

Krisztina SZÁRAZ:

The role of the European Union
in the global fight against trafficking in human beings

Department of World Economics

Consultant:
Prof. Dr. Ferenc Miszlivetz
Professor



**International Relations
Multidisciplinary
Doctoral School**

**The role of the European Union
in the global fight against trafficking in human beings**

Ph.D. DISSERTATION

by
Krisztina SZÁRAZ

Budapest, 2010

Table of contents

Introduction	4
Abbreviations.....	13
List of tables an figures.....	14
1. Phenomenon of trafficking in human beings.....	15
1.1. Clarification of definitions	17
1.2. Difficulties in collecting data	32
1.3. Profile of victims and their identifications	36
1.4. Profile of traffickers	45
1.5. Process of trafficking in human beings	49
1.6. Forms of trafficking in human beings	51
1.6.1. Sexual exploitation	52
1.6.2. Economic exploitation	56
1.6.3. Other forms of exploitation	59
1.7. Challenges	69
2. Response of the European Union to the phenomenon of trafficking in human beings.....	71
2.1. Development of EU policy in the field of trafficking in human beings	71
2.2. Programmes, projects funded by the EU to combat trafficking	109
2.2.1. The STOP and AGIS programmes	110
2.2.2. The DAPHNE programme	113
2.2.3. Other programmes and initiatives	116
2.2.4. The EU Anti-Trafficking Day	119
2.3. Specialised bodies of the EU to fight trafficking in human beings	121
3. Practices and recommendations.....	128
3.1. Practices of the EU Member States in the field of human trafficking.....	128
3.2. United States of America´s anti-trafficking policy.....	145
3.3. Fighting against human trafficking on the level of international organisations	160
3.4. NGOs active in the field	166
3.5. Recommendations to the EU	168
3.5.1. Recommendation of actions on national level	168
3.5.2. Recommendation of actions on European level	192
3.5.3. Recommendation of actions on international level	213
Conclusion	230
Bibliography	239
Annex.....	250

Introduction

“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

(Art 4. Universal Declaration of Human Rights)

Each year, millions of women, men, and children around the globe fall prey to human traffickers whether for sexual exploitation, forced labour, domestic work or other purposes, both within and beyond the borders of their country. This phenomenon has taken on such proportions that it can be described as a modern form of slavery. According to the Council of Europe, trafficking in human beings represents the third largest source of income for organised crime (after guns and drugs). It is a high-profit and low-risk enterprise that ranks it among the most lucrative forms of international organised crime. It is estimated to net profits of 7-10 billion dollars a year worldwide.

Human trafficking is a serious crime and a multi-dimensional threat. It is based on a treatment of human beings as private property or even commodity depriving them of the possibility of using their fundamental rights. It is a severe violation of fundamental human rights and reduces people to a state of dependency via threats, violence and humiliation. Besides depriving people of their human rights and freedoms, it also increases global health risks, and it fuels the growth of organized crime. Human trafficking has a devastating impact on individual victims, who often suffer physical and emotional abuse, rape, threats against self and family, and even death. Boys and girls who should be at school are forced to have sex, work long hours under dangerous conditions, sold for illegal adoptions or even coerced into becoming soldiers. Women and girls are being trafficked for sexual exploitation or they are forced into domestic labour, or marriage. Men, trapped by debt, slave away in mines, plantations, construction or sweatshops.

However, the impact of human trafficking goes beyond individual victims. It is a threat for the whole society by undermining the populations' health, safety and security. The enormous amount of money involved in this crime might influence even the high-level politics. It can destroy the fabric of society. Corruption witnessed among law enforcement authorities or other stakeholders cause the re-victimisation of trafficked victims instead of providing them protection and assistance.

Slavery itself has existed since recorded history. The transatlantic trade began in the early 16th century, when Europeans began to settle in America. They enslaved Africans to work in their mines and plantations. Over the next 350 years, millions of Africans – the exact number of the deported is still uncertain – were transported to the Americas. They included men, women and children. In 2007, the world commemorated the bicentennial of outlawing the transatlantic slave trade. The same lie which underpinned the transatlantic slave trade of the eighteenth and nineteenth centuries, namely that some people are less than human, is the very lie that fuels modern-day slavery.¹

In many countries, neither the necessary laws are not in place, nor they are not properly enforced - traffickers are not punished, while victims are treated as criminals. Each and every the countries around the world are hit by this shameful crime. None of the countries, even the developed ones can solve this new form of slavery on their own. To address the question effectively, international cooperation is a must.

The issue of trafficking in persons, whether at the international, national or local level, can only be addressed effectively on the basis of coordinated and comprehensive strategies that are based on human rights, while taking into account the transnational nature of the problem, the many associated criminal activities, in particular money laundering, the frequent involvement of organized criminal groups and the profound pain, fear and damage suffered by the victims.

Historical events have a great influence even on the trafficking in human beings: after the fall of the Iron Curtain, a so called fourth wave of trafficking of women started. The first wave was the Southeast Asian wave, particularly in Bangkok, Thailand, to serve the American troops serving in Vietnam. After that came the North African wave that moved into parts of Southern Europe. And then there was the third wave, which is the movement of Central and South American women. The fourth wave came as an explosion by the fall of the Iron Curtain. During the Cold War the proportion of Eastern European women in global trafficking of women was one percent and it suddenly jumped to 25 percent. They were blond, white, intelligent and compliant.

¹ Ambassador Mark P. Lagon, In US Trafficking in Persons Report (2008)

According to the Europol, there has been an apparent increase in recent years in the number of victims trafficked into the EU, particularly through and from the Russian Federation, Ukraine, Central and South Eastern Europe. Given the global nature of trafficking and the existence of lucrative markets in the EU it is not surprising that victims from Asia, Africa and Latin America are also identified on a regular basis.²

The main objective of my thesis is to analyze, why and how the European Union can have a leading position in the global fight against trafficking in persons. How it can serve as a role-model for the rest of the world. How it can activate not just its Member States but also other countries in the world, mostly those of origin in order to eliminate this shameful crime. EU Member States are mostly countries of destination, but not solely. Mainly because of the 2004 and 2007 enlargement, the European Union became a union of states of transit and origin as well. An effective cooperation among these three types of countries is fundamental for human trafficking to be eliminated. This experience of having all these three types of countries within the Union will lead to obtaining the knowledge of how to help the elimination of trafficking in human beings outside the European Union. It is the EU's duty to fight this heinous crime within and outside its territory, thus having a global responsibility in fighting trafficking in human beings among other reasons for being the protector of human rights and because protection of human rights represents one of the European values. It can draw the world's attention on a human-rights-based, victim-protective approach in combating trafficking. Taking an active role in fighting trafficking in human beings, putting the human rights approach into the centre of attention, becoming a role model can motivate the Member State as well as the rest of the world to take this shameful crime seriously and take all needed means to tackle it.

During the analysis of the topic of the dissertation I regarded the multidisciplinary approach as determinative. I used the outcomes of the international law, EU law, the international economics, and the practice of the EU Member States.

The research aims to give an overall picture of the phenomenon and at the end to draw up a list of recommendations that closes the gap in current legislation,

² Europol (2008): Trafficking in human beings in the European Union: a Europol Perspective, February 2008, p.1

enforcement and practices, in particular reaching proportionate and dissuasive sanctions for traffickers, including confiscation of assets gained by trafficking or addressing demand for human trafficking. The list of recommendations is suggesting a comprehensive strategy that is inevitable to effectively combat trafficking in human beings.

The timely scope of the research is limited to a period of two decades when the EU anti-trafficking policy started to develop starting with the 1993 Council recommendation, the first official form of the European Union to recognise the problem. Since the anti-trafficking policy is still a developing and forming policy, the outcomes are flexible.

In order to keep the balance, and avoid the deviate from the scope of the dissertation, some questions were only concisely discussed. It specially applies to the certain EU programmes that are used to fight trafficking in human beings, and also to those legislative tools that are only interrelated to the European Union's anti-trafficking policy.

The object of the research was to point at the main challenges of the issue of trafficking in human beings, to analyse the development of the EU anti-trafficking policy, compare it with the US anti-trafficking policy and to formulate recommendations how the EU could improve its fight against trafficking in human beings inside the EU and also outside the EU.

On the basis of the above mentioned, the main questions of the dissertation were the following:

1. What are the main reasons behind an ineffective the anti-trafficking policy worldwide? What are the main mistakes that law enforcement authorities but even decision-makers make on an everyday basis?
2. How has the EU's anti-trafficking policy developed? What are the main tools?
3. How do the Member States implement the EU legislative tools? If there are shortcomings, why does this happens?
4. What are the main elements of the United States' anti-trafficking policy and how it differs from the European Union's?
5. The main question was whether and how the EU could play the role of a global leader in the fight against trafficking in human beings?

Since the scientific elaboration of this global issue is still in baby shoes, lacking the appropriate scientific literature, mostly given by the fact that the issue of modern-day slavery grabbed the attention of researches and decision-makers just recently. For a period of time, decision-makers did not want to admit that people in the second half of the twentieth century could be held in slavery-like conditions, since slavery has already been abolished for 200 years ago. However, trafficking in human beings differs at least in one point, but crucial point from the old form of slavery. Two hundred years ago slavery meant exploitation of black people trafficked from Africa to the United States. On the contrary, nowadays slaves do not come solely from Africa but also from Asia, Europe, America and Australia. It was first the NGOs who started to raise attention to this problem and was slowly recognised by international organisations and finally by governments. As a primary source I used the international conventions and EU legislation, legal actions and declarations. Furthermore I used the reports and analysis of international organisations active in the field, in particular the UNODC, IOM, ILO and UNICEF. There are several thousands of studies conducted by international organisations and NGOs active in the field. However, most of these studies focus only on one thing, the general issue of trafficking in human beings, trying to describe the basic forms, methods and root causes of human trafficking. The knowledge of the issue has slowly extended. Attention was firstly paid only to women and their sexual exploitation and then gradually the scope of researches and attention was widened to labour exploitation, as the second most common form of human trafficking; even though researchers, experts and politicians still have only limited knowledge about this form. The other forms of trafficking, such as forced domestic work, forced begging, illegal adoption, forced marriages, just to mention a few, are still under-researched. In addition I found it important to make interviews with those people who are directly or indirectly involved in the EU and/or US anti-trafficking policy-making, such as the persons responsible within the European Commission, European Parliament, some Member States as well as the main US Departments involved in the decision-making, in particular the Department of State, as well as the US Congress and some NGOs. Finally, I have participated in some conferences on the issue, like the Council of Europe's GRETA conference on 8-9 November 2007 in Strasbourg, UN.GIFT conference on 13-15 February 2008 in Vienna, and the Ministerial conference on 19-

20 October 2009 in Brussels. All of these sources created the secondary sources of information.

In the first chapter of the dissertation I have described the phenomenon of trafficking in human beings. The reason why I have dedicated the first chapter to describe the phenomenon of trafficking is to point at to those problematic parts that create the Achilles tendon of the anti-trafficking policy, where most of the decision-makers, governments and law enforcement authorities make mistakes. Unfortunately, after two decades of efforts to create a legislative tool to answer trafficking in human beings, there are still conceptual mistakes made by stakeholders both at national and international level. Most of the decision-makers and law enforcement authorities can hardly distinguish definitions; they mix up basic terms, such as smuggling, trafficking in human beings and illegal migration. The basic difference is that "trafficking is a crime which infringes the fundamental rights of persons, while smuggling is a violation of legislation protecting the borders".³ Without clearing out these basic definitions, it is impossible to fight effectively against this heinous crime. First of all, I focused mostly on the definition of trafficking, as it is the alpha and omega of an efficient anti-trafficking policy. Unless the stakeholders use the same definition, they might misunderstand each other. In most of the cases there is a misinterpretation and misunderstanding of the definition even by the law enforcement authorities who suppose to identify victims of trafficking or even the decision-makers who create legislation on European or national level or when transposing EU legislation into national. Frequently, trafficking in human beings is mixed up with smuggling or even illegal migration. Many of the Member States' efforts to fight against trafficking is not that efficient because they consider cases of trafficking as cases of smuggling and illegal migration, therefore they cannot guarantee the victims the needed assistance and protection. As a basis I have taken the definition agreed under the UN Palermo Protocol as the most commonly adopted definition of the phenomenon of the trafficking in human beings in the world and compared it to the definition of smuggling, drafting up the basic differences between the two different criminal actions. Another important element of the definition is the consent of the victim. Member States often treat trafficked victims as illegal migrants

³ Commission Staff Working Document SEC (2009) 359, p. 2

saying that the victim consented to enter the territory of the Member States illegally. According to the definition of the Palermo Protocol, consent of the victims should be regardless. This is also shared by the Council Framework Decision 2002/629/JHA, the main tool of the current EU anti-trafficking policy. The reason why this prior consent should not be taken into consideration is that it might happen that victims of trafficking have given their consent to illegally enter a country but they have never consented to being exploited sexually, or to be held in slavery like conditions. In addition I have concentrated on the different forms of trafficking in human beings. The reason for this is that unfortunately people who should fight trafficking in human beings are often not aware of all forms of this crime. They think, trafficking is equivalent to prostitution. In fact, prostitution does not mean trafficking in human beings. Prostitution is not even a form of human trafficking. It is the forced prostitution, when threat and coercion is used, that is one of the forms of trafficking. However, we should not forget about the other forms either, like forced labour, forced domestic work, child sex tourism, forced begging, organ trafficking, just to mention a few. In my dissertation I have characterised these main forms of trafficking. Furthermore, I have tried to describe the certain cases where victims can be trapped into trafficking, what makes them vulnerable, what are their main characteristics and finally prove why victims should not be treated as witnesses in criminal cases, as many of the Member States consider them, this way they are obliged to testify against the offenders, while not receiving the assistance they should have access to. Also in this chapter I dealt with traffickers, their main characteristics, working methods how they purchase the victims.

