14 ministries from across the Canadian government that is mandated to co-ordinate counter-trafficking efforts and to establish a comprehensive federal strategy to combat human-trafficking. Two of the elements that we will be examining (Foreign Affairs Canada is a co-chair of the working group) will be prevention and awareness as well as victim protection and assistance. The prevention side of our strategy may well draw on the human security principles I have mentioned today. On the victim protection and assistance side I hope to draw on the expertise so evident at this conference to inform our process.

Conclusion

While Canada looks at human-trafficking from a global as well as a domestic viewpoint, we also see how important regional organizations, like the OSCE, are in the fight against trafficking. Regional organizations can work effectively at the grass-roots level, have access to regional/local legal and language expertise, and maintain a “global” vision for their regions. This is why we feel confident investing in a project like the public/private partnership that I mentioned earlier.

I hope that his short survey on the Canadian approach to human security and human trafficking has been useful to you and I look forward to a very interesting and fruitful discussion during the conference.

Jaana Kauppinen

Director, Pro-tukipiste, Finland

Gaps in human rights protection of victims of trafficking in countries of destination

First I have to admit, that I am a little bit confused because I have heard so many times today, what a good reputation Finland has in this area. From my perspective – as a service provider at grass-roots level – I have to say that the situation here in Finland is far away from ideal. We enacted trafficking legislation less than two months ago and we still lack a national action plan for supporting and protecting victims of trafficking.

Talking about gaps in human rights protection in this context in 15 minutes is quite a challenge. I have picked out only few points of view which I think are relevant to human rights and victim-centred approach. Remarks concerning gaps in human rights of victims of trafficking made at the first conference in Berlin 2001 are unfortunately still relevant today.

Trafficking is part of international organized crime and trafficking is a crime against the State. International conventions are usually binding in criminal acts but when it comes to victim support and protection, the provisions are not of a mandatory nature.

Concerning human rights issues and protection and services for victims, ratification of international conventions is usually not a problem because in many cases national legislation fulfils the minimum requirements laid down by international conventions. So we can say that national legislation and international treaties are in balance. But when we change the perspective and look at the situation from the victim's point of view this balance is irrelevant if they cannot obtain the rights and the services they need. So even if in many European countries their national legislation and national action plans fulfil the minimum requirements, in practice, a victim's right to be identified as a victim and to be treated as a victim of serious international crime falls short of minimum standards.

One of the biggest problems is that there are differing interpretations of who should be considered victims of trafficking. Attempts to reach an agreement on the definition of the concept have often failed because the trafficking issue has been so muddled with the anti-prostitution policy (and the concepts of forced prostitution and prostitution based on consent etc.). This bracketing together of trafficking and prostitution has also confined attention to trafficking for prostitution purposes to the exclusion of other forms of trafficking.

Each State should ensure that trafficked persons are promptly and accurately identified. Identification requires firstly unanimity on the concept and secondly training for all the professionals (especially police officers, social and health care professionals, out-reach workers) who are likely to meet victims of trafficking.

But far too often potential victims of trafficking are treated as illegal immigrants and/or illegal workers. Individuals are deported without any further investigation and without there having been any reflection period, even in cases where the typical characteristics of trafficking are evident.

Primary prevention has been one of the priorities when fighting against trafficking and lot of money and effort has been put into prevention and awareness campaigns. Even if it is understandable that these TV spots and posters are often quite shocking (to wake people up) they may be counterproductive. Women

stuffed in sardine cans or tied to radiators can be thought-provoking but at the same time it gives too extreme an image. Because most of the victims do not conform to this image, I'm afraid that these kinds of extreme campaigns rather hinder that help victims when it comes to disclosing their situation. There is a danger that they will not be taken seriously because they look quite normal and well.

In addition, the continuous political wrangling about forced and voluntary prostitution is liable to hinder identification of victims of trafficking. Instead of indulging in political infighting we should be focusing on the violations of human rights, integrity and self-determination. Even those persons who already know what they are going to do in the country of destination can be victims of trafficking if their rights, self-determination and freedom of movement are restricted.

The strength of NGOs is that they are not authorities and they usually have access to people who are living in marginal conditions. NGO service providers have to consider very carefully what it means for their reliability and credibility if they are part of a service structure which is so heavily concentrated on control systems and judicial procedure. Most of the people have bad experiences with the police or other authorities and they don't trust them (usually with reason).

NGOs and other service providers should also think about their own security while they are doing out-reach work in the same environment where criminal networks are operating as well.

I was happy to hear that in Italy the reflection period is called "recovery" period, because it is nearer to what I believe it should consist of. If the reflection period is merely for waiting to if a person wants to testify or not we cannot expect too much. In many countries reflection periods are too short (only 14 days in Denmark, for instance) to guarantee that victims have enough time to make up their minds (without any pressure), concerning what they really want to do.

From the moment victims contact the police or other authorities they are very vulnerable. This is usually when they are extremely frightened; what will happen to them or to their significant others? This is exactly the moment they are "trained" for by the network: what will happen if you tell anybody?

We need more cultural mediators. Translating the language is not enough; cultural meanings are equally important. It is also important that the cultural mediator knows the situation in the country of origin. Human rights and civil rights are only rights on paper if you don't understand your rights or if you don't know how to use your rights for your own benefit or how to seek help.

Empowering work and emphasizing people's right to self-determination reduce the risk of secondary victimization. Even if they are victims of serious crime they shouldn't be treated as if they were nothing but victims. Offering opportunities to recover and offering skills to enable them to cope with their everyday lives (education, vocational training, language skills etc.) are good practices for minimizing secondary victimization.

Support and protection services shouldn't restrict a person's fundamental human rights. People who are living for example in shelters should have same rights as everybody else. Otherwise in practice there is no difference between jail and shelter.

Needs assessment:

- ask the victims what they want and what they need;
- ask the service providers and NGOs who work with trafficked persons;
- ask also for evaluation and feedback from the victims themselves.

Mike Dottridge

*Author of the Terre des Hommes report on child trafficking
"Kids as Commodities"?*

Special needs of trafficked children in countries of destination

My name is Mike Dottridge. For the past two years I have worked as a consultant on human rights issues. Before that I worked for 25 years for human rights non-governmental organizations (NGOs). Earlier this year an NGO which operates in half a dozen European countries, *Terre des Hommes*, published a study on child trafficking which I prepared for them.

I am going to talk about three issues and show some slides as I do so. First I will talk about why children present a particular problem for agencies involved in counter-trafficking work. Secondly, I will focus on some of the specific forms of protection which trafficked children need. Thirdly, I will summarize what is being done to address these needs.

1. The Problem

I realize that it would be convenient if children could be addressed as a simple sub-category when it comes to responses to trafficking, a sort of add-on to the main topic of trafficking in human beings, specifying a few extra needs which children have.

This has often been the approach when trafficking is discussed. Indeed, I think that I and others who helped draft the UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking* in 2002¹ were guilty of this, drafting just one guideline among eleven to cover the special measures needed by child victims of trafficking.

But this approach will not do. The criteria adopted in the UN's Palermo Protocol for defining trafficking involving under-18s are qualitatively different from those concerning cases of adults. While the process of recruitment of an adult must be marked by coercion or deception or suchlike for them to be regarded as trafficked, no such coercion is required for children and minors to be regarded as trafficked: it is enough for them to be moved and subjected to exploitation in their destination country. And while the Palermo Protocol is fairly clear on what constitutes "exploitation", in reality it is difficult to assess which cases of under-18s constitute "forced labour or services, servitude or slavery or practices similar to slavery", precisely because the levels of coercion required to make children do something are quite different from those required in adult cases – or at least all but the oldest.

The main issue still concerns the question of who is regarded as a victim of trafficking and entitled to protection.

There are numerous variables involved in the way under 18s are trafficked and exploited. Age is the most obvious one, with forms of trafficking and exploitation varying enormously between young children and "almost adults" of 17. But the different circumstances in which they leave home and the different forms of exploitation they experience are all relevant to the protection they require subsequently. Each different type of exploitation requires a correspondingly different protection strategy.

¹ Issued in May 2002 as part of a report to the UN ECOSOC. They can be obtained from the Office of the High Commissioner's web-site, <http://www.unhchr.ch>.

Trafficked children can be divided into at least three sub-groups according to their different ages:

1. The main one for consideration in Europe involves adolescent girls and some boys who are “almost adult”, 16 or 17-year-olds, perhaps 15-year-olds, mature enough to decide to leave home themselves and not likely to describe themselves as “children”. In Europe most of the trafficked girls in this age group are subjected to commercial sexual exploitation.
2. The second group involves pre-pubescent children who are trafficked in some parts of the world for their labour, rather than for sexual exploitation. In Europe they include youngsters used to beg or steal.
3. The third group involves even younger children: babies (for the most part), trafficked for adoption.

Among older adolescents, most who are trafficked have decided themselves to migrate in search of a better future, but have ended up in situations of abuse through no fault of their own. These teenagers do not look significantly different from other migrants aged in their late teens or early twenties and tend to be treated by the police in most countries as if they were adults, particularly if they have been provided with identity papers which state they are adults. However, if they are under-18 they are entitled to a special form of protection.

The type of exploitation to which young people are subjected is a second variable. The obstacle here is that most law enforcement agencies in Europe start from the assumption that “trafficking” is about commercial sexual exploitation – prostitution or the production of pornography. Having been redefined in 2000 by the Palermo Protocol, it is now clear that children, both adolescents and younger ones, can be exploited in all sorts of ways.

Here are some examples in Europe at the moment:

1. Albanian boys and girls taken to beg in Greece;
2. Romanian boys and girls taken to France and other European Union (EU) countries to take part in theft and other crime;
3. West African boys and girls brought to France and the United Kingdom to work as household drudges in conditions of servitude or slavery.

But needless to say, not every young person who has crossed a frontier, legally or illegally, in order to earn a living abroad, has been trafficked.

In reality, there are a series of overlapping categories into which young people fall: young worker, victim of forced labour or servitude, or victim of commercial sexual exploitation; and migrant, asylum seeker, unaccompanied minor, irregular migrant, “smuggled person” or “trafficked child”.

Particularly perplexing have been the cases of unaccompanied teenagers who are helped to migrate by others but who end up engaging in illegal activities, for example after an asylum application has failed. In Switzerland, a series of teenage boys from Guinea (in West Africa) have arrived and had their asylum applications turned down. Some observers see them as trafficked children who are exploited by pimps and criminal gangs. Others see this as a fairly normal pattern of irregular migration, which simply does not fit neatly into the categories developed in UN treaties.

The key message here is that law enforcement agencies and other authorities have a challenging but essential role to play in deciding how to categorize someone and an obligation not to deprive them of protection which their possible status as “trafficked” entitles them to, even if that status is not obvious.

2. Protecting trafficking children

I am now going to talk about the protection that anyone under 18 who has been trafficked requires in the countries they are taken to. In the context of the OSCE, most countries of destination are member States of the EU. The EU's main instrument on human trafficking, the 2002 Framework Decision, was intended to harmonize prosecutions and punishments for traffickers; consequently, it has not done much to standardize protection. This would not be a problem if all the States concerned systematically paid heed to the recommendations made by bodies such as the UN Commission on Human Rights and the UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. But they do not.

These international standards invariably stress some basic points.

First, that children or adults who have been trafficked should “not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities.”²

Secondly, that “...protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.”³

Thirdly, “...there should be no public disclosure of the identity of trafficking victims”⁴ and “the privacy and identity of child victims” should be protected and action taken “in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims.”⁵

Fourthly “Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin.”⁶

Fifthly, in the case of children believed to have been trafficked: “Their best interests shall be considered paramount at all times” in decisions made “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.”⁷

To make it clear what steps States should take to protect trafficked under-18-year-olds, in addition to the handbook issued by the OSCE on National Referral Mechanisms,⁸ the UN's specialized agency for children, UNICEF, has spelled out eleven specific issues on which the authorities should take action. These were prepared in the context of southeast Europe and issued last year: the *Guidelines for*

² Principle 7, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.

³ Principle 8, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.

⁴ Guideline 6 (6), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.

⁵ *Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, (Article 8.1.e); adopted 25 May 2000 and entered into force on 18 January 2002: “States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by: ... (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims:...”

⁶ Principle 11, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.

⁷ Principle 10 and Guideline 8, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.

⁸ OSCE/ODIHR. *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*. Warsaw, 2004.

*Protection of the Rights of Children Victims of Trafficking in Southeastern Europe.*⁹ The eleven areas of action are listed on this slide and seem appropriate for every OSCE State.

They include questions of identification, of appointing a guardian, of how the authorities may question a trafficked child, and a range of issues concerning care and protection. [Slide 12] They also concern finding what is called a “durable” solution and protection of the child as a victim and potential witness in any court case. The Guidelines point out that a “risk and security assessment” should be carried out before a young person is returned to their country of origin in every case where there are any reasons to believe that a child’s safety or that of their family is in danger.

This is not so different to the message from child rights NGOs, which regard repatriation as a good solution when it is “voluntary and assisted”, but perceive all cases of non-voluntary repatriation to be risky.

If any State in the OSCE intends to protect trafficked children, I suggest they need only consult these Guidelines and implement them.

I will not enter into detail on the measures needed to put the eleven measures into practice, but would like to comment on a couple.

Age and Identification as a “trafficking victim”

The issue of identification is critical. The fact that a young person is being trafficked is usually not obvious when they are on the move, particularly as it is not the coercion or deception involved in recruiting and moving them that defines them as “trafficked”, but the exploitation which follows.

Consequently, they must be given the benefit of the doubt: the authorities should not take steps which expose children to further danger, such as assuming that mature-looking young people are illegal immigrants who can be summarily deported.¹⁰ It is also important that protection measures are available to 16- and 17-year-olds as well as younger children.¹¹

⁹ Available at <http://www.seerights.org>. The eleven issues are:

1. identification;
2. appointing a guardian for each trafficked child;
3. questioning by the authorities;
4. referral to appropriate services and inter-agency co-ordination;
5. interim care and protection;
6. regularization of a child’s status in a country other than their own;
7. case assessment and identification of what is called a “durable solution”;
8. implementing a durable solution, including possible return to a child’s country of origin;
9. access for children to justice;
10. protection of the child as a victim and potential witness;
11. training for government and other agencies dealing with child victims.

¹⁰ On the question of age, UNICEF’s Guidelines (Section 3.1.2) state that “Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child.” The UN High Commissioner for Refugees (UNHCR) issued a set of *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* in 1997. While these focus especially on under-18-year-olds who are seeking asylum, they set out a set of basic procedures to be followed in the cases of all unaccompanied children who come into the custody of law enforcement or other government agencies in a country other than their own and set a minimum standard by which children believed to have been trafficked should be treated. They suggest how the authorities should respond when children are accompanied by an adult who is not their parent. On the question of assessing a person’s age and deciding whether to consider them under 18 years old, these Guidelines suggest that: “The child should be given the benefit of the doubt if the exact age is uncertain” ... “The guiding principle is whether an individual demonstrates an ‘immaturity’ and vulnerability that may require more sensitive treatment”.

¹¹ This seems to be a particular problem in countries where it is argued that girl children aged 16 have reached sexual majority and should be treated as adults. This approach seems inconsistent with upholding their best interests: it suggests they are old enough to get married and consequently it would be an infringement of their human rights to say that they should not earn money by selling sex. The International Labour Organization’s (ILO) *Worst Forms of Child Labour Convention* (No. 182 of 1999) bans “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” as far as everyone under 18 is concerned (Article 3(b)).

The result should not mean that young people crossing frontiers are subjected to oppressive checking by immigration officials, but that special attention is paid to unaccompanied children and others who fall into categories known to have been trafficked, and non-intrusive ways found of monitoring what happens to them subsequently.

The implication is also that more needs to be done to identify incidences of “exploitation”, particularly in the informal sector, bridging the gap existing currently between the police and labour inspectors and building more effective co-operation between statutory agencies and the NGOs which have often been the first to notice cases occurring.

3. What is currently being done to protect trafficked children

Rather than comment on other measures which *ought* to be taken to protect children who may have been trafficked from further harm, I am now going to focus on what happens in practice.

I can be worryingly brief in telling you what is being done to implement special measures to protect children trafficked into European countries of destination at the moment. The bleak answer is “not nearly enough”. There seems to be a shocking lack of political will in most countries of destination to ensure appropriate action to protect trafficked children is actually taken. I suppose this is because politicians are more interested in preventing irregular migration than in protecting the human rights of “foreign” children. This attitude contravenes the basic human rights principle of non-discrimination.

Equally worrying are the current practices which flout basic principles of protection, sometimes by turning them on their head. Some officials in Europe have invoked child protection principles to justify repressive measures that result in further abuse of either children’s human rights or adult’s rights, for example by systematically separating adults and children in all asylum-seeking families arriving at one port earlier this year.¹²

I want to comment briefly on the complications which surround the provision of residential care for under-18-year-olds who are believed to have been trafficked, as well as the issues which arise when unaccompanied minors transit through residential care back into the hands of traffickers.

Providing a young person with “safe and suitable accommodation”¹³ means ensuring that trafficker(s) do not have access to them. It does not mean depriving them of the freedom of movement. However, we have witnessed a worrying pattern throughout Europe involving unaccompanied children placed in residential accommodation. Some children requesting asylum have walked out and are known to have been pre-programmed to return to their traffickers. And nothing is known about what has happened to many hundreds of children who are believed to have been trafficked and who have been placed in residential accommodation for their protection, but who have also walked out.¹⁴

This pattern has prompted some observers to call for tighter restrictions on the movements of the children concerned and for them to be kept in closed accommodation. However, we know that

¹² In Italy.

¹³ UNICEF *Guidelines for Protection of the Rights of Children Victims of Trafficking in Southeastern Europe*, Section 3.5.2.

¹⁴ The numbers of children involved can be significant. For example, in one case in Greece, a special school in Athens taking in unaccompanied children referred by a Public Prosecutor, between November 1998 and October 2001, out of the 644 children arriving there (543 of whom were from neighbouring Albania), 487 subsequently disappeared (75 per cent). See Terre des Hommes, *The Trafficking of Albanian Children in Greece*, 2003, quoting information from Greece’s Directorate for Child Protection.

trafficked children in other parts of the world have chosen to escape from closed accommodation precisely because they felt they were prisoners.¹⁵

Managers of residential facilities consequently have to assess the risks facing the children in their care, but are not entitled to “err on the side of caution” and lock children in simply because this is easier to administer.

In conclusion, the way forward to strengthen protection for under-18s seems fairly clear.

At national level, the report published by *Terre des Hommes* last May summarized the efforts needed in the following terms:

“Every government should conduct a review to assess how its current procedures and practices compare to those recommended in the guidelines issued by UNICEF and the UN High Commissioner for Human Rights. A review panel which includes representatives of both statutory agencies and NGOs with experience of assisting trafficking children should be asked in every country to recommend specific measures to bring national practice into line with these international guidelines.”¹⁶

One of the conclusions I drew in this same report was that all measures to prevent child trafficking or to protect the children involved require reviewing on a regular basis, as there have been numerous cases in which well-intentioned initiatives were actually resulting in harm to the very children they were intended to benefit.

At regional level, regional institutions should take a lead in identifying the minimum standards for protecting trafficked children which are acceptable. The lead could come from the OSCE, or the Council of Europe, if it adopts a new convention on human trafficking, or from the European Union. If the States concerned are genuinely committed to protecting human rights, I do not think it is very difficult to see what should be done.

¹⁵ For example, research in Bangladesh for the International Labour Office’s International Programme for the Elimination of Child Labour (ILO-IPEC) found that 70 per cent of trafficked children who had experienced residential care felt they have been re-imprisoned in an NGO shelter (INCIDIN Bangladesh. *Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh*. 2002).

¹⁶ Mike Dottridge, *Kids as Commodities? Child Trafficking and what to do about it*, Terre des Hommes, May 2004, page 87 (Recommendation 6).

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The role of civil society in ensuring victim protection. Good practices and challenges from the perspective of the Italian system¹⁷

In Italy, civil society and particularly the Non-Governmental Organizations (Ngos)¹⁸ have always been at the forefront of action against social exclusion. Especially in the case of strategies to support victims of trafficking of human beings and to combat the phenomenon, Ngo's have played, and still play, a central and exemplary pioneering role. They, in fact, have always anticipated – and often taken the place of – governmental bodies in planning activities and providing services in favour of weaker members of society at risk of social exclusion. Public bodies generally follow suit after a certain delay. Nevertheless a long-standing “welfare mix” culture characterizes the Italian social policies and interventions system, in which, at a certain stage, public and private non-profit-making agencies co-operate closely in order to implement it.

This kind of process also leads to the present system which has been implemented in the country in order to provide assistance and social inclusion opportunities for victims of trafficking.

From the point of view of On the Road's experience,¹⁹ I will try to describe the system and its features.

Until last summer, the Italian penal system did not include a specific offence of “trafficking in human beings” as envisaged in the UN Protocol, but on 11 August 2003, the first law specifically to punish the offence of human trafficking: law no. 228/2003 “Measures against trafficking in persons” was enacted.

The new law is a great improvement over the previous system: it finally incorporates the specific crime of trafficking in persons in the Penal Code and provides a new definition of being reduced to slavery. It covers all forms of trafficking, slavery and servitude and contains elements of the crime – violence, abuse of authority, profiting from a situation in which another is in a situation of physical or psychological inferiority, as well as internal and cross-border trafficking. The law makes provision for the compulsory confiscation of profits deriving from trafficking and the setting-up of a “Fund for anti-trafficking measures”, which will increase the funds allocated for the Programme of Social Protection and Assistance of victims of trafficking through the Legislative Decree no. 286/1998 (Immigration Consolidation Act).

¹⁷ This presentation is based on an updated version of excerpts of “Country Report: Italy” in *Research based on case studies of victims of trafficking in human beings in 3 EU Member States, i.e. Belgium, Italy and The Netherlands* (2003) funded by the European Commission and developed by Payoke (Belgium), Associazione On the Road (Italy) and De Rode Draad (The Netherlands) within the Hippocrates Programme (JAI/2001/HIP/023).

¹⁸ We use the word “Non Governmental Organisation” as conventionally employed at the international level, but it is important to highlight that in Italy such a term (*organizzazione non governativa*) specifically refers to the agencies accredited by the Ministry of Foreign Affairs to carry out projects of international co-operation. In this presentation, the acronym “Ngo” will be used to refer to non-profit making social agencies such as voluntary associations, associations of social promotion, social co-operatives, church institutions, and charitable foundations.

¹⁹ The On the Road Association has been operating since 1990, developing social interventions aimed at those involved in prostitution, victims of trafficking for the purpose of sexual exploitation, victims of trafficking for other purposes of exploitation, and others suffering forms of marginalization and poverty.

On the Road directly provides services to victims of trafficking in three Italian regions on the Adriatic coast, with an approach based on the promotion and protection of individuals' rights (out-reach, drop-in centres, legal advice, shelters, programmes of assistance and social inclusion, including education, vocational guidance and training, work placement).

Simultaneously, On the Road, from a local, national and transnational perspective, contributes to the promotion of policies in the field, to the formulation of models of intervention, of professional profiles and of training curricula; it carries out research-intervention projects and issues a variety of publications.

However, due to its recent implementation, it is not currently possible to assess the impact and evaluate the results of this anti-trafficking law, either at the judicial or social level.²⁰ Pending verification of the effectiveness of the law no. 228/2003 “Measures against trafficking in persons”, it is possible to state that the most effective tool implemented so far in Italy to fight human trafficking is doubtless the **art. 18 of the Legislative Decree no. 286 of 1998**. Such a law has proved to be an effective instrument in supporting victims of trafficking, investigating the phenomenon, and punishing the traffickers. Most of all, it has accorded thousands of migrants – women in particular – the status of victims of trafficking and provided them with special assistance, protection and a residence permit for humanitarian reasons.²¹

Social Assistance and Integration Programme (Art. 18): how it works

The enactment of the Legislative Decree no. 286/98 (in particular of Article 18) represents a milestone both in the field of social policies and the fight against the trafficking in human beings. Through financial support provided by the new law, the Italian Government has started to promote, on one hand, the social inclusion of trafficked people, and on the other, the struggle against trafficking. It has therefore, set up the first co-ordinated and structured programme of social protection of victims of human traffic and intensified the fight against traffickers and exploiters.

This law has provided for the implementation of the Programme of Social Assistance and Integration and a set of actions, all managed by the Interministerial Committee for the Implementation of Art. 18, the managing body of the Programme. The Committee is composed of representatives of the Department for Equal Opportunities, the Ministry of Justice, the Ministry of Welfare, and the Ministry of Interior. Its assignment is to propose policies, evaluate, fund and supervise the projects of social assistance and integration targeting victims of trafficking.

Since its activation, the Programme has funded 289 projects throughout the country.²² The call for the submission of project proposals is launched yearly by the Department for Equal Opportunities, which runs the Programme technically and financially. It is important to underscore that the each grant – by law – is co-financed by the Department for Equal Opportunities (70% of the eligible costs) and by a local authority (30%).

NGOs, associations and local authorities (Municipalities, Provinces and Regions) submit their project proposal annually to the Department for Equal Opportunities. The NGOs applying for the funding must involve a local authority as project partner. In order to be eligible for the funding, the NGO or the association must be enrolled in the register of NGOs and bodies carrying out assistance to migrants set up by the Executory Regulation of the Legislative Decree no. 286/98 at the Presidency of the Council of Ministers.

The Article 18 permit applies to foreign citizens in situations of abuse or severe exploitation where their safety is seen to be endangered as a consequence of attempts to escape from the conditioning of a criminal organization or as a result of pursuing criminal action against traffickers. Those granted the

²⁰ It is also important to underline that two other laws will have a strong impact on the phenomenon of human trafficking in Italy: the recently approved Immigration law no. 189/2002 “Changes in regulations concerning immigration and asylum” (known as “Bossi-Fini”, after the politicians who proposed it) and, in case it will be voted by the Parliament, the law “Provisions concerning prostitution” (known as “Bossi-Fini-Prestigiacomo”).

²¹ From 1998 to June 2004, 3,870 art. 18 residence permits were issued (source: D. Missineo in his presentation at the conference organized by the Italian Ministry of Interior and IOM, Rome, 17 June 2004).

²² It is important to underline that most projects have been funded in all five calls.

Article 18 permit holders are obliged to participate in a social assistance and integration programme offered by various local NGOs and local public authorities, funded by the above-mentioned Interministerial Committee. They are also afforded access to social services and educational institutions, enrolment with the State's employment bureau and are provided access to employment.

Two separate ways of obtaining the residence permit exist at present. The first one is a judicial procedure ("judicial path"), in which the Public Prosecutor has an important role to play, and the second is a social procedure ("social path"), involving the local authorities, associations and NGOs as main reference points.

The "judicial path" implies that the victim will cooperate with the police and the prosecutor. She/he will be instrumental in bringing charges against the perpetrator by filing a complaint.

The "social path" does not require the formal report to the *Questura* but rather the submission of a "statement" (containing provable key-information) by an accredited Article 18 agency or by the public social services of a City Council on behalf of the victim. This is because some victims do not possess relevant information about the criminal organization; or the criminals have already been prosecuted; or "simply" because, at the beginning, they are too scared for their own or their relatives' safety to press charges. Nonetheless, these factors do not diminish their "victim status" and the need to receive help and support. In the Italian experience many women who started out on the social path, after having been reassured and having gained new trust in institutions and legality, took the decision to file a complaint against their traffickers and/or exploiters.

Due to the statutory obligation of accusation on the part of the *Questura* when a *notitia criminis* is found, a person on the social path route may also be asked to testify, but not at the very beginning.

According to both the "judicial path" and the "social path", a victim or the prosecutor can also request a special evidence pre-trial hearing (*incidente probatorio*) when there are specific circumstances that may jeopardize the trafficked person's safety or the evidence.

Both methods lead, in the end, to a residence permit for education or for work, allowing the foreigner to remain in Italy in conformity with the regulations governing the presence of non-European Community citizens.

This is an important starting point, not only because it places the main emphasis on the protection of the victims and on providing a means of escape from exploitation, whether sexual or labour, but also because, from the point of view of fighting crime, obtaining the trust of an exploited individual and providing him/her with the opportunity to start a new life in Italy is the first step in overcoming fear, threats of vengeance by traffickers, distrust towards institutions and fear of deportation, which often prevent the victim from reporting his/her exploiters.

The Article 18 permit is renewable, and does not oblige the person to return home once the programme is over. In fact, if the person has a regular job at the end of the programme, they can remain in Italy according to the conditions of their work contract and, eventually, they can also apply for permanent residency.

Victims of trafficking can directly access a programme of social assistance and integration or they can be referred to an agency running an Art. 18 project through several channels and/or the support of

different actors such as: law enforcers, social services providers, voluntary organizations, acquaintances, friends, clients, partners, *Numero Verde Nazionale contro la Tratta*, outreach units, drop-in centres and so on.

Not every project necessarily provides all types of services directly. In several cases, in fact, the wide range of activities and services is assured by the projects network. The projects function as reception centres and assistance providers that offer a so-called “individualized programme of social protection” tailored to the needs of the person sheltered and in compliance with the law.

Within each individual programme various activities and services are provided to the victim:

- co-elaboration of the “individualized scheme”;
- shelter and protection;
- board and lodging;
- support for possible crime reporting;
- legal assistance;
- stay permit procedures;
- health and social services;
- psychological assistance;
- social activities;
- educational and training activities;
- Italian language classes;
- vocational guidance;
- work placement.

In some cases a person can be hosted in different phases of her/his individual programme by various projects throughout Italy.²³

In order to support the social and professional inclusion of the victims participating in the programme, vocational training classes may be provided either directly by the organizations themselves or by local agencies. Several models of work placement have been tried out in the last few years. One of the most effective has proven to be the *Formazione Pratica in Impresa – FPI* (Work Experience Training), conceived by Associazione On the Road. There is also a segment of the target group that prefers to access the job market directly without attending vocational training classes or programmes such as FPI. In such cases, the individuals concerned are given support in their job hunting.

Other relevant THB policy measures

Numero Verde Nazionale contro la Tratta 800-290.290

Another important tool must be mentioned in this framework of governmental and non-governmental actions to combat trafficking in human beings: the *Numero Verde Nazionale contro la Tratta* 800-290.290 (Toll-Free Number against Trafficking). This is a national hotline directed at victims of trafficking, clients, social and law enforcement agencies and the population at large. Financed by the Interministerial Committee for the Implementation of Art. 18, the *Numero Verde* is composed of a single

²³ In five calls 289 projects have been funded: 48 in the first call (2000-2001); 47 in the second call (2001-2002); 58 in the third call (2002-2003); 69 in the fourth call (2003-2004); and 67 in the fifth call (2004-2005). It is important to underscore that the budget allocated for this programme has changed slightly after each call; therefore, even if in the last call a higher number of projects has been funded, many of them were granted an undersized fund.

central headquarters that functions as a filter for the calls and 14 territorial branches located in 14 different regional or interregional areas throughout Italy. In most cases, the territorial branches of the *Numero Verde* are managed by the same Ngos and public institutions responsible for the implementation of projects funded within the Art. 18 Programme. The types of information asked for concerned: *Numero Verde*, Programme of Social Protection and Assistance, legal advice, socio-sanitary services and addresses. Information is provided in the various languages spoken by the target group, including: English, Albanian, Russian, French, Spanish, Rumanian, and Bulgarian.²⁴

Azioni di sistema

In the three years since the implementation of the Social Assistance and Integration Programme, the Interministerial Commission has also funded other initiatives, the so-called “azioni di sistema”:

- Printing and distribution of stickers advertising the toll-free number in the main languages spoken by the target group (included several Nigerian dialects);
- Public awareness campaign to publicize the *Numero Verde* through radio and TV commercials;
- National seminars aimed at social operators working in agencies running Art. 18 projects;
- The research *Trafficking and smuggling in persons for the purpose of exploitation* carried out by the Research Centre on Transnational Crime of the University of Trento in collaboration with Ministry of Justice;
- The “Voluntary Repatriation Programme” run by the Italian branch office of the International Organization for Migration (IOM) in collaboration with the Ministry of Interior.

Law enforcement's practical tools

As far as the practical instruments introduced by law enforcement agencies are concerned, police forces have recently been equipped with special technologically advanced equipment. The police forces have also increased the number of raids and expulsions of illegal migrants suspected of being involved in the trafficking chains. Sometimes, however, such measures also involve victims of trafficking who are not always informed by the law enforcers about their right to access to a programme of social protection and so find themselves immediately repatriated.

Within each *Questura* (usually within the Immigration Office), the Ministry of Interior has appointed a “unique referent” officer who is responsible for the “Art. 18 cases of human trafficking”. Unfortunately, not all *Questure* have such officers. Where they do exist, however, they have made a valuable contribution as an intermediary amongst all relevant actors involved: law enforcement agencies, Ngos, local authorities, national authorities, *Numero Verde contro la Tratta* and, of course, the victims themselves.

Finally, international police co-operation has also been enhanced.²⁵

²⁴ From July 2000 to September 2002, the *Numero Verde* received 446,026 calls: 155,745 (34.92%) were “good calls”, the rest were: “calls external to the target group”, “interrupted calls”, and “wrong numbers”. The majority of calls were those of citizens (61%), followed by those of victims of trafficking (11%), relatives (9%), clients (8%), police (7%), exploited sex workers (3%) and suspected persons (1%). These figures need to be interpreted because it is not always easy to distinguish the given categories clearly. For instance, the distinction between a citizen and a client is sometimes problematic since a person usually prefers to present himself as “a citizen” rather than “a client”.

²⁵ Italy has signed 62 agreements with 40 countries in order to exchange knowhow and information to counteract illegal immigration. (Particularly relevant is the agreement signed in Tirana in 1997 with the Albanian Government, according to which all Albanian citizens found to be residing in Italy illegally, can be immediately expelled. Furthermore, an Italian Interforce Police Mission has been established in Albania to supply counselling and operative co-operation in the reorganization of Albania's police forces, and to reinforce measures to control Albanian territory.²³)

Conclusions

Before the enactment of the Legislative Decree, the institutional response to problems engendered by the growth of trafficking was weak and inconsistent. Immediate forced repatriation and/or temporary shelter was provided to those people who illegally entered Italy and were caught by the police.

Considering the aims achieved at local and national level, we believe that the strong points of the Article 18 Programme are:

- the global approach involving law enforcement agencies, the judicial system, public authorities (Ministries, Regions, Provinces, Municipalities) and NGOs at the local, regional and national level; and, the emergence, as a result, of an in/formal network of different agencies engaged in the fight against trafficking and in providing services to victims;
- an approach that combines the duty to protect victims with the need to fight against organized crime;
- a real chance for victims to escape trafficking, violence and exploitation and to access social and occupational insertion through specific programmes;
- the issuance of a special stay permit (for “extraordinary reasons with the possibility of work”),²⁶ renewable, which can be made permanent for study or work purposes, thus allowing victims to become legal migrants and fully-fledged citizens;
- the fact that the above-mentioned opportunities are not necessarily connected with the direct victim’s co-operation with the law enforcement agencies since, along with the so-called judicial path, a social path is also provided.
- the marked increase in the arrest and conviction of traffickers and exploiters as a result of the collaboration of individuals (mainly women) participating in the Programme, as has often been pointed out also by the most important representatives of the law enforcement agencies and the Public Prosecutor’s Offices;
- no instrumental use of Article 18 by migrants to legalize their irregular stay on Italian soil has been detected, due to the specific structure of the system in force, as both police sources and scientific studies have demonstrated beyond doubt;²⁷
- the diversified set of actions implemented by the Interministerial Committee;

There are of course some aspects that need to be taken into serious consideration by the Italian national and local institutions in order to ameliorate the system of social assistance and protection set up and to bridge the gaps that remain between the law on paper and its application:

- the Government should acknowledge the crucial function performed by the Art. 18 agencies as social services providers on behalf of the State. Allocating adequate funding to support the projects is therefore a priority that should be very high on the political agenda. The newly approved anti-trafficking law will provide a “Fund for anti-trafficking measures” that is designed to supplement the annually allocated budget for the Article 18 Programme. Nevertheless a more structured and definite provision will probably be required to ensure adequate financial support for the Programme;
- it is of the utmost importance that the Interministerial Commission for the Implementation of Art. 18 establishes annual public monitoring and evaluation of the funded projects to assess results both at the social and the judicial level, to identify the best practices to assist trafficked persons and, most of all, to set minimum standards required for the agencies running the projects;

²⁶ Previously it was called “Permit for humanitarian reasons” but for reasons of protection of privacy, the *Ufficio del Garante della Privacy* (Office of the Guarantor of the Privacy) imposed the new title.

²⁷ Regione Emilia-Romagna, Associazione On the Road (eds.), *Article 18: protection of victims of trafficking and fight against crime (Italy and the European scenarios)*, On the Road Edizioni, Martinsicuro, 2002.

- a more structured national network of the Art. 18 projects has yet to be set up. Such a network would greatly contribute to the sharing of methods and knowhow on a regular basis and, furthermore, could supply a sort of national “resource database” so as to allow a prompt response to victims’ specific needs (accommodation availability, work placement, and so on);
- the law is not fully and homogeneously applied throughout the territory. Some Police Headquarters (*Questure*) in fact offer only the “judicial path” and, in some cases, they do so only if it is “judicially useful”, thus, on the one hand, not entirely respecting the law and, on the other one, significantly diminishing the effectiveness of the system but, most of all, not respecting the victims’ rights and needs;
- the implementation of a repressive strategy through continuous police raids and forced repatriation does not favour the realization of the goals set by the law. In many cases, in fact, when stopped or deported, victims are not informed of their right to access to a social assistance and integration programme;
- the need to implement training activities directed at all professionals employed in the field (social workers, law enforcers, public prosecutors, and so on) in order to properly identify and assist victims of trafficking;
- the legislation does not cover the protection of family members, who may run very substantial risks at home or in other countries. Therefore, changes to these regulations are highly recommended to ensure an easier procedure in the issuance of permits for reunions with families, regardless of income or other requirements, at least for the victims’ children;²⁸
- the Art. 18 Programme has been mainly applied to victims of trafficking for sexual exploitation in prostitution, even though it is directed at all forms of human trafficking. It is therefore necessary to implement the programme fully, providing services and schemes for victims of other types of trafficking and exploitation;
- multidisciplinary and multi-approach studies, with special regard to the new forms of trafficking and exploitation, are much needed. Furthermore, updated and significant investigations would help to develop efficient and *ad hoc* prevention measures on human trafficking and, therefore, to better meet victims’ needs.

The evaluation of Article 18 Programme underlines that it is essential that “the actions of public and private social agencies at local level be not only a sum of actions, but rather – together with any non-symbolic/non-demagogic work by local administrations and institutions – the core of an organic policy, capable of dealing with the various aspects of the phenomenon”.²⁹ The potential of the Art. 18 model could be still further enhanced at different levels. We are nonetheless convinced it is already an effective system to help victims of trafficking and to fight criminal organizations.

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²⁸ M.G. Giammarinaro, “Prime valutazioni sull’attuazione delle norme sul traffico di persone” in *Diritti Immigrazione Cittadinanza*, 2000, n. 3 p. 58.

²⁹ D. Petri, F. Prina, M. Virgilio, “Conclusions”, in Regione Emilia-Romagna, Associazione On the Road (eds.), *Article 18: protection of victims of trafficking and fight against crime (Italy and the European scenarios)*, On the Road Edizioni, Martinsicuro, 2002, p. 228.

Stana Buchowska

Director, La Strada, Poland

The Effects of EU Enlargement on THB within the European Union and the Role of NGOs in Combating THB

The Situation in Poland and Central and Eastern Europe in the Context of new Member States' Accession into the European Union

Historically, the Ukraine, Bulgaria, Belarus, Moldova, Romania and Russia were the main countries of origin of victims of THB. THB is one of the negative side effects of the transition period in the CEE. Most of the new EU member states have acquired a triple function (3 in 1) as country of origin, transit country and country of destination.

It is important to look at the issue of trafficking from different perspectives: as a human rights violation, as an economic and social problem, as a problem of migration, as a legal problem and one of international organized crime, as a problem of violence against women and as a problem of labour.

The current situation in EU countries is characterized by the "Post 09-11 Syndrome": with terrorism and no longer trafficking in human beings as a priority, there has been a growing hostility in society towards migrants, who are treated as possible terrorists, a right-wing shift among political parties, a tightening of anti-migration policies, and generally more restrictive policies towards migrants.

The EU enlargement meant that the EU eastern border moved and more restrictive policies towards its Eastern neighbours were introduced (e.g. a visa regime in October 2003). As a consequence of the enlargement, improved technical equipment, training, and financial assistance from the EU has meant that the border is better protected.

A consequence of this development is, however, that more crimes are being committed in the wake of trafficking, which worsens the plight of trafficked persons. They increasingly cross the border illegally – with false passports, false documents or through smugglers. From the perspective of the law enforcement, trafficked persons can be charged with other crimes they caught up in even though they are themselves victims of the crime of trafficking. The situation of trafficked persons is therefore worsening because of their involvement in criminal activities – with or without their consent.

Poland has gradually taken on the role of Germany in trafficking in human beings – a "buffer state" between the East and West, to which the majority of persons are trafficked initially and then "further distributed" by traffickers. Furthermore, Poland has become a "waiting room" in which many of the migrants are awaiting their opportunity to migrate further west. These groups of migrants are therefore an especially vulnerable target group for traffickers.

La Strada is expecting the following three future developments with regard to trafficking in human beings in the new EU countries, including Poland: 1) the role of Poland as a country of origin will gradually diminish because fewer Polish women will be trafficked to Western Europe (because of more legal job opportunities, more information on safe migration and easier access to information on safe jobs), 2) the role of Poland as a country of destination will increase gradually because of more migrants being trafficked into Poland, and 3) Poland will remain a transit channel with changing patterns of transit (persons trafficked first into Poland and then trafficked further West).

The role of NGOs in this changing geopolitical situation is: to raise awareness on these changes and to raise awareness on migrants' issues within Polish society (as job migration into Poland is quite a new phenomenon, migrants often encounter a lack of understanding from the Polish people), to raise awareness among law enforcement agencies and service providers, to do advocacy work for better victim/witness protection and to advocate and lobby for less restrictive migrant laws within EU.

The role of non-governmental organizations (NGOs) in combating Trafficking in Human Beings

NGOs can and should address the need to protect victims of trafficking on different levels: 1) through direct work with trafficked persons, by gaining their trust and securing confidentiality NGOs are more flexible and able to create tailored individual assistance programmes based on a careful assessment of the needs of the victims, 2) through advocacy and lobby work for the rights of trafficked persons, 3) NGOs are a valuable source of information for other bodies (e.g. authorities) which would be otherwise unobtainable, 4) NGOs can act quickly and respond immediately to a particular situation or problem as they have their own well-developed informal, though professional, networking and referral systems. NGOs have a strong HR background and often a better human rights approach than the authorities.

In sum, NGOs may: advocate and lobby for victims' rights and better victim protection, transfer information and knowledge onto different levels (policy/working level); be a mediator between victims and law enforcement/state institutions; educate society as well as governments/law enforcement agencies about what THB is and the situation victims find themselves in; exchange best practices, transfer their knowhow, be the victims' advocate and representative; address the issue of trafficking from the victims' perspective; transfer information to governmental and international institutions; be a facilitator and mediator in the context of contacts with law enforcement bodies; ensure high standards of services for victims and convince governments to treat anti-trafficking as a priority.

NGOs are here to bring THB onto the political agenda, to make it a priority for decision-makers and to inform and educate public opinion about the real face of this phenomenon. La Strada Foundation is an organization that has the experience and ability to support and rehabilitate victims and systematically co-operates with the authorities.

A non-governmental organization may provide a victim with accommodation in a shelter, legal advice, medical and psychological help, and to some extent may also support the victim in the process of rehabilitation and social reintegration. The scope of such help is, however, limited by the financial resources of the organization. NGOs can intervene in crisis situations.

Non-governmental organizations can, like La Strada, provide victims with help in social reintegration – through supporting them in finding new accommodation and employment.

Non-governmental organizations are often the first institutions victims of trafficking turn to for help and where they agree to participate in support and protection programmes. The NGO shall immediately inform a police officer appointed for such contacts of the situation. If possible, a representative of the non-governmental organization will participate in the preliminary interrogation of the victim, and accompany them during travel. As some non-governmental organizations, including La Strada, used to do, the victim will be asked to sign an agreement accepting the internal shelter regulations.

La Strada provides victims with medical, psychological and legal help. It also ensures that the basic victim's needs concerning accommodation, clothing and food are met. Therapy and psychological

counselling during the crisis intervention period should make the victim's return to his/her State easier, and that State should in its turn facilitate social reintegration.

Victims must follow the regulations of the shelter and of co-operation with the non-governmental organization. This particularly concerns matters of safety. Violation of the regulations in this regard will carry the risk of expulsion from the shelter and exclusion from the programme.

In cases where there is a need to legalize the stay of victims (i.e. foreign victims), La Strada may, upon the basis of a written document of proxy, act as their proxy in the visa- application procedure. If a victim, during any stage of the programme, decides to return voluntarily to her/his country of origin, La Strada, either independently or in co-operation with the International Organization for Migration, will ensure that he or she can do so. La Strada may also, using the network of twin organizations, check and safeguard a victim's safe return and her/his subsequent social reintegration.

6.2 Panel Discussion B: Efforts to Improve Victims' Protection: National and Regional Initiatives

Riikka Puttonen

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The UN Trafficking Protocol and the Global Programme against Trafficking in Human Beings of UNODC

Thank you for giving me the floor. Please let me first tell you the story behind the photo which was taken in Abuja, Nigeria in June this year. The women in the photo were deported back to Nigeria from the European Union. Upon return, the Nigerian National Agency on the Prohibition of Traffic in Persons (NAPTIP) received them and determined their status: these women were victims of human trafficking. Before leaving Nigeria, the women were asked to give their nail clippings and pubic hair. They were made to swear an oath of silence. Otherwise a curse would fall upon them.

My presentation is divided into two parts. First, I will very briefly share with you some results from the UNODC database on human trafficking trends. I will then move on to the protection and assistance provisions in the Trafficking Protocol, which supplements the Convention against Transnational Organized Crime.

As we talk about destination countries in the OSCE Participating States, I would like to show you a map which shows the major destination countries in the OSCE Participating States. We should bear in mind that the patterns and movements are constantly changing.

According to the database, the victims in the OSCE area are to a very large extent women, followed by children. The main purpose of trafficking in the OSCE area is sexual exploitation. It is important to note that forced labour also takes place in the OSCE area. Men too are victimized, though to a lesser extent, for the purposes of both sexual and labour exploitation.

Let me then move on to the second part of my presentation. The Convention against Transnational Organized Crime is supplemented by three Protocols. Two of them are relevant for the purposes of this Conference: the Trafficking Protocol and the Smuggling of Migrants Protocol. The Trafficking Protocol is often called the Palermo Protocol, but as there are three Palermo Protocols we prefer to call it the Trafficking Protocol.

All these three instruments have entered into force and the number of States Parties is increasing. Also the European Union Member States are acceding to the Convention and its supplementing Protocols. The Convention against Transnational Organized Crime (hereafter the TOC Convention) is the mother Convention to the Trafficking Protocol. Therefore, when we talk about protection of and assistance to victims, we must also refer to the provisions in the TOC Convention.

In the TOC Convention itself there are two articles which deal with the protection of victims of trafficking: articles 24 and 25. These provisions are supplemented by the provisions in the Trafficking Protocol: articles 6, 7 and 8. The requirements entailed in these articles are divided into mandatory and discretionary. Here I would like to focus on the mandatory requirements.

The mandatory requirements include the protection of *witnesses* from potential retaliation or

intimidation. As appropriate, protection may need to be extended to include the relatives and other persons close to the witness. These protection measures may include, *inter alia*, physical protection such as relocation, including the conclusion of relocation agreements with other States, permitting limitations on the disclosure of information, permitting witness testimony to be given in a manner that ensures the safety of the witness, e.g. giving witness testimony through video links. These measures should not be implemented without taking fully into consideration the rights of the defendant. These measures must also be reconciled with the rights of the accused to confront his or her accuser. Nevertheless, where some basic degree of risk has been established, some of these measures are to be applied to protect the witnesses from retaliation.

Article 25 broadens the scope and deals with *victims* in cases of threat, retaliation and intimidation. The article establishes that some appropriate procedures are to be established on compensation or restitution. In other words, the article does not guarantee that victims are given compensation or restitution, but that *procedures* are in place whereby compensation or restitution can be sought or claimed. This may include civil damages and/or criminal damages. In some countries, such as Nigeria, funds have been established for victims to claim compensation for injuries or damages suffered as the result of the crime.

The requirements in the Trafficking Protocol address the specific characteristics of trafficked victims. The Trafficking Protocol requires that measures be taken to protect the privacy and identity of victims, including by making legal proceedings as confidential as possible, while still compatible with domestic law. This may include keeping the proceedings confidential or otherwise protecting the privacy of victims. This may in turn take place for example by excluding members of the public or representatives of the media or by imposing limits on the publication of specific information, such as details that would permit identification of the victim. The physical safety of victims must be guaranteed.

An interesting provision in the Trafficking Protocol is the obligation that victims should be provided with an opportunity to present their views and concerns. This obligation is mandatory. In some States it has been implemented through a victim statement about the impact of the offence. This is made after the conviction but prior to the passing of the sentence. This is a process which is completely distinct from calling on the victim to provide evidence of guilt.

Repatriation of victims – these first three points here concern countries of origin. First, it is the responsibility of countries of origin to facilitate and accept the return of victims and, second, verify whether the victim is one of their nationals or has the right to permanent residence in their country. Third, it is also the obligation of the country of origin to issue the required travel documents. The process of returning victims should be always be carried out with due regard for the safety of the person. Regard for safety naturally concerns countries of origin, transit and destination alike.

The provisions on temporary or permanent residence permits are very important – not only for humanitarian reasons. Deportation or repatriation should not be ordered or carried out while the person is, or may be required to be, a witness in criminal proceedings. We are not yet at the stage of being able to rely on intelligence and other pro-active investigation methods alone.

There are some important discretionary requirements in the Trafficking Protocol, such as the social assistance to and protection of the victims. Apart from the humanitarian goal of reducing the effects on victims, there are also criminal justice considerations that support the implementation of these discretionary requirements: assistance to and protection of victims increase the likelihood that victims

are willing to co-operate with and assist investigators and prosecutors. Such support and protection is however not to be made conditional upon the victim's capacity or willingness to co-operate in legal proceedings. If assistance and protection is given to victims, the code of silence may be broken. Here the role of non-governmental organizations cannot be overemphasized.

I would like to conclude by relating what happened to the trafficked women in Nigeria. The women were given counselling and shelter by a non-governmental organization which co-operates with the Nigerian authorities. One of the victims felt empowered enough to break the code of silence and gave evidence against the voodoo priests who took the oath of silence. The priests are now being prosecuted. The path the women have to tread towards psychological recovery, recovery from the trauma that they suffered, is long. Thank you for your attention.

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Human Rights for Trafficked Persons in Countries of Destination – International standards or serendipity?

I first learned about the human trafficking phenomenon in 1989 when I was living in China. I came across a paper written by a Chinese sociologist documenting the fact that thousands of Chinese women were being trafficked into forced marriages due to a shortage of women of marriageable age. The numbers were huge, in the tens of thousands, and I was absolutely astounded that a crime and human rights violation of this magnitude was not well known. In my eight years in Asia, I went on to learn that trafficking of women and men for all types of forced labour and services was rampant in other parts of Asia and indeed in the rest of the world.

I assumed that governments would all recognize that people who had been held in slavery, forced labour or servitude were victims and not criminals, and would treat them with the respect and justice they deserved. I also assumed that governments would vigorously seek and prosecute traffickers, locking them up for long prison terms.

Unfortunately, I was mistaken in believing that governments would care about the plight of undocumented migrants within their borders, especially persons who were forced to work on the margins of society such as in prostitution or begging. Many years have gone by and millions of dollars, euros, baht and zlotys have been spent and we still find ourselves asking, begging and demanding for governments to respect and support the rights of trafficked persons and to realize that a law enforcement approach, in which victims are interrogated and deported as “disposable witnesses” reduces the potential for prosecutions and harms victims. Yes, we are making some progress, but with thousands of people’s lives at stake, we need to pick up the pace and governments in countries of destination, in particular, need to accept responsibility for their role in facilitating the crime and sometimes re-victimizing the victims. We need more and better implementation of human rights standards and less government discretion and whim in policymaking on the issue.

This paper, then, will focus on the following three points:

1. Best practices by governments for victim protection are clearly set out in international human rights law.
2. The UN Trafficking Protocol falls far short of meeting these international standards, leaving victims subject to government whim or arbitrary judgement.
3. The Council of Europe draft Trafficking Convention, although much more grounded in a human rights framework, still falls short of the mark. With a few additions or changes, the Convention could become a model for countries around the world to emulate.

International human rights standards are best practices

Back in the early 90s, the Global Alliance against Traffic in Women gathered NGOs together in Thailand to discuss the problems that victims encountered in their interactions with governments. Dozens of NGOs from all parts of the world reported a litany of problems. Governments were routinely:

- Arresting and prosecuting victims.
- Holding victims in detention centres with criminals.
- Sending victims home without any protection from retaliation and ignoring the fact that many were being beaten, re-trafficked and even killed upon their return. Some governments just handed victims a small sum of money and left them at the border, where traffickers were often waiting to re-traffic them.
- Disclosing the names of victims, leading to public humiliation and rejection by their communities and families.
- Not providing services, shelter or assistance to victims.
- Failing to prosecute traffickers, which created a vicious cycle – victims who escaped were quickly replaced with other new victims.
- Not confiscating the assets of the traffickers, even if the traffickers were prosecuted and convicted.
- Not ensuring that the assets of the traffickers were given to the victims .
- Not funding service providers to support the needs of victims.
- Failing to adopt and enforce antidiscrimination laws and protect speech.

All of these actions violate human rights standards contained in international and regional human rights instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and Conventions on Slavery, Forced Labour, Civil and Political Rights, Migrant Workers, and Torture. The list of violations is extensive and covers the fundamental and inalienable rights that belong to all human beings:

- Right to freedom from slavery, forced labour, servitude.
- Right to life, not to be tortured, subjected to cruel or degrading treatment.
- Right to non-discrimination.
- Right to liberty and security of person and to be free from physical violence.
- Right to equal access to tribunals, equal application of the law and equal rights to remedies.
- Right to have safety protected and integrity respected in legal proceedings.
- Right to freedom from arbitrary arrest, detention and exile.
- Right to personal autonomy.
- Right to freedom of choice of residence and movement within one's own country.
- Right to leave any country, including one's own and to return to one's own country.
- Right to seek asylum.
- Right not to be deported arbitrarily or if danger of torture exists.
- Right to consensual marriage, equal rights in divorce and marriage.
- Right to hold and express opinions, seek and receive information.
- Right to work and to just, fair and safe working conditions.
- Right to be free from debt bondage.
- Right to education, health and social services.

The advocates and service providers who met in Thailand developed a plan to challenge governments who were unwilling to accept that they had obligations to address these violations and protect these rights. We unanimously agreed to develop specific steps that governments must take in order to implement their human rights obligations to victims of trafficking. As a result of these discussions, my organization, the Global Alliance and STV in The Netherlands produced the "Human Rights Standards for the Treatment of Trafficked Persons," which is now available in a number of languages.

Everyone hoped that the Human Rights Standards would become *the* tool for addressing human rights abuses in trafficking and we discussed conducting an international campaign to ask the UN to adopt

a set of “minimum standards” on trafficking similar to the UN Standard Minimum Rules for the Treatment of Prisoners. We felt that this was the best way to raise international awareness of the problem, on the one hand, and set international standards applicable to all governments, on the other.

UN Protocol: two steps forward and one step backwards

However, our planned campaign was pre-empted by a decision at the UN to draft an international instrument on human trafficking within the context of transnational organized crime. We were extremely concerned that the first and probably the only opportunity available for an international treaty covering all forms of trafficking was being developed in the UN Crime Commission, a non-human rights body located in Vienna, and worlds away from the human rights bodies in Geneva and New York. A number of groups and individuals from around the world remained hopeful, however, that this new instrument could be shaped into an effective tool to combat trafficking as well as a tool to protect the rights of trafficked persons.

So, about a dozen advocates, myself included, representing organizations from around the world attended all of the negotiations on the new Trafficking Protocol. Our efforts yielded some important successes – the Protocol covers women, men and children, and all forms of trafficking into slavery, forced labour and servitude and also sets out some minimum actions governments should take with respect to their treatment of trafficked persons.

However, these minimum actions fall far short of reinforcing existing international human rights obligations of states with respect to people within their territories. It is very weak on access to justice, on ensuring that the basic needs of victims are met and that immigration laws provide victims with legal status, and somewhat better on protecting victims from harm.

In fact, the Protocol could be interpreted as a step backwards since it renders a number of state obligations to protect and promote the rights of trafficked persons as *options* rather than *obligations*. Protections and assistance provisions are optional while the law enforcement and information-sharing provisions are obligatory, leaving rights to the discretion and whim of governments.

UN Principles and Guidelines on Human Rights and Human Trafficking

To address these serious flaws, the UN High Commissioner for Human Rights (after consultations with a number of experts) issued the “Recommended Principles and Guidelines on Human Rights and Human Trafficking”. This document includes most of the recommendations contained in the Human Rights Standards as well as a number of important additions, for example, concerning peacekeeping and special measures for child victims. It is not a legally binding document but it is highly authoritative and should guide the development of all laws and policies on human trafficking.

Thus, the basic framework now exists to develop a truly comprehensive human rights-based law or treaty: the UN Trafficking Protocol establishes criminal law responses and the UN Principles and Guidelines and the Human Rights Standards (as well as various international human rights instruments on slavery, forced labour, child labour, etc.) establish specific actions governments must take to protect the rights of vulnerable persons and trafficked persons. All of these documents can and should inform the development of the Council of Europe draft trafficking Convention.

Council of Europe draft Convention on action against trafficking in human beings

The Council of Europe is to be commended for taking the initiative to improve upon the UN Trafficking Protocol by incorporating into the draft trafficking Convention a number of the recommendations in the Principles and Guidelines and the Human Rights Standards. The draft Convention mandates government action in a number of areas where the Protocol merely suggests government action. Obviously, the delegates are listening to experts and the voices of the victims.

However, the draft still falls short of meeting international standards so I would like to ask the drafters to listen even more closely to the needs and voices of the victims and to create a model instrument that governments around the world can emulate. The following recommendations are based upon the Human Rights Standards and the Principles and Guidelines and also on the comments in a document issued by Anti-Slavery International and Amnesty International.

The recommendations are divided into five categories of human rights abuses that must be addressed in law, policy and practice: root causes, access to justice, protection from harm, right to basic necessities and right to legal status.

1. Root causes.

The Convention covers a number of root causes and should be amended to include the following:

Discrimination against women and minorities.

Discriminatory practices often drive people to use any means available to escape in search of a better life. The Convention includes a broad discrimination provision (art. 3) but it should be amended to include discrimination on the grounds of sexual orientation. It should also reiterate the right of all persons to have equal access to education, employment and social services.

Suppression of unpopular speech.

People are also driven out of their communities when they dare to speak out against injustice or merely voice a difference of opinion from the norm. The Convention should remind governments that repression of groups or individuals because they engage in unpopular speech violates a fundamental human right.

Harmful traditional practices.

Many women and girls, in particular, leave home in order to escape harmful social or traditional norms or practices such as child labour, forced marriages, child marriages and unequal rights in divorce and marriage. These practices all violate basic human rights and should not be tolerated. In fact, sending children into child labour or forced marriages is often a form of trafficking in itself. Thus, the draft should remind governments that a number of traditional practices violate international norms.

Unrealistic labour migration policies.

Once people decide to migrate, for whatever reason, they encounter an enormous obstacle to safe migration. Governments in countries of destination do not allow safe and legal migration to jobs. The Convention should require governments to address the imbalance in their labour migration policies between the “demand” for labour that is unmet by the domestic labour force and the supply of labour that is without legal means to meet the demand. The draft (art. 5.4) simply calls for “measures to enable migration to be carried out legally” by informing people about migration laws. This does not address the problem of inadequate and unrealistic migration laws.

The demand for labour in many parts of Europe is very real. Most countries have a very low fertility rate and are unable to supply workers to meet the real demands for labour. Thus, migrant workers are essential to their economies. Recent studies show that immigrants are working by the thousands in the dirty, degrading and dangerous jobs that western Europeans are unwilling or unable to take. Most of Europe's (and America's) farms would collapse without migrants who work for low wages and live in intolerable conditions. In a recent study, the European Civic Forum found that gang masters now supply labourers to farms, instead of farms hiring workers directly. This same situation exists in the US and has resulted in the trafficking and forced labour of migrant workers.

Strangely, the Convention (art. 6) calls upon countries to reduce labour demand. It calls on states "to discourage the demand that fosters all forms of exploitation of persons...that leads to trafficking...." The intent of this provision is unclear. Firstly, the demand for labour does not foster exploitation. It is the inability of workers to meet the demand for labour through legal means that gives rise to the conditions under which employers can feel free to exploit workers. Undocumented, underground economy workers are extremely vulnerable. Secondly, there is nothing any government can do to reduce the demand for labour unless it promotes policies to outsource or export jobs to countries that have a labour surplus. No right thinking politician would ever propose such a policy; it would be political and economic suicide. Thus, the only means for surplus labour to meet the demand for labour is to produce a rational, transparent labour immigration policy. In the absence of such a policy, governments in countries of destination will continue to be guilty of turning a blind eye to the millions of undocumented workers working in our restaurants, homes, factories and farms and of failing to acknowledge any culpability for the creating the conditions under which workers are rendered vulnerable to exploitation and, in its most extreme form, to becoming victims of traffickers.

Inadequate labour protections.

If governments are truly interested in addressing root causes in countries of destination, then a provision should be added to ensure that labour laws protect the rights of all migrant workers, even undocumented ones. Otherwise, abusive and exploitative employers will continue to have free rein to use and abuse undocumented, vulnerable migrants, even to the point of holding them in forced labour, knowing that the government will do nothing. The Convention should support labour rights for migrant workers, including the right to join a union and work in just, fair and safe conditions. Countries that allow a two-tiered system of labour rights to exist are unwittingly providing fertile soil for traffickers.

2. Access to Justice.

Adequate criminal laws.

Many laws can be used to prosecute traffickers. In addition to recommending the adoption of a trafficking law, the Convention should recommend that governments also adopt criminal laws on slavery, forced labour, servitude, and debt bondage, which are often easier to prove than the more complicated crime of trafficking. All of these crimes should have the same penalty structure as trafficking.