In the second chapter I have described how the EU policy in the field has developed, starting with the 1993 Council Recommendation that contained only a limited set of steps, namely five that all Member States should have had taken. My research however showed that Member States are still lacking the implementation of these initial recommendations. I have presented and characterised the Commission's communication, how it have initiated new tools for the fight against trafficking in human beings. I have also analysed the two major legislative tools of the European anti-trafficking policy, the 2004/81/EC Directive on short-term residence for third-country victims of trafficking, and the 2002/629/JHA Framework Decision on trafficking in human beings, while comparing it to the Palermo Protocol, which is the

most common international convention on the issue. The European Parliament was always a leader in proposing new approaches and initiatives in order to improve the anti-trafficking policy; for example, it was the EP that called for comprehensive and human rights based approach from the beginning while this has been recognised just recently by other EU institutions and some Member States. Therefore I found it important to describe and analyse all EP resolutions in the field, as they had great added value to the development of the EU's anti-trafficking policy. Another significant part of the research is that it describes the most recent developments in the EU legislation in light of the Lisbon Treaty, how it changes the EU institutions' role in the field and what procedural changes it brought. Furthermore, I have also focused on the main instruments, programmes and initiatives, in particular the EU Anti-Trafficking Day, as well as on EU anti-trafficking agencies, such as Europol, Eurojust and Frontex.

The third chapter focuses on the practices of Member States, the legislation and practices of the United States of America and on the two main international conventions in the field. Firstly, I have described the Member States response to the trafficking in human beings in light of the EU legislation development, the state of implementation and areas where they fail to cope with EU legislation. I have also gathered information on the efforts of previous EU presidencies, how they tried to hold the issue of human trafficking high on the agenda and also showed some best practices. I am convinced that by the exchange of the best practices the improvement of the effectiveness could accelerate. Further, I have described the main characteristics of the US anti-trafficking policy, in the end summing up its shortcomings and good solutions, and finally how it differs from the EU approach to combat human trafficking. Although the United States Government appears to have created a sound and viable infrastructure to create and implement anti-trafficking laws and policy, and besides stepping up on the international level with significant funding and with issuing the Trafficking in Persons Report each year as a diplomatic tool, the US fight against trafficking in human beings has serious challenges that so far has remained unanswered. In addition I have characterised the two main international conventions on the fight against trafficking in human beings, the 2000 Palermo Protocol and the Council of Europe Convention on Actions against Trafficking in Human Beings. Finally I closed the third part with setting up a list of

recommendations for the EU and its Member States. My research intends to be a pioneer by working out a comprehensive set of recommendations of all the steps that each Member State and the European Union should do at local, national and international level. This is a set of minimum requirements towards the Member States. The recommendations follow the so called “3 P” approach, namely prevention, prosecution, protection of victims, an approach invented by the Palermo Protocol and supported by the Council of Europe Convention. I have widened this approach by another “P”, partnership that is present in recent debates about the fight against trafficking in human beings. I have divided the recommendations by levels where the actions need to be taken and within that by the so called “P”-s that has not been done before. My research also represents a novelty in a sense that it includes not only actions directly related to human trafficking, like protection of victims, but also actions that indirectly effect the trafficking in human beings, like gender empowerment, education and so on. These recommendations are comprehensive and holistic since they do not seek to address trafficking in human beings only inside the EU but also draw up ways how the EU could strengthen its influence and power globally and how it could gain a leading role in the fight against the trafficking in human beings.

Abbreviations

CoE: Council of Europe

Council of Europe Convention: 2005 Council of Europe Convention on Actions against Trafficking in Human Beings

CRC : United Nations Convention on the Rights of the Child

EP: European Parliament

EU: European Union

ICMPD: International Centre for Migration Policy Development

ILO: International Labour Organisation

IOM: International Organisation for Migration

NGOs: Non-governmental organisations

OSCE: Organisation for Security and Cooperation in Europe

Palermo Protocol: 2000 United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime

PITF: (US) President's Interagency Task Force to Monitor and Combat Trafficking

SPOG: (US) Senior Policy Operating Group

TVPA: (US) Trafficking Victims Protection Act

TVPRA: (US) Trafficking Victims Protection Reauthorization Act

UNHCR: United Nations High Commissioner for Refugees

UNICEF: United Nations Children's Fund

UNODC: United Nations Office on Drugs and Crime

USA: United States of America

List of tables and figures

Figures

1. Most frequently reported origin and destination countries	26
2. Countries of origin, as measured by the extent of reporting of trafficking	29
3. Countries of transit, as measured by the extent of reporting of trafficking	30
4. Countries of destination, as measured by the extent of reporting of trafficking	31
5. Reported profile of victims at the global level.....	41
6. Organized crime group typologies: “Standard hierarchy”	47
7. Organized crime group typologies: “Core group”	48
8. Forms of trafficking	51
9. Victims of trafficking by sex.....	52

Tables

1. Classification of high at-risk groups based on main forms of exploitation used in human trafficking.....	40
2. Sanctions for committing trafficking in human beings.....	129
3. Number of investigations in Member States.....	132
4. Number of assisted victims in Member States	134
5. Number of applications for T visas in the USA	149
6. Number of certifications and letters of eligibility in the US	151
7. Number of prosecution and convictions around the world	156

1. Phenomena of trafficking in human beings

Trafficking in human beings is one of the most inhuman enterprises in the world. It increased dramatically during the 1990s. The US Government estimates that currently between 800 thousand people are trafficked across national borders annually, which does not include millions trafficked within their own countries. Approximately 80 percent of transnational victims are women and girls and up to 50 percent are minors⁴. Research carried out by the ILO estimated that in 2000 1,2 million children had been trafficked for sexual or labour exploitation internationally. The majority of transnational victims are females trafficked into commercial sexual exploitation. These numbers do not include millions of female and male victims around the world who are trafficked within their own national borders – the majority for forced or bonded labour.⁵

An accurate calculation of the total number of people trafficked is difficult because of the clandestine nature of trafficking and the problems involved in detecting and documenting trafficking cases. Assessments are even more difficult when they are being made across regions or internationally, as data may be collected using different criteria, for example with some looking only at those trafficked across borders and other looking at both cross-border and internal trafficking.

Complex economic, social and cultural conditions, such as globalisation, employment, trade, and migration policies, humanitarian crises, regional conflicts, environmental disasters, gender and ethnic discrimination and, with regard to children, the lack of protective systems increase vulnerabilities and fuel trafficking in human beings. Its most commonly identified push factors are poverty and unemployment in countries of origin, among others as a consequence of lack or badly shaped reforms, and the decline of industries and agriculture in many transition countries. These factors, together with gender inequality, discrimination and tolerance of violence against women, push women in particular to migrate. Some vulnerable groups, such as ethnic minorities tend to have limited access to social services reinforcing their vulnerabilities to trafficking in human beings.

⁴ US Trafficking in Persons Report [2008], p.7

⁵ US Trafficking in Persons Report [2008], p.7

Pull factors, such as images drawn from the media and stories from returning migrants, aspirations for a better life with more opportunities, the expectation of employment and financial rewards, and, more generally, of an improved social position and treatment in richer destination countries, entice many persons into migrating under mis-informed and risky circumstances. In hope of better jobs and lives abroad, migrants may fall prey to fraudulent employment offers and suddenly find themselves in coercive or exploitative conditions. Among these migrants, a large proportion of women, young girls and children end up under slavery, like conditions in the traditionally female designated, most vulnerable sectors of domestic work and the sex industry. The same root causes apply to internal trafficking too.

Increasing demand for cheap, un-skilled labour, mainly in construction and agriculture, create strong pull factors for legal or illegal migrants.

In addition, trafficking is usually connected with the shift towards investment in informal – often clandestine or illegal and largely invisible – sectors, where workers are not able to organise or demand their rights and where, therefore, labour is cheaper and workers easily exploitable.⁶

To date, global efforts to combat trafficking in persons have focused on breaching of human rights, protecting and assistance provided for victims and on the criminalization of trafficking. However, relatively little attention has been given to the business of human trafficking. It is a worldwide criminal industry that generates billions of dollars of yearly profits for its “entrepreneurs” that ensures their economic power and influence. By some estimates, this “industry” is not only thriving, but growing.

Recent estimates of this illegal global trade by ILO are as high as 32 billion USD, if both the sale of individuals and the value of their exploited labour or services are taken into account. The money generated by sex trafficking alone is conservatively estimated at 7 billion USD per year, although Interpol has given a higher estimate of 19 billion USD annually. In 2005, the International Labour Organization (ILO) issued a report that estimates profits from sex trafficking at 217.8 billion USD a year

⁶ For example, domestic work into which especially women are trafficked, is largely unregulated and unprotected and partly even not recognised as work, leaving very few channels for legal migration, whereas on the other hand the demand for this type of work (domestic services, childcare and taking care of the old) will further increase if only due to demographic developments (increased labour participation of women; the general ageing of the population).

or 23,000 USD per victim. Some have suggested that this underground criminal enterprise will continue until the problem is addressed from an economic perspective.⁷

1.1. Clarification of definitions

For better understanding of the issue, it is inevitable to make a clear distinction between trafficking, smuggling and migration. They are separate, but inter-related issues. They should be basically distinguished from one another. Nevertheless, they are closely related because of a number of shared characteristics, which often overlap to some extent.⁸ Migration may take place through regular or irregular channels and may be freely chosen or forced upon the migrant as a means of survival (e.g. during a conflict, an economic crisis or an environmental disaster). If the method of migration is irregular then the migrant may be assisted by a smuggler who will facilitate illegal entry into a country for a fee. The smuggler may demand an exorbitant fee and may expose the migrant to serious dangers in the course of their journey, but on arrival at their destination, the migrant is free to make their own way and normally does not see the smuggler again. Trafficking is fundamentally different as it involves the movement of people for the purposes of exploiting their labour or services. The vast majority of people who are trafficked are seeking to escape poverty and discrimination, improve their lives and send money back to their families. They hear about well-paying jobs abroad through family or friends or through “recruitment agencies” and other individuals who offer to find them employment and make the travel arrangements. For most trafficked people it is only once they arrive in the country of destination that their real problems begin as the work they were promised does not exist and they are forced instead to work in jobs or conditions to which they did not agree.

The whole problem can be clearly distinguished by the definition given by the United Nations Convention against Transnational Organised Crime and its two protocols.

⁷ US Trafficking in Persons Report [2008], p.33

⁸ One of the similarities is the mode of transport. In practice, it turns out that most of the itineraries and key cities used by criminal networks are the same for both smuggling activities and trafficking in human beings. Related criminal offences include abuses of immigration and border-control laws, corruption of officials, document forgery, acts of coercion against the victim, unlawful confinement and the withholding of identity papers and other documents.

The United Nations Convention against Transnational Organized Crime (the Convention) and two of its supplementing protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, were adopted by the General Assembly at its Millennium Meeting in November 2000.

The Convention⁹ and the two supplementing Protocols were then opened for signature at a high-level conference in Palermo, Italy in December 2000 and constitute the first serious attempt by the international community to answer the global challenge of transnational organized crime with a global response in the form of international law.¹⁰

Previous instruments to fight trafficking in persons and forced prostitution, such as the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,¹¹ or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹² failed to provide a definition of trafficking in persons and focused mainly on the punishment of traffickers.

The Convention and the Palermo Protocol, then, provide a legal and conceptual framework for combating trafficking in persons.

The Palermo Protocol succeeded to provide for the first time with a working definition of trafficking in persons, requiring ratifying States to criminalize such practices and also addressing the issue of victims' rights through providing assistance to, and protection for victims of trafficking.

⁹ The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition of U.N. Member States that this is a serious and growing problem that can only be solved through close international cooperation. The Convention, concluded at the 10th session of the Ad Hoc Committee established by the General Assembly to deal with this problem, is a legally binding instrument committing States that ratify it to taking a series of measures against transnational organized crime. These include the creation of domestic criminal offences to combat the problem, and the adoption of new, broad frameworks for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training. In UNODC report [2006]: Trafficking in Persons. Global Patterns, p.49

¹⁰ The United Nations Convention against Transnational Organized Crime entered into force on 29 September 2003. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children entered into force on 25 December 2003. The Protocol against the Smuggling of Migrants by Land, Sea and Air entered into force on 28 January 2004. In UNODC report [2006]: Trafficking in Persons. Global Patterns, p.50

¹¹ The 1949 Convention can be downloaded from <http://www.unhchr.ch/html/menu3/b/33.htm>.

¹² CEDAW can be downloaded at <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>.

Definition of trafficking in human beings¹³

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of a threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The definition of trafficking in human beings makes clear that trafficking covers not only the transportation of a person from one place to another, but also their recruitment and receipt so that anyone involved in the movement of another person for their exploitation is part of the trafficking process. It also states that trafficking is not limited to sexual exploitation and also takes place for forced labour and other slavery like practices. This means that people who migrate for work in agriculture, catering, construction or domestic work, but are deceived or coerced into working in conditions they did not agree to, are also defined as trafficked people.

The definition of trafficking in persons is central to addressing the activity of trafficking in persons and can be broken down into three separate parts: criminal acts, the means used to commit those acts, and purposes or aim (forms of exploitation). At least one element from each of these three groups is required before the definition applies, as shown in the following box.

¹³ Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)

Human trafficking, as defined, can be broken into three constituent parts:

The act (what is done)		The means (how it is done)		The purpose (why it is done)		
recruitment	+	threat or use of force	+	exploiting including	=	T R A F F I C K I N G
transportation		coercion		prostitution of others		
transfer		abduction		sexual exploitation		
harbouring		fraud		forced labour or services		
receipt of persons		deception		slavery or similar practices		
		abuse of power or vulnerability		removal of organs		
		giving payments or benefits		other types of exploitation		

The Protocol does not define exploitation, but it includes a non-exhaustive list of forms of exploitation. Sexual exploitation is not defined in the Protocol or any other international legal document. Other forms of exploitation listed in the definition, however, have found some definition in other international legal instruments.

By naming the conditions of forced labour, servitude, slavery-like practices and slavery, the Palermo Protocol avoids the tendency to restrict the definition of human trafficking to cases involving sexual services, and instead recognizes all forms of trafficking, including trafficking into different forms of forced labour, for the purpose of removal of organs and, as well, recognizes that all persons are potential victims of trafficking, even if women and children are especially vulnerable to this form of victimization.

On the other hand, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime defines smuggling the following way:

Definition of smuggling¹⁴

“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;“

It is often difficult to know whether a particular case falls under the definition of smuggling of migrants or trafficking in human beings.¹⁵

In order to understand the definitions more easily, the main points are the following:

Definition of human trafficking

Trafficking in persons is:

- The **action** of recruitment, transportation, transfer, harbouring, or receipt of persons
- By **means** of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
- For the **purposes** of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs

Definition of smuggling

It contains the following elements:

- the procurement of illegal entry
- into a State of which the person is not a national or a permanent resident
- to obtain direct financial or other material benefit

According to the Palermo Protocol's definition, consent to leave a country and work abroad does not determine the dividing line between smuggling of migrants and trafficking in persons. Many victims of human trafficking begin their journey by

¹⁴ Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

¹⁵ The definition of smuggling of migrants and the definition of trafficking in persons also recognize that while victims of trafficking in persons should be treated as victims of criminal activity, migrants who were not exploited are not necessarily victims of crime. It is important to note that *trafficked victims are victims of crime* regardless of their possible illegal entry into and stay in the country. In UNODC report [2006]: Trafficking in Persons. Global Patterns, p.52

consenting to be smuggled from one State to another. Smuggled migrants may later be deceived or coerced into exploitive situations and thus become victims of human trafficking. In fact, it may often be difficult for law enforcement officials and victim service providers to determine whether a particular case is one of smuggling or trafficking.

Both migrant smuggling and human trafficking are forms of irregular migration. Often both smuggled migrants and trafficked individuals leave a country of origin willingly, although, in the case of human trafficking, an element of deceit is typically employed. Smuggled migrants and trafficked individuals may be exposed to similar cases of danger or discomfort during long journeys. But while in the case of smuggling, the immigrant is free to go on his/her way after reaching his/her point of destination, in case of trafficking, trafficked persons, upon arrival, are often put in a situation of debt bondage and forced into slavery like practices in the sex or labour market or exploited in other ways.

Smuggling of migrants and human trafficking both involve moving human beings for profit. However, in the case of human trafficking, two additional elements beyond smuggling must be present: there must be some improper form of recruitment, such as coercion, deception or some abuse of authority; and the activity must have been undertaken for some exploitive purpose, although that purpose need not necessarily have been fulfilled.

In human trafficking, the major source of revenue for offenders and the economic driving force behind the offence are the proceeds derived from the exploitation of victims in prostitution, forced labour or in other ways. In smuggling, the smuggling fee paid by the illegal migrant is the major source of revenue and there usually is no ongoing relationship between the offender and the migrant once the latter has arrived at the destination. The other major difference between smuggling and trafficking is that smuggling is always transnational in nature, but trafficking may or may not be.

The consequences of mistakenly treating a trafficking victim as a smuggled migrant can be very severe for the victim. Protection and assistance services are required to be offered to victims of human trafficking but are not typically available to migrants who have been smuggled into a State. Thus, there is sometimes a concern that authorities may treat cases of human trafficking as cases of smuggling of migrants in

order to minimize their responsibility to offer victim protection and support. For all these reasons, it is important to ensure that States become parties to both Protocols, whenever possible.

To sum up, while there are many similar components within the two types of crime, there are three important differences as highlighted in the following box:

Key differences between human trafficking and smuggling of migrants	
Consent:	<ul style="list-style-type: none"> • Smuggled migrants usually consent to being smuggled. • Trafficking victims have not consented or their consent is rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.
Transnationality:	<ul style="list-style-type: none"> • Smuggling involves illegal border crossing and entry into another country, it is always transnational. • Trafficking does not necessarily involve crossing a border and where it does the legality or illegality of the border crossing is irrelevant. Human trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country.
Exploitation:	<ul style="list-style-type: none"> • The relationship between the smuggler and the migrant is a commercial transaction which usually ends after the border crossing • The relationship between traffickers and their victims involves ongoing exploitation of the victims to generate profit for the traffickers. From a practical standpoint, victims of human trafficking also tend to be affected more severely, become more traumatized by their experiences and are also in greater need of protection from re-victimization and other forms of further abuse than are smuggled migrants.

The issue of consent

The consent of victims
Article 3 (b) of the Palermo Protocol states that if a victim's consent to the intended exploitation is obtained through any improper means (threat, force, deception, coercion, giving or receiving of payments or benefits, abuse of power, or position of vulnerability) then the consent is negated and cannot be used to

absolve a person from criminal responsibility.

Regardless of whether their consent was obtained without use of any prohibited means, children have special legal status.

In many trafficking cases, there is initial consent or cooperation between victims and traffickers followed later by coercive, abusive or exploitive circumstances. The false offer includes the promise of a valid work and residency permit. Sometimes the victim agrees to being smuggled into a State illegally in order to find work but the victims clearly do not consent to the subsequent exploitation. It is not possible under international law to consent to torture and abuse. Any initial consent is effectively later nullified by initial deception, later coercion, or an abuse of authority at some point in the process in accordance with article 3, subparagraph (b), of the Palermo Protocol.

Even if the victim knew in advance that she/he was going to engage in prostitution does not mitigate the criminality of the trafficker - the means of trafficking are utilized and the element of exploitation remains. The gravity of it is not diminished because the victim was aware of the nature of the work but not of the working conditions.¹⁶

It is not just trafficking of women into prostitution that leads from consent to enslavement. There are also cases of men recruited to work in construction who consented to what they believed were legitimate temporary jobs only to find themselves locked in at the worksite, paid nothing and physically abused.

Often accused traffickers raise evidence of victim consent as a criminal defence, however, subparagraph (b) of the definition clarifies that consent becomes irrelevant whenever any of the “means” of trafficking has been used.

So it is the coercive conditions which give rise to it falling under the Palermo Protocol, rather than the type of work or services itself.¹⁷ However, if the consent is maintained, it is not trafficking, even if the subject has consented to engage in actions that are illegal in the destination state, such as prostitution or drug trafficking.

¹⁶ UNODC report [2006]: Toolkit to Combat Trafficking in Persons. Global Programme against Trafficking in Human Beings, p.18

¹⁷ The same goes for the purpose of “removal of organs” in the Palermo Protocol definition. The removal or transplant of organs is not inherently coercive but only becomes trafficking if one of the means is used, plus the element of movement.

A further issue in many cases will be the question of whether a particular victim had the capacity to consent to recruitment or subsequent treatment in national law. Under article 3, subparagraph (c), of the Palermo Protocol, consent and the presence or absence of improper means of trafficking become completely irrelevant if the victim is a child under 18 years of age. It is important to note that a child under the age of 18 cannot give his or her consent even if none of the means of trafficking are used. In other words, even if a child is not threatened, no force is used against him or her, or he or she is not coerced, abducted or deceived, the child cannot give consent to the act of trafficking for the purpose of exploitation.

In many cases the element of coercion of the definition can cause confusion, because where workers may have seemed to consent to what is actually forced labour or slavery like practices, some may consider that they are not trafficked. In this context it is important to look closer at the issue of consent. Real consent is only possible and legally recognizable, when all relevant factors are known and a person is free to consent or not.

Thus, although a person may consent to migrate, to carry false papers, to participate in prostitution or to work illegally abroad, this does not imply the person's consent to the forced labour or slavery like exploitation, including in the sex industry, and, consequently, does not exclude the person being a victim of trafficking. In this context, it is important to note that the inclusion of fraud, deception and the abuse of power or of a position of vulnerability recognises that trafficking can occur without any use of (physical) force.