Many people "use" the labour or services of persons held in forced labour and manage to escape punishment. Article 18 of the draft advises governments to consider laws criminalizing persons who knowingly use the "services" of trafficked persons. This provision should be revised to include persons who knowingly use the labour of trafficked persons. The term "services" is too narrow to cover all potential "users" of trafficked persons. Many victims are forced to work in factories, homes, farms and elsewhere and the factory owners, home owners, farmers and others in the chain of movement of goods

should also be prosecuted for knowingly using goods produced by the forced labour of trafficked persons.

Extraterritorial jurisdiction.

One of the problems identified within peacekeeping missions is the difficulty of governments to prosecute peacekeepers and foreign workers for their involvement in trafficking and other serious crimes while on missions. The Convention should contain provisions requiring governments to establish codes of conduct for all nationals deployed or working in countries in which peacekeepers are located. It should also establish extraterritorial jurisdiction to enable governments to prosecute nationals and persons found on their territories for trafficking and other crimes committed in peacekeeping locales. For example, if a civilian contract employee hired by a government is involved in trafficking in the Democratic Republic of the Congo and then escapes to Europe, there should be some means of prosecuting him if extradition to the DRC is impossible or useless because, for example, the contractee has immunity in the DRC.

Arrest, detention and prosecution of trafficked persons.

Trafficked persons should never be prosecuted for immigration or labour offences or for acts related to being trafficked. The draft (art. 26) offers three options on “non-punishment” of trafficked persons. The third option should be adopted as it is the only one that recognizes that trafficked persons should not be “detained, charged or prosecuted” for unlawful entry or for other acts related to being trafficked persons. The US has adopted this third approach, even though many trafficked persons enter the country knowing they are using false documents and intending to work without legal papers. Congress decided it was more important to ensure that victims are safe and able to testify against their traffickers than to detain or prosecute them for the comparatively minor immigration offence. The Council of Europe should take a similar approach and adopt option three.

Access to courts and compensation.

If access to justice is to have any meaning in the context of human trafficking then all countries must ensure that trafficked persons have access to court and compensation for the harm they have suffered. The draft (art. 11) provides for the right to free legal assistance and the right to compensation but it should also ensure that trafficked persons have the same access to courts as citizens and also to all forms of redress, not just to compensation. Trafficked persons should be able to sue their traffickers for full restitution and rehabilitation costs to cover all past, present and future losses and expenses related to being trafficked. Additionally, they should be provided with information about their rights and any legal proceedings in a language they understand.

3. *Protection from harm.*

Public disclosure of identity.

The state plays the crucial role in protecting trafficked persons from retaliation from traffickers and their supporters. The draft Convention (art. 12.2), unfortunately, only protects children from public disclosure of their identities or identifying information. All victims need to be protected so that traffickers are less able to identify their accusers and so that victims are not stigmatized by their communities.

Safe and voluntary repatriation.

Once someone has been identified as a victim of trafficking, the government should take all necessary measures to ensure the safety of that person. Prior to removal, the government should undertake

a thorough assessment of the needs of the victim and the risks involved in repatriation. If it is safe to return, the repatriation should preferably be voluntary and co-ordinated with a service provider in the home country. Additionally, no minor should be returned until an appropriate legal guardian has been identified and a thorough investigation has been made of the family to ensure that it is a safe environment for the child.

Sometimes, it is not safe for a victim to return home or to remain in the country of destination. A third-party safe haven country is the only solution. Unfortunately, third country relocations have been extremely rare to date, despite the need. The Convention includes language on “relocation” to protect trafficked persons; it should be amended to ensure that the parties to the Convention agree to co-operate on relocations to third countries when necessary.

Protect from retaliation.

Traffickers have been known to kill victims, or their family members, if the victim collaborates with law enforcement agencies. They also rape, beat up and re-traffic their victims. Thus, it is the responsibility of the state to ensure the safety of victims and their families from this potential harm. The Convention (art. 28) calls for “effective and appropriate protection from potential retaliation or intimidation” but only “during and after investigation and prosecution”. Obviously, this provision is primarily for the purpose of protecting a law enforcement witness and not for protecting the life of the victim. It must be amended to include protection *before* investigation and prosecution and also protection in the *absence* of a prosecution. Otherwise, it will be very difficult for any lawyer or advocate to recommend that any client should co-operate with law enforcement agencies.

4. *Right to basic necessities in destination countries.*

Adequate medical and psychological care and assistance.

Services should be available to all trafficked persons as soon as they are identified as victims and for as long as is necessary for complete recovery. The Convention (art. 10.1.) requires parties to adopt legislation to provide assistance for “physical, psychological and social recovery”. This includes “emergency” medical treatment. It also lists other services.

However, the provision of non-emergency medical care and “other assistance” is restricted to victims who are “lawfully resident,” without “adequate resources” and in need (art. 10.3). This provision should be dropped as lawful residence is in the control of the government and residence status bears no relationship to need. Furthermore, by definition, trafficked persons have no money and are in need.

Additionally, assistance should not be tied to “willingness to act as a witness”. The draft (art 10.4) does not require a child “to act as a witness” in order to receive services. This language should be expanded to include adults who are unable to act as witnesses, for example, due to psychological or medical reasons or safety issues.

Access to work, education and vocational training.

During the period that they are in the destination country, trafficked persons must be provided with a means to integrate into the community and start rebuilding their lives, even if they are only in the country for a short time. Jobs, education and vocational training are essential ingredients for this process. The Convention links work, vocational training and education to lawful residence so the Convention should ensure that trafficked persons who are in the country for any period of time are provided with some form of lawful residence.

5. *Right to legal status.*

Adequate recovery and reflection period.

The draft (art. 14) calls upon governments to allow trafficked persons to remain in the country for an unspecified period of time; however, the provision is not victim-centred. The reflection period links the need to recover and escape the influence of the traffickers to the purpose of making “an informed decision on co-operating with the competent authorities.” The reflection period should be for the purpose of recovery or for making an informed decision on co-operating. The focus first and foremost should be on recovery, because people who are able to regain control of their lives are also able to make informed decisions and work effectively with law enforcement agencies. Lastly, we recommend a three-month period for reflection.

Adequate scope and term of residence permits.

We are pleased to see a section on residence permits (art. 15), which allows trafficked persons to remain for an unspecified period of time (1) when necessary due to the personal situation of the trafficked person or (2) when necessary for the purpose of investigation or criminal procedure. This is excellent. However, we recommend that the second part should be amended to include *civil* or *administrative* procedures, since some trafficked persons might file suits for civil damages or be involved in administrative proceedings connected to the trafficking. In the US, temporary residence permits are authorized for up to 3 years, which provides stability and allows people to recover. Short-term renewable visas are very complicated to administer and can interfere with people’s work authorizations and assistance. Furthermore, since the Convention links work authorization to legal status, governments must not be able to deprive people of the right to work by leaving them without any legal status and, at the same time, requiring them to co-operate with law enforcement agencies.

Respect for right to asylum.

All trafficked persons should be able to exercise their right to seek asylum and should not be deported without first being informed of their right to seek asylum.

In conclusion, I am confident that, if the member states of the Council of Europe listen to the concerns and voices of civil society and the victims, they will create a strong rights-based anti-trafficking convention and place Europe at the forefront of the fight against trafficking, as well as set a positive example for governments around the world. We had great hopes at our Thailand meetings that governments would be as horrified as we were and would be compelled to take responsible actions; perhaps our vision will be realized yet through the work of the Council of Europe. I hope so.

Bärbel Heide Uhl

Expert on Anti-Trafficking Issues, OSCE/ODIHR

Human rights, accountability and ownership – the creation of National Referral Mechanisms (NRM) as an effective tool to combat human trafficking throughout the OSCE region

The creation of the National Referral Mechanisms concept was motivated by a dilemma: on the one hand there had been enormous achievements in the development of human rights documents and declarations, such as the “UNHCHR recommended principles and guidelines on human rights and human trafficking” while on the other hand the human rights approach had yet to be put into practice.

Furthermore, anti-trafficking practice sometimes continued to violate human rights for trafficked persons.

Let me give you three examples:

- Sometimes border police or embassy personnel would not issue a visa or would deny entry because they considered the applicant a potential victim of trafficking. The right to freedom of movement is violated in order to prevent trafficking.
- Shelters for trafficked persons would be locked for security reasons. Consequently, trafficked persons who deserved to receive rehabilitation and needed to recover after having escaped torture and exploitation, found themselves again locked in, ignorant of their whereabouts and with no control over their lives.
- The demand for better statistics and data exchange would lead to the creation of databases on trafficking that stored information on trafficked persons. Once having been referred to a victim support programme, a trafficked person might lose control over his or her personal data, including name and date of birth. The person also might not be informed that his or her data were stored in a computer information system that would lead to denial of re-entry into the country. Moreover, the transfer of the personal data between law enforcement agencies in countries of destination to countries of origin for prosecution purposes may cause social stigmatization and legal remedies for the trafficked persons after their return.

These examples highlight two aspects:

1. As has been said repeatedly, we have numerous human rights declarations and commitments, but their translation into practice is defective.
2. The need for responsibility and accountability.

Here we have to look at the domestic authorities which can be held responsible.

As Prof. Süssmuth has said today, human rights protection of trafficked persons has to be embedded into a process of democratization.

Domestic actors can, in co-operation with civil society, create a flexible structure that addresses the needs of an effective anti-trafficking strategy: transparency, assignment of clear responsibilities and competencies according to the different mandates of the actors. Moreover, the flexibility of an anti-trafficking structure based on co-operation between governmental and civil society may be able to respond rapidly to different and sometimes also novel forms of trafficking in human beings.

A third crucial element underpinning the importance of focusing on strengthening democratic institutions as an integral part of any anti-trafficking strategy lies in the nature of the crime of trafficking.

Crimes such as trafficking, committed by organized non-state perpetrators, belong, as does terrorism, to the category of major security threats in the post-cold war era.

We have to find new strategies to address these new threats to security. Trafficking in human beings is highly diametrically and informally organized. The crime of trafficking is a phenomenon that involves multiple activities and perpetrators involving a broad spectrum of criminal elements within and beyond national borders.

Trafficked persons are often recruited from areas with poor social and administrative infrastructure, such as countries that have recently experienced armed conflict and countries in transition.

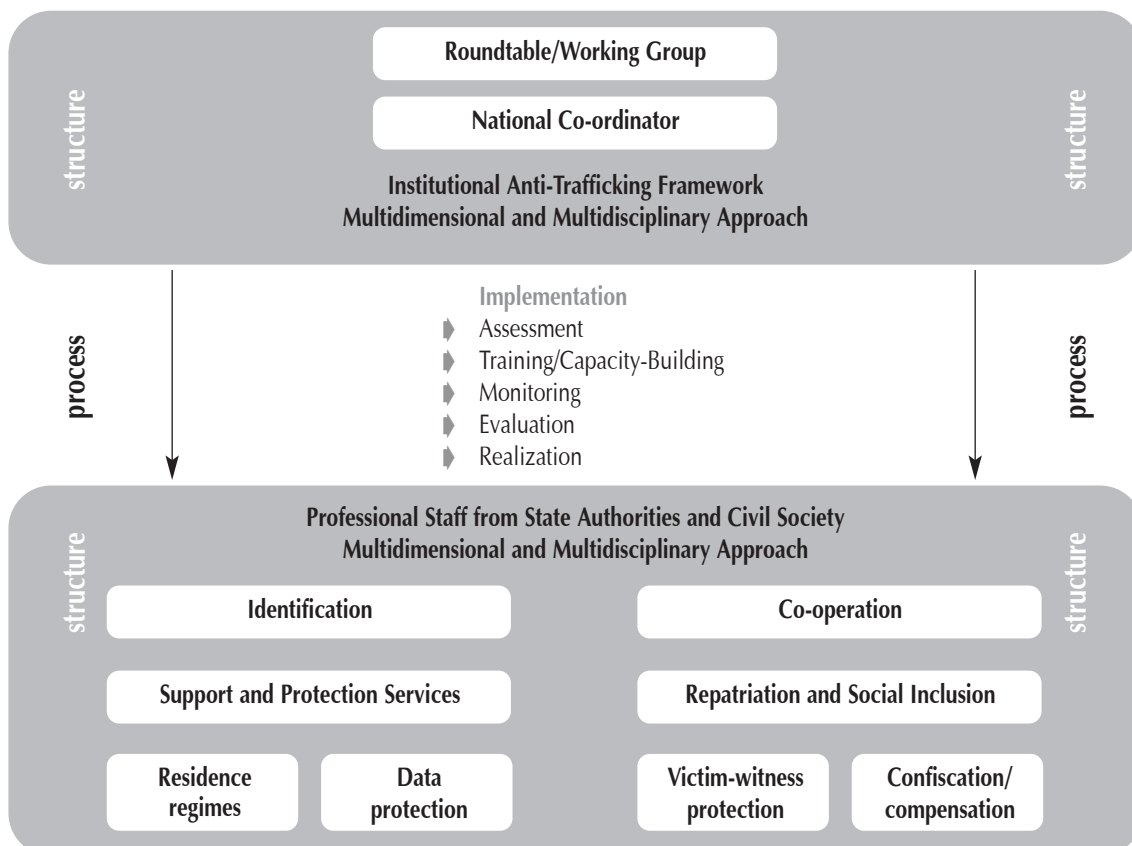
Paradoxically, the response of the international community and donor governments to trafficking is often the creation of international bodies rather than the strengthening of local social infrastructure and national governmental and non-governmental stakeholders.

Taking into consideration these two dilemmas, namely, that anti-trafficking structures may themselves involve human rights violations and the need for all anti-trafficking structures to be embedded in a democratic institution process, the OSCE/ODIHR developed a practical tool to assist OSCE participating States, civil society and OSCE Field Missions in setting up sustainable anti-trafficking structures that put the human rights of the victims first while at the same time enabling the effective prosecution of traffickers.

The concept of a National Referral Mechanism consists of two areas:

1. What should be in place?
2. How it should be implemented?

Overview of a National Referral Mechanism



We analyzed and systematized existing victim protection programmes and law enforcement tools. In a second step, we adjusted the standards of each component to existing international human rights obligations.

The creation of this flexible mechanism guarantees access for all trafficked persons. Measures should at the same time be able to respond rapidly to new trends and practices on the part of traffickers and also keep the threshold low so that all presumed trafficked persons receive appropriate treatment.

I would like to conclude by glancing backwards for a moment. Ten years ago in Prague, I organized together with NGOs a conference on trafficking in human beings that was called at the time “the First East-West conference on Trafficking”. Despite all the criticisms of anti-trafficking policies we have heard today (in my own speech included), I would like to highlight the fact that, compared with what we discussed ten years ago, what we have heard today – all these sophisticated analyses by NGOs and Gos – is real progress!

Dr Hanno Hartig

*Head of the Department for Media, Equality and Minorities,
Directorate General of Human Rights
Council of Europe*

The drafting of the European Convention

Ladies and Gentlemen,

My intervention will deal with the Council of Europe's efforts to draft a European Convention against trafficking in human beings. Trafficking in human beings has become a major problem in Europe today and it is indeed extremely important that binding international legal instruments are developed in order to protect its victims.

It is not sufficient to rely only on soft law. We need a legally binding instrument in Europe for two equally important reasons:

- Firstly, victims should be protected because trafficking in human beings is one of the most serious forms of violation of human rights. Therefore trafficked persons should not be considered merely as a tool in investigation and prosecution.
- Secondly, the co-operation of victims makes prosecution more effective. We need a Council of Europe Convention aimed at a proper balance between matters concerning human rights and prosecution.

The future Council of Europe Convention on action against trafficking in human beings will be based on the recognition of the principle, already stated in the Recommendation N° R (2000) 11 of the Committee of Ministers on action against trafficking in human beings for the purpose of sexual exploitation, that trafficking in human beings constitutes a violation of human rights and an offence against the dignity and integrity of the human being.

Thus, the future Convention will pursue the following aims:

- to prevent and combat trafficking in human beings, with due consideration given to aspects of gender and equality;
- to protect the human rights of the victims of trafficking and to design a comprehensive framework for the protection and assistance of victims and witnesses, taking gender equality aspects into consideration; also to ensure that there is effective investigation and prosecution;
- to promote international co-operation on action against trafficking in human beings.

Even though there are already other international instruments, a Council of Europe convention devoted to trafficking in human beings will have an important added value. Benefiting from the limited and more uniform context of the Council of Europe, it will contain more precise provisions and may go beyond minimum standards agreed upon in the United Nations instruments.

The future Convention will not have exactly the same approach as the Palermo Protocol. It will complement and develop on the Protocol, which emphasizes the crime prevention aspect of trafficking (Article 1 of the Protocol states that it shall be interpreted together with the Convention); the Council of Europe's Convention aims to strike a balance between the Human Rights of the victims of trafficking and the requirements relating to criminal prosecution. Therefore, the drafting of the Council of Europe

Convention does not aim to compete with the Palermo Protocol but to enhance the protection afforded by it and develop standards contained therein.

One of the aims of the future Convention is to make further provisions for victim protection. It is essential that the future Convention provide binding provisions allowing assistance to victims of trafficking in human beings. The situation of victims requires various types of assistance.

However, countries of origin and countries of destination do not always share the same approach on how to prevent trafficking, assist its victims, or prosecute traffickers. Nevertheless, all States need to take their responsibilities seriously and do their utmost to tackle trafficking effectively.

Furthermore, before you can assist a victim of trafficking you have to recognize him or her as a *victim*. I am worried by the fact that trafficked persons are often not identified as such and taken for illegal migrants. In addition, some authorities still confuse the issue of illegal migration with that of trafficking.

Illegal migrants are not victims of trafficking. Illegal migration and trafficking are different issues that need to be addressed separately. Of course, like any other vulnerable person, an illegal migrant may become a victim of trafficking. Some fear, however, that illegal migrants voluntarily become victims of trafficking to benefit from the protection granted to victims. Against this argument, I would like to make two observations:

- Firstly, one cannot voluntarily become a victim of trafficking. The definition of trafficking entails the absence of free consent of the victim. Traffickers use means such as threats, force or other forms of coercion, abduction, fraud, deception, abuse of power, etc. In the case of children (those under the age of 18), the absence of those means of coercion and the existence of consent are irrelevant because the victims are minors.
- Secondly, the abuse of a right does not entitle us to ignore that right. Do we really think that many people are willing to risk torture, ill-treatment, and deprivation of liberty, etc. just to move abroad? Do these people not migrate because they wish to improve their standard of living?

I am also worried because this confusion has a threefold effect:

1. victims of trafficking are denied their rights;
2. victims are treated as if guilty of an offence (illegal migrants): they are re-victimized;
3. one important (if not the most important) element of the policy against trafficking is neglected, with the result that the issue is at risk of not being addressed in its complexity.

Despite these difficulties, the current draft Convention includes a Chapter (III) entirely devoted to measures to protect and promote the rights of victims, including gender equality issues. Very briefly, these measures cover:

- Identification of the victims: the authorities dealing with trafficking should co-operate with each other and be assisted by trained and qualified experts that will help them to identify the victims and to issue residence permits when appropriate. In those cases where there are reasonable grounds to believe that a person has been a victim of trafficking, states are asked to refrain from expelling that person from their territory until the identification process is completed.
- Assistance for the victims: the objective is to ensure their physical, psychological and social recovery, and the provision of appropriate and secure housing, medical and material assistance, counselling and information (in particular legal advice) in a language they understand, employment and training opportunities (including the possibility of having access to the labour market).

- Compensation and legal redress: the Convention guarantees the right to have access to information on relevant proceedings and the right to compensation for victims of trafficking. Such compensation could be financed, for instance, through the establishment of a fund for victim compensation, which could be funded *inter alia* by the assets confiscated from traffickers.
- Protection of private life (through appropriate management of data by the authorities and through the promotion of responsible behaviour on the part of the media).
- Recovery and reflection period: countries of destination and transit are requested to allow a victim to stay on their territory over a period of time which should be sufficient to allow the victim to recover, escape from the influence of traffickers and be in a position to take an informed decision on co-operating with the competent authorities.
- Residence permits: an important provision tackles this controversial and difficult question. It would request states to provide, in conformity with their national laws, for the possibility of delivering a renewable residence permit to victims. I am particularly glad that the drafters of the Convention are not making the granting of a residence permit conditional on the victims' co-operation with law enforcement authorities. Indeed, the draft Convention will also enable countries to grant residence permits to victims of trafficking when their stay is necessary owing to their personal situations.
- Repatriation of victims: a specific provision aims to cover those cases in which the victim returns to his/her country of origin. Some of the issues at stake are: the victim's safety, documentation, re-integration into the labour market, and prevention of re-victimization. Particular attention is paid to the cases in which the victims are children and to the need to co-operate with NGOs, and law enforcement and social welfare agencies.

Non-punishment clause:

Furthermore, the Convention should prohibit the detention, indictment or prosecution of trafficked persons on account of the illegality of their entry into or residence in a country or their involvement in unlawful activities that are the direct consequence of their situation as trafficked persons.

- **Role of NGOs:**

As regards the implementation of the provisions of the Convention, the text requires states to take measures to involve non-governmental organizations, other relevant organizations or other components of civil society. The vital role played by NGOs both in the prevention of trafficking and in the effective protection of victims is fully recognized and encouraged.

Already now, civil society is closely following the drafting process. We consider the participation of civil society in both the negotiation process of the Convention and the implementation of its provisions as crucial to the success of any policy and legislation aimed at fighting trafficking.

I was extremely pleased to see that the last negotiation round started with the hearing of three major international NGOs: Amnesty International, Anti-Slavery International and Terre des Hommes. Their contributions, both oral and written, were instrumental, during the negotiations which followed, in developing provisions which addressed the core needs of victims. We look forward to continuing this dialogue with interested NGOs, which may have access to the latest version of the draft Convention at any time.

- **Monitoring mechanism:**

Finally, the protection of victims would not be fully assured without a monitoring mechanism guaranteeing States Parties' compliance with the provisions of the Convention. The objective of the

monitoring mechanism of the future Convention will be to make it possible to measure progress as far as legislation and practices to combat trafficking and to protect its victims are concerned. The establishment of a monitoring mechanism continues to be one of the main added values of the future Convention. The possibility of an independent body examining the situation in the States Parties and formulating conclusions likely to help them to make the necessary progress is an enormous asset.

I would like to underline the importance of involving civil society in the monitoring process and of achieving this in a spirit of co-operation with the States Parties. It is important that the body responsible for monitoring the application of the convention should prepare a report containing suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. We must never forget that the function of a good monitoring mechanism is to help the States Parties to implement the Convention's provisions.

At this stage, the Council of Europe committee responsible for drafting the Convention has completed the first reading of the provisions of the draft Convention. It is expected that the draft Convention will be finalized by the end of the year in order that it may be opened for signature at the 3rd summit of Heads of State and Government of the Council of Europe to take place in Warsaw in the spring of 2005.

Thank you for your attention.

Marjo Cromptvoets

*Policy Advisor on Human Trafficking,
Ministry for Foreign Affairs of the Netherlands*

Initiatives of the European Union

Dear Participants,

Human Trafficking should not merely be considered from the point of view of national or regional protective interests, i.e. as a fight against organized crime. Nor should trafficked persons simply be treated as illegal immigrants. Human trafficking is, above all, a human rights problem and attacks basic human dignity. Far too often the victim is criminalized as an illegal immigrant and deported before the true circumstances are investigated. It is undeniable that in recent years immigration policies all over the world and in Europe have become more protective and restrictive.

The EU has in recent years developed a comprehensive, coherent policy to prevent and combat trafficking in human beings (THB) and the exploitation of persons, especially the sexual exploitation of women and children but more and more trafficking for the purposes of labour exploitation is being detected as well. This policy is based on a multi-disciplinary approach including elements of prevention, protection of and assistance to victims and witnesses, on appropriate criminal proceedings, substantive criminal law, and police and judicial co-operation. The importance of trafficking in human beings is underlined by the EU Charter of Fundamental Rights, Art. 5(3): "Trafficking in human beings is prohibited".

The main legislative milestones are the Council Framework Decision of 19 July 2002 on combating Trafficking in Human Beings, the Council Directive of April 2004 on a temporary residence permit for victims of trafficking and the Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography, of which some aspects are directly relevant to combating Trafficking in Human Beings.

The Council Framework Decision of 19 July 2002 on combating Trafficking in Human Beings defines human trafficking for the purpose of sexual or labour exploitation as an offence and obliges EU Member States to criminalize trafficking in human beings. It also includes provisions on penalties, liability of and sanctions on legal persons, jurisdiction, prosecution, protection of and assistance to victims. This Framework Decision has just passed the implementation deadline on 1 August and will now be the subject of an evaluation procedure. By 1 August 2005 at the latest, the Council will assess – on the basis of the relevant information to be provided by Member States and of a written report from the Commission – the extent to which Member States have taken the necessary measures to comply with this Framework Decision. In this respect the ERA Conference in Trier on 21 and 22 October 2004, entitled "Towards a common Legal Framework in the EU" should be mentioned, as it will provide a first opportunity for a legal and practical exchange of views.

The Council Directive of April 2004 on the residence permit issued to victims of human trafficking and smuggled migrants is a directive that stipulates that victims who co-operate with the competent authorities against those accused of the crimes concerned will be issued at least a temporary residence permit. This directive extends to all Member States of the EU (except Denmark, United Kingdom and the Republic of Ireland) and harmonizes the conditions for issuing this residence permit and the rights

and benefits given to those victims that are covered by the instrument. The text was adopted on 30 April 2004. The directive must be implemented by April 2006.

The Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography defines the crimes concerned and includes similar provisions to those of the framework decision on trafficking in human beings. EU member States must implement the act by January 2006.

Apart from these legal instruments, the EU promotes discussions at expert level by convening workshops on Trafficking in Human Beings in the framework of the EU Forum for the Prevention of Organized Crime. Research related to Trafficking in Human Beings and co-operation among institutions – public as well as private – in EU Member States and Accession/Candidate Countries was and is stimulated through funding programmes such as STOP (expired), AGIS and DAPHNE. As far as AGIS is concerned, it should be noted that most applications for funding under the 2005 annual programme had to be sent to the Commission by mid-December 2004. Institutions and organizations that are interested should regularly check the web site of the Commission (DG JAI – Funding).

In 2002, STOP funding was also used for a conference organized by IOM (International Organization for Migration) in Brussels. This conference was attended by about 1,000 participants at political and expert level and resulted in the Brussels Declaration on Preventing and Combating Organized Crime. The Brussels Declaration, of which a fair part deals with victim protection and assistance, is considered a substantial working paper and agenda for the EU. This is reflected in several statements of the Commissions as well as in Council Conclusions of May 2003.

In 2003, the Commission set up the Experts Group on Trafficking in Human Beings. This consultative group, consisting of 20 persons appointed as independent experts, offers advice on how the EU counter-THB policy should be further developed, mainly on the basis of the Brussels Declaration. Over the last year, the Experts Group have worked out a draft for a report that the group will submit to the Commission. The draft report is now published on the web site of the European Commission. On 26 October 2004, a consultative workshop will be held on this draft report under the auspices of the EU Forum for the Prevention of Organized Crime, since a broad range of governments and organizations expressed deep interest in the report and wish to participate in the ongoing developments at the European level. Furthermore, written comments can be transmitted by email, as indicated on the Commission's web site, concerning the Forum. The final report should then be ready by mid-December.³⁰

In the draft report the Experts Group presents clear recommendations concerning human rights to the EU Commission. I will limit myself to quoting only some of the recommendations here:

- For the overall purpose of this report – the further development of a comprehensive and coherent EU counter-trafficking policy – the definition of trafficking has to take into account all relevant aspects, especially the impact on human rights. In this context, trafficking in human beings has to be defined as a complex phenomenon violating the trafficked persons' will and right of self-determination and affecting her or his human dignity.
- Political Papers such as the European Council Conclusions or Commission Communications should more clearly stress that trafficking in human beings is not primarily an issue of illegal immigration but that has to be addressed as a serious crime and human rights violation, underlining the EU's commitment to a holistic and integrated human rights-based approach focused on combating the exploitation of human beings under forced labour or slavery-like conditions.

³⁰ ???

I would like to conclude by expressing my personal hope that the EU Council will take note of the remarks of the Experts Group and will strive to carry them forward. The Conclusions of May 2003 may be interpreted as a promising indication in this context. The Commission intends to issue a Communication on the basis of the report in 2005. The recommendations show the extremely slow shift in perspective in the EU that I referred to at the beginning. But, as we all know, those who go slow, go the furthest.

7. WORKING GROUP I: Towards a Rights-Based Approach to Protect Trafficked Persons

7.1 Working Group Session 1

Madeleine Rees

*Chief of Office of the High Commissioner for Human Rights,
Bosnia and Herzegovina*

Introduction

The working group sought to address the problems that arise when dealing with the harsh reality of trafficking, in particular the concerns that many have about the lack of real progress in breaking the cycle. Despite improvements in legal regimes and protection mechanisms in Eastern Europe, little action has been taken to recognize and promote rights-based approaches in Western Europe. After many years of activity and advocacy, particularly by NGOs, the rights of the victims are still seen as secondary to the imperative of law enforcement. This is particularly so in Western Europe. It is still not understood that prosecution is dependent on the co-operation of the victim and hence an approach which recognizes the primacy of human rights is fundamental to effective law enforcement. Whilst progress has been made there is still a lack of understanding of the issue and hence serious flaws in the approaches taken, both by governments and by IGOs.

To address these deficiencies, after excellent presentations by experts who work with victims in providing shelter and support, from experts on the legal frameworks for temporary residence permits and for effective prosecution as well as on data protection, the working group made their recommendations. Whilst none of these is either new or revolutionary, they focus on what is the minimum that must be done to make progress.

Mara Radovanovic

President, LARA, Bosnia and Herzegovina

Identification and self-identification of victims of trafficking

Proper identification of victims of trafficking is very important, and at the same time it is a field where, in practice, the greatest mistakes are made. In my five years' experience in victim assistance I came across many cases when the victims were wrongly identified, and sometimes were sent to prison as criminals who had crossed the border illegally or used forged documents.

The biggest mistake made in victim identification is insisting that victims identify themselves as victims, as soon as they are found in night clubs or at the border. If we know what they had to go through, we would know how silly is to ask them "Are you a victim of trafficking"? in the course of their first interview.

Traffickers are professionals and have methods for forcing victims to be obedient to them. Victims are recruited in their countries of origin on the basis of false promises that they will get a job in another country. Traffickers tell them that they have to cross the border illegally, but since it is to their advantage, they follow all instructions given by traffickers. In addition, they are already being blackmailed: if they do anything on their own, it will cause trouble to their families. How can we expect girls in such a situation, once stopped at the border, to identify themselves as victims?

When a victim is sold for sexual exploitation, the first thing that her "boss" will do is to send her an accomplice as a client. This accomplice will tell her that he works for police, and the girl will ask him for help. She will tell him all the reasons why she should return home in order to persuade him to help her to escape. The accomplice then informs the "boss" of everything he learned from the victim. The victim will be punished and be taught the lesson that she should not trust any policeman, because he could be a friend of her "boss".

We cannot then realistically expect that a victim, when interviewed by police, to identify herself as a victim.