In order to sum up, circumstances, where consent is rendered irrelevant are the following:

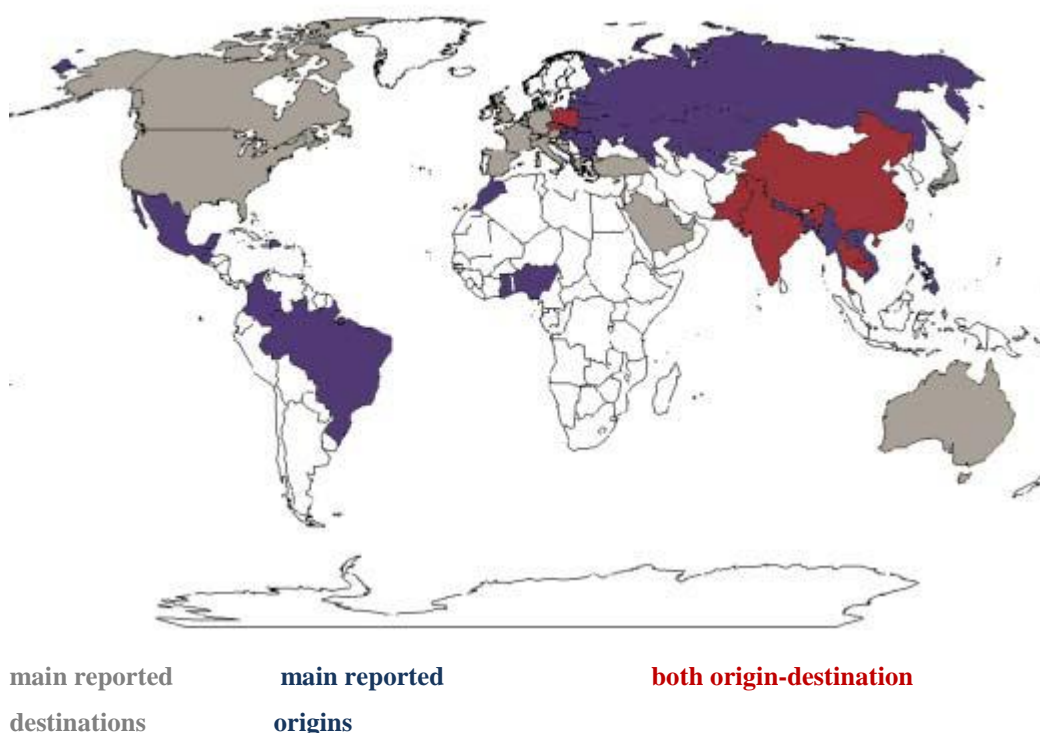
A fraudulent job offer	In many trafficking cases the false offer includes the promise of valid work and residency permits. Sometimes the victim will agree to being smuggled into a country illegally in order to find work. The victims clearly do not consent to the subsequent exploitation.
Deceit regarding the conditions of work	The fact that a victim knew in advance that she was going to work in a brothel does not mitigate the criminal liability of the trafficker—the element of exploitation remains. The gravity

	of the offence is not diminished because the victim was aware of the nature of the work but not aware of the working conditions.
Where exploitation involves children	Where a child and the child's parents give their consent to the use of the child for labour, the child is still a victim of trafficking—even where they gave their consent without being threatened, forced, coerced, abducted or deceived. Where an act of trafficking and the purpose of trafficking are established, the fact that none of the improper means were utilized does not mitigate the crime where children are involved.

A short global review:

Human trafficking is widespread. There is no single country that would not be touched by this modern-day slavery. According to the data of the United Nations Office on Drugs and Crime victims from 127 countries are exploited in 137 countries.¹⁸

Figure 1: Most frequently reported origin and destination countries¹⁹



Source: UNODC: Trafficking in persons, Global Patterns (2006)

Africa:²⁰

Africa is predominantly an origin region for victims of trafficking. Most of the African victims head to Western Africa and Western Europe. Western Africa is also reported to be the main origin sub-region for victims trafficked from Africa. This points to intra-regional human trafficking in Africa in general, and Western Africa in particular as an identified trend.

¹⁸ UNODC Report on Trafficking in persons: Global Patterns (2006)

¹⁹ UNODC Report on Trafficking in persons: Global Patterns (2006) p. 17

²⁰ At a country level, Nigeria ranks very high as an origin country, while Benin, Ghana and Morocco rank high. In UNODC report [2006]: Trafficking in Persons. Global Patterns

Asia:²¹

Asia is a region of origin as well as of destination for trafficking in persons. Asian victims are reported to be involved in intra-regional human trafficking, being trafficked in particular to Thailand, Japan, India, Taiwan and Pakistan. If talking about Asia as a destination region, victims mainly from the Commonwealth of Independent States, followed by South-Eastern Asia, point to this (sub)-region.

Europe:²²

Western Europe is reported largely as a destination sub-region, while Central and South Eastern Europe is reported as predominantly an origin sub-region. Victims trafficked out of this sub-region are reported to be exploited in Western Europe.

Central and South Eastern Europe is also reported to be a main transit sub-region and, to a lesser extent, as a destination sub-region for victims mainly trafficked from the Commonwealth of Independent States.

Commonwealth of Independent States:²³

The Commonwealth of Independent States is mainly reported as an origin region for trafficked victims. Western Europe and North America are the main destinations for victims reported to be trafficked out of the region. Other reported (sub-) regions are Central and South Eastern Europe, and Western Asia and Turkey.

²¹ At a country level, China and Thailand are both ranked very high as origin countries, followed by Bangladesh, Cambodia, India, Lao PDR, Myanmar, Nepal, Pakistan, the Philippines, and Vietnam ranked high.

As destination countries, Thailand, Japan, Israel and Turkey (the latter two are both part of the sub-region, Western Asia and Turkey) rank very high. Cambodia, China, Hong Kong, Taiwan, Cyprus, India, Pakistan, Saudi Arabia and United Arab Emirates are ranked high.

South-Eastern Asia is reported to be a crucial point of trafficking both out of and into the region. Thailand ranks very high as an origin, transit and destination country. In UNODC report [2006]: Trafficking in Persons. Global Patterns

²² At a country level, within the Central and South Eastern European sub-region, Albania, Bulgaria, Lithuania and Romania are ranked very high as origin countries; the Czech Republic, Estonia, Hungary, Latvia, Poland and Slovakia are ranked high.

As destination countries Belgium, Germany, Greece, Italy, and the Netherlands are ranked very high, followed by Austria, Bosnia and Herzegovina, the Czech Republic, Denmark, France, Kosovo, Poland, Spain, Switzerland and the United Kingdom ranked high. In UNODC report [2006]: Trafficking in Persons. Global Patterns

²³ At the country level, Belarus, Moldova, the Russian Federation and Ukraine are ranked very high as origin countries; Armenia, Georgia, Kazakhstan and Uzbekistan are ranked high. In: UNODC report [2006]: Trafficking in Persons. Global Patterns

Americas:²⁴

The region, Latin America and the Caribbean, is primarily reported as an origin region, from where victims of trafficking are trafficked mainly to North America and Western Europe. Latin America and the Caribbean is reported, to a lesser extent, also as a destination and transit region.

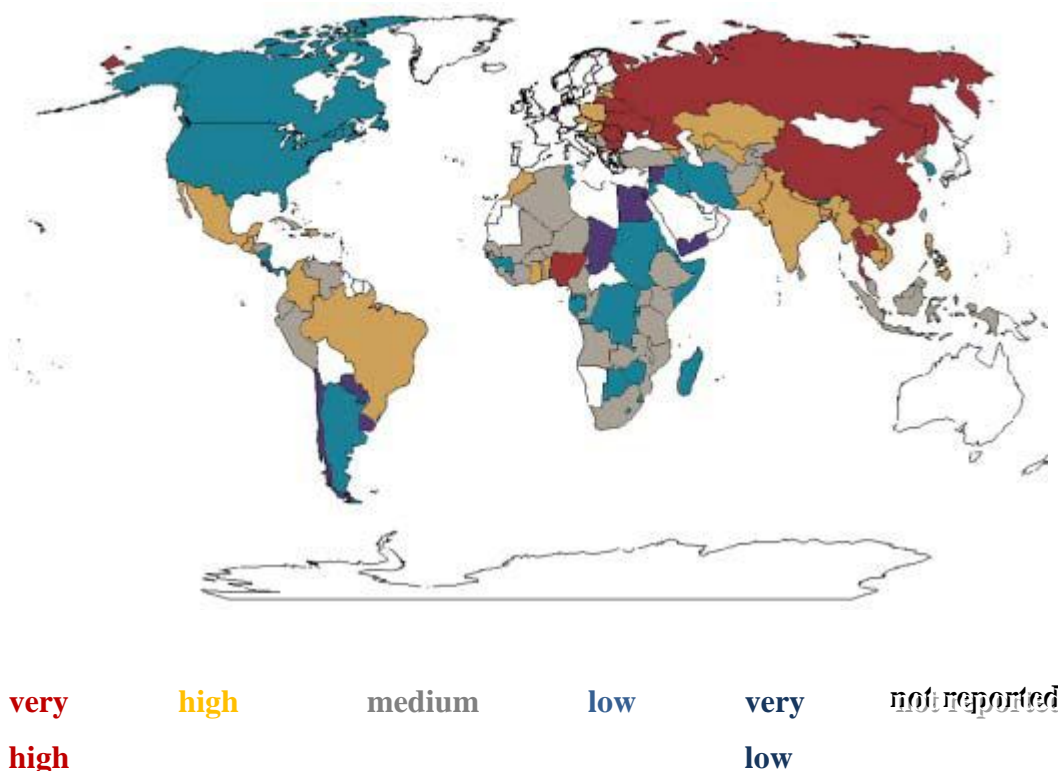
North America is reported almost exclusively as a destination region and victims are reported to come from all main origin regions, mainly from Latin America and the Caribbean because of the geographical situation.

Oceania:

Oceania is primarily reported as a destination region, victims coming mostly from South-Eastern Asia are heading mainly to Australia and New Zealand.

Countries of origin, transit and destination

Figure 2: Countries of origin, as measured by the extent of reporting of trafficking²⁵



²⁴ At a country level, Brazil, Colombia (South America), Dominican Republic (Caribbean), Guatemala and Mexico (Central America) were ranked high as origin countries. The United States ranks very high as a destination country; Canada is ranked high. In: UNODC report [2006]: Trafficking in Persons. Global Patterns

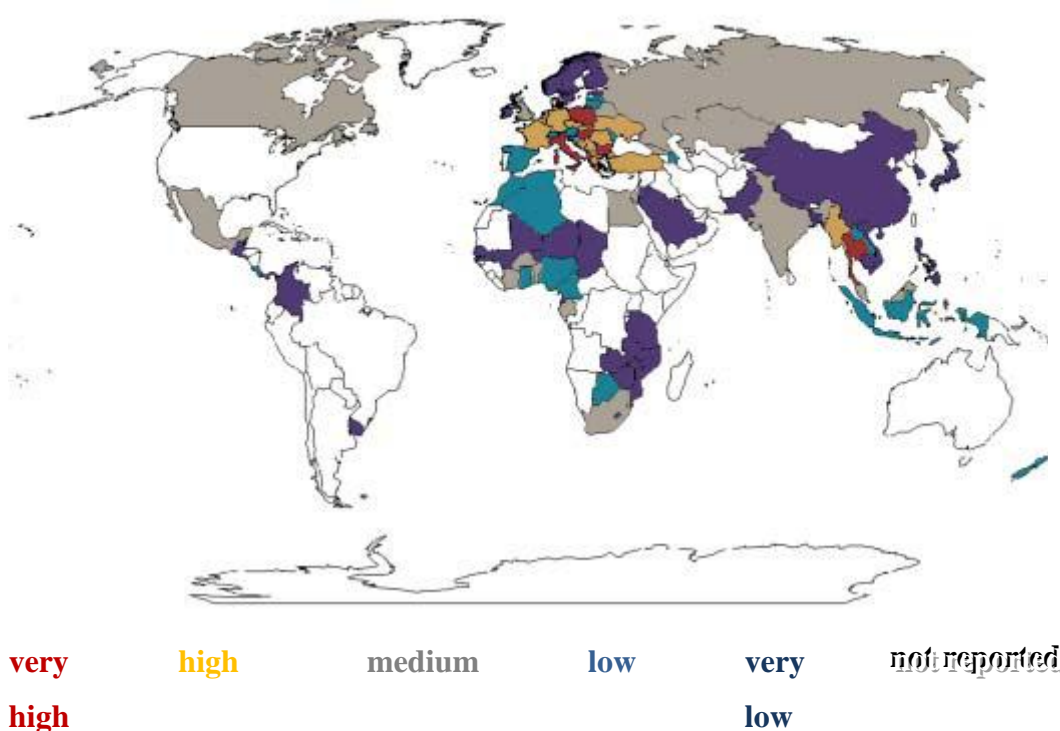
²⁵ UNODC Report on Trafficking in persons: Global Patterns (2006) p. 38

Source: UNODC Trafficking in Persons: Global Patterns (2006)

The key action associated with origin countries is the recruitment of victims or potential victims, whether it be by consent of victims or by deception, physical or psychological coercion.