There are two more reasons why victims of trafficking cannot identify themselves as such. The first is that they don't know what it means. In their language it is new expression, accepted from foreigners, and only people who have undergone special training know its real meaning. The second reason is that they are usually interviewed without an interpreter in their language, and so understand little or nothing.

Thus, before we ask a girl whether she is a victim of trafficking we must ensure that the following conditions apply:

1. She must be sure that she is safe;
2. She must have it explained to her what a victim of trafficking is;
3. She must receive these explanations in her own language;
4. She must have access to proper legal aid and know what rights she has as a victim, and also the legal consequences if she is not a victim.

Victims of trafficking are, in practice, very often misidentified as illegal migrants or as prostitutes, in part on account of the lack of proper education of those dealing with them, but it is also the traffickers' strategy to make such confusion possible.

Traffickers very often use the same channels used by illegal migrants for sending victims over the border. For example, to cross the border between Serbia and Bosnia, they use smugglers who cross the river Drina by boat. Police may intercept a boat in which they find illegal migrants and victims of trafficking together. The difference is that illegal migrants travel on their own: they have paid smugglers just to help them to cross the border. Victims of trafficking do not pay smugglers themselves, it is always someone else who has paid for them, and there is always someone waiting for them on the other side of border.

If a victim crosses a border using false documents, the border police should, instead of punishing her, direct their investigations at the person who gave them the false documents.

Bar-owners very often keep one or two professional prostitutes in their bars, working alongside the victims of trafficking. They use them as coverage to deceive the police. If the police raid the bar, because they have information it is being used for prostitution, the bar-owner will hide the victims somewhere else and show to the police only the prostitutes, who will say they were not forced to be prostitutes, and that they are paid for their job, and the raid will end in failure. This will discourage police from organizing future raids, and also help to spread the belief that all girls working in such places are prostitutes.

There is a huge difference between a prostitute and a victim of trafficking. A prostitute is not forced to work as a prostitute. She is free to leave whenever she likes. She has a contract with bar-owner and shares an income with him. She has her working-time and her free time.

She can use her free time as she sees fit (to go shopping, etc.). She can refuse a client she doesn't like, or refuse to give him the kind of service he asks for. She will refuse to have unprotected sex.

Victims of trafficking, on the other hand, have nothing of this freedom. They don't have any kind of freedom whatsoever. They cannot leave the bar without a guard. They work as long as there are clients on the premises even they are exhausted. They have to accept any client (even if the person is insane) and do whatever he tells them (even to the extent of being beaten or injured by him). The bar-owner has a "menu" detailing the prices of a range of services. Clients can do anything to a girl; they can even kill her, provided they have paid the bar-owner sufficient. As the victim has already been turned into an object, she is used by bar-owner only as a disposable commodity that will help him to earn as much money as possible. Victims are starving. They receive only enough food to keep them alive. They can earn only money they get as an allowance for the drinks they drink with a client, or as tips. With that money they can buy food or cigarettes but only in the bar, where prices are much higher than in shops.

They must be always pleasant and smiling, even when they are ill or exhausted. If any client complains to the bar-owner that the victim was not up to standard, she will be punished, either by having all her allowance confiscated, or by being beaten.

From my experience in victim assistance, when the police do bring in from a bar a group of girls some of whom are victims and some prostitutes, it is possible to tell the difference, even when they all look like the same, and give the same answers to all the questions. If any man is present, prostitutes will always try to attract his attention.

Victims of trafficking are afraid of men and in their presence they try to be invisible. Even when we know immediately that a girl is a victim, she will still deny it and try to defend her “boss”. This is because she has been mentally reduced to an object, she feels herself an object and says automatically what she is trained to say.

It is very important to assist victims in shelters at least 5 days, to give them time to rest, to sleep and to eat, so that they can pull themselves together.

After that we can expect to earn a girl’s confidence and she will be ready for the interview. The victim, once fully recovered, can usually be easily turned from victim into witness.

Marco Bufo

General Co-ordinator, On the Road, Italy

Standards on assistance

I would like to focus on some basic principles for implementing assistance and social inclusion systems for victims of trafficking.

First of all, we should bear in mind that we are talking about victims, not criminals. That is why a human rights-centred approach is unavoidable. Therefore a clear legal status perspective should be offered to the victims, allowing them to access a whole range of services (protection, shelter, health care, psychological support, education, vocational guidance and training etc.) aimed at their social inclusion and at access to the labour market in the country of destination, or at their voluntary and assisted return to the country of origin. This perspective, based on a residence permit which must be renewable and transformable for work or study purposes, is crucial: the permit should be granted regardless of the victims' willingness or capacity to press charges or to testify in court against the perpetrators. In fact, some of the victims do not have relevant information about the criminal organization, or the criminals have already been prosecuted, or "simply" at the beginning they are too scared for their own or their relatives' safety, but these factors do not diminish their "victim status" or the need to offer them help and support and the opportunity to start a new life.

Offering such a clear perspective, in a way that is sensitive to gender and culture, is also crucial during the first contact and identification phase. If these provisions are not offered, a barrier arises in the relationship with the victims that the NGOs, the public social services, but also the police, cannot surmount. The victims of trafficking will never get the chance to access the services which we are trying to implement and to provide and, on the other hand, the law enforcement agencies and the judicial system will have fewer opportunities to combat trafficking and the various related exploitative practices.

In Italy, as I described yesterday, the protection and social inclusion opportunities for trafficking victims based on the special art. 18 residence permit, are not necessarily connected with victims' direct co-operation with the law enforcement agencies (report to the police), since besides the so-called "judicial path", a "social path" is also envisaged. It should be stressed that in the social path, where the victims are not pressing charges, they do in any case have to give information – through the public or private social intervention body responsible for the programme applying for the residence permit – about their trafficking and exploitation experience, and thus they contribute to the police investigation. Moreover, if required, the victims will testify in court. Finally, in the Italian experience many of the women who followed the social path, after having been reassured and having recovered trust in institutions and legality, arrived at the decision to formally report to the police.

Starting from 1998, but mainly between 2000 and June 2004, through the 289 projects funded by art. 18, accredited NGOs and public social services developed programmes of assistance and social integration for 3,870 victims of trafficking for whom the Police Headquarters issued the special art. 18 residence permits. It is also important to state that there was no instrumental use of the art. 18 social path, and it is categorically not a means for irregular status migrants to regularize their status, which might be feared by other countries, Governments or even by European institutions.

So, through the Italian system we can demonstrate that enacting the basic principles of assistance and social inclusion for victims of trafficking, as I have mentioned before, not only ensures human and civil rights protection, but is also a way of increasing the effectiveness of the fight against traffickers, and also has a positive impact on the issue of national security, since investigations and prosecutions have increased considerably thanks to this system.

Considering the persons affected not as illegal migrants or merely as tools for investigations and court proceedings, but as human beings, in fact strengthens investigations and prosecutions.

The potential of the art.18 model could be still further enhanced at different levels. Nevertheless, we are convinced it is an effective system to help victims of trafficking and to combat the criminal organizations. Unfortunately, it has been up to now a “unique” model, but we recommend that it should be given special attention and its main principles adopted at a European level, superseding an approach based only on the temporary stay permit and on the victims’ immediate co-operation.

This is also all the more necessary, when we consider the complexity of the trafficking phenomenon. We should also consider that the traffickers are employing and adopting much more sophisticated trafficking and exploitative strategies, by allowing, for example, victims of trafficking to enjoy more freedom or to retain a part of their earnings. Such changes represent a challenge we now have to meet, I mean the NGOs and the law enforcement agencies. We must consider that things cannot be seen as black or white, but there is a whole range of grey nuances in the victims’ condition, and that we are not talking of professional prostitutes or illegal migrants here, but about victims of trafficking.

Another precondition in the provision of an adequate assistance system is adequate funding. It must be a multidisciplinary, multi-actorial, integrated system, but also adequately funded, in order to shift from time-limited and uncertain projects to stable and structured services, as long as these are needed. Unfortunately, trafficking is a global, deeply rooted, complex and ever changing phenomenon and is unlikely to cease or decline significantly in the short or medium term.

Thinking about trafficking in human beings as a multifaceted phenomenon, in which different people are involved, mainly women but also men and children of different personal, cultural and social backgrounds, must be the framework for implementing assistance systems. These systems have to be human rights-centred, but at the same time gender-sensitive and culture-sensitive. For example, the participation of cultural mediators in the assistance work, but also in the prior outreach work, or in the identification process is a fundamental aspect.

The most important point is that all services and activities must be provided with due respect accorded to the persons’ will and choices; the person must be at the centre of the decision-making process as the main protagonist. NGOs and the service providers have to create opportunities for the victims to know and to understand the opportunities they have and the choices they can make. Such an approach must of course be non-judgmental. Confidentiality must be guaranteed so that no information can be passed on to anybody without the victim’s consent. The services must be tailored to the needs of the persons involved. Flexible individualized programmes should be developed, based on an approach of empowerment, so that we can really understand what needs, but also what potential, what desires, what dreams the victims carry with them and match them with the real opportunities society and the labour market offer. Such a system should be based on a multidisciplinary approach, in which the social service providers and the law enforcement and judicial agencies closely co-operate, whilst maintaining their distinct roles.

Coming back to the assistance services, I would like to stress here that they should be highly specialized. Being tailored to the needs of the individual, they should offer a wide range of possibilities. This means that in the outreach work and when a person enters a programme, she or he should be presented with different possibilities, for example different kinds of shelters which consider their needs, including also the special needs of children. These services should be aimed at social inclusion and this means that they should be focused on connecting with society. Work with the local community is very important in this regard. Education, psychological support, and legal counselling are very important too. The person needs to be aware of what is really happening. They have to be aware of the whole process, which in a foreign country, for instance from the legal point of view, can be very complicated. That is why it is of great importance that the services include lawyers or at least legal consultants in their teams.

If services should be specialized, they must rely on different kinds of professionals with specific training and constant supervision provided, in order to reduce the risk of “burnout”, the incidence of which in such a difficult field is very high.

If the aim is social inclusion, education and vocational guidance and training are of course of great relevance. In Italy we also have to face the general problems of a much more free and unstable labour market, which makes it more difficult to obtain regular employment. Short-term contracts are very common in Italy, while we have an immigration law which says that the residence permit can be renewed only on the basis of full-time employment. This of course also affects victims of trafficking. It is just one example of the need to consider the trafficking phenomenon and specific provisions in the framework of the global scenarios and policies in our societies.

Therefore, the service providers must not only concentrate on what they are doing in the field, but also on the improvement of the whole system, working for data collection, for the advancement of multidisciplinary networking, for quality standards, and, last but not least, developing lobbying activities and making recommendations to the policy makers.

In conclusion, I would also like to stress the importance of the excellent report of the Experts Group on Trafficking established by the European Commission in general terms and specifically in relation to assistance standards. I would like to invite you to become familiar with it and to respond to it.

Thank you.

Dejan Keserovic

Counter-Trafficking Project Manager, IOM Belgrade

Overview of different requirements for residence regimes for trafficked persons and best practices in different countries

Discussion on the status of victims of trafficking has taken place over a decade and reached its culmination in the last few years. In the Protocol to Prevent, Suppress and Punish Trafficking in Persons, the legalization of the status of trafficked person has for the first time been raised to the level of an international legal norm. Nevertheless, Art. 7 says that states *should* legalize the status of victims, meaning that this article did not really oblige the signatory States to legalize the status of victims but only opened the door for subsequent action in this regard.

The first action was undertaken by the Stability Pact in December 2002, in Tirana. Government representatives from the South East Europe Region³¹ signed the “Statement on Commitments on the Legalization of the Status of Trafficked Persons”, acknowledging responsibility of States to address the challenges of trafficking, by recognizing human trafficking as both a law enforcement and a human rights issue, and affirming that the legalization of the status of trafficked persons would encourage their co-operation with the authorities and facilitate their recovery and reintegration. Signatories have also agreed that temporary residence permits are a crucial element for any effective victim and witness protection strategy and acknowledged that the provision of temporary residence permits to foreign victims of trafficking who have escaped the clutches of traffickers also brings long-term benefits in terms of the reintegration of victims and the prevention of re-trafficking.

The signatories to the Tirana Agreement have made a commitment to:

1. Entitle victims of trafficking to remain on their State’s territory and grant them a recuperation period of up to 3 months for them to settle and reorient themselves; and
2. Issue a temporary residence permit to foreign victims of trafficking for (a) the duration of legal proceedings in the event of their choosing to testify, or (b) whenever appropriate.

The Tirana Statement on Commitments follows a number of instruments such as the Anti-trafficking Declaration of South Eastern Europe, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, as well as the Brussels Declaration, which all aim to combat human trafficking. In order to support the efforts of those responsible for counter-trafficking activities (i.e. the authorities and service providers) and enable them to establish a system of temporary protection for victims of trafficking, IOM, in close co-operation with government authorities, service providers and NGOs, is implementing a series of activities aimed at strengthening capacities at the regional level.

In April 2004 further action was undertaken but this time by the European Commission adopting the Directive on the Residence Permit.³² This Directive stipulates that by April 2006 each EU member State should incorporate the following:

³¹ Signatories to the Tirana Commitments are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYR of Macedonia, Hungary, Moldova, Serbia and Montenegro, and Turkey.

³² Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities, (14994/03).

1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to co-operate with the competent authorities.

The duration and starting point of the period referred to in the first subparagraph shall be determined according to national law.

2. A decision on the issue of a residence permit for at least six months or its renewal has to be taken by the competent authorities, who should consider if the relevant conditions are fulfilled.

By legalizing the status of foreign victims, temporary residence permits are an essential component in assisting victims and are a potential motivation for victims who have not been identified as such to come forward and seek protection. Without TRP in place, uncertainty regarding legal status and the possibility of immediate deportation add to the anxiety of victims, already traumatized by their experiences. The setting-up of Temporary Residence Permit mechanisms throughout OSCE member States removes the prospect of immediate deportation and considerably diminishes the risks of their re-entering trafficking networks. Temporary Residence Permits also provide a legal basis for the NGOs to assist foreign victims of trafficking and allow for the prosecution of traffickers. Without the permits in place, foreign victims who are identified throughout the region without proper documentation are often treated as irregular migrants and deported to their country of origin where they rarely denounce their traffickers or receive any kind of assistance.

It is clear from the above that without residence permits in place we will find it difficult to provide an environment in which victims can exercise their human rights.³³

However, the discussion was centred on the issue of how to perceive residence permits for VoT (Victims of Trafficking) as a human rights protection tool or as a tool for combating trafficking and illegal migration. All actions regulating the status of VoT, faced the problem of reconciling the two sides interested in helping victims to obtain legal status. On the one hand, there are law enforcement bodies charged with imprisoning traffickers and tackling the growing strength of organized crime groups. On the other hand, trafficking has always raised human rights concerns and the creation of a human rights framework has been a major approach to combating it, thus, human rights protection for VoT should be paramount.

In this long-standing discussion there are several ongoing issues:

- Reflection period – duration?
- Temporary residence permit versus permanent residence permit;
- Should individual VoT socio-integration programmes exist or not?
- Should the issuance of a residence permit be linked to co-operation with the law enforcement agencies?
- Are there adequate victim witness protection programmes?
- Family protection/reuniting with families?
- What about victims' civil claims for compensation?

³³ Right to Safety, Right to Recuperation, Right to Residence, Right to Criminal Procedure, Right to Compensation and Right to Social-integration.

Reflection /Orientation /Recuperation

The reflection period allows trafficked persons to decide whether or not to testify, as well as to determine if they are willing to be repatriated. This period allows the trafficked person fully to understand the possible consequences of repatriation, such as being re-trafficked, exposed to reprisals by the traffickers, and stigmatized.

At a governmental level this reflection period is also important, as trafficked people can continue to be influenced by their traffickers immediately after apprehension. Legal status is essential for allowing a VoT to become self-supporting.

From what has been said so far, it is clear that the answer to the question how long the reflection period should last depends on who you talk to:

- if you speak to psycho-social workers they will recommend at least six months for a victim fully to recover prior to coming to any decision;
- if you speak to members of an anti-trafficking team they will be in favour of the shortest period possible as they are there to apprehend traffickers since information leading to the arrest of traffickers is of importance to them.

Thus lawmakers find themselves in the unenviable position of having to satisfy both positions simultaneously. This “problem” is also recognized by the EC Directive which states:

“Members states shall ensure the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether or not to co-operate with the competent authorities.

The duration and starting point shall be determined according to national law.”

Existing models in OSCE countries are divergent: the reflection period is from 4 weeks in Germany, 30 days in Italy and the Netherlands, 45 days in Belgium and up to three months in Bosnia and Herzegovina and Serbia. The latter two are the direct result of the Tirana Commitments document, signed thanks to the efforts of SPTF, where the following is stated:

“To entitle possible victims of trafficking to remain on the State’s territory and grant them a recuperation period of up to 3 months during which they can stabilize and reorient themselves.”

Short-term and long-term residence permits

Temporary protection for victims of trafficking may not be an adequate form of protection. In addition to obvious reservations regarding protection provision granted exclusively to those willing to testify against their traffickers, it is well documented that people receiving temporary protection in OSCE countries have experienced mental health problems due to the insecure nature of the protection. Furthermore, the lack of long-term legal status contributes to the social exclusion of those temporarily protected, particularly those suffering trauma from their experiences. Often temporary protection is not coupled with the right of victims to be reunited with their families, the right to education, basic health care, national identification documents, and travel.

Throughout OSCE countries, it is theoretically possible for victims of trafficking to qualify for residence permits on humanitarian grounds, but the implementation of residence permit distribution for VoT is uneven and discretionary. According to the European Commission, the minority of European States that

currently have legislation that addresses protection for survivors of trafficking have policies which are vastly divergent. As a result the above- mentioned Directive gives a period of two years from the date of its adoption in which EU member States shall bring into force the laws, regulations and administrative provisions in compliance with the Directive.

As regional solutions are an essential component of any comprehensive approach to VoT protection in the last several years there have been attempts to harmonize responses of governments. Regionally, the first is that for SEE countries through the Tirana Commitments (Dec 2002) and the second is the one for EU – the EC Directive (Nov 2003).

To issue a temporary residence permit for victims of trafficking until the completion of legal proceedings, in the event that the victim of trafficking is willing to testify, or whenever appropriate. (Tirana Commitments)

The residence permit shall be valid for at least six months (EC Directive)

Studies show that States issuing temporary residence permits have a higher success rate of prosecution of traffickers than States without such protective measures. This is particularly true in case where residence permit rights are not conditional on willingness to testify against traffickers.

Special residence regimes

In order to contribute to the protection and assistance of VoT in human beings in a durable and sustainable manner, there is a need for integrated policies and programmes aimed at the protection and improvement of the victims' position. It is thus advisable to set up victim protection programmes tailored to their individual needs. Those programmes similar to the Italian model should include protection, socialization, counselling, psycho-social and medical support, legal assistance, shelter, vocational training, job referral and follow-up.

Therefore, it is necessary to deal with the problem of the residence status of foreign trafficked persons. This is a crucial issue both to protect the human rights of trafficked persons and encourage their co-operation in criminal proceedings. At present the fear of being immediately deported is a major impediment to VoT coming forward and reporting their exploiters. In addition, it is very difficult for NGOs to accept a VoT in a shelter home or in a programme of assistance if the person cannot stay legally in the country. National legislation should envisage on what grounds a person is entitled to have access to special forms of residence permit.

The right to receive a residence permit and to be admitted to the benefits stipulated by national legislation, at least at an early stage of the procedure, should be set out on the grounds of the person being a trafficked person, not necessarily a witness. Only a second phase of the procedure requires that a person make a statement in criminal proceedings.

Waltraut Kotschy

Executive Member of the Austrian Data Protection Commission

Data Protection

I would like to start my presentation by trying to define what data protection is. These are rules about collecting, disclosing and using personal data and there are certain principles which show us how we are allowed to use this data.

Disclosure is perhaps a concept which needs some explanation. It would mean presenting data to other authorities, private institutions, private persons and also to the public. Publication is only a specific form of disclosure which means that it falls under the same rules as disclosure.

What is personal data? It is not such a trivial question as it may perhaps appear at first glance. It is certainly data about an identified person. The usual identifiers of the person are name, date of birth, place of birth, address, first names of parents etc. If we have enough identifiers in order to be sure that the person is uniquely identified, then we talk about the data of an identified person. For data, which are needed only for statistical purposes, we recommend an additional regime, encrypting the identifiers, so that data cannot be traced to a specific individual without being in possession of the encryption key. This is relevant here because all those institutions which want to ameliorate the situation of trafficked persons need some statistical material. Without statistical figures it will be quite impossible to prove the seriousness of the problem.

Now very briefly, from the perspective of EU member State countries, I have listed here the legal instruments ensuring data protection. On the European side there is the European Convention on Human Rights which is the mother of all the data protection instruments. Then we have to mention the Council of Europe Convention number 108. This data protection convention is particularly important because it is still the only legal ground for data protection in the European Union within the third pillar, which are police and judicial matters. In the first pillar (comprising matters like asylum, residence and so on) there is an EU legal instrument in place: This is the Directive 95/46, the data protection directive. As an important additional fact the Charter of Human Rights must be mentioned, which will form part of the future EU constitution. The Charter of Human Rights makes a step towards acknowledgment of the importance of data protection, as it contains not only a right to privacy, but expressly also a right to data protection.

I will try now to explain what data protection is in a nutshell. It is a set of principles on how you should treat personal data. This not only relates to personal data which are processed electronically. The human rights aspect is independent of the technical side of handling data. It pertains to how data are used, in whatever technical way.

The first rule is that the collection, use and disclosure of personal data must only occur for a legitimate and pre-defined purpose. The reason for collecting data must be specified at the outset. It is not permitted to collect data for future possible purposes without being able to name them.

Moreover – and this is Anglo-Saxon terminology and thinking – data must be treated in a fair manner. Fair treatment means fair towards the subject of the data. He or she must always be informed about what is going to happen with his/her data and why these data are being processed or used. Fairness in that context principally means that reliable information is given to the subject.

Supposing that a legitimate purpose were defined for using data, the data collected and used must not exceed that justified by that purpose. Definition of the purpose is thus extremely important in data protection because you may only use such data as are necessary for a (legitimate) purpose. This is the so-called principle of “avoidance of data”. One may only use the least data possible, that is: only as much as is absolutely necessary.

What is more, the data should be accurate. What does this mean? For example in the police sector there are whole data banks which include people who are only under suspicion of having done something. Such data bases must clearly show that those contained in the data base are only suspects, not criminals as long as their criminality remains unproven.

Data should be deleted as soon as they are no longer needed. Data must not be allowed to “float around” because they are not used (needed) anymore.

How do we ensure that all these rules are complied with? In the system of ensuring compliance there is an obligation to inform the data subject, why the data are being used and processed. Then every data subject has a right to access his or her data in order to know exactly which data are being processed and what is the content of these data. The data subject has a right to correct the data, if they are wrong, and the right to have the data deleted, if their use is illegitimate. In order to make it easier to enforce compliance there are in all EU member countries independent authorities who protect the rights of the data subjects (ombudsman-type authorities or courts).

There are three main reasons why the purpose for which anyone wants to use data may be a legitimate one: One is that the data subject has consented to a specific use his or her data. Another reason would be that it is in the vital interest of the data subject to use his or her data. “Vital interest” is an extraordinary case – this cannot be overstressed. If there is a question of the lawfulness of data-processing, there will not be many cases in which it could be proved that “vital interests of the data subject” were at stake. Most important is, however, the third reason of legitimacy: The use of data is necessary because of overriding legal interests of a third party. All data-processing for the purpose of law and order and state security falls under these grounds of legal justification. It is in the overriding legal interest of society to provide a certain amount of order and security. The topic of criminal procedure also falls under this rule.

The concept of “consent” is very specific and important in data protection. According to the Directive “consent” is valid only if it satisfies these four conditions:

- It must be given freely,
- The data subject must be duly informed about what he/she is consenting to,
- Consent must concern a specific situation of the use of data,
- consent can be withdrawn at any time.

Acting as an authority receiving such consent it must be always kept in mind that consent can always be withdrawn at any time, without having to give any further reasons.

Two other specific features have to be kept in mind when talking about the legitimacy of data processing:

As I said before, the European Convention of Human Rights (ECHR) underlies all the other legal instruments on data protection. One of the most important principles of the ECHR is that states using

data, and therefore infringing the right to privacy, must have a sound legal basis in an express legal provision. The legal provision must be explicit and clearly state that in the situation which is regulated a specific authority may use specific data for a pre-defined purpose. If therefore a public authority needs to use data about trafficked people, there must be a law in place that will provide a legal basis.

Under the regime of the Directive 95/46 one must additionally bear in mind that if sensitive personal data are to be used – that is to say medical data, data about race or religion, but also data relating to criminal offences – special safeguards must have been implemented within the law justifying the use of such data: it is not sufficient that a relevant law exists; this legal provision must incorporate a number of additional specific safeguards to prevent the data from being misused.

After this theoretical background I will try to make some evaluation of the typical data flows which would come under the rubric of this conference. I understand that one of the major problems is the problem of the victim identification when you have to categorize people as victims of trafficking or simply as illegal immigrants. You may face situations in which potential victims of trafficking cannot prove their identity (such as name, date of birth, citizenship etc). Identification can be achieved by different means: for instance by finding out the name and/or the date of birth of the person. Identification by means of biometric data is another method. For the purposes of asylum we have in the EU a special system of identifying people who cannot prove their identity, which is called EURODAC: In Eurodac, the fingerprints of persons who cannot – or will not – identify themselves properly are processed.

Another type of data flow, which will occur in a given context – is the use of data for the administrative procedures arising from finding people who are in the country illegally. These procedures are usually well defined by law. Passing the data of trafficked persons to the relevant authorities for such purposes is lawful. Confidentiality is not really possible between the authorities which operate these procedures. However, outside the circle of these authorities, confidentiality as guaranteed by data protection must be strictly observed. The same is of course true for criminal procedures, although it must be noted that the criminal procedures will mainly be directed against the trafficker. In this context the confidentiality problem vis-a-vis the trafficked person is certainly most acute: criminal procedure includes the necessity to disclose the data of the victim as witness to the investigating court. Here the life of the person who may act as a witness may definitely be at stake. Specific rules for guaranteeing confidentiality by the authorities dealing with such special situations in criminal procedure are actually in place in most of the member States of the EU.

Ensuring confidentiality in reality will – apart from the existence of relevant legal provisions – always constitute a major problem: As trafficking is definitely within the domain of organized crime, special endeavours will have to be made, so that insider-information will not put the trafficked person in danger.

There is also very often a need to co-operate with the state of origin, for instance if the police authorities want to pass on some information to the police authorities of the country of origin. From a data protection point of view, such exchanges of information would call for a bilateral police information and co-operation agreement in order to be legal. Such agreements usually impose on the authorities of the country of origin specific confidentiality obligations which are necessary for the protection of the victims and the victims' families which have stayed behind.

The next category of data flow cropping up in most cases is that caused by the problem of providing shelter. I understand that providing shelter is mainly done by private institutions. If state authorities pass

on the data of trafficked persons to such private institutions, we have a special problem, even if these data have been passed with the consent of the data subject: a special service contract between the authorities and the private institutions would be needed to take care of the relevant data protection problems. The private contractor will have to promise to the contracting state authorities that he will keep all the confidentiality obligations which are in place for the authority.

A very interesting problem is the extent to which you must rely on the consent of the person concerned. Often a situation arises in which a person is unable to make decisions about herself or himself because of the trauma experienced. The question then would be: can the lack of consent be neutralized by relying on “vital interests of the data subject”? There is no court ruling on such cases, so I can give you no reliable guidance. Moreover, most likely there are no specific legal provisions in the national sphere which would relate exactly to such situations. I rather doubt however, that it would be legally safe to rely solely on the consent of the trafficked person considering their known indecisiveness under duress. Such situations therefore seem to call for the creation of special legal provisions in order to know how far “vital interests” could be relied upon to provide a sound legal basis.

Finally, in the stage of recovery and reflection, using data about the victim should be mainly covered by consent. Only in exceptional cases might the vital interests of the data subject justify disclosing data to other institutions involved in a HELP – scheme.

I hope that I have been able to clarify those data protection problems which are relevant in the context of trafficking. Further discussion should include the question if and in what circumstances more precise legal provisions are needed in order to move on solid legal ground when dealing with the protection of trafficked persons.

Thank you very much for your attention.

7.2 Working Group Session 2

Petra Burčiková

Director, La Strada Czech Republic

Social Inclusion of Trafficked Persons

Ladies and Gentlemen,

It's a pleasure for me to speak at this conference and share some ideas and experience from the Czech Republic.

I would like to touch upon:

- general concept of social inclusion,
- the situation in the Czech Republic and
- its connection between personal motivation of trafficked persons and social inclusion.

Inspired by the Council of Europe's concept of social inclusion we can generally say that it means access to five important societal resources:

1. Employment;
2. Housing;
3. Social Protection;
4. Health Care;
5. Education.

It is clear that trafficked persons' access to these resources is seriously impaired. However, it varies to a large extent according to whether we are discussing social inclusion in a source country or a destination country.

The difference, of course, results from the legal status of a trafficked person. While in a destination country the person usually has the status of an alien and, therefore, has limited access to the resources mentioned above, whereas in a source country the person is a national of that country and her or his access to societal resources is incomparably easier.

It is important also to take time into account: we can talk about impact of social exclusion/inclusion prior to and following the experience of trafficking in both source and destination country.

However, as I have only limited time for my presentation and this conference deals mainly with destination countries, I will focus on destination countries, and later on the Czech Republic as one such destination country.

Taking the trafficking experience as a decisive moment, we can talk about "potentially trafficked persons" and "trafficked persons". In this respect the possibility of social inclusion or the effects of social exclusion are very important.

Generally, the situation of migrants in a foreign country is characterized by their exclusion from resources of the society and from protection in situations of hardship or crisis, because those are usually

reserved for nationals, or in some cases regular migrants who have been residing in a country for a long period. Not having access to legal employment, legal redress for wrongdoings, social protection and other important services often forces migrants to the margins of society and makes them vulnerable to trafficking as a way out of a situation that deprives them of other viable options. So it is important to keep in mind that trafficking doesn't always have to follow the same route from a source country to a destination country, but might also occur in a situation in which persons arrive in a destination country voluntarily and without any use of force or deception. It is their plight in the destination country that allows them to fall prey to traffickers.

On the other hand, when it comes to trafficked persons, many countries these days provide assistance in the form of a reflection period that allows for crisis intervention and the stabilization of immediate circumstances of a trafficked person. In most cases this means the provision of a residence permit and assistance, but only for the duration of criminal proceedings against traffickers and only to trafficked persons who co-operate with the law enforcement agencies. Afterwards, they are returned to the home country and into the same situation that forced them originally to seek other solutions, even if those involved great risks to their security and well-being.

The approach of the Czech Republic is in many respects similar.

Eventual social inclusion of trafficked persons in the Czech Republic would have to be based on either or both of these documents.

Protection scheme for trafficked persons is a part of the National Strategy on Combating Trafficking in Persons. It provides for:

- A reflection period – based on registration of a trafficked person in the Protection Scheme Programme,
- Tolerance status – for the duration of criminal proceedings and provided that the person co-operates with the law enforcement agencies,
- Permanent residence – to be granted in exceptional cases. It has not yet been granted, but it has to be said that the protection scheme was only put in practice about a year ago.

The National Plan of Social Inclusion outlines strategies and specific measures designed to prevent, reduce and eliminate social exclusion in the Czech Republic. It pays special attention to assistance to vulnerable groups among which it specifically includes migrants, but at the same time it gives preference to legal and long-term residents.

Clearly, conditions for social inclusion of trafficked persons have to be created by states in their policies and that is usually a long-term and difficult assignment. In the meantime, a lot of work in the effort to improve the situation can also be done by non-governmental organizations. In an ideal scenario, the two actors should orchestrate their work in a way that would most benefit trafficked persons themselves.

In the work of La Strada Czech Republic we were able to identify the following obstacles to the social inclusion of our clients:

1. Not being entitled to a residence permit.
2. Because of that, in most cases, not having access to the labour market or social protection.
3. Not speaking the language, thus severely limiting the capacity to protect one's rights and employment options.
4. Having low/no education/skills or losing them in the process of trafficking.

In the end, all of these factors have a fundamental impact on the personal motivation of a trafficked person to escape the trafficking environment and change her situation.

The personal motivation of a trafficked person would be, to a large extent, affected by

- How long the person had been living in a trafficking environment. The longer the experience, the harder it is to adjust to different life-styles, to shift priorities, or to regain or acquire normal working habits and skills,
- Especially in cases of sex trafficking, when a trafficked person was able to keep all or at least part of her earnings, the financial aspect is very important. The difference in income from prostitution and from any alternative employment that may be available is in many cases quite striking. That makes it hard for the person to opt for a change, especially if there are persons at home dependent on her income.
- In the effort to change their situation trafficked persons usually have to face multiple discrimination – as foreigners, as women, as irregular migrants, as ex-prostitutes, in some cases as being of different ethnic origin, just to name a few.
- They have to learn to deal with and live in a situation of permanent uncertainty resulting from traffickers exercising control over their lives, from not having legal status, and from not being connected to support networks.

So in the end, it seems reasonable to argue that in order to motivate trafficked persons to leave the trafficking environment we have to replace the uncertainty they felt while in the trafficking environment, by the certainty offered to them if they decide to leave it – and this certainty entails the provision of comprehensive assistance, including social, legal, health, educational and other services, but the assistance has to be provided on the basis of entitlement, not

- conditions to be met,
- circumstances to be considered or
- discretion to be applied.

Unless we can provide a trafficked person with clear and definite information that is not subject to change, we can hardly assure ourselves that we are providing her/him with any certainty. If, for example, victims' residence status is to be dependent on co-operation with law enforcement agencies, or on whether the information they may have is important for the investigation, or on whether the police can pursue the case without their testimony or whether their security is threatened in the home country etc. – it scarcely makes the situation of the victim of trafficking more certain than before.

If we want to achieve the social inclusion of trafficked persons we have to motivate them. And in order to do that, it is not enough to say it is not right to buy and sell people, just as it was not enough to conclude it was not right to own people when the fight for abolition of slavery was fought – it resulted in abolition, but not in liberation.

I would like to finish by citing Robert E. Goodin, a specialist in political theory and public policy. And if I haven't been clear in my presentation I hope this will make my point for me.

Robert E. Goodin – Inclusion and Exclusion

Granting equality to African Americans in the South of the US brought them one type of freedom. But the reasoning of the abolitionists, who focused on a single point that it is not right to own human beings, did not smoothly result in newly liberated slaves being able to own property that would make

them truly independent social actors. Even though they had won one battle, they had lost another, equally important, and for the rest of the 19th century were allotted a fate not far from enslavement.

A similar thing happens to certain migrants these days. They get the right of residence in a country, but fail to achieve all rights connected with social citizenship and are forced to live in a situation only slightly better than that from which they escaped by leaving their home country.

Ms. Ann Jordan

Director, Initiative Against Trafficking in Persons, Global Rights USA

Compensation and Confiscation of Assets

I have been asked to speak about compensation, but I would like to start by talking about confiscation of assets. The reason is that compensation is linked to confiscation of assets. I do not think that this problem is anywhere else on the conference agenda, so I want to talk about these issues first.

If our governments, the UN, and other experts are correct, if they are able to calculate how much money it is possible to make by selling and buying a human being, then there are billions of dollars being made through this crime. If it were possible to confiscate all of this money, we could compensate every single victim and provide funding for every NGO to provide services.

Thus, it is very important for governments to confiscate these assets. Governments want to confiscate the assets, but unfortunately the model that they have chosen for confiscation comes from drug and other confiscation mechanisms. This means that governments keep all the money because, when they confiscate the assets of drugs dealers or arms dealers, there are no victims directly involved. The product that is moved around is not a human being, so the governments feel perfectly justified in keeping these assets. Unfortunately, this is the model that is also being used in human trafficking. This was the model that was being pushed in Vienna during the Trafficking Protocol negotiations. One of the arguments that our NGO Human Rights Caucus made against governments keeping the money was to say that if we can all agree that the property held by the traffickers was made through the sweat, labour and harm suffered by the people who were trafficked, then governments that confiscate and keep this money are stepping into the shoes of the traffickers. Of course, there were delegates who became very upset with us for saying that, but what other explanation could there be? Some of the governments actually said that their countries are poor and their people are poor and they need to use this money for their own people. We found that totally unacceptable.

It was a very difficult process for us to convince the governments that they should confiscate the assets and then use these assets to benefit the victims. Confiscation is not only for the purpose of giving the money to the victims. I was speaking Mara (from Lara in Bosnia) who told me about a trafficker who was sentenced and is going to come out of prison after only 6 months. Six months is nothing if you have 7 million dollars waiting for you when you are out. This trafficker can start his business all over again.

We encouraged delegates in the Protocol negotiations, particularly those from countries of origin, to understand that when the people are returned to their countries, for example from Germany to Moldova, then Moldova will have a problem with caring for the returnees, while Germany will have got rid of the “problem” by deporting the victims. Countries of origin will need resources, which could come from the confiscated assets. There can also be a situation in which the traffickers put their money in banks in countries of destination, such as Germany, which could confiscate the assets without sharing the money with the governments in countries of origin. It seems just and fair that any money not being used for compensating the victims should be shared with other governments in countries of origin because they desperately need resources to provide services to people who have returned – and we know that the majority of people who have been trafficked do return home.

In the end, the Human Rights Caucus did manage to obtain some agreement among the governments. There are some provisions in the Protocol and in the Convention on asset confiscation and how to use the money and set up a fund to share the assets. What we need now is some support from civil society to put the pressure on their governments to share these resources with victims and service providers, if and when governments actually confiscate those assets. It is also important to pressure governments to sign the Convention and the Protocol so that they automatically have bilateral agreements with many governments on this and other issues, instead of working out arrangements on a one-to-one basis.

What happens afterwards when the government confiscates the assets? The assets should obviously be used to compensate the victims. There are different ways to compensate the victims. A government can set up a victim compensation fund where money is given out to victims. This really comes from tort law where a set of criteria are used to calculate the loss suffered. For example, if someone has a broken finger, she is given a fixed amount of money. However, this system is not appropriate for human trafficking. I am not a great fan of victim compensation funds because I think that the victims have a better opportunity to recover what is really owed to them if they can have a court calculate the loss directly based on the actual physical and psychological harm. Judges or juries can look at all the harm and suffering, the psychological suffering, and the needs that people have when they return home, so they can calculate precisely the value of the victim's forced labour to the traffickers as well as the harm suffered. The courts can come up with this amount of money, which should then be given to victims.

However, what I have not been seeing is any great interest on the part of governments to provide this kind of access to justice. Compensation is an issue of access to justice that ensures that people have the ability, whether they are in the country legally or not, to receive fair compensation for the harm that they have suffered. I would like to ask how many people in this room have seen their country's courts awarding compensation based on the total harm suffered by the victims. No one? It is very important for trafficked persons to be able to recover from their loss and suffering not only to feel that there is a just world out there, but also to help them build a new life. As we have discussed in this conference, many people who have been trafficked can return to the cycle of migration and then become potential victims of trafficking.

In the US law in 2000, a new legal provision in the criminal law came into effect on trafficking in human beings. A provision of this law ensures that in the criminal process the government can ask a judge to order compensation to the victim and the law even contains a formula on how to calculate this compensation. One of the interesting problems that we have in the US is that prostitution is a crime in almost every part of the country, except for two small counties in Nevada. So the question is the following. If somebody has been forced to work in agriculture, which is a legal industry, victims can recover compensation for their labour. If somebody was forced into prostitution, which is not accepted in US law as a form of labour, then how can the victim recover compensation? The federal law answers this dilemma because the formula used to calculate compensation includes the value of the labour of the person to *the trafficker*. So the compensation is not based on something like a minimum wage or average income or wage for the work. If the value of the forced prostitution to the trafficker was 200 dollars, the law uses this amount to calculate what the compensation is for the victim, whether prostitution or agriculture or some other type of work is involved.

The limitation to the law being able to compensate all victims is that the court needs to know who the victims are. For example, we had a case in Berkeley, California, involving a trafficker who was the largest land owner in the city. He brought people from India and had been doing this for 15 years. The representatives of the government went to the village in India where he recruited people in order to try

to identify all of the victims and locate witnesses and ask the court for compensation. This can be a very expensive process. Does the government always have the will and ability to go and look for them?

Even in the best of circumstances, we know that some trafficked persons will be left out; there will be people who will not be able to access compensation through the criminal law. It is, of course, much easier for the victims if they can get compensation through the criminal proceedings, since they will not have to go through a separate court process in a civil case. So I think that we need to have another fund of money available, one that would be for all victims. This fund could be for the victims who are not identified and do not have the ability to access the court. In the ideal world, governments would work very closely together tracing assets. Looking at this issue after September 11, we know that governments were able to trace assets all over the world. We know that it is possible to find this money if there is a will.

So if governments can find and confiscate all the trafficking assets, they should be able to ensure full compensation for the victims and, in this way, ensure that they will not be forced again to migrate and that they will be able to regain control over their lives. They will also have money to fund the NGOs to provide services. There may even be enough money for adequate investigations of the traffickers. Why would we want to give any of the money to governments? Because at present there is no funding in most countries for investigations. Even in the US, the resources for investigations are completely inadequate to the task. The US government is not funding enough investigators. We have produced a good law that works well, but without enough investigators, we do not have as many cases as we should have. The same situation exists around the world. We would also like to see some of the assets confiscated from the traffickers used to fund investigators who are well-trained, who work well with NGOs, and who are actively searching for victims and then bringing them to well-funded service providers. We would also like to see some resources given to prosecutors and the courts, to train them so that they are able to put the traffickers in prison. Of course, it goes without saying that our priority is for governments to use confiscated assets to compensate victims first and to provide services to victims second.

Thank you.

Maria Grazia Giammarinaro
Judge, Criminal Court, Rome, Italy

ABSTRACT

Protection of victims in criminal proceedings

A victim-centred approach is needed, during investigation, prosecution, and the trial. This approach implies that the victim must be protected from secondary victimization.

Good practices already exist in cases of domestic violence or sexual violence, or other crimes that cause serious trauma to the victim. In these cases, including trafficking cases, the protection of the victim requires not only the protection from retaliation by traffickers, but also an approach aimed at minimizing the negative impact of criminal proceedings on the victim.

Good judicial practices should include:

- Co-operation between the police, the prosecutor's office and NGOs. The person must be immediately sheltered and assisted, as soon as she/he decides to escape from traffickers, by reporting them to the police, or asking an NGO for help.
- The victim must have an adequate period of time for recovery. During this period, even though the victim has not yet reported or made a statement before the police or a judicial authority, she/he should be allowed to stay in the territory of the receiving State. It is important to emphasize that, at least in this first stage, the recovery period must be safeguarded unconditionally. In addition, since the victim is seriously traumatized, during this period any decision concerning the right time for her/him to make a statement should be taken in close co-operation with the police, the prosecutor's office and the NGO which shelters and assists the victim. In fact, if the victims are still in the first stage of the recovery process, they are probably not in a position to remember what exactly happened to them.
- Any legal means should be used, in conformity with the criminal code of procedure, to avoid any repetition of the victim's examination. Every time the victim is obliged to tell her/his story, this is a renewal of the trauma. In addition, any visual contact between the victim and the offender should be avoided, for example through audio-video facilities.
- The testimony of a child victim should be gathered with the assistance of a psychologist. Through video-facilities, the psychologist should ask questions to the minor, upon request of the parties or of the judge.
- During the pre-trial and the trial phase, the judge must play an active role, in order to ensure that the victim feels that her/his personal dignity is respected during the criminal proceedings. In legal systems that provide for cross examination, the judge must establish very strict rules, and ensure that the parties comply with them, disallowing questions concerning the victims' past private life, questions about their consent to prostitution or trafficking, and questions aimed at disqualifying the witness, unless it is necessary to collect decisive evidence directly related to the indictment.
- Protection of the victim must be guaranteed during the investigation, prosecution and the trial. Protection is normally achieved by sheltering the person. Nonetheless, the period of criminal proceedings is a particularly dangerous one for the victim. In this stage, the judge should use all her/his discretionary powers to ensure that the victim is accompanied to the courtroom, and that she/he does not meet the offender or any his/her relatives or friends.
- When a victim is in danger because of her/his statements in criminal proceedings, special protection measures for victims/witnesses should be provided, including relocation and, if necessary, change of identity.

8. WORKING GROUP II: Implementation of National Referral Mechanisms: Co-operation Models of Law Enforcement Agencies and Civil Society

8.1 Working Group Session 1

Stana Buchowska

Director, La Strada Poland

The Role of NGOs and civil society in Building National Policies

Role of civil society and NGOs in anti-trafficking initiatives:

1. NGOs addressing the issue of trafficking in persons from different perspectives – human rights, migration, social and economic factors, labour, legal, – and on different levels: grass-roots level, education and training, advocacy and lobbying, advisory/expert role in the process of policy making.
2. NGOs have a unique position and role
 - a. Advocacy and lobbying for rights of trafficked persons;
 - b. First, direct contact with trafficked persons;
 - c. Gaining their trust and securing confidentiality;
 - d. NGOs are more flexible and better able to create “tailored” individual programmes based on carefully carried out needs assessment;
 - e. NGOs are a valuable source of information that cannot be obtained by other institutions (governmental representatives, law enforcement agencies);
 - f. NGOs can act more quickly and respond immediately to a particular situation or problem;
 - g. A well-developed informal, though professional, networking and referral system among themselves;
 - h. A strong human rights background – a better understanding of a human rights approach and its practical implementation;
 - i. Well-developed social assistance programmes/direct victim support programmes.

Role of NGOs in networking on national and international level:

- to advocate and lobby on victims’ rights and secure better victim protection on national and international levels;
- to advocate and lobby on migrant rights;
- to transfer information and knowledge to different levels, decision-makers, governmental institutions;
- to be intermediaries between victims and law enforcement agencies/state institutions;
- to educate society, governments/law enforcement agencies concerning different aspects of the phenomenon of trafficking in persons, particularly situation of victims ;
- to share information;
- to exchange best practices;
- to transfer knowhow;

- to address the issue of trafficking from the victims' perspective;
 - to transfer information to governmental, international institutions, law enforcement agencies;
 - to be facilitator, mediator in contacts with law enforcement agencies;
 - to ensure high standards in services for victims;
 - to convince governments on the priority of anti trafficking measures;
 - to co-operate with others on common anti-trafficking measures;
 - to take an active part in developing and implementing national action programmes;
 - to lobby on the establishment of an independent National Rapporteur on trafficking in persons.
3. NGOs are here to put this issue on the political agenda, to make it a priority for decision-makers and to inform and educate public opinion about the real nature of this phenomenon.

Isabel Lorenz

*Desk Officer, Human Rights Division,
German Ministry of Foreign Affairs*

Best practices in co-operation models

Madam Chairperson, ladies and gentlemen,
Trafficking in human beings is a particularly inhumane, cruel and cynical crime. Statistical studies show that it has gained a substantial foothold in the Federal Republic of Germany, as in other Member States of the European Union. High profits with relatively low risks have created organized crime structures that are comparable to those who traffic in drugs or illegal weapons.

OSCE has made the fight against trafficking in human beings one of its priorities and the recent appointment of Helga Konrad as the first OSCE Special Representative on Combating Trafficking in Human Beings only underlines that commitment. It has been at the heart of the OSCE's efforts to bring together State bodies and civil society with the aim of strengthening capacities in the fight against trafficking and I read with great interest the recently published handbook on national referral mechanisms. Representing the host of the first OSCE conference dedicated to the theme of trafficking, I am particularly pleased to acquaint you with the experiences we have had with the German co-operation model.

Let me first of all give you an introduction into what the co-operation model in Germany looks like and I would then like to go into more detail regarding specific features that we find either still deficient in our present model or particularly valuable.

The co-operation model in Germany builds on the insight that trafficking in persons is both a law enforcement and a human rights issue and that, therefore, trafficking in persons can only be effectively combated if the procedure addresses both aspects of the problem. Therefore, we needed to find a mechanism that foments a constant dialogue and, eventually, forges a relationship of mutual trust between the respective actors.

Let's focus on the human rights aspect first: trafficking in human beings is a violent crime, which causes unforeseeable physical and mental damage to the victims, massively interferes with their right of self-determination and often has traumatic effects. For this reason, the victims need the intensive care of a particularly well qualified counselling service. It is the task of the counselling service to render support to the victims of the traffic in human beings, regardless of their willingness to give evidence in any proceedings that may ensue. The aim is to help them to recover quickly and preserve their physical integrity and mental wholeness and to enable them to return to normal everyday life and develop a worthwhile perspective for their further lives.

If the victims decide to testify in court against their former tormentors it is evident that they need efficient protection against those who might be held responsible for their crimes due to the victims' testimony. But also if prosecution is just an option after a police raid, the victims are in danger. And the vast majority of victims are discovered by police action. This is where the law enforcement agencies come into play. They are the first on the scene in a police raid and therefore in a position to decide if they are confronted with trafficking and what to do next. Once criminal proceedings are initiated, the law enforcement agencies on the one hand need a credible testimony to see the perpetrators convicted,

but on the other hand have a responsibility to protect the witnesses whose personal evidence is in most cases the critical element for an indictment.

To this end, a good co-operative relationship between the investigating authorities and the counselling service is indispensable. This means that only qualified NGOs are registered as counselling centres. There are two good reasons for a formal procedure. Firstly, as I have already pointed out, we are dealing with a form of organized crime and the perpetrators must not be allowed to infiltrate the system and thus gain access to sensitive police information. Secondly, the traumatized victims of trafficking do need professional care after they are no longer in the hands of the traffickers. Any other than professional services would be likely to aggravate the diverse traumas undergone.

Efficient protection and professional care of victims who are witnesses are the basic prerequisites for giving them a stable position and thus for obtaining a statement that can be used in the criminal proceedings. On the other hand, counselling centres can operate much more effectively if they are involved in the victims' care from the very beginning and supported by the police authorities.

An efficient protection mechanism that satisfies both requirements, those deriving from human rights and those deriving from law enforcement perspectives, must safeguard:

1. physical integrity;
2. accommodation;
3. subsistence;
4. residence status of the witnessing victim.

To guarantee all these aspects and deal with the naturally different roles of the counselling service and the police, regulated co-operation between police and counselling service is necessary. Therefore, co-operation between the counselling service and the police is based on a number of mutually agreed terms of co-operation that seek to strike a fair balance between the law enforcement and the human rights issues involved:

1. The offence of trafficking in human beings shall be efficiently prosecuted and the offender shall be indicted and convicted.
This means that the police obtain knowledge of offences acting on their own initiative, for example, by controls in the red-light scene. It is extremely difficult to recognize a case of trafficking in human beings when the first contact is made. Consequently, police require constant training to put them in a position to detect cases of trafficking and react accordingly. Furthermore, if victims who act as witnesses are entitled to stay in Germany over the whole duration of the proceedings, it may contribute considerably to the effective prosecution of the perpetrators.
2. The victim witnesses have the right to be treated with dignity.
This may seem obvious to us, but once again it needs to be emphasized that there has to be a balance between the interests of law enforcement agencies and human rights, and that deciding on the victim's future without her consent may seriously aggravate the damage that has been done to her. Furthermore, there needs to be a clear separation between investigation and care. The respective tasks and roles must be transparent also to the victim witnesses.
3. All parties involved must give equal attention to the situation of the often badly traumatized victim witnesses and to the penal proceedings as such.
This entails the absence of pressure on victims to testify as well as modifications of the proceedings if the condition of the victim so requires, for example regarding anonymity of the victim in court,

possibility to testify in a one-to-one encounter with the judge outside the courtroom, adjustments as to timing of the witnesses' day in court etc. The counselling services must be granted the right to be present during all interviews of the witnesses by the police, public prosecutor's office or court, if the witness so wishes.

4. It should be regarded as a matter of fact that the victim witnesses in cases of trafficking in human beings are always incurring a risk.
This item once again addresses the legitimate interests of the victim: it is her free choice if she wants to testify as it may put her health or even her life at risk and 100 % protection is not possible.
5. The better the victim witnesses are counselled and cared for, the more useful their statements are for the proceedings.
6. If there is any evidence of a real risk to the victim when she returns to her country of origin, she must be granted exceptional leave to remain.
Both these points demonstrate once again the close link between human rights interests and law enforcement interests. Only a victim who is in a stable condition and need not worry about her residence status and the risks involved in her giving testimony in court can effectively contribute to the prosecution and conviction of the perpetrator.
7. All measures under the present protection programme are carried out by mutual agreement.
That is to say, that even if there is an inherent imbalance of power between the police and the counselling service, the counselling service, which represents solely the interests of the victims, should be actively involved at all stages, together with the police.

The co-operation model applies if the witnessing victims are not covered by the witness protection programme of the police. The inclusion of a witnessing victim is furthermore dependent on the approval of the public prosecutor's office and the police. The counselling centres are also consulted before a decision is made whether or not a victim witness should be included in the programme. The specific features of the co-operation model are as follows:

Concerning the police:

1. When the first contact is made by the investigating authority with a potential witness, the latter must be informed of the possibility of receiving support by an independent counselling service. As soon as the investigating service suspects that this person may be the victim of trafficking in human beings, it shall establish contact with the counselling service and the special police unit responsible for protection measures.
2. The police take care of the formalities with the appropriate authorities and make arrangements to guarantee that no information on the witness is divulged.
3. The police take measures to protect the victim witness before, during and after court inspections of the scene, interviews and court hearings.
4. The police give advice on the protection of female counsellors.

Concerning the counselling services:

1. In consultation with the police, the counselling service decides upon the future place of accommodation of the victim witness. The counselling service then sees to the placement of the victim in a suitable institution.
2. The counselling service provides continuous psycho-sociological care to the victim witness and arranges for medical care.

3. Female counsellors may be present during the interview of the victim witness if so desired by the latter.
4. The female counsellors provide psychological support to the witness before, during and after court inspections of the scene, interviews and court hearings.
5. The counselling service provides offers of reintegration training and education to the witness.

Let me also very briefly describe a few features of the co-operation model that we consider particularly helpful and a few obstacles that we still face:

As to the challenges:

- Germany being a federal State where the implementation of the scheme is largely in the hands of the Länder authorities (justice and police), we are particularly pleased that a number of Länder have explicitly adopted the programme. Others, however, are still operating comparably, but without a formalized partnership between civil society and the police.
- Financing the counselling centres is a constant problem. The Federal Government, due to its constitutionally limited competence in this regard, can only support the federal association of local counselling centres. Some Länder have established foundations or funds for counselling services which are nurtured by means of confiscated assets. A nation-wide system has yet to be found.
- There is still scope for improvement in the financing of the victim's stay and support. The legal basis for public services does not sufficiently take into account the special situation the victim is in, for example as regards the need for psychological and medical care or for special security requirements.
- There is still no right for a counsellor to refuse testimony if this would disclose a crime committed by the victim. However, the Federal Government is considering introducing such a right, which exists for example for counsellors of drug addicts, into the procedural law.

Apart from these challenges which lie ahead, we had a very positive reaction when the co-operation model, which entails various obligations on the part of the police as well as the counselling service, was laid out in a written document, so as to formalize the co-operation and more clearly define individual rights and duties. Furthermore, there were a number of measures in related areas which contributed considerably to the success of the present scheme. Those were:

- A decree regulating cases of hardship was issued under the Federal Labour Agency under which victims acting as witnesses under the co-operation concept can be immediately given work permits
- Annual training courses of the Federal Criminal Police Office involve representation from the counselling centres to ensure that the vital idea of co-operation between civil society and the police and the features of the scheme are further promoted
- Regular training courses for the police to raise awareness in the police force of the trafficking problem

In Germany, we have had the additional valuable experience of listening to the recommendations and embracing the knowledge and the specific skills of civil society in many areas of our government work. The co-operation model is definitely one of these.

Thank you.

Jamie Factor

*Head of Democratization Department,
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Multi-disciplinary Round Tables and the role of a National Co-ordinator

Montenegro – one of the six republics of the former Yugoslavia, and now in a loose union with Serbia – is a coastal state that borders Bosnia and Herzegovina, Croatia, Albania, Kosovo and Serbia. On a clear day, you can see Italy across the Adriatic. It is generally thought to be a country of transit. However, there are increasing signs that Montenegro has become a country of both destination and origin as well.

Montenegro is also a very small place, with a population of about 650,000 people. It is very old and proud country, with conservative traditions; it is a clan-based society in which people not only know each other well – they are in fact related to each other through extended families that transcend economic, social and political alliances.

Notwithstanding some exceptions, this creates a sense of indivisible identity that enabled Montenegro to avoid recent violent conflicts that engulfed its neighbours, at least in part. But it is also these characteristics that both inhibit and promote an environment in which traffickers may thrive with impunity. This, in turn, creates enormous opportunities as well as barriers to effective investigation and prosecution of the crime itself.

From early 2001, and following the Stability Pact model, the Republic of Montenegro undertook several important initiatives in an effort to combat trafficking in human beings by governmental institutions and non-governmental organizations. These include the appointment of the first National Anti-Trafficking Co-ordinator, establishment of an Interagency Project Board, development of a National Action Plan, creation of a Republic level Police Expert Team, and the signing and implementation of a model Memorandum of Understanding (MoU) between law enforcement and international and domestic NGOs. The MoU provides guidelines for the identification and protection of victims. It also defines their status and treatment by police and prosecutors.

The OSCE Office in Montenegro has subsequently worked to institutionalize the Office of the National Co-ordinator for Anti-Trafficking, a government body tasked to direct the Government's response to the presence of trafficking in human beings in Montenegro – and to support the development and implementation of a national strategy that incorporates ministry-level policies and activities, including a formal national referral and co-ordination mechanism (NRCM) between government agencies and NGOs.

Before describing these efforts in earnest, let me describe a case in Montenegro that first emerged about two years ago, involving a young Moldavian mother of two, who was believed to have been trafficked both to and within Montenegro by several individuals, including a Deputy State Prosecutor. Other senior officials were also implicated. However, the case never made it to trial. The young woman was resettled in a third country and charges were dismissed. It was a high-profile case and highly political. Indeed, Montenegro has yet to recover fully from the repercussions of both the initial charges and the manner in which the case was handled. Virtually every possible mistake was made – by everyone involved – both governmental and non-governmental personnel, domestic and foreign – a veritable case study of what NOT to do.

Prior to this, we thought we had a good system in place, perhaps not adequately institutionalized or formalized but we had a national project board and a national co-ordinator. We had a victim protection programme. We had a signed co-operation agreement between law enforcement agencies and NGOs regarding the referral of potential victims by police to the shelter. There was a fairly high degree of trust and confidence, not perfect, but it worked. This system worked because it had never been fully tested. Montenegro was a transit country and there were not so very many cases anyway...This is how most people, even many of the advocates, saw it.

The Moldova case shattered this illusion. It polarized the country utterly and completely. The debate continues to this day. Was she or was she not a victim? Were the accused guilty or were they not? Unfortunately, we will never know the full truth.

Were lessons learned? I believe so. The good news is that this case forced everyone working on trafficking in Montenegro to reassess what was being done to address the presence of human trafficking in Montenegro, to identify and assist victims – how all this was being done – by whom – and why? This is why the NRM model is of vital and timely importance in Montenegro today. It is a core element of the Montenegro national strategy to combat human trafficking – a multi-layered strategy with parallel, yet mutually reinforcing structures – rather complex in fact, yet such complexity reflects the nature of the crime and responses to it.

And this is important...because for all of the advances in defining, legislating and responding to this heinous crime, sadly, it is still not sufficiently well understood. As a result, trafficked persons, once free of their captors, continue to be re-victimized – if not on purpose, then by default.

Trafficking in many states is a crime against the state. But it cannot be eradicated by law enforcement alone. Law enforcement agencies cannot provide the full range of assistance that trafficked persons deserve and require. For one thing, this is beyond their general mandate. Most are not trained to do so in any case – nor, experience tells us, is such training, however specialized and intensive it might be, adequate without a significant shift in attitude, mentality and perception. Without such changes, institutions, and the people who work in them, will remain stymied in their efforts to investigate and prosecute this crime – if not indifferent. Under these conditions, compassion and co-operation in response to the overarching needs of victims have little chance of prevailing.

It is also important to note that, as a potential witness in criminal proceedings that may drag on for some time, a presumed victim will necessarily have to tell her story. In so doing, she may, at best, relive the trauma. At worst, she may relive it and not be believed. So she makes a decision. Maybe she does not want to act as a witness in criminal proceedings. If not, this should not influence her right and need for proper care.

Under any circumstances, a trafficked person must be able to reflect on her experience in a safe environment, knowing that she will not be further victimized by those whose aim to help her within the system she finds herself in.

Human trafficking is a crime that happens to human beings – and these human beings are someone's friends, neighbours and relatives. Those of us sitting in this room today know this. How to impart the importance of this fact to the average person – someone who may not otherwise be inclined to identify perpetrators and potential victims in their midst – remains an elusive proposition? Assuming we are able to do so, will the response be rapid enough, compassionate enough, determined enough to bring

justice to victims – starting first and foremost with how they are treated and cared for once free of their captors?

The NRM is a response mechanism designed to ensure proper identification and care of trafficked persons. It provides a structure that can work, does work – but more importantly, it must be seen to be working well, if there is to be any hope of a change in public, official, institutional and national perception.

The NRM is also designed to institutionalize and formalize protection and assistance mechanisms in a manner that ensures accountability, responsibility and transparency – among and between government agencies and NGOs that render assistance to victims – a process that requires not only a rapid response but a dynamic response by investigators and service providers who share a common understanding of the crime and its impact on trafficked persons.

Having worked in transitional societies for more than a decade, I have had ample opportunity to assess the capabilities of many formerly closed societies and socialist states as they move steadily toward enduring democratic values and practices. What I have also learned is that it is far easier to acquire the vocabulary of democracy and human rights than it is to implement these principles and practices in daily life, in institutions, at all levels of society. This is certainly evident in the fight against trafficking – not only in Montenegro. This being the case, what are we doing in Montenegro specifically?

Institution-Building

1. Assistance to Government of Montenegro (GoM) institutions and specialized NGOs in their individual and common efforts to implement effective counter-trafficking policies and strategies in the areas of assistance and protection. This includes the development and implementation of an effective and sustainable National Co-ordination and Referral Mechanism (NRCM) that will:
 - Identify and analyze core components and competencies of the existing national framework including GoM strategy, ministry action plans; Office of the National Co-ordinator, National Project Board, NGOs, and others;
 - Review and assess the quality of participation of core components; identify and recommend actions needed for improvement in co-ordination and communication;
 - Provide strategic advice and guidance to ensure effective management and supervision of personnel, including the development of clear objectives, benchmarks and indicators;
 - Revise/draft/sign formal Memorandum of Understanding (MoU) between relevant GoM ministries/bodies and NGO sector outlining roles, responsibilities and obligations of signatories under the NRCM;
 - Monitor and report on ongoing implementation of NRCM, advise and recommend on improvement and action required.