According to the UNODC²⁶, eleven countries score very high as countries of origin. The countries are (listed in alphabetical order, by sub-region): Belarus, the Republic of Moldova, the Russian Federation and Ukraine (Commonwealth of Independent States); Albania, Bulgaria, Lithuania and Romania (Central and South Eastern Europe); China (Eastern Asia); Thailand (South-Eastern Asia); and Nigeria (Western Africa).

Figure 3: Countries of transit, as measured by the extent of reporting of trafficking²⁷



Source: UNODC Trafficking in Persons: Global Patterns (2006)

The term, 'transit countries', in the context of human trafficking, refers to the countries that make up the transnational route by which a victim is transported from

²⁶ UNODC Report on Trafficking in persons: Global Patterns (2006)

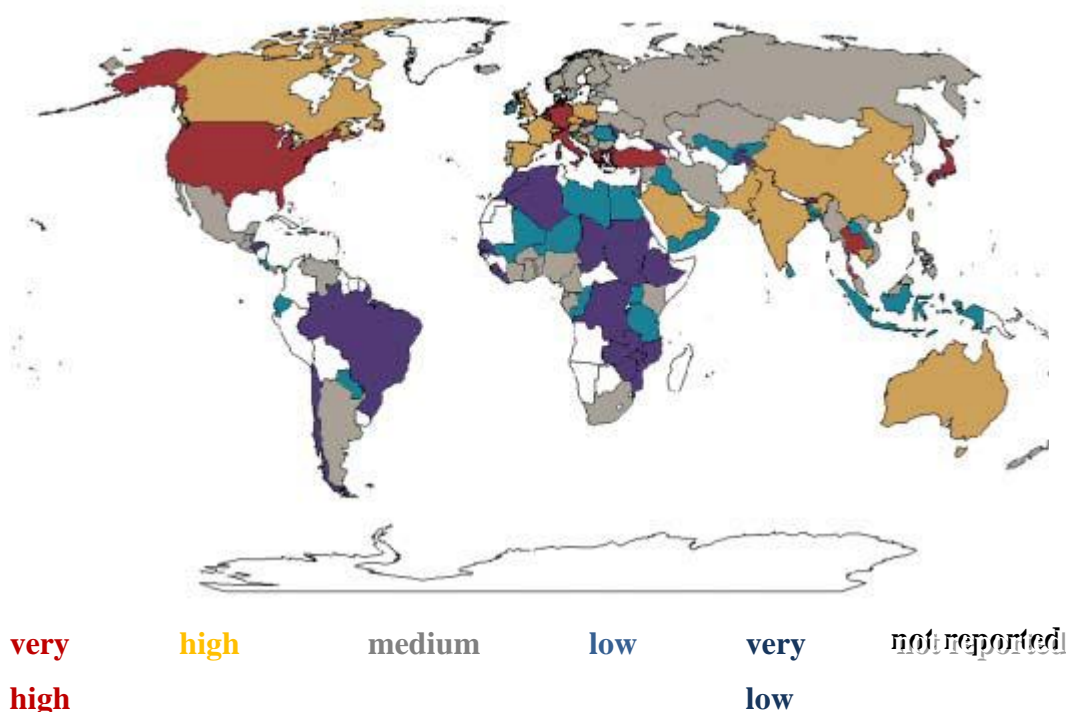
²⁷ UNODC Report on Trafficking in persons: Global Patterns (2006) p. 39

their country of origin to a destination country determined by the traffickers. Of course, there may be more than one transit country along a route, and alternative routes between a particular origin country and a determined destination may vary significantly.

According to UNODC data²⁸ 98 countries were reported as countries of transit. Forming a greater regional area, (countries within) Central and South Eastern Europe and Western Europe are highly reported transit regions. Beside Europe, South-Eastern Asia, Central America and Western Africa are also reported transit (sub-) regions and account for the greatest part of the remaining sources providing information on transit countries and human trafficking routes.

According to the UNODC report²⁹, six countries score very high as transit countries. These are, in alphabetical order and by sub-region: Albania, Bulgaria, Hungary, Poland (Central and South Eastern Europe); Italy (Western Europe); and Thailand (South-Eastern Asia).

Figure 4: Countries of destination, as measured by the extent of reporting of trafficking³⁰



Source: UNODC Trafficking in Persons: Global Patterns (2006)

²⁸ UNODC Report on Trafficking in persons: Global Patterns (2006)

²⁹ UNODC Report on Trafficking in persons: Global Patterns (2006)

³⁰ UNODC Report on Trafficking in persons: Global Patterns (2006) p.39

Dependent on the legal system of a country, associated criminal offences include those related to slavery, involuntary servitude, forced or compulsory labour, unlawful coercion, unlawful threats, extortion, false imprisonment, kidnapping, illegal procurement, corruption, debt bondage, document theft, destruction of documents, sexual assault, assault, bodily injury, rape, death, forced marriage, forced abortion, forced pregnancy and torture.

According to UNODC data³¹ one hundred and thirty-seven (137) countries were reported as destination countries. Countries within Western Europe, Asia (in particular some East and South-Eastern Asian countries and some countries in the sub-region, Western Asia and Turkey) and North America, are the most commonly reported destinations for trafficking in human beings.

Ten countries in the UNODC Trafficking Database³² score very high as reported destinations for trafficked victims. Five of these countries are in Western Europe (in alphabetical order): Belgium, Germany, Greece, Italy and the Netherlands. Among Asian countries that score very high are Israel and Turkey (Western Asia and Turkey); Japan (Eastern Asia); Thailand (South-Eastern Asia). The other very highly reported destination country is the United States of America (North America).

In general terms, each (sub-)region can be classified as one of the three categories: being a (sub-)region of origin, transit or destination. However, it is important to underline that even though a region is defined as a region of origin, its sub-regions and/or countries of this regions can be sub-regions and/or countries of transit and destination. Trafficking in human beings does not necessarily take place among continents. Moreover, it does not have to have a transnational characteristic. Victims of trafficking do not have to leave the borders of their own country.

1.2. Difficulties in collecting data

Although combating human trafficking has increasingly become a political priority for many governments around the world, information about the magnitude of the problem and current trends remains very limited. One of the biggest gaps in the understanding of trafficking is in the area of statistics and data collection.

³¹ UNODC Report on Trafficking in persons: Global Patterns (2006)

³² UNODC report [2006]: Trafficking in Persons. Global Patterns

The main criticism of human trafficking estimates is that the ranges are often excessively wide, sometimes as much as a high of 10 times that of the low estimate. In reports providing human trafficking estimates, the methodology for calculating any estimates used is rarely given. Reports also often fail to indicate whether estimates are annual figures or cover a period of several years.³³

The lack of reliable statistics can be attributed to a number of factors.

Thanks to the new international definitions of trafficking and smuggling, some governments systematically collect trafficking data. However, often unknowingly, many countries mix data related to trafficking, smuggling, and irregular migration, meaning that figures are often little more than estimates. In addition, data is often collected only on cases of trans-border human trafficking and not on internal human trafficking.

Internal trafficking in persons, i.e. where a victim is located, transported and exploited within one territory, is often not taken into consideration for the purposes of the analysis because of the perceived risk of severely underestimating the phenomena due to the small amount of information collected. While many indicators do suggest high levels of human trafficking occurring strictly within a country or a sub-region in certain geographical regions, internal trafficking in persons appears to be materially under-reported. This may be, in part, due to two factors: the focus that the international community has brought to the plight of trafficked victims in foreign countries; and, the application of regular (i.e. non-human trafficking) criminal justice procedures to domestic nationals and, as a result, their non-categorization as trafficking victims.

Many countries lack anti-trafficking in persons legislation. Even when legislation is in place, laws may only define human trafficking as applying to certain exploitative practices, such as sexual exploitation, and not other forms of exploitative behaviour. Moreover, in many countries, the definition of human trafficking applies only to the exploitation of women and children overlooking the exploitation of adult male victims. Further, if comprehensive laws do exist, they are not always enforced and

³³ Makkai (2003), "Thematic discussion on trafficking in human beings", Workshop on trafficking in human beings, especially women and children, 12th Session of the Commission on Crime Prevention and Criminal Justice, Vienna, 15 May 2003 in UNODC report [2006]: *Trafficking in Persons. Global Patterns*, p.44

victims may not be recognized as victims of crime but may be seen as smuggled migrants.

Lack of data can also be attributed to the low priority placed on fighting trafficking by law enforcement officers; due to lacking, inadequate or inadequately implemented legislation for prosecution and victim protection and the likeliness of the witnesses being deported. The net result is that the police often prefer not to go after traffickers at all, knowing that a great deal of effort only rarely results in a conviction.

Many countries lack a centralized agency or coordinated statistics system so that the collection of trafficking data, if done at all, is done on an ad hoc basis. While inter-governmental (IGOs) and non-governmental organizations (NGOs) assisting trafficked victims often maintain databases on those who have been assisted, repatriated and reintegrated, these figures represent a small number of human trafficking victims worldwide.

Other factors are a lack of common definitions among existing data sources and the unwillingness of some countries and agencies to share data.

There are many other reasons for the scarcity of data: trafficking cases tend to remain unreported because the victims fear of harm to themselves or their families by either criminal networks or the legal authorities because of their status as undocumented migrants and those brave enough to testify against traffickers may simply find themselves deported.

But, most importantly, it is a clandestine activity making the collection of data very difficult. Figures that are available range from the actual number of victims rescued or repatriated to estimates of the total number of trafficked victims in existence. There is a large disparity between the number of known cases and estimates of trafficking in persons.³⁴

As noted above, the reporting of human trafficking may currently fail to appropriately reflect the severity of trafficking in persons for a number of reasons, such as:

³⁴ The Dutch National Rapporteur Against Trafficking in Human Beings estimates that only 5% of victims report their victimization or come to the attention of government authorities - the number of documented cases reported in the Netherlands for the year 2002 was 201. It is estimated that the annual number of victims trafficked into Germany is somewhere between 2,000 and 20,000 - in the year 2000, 926 victims were registered. In: UNODC [2006]: Report on Trafficking in persons: Global Patterns, p.44

- geographical bias;
- political emphasis;
- the comprehensiveness of various national legal definitions of human trafficking and child trafficking;
- the non-recognition of different forms of exploitation;
- the availability and quality of official statistics and reporting;
- the availability and quality of national structures for victim identification, referral, assistance and repatriation;
- the extent of bi- and multilateral cooperation, and;
- confusion between trafficking in persons and other forms of irregular migration

When analysing the reported data, caution is advised at negatively interpreting the human trafficking situation in those countries for which more information is currently available. The fact, that a country reports high level of trafficking in human beings, does not necessarily mean that the country is at high risk of trafficking.

A high level of reporting of human trafficking in a country can, in some cases, be correlated with the existence of a national policy against human trafficking. In other words, a greater depth of detailed information regarding the human trafficking situation in a country may reflect the existence of a considered and well-resourced attempt to ascertain the likely level of trafficking in persons, as opposed to countries where little information is known though the actual amount of human trafficking activity may be at a similar or higher level. Hence a high level of reporting can be interpreted as a positive indicator.

Fundamentally, it is the responsibility of Member States to collect better information regarding all facets of this criminal activity. There is an ongoing need for countries to develop methods for systematic data collection, including greater information on victims (for example, disaggregated by age and gender), to assign institutional responsibility for the collection of such information and to engage in greater collaboration to ensure more intensive gathering and analysis of primary data. It is primarily through increased efforts at the national level that the necessary information can be generated to provide a platform for responding to this major issue facing the international community.

However, measuring the amount of trafficking in persons should not be seen as necessary, however, to justify an action in response. The Palermo Protocol defines human trafficking as a criminal activity, and the focus of all involved bodies, organs who fight against trafficking in persons should be, first and foremost, on addressing this crime, regardless of the severity of the phenomenon.

1.3. Profile of victims and their identification

The root causes of trafficking are various and often differ from one country to another. Poverty alone does not explain this tragedy, which is driven by fraudulent recruiters, employers, and corrupt officials who seek to reap unlawful profits from others' desperation.³⁵ In search of a better life elsewhere, disadvantaged people are often drawn into the control of criminals who will take advantage of their situation and exploit them. Economic hardship, conflict, crime and social violence, natural disasters and other such pressures create a desperate situation for millions of people and make them vulnerable to various forms of exploitation and enslavement. In many societies, girls are less valued than boys and are expected to sacrifice their education and assume domestic responsibilities such as taking care of their parents and siblings. This gender-based discrimination makes women and girls disproportionately vulnerable to trafficking.

However, it is not necessarily the most defenceless people who become victims of trafficking. It might be young people with a sense of initiative who do not wish to simply resign themselves to a socio-economic situation that offers them no prospects. Often, such people make an error of judgement. They overestimate the opportunities they will have in the Western society. This group of people easily fall prey to the promise of an attractive job abroad. They believe this job will provide them with plenty of money with which they can financially support their families in their home countries. Sadly, in many cases prospective migrants are not told what kind of work they are being offered. And even if the nature of the work is made clear to them, they are misled about the remuneration, employment conditions and the nature of work relations.

³⁵ US Trafficking in Persons Report [2008], p.8

Very often, parents entrust their children to relatives, friends and other people – who might be traffickers. By doing so the parents hope to give chance to their children to attend school, undertake vocational training and finally have a better life. However, upon arrival in the country of destination, those children might be facing conditions similar to modern slavery.

Another way is the “lover-boy method” – girls meet someone in a discotheque, after school, or even in their own neighbourhood. After some time, the boy suggests that they go to the West together in order to embark on a happy and prosperous life there. Once they have arrived in the country of destination, he takes away her passport and it is made clear to the girl that she must earn money and is obliged to work in prostitution.

The most drastic method of forcing people to go abroad is by kidnapping them. This practice is particularly prevalent with regards to girls from Eastern Europe. The kidnapping usually leads to a situation of forced prostitution.

Street children and unregistered children³⁶ are taken away for illegal adoption or for use in the trade of human organs to Western countries. Across the globe, street children represent one of the most vulnerable groups, both for sexual exploitation and forced labour. In major cities worldwide, street children are lured into brothels, where they are also exposed to physical and sexual abuse, drug addiction, and HIV. They are often also forced to steal or sell drugs by adult street gang members.³⁷ Sometimes, gangs recruit street children to sell drugs, not only exploiting the children for their labour, but exposing them to harmful substances to which they frequently become addicted. Among the myriad dangers street children face, forced begging is one of the most common.³⁸ In many countries, children living on the street are former trafficking victims who have run away from abusive employers.

³⁶ Pursuant to the UN Convention on the Rights of the Child, each child shall be registered immediately after birth, however, according to UNICEF estimations and average over half - 55 percent - of birth in the developing world - excluding China - each year go unregistered, a proportion that rises to 62 percent in sub-Saharan Africa. In: UNICEF report [2005] ‘The State of the World’s Children 2006: Excluded and invisible’, p.37

³⁷ In January 2008, British law enforcement authorities estimated that gangs forcing children to steal in London can earn the equivalent of 200,000 USD annually. In: US Trafficking in Persons Report [2008], p.18

³⁸ In Shenzhen, China, adults force street children to beg, sometimes breaking their arms or legs so that passers-by will take pity on the maimed children and pay more money. An undercover reporter learned in 2005 that a man in Shenzhen could earn between 30,000-40,000 USD per year by forcing children to beg. In: US Trafficking in Persons Report [2008], p.18

Stateless persons, who exist in every region of the world, are at high risk for trafficking due to their marginalized political status, lack of economic or educational opportunities, and poverty. In many instances, such individuals also lack identity or travel documents, putting them at risk of arrest when they travel outside of their communities, whether voluntarily or by force. Without documents or citizenship status, trafficking victims who find themselves outside of their country of origin may find it impossible to return, while at the same time having no legal status in the country where they now reside. Government-sponsored public awareness, economic development programs, or employment programs often bypass these invisible populations. In addition, stateless people are often unable to access state-sponsored benefits like healthcare and education.³⁹

A stateless person who becomes a trafficking victim may receive limited protection, little assistance, and be denied repatriation to his or her country of habitual residence. Measures to alleviate these vulnerabilities include: birth registration campaigns and more efficient, transparent, and accessible avenues for acquiring legal residency or citizenship. For countries or regions that share cross-border populations, similar approaches for providing documentation can be a helpful undertaking.

In several countries of origin, travel and employment agencies have also been suspected of involvement in activities linked with human trafficking. They usually offer their customers assistance with obtaining a passport, a visa, if necessary, in making the appropriate travel arrangements (i.e. tickets and itinerary) and a job in one of the Western countries. These agencies generally make themselves known by placing advertisements in newspapers.

Porous borders, corrupt government officials, involvement of international organized criminal groups or networks, limited capacity of or commitment by immigration and law enforcement officers to control the borders, lack of adequate legislation and political will and commitment to enforce existing legislation or mandates are other factors that facilitate trafficking in persons.

The early identification of trafficked persons is a prerequisite for their recognition as victims and, consequently, their access to assistance and protection. If trafficked victims are not recognized, assisted and protected as victims, criminal justice systems

³⁹ US Trafficking in Persons Report [2008], p.26

lose important evidence against traffickers. Moreover, the failure to identify victims causes secondary victimization and compounds the trauma victims suffer from.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)⁴⁰ states, at clause 16, that persons who are likely to be in contact with victims (such as police and justice officials and staff from health and social services, and other personnel) should receive training in order to enable them to identify victims and to be sensitive to their needs. To provide adequate protection to the victims of trafficking in human beings, governments must train police and social welfare workers to recognize the deceptive measures traffickers use to reclaim victims. A rescue is only the first step in a longer process of victim protection. Unfortunately, the removal of children from sites of exploitation is often not followed by efforts to adequately protect these vulnerable children. Too often, child victims are subjected to additional exploitation after being entrusted to an NGO or government agency for care. Such re-exploitation often results when children are either released inappropriately on their own or released to persons who are traffickers, including family members who were complicit in the child's trafficking.⁴¹

Governments should also ensure that shelters have adequate security to bar traffickers from entering and that their locations are not leaked to traffickers. Specialized shelters for children vulnerable to being trafficked may also assist in combating this problem.⁴²

Moreover, it is crucial to enlist the cooperation of all persons and groups who come into contact with victims of human trafficking, such as border guards, police and immigration officers, prosecutors and judges, doctors, medical and social workers, housing and agricultural inspectors, and staff of immigrant rights organizations, women's, victims' rights and refugee protection and asylum organizations.

⁴⁰ "The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" is available at <http://www.pogar.org/publications/garesolutions/a40-34-85e.pdf>

⁴¹ In January 2007, for example, over 50 child trafficking victims in Accra were freed from a brothel by authorities. Yet, only hours after their rescue, traffickers reclaimed most of these victims by posing as boyfriends and family members at the government's shelter, according to local observers. In: US Trafficking in Persons Report [2008], p.30

⁴² For example, after a number of under-age asylum seekers in the Netherlands disappeared into the hands of traffickers, the government, in 2007, established specialized, secure shelters to better protect such minors. Victims receive close monitoring and specialists educate them about the risk of being trafficked and the deceptive measures traffickers may employ to claim them. In: US Trafficking in Persons Report [2008], p.30

Identification of victims could take place during different phases of the trafficking in persons process: potential victims might be identified, for example, when crossing borders or at any other point of the transportation stage. Identification is probably most common when victims are exploited in the country of destination. In some cases, particular effort is made to identify victims returning to their home countries.

For several years, trafficking for sexual exploitation has dominated discussions concerning the purpose of human trafficking. Trafficking in persons for forced labour has not been viewed as a significant issue in many countries, and the identification of trafficking victims who are exploited through forced labour has been even less successful than in the case of sexual exploitation.

Most identified human trafficking victims have been women and children who seem to be particularly vulnerable to sexual exploitation. Far fewer sources have identified either male victims or victims who have been subjected to forced labour, when the popular perception, at least, is that it is men especially who might be expected to be trafficked for forced labour purposes.

Table 1. Classification of high at-risk groups based on main forms of exploitation used in human trafficking⁴³

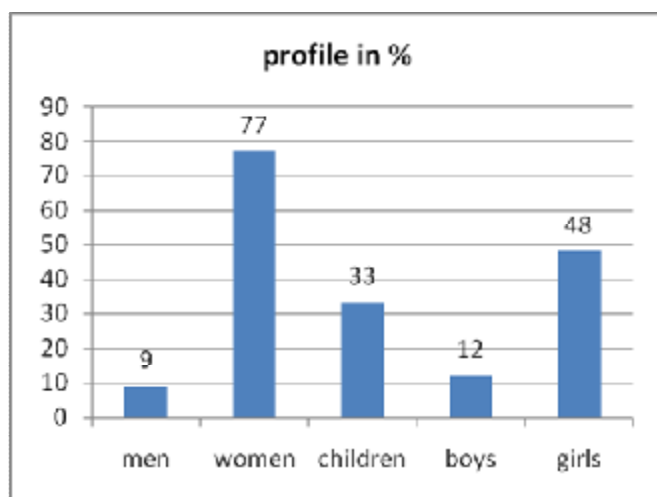
Form of Exploitation	Risk Groups
Sexual Exploitation	<ul style="list-style-type: none"> • Young women especially those with low levels of education • Unemployed and those engaged in commercial sex work • Individuals with low incomes and migrants • Children especially those from families in crises and in children's homes
Labour Exploitation	<ul style="list-style-type: none"> • Young and middle-aged men and women, especially those with low education levels • Migrants • Unemployed • Homeless • Children from families in crises and those without parental

⁴³ IOM report [2006] on Human trafficking in the Russian Federation – Inventory and analysis of the current situation and responses, report conducted by E.V. Tiurukanova and the Institute for Urban Economics for the UN/IOM Working Group on Trafficking in Human Beings, Moscow, p.33

	supervision
Begging	<ul style="list-style-type: none"> • Children from families in crises and those without parental supervision • Disabled • Homeless • Mothers with a number of children • Single mothers
Illegal Adoption	<ul style="list-style-type: none"> • Socially vulnerable families (e.g. families with problems of alcoholism or domestic violence, etc.) • Low-income families

In generating the profile of victims, based upon the number of source institutions reporting cases of trafficking in persons (both for sexual exploitation and forced labour) for which age and gender are known, minors (consisting of boys, girls and where the gender is not specified, "children") comprise the largest percentage of persons reported as victims. Adult women comprise the second largest reported group. A relatively small number of sources report the victim to be an adult male.

Figure 5: Reported profile of victims at the global level⁴⁴



Source: UNODC [2006]

This pattern fluctuates across regions. In the Commonwealth of Independent States countries, adult women are mostly reported as victims of human trafficking. The

⁴⁴ UNODC report [2006]: Trafficking in Persons. Global Patterns, p.33

same pattern is reported in Latin America and the Caribbean, and in Oceania. Sources citing adult women as victims also far outnumber sources for children in Central and South Eastern Europe and Western Europe.

In Africa, children comprise the largest group of trafficked victims and when the categories of girls and boys are added to the category of children, the total category comprises almost sixty percent of all source institutions reporting human trafficking in the region. The situation is similar in Asia where children, girls and boys combined outnumber adult women as reported victims of trafficking. A similar number of sources in North America report trafficking of women and minors.

The sharpest discrepancies can be found in Latin America and the Caribbean, Central and South Eastern Europe and Western Europe, all of where the number of sources reporting girl victims significantly outnumber the sources reporting boy victims. In North America, sources reporting girls outnumber boys by about six to one. There were no reports of boys as victims of trafficking in persons in Oceania. In Africa, Asia and the Commonwealth of Independent States, girls are reported as victims of human trafficking more frequently than boys but the disparity is not as great as in other regions of the world.

Reported information regarding men as victims of human trafficking remains low. It is highest in North America where 5% of the sources report adult male victims, followed by the Commonwealth of Independent States. Very few sources report men as victims of trafficking in persons in Africa, Asia, Western Europe, Latin America and the Caribbean, and Central and South Eastern Europe. In Oceania, there were no reports of male victims.