Capacity-Building and Awareness-Raising

- Increase and strengthen specialized skills and expertise among law enforcement agencies, judiciary, educators, health workers, media, and other professionals.
- Design and conduct joint workshops for law enforcement agencies and prosecutors to ensure effective and appropriate professional co-operation and awareness of criminal code and procedural reforms in the investigation and prosecution of crimes of human trafficking;

- Assist relevant GoM Ministries to develop and train multi-disciplinary professional mobile teams to ensure proper identification, protection and needed follow-up medical, psychological, social and legal services for victims and victim/witnesses. Establish criteria for selection of team members, identify team competencies, prepare and deliver joint workshops. Monitor and evaluate performance of teams, provide on-site in-service training as needed;
- Design and implement follow-up intermediate and advance trainer of trainers (ToT) workshops for women police officers, as well as teachers and school administrators (intermediate and advanced, as follow-up to 2003) with a focus on specialized curricula for elementary and high school students;
- Promote zero tolerance towards all forms of trafficking within Government;
- Work with managers, editors and reporters of local media that provide a clear definition and explanation of the phenomenon of human trafficking and a realistic and accurate portrayal of victims;
- Target potential clients through strengthened ties to the private sector, especially by promoting Code of Conduct for the tourism sector;
- Increase public awareness among vulnerable groups; including national minorities and IDPs.

These activities do not by any means embrace everything that can or should be done by OSCE. It does however reflect the cross-cutting dimensions of OSCE mandate and work. It must also be acknowledged that there are also many successful initiatives in the region and OSCE seeks to strengthen its efforts in a complimentary and co-operative fashion with other international, regional and national partners to achieve our common goals.

8.2 Working Group Session 2

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Access by trafficked persons to assistance services

Access to services

The two previous SEE RIGHTS reports¹ on the situation and responses to trafficking in human beings in South Eastern Europe in 2002 and 2003 were primarily focused on the protection of the human rights of the victims of trafficking, including legal provisions, measures for identification, assistance and reintegration, as well as governmental and non-governmental structures established to combat trafficking. Recommendations for actions to combat trafficking in human beings in South Eastern Europe were presented.²

While most of the observations and recommendations noted remain valid, it should be acknowledged that since the first report was published in 2002, the situation regarding trafficking in human beings in the region has changed. New trends are visible and there is new information suggesting that the scope of trafficking is different from what it was before. There is a body of new information to be analyzed and, as a result, there is a need to rethink existing responses, including assistance to the victims and their adequacy or otherwise with respect to the changing situation.

Changes in the region

In very practical terms, changes in the area of assistance to the victims of trafficking in the region since 2003 can be characterized by the following:

- There have been fewer victims assisted than in previous years. "Assistance" means, in the majority of cases, acceptance into a shelter after identification by the police, support in the shelter and arrangements for return to the country of origin. In the country of origin, "assistance" means return with support of an assisting agency and, in some cases, support in the shelter and participation in a reintegration programme. The number of assisted victims started to drop in the second half of 2002 and is still going down;
- Bar raids, still the most prevalent form of anti-trafficking action, are not delivering results. Almost no victims are identified as a result of such raids;
- There are, in general, fewer women returning to countries of origin (Moldova, Albania, Romania and Bulgaria) from the other countries of the Balkan region (Macedonia, Montenegro, Serbia, Kosovo, BiH, Croatia), while the general numbers of assisted victims are not going down (with exception of Albania);
- The incidence of return from the EU states, which in the majority of cases is the result of the readmission agreements, is growing. Women and children returning from the EU are either not identified as victims of trafficking (Albania and Bulgaria) or are identified, but rarely supported.

¹ Barbara Limanowska, *Trafficking in Human beings in South Eastern Europe. 2003 Update on situation and responses to trafficking in human beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the Former Yugoslav Republic of Macedonia, Moldova and Romania*. UNICEF, UNOHCHR, OSCE/ODIHR. Sarajevo, 2003. Pp. 201-219. Report can be found at www.seerights.org.

² Ibid.

Further:

- In all the countries, there are shelters for the victims of trafficking (run by IOM and non-governmental organizations, in some cases by or with support of governments) and many new shelters are in the process of being set up;
- In the majority of cases, governments take at least partial responsibility for these shelters;
- In many cases shelters are very expensive and the cost of supporting the victims (or keeping empty shelters) is very high;
- In countries of transit, destination or prolonged transit in the Western Balkans (Macedonia, Montenegro, Serbia, Kosovo, BiH, Croatia), there is a significant decline in the numbers of assisted women in comparison to 2002 and 2003, currently many women accommodated in the shelters are local women identified as “internally trafficked”;
- In the same time, foreign and local women judged by the police to be victims of trafficking often refuse assistance, claiming that they are not victims of trafficking but prostitutes/entertainers/waitresses working voluntarily;
- While shelters for victims of trafficking in the Western Balkans are almost empty, but expanding in numbers, the shelters for the victims of domestic violence are full and there are fewer of them due to a lack of resources and limited interest on the part of the governments and donors;
- The NGOs that were the first to undertake anti-trafficking work (women’s NGOs running shelters for victims of violence, human rights NGOs) have often been replaced by the new NGOs currently running the shelters (in some cases organizations lacking a human rights background and not acquainted with the concept of empowerment of victims) contracted by governments and international organizations;
- While there are new guidelines issued by the UN human rights organizations,³ there are still no agreed standards set for the work of the supporting agencies and no standards for the treatment of victims of trafficking;
- Similarly, while there are new concepts and a greater understanding that the identification procedure should be an integral part of the assistance and referral process, the issue of identification is still unresolved. There are signs that women and children returning from the EU in the framework of the readmission agreements are not screened or recognized as victims.

In general, while there are almost no foreign victims in the shelters in “transit” countries, the activities of governmental and international agencies, as well as the donors, remain focused on developing and establishing new shelters. Two years ago, women seeking assistance could not find a safe place to go, now either victims are not being identified or those who are identified often refuse to go to the shelters. There is a “hunt for victims” going on with service providers trying to find women they can place in their shelters to prove they are indispensable. The running costs of the shelters are quite high (extremely high in some cases) without proper justification for their usefulness.

There is much more interest in “border cases” of trafficking. The debate on trafficking in the region has a much broader scope than two years ago. Cases of domestic prostitution, underage prostitution, street children, the exploitation and abuse of women and children in the Roma community, children in institutions, are described and treated in terms of trafficking. Service providers are usually willing to accept women and children into their programmes even if they fit only into a very broad definition of trafficking.

³ UNCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking. E.2002.68. Add.1, can be found at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.1En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.1En?Opendocument).
UNICEF Guidelines on the Protection of the Rights of Children Victims of Trafficking in SEE can be found at: http://www.seerights.org/data/reports/Reports/UNICEF_Guidelines_Trafficking_Final_May03.doc.

While there are already databases of the victims and potential victims of trafficking and there is greater co-ordination of anti-trafficking actions and more resources, access to information is more difficult. Governmental statistics often mix together cases of trafficking and irregular migration, some information is described as “restricted” and the issue of “infiltration of NGOs” and “protection” of the organizations involved is used as the reason not to provide information about the implementing partners. In addition, there are still no clear standards and procedures for the work of the agencies involved.

At the same time, there is still no serious discussion about changes in the identification procedure and the search for more efficient ways to approach victims of trafficking. Neither is there discussion about the quality of services and the compatibility of the assistance offered with the needs and expectations of the victims. While for some time now there has been a debate about availability of options to return (permits to stay in countries of destination, third country resettlement, seeking asylum on humanitarian grounds) and the long term support for those women who decide to return to their countries of origin, these options are still not often used.

Identification

Figures on the identification of and assistance to victims of trafficking in 2002/2003, show that despite all the efforts and training, the police fail to identify the majority of the victims of trafficking. Many experts and those involved in anti-trafficking work (including OSCE/ODIHR) argue that the approach to the identification of victims should be changed. The police should not be the only agency responsible for identifying who is and is not a victim of trafficking. Other organizations, including NGOs working in the field, which might inspire more trust in the persons they approach, should be approaching potential victims, identifying them and offering assistance.

Some countries have already witnessed new approaches to the issue of identification:

- In the countries where there are hotlines operating, some of the referrals are coming from these hotlines. In Montenegro, for example 30 percent of referrals come from the hotline;
- La Strada Moldova has a well-organized system of co-operation with law enforcement agencies in many countries and is able to trace and rescue many women;
- La Strada also engages embassies in anti-trafficking work;
- Campaigns aimed at clients have produced some results in FYR Macedonia;
- In Serbia there is a referral system based on Mobile Teams comprising social workers, police officers and NGO workers, to identify and refer trafficked women;
- The BiH Temporary Instructions, based on human rights standards, place the police under the clear obligation to inform local NGOs about all potential victims of trafficking and to co-operate with them. Currently the Instructions are altered in the Rulebook on the Protection Victims of Trafficking in accordance with Article 37, paragraph 2 of the Law on Movement and Stay of Aliens and Asylum;
- Similar obligations on the police to co-operate with NGOs exist in Albania, Montenegro and Kosovo, as a result of a MOU between the police and local NGOs;
- EUPM has changed the way that the police in BiH understand their role and duties. They are trying to introduce investigation-led policing, which focuses more on preparing cases and collecting intelligence against traffickers, and less on massive poorly prepared raids aimed at potential victims of trafficking.

Notwithstanding these examples, the prevailing model of identification is still that of the police doing the preliminary assessment on their own, without following any clear standards or procedures, and deciding in a rather arbitrary way who is a victim of trafficking.

Recommendations for identification

Governments in co-operation with NGOs and international organizations should:

- Establish clear rules and standards for identifying all victims, including:
 - The identification of internally trafficking women and trafficked children, as well as foreign women willing to return to their home countries;
 - The establishment of new methods of identification through hotlines, prevention campaigns, outreach work and co-operation with embassies;
- Ensure that identification is part of a comprehensive referral system involving the various agencies involved in assisting victims;
- Establish investigation-led policing, focusing on collecting evidence against traffickers, preparing cases, and organizing action aimed primarily at arresting traffickers.

Assistance

Judging from the numbers of referred victims of trafficking, either trafficking is declining in the countries of Western Balkans or the assisting agencies have been less effective in reaching victims of trafficking in 2003/2004. The drop in referred cases is not only the result of problematic identification but also of access to limited assistance, since many trafficked women and children are unwilling or unable to accept assistance on the conditions under which it is offered.

People who work in shelters confirm that in general, returning women and children do not want to be recognized as victims of trafficking. Women from SEE supported by NGOs in Western Europe often choose to return on their own and refuse any subsequent support because they are afraid of being recognized. The three main concerns of returning victims of trafficking are confidentiality, security and real, long-term, psychological and economic support. These concerns are seldom met by the assisting organizations.

In general, there are two parallel systems of assistance in the SEE region: one is run by IOM or governmental institutions (with support of IOM); and the other by local NGOs. The NGO programmes, however, are not numerous despite the fact that very often they are better able to meet the needs of the victims and are cheaper than the government-sponsored shelters. Instead of merging and coming closer together, these two systems seem to be drifting further apart. The government shelters are usually run by the local NGOs. However, according to the NGOs, this co-operation often looks more like subcontracting certain limited activities to the local NGOs, rather than supporting independent local NGO projects and capacity-building.

Problems with assistance are well known. Firstly, once identified, most victims are offered only the option of returning to their home countries and agreeing to be repatriated. It is difficult to talk about free choice and voluntary participation in the programme when this choice is limited to a) being deported by the police or b) being repatriated. This choice says little about a woman's real desire to return to her home country; it says only that she prefers to return with IOM rather than as a deportee.

Despite the prevailing opinion that victims of trafficking should be grateful for any kind of help that would allow them to escape abusive conditions and that anything assisting agencies can offer is better than the exploitation to which they are subjected, victims often have a quite different outlook and express the opinion that they do not receive adequate assistance. They associate the existing provision of support with:

- *Stigmatization* – women participating in a programme for victims of trafficking means that they are in danger of being considered prostitutes. Returning under the aegis of such a programme means that people in their country – family and friends – might also find out about their past;

- *Criminalization* – women are included in databases and are registered with the police. In some cases, they have stamps put in their passports preventing them from re-entering the country from which they were repatriated. They can also be accused of crimes related to trafficking;
- *Re-victimization* – alleged victims have to undergo a medical examination (the so-called “Fit to travel” examination). They have to answer many questions, including some of a very personal or embarrassing nature, posed by the police, border police and IOM in the countries of destination and upon return to the country of origin. Their freedom of movement is restricted; they may be confined in the shelters with their activities controlled.
- *Lack of protection* – while in the custody of law enforcement agencies and with IOM in the country of destination, as well as during the journey to the country of origin, the women are protected by the police. This protection stops when they arrive in their home country and leave the shelters there. The return and possible encounters with their traffickers can be traumatic and dangerous experiences, especially for the women who have divulged information to the police. Quite commonly victims of trafficking try to protect themselves and their families by changing their testimonies after their return so as not to accuse the traffickers.
- *Lack of long-term support* – upon repatriation, victims of trafficking are usually sent back to the places from which they were trafficked. There they have to confront the same problems of unemployment, lack of means to survive, lack of perspectives, abuse and discrimination, all of which are often exacerbated by a new threat. Some women decide to co-operate with traffickers and become one of them, while others are re-trafficked.
- *Lack of real options* – as has already been pointed out, many women decide to stay in an abusive situation and not accept assistance because they perceive prostitution as the only available means to support themselves and their families. Assistance programmes, from the victims’ perspective, do not offer any viable, long-term options.

In conclusion, victims of trafficking are vulnerable to being stigmatized and victimized in the process of assistance. “Do no harm” in the process of assistance should be the condition *sine qua non* for all agencies involved. Even though this condition is rarely met, the voluntary character of the victim’s actions and choices needs also to be incorporated in all assistance programmes.

La Strada, as a network, claims to place the interests and well-being of the victims above all other obligations. Confidentiality and safety are the main priorities of their assistance programmes. La Strada Bulgaria prepares a “Safety Plan”⁴ with each victim they assist, an assessment of all the dangers and difficulties that the woman may face after return and a list of all the possible solutions. One of the main dangers mentioned by the returned women is that of being recognized as a victim of trafficking, by family and friends (involving the danger of stigmatization) or by the police (involving the risk of being included in a police database). Giving information to the police is also dangerous, especially as the traffickers may take reprisals. The women often therefore choose not to talk to the police, a decision that is understood and accepted by the La Strada staff. Victims assisted by NGOs very often do not co-operate with police in order to try to protect themselves.

It is agreed that the existing system works well for the persons who want to return to their home countries, are willing to talk to the police, and are not in possession of information that might endanger them after return (i.e. might lead to the prosecution of traffickers). For other groups of victims, other programmes should be established that meet their needs for confidentiality, security, informed consent, a choice of available options, and long-term support. This type assistance is already built into some

⁴ See chapter on Bulgaria, Section 4.2.

NGO programmes, but these programmes need financial support and further development if they are to become a viable alternative.

However, the main solution lies with the creation of an inclusive referral system, for identification, assistance and reintegration of the victims of trafficking, which would incorporate various forms of assistance (offered by a variety of organizations) to try to meet all the needs of the victims and to offer all possible assistance.

Recommendations for assistance

Governments should:

- Ensure legal protection for the victims/witnesses and their families.

Governments, international organizations and NGOs should:

- Ensure that all identification and assistance programmes aim primarily to protect the victims' rights and dignity; including security, confidentiality, informed consent and provision of tailored long-term support;
- Adopt a holistic approach to trafficking, integrating the issues of protection, prevention and prosecution, based on the human rights and child rights guidelines developed by UNOHCHR and UNICEF;
- Ensure that all victims regardless their status should have access to the shelters and to assistance (including legal assistance) and remedies;
- Develop clear Standard Operating Procedures based on human rights for the shelters and minimum standards for the treatment of the victims, in all shelters;
- Develop comprehensive assistance programmes (incorporated into NPAs as national referral mechanism), based on co-operation between governmental and non-governmental organizations, with long-term goals and strategies;

Donors and implementing agencies should:

- Monitor and evaluate assistance and reintegration programmes, especially the long-term results of reintegration programmes.

Reintegration

Projects aimed at the reintegration of trafficked women into society are a complicated and controversial part of the system of assistance to the victims of trafficking. Until recently victims of trafficking who returned to their countries of origin could not expect to receive much help. Support for the victims assisted by IOM was usually limited to the reintegration allowance of US \$150 and referral to a local NGO for further support. Local NGOs, however, were unprepared to offer real help to traumatized, helpless women in need of housing, employment, and medical and psychological assistance. In practice, they were only able to offer few meetings with a returning victim, often called "therapeutic sessions", which provided no concrete assistance and help. The only option usually available to the victims of trafficking was to return home, to the situation from which they had been trafficked and which had quite often contributed to them being trafficked in the first place.

Women are not in a position to be directly integrated into society and are left to manage on their own. Almost all victims of trafficking suffer from post-traumatic stress; they have no self-esteem and need long-term psychological counselling. They also need practical support, especially if it is not desirable for them to return home. The majority of women and girls do not have appropriate education, skills or

work experience to be able to find a job without further training or re-schooling. At least 30 percent of victims need long-term therapy and assistance before they can enter any programme.⁵ The short-term hairdressing, sewing and cookery courses offered to traumatized girls do not prepare them for an independent life. Currently, new reintegration programmes are being organized in the countries of origin, which offer more concrete, substantial support, although the options for returning women and girls are still very limited, and are only appropriate for a small proportion of victims of trafficking.

It is also becoming clear that there is no single solution to the problems of trafficked women and children. Depending on their condition, needs and wishes, they should be offered the most suitable treatment and integration options. Even if the only option is for them to return home, they should not be abandoned after their return.

Repatriated victims need different types of assistance according to their situation and mental condition. Several NGOs have started to provide appropriate assistance for trafficked women:

- La Strada Bulgaria offers long-term individual therapy and individual “Safety Plans”;
- The NGO “Reaching Out” from Romania runs a long-term shelter/safe house where women can stay until they can find a job and support themselves;
- The income-generating programme of the Italian Consortium for Solidarity, offers women the opportunity to start their own small businesses.

Terre des Hommes and local NGOs in Albania have reintegration programmes for trafficked children. Services offered on a voluntary basis, adoptive families and specialized programmes, including social and academic reintegration, are often considered as areas of intervention.

In general, victims of trafficking need better options for assistance, more time to explore these options, and a better referral system at national and local level. There is a need for a network of co-operating NGOs to which cases can be referred, and co-operation with governmental authorities so that the women can be registered for jobs, medical services etc; and children can go to school and be allowed to remain with their own family or new foster families.

Recommendations

Governments should:

- Include reintegration programmes/activities in NPAs and ensure co-operation between governmental and non-governmental institutions;
- Include victims of trafficking in existing initiatives for disadvantaged groups (scholarships, programmes of job placements, social support, re-schooling, etc.);
- Give special attention to programmes for the reintegration of children. This should mean family reintegration (when possible) rather than institutionalization.

Governments and international organizations should:

- Monitor and evaluate the existing reintegration programmes for effectiveness;
- Research the needs and expectations of returning women in respect of reintegration;
- Support NGOs to develop innovative programmes of assistance and reintegration for victims of trafficking;

⁵ According to the data provided by La Strada Bulgaria and IOM Moldova, at least 30 percent of victims of trafficking returning to their home countries, suffer from severe psychotic, mental and behavioural disturbances and are in need of long-term psychiatric treatment and support.

Trafficking in children

In the past years, trafficking in children has begun to be recognized as a serious problem in SEE, and there is now a much greater understanding that children and young people under 18 are entitled to special protection and treatment.

While the assisting agencies increasingly understand much better their obligation towards children, they are often unable to provide the necessary support due to a lack of appropriate legal provisions or of available services. Protection of trafficked children is very much connected with the issues of juvenile justice, the legal protection of children, and the child protection/social services available to vulnerable children and child victims of violence in the countries of origin.

The *UNICEF Guidelines on the Protection of the Rights of Children Victims of Trafficking in SEE*⁵ provide much needed guidelines for the treatment of child victims of trafficking, although they need to be promoted and implemented by responsible institutions at the national level, if they are to be effective. As yet these Guidelines are not operational and too often children are not receiving any help or special protection. For example, although all girls under 18 engaged in prostitution should be considered victims of trafficking and should be entitled to protection and assistance according to the Palermo Trafficking Protocol, they are all too often prosecuted for being illegal migrants and prostitutes, detained, and deported or placed in institutions for juvenile delinquents, or they are ignored by the police altogether. Neither the police nor the assisting agencies know how to treat underage victims of trafficking and pay little attention to the age of their charges.

The programmes for preventing child trafficking and assisting trafficked children need to be monitored and evaluated, as organizations without any previous experience of working with victims of trafficking or victims of violence, are starting to provide such services for children.

Recommendations for the assistance and protection of trafficked children

Governments, with the support of international organizations and NGOs should:

- Conduct research and analyses of information in relation to:
 - Internal trafficking of children (girls and boys) for sexual exploitation;
 - Trafficking of children for begging;
 - Situation of children from high risk groups;
 - Unaccompanied children, migration and trafficking;
 - Demand for child labour.
- Monitor and evaluate existing programmes for child assistance and trafficking prevention, and assess their professional value;
- Implement the UNICEF Guidelines on the Rights of Children Victims of Trafficking in SEE.

Conclusions

After the research carried out in the region in 2004, the same recommendations as in previous years should be made, with very few changes or additions. It seems that the problem in the region is no longer related to poor understanding of the situation of the victims and the protection that they are entitled to but, rather, to the relative absence of human rights-based strategies and the lack of implementation within the democratization framework. While many actors in this field do know what

⁵ UNICEF Guidelines on the Protection of the Rights of Children Victims of Trafficking in SEE can be found at: http://www.seerights.org/data/reports/Reports/UNICEF_Guidelines_Trafficking_Final_May03.doc.

should be done and many initiatives are underway, a co-ordinated approach to combating trafficking by focusing on prevention and the protection of victims is still lacking. When describing the prevalence and trends related to trafficking in human beings in SEE since 2003, two seemingly contradictory conclusions are possible, both based on the information collected from practitioners working in 10 countries of the region in the period of January – May 2004. These are that:

- 1. Trafficking in the West Balkan region is declining rapidly;**
- 2. Trafficking is not declining but due to the changing patterns has become more covert.**

However, we cannot accept two different interpretations of the existing situation, as has been occurring during the last two years. While the number of victims in the shelters have been decreasing and the situation is clearly changing (getting better?), still in all the countries the problem of trafficking continues to be described in terms of increasing threat and is understood as a problem of growing numbers of victims.

It is time to decide: either the progress has been made and there are fewer victims of trafficking in the region of the Western Balkans or there has been no progress and there are victims but we have failed to create a system that identifies and reaches them.

In the first case it has to be stated openly that trafficking in the Western Balkans is in decline. That may mean that the approaches adopted were to some extent effective and now the strategies should be adjusted accordingly, taking into consideration the different scope of the problem. In particular, the stress should be shifted from establishment of shelters and assistance to the victims to the long-term strategies focusing on prevention. Or, we can continue to claim that there is no progress, and trafficking is a growing problem in the Western Balkans. But in that case, we have to admit that the existing measures have been inadequate in addressing the issue of trafficking, especially in its new forms. Also in this case the strategies have to be adjusted or changed accordingly. While we have to be careful with the assessment and the conclusions, especially given that there is no hard evidence to support the claims about new forms of trafficking, governments, intergovernmental agencies and NGOs involved in anti-trafficking work are obliged to engage in discussion and re-evaluate the situation of trafficking in the Western Balkans.

An emergency situation no longer exists in the region. There are no longer stories of victims waiting to be rescued or of bars full of foreign women looking scared and desperate. In the event that there is a victim in need, there are also services available and places to receive her. It is not a question of the availability of support any longer but, rather, the quality of that support. Therefore some questions which have to be asked are: is the existence of “shelters” enough to convince victims to use them? Do the services offered reflect the needs and expectations of the victims? Did anyone ask the victims what their needs are? Are their opinions and needs taken into consideration at all? And, the most important question of all: where are the victims?

Need for new approach

This new situation requires not only an assessment and evaluation of the actions undertaken to date. It also requires new approach, which will better respond to the new challenges. We have to examine the effectiveness of the existing responses and reflect on a system which will be more effectively address the new situation and. One that will:

- Include long-term, comprehensive strategies;
- focus on prevention as the core strategy;
- be cheaper and more sustainable, and rely on local capacity;

- be built on the co-operation of the various participants and include civil society (National Referral Mechanism);
- be based on human rights principles and empowerment of potential victims;
- include an early warning system about the changes in the trafficking modalities, as well as monitoring and evaluation mechanisms.

Jola Vollebregt

Police Affairs Officer, OSCE Strategic Police Matters Unit

Breaking the Cycle of Profit

INTRODUCTION

My name is Jola Vollebregt. I work at the OSCE Strategic Police Matters Unit in Vienna, as the Police Affairs Officer on Trafficking in Human Beings for commercial sexual exploitation. I've been asked to talk to you about confiscation and compensation, which is rather an odd thing to ask of a police expert on trafficking. Or isn't it?

"THB is a human rights violation, that generates millions world wide." If you have heard it once, you have heard it a thousand times: since all the speakers before and after me, address the human rights aspects, allow me to focus on the millions.

Contrary to popular belief, trafficking in human beings, like any other organized criminal activity, is undertaken for money; violations of the law are merely a means to an end.

Although in recent years police efforts to focus on victims' rights have been commendable, victims are not in fact coming forward in great numbers. And even when they do, they do not provide us with insights into the structures of the criminal organizations. Simply because they have none! The police focus – not to say dependency – on the victims' testimony has not resulted in the elimination of the organization behind the crime.

Let's see how the institution of confiscation and compensation would affect police counter-trafficking efforts. In other words: in fighting trafficking, we will take the same commercial perspective as the traffickers. Let's go for the money!

The Commodity Market

Trafficking is mainly controlled and exploited by organized criminal groups. The potentially huge profits and minimal risk of detection and punishment make trafficking for sexual exploitation a tempting venture in many countries.

What makes it such attractive business?

Prostitution and control over prostitution is highly lucrative. It is a growth market, with a brisk trade selling durable if replaceable "goods".

There is an abundant supply of raw material, i.e. susceptible women from countries where poverty is mostly female. After some processing (force, coercion, deception) these women are transformed into sexual commodities, commodities that can be consumed repeatedly rather than just once. The overheads are low, since the women are paid little or nothing and occasionally they even pay for the trip themselves.

The women can be sold on to other pimps/traffickers, thereby generating a whole new cycle of profit.

From this angle the profits from trafficking for sexual exploitation may even exceed those of drug-trafficking. We are talking about cycles of profits here.

Low risk

All these transactions are conducted with very little risk. A trafficker will go where there is already a successful criminal community of the same ethnicity that has sized up the market and where the opportunities to exploit and control the women are best. Ideal destination countries are those that generate their own THB market: by perceiving a victim as an illegal immigrant and deporting her to her country of origin, where again she will be exposed to the exactly the same trafficking networks. Her trafficker remains free even to profit from the deportation. For empty places need new women to fill them.

In short, the trafficker's destination is based upon risk-assessment: the destination will be where activities can be carried out with very little risk due to incorrect, non-existent or sporadic enforcement, and where convictions for this type of crime are likely to attract a minimal sentence.

So which comes first: the chicken or the egg? Poor law enforcement will certainly result in a minimal sentence, if indeed any at all. And lenient sentencing in this field does not exactly spur the police on to more strenuous law enforcement.

Can we tip the balance of high profits/low risks to our advantage and use the multiple transactions in THB as potential starting points for investigation, thereby raising the traffickers' risk of being caught and punished?

Looking at the general sentencing for trafficking, confiscation of assets seems to be the only sanction that commands respect in offenders.

Unfortunately, generally speaking, most countries do not have a good record on confiscation

2003 statistics (German Lagebild) show a drastic decline:

2002: 69 of 289 proceedings resulted in seizure of assets (8.4 million euros)

2003: 19 of 431 proceedings resulted in seizure of assets (2.4 million euros)

How might the objective of confiscation affect an investigation?

Successful confiscation requires financial insight, and financial insight can only be obtained by financial investigations. Conducting investigations into the finances of suspected traffickers is an integral part of the THB investigations process. It leads not only to insights into the money flow and facilitates the seizure of assets; it also yields invaluable tactical and strategic evidence on the criminals and locations involved.

The confiscation provisions also give the police extra investigative powers.

The UK Proceeds of Crime Act (2002) is a beacon in this particular area. Mouth-watering stuff for crime fighters:

Extraterritorial powers

A common feature of trafficking cases is the inability to identify or effectively deal with those who offend outside domestic jurisdiction.

One attraction of the confiscation provisions is that it allows the police to hit the traffickers in their countries of origin. They can trace, freeze or seize funds outside the UK even though they cannot arrest or prosecute those outside UK jurisdiction.

With reasonable doubt

A second, extremely useful power is the power to seize and confiscate assets “suspected” of being the proceeds of crime or intended for use in criminal activity. This applies to any sum over £5,000 discovered by the police and the burden of proof is “civil”, that is to say, on a balance of probabilities rather than “beyond all reasonable doubt” (criminal balance). In practical terms, this means that a trafficker stopped at an airport with cash – even though there is no operation against him – can have sums over the stated amount confiscated. This provision is frequently used in cases where there is no formal investigation being conducted but money is found fortuitously.

Reverse burden of proof

Under the Proceeds of Crime Act (2002), the police are entitled to calculate criminal benefits and make “assumptions” as to these benefits. The onus is not on the Police to prove that the benefits are criminal, it is up to the defendant to prove otherwise.

The methodology is to check whether the suspect has any income from other sources. When this is not the case, his entire assets are considered “criminal benefit” and are confiscated. No deductions for “running costs” and other expenses. For the calculation of the criminal benefit, it is permitted to go back six years prior to the offence being committed. The confiscation will be based on an estimate, the calculation of which is established by random observation.

If the seizure doesn’t match the recoverable amount, the difference is still owed. If the offender does not pay, (part of) the amount due will be converted into an additional prison sentence. Even after serving this sentence, the state will have no hesitation in confiscating any newly purchased goods, such as a house, boat, or BMW, the proceeds of whose sale will all flow into the state coffers, until the amount due is settled.

Human rights?

When its predecessor, the Proceeds of Crime Act (1995), was tested in the Human Rights court in Strasbourg, the court deemed itself not competent to deal with this issue, since the contested procedure was not a part of the criminal proceedings but part of the sentence.

In this company I might be putting my foot in it, when I admit to keeping my fingers crossed for the survival of the 2002 version.

The benefits of compensation

All in all, this legislation has allowed The Metropolitan Police to confiscate 61 million GBP in 15 THB cases. Unfortunately, none of this money was used to compensate victims.

Is this a police issue? – Yes.

The ability to provide the victim with compensation might give them an incentive to come forward, thus providing the police with additional/more valuable information with which to nail the trafficker. With the trafficker out of the way and the compensation in hand, the victim might be able to rebuild her life when she resettles in her country of origin and be less susceptible to “re-recruitment”, thus breaking the cycle.

Dutch compensation model

In the Netherlands, the victim's compensation claim may be based on three potential areas of claims. Firstly, she can claim compensation for personal suffering due to physical and psychological distress, so-called non-material damages; secondly, damages due to material losses suffered, and thirdly, and this would again address the financial profit from human trafficking, the compensation for withheld earnings. As in most cases of human trafficking, all or part of the wages of the victim is withheld.

Two procedures allow them to be retrieved directly from the perpetrator:

- through a civil action whereby the victim has the possibility of starting separate civil proceedings and lodging a civil suit against the perpetrator. This has several disadvantages. In practice they are extremely long drawn-out affairs, in which the victim has to depend on a civil lawyer to look after her interests and obtain the money.
- by pursuing a compensation claim directly from the perpetrator in the criminal proceedings.

The double advantage here is that if compensation is awarded the prosecution office is responsible for its execution and is far better at enforcing it.

It's cost-effective, since a single trial is sufficient for both punishment of the perpetrator and compensation of the victim.

In the Netherlands there is a Judicial Support system for victims of sexual violence. This is a collaborative arrangement between the police, prosecution service and legal aid. It provides legal counsel for victims of trafficking. When a victim files a complaint against a trafficker, she has a lawyer assigned to her. This lawyer will inform her about the criminal proceedings and guide her through all aspects of the investigation, from accompanying her to the interview to filing for compensation in the criminal proceedings. Until recently it was only possible to file for material and non-material damages, but recently additional compensation has been successfully claimed based on withheld earnings.

State compensation

Compensation can also be awarded through the States Criminal Injuries Compensation Funds. This applies when the perpetrator is "perceived" not to have sufficient means for compensation or when such means cannot be detected. Although this scheme does not allow for compensation for withheld earnings, there has been a case where the compensation fund paid out seven times the amount originally assigned to the victim by the criminal court.

All this may sound very encouraging but, effective confiscation legislation is lacking in the Netherlands. The compensation is not often paid by the offender.

In line with the issues of financial investigation and confiscation of assets addressed earlier, compensation for victims could and should be drawn from the assets of the perpetrator. It would be marvellously efficient: any judge ruling on trafficking implicitly rules on exploitation. The same financial insight that facilitated the confiscation would make plain the exploitation of the victim. A verdict based on this insight should therefore make it easier to assign damages to the victim.

I think I have come full circle here. When law enforcement agencies take a comprehensive economic perspective, that is to say, obtain financial insight to confiscate and compensate, this could bring huge dividends when countering trafficking: There is thus a need for more and better investigations and evidence leading to more and better convictions and punishments

Going for the money will ultimately break the cycle of trafficking!

9. WORKING GROUP III: European Instruments to Strengthen the Rights of Trafficked Persons: Challenges and Opportunities

9.1 Working Group Session 1

Mette Kongsheim

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Chairman of the OSCE Informal Working Group on Gender Equality
and Anti-Trafficking*

Introduction

The working group discussed both already enforceable and emerging European and global instruments, as well as mechanisms charged with monitoring and co-ordinating activities on anti-trafficking recently established by intergovernmental and international organizations. There was also discussion on monitoring in the national context, through the domestic establishment of the post of National Rapporteur.

The discussion highlighted the already existing standards, mechanisms and tools that OSCE participating States have at their disposal to strengthen the rights of trafficked persons. The working group highlighted some of the deficiencies in the current standards and recognized that they should all be reviewed regularly if they are to remain effective and reflect the realities of the situation of trafficked persons in Europe.

Deliberations were undertaken on the opportunities and challenges presented by the development of new standards and mechanisms such as the drafting of the new Council of Europe Convention on Action Against Trafficking in Human Beings, and the establishment of the new institution of the OSCE Special Representative on Anti-trafficking Issues and European Union standards. The group was unanimous in recognizing that any development of standards and mechanisms, cannot be undertaken without the input of grass-roots experts and that we should look at the development of all standards should through the prism of human rights. In this context, the group recognized that a unified approach in countries of destination is essential, and may be achieved through, amongst others, co-ordination between the different mechanisms.

Additionally, it was tabled that despite all of the already available and emerging legal developments, concerted efforts must continue to be undertaken to transform the standards into practice at a national level.

Mette Kongsheim

*Ambassador and Permanent Representative of Norway to the OSCE and
Chairman of the OSCE Informal Working Group on Gender Equality
and Anti-Trafficking*

OSCE Action Plan

I would like to start by thanking the Finnish Government and the Office of Democratic Institutions and Human Rights (ODIHR) for arranging this conference, with its focus on human rights protection of trafficked persons in destination countries.

This particular focus is very much called for. In our common efforts to combat trafficking in human beings, be it for sexual exploitation or for forced labour, a victim-centred approach is indeed important. So far national and international efforts have basically concentrated on the measures needed to identify and prosecute the traffickers, the criminals. These measures are also necessary, but they are not sufficient. Our social order simply cannot be effectively protected if we fail to protect and assist the direct victims of trafficking. This is an extremely vulnerable group, which is facing a number of obstacles and, as we know, run the high risk of being re-trafficked after having been repatriated to their country of origin. Effective law enforcement and a human rights approach must therefore go hand in hand.

This conference provides us with an excellent forum for sharing information and experience and looking for new strategies to ensure the human rights protection of victims of trafficking in persons, in order to improve their future possibilities on the basis of their individual needs, interests and skills.

Trafficking is a heinous crime. It is morally reprehensible and represents cynicism at its worst. Trafficking has a corrosive effect not only on the societies in which victims of trafficking are recruited, but equally on the societies to which they are trafficked – the destination countries. It breeds contempt for human dignity. In the long run no society, however rich and prosperous, can live with that. Fighting trafficking, by also protecting the victims, is in our own enlightened self-interest. A lot is already being done in destination countries. But more is needed in terms of awareness, assistance and legislation. And not least: we must increase our efforts to identify and rescue the victims of trafficking.

The cross-border and often regional nature of human trafficking makes international co-operation and co-ordination crucial. We are confronting sophisticated international crime networks, who engage in human trafficking because they recognize that it is a high profit, low risk form of criminal activity. And we are all becoming increasingly aware of the changes of interaction between traffickers and other forms of organized crime, including raising money to support acts of terrorism. Furthermore, human trafficking routes can be used to infiltrate terrorists, weapons and other materials into destination countries.

Hence, the war against trafficking in persons cannot be successfully waged by national means alone. It is a problem no country can solve on its own. We need a broad international co-operation – or rather a broad international alliance against trafficking in persons. Countries of destination, of transit and of origin must redouble their efforts and seek every opportunity to co-operate, bilaterally, trilaterally and multilaterally. Possible bilateral agreements on gathering and sharing reliable information, can contribute to operational effectiveness. I understand that in many destination countries the need is felt for more personal contacts with counterparts in countries of origin and transit.

Although the issue of trafficking figures high on the agenda of national governments and international organizations, we still have a long way to go in order to bridge the gap between recognition of the problem and concrete follow-up measures.

In the 55 OSCE participating States trafficking in human beings is one of the most pressing and complex issues. Although reliable quantitative data and statistics on trafficking are hard to come by, given the illicit and secret nature of these activities, several recent estimates indicate that the problem is growing. In the OSCE trafficking in human beings has therefore been fully recognized as a common concern, for which a common response is needed.

Since 1999 the OSCE participating States have developed strong commitments to fighting trafficking in human beings. These commitments are all embodied in the Action Plan to Combat Trafficking in Human Beings which was endorsed by the Ministerial Council at Maastricht in December last year. The Action Plan is a well-balanced document, which equally focuses on preventing trafficking, prosecuting the perpetrators, and protecting their victims. It is a very detailed, concrete and at the same time pragmatic document, giving clear guidance to participating States and offering a perspective on the ways in which various parts of the Organization, its Institutions and bodies, can better contribute to the fight against trafficking.

The Action Plan provides the participating States with a comprehensive toolkit to help them implement their commitments to combating trafficking in human beings. And the Action Plan adopts a multidimensional approach to combating trafficking, in that it addresses the problem in a comprehensive way, dealing as it does with investigation, law enforcement and prosecution, as well as the issue of prevention, and, not least, it contains important recommendations concerning protection and assistance to the victims.

As part of its focus on protection, the Action Plan recommends national measures such as establishing shelters, ensuring provision of documents, enhancing co-operation amongst law enforcement bodies, and developing social assistance and integration programmes. It recommends participating States to consider legal measures to allow confiscated assets to be used to compensate victims and it addresses important problem areas such as repatriation, rehabilitation and reintegration. There are provisions for a reflection delay and ensuring the rights to asylum. As an important part of the protection measures the OSCE Action Plan also puts a specific focus on the special needs of children.

I would also like to highlight the recommendation to establish National Referral Mechanisms, a co-operative framework by which participating States together with civil society and other actors in the field can protect the human rights of victims of trafficking in human beings. And now that ODIHR's Handbook on Guidelines and Principles to Design and Implement National Referral Mechanisms is out, providing a very useful source of advice regarding the role of NRMs.

The follow-up part of the OSCE Action Plan is of special importance. The participating States took great care to put in place a mechanism which could assist in the implementation. This mechanism consists of a Special Representative of the Chairmanship-in-Office and a special Unit in the Secretariat, with a clear mandate. Its mandate is to assist participating States in implementation of commitments and full usage of the recommendations proposed by the Action Plan on protecting victims, preventing trafficking and prosecution of perpetrators of trafficking, and on ensuring co-ordination of OSCE efforts in combating trafficking, on strengthening co-ordination within and between participating States and between the OSCE and other relevant organizations. The Special Representative, a position to which Dr. Helga Konrad has been appointed, and her Unit, will be able to draw on and make full use of the

expertise within the existing OSCE structures: the ODIHR and other Institutions of the Organization, the OSCE Secretariat including the Office of the Co-ordinator for Economic and Environmental Affairs (OCEEA), the Strategic Police Matters Unit (SPMU), the Anti-Terrorism Unit (ATU) and the OSCE field presence.

This mechanism will offer support and assistance to participating States in all regions of the OSCE area in a geographically balanced way. We expect it to be a strong and empowered body, able to guide us and raise the political and public profile of this issue. Countries of destination, origin and transit all need guidance. We very much welcome that the fact that the Unit is now operational, so that the two parts of this mechanism can start on their important mission (on a political level too, as they are at the disposal of senior level authorities representing the legislative, judicial and executive branch in participating States) to discuss ways and means of implementing OSCE commitments such as developing national referral mechanisms as a co-operative framework; focusing on respecting human rights of trafficked persons, and on effective ways to give the victims the necessary assistance and service. The aim is to address the supply side of this problem as well.

In addition, the OSCE has a working group on Gender Equality and Anti-Trafficking, of which I have the honour of being the chairman, which meets on a monthly basis. It was in this group that the Action Plan on Anti-Trafficking was negotiated, and this body will also in the future, together with the Special Representative and the Unit, dedicate its efforts to the follow-up of the Action Plan. Gender issues and trafficking are closely linked. We know that the overwhelming majority of persons trafficked especially for sexual exploitation are women and young girls, children. As such the causes and consequences of trafficking have gender implications, and therefore many aspects of the problem require a gender-specific approach. Trafficking in children and what to do about it is also the focus of this Conference, and I am confident that I will be able to bring with me many inputs and proposals for further action to the Working Group from Helsinki.

You may ask: why is it that the OSCE is so well placed in tackling and re-enforcing the combat against trafficking in human beings?

The fight against trafficking is a security issue, and human security, namely protection of the individual, is an integral part of overall security policies in all participating States. The OSCE's comprehensive, cross-dimensional approach to security is very well suited to dealing with this new threat to security and stability in the whole OSCE region. Trafficking does not only cross borders, it crosses dimensions. It not only causes human misery, it can devastate national economies and put pressure on political systems. In combating trafficking through the OSCE Action Plan, we can make use of every tool in the OSCE toolbox as well in the human dimension as in the economic and political-military dimensions. Furthermore, with its presence in the field in many participating States, we have a network of focal points advising governments in raising awareness and assisting with a range of relevant projects, and support governmental representatives, civil society actors and law-enforcement structures.

The OSCE Parliamentary Assembly has also devoted its attention to the fight against trafficking in persons and has actually proposed that the OSCE take a leading role among international organizations in this matter.

Taking the Action Plan as a basis for our discussion today, I would like to suggest that the discussion could focus, *inter alia*, on the following problem areas, or rather challenges, which are of special importance for success in protecting the human rights of victims in destination countries:

- How can participating States best proceed in order to use the OSCE Action Plan as a toolkit for the introduction of structures and measures to protect and assist victims?
- Can National Referral Mechanisms be used as a tool in achieving national co-operation on providing assistance and protection to victims of human trafficking?
- How to bring all relevant actors together within the NRM so that the NRM will be a strong monitoring mechanism;
- Co-operation and co-ordination being of great importance on a national, regional and international basis; how can we best go about achieving this among the important players, the national agencies or NRMs, the OSCE Special Representative on Anti-Trafficking, the UN Rapporteur on Anti-Trafficking as well as the monitoring mechanism foreseen by the European Convention.

These challenges entail that we also look at the following questions:

- How to achieve a unified approach to combating trafficking among OSCE destination countries;
- How to develop a legal framework for co-operation between law enforcement and justice officials in other countries – particularly between countries of destination and countries of origin, including provisions on carrying out joint operations;
- How to make sure that trafficked persons are aware of their rights and have access to assistance measures to support and assist them, including witness protection schemes;
- How best to address the situation of trafficked persons by going beyond purely seeing them as sources of information and potential witnesses, and expressly protecting them as victims of grave human rights violations, violations that have occurred in the destination country and must be addressed there;
- How best to address issues such as a reflection delay, of providing access to shelters for all victims of trafficking and the provision of temporary or permanent residence permits. And how to establish shelters and using them to provide training opportunities for victims, thus facilitating their future reintegration, and assisting victims in voluntary repatriation to the country of origin;
- How to deal with the demand-side factors through awareness raising by also involving the media and building public-private partnerships and involving the business community and better regulation of the travel industry;
- How to ensure specialized training of police officers and provide sufficient funding for law enforcement anti-trafficking measures;
- How do we go about responding to the special needs of children.

The scope and complexity of the challenge we face can hardly be exaggerated. Dealing with this scourge will be time-consuming and costly. There will be many setbacks. But there will also be successes. Given the necessary political will, resources, time and international co-operation, it will be possible to turn the tide of trafficking. Effective instruments like the OSCE Action Plan are necessary, but it is the implementation in practice that will bring real and sustainable change in combating trafficking in human beings. Saying the right things about trafficking is important. Doing the right things is crucial.

Thank you for your attention.

Iveta Bartunková

Trafficking Programme Officer
Anti-Slavery International

EU NGOs: Standards Protocol for Identification of trafficked persons

Over the years it has been said many times and in various international forums that trafficking in human beings is a complex problem and that a multi-faceted approach is required to combat the grim reality that hundreds of thousands of men, women and children face each year. Social and economic inequality, poverty, gender inequality, unemployment, discrimination in the labour market, corruption and contempt for human rights were identified as fertile ground for its flourishing. Many of those issues were named as a problem, which the countries of origin of trafficked persons had to address. However, the question of what can and should be done in the destination countries to address the issue of trafficking in human beings to ensure that its victims have access to justice is still rarely dealt with. In this respect, this conference represents a positive development.

In terms of Ensuring Human Rights Protection in Countries of Destination, the recent EU instruments may be a step forward. The EU Framework decision⁷ on Combating Trafficking in Human Beings as well as the Council Directive⁸ on the residence permit issued to third-country nationals, who are victims of trafficking in human beings, present an opportunity for the destination countries to ensure that the rights of trafficked persons are properly addressed.

We also welcome the Committee of Minister's mandate to the Ad Hoc Committee on Action against Trafficking (CAHTEH) to draft a European Convention against Trafficking in Human Beings, which aims to design a comprehensive, gender-sensitive framework for the protection of the human rights of trafficked persons.

The new legal tools do and will constitute an important and positive development. However, legislative changes *per se* do not yet mean that effective policies and practices are in place to address the situation of trafficked persons.

In the NGOs Statement on Protection Measures for Trafficked Persons in Western Europe⁹ the authors stated that in their view, the identification of trafficked persons remains one of the key problems. Even though many destination countries have adopted laws protecting trafficked persons, implementation has been variable due to the failure to identify trafficked persons as such. In many cases, trafficked people have irregular immigration status and are then identified as "undocumented" or "illegal migrants" or those trafficked into prostitution, simply as "prostitutes". In most of the destination countries those who are not recognized as possibly having been trafficked, face deportation or detention in an immigration centre.

As a direct result of not being properly identified, trafficked persons are unaware of their rights and do not have access to assistance measures, which according to the law exist to support and assist them. In 2003, the OSCE Action Plan¹⁰ called for accurate identification and appropriate treatment of the victims of trafficking in human beings, in ways which respect the views and dignity of the persons concerned.

⁷ The EU Council Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings.

⁸ Council Directive 2004/81/EC.

⁹ Germany (KOK), Greece (STOP NOW), Italy (On the Road), The Netherlands (STV) and United Kingdom (Eaves housing), Anti-Slavery International. The NGOs presented this statement at the OSCE Human Dimension Implementation Meeting in Warsaw in October 2003.

¹⁰ OSCE Action Plan to Combat Trafficking in Human Beings (PC.DEC/557), Chapter V. Protection and assistance, point 3.2.

However, the process of identifying trafficked persons in countries such as the UK is still *ad hoc* and arbitrary. Access to services and appropriate support can vary enormously depending on where a trafficked person is first encountered, which agency first works with the person, whether or not the staff member involved has any knowledge of trafficking and even whether they “believe” the person’s experiences.¹¹

Similarly, the identification of trafficked persons in Italy is not based on standardized procedures. In fact, regardless of the innovative system of assistance and protection put in place to assist victims of trafficking, no homogeneous and co-ordinated methods of identifying them have been established so far. As a matter of fact, the application of “art. 18” has yet to be fully and homogeneously implemented throughout national territory.¹²

Despite the fact that standard identification criteria do exist in the Netherlands, a recent paper on civic stratification in the Netherlands noted that “with regard to the question of identification of women as trafficked women, as opposed to illegal migrants, it is interesting to note that the top five nationalities represented in the 1,000 women held as illegal migrants in detention centres in 2003, are the same as the top five countries of origin for trafficking into the Netherlands. Whilst we note this anecdotal piece of evidence, it does, in light of the regional variations in police applications and awareness of the trafficking criteria, beg the question whether or not the women in this situation were asked about, or encouraged to reveal, their status¹³ (as possibly having been trafficked).

The gaps in identification of trafficked persons significantly diminish the effectiveness of the system, which in many cases is in place to assist victims. Secondly, since trafficked persons are rarely identified as victims of crime, they can not be helpful in assisting in prosecution.

Clearly, it would be too simplistic to claim that identification is an easy process. The OSCE/ODIHR National Referral Mechanisms Handbook¹⁴ makes several practical suggestions, puts forward models of identification procedures and examples of good practices of how to overcome the problems. In order to offer a practical tool, the Western European NGOs Eaves Housing, On the Road, STV and Anti-Slavery International¹⁵ started to develop a model protocol for police, immigration officials and policy-makers to interview migrant women to determine if they are victims of trafficking and related violence. The model protocol will be accompanied by a training kit, which we hope, will make it easier to use the protocol. We are well aware that this should not and cannot be a one-way process and therefore, as well as consulting NGOs in countries of origin and in later stages institutions such as the London School of Tropical Health and Hygiene, we work in close partnership with the law enforcement on preparation of this material.

As I said earlier, the existence of formal instruments does not yet mean that these are implemented in practice. It must also be said that any standard identification protocol per se cannot effectively address the problem of trafficked persons. It will not be possible without our full understanding of the situation and of the needs of trafficked people and without our commitment to protecting their right in the first place.

Trafficked people deserve recognition, deserve to have their needs respected, and above all, they deserve access to justice. The responsibility for making this a reality lies primarily with the destination countries.

¹¹ Marshall, D. ; UK Country paper, AGIS project JAI/2003/AGIS/083.

¹² Orfano, I.; Italy country paper, AGIS project JAI/2003/AGIS/083.

¹³ White, A.G.; Human Rights and Trafficked Women in Enforced Prostitution: A case of Civic Stratification in the Netherlands; Dissertation Research project; Human Rights Centre, University of Essex.

¹⁴ National Referral Mechanisms, Joint Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook; OSCE/ODIHR, 2004.

¹⁵ AGIS project JAI/2003/AGIS/083.

9.2 Working Group Session 2

Maureen Walsh

General Counsel, US Helsinki Commission

Trafficking in Persons Reporting Mechanism

It is a pleasure to participate in this latest OSCE conference on human trafficking. I serve as General Counsel for the Commission on Security and Co-operation in Europe, which is also known as the U.S. Helsinki Commission. The Commission is an independent agency of the U.S. Government and I am pleased to be speaking today on behalf of the Helsinki Commission's Chairman, Rep. Christopher H. Smith.

Because our Chairman is also a Member of the U.S. Congress, some of our priority issues at the Commission are also reflected in U.S. legislation. Rep. Smith was the prime sponsor and author of the Trafficking Victims Protection Act of 2000 (TVPA) and of a TVPA reauthorization in 2003.

The TVPA is a comprehensive law that, *inter alia*, (1) criminalizes trafficking in persons for sex or labour exploitation, (2) authorizes money to assist NGOs, both in the U.S. and abroad, who are helping victims, (3) requires that trafficked persons be treated as victims of crime, and (4) requires the U.S. Government to monitor the trafficking problem in countries around the world and provides tools to encourage action by other governments.

To support the U.S. Government's efforts on this last point, the TVPA created within the Department of State an Office to Monitor and Combat Trafficking in Persons. The law requires that office to issue a *Trafficking in Persons Report* (TIP Report) every June. The United States is committed to taking action in co-operation with other governments against this scourge and the report is a tool to further co-operation and progress on this issue.

This year the State Department issued its fourth annual report (available at www.state.gov/g/tip) on what governments abroad are doing to combat trafficking. The report includes every country where the State Department can establish a significant number of victims, essentially 100 or more. There are 140 countries included in the 2004 report. This does not mean that countries that are not mentioned do not have a trafficking problem. It simply means the State Department did not have sufficient information on such countries to be able establish 100 victims.

Every country that has a significant number of trafficking cases is assessed for the willingness of its government to take action to monitor and eliminate trafficking. The TVPA sets out a number of criteria that the State Department must use to assess countries' actions in the areas of prevention of trafficking, protection of victims, and prosecution of criminals.

The sources for the report are varied: U.S. embassies, foreign governments, NGO workers, international organizations, news media accounts and visits by the reporting officers to countries abroad. This is followed by extensive analysis and debate leading to the assignment of tiers.

Tier one includes nations that have a significant number of trafficked persons and have undertaken efforts to fight trafficking in all three areas with a large measure of success. The second tier includes

countries that have made some efforts to bring themselves into compliance with minimum standards for combating trafficking. This year, the State Department also added a Tier 2 watch list for weak Tier 2 countries that are in danger, the coming year, of falling to Tier 3. Tier 3 countries neither satisfy the minimum requirements nor demonstrate the desire to do so. In the most recent report, there were 10 countries on tier three – five fewer than last year. Nations with poor human rights records as well as countries that are strong US allies have all been on Tier 3 at various times. For the first time this year, none of the OSCE countries were on Tier 3.

Under the TVPA, being on Tier 3 brings with it the possibility of losing certain kinds of US foreign aid—that is non-humanitarian, non-trade related foreign assistance. This could mean the loss of US military aid, educational and cultural assistance, and support from the World Bank and the International Monetary Fund.

The purpose of the report and the tier rankings is to achieve progress, not to impose sanctions. But the underlying philosophy is that the law must contain both carrots and sticks—both incentives and disincentives. Since taking office shortly after the TVPA was enacted, the Bush Administration has provided more than \$295 million to support anti-trafficking programs in more than 120 countries. After issuing the report, the State Department and our embassies are working with countries on Tier 3 and on the Tier 2 watch list to help them improve their efforts against trafficking.

The report has been successful in encouraging countries with trafficking problems to take concrete steps. Of the ten countries on Tier 3 in the 2004 report, the governments of four Bangladesh, Ecuador, Guyana, and Sierra Leone took quick action to address problems noted in the report, including by means of the prosecution of trafficking-related cases; by creating police anti-trafficking units; by increasing efforts to identify and rescue victims of trafficking; by drafting new anti-trafficking legislation and procedures; and by conducting high-profile public awareness campaigns.

Likewise in 2003, the fifteen countries listed on Tier 3 were for the first time potentially subject to sanctions. Belize, the Dominican Republic, Greece, Turkey, and six other nations acted quickly to improve their record on anti-trafficking and, as a result, were able to be reassessed as Tier 2 countries. Today, South Korea is on Tier 1 after making significant efforts following its Tier 3 listing in the very first TIP Report.

There are other signs of progress domestically and around the world. For example, 24 countries this past year have new, comprehensive anti-trafficking laws. There have been almost 8,000 prosecutions of traffickers worldwide and almost 3,000 convictions. Major organized crime figures in trafficking in persons have been sent to jail.

In addition to country reports, the State Department has added new features to the TIP Report each year. The 2004 report reflects new US Government statistics on the scope of the trafficking problem: 600,000-800,000 individuals trafficked internationally; 14,500-17,500 trafficked into the United States each year; potentially millions of internal trafficking victims. The US Government believes that 80 percent of victims are female, that around 50 percent are children, and that the largest category of slavery is sex slavery.

The report includes a section of best practices that have been taken by governments and a section highlighting individuals who have made extraordinary contributions to the fight against trafficking. Finally, the report includes stories of victims so that along with the figures and narratives, readers will

see and, hopefully, understand the violence, exploitation, and degradation, inherent in the trafficking of human beings.

As a closing note, I would like to mention that the United States also examines its own actions in this area very critically-albeit in a different format. The TIP report contains some brief information about U.S. Government efforts against trafficking. But, in addition, beginning in 2003, the Department of Justice now issues an assessment of U.S. Government anti-trafficking initiatives (available at http://www.usdoj.gov/crt/crim/wetf/us_assessment_2004.pdf) and, as of 2004, the Attorney General is required to report to Congress on U.S. Government anti-trafficking activities (available at <http://www.usdoj.gov/ag/speeches/2004/050104agreporttocongresstprav10.pdf>>).

Anna G. Korvinus

Dutch Rapporteur on Trafficking in Human Beings

National and regional rapporteurs on trafficking in human beings

Ladies and gentlemen,

What is the value of rapporteurs on THB in general and more specifically when it comes to contributing to strengthening the position of victims of trafficking? This is the central question of my contribution.

(Being a national rapporteur, in some way it looks like an *oratio pro domo*, but I try to be honest and modest.)

At the recent Conference “Alliance against trafficking in persons”, in July this year in Vienna, organized by the OSCE Special Representative on THB, I explained in my contribution there (which is available here) that my role as national rapporteur is to inform the national government on the scale, the prevention of and the fight against trafficking. This means providing both qualitative and quantitative information on the state of affairs with regard to the fight against trafficking. A logical consequence of this task of gathering and supplying information is that the rapporteur also advises the government on how to improve its approach to the trafficking problem. To that end I make concrete recommendations to the government. These concern government policy and law enforcement, as well as victim assistance and support. The information my Bureau collects serves as the foundation and the justification of the recommendations. The more trustworthy the information is, the greater the value that can be assigned to the recommendations. Of course, the latter has also to do with the position I have been given and acquired during the years of our existence, and with the respect the rapporteur has among all those involved in the fight against trafficking. The recommendations should be relevant, comprehensive, convincing, and clear enough to be implemented in actual practice, because it’s the practice that makes a law and (any other legal provision) a living instrument. If justice is not seen to be done, it does not work in the way it is meant to.

Recently, we presented our third report to the Dutch government, which will be published soon. As well as background information, facts and figures, it contains recommendations on the broad spectrum of the combat against trafficking. At the moment, the government is preparing its response to these recommendations. A National Action Plan will be formulated for acting upon the recommendations, those of them at least taken up by the government, before and after parliamentary debate. It will indicate what activities will be undertaken to bolster the fight against trafficking, by whom and within what period of time they should be carried out. Of course I cannot yet indicate with certainty which of my recommendations will be taken up by the Dutch government. But the information and the recommendations contained in our reports form an important basis for a national anti-trafficking strategy, laid down in the National Action Plan. That is a direct and concrete effect of a national rapporteur.

Although the recommendations are primarily focused on the Dutch situation, several of them could be of value to other countries as well. This particularly goes for those that have their basis also in international (legal) instruments such as the Palermo protocol, the EU framework decision on THB and the guidelines on the short-term residence permit, as well as the OSCE Action Plan. Since they are based on international agreements to which the Netherlands are bound, it is highly likely that they will show up in the National Action Plan. In fact, because of their basis in international regulations, they

have a more transnational relevance and should for that reason be considered by all other countries as well. And that is in line with a general principle on which the international community seems to agree: combating the transnational phenomenon of THB should be dealt with at an international level. That international level consists of individual countries, but working in close co-operation to achieve a goal that transcends national borders: minimizing THB and taking adequate care of its victims.

Now I will go into some of my recommendations to the Dutch government that specifically deal with the position of the victims of THB. On account of their relevance to other countries, I will limit myself to the items that have an international background.

In dealing with victims of trafficking, countries of origin, transit and destination have a shared responsibility. For example, article 6 of the Palermo Protocol states that each state party shall endeavour to provide for the physical safety of the victims, while they are within their territory. Thus, a country should put in place a system that provides shelter, assistance and protection to a victim of trafficking. But an adequate level of protection can only be achieved in a transnational way, thus not bound to one national system. The time however is not yet ripe for a truly international victim protection system, thus the systems of the individual countries should be tuned, so that protection (and assistance) does not stop at the border, but is taken over by the neighbouring country when the victim enters its territory. This requires international co-operation and fine-tuning, a call to state parties that was also made in the OSCE Action Plan (Chapter V). I therefore advised the Dutch government to look for ways to achieve a more far-reaching form of protection than that provided to victims residing in the Netherlands, for example by initiating (the conclusion of) bi- or multi-lateral agreements with other countries. A positive effect of such a transnational system is that it may enhance the willingness of victims to co-operate with the police and the prosecution, which will increase the chance of effective law enforcement. Although law enforcement, based upon intelligence leads and financial investigations must be intensified, the statement of a victim is often needed for further clarification of the facts. As I said in my earlier speech in Vienna, repression and prevention are connected. Law enforcement is essential to upholding the rule of law of which human rights standards form the basis. It is a mistake, a misunderstanding, to suggest that a human rights-centred approach is incompatible with law enforcement, especially when it comes to the offence of human trafficking. It is the heart of the matter, as you know. Why are the actions of traffickers punishable in our criminal systems? It is to safeguard dignity and the human rights of persons, not only for their sakes, but in the interests of society at large. We should not tolerate the undermining of the rule of law. We should realize, that if perpetrators are not brought to justice and are not stopped (and their assets not seized, for which in most law systems a conviction is needed) they can and will go on with their profitable criminal activities, making new victims. That's the point.