One of the major problems in identifying human trafficking victims who are men is legislation. In many countries, the laws relevant to human trafficking are restricted in their application solely to women, and in many cases, only women who are trafficked for sexual exploitation. This was particularly the case prior to the Trafficking Protocol entering into force. In addition, many service providers limit their support and protection only to female and child victims. Thus, exploitation through forced labour is often quite unlikely to come to the attention of those dealing with victims.⁴⁵

⁴⁵ In Belgium, the human trafficking legislation applies to both sexual exploitation and forced labour and there are several male victims, nearly all young football players from Nigeria, under the victim protection programme. In: UNODC report [2006]: Trafficking in Persons. Global Patterns, p.78

Trafficking in children

Trafficking in human beings is unacceptable under any circumstances, but trafficking in children is something even worse. It is a violation of their rights to protection from exploitation, to play, to an education, to health and to family life.

An estimated two million children worldwide face the horrors of exploitation in the transnational sex trade. Child sex tourism involves people who travel to engage in commercial sex acts with children. The lives of such prostituted children are appalling. Studies indicate that each of these children may be victimized by 100 to 1,500 perpetrators per year.⁴⁶ Prostituted children live in constant fear and often suffer from many physical ailments, including tuberculosis, infections, and physical injuries resulting from violence inflicted upon them.

Though they often go unreported, boys around the world also face the trauma of trafficking for commercial sexual exploitation. According to ILO and UNICEF,⁴⁷ two percent of those forced into commercial sexual exploitation are men or boys, but the practice might be far more widespread than reported due to social stigmas associated with sex with boys.

The sexual exploitation of boys may take place in informal, unorganized settings, making them both vulnerable to abuse and less likely to be identified by authorities charged with assisting them. Young street boys form relationships with older boys for protection, and are sometimes forced by these boys to have sex with older men for profit as part of the relationship. Public meeting places are often arranged, including parks, markets, bus terminals, rail stations, hotels, beaches, and movie theatres. When boys have pimps, they may endure injections with hormones to accelerate physical maturity and increase sexual performance, with painful results and long-term health consequences. Traffickers have also been known to lure boys into prostitution by making them dependent on drugs and alcohol.

Culture and stigma play a significant role in the victimization of boys in prostitution.⁴⁸ Sexual exploitation of boys is also found in tourist destinations.⁴⁹

⁴⁶ US Trafficking in Persons Report [2008] p.14

⁴⁷ US Trafficking in Persons Report [2008] p.9

⁴⁸ A different concern was highlighted by a research study on commercial sex in Costa Rica, which concluded: "Local demand for young boys arises because homosexuality is heavily stigmatized in Costa Rica, so 'respectable' Costa Rican men prefer to pick up boys from the street and take them

The hidden nature of these boys' trauma means they receive little or no help. Social stereotypes that presume boys cannot be exploited in prostitution often result in their exclusion from assistance, forcing many to remain silently in the sex trade.

Victim Trauma and Recovery

The psychological and physical effects of commercial sexual exploitation are profound and remain long after a victim escapes from her trafficker.

Trafficked women experience varying levels of trauma. Some victims are literally held captive, relentlessly battered and/or sexually violated. Others suffer less physical abuse, but are subjected to psychological torment and threats, living in fear of harm to themselves or their loved ones.⁵⁰ The symptoms are psychological reactions to trauma similar to those seen in survivors of torture, which include depression, anxiety, hostility and irritability, recurring nightmares and memories of abuse, difficulty concentrating and sleeping, and feelings of apathy or emotional detachment.⁵¹ The myriad public health implications of prostitution also include HIV/AIDS and other serious diseases.

While physical symptoms of abuse can be treated immediately after escape or rescue and the corresponding injuries can start healing immediately, the symptoms of post-traumatic stress that the majority of sex trafficked victims report take at least 90 days to decrease significantly.

somewhere discreet to use them rather than to enter into open homosexual relationships with their social and/or age equals." In: US Trafficking in Persons Report, 2008 p.9

⁴⁹ The beaches of Sri Lanka, Mexico, and Dominican Republic are host to men seeking sexual encounters with boys who are pimped by men or other boys. In Thailand, boys aged between 10 and 15 can earn \$280 a night having sex with foreign men. In some European cities, including in Great Britain and the Czech Republic, "rent boys," often very young, are exploited in train stations by incoming tourists. In: US Trafficking in Persons Report, 2008 p.9

⁵⁰ A 2006 study found that 76 percent of 207 trafficked women interviewed were physically assaulted by their trafficker, pimp, madam, brothel and club owner, clients, or boyfriend. The same study found that 90 percent of victims reported being physically forced or intimidated into sex or other sexual acts, and 91 percent of victims reported being threatened with death, beatings, increased debt, harm to their children and families, or re-trafficking. In: US Trafficking in Persons Report [2008], p.21

⁵¹ Field research published in 2003 of women in prostitution in nine countries concluded that 63 percent were raped, 71 percent were physically assaulted, and 68 percent met the criteria for post-traumatic stress disorder in the same range as treatment seeking combat veterans, battered women seeking shelter, and rape survivors and refugees from state-organized torture. In: US Trafficking in Persons Report [2008] p.21

1.4. Profile of traffickers

Trafficking is a high-profit, low-risk enterprise. The risk of getting caught are low because traffickers use a combination of coercive mechanisms in order to retain control over the migrant and thereby ensure that they are either unable or unwilling to contact or co-operate with the authorities. These mechanisms include:

- threat or use of violence, including torture or rape
- irregular immigration status and control of movement – traffickers do escort migrants to and from work and lock them in rooms and houses to stop them escaping.
- debt bondage
- emotional attachment
- lack of alternatives – these coercive mechanisms, combined with the fact that the migrant has no money to live on, let alone pay for a return ticket home, severely curtail their options.

These factors explain how traffickers maintain control over migrants and why the vast majority of trafficked migrants will not go to, or co-operate with, the authorities against their traffickers. Equally problematic is the fact that, even today, few law enforcement or other state officials are aware of what trafficking is and how it operates. This means that they often do not identify people they come into contact with as being trafficked, and consequently they miss the opportunity to take them out of the trafficking cycle and build a case against the trafficker.

Human traffickers prey on the vulnerable. Their targets are often children and young women, and their ploys are creative and ruthless, designed to trick, coerce, and win the confidence of potential victims.⁵²

Organized criminal groups have begun trafficking in persons as a supplement to other criminal activities, such as trafficking in illicit drugs, weapons or other lucrative commodities. These groups are also involved in crimes intended to protect illicit operations, including money-laundering, violence, intimidation and corruption of officials.

⁵² US Trafficking in Persons Report [2008], p.7

Recent years have seen the expansion of the involvement of criminal organizations in smuggling of migrants and trafficking in persons because of the extremely high profits and relatively low risks involved. Human trafficking may be carried out by a series of small, loosely connected organizations recruiting and selling victims from one to another as they move from the state of origin to a state of destination, or it may be carried out by large and sophisticated criminal organizations operating every stage of the process. In either scenario, few groups limit their criminal activities to trafficking in persons; other forms of trafficking or other crimes are almost always occurring.

The United Nations Convention against Transnational Organized Crime provides a broad definition of what constitutes an "organized crime group" and what is entailed by "transnational crime".

The Convention defines an organized criminal group as:

Definition of organized criminal group

"Organized criminal group shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly, or indirectly, a financial or other material benefit."⁵³

An offence is transnational under the Convention if, "(a) It is committed in more than one state; (b) It is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one state but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one state but has substantial effects in another state".⁵⁴

In 2002, UNODC undertook a pilot survey⁵⁵ of forty selected organized groups in sixteen countries and one region. The aim of the survey was to identify a striking diversity amongst the specific groups studied, evidencing the very different forms that transnational organized crime can take, with a variety of localities, activities and

⁵³ Article 2(a) of the United Nations Convention against Transnational Organized Crime

⁵⁴ Article 3(2), United Nations Convention against Transnational Organized Crime.

⁵⁵ The survey results, "Results of a Pilot Study of Forty Selected Organized Crime Groups in Sixteen Countries", are available at http://www.unodc.org/pdf/crime/publications/Pilot_survey.pdf

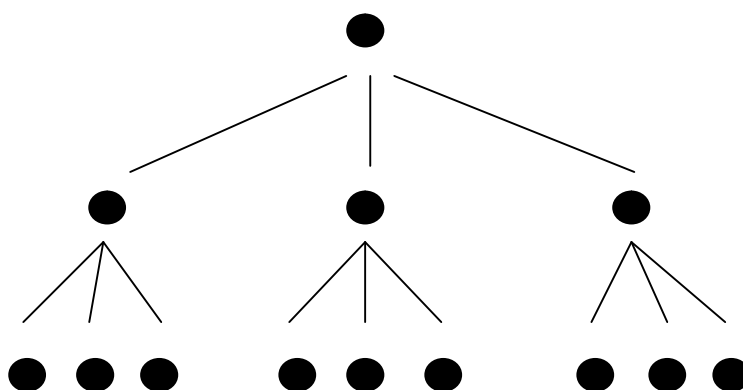
structures. This, in turn, however, allowed analysts to identify a number of important similarities between the groups in question and develop five possible standard typologies of transnational organized crime groups. Of the forty organized crime groups in the survey, eight were found to have trafficking in persons activities⁵⁶.

Despite the small sample of groups undertaking human trafficking activities, a clear distinction emerged based upon structure and the extent to which the group relied upon human trafficking activities.

According to the findings of the survey two major type of criminal groups can be identified.

- a) Criminal group with standard hierarchy: this group is characterized by strong internal lines of control and discipline. It has a single leadership structure, a strong social or ethnic identity. These are true mafia-like structures with international branches, generally involved in several forms of crime such as illegal arms dealing, drug trafficking and money laundering. They are networks that offer full “travel packages”, which include false passports, transport and accommodation. In other words, one organisation has complete control from the country of origin, via transit countries through to the country of destination

Figure 6: Organized crime group typologies: “Standard hierarchy”⁵⁷

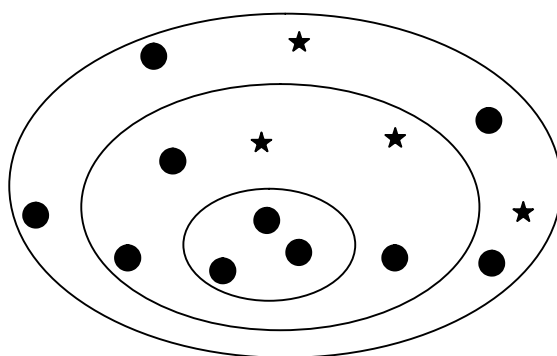


⁵⁶ of those, two groups were almost exclusively involved in human trafficking, while for the remaining six, human trafficking was one of a number of diversified criminal activities undertaken by the group. In: UNODC report [2006]: Trafficking in Persons. Global Patterns

⁵⁷ UNODC report [2006]: Trafficking in Persons. Global Patterns, p.69

- b) Criminal group with core group but loosely knit network: such groups are characterized as consisting of a limited number of individuals forming a relatively tight and structured core group surrounded by a loose network of "associates", with the small size of the group helping to maintain internal discipline. Such groups seldom have a social or ethnic identity. "Core groups" are strictly profit-orientated and opportunistic, shifting between illegal activities on the basis of where the most profits can be generated. These criminal organisations do not really operate in any well defined organised structure, and have little regards for the victims, due to the fact that they make their expected profit from the passage as the transfer of migrants in always accompanied by some form of sale, at an ever-increasing price.

Figure 7: Organized crime group typologies: "Core group"⁵⁸



In order to be able to investigate trafficking in persons cases, and prosecute and convict offenders, it requires identification of traffickers. Unfortunately, relatively few cases are prosecuted successfully resulting in a very small number of convictions.

In many countries most of the traffickers involved in the recruitment phase are more likely to be of the same nationality or ethnic origin of the victims that they target.⁵⁹ Even though, a very limited number of source institutions provided data on the gender of the traffickers, reports, however, talk about existence of human trafficking groups of men and women operating together, as well as men- and women-only groups. Interestingly, reports of trafficking in persons that mention male and female

⁵⁸ UNODC report [2006]: Trafficking in Persons. Global Patterns, p.69

⁵⁹ Europol report [2008]: Trafficking in human beings in the European Union. A Europol perspective, p.4

traffickers working together or mention only male traffickers also tend to report victims to be women, men or children. For sources that report instances where the traffickers are all female, the trafficking victims are reported to be women or girls.