Another recommendation in my report to improve the position of the victim addresses the aspect of returning a victim (repatriation) to the country of origin, (as a consequence of the illegal status of the person in the country of destination). In this respect, article 8 of the Palermo protocol and paragraph 7, Chapter V of the OSCE Action Plan placed a special obligation on the returning State party, mostly the country of destination. These articles state that such return shall be with due regard to the safety of the person. A binding obligation, thus, to the States parties. Of course – one should be realistic – safe return cannot be fully “guaranteed” in another country, but a State should demonstrate at least more dedication than simply a willingness to return a victim. So I recommended to the Dutch government that minimum standards for a safe return should be developed, in addition to an individual risk assessment of victims before sending them back. Again this requires international co-operation and fine-tuning. Yet, this should not be used as an excuse to do nothing; just at the national level, a country could start by defining criteria for safe return and reintegration.

On the initiative of several NGOs, gathered in a joint project of the Dutch Foundation against Trafficking in Women and the Interchurch Development Co-operation Organization, principles were formulated that could contribute towards the safe return to and social inclusion of the victim in the country of origin. My Bureau has supported this project. The outcomes of this initiative will be presented under the Dutch EU presidency and with the support of the Dutch government be put forward in the EU organization for further consideration. I can only applaud this public-private co-operation.

Also when it comes to victims of trafficking, who for reasons of safety or other humanitarian reasons, cannot return to their country of origin, the Dutch government has lent a helping hand. The Dutch victim assistance regulation offers a victim of trafficking that has assisted the authorities in prosecuting the trafficker, the possibility of obtaining a residence permit for a longer or even permanent stay in the Netherlands. This occurs if the victim can prove that s/he runs a risk of reprisals or persecution upon return. In most cases it is almost impossible for a victim to provide such proof. As rapporteur (appealing to the Palermo Protocol) I therefore called upon the government to consider a reversal of proof on this matter. The minister responsible did not want to go that far, but recently agreed to help the victim to collect the information for the proof. This can be achieved by actively encouraging (or where appropriate: by ordering) the organizations (both state and non-governmental) that have a role in the application of the victim assistance regulation, to provide information for inclusion in a specific victim's file that may help her/him to demonstrate that s/he is at risk upon return. A caring gesture, thus, from the government. (Of course the government not completely disinterested because this assistance may open the door to co-operation with the authorities, which would help law enforcement. As I said, law enforcement in the end is also in the victim's interest; perpetrators must at least fear prosecution to stop creating new victims.)

I told you that these and suchlike recommendations are included in my reports to the Dutch government. In principle, reports are published annually. Of course I do not wait for a report to be ready to "intervene" as far as possible in matters that I deem of interest in the fight against trafficking. An example: when we found out in the course of gathering information that the State immigration police, when enforcing national immigration laws, virtually discarded the possibility of victims of trafficking being among extraditable illegal aliens, I asked for an appointment with the minister responsible. As an outcome of this intervention, a specific paragraph was added to the guidelines for the immigration police, instructing them actively to look for victims of trafficking among illegal aliens and treat them as victims rather than as illegal aliens, thus guaranteeing them the possibility of taking part in the trafficking victim assistance regime.

I return to the subject of the role of a national rapporteur. From the above examples it is clear that a rapporteur can have a multi-functional role in the fight against trafficking. Depending of course on the position the rapporteur has, preferably an independent position (and the authority with which he or she can speak), the influence of such an official could be considerable. The rapporteur puts and maintains the trafficking issue on the (political) agenda of the authorities and he or she can also act as a forum for partners in the fight against trafficking to bring matters to the attention of the relevant authorities. Through his recommendations, the rapporteur can be initiator and supporter of anti-trafficking activities. Because of the fact that a rapporteur has an overview of the subject matter, he is not only an expert, but also a binding element between all actors involved and between the different possible approaches to the subject. And by carrying out continuous research and follow-up, the reports of the rapporteur can act as a monitoring instrument, by which progress in the fight against trafficking is measured, but also by which lack of action in this field can be revealed. The "weapon" of the public

nature of the reports and the possibility of convincing the government, parliament and the general public that the recommendations made are necessary, reasonable and based upon a lot of reliable information, has proven to be effective in the Netherlands. Other countries should not hold back in appointing such an “eye, hand and conscience” in the fight against trafficking. One should, however, not forget that real progress in the fight against trafficking depends on the activity of the policy-makers and the people on the ground. The rapporteur must try to supply them with enough munitions to carry their work forward, (munitions collected by doing research and aggregating the findings to the level of workable recommendations), but it is the challenge of all actors in the field of anti-trafficking initiatives to take up these recommendations and implement them.

Bernhard Bogensperger

*Delegation of the European Commission to Ukraine,
Moldova and Belarus*

The Council Directive of April 2004 on short-term residence permits issued to victims of human trafficking and smuggled migrants¹

1. Historical background of EU intervention

The European Union [EU] set itself the objective of creating an area of freedom, security and justice, determined in the 4th indent of Article 2 TEU. According to Art 63 (1) TEC measures concerning illegal immigration and illegal residence are an integral part in this declared goal. Trafficking in human beings is closely connected with the phenomenon described in the article mentioned above.

Since the late 1980s the European Commission (COM) and the European Parliament (EP) have been active in fighting trafficking in human beings: in 1989, the EP adopted a Resolution on the exploitation of prostitution and the traffic in human beings, calling on the EU Member States to ensure that victims could lodge a complaint without fear of immediate deportation.² This was followed in 1993 by a Resolution on trafficking of women, which called for the formulation of a policy to combat illegal immigration and a legal right to residence and protection for migrant women when they are witnesses before, during and after legal proceedings in cases of trafficking in human beings, as well as permission for victims of this international trade to remain on a Member State's territory, especially when their repatriation might pose a threat to their personal safety or expose them to renewed exploitation.³ In 1996 the EP called for measures to ensure the safety and dignity of the victims by granting them a temporary residence permit for humanitarian reasons.⁴ In the same year, the Commission referred explicitly to a temporary residence permit in its Communication on trafficking in women for the purpose of sexual exploitation.

Continuing the approach outlined in its 1996 Communication, the Commission presented another Communication two years later on further actions in the fight against trafficking in women.⁵ It stressed the close interconnection between the need for an immigration policy that took the situation of the victims of trafficking into account and the question of increasing the powers of the courts to sentence traffickers, reiterating the link between improving prosecution of traffickers and the possibility of allowing victims to remain in the host country and receive help there.

In 2000 the EP recommended a common EU policy focused on a legal framework and law enforcement response, punishment of offenders, as well as prevention and protection of and support to the victims.⁶

In September 2002, a European Conference on Preventing and Combating Trafficking in Human Beings took place in Brussels resulting in the so-called Brussels Declaration, which was adopted by the Council in May 2003. The Brussels Declaration aims at further developing European and international

¹ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities, OJ L 261/19 of 06/08/2004.

² See EP-Doc. A-2-52/89, OJ C 120/352 of 16/05/1989.

³ See EP-Doc. [Resolution] B3-1264, 1283 and 1309/93, OJ 268/141 of 04/10/1993.

⁴ See EP-Doc. A-0326/95, OJ C 32/88 of 05/02/1996.

⁵ See COM(1998) 726 of 09/12/1998.

⁶ See EP-Doc. A-5-0127/2000 of 19/05/2000 ("Sørensen report").

co-operation, specific measures, standards, best practices and mechanisms. In March 2003, the Commission decided to set up a consultative group, to be known as the Experts Group on Trafficking in Human Beings. The Experts Group's brief is to issue opinions or reports to the Commission at the latter's request or on its own initiative. A first comprehensive report drafted by the Group was discussed in detail on 26 October 2004. On the basis of this report, the Commission intends to issue a Communication to the Council and the EP on trafficking in human beings in the first half of 2005.

On the legislative side, the Council started a process to harmonize standards within the EU. The Council Framework Decision of 19 July 2002 on combating Trafficking in Human Beings defines human trafficking as an offence for the purpose of sexual or labour exploitation and obliges EU Member States to criminalize trafficking. It also includes provisions on penalties, liability of and sanctions on legal persons, jurisdiction, prosecution, protection of and assistance to victims. The EU Member States had to implement the act before August 2004. The Commission has just started the evaluation procedure.

Subsequently, the Council adopted a Framework Decision on 22 December 2003 on combating the sexual exploitation of children and child pornography which is also relevant for combating trafficking in human beings. It defines the crimes concerned and includes provisions similar to those of the Framework Decision already mentioned. EU Member States are committed to implementing the act by January 2006.

The most recent development in this regard is Council Directive of 29 April 2004 on the short-term residence permit issued to victims of human trafficking and smuggled migrants who co-operate with the competent authorities.⁷ The objectives of the Directive must be implemented by April 2006.

2. Council Directive of 29 April 2004 on short-term residence permits

The overall aim of the Council Directive is to strengthen the instruments for combating illegal immigration by introducing short-term residence permits for the victims of trafficking and migrant smuggling actions. The permit will be issued to victims, defined as adults (or possibly minors who fulfil certain conditions laid down by domestic law) who are third-country nationals and have suffered harm directly caused by trafficking or migrant-smuggling. The Directive takes into due consideration the fact that traffickers and smugglers frequently exploit the vulnerable social and economic position of their victims. They are often unaware of the atrocious conditions in which they will be forced to work.

When the police come into contact with persons who might reasonably be regarded as victims, they shall inform them of the existence of the temporary residence permit. EU Member States may also decide that such information will be provided by a NGO or an association specifically appointed by the Member State.

Victims who effectively break off all relations with the suspected criminals will be granted a 30-day reflection period in which to decide, on the basis of all the facts, whether or not to take their co-operation with the police and judicial authorities any further. During this reflection period the EU Member State will allow victims to receive aid according to their needs (housing, medical and psychological care, social assistance if required), which should help them to regain the material and psychological autonomy needed to take the decision to co-operate. At the same time, the authority responsible for the investigation and prosecution, i.e. the judicial authorities or the police, depending of the Member States' organizational system, (i) determine whether the presence of the victims is useful

⁷ Denmark, Ireland and the United Kingdom are exempted.

for the investigation or for prosecuting the suspects; decides (ii) whether victims are really prepared to co-operate and (iii) whether they have genuinely severed their links with the suspects. Co-operation may take various forms, from simply providing information or lodging a complaint to giving evidence in a trial.

If these three conditions are met and the victim does not pose a threat to public order or national security, the short-term residence permit will be issued for 6 months. This permit gives access to the labour market, education and vocational training. It also gives victims greater access to medical care. The Member States may arrange for victims to follow an integration programme with a view to settling there or returning to their country of origin.

The residence permit may be renewed under the same conditions as it was issued. It will not be renewed if a judicial decision has been reached terminating the proceedings. At this point, the normal legislation affecting aliens will apply. If victims apply for a residence permit on other grounds the Member State will take their co-operation in the criminal proceedings into account when considering the application. On the other hand, the short-term residence permit may be withdrawn from victims who are found to have renewed contacts with the suspects or who have not genuinely co-operated with the authorities.

The Directive makes no provision for victim or witness protection, since this is already governed by European or national legislation such as – at European level – the Framework Decision of 15 March 2001 on the status of victims in criminal proceedings.⁸ This Framework Decision sets out the rules concerning the right to receive information and the specific assistance to be given to victims, as well as the right to compensation. Also the Council Resolution of 23 November 1995⁹ on the protection of witnesses in the framework of the fight against international organized crime calls on the Member States to ensure proper and effective protection of witnesses before, during and after trials.

3. Conclusion

The Council Directive can be seen as an important step forward in the fight against trafficking and smuggling of persons. However, the success of this measure needs to be assessed in the future, in particular as regards the duration of the residence permit. Victims of trafficking or smuggling are often threatened by criminal networks. They are also frightened and suspicious of contact with the authorities. These circumstances could prevent a victim from co-operating once he/she is aware that after the judicial proceedings he/she will be returned to his/her home country where the victim could again fall in the hands of the criminal network. Due consideration should also be given to the fact that criminal networks often threaten the victim's family members. The victims' co-operation should therefore be properly acknowledged and rewarded. Victims who co-operate with the authorities should receive all the necessary guarantees and legal support from the outset as determined in the documents mentioned above.

The Economic and Social Committee acknowledged the multi-faceted aspects of the problem and thus recommended permits which are issued for a year and can be renewed. This could be an attractive offer which might induce victims to opt for the co-operation which is asked of them. However, in the future thorough assessments should be carried out in order to see how far the Directive's objectives have been met. In this regard, the Commission is committed to submitting a report to the Council and the EP no later than 6 August 2006.

⁸ OJ L 82/1 of 22/03/2001.

⁹ OJ C 327/5 of 07/12/1995.

10. RECOMMENDATIONS AND CONCLUSIONS

Elisabeth Rehn

*Chair of the Working Table 1 on Human Rights and Democratization,
Stability Pact for South Eastern Europe; Former UN Under-Secretary General*

Closing Speech

Ladies and Gentlemen,

The organizers really put me in a terrible situation because, after all the wisdom which we have heard here, to come with any added value is impossible. But I will try to give some of my impressions from my own experience in this very difficult problem.

There were a few observations made during these few days that I was especially taken by. First of all our Minister of Justice Mr. Koskinen, who said that this conference should be oriented towards human rights and victim protection, and that we should really work towards activities instead of talks. I think that you have succeeded in this regard with a lot of recommendations that will lead to direct activities.

Also Ms. Helga Konrad's remark about putting an end to the silence and of course Maria Grazia Giammarinaro, who had a good deal to say about victim protection and stated also that in the court proceedings we have to remember that it is not the behaviour of the victim, but the behaviour of the defendant which is important. Sometimes we are apt to say that so and so was no saint. But this is not important at all. The important thing is that we really have to examine the situation as it is.

My own experiences with trafficking started in one way with Madeleine. It was when I was the Special Representative of the Secretary General in Bosnia and Herzegovina. We knew of course about trafficking. We had heard rumours. But then a couple of Ukrainian girls escaped from the mafia bosses who kept them in a bar as sex slaves. They came to the international police station and then everything began. What they talked about really opened our eyes. Then Madeleine, myself and IOM really started to work on this, but there was much more than anybody could conceive of.

I was asked by UNIFEM three years ago to make a report for the Commission as an independent expert. The report "Women War Peace", which was released by the Secretary General to the United Nations Security Council a couple of years ago, dealt with what happens to women in war and conflicts. Trafficking was quite a big part of all of this, because it seems to be quite clear that during the conflicts trafficking is regarded as something natural. I have heard such words many times from an excellent gentleman: "Ms Rehn you really must understand that men have their needs and boys will be boys". He said this when we had been talking particularly about minors. Getting back to this statement that men have their needs, I have been so close to violence from my own side, because I was so terribly angry with everything I found out. Talking to the trafficked girls and also some boys in the Balkan region and all over the world where we were collecting materials for the report, everybody had their own story to tell. These were heart-breaking stories telling why they were in such a situation and what they had gone through. This is of course very much a question of trafficking of women for sexual exploitation. I cannot understand how in 2004 we still accept that women can be sold on the market as cattle. Even

cattle are dealt with more humanely than these women who were trafficked. That goes for the Balkans as it goes for everywhere else. When we talk about this we have something of that attitude we have when we are talking about them, not us. We are a little bit patronizing. We are behaving as if we were superior to those who have been trafficked. I think that this attitude should be changed. They're exactly the same people as we are, only less lucky in their lives than we have been.

Trafficking is not only a question of trafficking for the purposes of sexual abuse. There is also the question of labour in some cases, and something which shocked me when I came across this for the first time, trafficking in human organs was becoming more and more widespread. When I was in Chisinau in Moldova some years ago there was a case of 17 young men who had been offered quite a sum of money for one of their kidneys. They went to Istanbul and there in some dirty unsanitary place the surgery was done. Some of them got their money, some of them did not. We have a lot of cases of trafficking in human organs where no money is given. That is happening in our Europe and I think that we should be very much aware of this. We have information about Roma girls and boys especially who have been victims of this kind of trafficking. Children too of course are being trafficked, sometimes even sold by their mothers or fathers. From the wider experience I had in Cambodia I know that when you could not make it economically, you just sold your kids to the sexual abusers, to the brothels. You got some dollars for that and destroyed your whole life. We know that AIDS is very closely bound up with this trafficking. This is the problem that is really immense.

When talking about labour, we know that those trafficked who really are getting some work constitute the grey market. Social security is not paid for them, they are doing the dirty jobs. Sometimes I think of so many cleaning ladies who have been mostly trafficked, sometimes smuggled. Do they guarantee for us, western women, that we can have a good job and children, because somebody else is taking care of our household? Those women are paid a pittance and have no social security. I think that we have to think about all of these questions even if it is painful for us. There are many of those who are using the services of trafficked women. They have money. I have interviewed so many girls, so nobody can tell me lies about how our ranks never use these services, that we are definitely clean. I know the clients directly from them. These are diplomats, bilateral workers, religious organization workers, humanitarian workers, international police and peacekeepers. They are not thinking of what they are really doing. I am lecturing a lot about these questions, gender issues, respect for women and trafficking for the military and also for the police in Finland. It was quite interesting when I was lecturing to the Danish Royal Defence College eight or nine months ago in Copenhagen and I could see from the faces of those officers who were there such thoughts: "Oh this old woman is now being really moralistic with us" and then I received support from an unexpected quarter, one of the officers, who said "Have you guys at all thought that when we are visiting and making use of trafficked women at the same time we are supporting organized crime, smuggling, money laundering, drugs, arms-dealing because it's the same guys that are taking care of these things". I am very pleased that at least the UN has made a clear declaration of zero tolerance regarding visiting prostitutes, because it is impossible to know whether they are trafficked or "voluntary". I must say that I am delighted that the awareness of this fact is penetrating the upper echelons of international organizations.

What is essential is that we have a very strong and relevant legislation. I think it would be very important to clearly harmonize it in the whole OSCE region to ensure that trafficking is dealt in the same way everywhere. That is really something that we need. I am not a member of government of this country and I am not even working for the Foreign Ministry anymore, so I'm taking a liberty when I express my gratitude on behalf of the Finnish government for your participation in this conference.

I believe that it has been of terrifically valuable for the problem of trafficking in human beings. It was really a pleasure to be with you listening to all this wisdom. As I said I personally have spoken to hundreds of trafficking victims in Europe and outside Europe. All of them really have their own tragic stories to tell us, as well as a clear wish to recover human value, human dignity. I think we are under the obligation to give them both – hope and concrete action.

Thank you for your attention.

Amb. Christian Strohal

*Director of the OSCE's Office for Democratic Institutions
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Closing remarks

Thank you, Ms. Rehn. Your contribution was especially important, as it provided us with a few glimpses into practical reality, into concrete experiences from the field. And it is there that our success will be gauged.

The question, in other words, is the following: how can we take all of the issues discussed, all our new insights, and the wealth of recommendations we have just heard forward? There is clearly nobody in this room who has to be convinced of our conclusions. The essence is that we have to go out to those who still need to be convinced. And we stand by Point 1 just made by Madeleine Rees as our key, i.e. that we should keep the spotlight at the same time on the victim and on the responsibilities of governments in order to ensure that their legal obligations are being effectively respected. That is really the essence and the basis of all our work.

In addition, I would like to mention three further points of a more general nature and then look at what my Office can do in all of that. First, I would expect that you use the Action Plan, that you have already acted on the Action Plan, which was adopted by 55 governments only last year in Maastricht. It is important to ensure that the Action Plan does in fact lead to action. It is only as good as the actions it generates and that is why we should make sure that the very detailed prescriptions in that plan are being tested against reality, are being monitored, used and followed up on. I think that a further element that also comes from that principle is to share experiences, bad experiences as well as good ones, good and best practices, and to maintain and strengthen networks in this regard, so that we can really profit from each other. And for that, and this is my fourth and last general point, it is important to support the new Special Representative, Ms. Helga Konrad, in her work and particularly in the work that she will be doing with governments, with ministers, to ensure that the obligations are being put into practice.

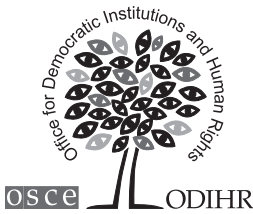
As far as my Office is concerned, we will clearly stand on that basis and continue to complement and to support the newly appointed Special Representative. We will strengthen the focus of our work in terms of this being clearly a human-rights focus. Trafficking will be a part of our Human Rights Programme and of our victim-centred approach. We will continue and strengthen the monitoring and support capacity of my Office, and we will do so in terms of the two main areas that have already been the subject of the two side events that we organized during the conference: legislative review and support, and NRMs. This capacity relates to governments but, of course, is equally important to NGOs and to OSCE field personnel. The point about zero tolerance with regard to field personnel clearly is not only important for the UN. It is very important for the OSCE, which has some 4,000 people in the field and, of course, for other international organizations. It is therefore crucial that we in our Office develop and further strengthen our training capacity vis-à-vis all these different sectors, vis-à-vis our own staff in the field, vis-à-vis NGOs and governments. Finally, what I would also very much expect from our Office is that we maintain and strengthen a strong mainstreaming of anti-trafficking concerns into our overall programmes: into our Gender Programme, into our Rule of Law Programme, into our Roma and Sinti Programme, and into our new Tolerance and Non-Discrimination Programme. There are aspects of trafficking that can also be transported through these other programmes and that affect,

and can be affected by, these programmes. We, of course, look to continued support from all of you in these efforts. I think this is really all I wanted to say.

In conclusion, I wish to thank you all for having come. I have also to thank our keynote speakers and all presenters. I should also thank our chairs and rapporteurs for producing excellent recommendations. We should thank the interpreters too who are invisible but definitely essential for the acoustics and understanding. I would like to thank the hosts, Ms. Johanna Suurpää, Ambassador Härkönen, and everybody else. We need a courageous government to accept a conference on fighting against trafficking in countries of destination, because every country of destination fears that it may be put in the spotlight. So there is special gratitude to Finland that they have come up with this courage and made this conference possible. Finally, I want to thank my own team. I think that they have all worked hard in co-operation with Finland for the success of this conference and I know that they will work even harder on the follow-up to this conference. I would like to thank one person in particular, who has been with this conference, and this subject, from the beginning, and who is now looking towards new horizons: Baerbel Uhl. Thank you for all you have done.

Thank you all.

11. RECOMMENDATIONS



Ministry for Foreign Affairs
of Finland

Conference:

Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking

Helsinki, 23-24 September 2004

Recommendations

Working Group I: Towards a rights-based approach to protect trafficked persons Standards of assistance and protection

States must make anti-trafficking and the protection of victims a priority.

States must ensure the protection of the rights of the trafficked persons at any stage of the trafficking cycle at which such persons are identified.

Presumed victims of trafficking must be allowed some time in a safe environment before they are subjected to questioning that might establish their status as victims of trafficking in human beings.

Support services and protection measures should be tailored to meet the individual needs of every victim of trafficking in human beings. Long term integration and inclusion programmes must be established. Participation must be voluntary.

Protection from retaliation by traffickers during, but not limited to, criminal proceedings, should be addressed.

Best practices in co-operation models

States must take steps to encourage authorities to improve their understanding of the nature of exploitation in trafficking in order to eliminate prejudices. This would ensure that victims of trafficking are properly identified.

State and non-State actors should be constantly reviewing their awareness of trafficking to understand new trends and developments. A static approach will not suffice to keep up with what is a dynamic problem.

Western European countries should make use of the experiences and lessons learned in South East European countries, in particular in the development of National Plans of Action.

All victims of trafficking must be afforded the rights and freedoms entrenched in the European Convention on Human Rights. Non-member States of the Council of Europe should afford the same rights to victims of trafficking as contained in other international instruments.

Data Protection

States should ensure that the processing (compilation, storage or transmission) of data respects the victim's right to privacy and always takes place with the consent of the victim in the context of information-sharing between national authorities as well as in the realm of international co-operation.

Residence regimes

States should grant residence permits to all victims of trafficking in human beings. This should not be conditional on the ability or willingness of victims to act as witnesses.

States must consider third-country resettlement options for victims and families.

States should not preclude victims and their families from seeking asylum on their territory.

Access to justice and compensation for trafficked persons

It must be ensured that in establishing their status as victims of trafficking the burden of proof does not lie on the presumed victims of trafficking in human beings.

States should recognize that effective prosecution of crimes of trafficking in human beings and effective access to justice and compensation of trafficked persons is possible only when victims of trafficking receive the required protection and assistance.

States should ensure that victims of trafficking are not legally obliged to testify against alleged perpetrators and there can therefore be no linkage between testifying and access to their right to support services. The provision of assistance should be totally separate from prosecution of the crime of trafficking.

States should consider how victims' rights in criminal proceedings can be codified.

States should set up a special compensation fund from which victims of trafficking in human beings can be compensated for their material loss and the moral damage incurred as a result of being trafficked.

States should establish procedures that would allow for civil claims to be heard concurrently with criminal cases.

Working Group II: Implementation of National Referral Mechanisms: co-operation models of law enforcement and civil society

The role of civil society in ensuring victim protection

Civil society has a crucial role to play in ensuring the human rights of the victims of trafficking. Civil society is well-placed in terms of having access to the victims and providing assistance and support. Non-governmental organizations should work together at national and transnational levels.

Adequate and sufficiently long-term funding must be secured for NGOs providing assistance to victims. The independence of non-governmental organizations should also be respected.

It is essential to make sure that co-operation between civil society and the relevant authorities is ongoing. Civil society should assume its role in the National Referral Mechanism.

Support and protection mechanisms should include a wide range of different specialized services, addressing the specific needs of each individual.

Best practices in co-operation models

The human rights approach to trafficking is essential. When law enforcement related to trafficking is based on human rights standards, there is no contradiction between protecting the rights of the victim and effective law enforcement measures aimed at bringing those responsible to justice.

Combating trafficking requires a multidisciplinary and cross-sector approach, involving all relevant actors from government and civil society.

Co-operation models should make it clear who is doing what. The assignment of responsibilities should be clear and transparent according to the different mandates of civil society and state authorities. The establishment of a focal point may facilitate co-operation in practice.

Activities related to trafficking should be based on a realistic picture of the situation on the ground. Research to this end should be encouraged.

Access for trafficked persons to assistance services

The identification of the victim is a crucial issue. The definition should be kept wide enough to encompass all the various forms of trafficking. Guidelines should be developed to facilitate the identification of the victims based on a shared understanding between all actors involved.

From the point of view of protection of the victims of trafficking, it is essential that all victims have access to assistance services, irrespective of factors such as legal status. Confidentiality, security and a long-term perspective are important points of departure for assistance services.

A residence permit should be issued to victims of trafficking for a sufficient period to enable them to realize their rights. Without the right to at least temporary residence, assistance cannot be given and

even bringing those responsible for trafficking to justice is normally not possible without the co-operation of the victim.

Indiscriminate return leads to re-victimization of the victims of trafficking.

Confiscation of Criminal Assets and Compensation

States should adopt measures to allow for confiscation and seizure of assets, including property, which are the proceeds of the crime of trafficking.

States should establish victim compensation funds which may be supplemented by assets confiscated from perpetrators. Confiscated assets should be used for compensation of victims and funding for NGOs and other related anti-trafficking activities.

States must establish appropriate safeguards against corruption.

Working Group III: European instruments to strengthen the rights of trafficked persons: challenges and opportunities

Draft European Convention

In the drafting of key international instruments such as the Convention on Action against Trafficking, States should ensure close consultation with civil society. This is particularly important in the case of the draft Convention which ascribes a key role to NGOs in the prevention of trafficking and protection of its victims.

The draft Convention of the Council of Europe is recommended to refer to the right of trafficked victims to seek asylum.

In light of the human rights focus of the Convention, and the strong monitoring mechanism that is envisaged, OSCE participating States should accede to the Convention once its drafting is complete.

The draft Convention of the Council of Europe should be more explicit concerning the protection of children. UNICEF guidelines should be used in drafting the convention.

OSCE Action Plan on the Combat of Trafficking in Human Beings

As a follow-up to the OSCE Action Plan, more specific measures should be adopted by OSCE participating States to enhance children's rights. The needs, rights and best interests of child victims of trafficking should be taken into account by providing tailor-made protection measures. Account should be taken, for instance, of the need for different shelters from those for adults, the need for OSCE participating States to devise specific residence and repatriation regimes for children, and a child-friendly court system, for child victims who participate in criminal proceedings. Follow-up

should also address the gender aspects in trafficking in human beings more thoroughly. Racism and anti-discrimination in the context of trafficking should also be addressed. Additional decisions should be adopted to supplement the OSCE AP on these issues.

As a follow-up to the OSCE AP the root causes of trafficking in human beings should be addressed by OSCE participating States in a systematic way.

Separate OSCE decisions should be adopted to develop the provisions of the OSCE Action Plan.

National Rapporteurs

OSCE participating States should consider establishing National Rapporteurs on Trafficking. Such National Rapporteurs must be independent and have a multi-functional role.

National Rapporteurs should provide governments with information and advise them on their action or lack of action in the fight against trafficking and have a multi-functional role.

National Rapporteurs should not be linked to any other governmental agency, in order to preserve their independence. National Rapporteurs should forge links with other independent human rights bodies of other States in order to further a unified approach in countries of destination in the fight against trafficking.

EU Council Directive

The EU is encouraged to press ahead in developing their strategy for protecting and assisting all victims of trafficking, in order also to ensure a unified approach in countries of destination.

The EU is encouraged to adopt standards which examine the problem of trafficking from the perspective of human rights protection of victims in addition to the law enforcement measures adopted to combat the crime.

General Recommendations

Countries of destination should aim at achieving a unified approach as to how best to combat trafficking in human beings, in order to ensure effective prosecution of perpetrators and the provision of effective protection and assistance to victims.

Co-operation between the various control and monitoring mechanisms is imperative, amongst others, between the OSCE Special Representative on Trafficking, the UN Rapporteurs on Trafficking, the US TIP mechanism, the planned monitoring mechanism of the Council of Europe Convention on Action against Trafficking, especially for the purposes of exchanging information.

OSCE participating States are encouraged to devise a methodology on the compilation and comparison of figures on the occurrence of trafficking, so that figures are reliable and may be used for policy changes.

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Ms. Riikka PUTTONEN

Speaker at the Panel Discussion B

Ms. Ann JORDAN

Speaker at the Panel Discussion B and at the Working Group 1

Ms. Barbel UHL

Speaker at the Panel Discussion B

Ms. Marjo CROMPVOETS

Speaker at the Panel Discussion B

Ms. Eva BIAUDET

Moderator of the Panel Discussion B

Ms. Madeleine REES

Chair of the Working Group 1

Ms. Mara RADOVANOVIĆ	Speaker at the Working Group 1
Mr. Dejan KESEROVIĆ	Speaker at the Working Group 1
Ms. Waltraut KOTSCHY	Speaker at the Working Group 1
Ms. Petra BURCIKOVÁ	Speaker at the Working Group 1
Ms. Johanna SUURPÄÄ	Chair of the Working Group 2
Ms. Isabel LORENZ	Speaker at the Working Group 2
Ms. Jamie FACTOR	Speaker at the Working Group 2
Ms. Barbara LIMANOWSKA	Speaker at the Working Group 2
Ms. Jola VOLLEBREGT	Speaker at the Working Group 2
Amb. Mette KONGSHEM	Chair of the Working Group 3 and Speaker at the Working Group 3
Ms. Iveta BARTUNKOVÁ	Speaker at the Working Group 3
Ms. Maureen WALSH	Speaker at the Working Group 3
Mr. Barnhard BOGENSPERGER	Speaker at the Working Group 3
Ms. Elisabeth REHN	Closing remarks
Ms. Anna G. KORVINUS	Speaker at the Working Group 3