Although men are more commonly identified by the media as traffickers and exploiters of victims in the commercial sex trade, a closer look at trafficking reveals that women are frequently culpable offenders too. Women as recruiters, brothel operators, and even “clients” of commercial sexual exploitation are more common occurrences than previously thought.⁶⁰

Female trafficking victims in Europe and Central and South Asia are frequently recruited and trafficked into prostitution by other women, sometimes women who were themselves previously trafficking victims.

Women also serve as pimps and madams, brokering illicit commercial sexual transactions, that include trafficking. Criminal organizations often employ female traffickers and mostly for trafficking in children, because governments simply do not suspect women of committing such a terrible crime and even if they are caught, they frequently exhibit leniency toward female criminals. In many countries in Eurasia, female traffickers are released from serving prison time when they are pregnant or mothers of young children and receive lighter sentences than men, often because they are found guilty of low-level recruitment offences.

1.5. Process of trafficking in human beings

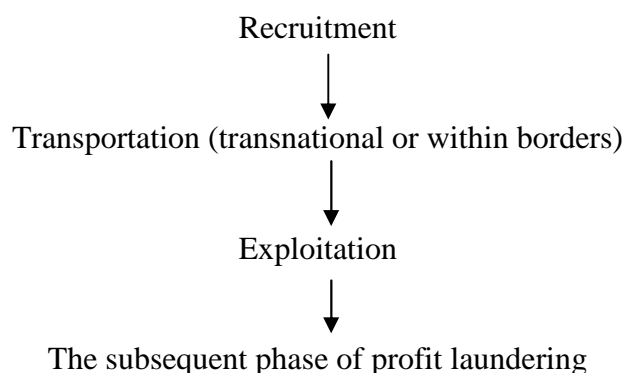
Trafficking in human beings should be seen as a process rather than a single offence. It usually starts with a consensual agreement between the trafficker and the potential victim and then ending in an ever-narrower labyrinth where choices are very limited or perceived to be very limited on behalf of the victim.

The process of human trafficking begins with the abduction or recruitment of a person. It continues with the transportation from the place of origin to the place of destination. In case of transnational trafficking in persons, the process includes the entry of the individual into another country. This is followed by the exploitation phase during which the victim is forced into sexual or labour servitude. This often

⁶⁰ US Trafficking in Persons Report [2008] p.11

includes violence against the victim. A further phase may occur that does not involve the victim but rather the offender.

Depending upon the size and sophistication of the human trafficking operation, the criminal (organization) may find it necessary to launder the criminal proceeds. There may be further links to other criminal offences such as the smuggling of migrants, weapons or drugs.



Those victims who hold the necessary documents – whether or not they are fake or have been forged – can make use of regular means of transport such as aircraft and trains. Those victims who travel with unreliable documents or without any papers, has to avoid any checks while crossing borders into the country of transit and/or final destination. As a result, people are often transported as a “commodity” in trucks or ships. There is generally little to eat or drink, no sanitary arrangements and a shortage of air. If they seem likely to be discovered, most smugglers choose to make their escape and leave the stowaways to their fate. Another frequently used method of border crossing is by foot across the “green borders”.⁶¹ During the journey many victims become involved in transfers between smugglers and traffickers.

Upon arrival in the country of destination, most migrants appear to be highly vulnerable and fairly dependent on those who will have organised their journey, lacking documents and financial resources, deprived of all communication and given over to abuse and violence. Traffickers’ activities involve putting victims in a position of dependency. The debt is fictitious, or at any rate many times higher than the actual costs incurred and sometimes increases over time. Many victims have to

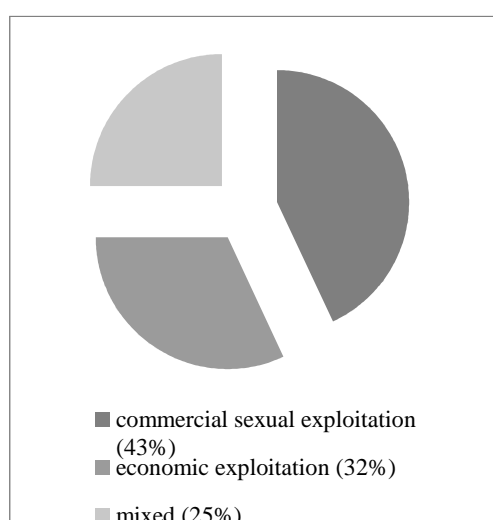
⁶¹ i.e. forest-covered mountain ranges or rivers

incur debts among their own circle of acquaintances or with the criminal networks themselves in order to pay these extremely high intermediation costs. By the time the victims have realised what kind of a situation they have landed themselves in, they are scarcely able to return home because of these debts. The debt thus legitimises the financial exploitation of the victims vis-a-vis their exploiters. Victims' earnings have to be handed over to their exploiters in whole or in part in order to pay off the accumulated debt. To increase a victims' state of dependency and restrict their freedom of movement still further, their identity papers are frequently confiscated when they arrive at their final destination. Secondly, attempts are made to prevent victims from seeking help. This is, for example, achieved by physically curtailing their freedom and by undermining their trust in others, so that they no longer dare to seek help. The exploiters look for workplaces where they can easily keep an eye on the victims and usually also restrict their freedom of movement outside working hours by reminding them of their illegal status or pointing out that they will be prosecuted for forgery if they are found to be in possession of false identification papers.

1.6. Forms of trafficking in human beings

Human trafficking takes many different forms. It is dynamic and adaptable and, like many other forms of criminal activity, it is constantly changing in order to defeat efforts by law enforcement to prevent it.

Figure 8: Forms of trafficking⁶²



According to the ILO, at least 12.3 million persons are currently victims of forced labour. Of these, 2.5 million persons were trafficked into their forced labour situation. Out of these 2.5 million persons trafficked into forced labour worldwide, 43 percent (approximately 1 million persons) are trafficked into commercial sexual exploitation and 32 percent

⁶² ILO report [2005]: Global alliance against forced labour, p.14

(approximately 768 thousands persons) are trafficked into other forms of economic exploitation. 25 percent (approximately 600 thousands persons) are trafficked for a mixture of these two main purpose.

Figure 9: Victims of trafficking by sex⁶³



Figure 9 show results disaggregated by sex, based on those sources where such information was available. Regarding forced commercial sexual exploitation, an overwhelming majority of 98 percent are women and girls. In forced economic exploitation, while women and girls represent 56 percent of victims, men and boys nevertheless account for 44 percent.

1.6.1. Sexual exploitation⁶⁴

Sexual exploitation is the most common form of trafficking in human beings. Many victims of forced sexual exploitation have been deceived into this abusive treatment, after originally contracting to undertake diverse economic activities.⁶⁵ Other common recruitment methods for sexual exploitation are misleading advertisements, job offers

⁶³ ILO report [2005]: Global alliance against forced labour, p.15

⁶⁴ In the case of the UN Trafficking Protocol the terms “exploitation of the prostitution of others” and “sexual exploitation” were intentionally left undefined to allow all states, independent of their domestic policies on prostitution, to ratify the Protocol.

⁶⁵ In some countries it is commonplace for female migrants to apply for an “entertainment visa”. In Japan or Australia, for example women have entered the country legally under such visa arrangements in the expectation of working in dance clubs, only to be forced later to provide sexual services as well. In: ILO report [2005]: Global alliance against forced labour, p.51

in media, relatives, individual traffickers posing as friends or bridal agencies. Sex trafficking comprises a significant portion of overall trafficking and the majority of transnational modern-day slavery. Sex trafficking would not exist without the demand for commercial sex flourishing around the world.

The sex industry has become highly diversified and global in recent years. Technological developments such as the internet, as well as the proliferation of tourism, escort agencies, and media outlets that advertise sexual services, have all contributed to the growing demand for commercial sex. Many cases involve a high degree of violence, including abduction, starvation and locking up of victims. Usually the trafficked girls are watched constantly. The girls are accompanied to the place where they have to work as prostitutes and their exploiters try to ensure that the girls do not keep back any money or attempt to escape. These kinds of practices are never found among African women. This is because usually, before they leave their country of origin, a sort of agreement is entered into between the “madam”, the girl and sometimes the girl’s parents. An agreement of this kind is accompanied by a number of rituals, e.g. voodoo, which the girl has to undergo. These rituals involve her having to give up parts of herself – fingernails, hair, menstrual blood and the like, which are made into a package. She then has to swear that she will never tell anyone of who helped her to go to the West and is warned that if she does, the voodoo will destroy her and her family. It is not rare that the victims protect their pimps/madams. This form of “protection” is based on the hope that the original promises made by the exploiters will be kept as long as victims do what is required of them. This phenomenon is known as “identification with the aggressor”. In other words, the victims try to protect themselves by placating as far as possible those in whose power they find themselves. Victims of sexual exploitation are found in the various settings of prostitution: street and bar prostitution, shop-fronts, cabarets, massage parlours and private houses. The settings of prostitution that are least visible give the pimps the most opportunity to abuse the girls working for them.

Sex tourism involves people who travel from their own country - often a country where (child) sexual exploitation is illegal or culturally abhorrent - to another country where they engage in commercial sex acts with children. Tourists engaging

in sex tourism often travel to developing countries looking for anonymity and the availability of children in prostitution.

The crime is typically fuelled by weak law enforcement, corruption, the Internet, ease of travel, and poverty. Sex offenders come from all socio-economic backgrounds and may in some cases hold positions of trust.⁶⁶

The expansion of tourism over the past half-century has more recently been accompanied by an increase in child sex tourism. The main perpetrators of child sexual exploitation in tourism are not 'real' paedophiles but people who take advantage of being in another country to ignore the social taboos which would normally govern their behaviour ("preferential abusers" and "occasional abusers").

The flow of sex tourists are mainly from the economically developed countries of Western Europe, North America and Australasia to the poorer countries in other regions. Initially concentrated in South East Asia, child sex tourism has spread to many countries in Asia itself, South America, the Caribbean and Africa. Similarly, there are a number of destinations for sex tourism in developed countries. Moreover, certain countries in Eastern Europe are also beginning to attract sex tourists and export child prostitution to other countries.⁶⁷

Noticeable is that children are abused not solely by paedophiles but also by occasional abusers. The reason for this can be that when a tourist is away from his home there is an element of anonymity which might release him/her from the usual social restraints which determine behaviour in the home country. Thus, a man who would have never contemplated visiting a brothel in his home town might often do so in a foreign country where there is little likelihood of being recognised.⁶⁸ Another reason is that tourists who consciously or unconsciously are convinced of the inferiority of other ethnic groups usually have their racist attitudes reinforced in foreign countries. Such people have no scruples about exploiting others because they consider them to be inferior. The experience of economic superiority in a poorer country tempts some tourists to sexually exploit and abuse local people. Finally the

⁶⁶ Testimony of a retired US schoolteacher: "On this trip, I've had sex with a 14-year-old girl in Mexico and a 15-year old in Colombia. I'm helping them financially. If they don't have sex with me, they may not have enough food. If someone has a problem with me doing this, let UNICEF feed them." In: US Trafficking in Persons Report [2008], p.15

⁶⁷ European Commission COM (1996) 547, p.3

⁶⁸ European Commission COM (1996) 547, p.15

ease with which tourists in some countries can obtain a child as a sexual partner is in itself a powerful incentive for some to try the novelty of a child sex partner.⁶⁹

Promoters of child sex tourism can also be the individuals or companies who write and publish travel guides which support sex tourism at least by implication. Some guides cater simply and solely for the sex tourist market and provide a wealth of information for the child abuser. There are also several small tour operator companies in Europe, Australia, North America and Japan which promote and facilitate sex tourism by identifying resorts where prostitution is widespread, also negotiating deals with local hotels to ensure that their clients will not be charged for “inviting” companions to their room for the night or even “arranging” 24-hour female “guides” for clients.⁷⁰

Children exploited for commercial sex

Each year, more than two million children are exploited in the global commercial sex trade.

Many of these children are trapped in prostitution. The commercial sexual exploitation of children is trafficking, regardless of circumstances. International covenants and protocols obligate criminalization of the commercial sexual exploitation of children. There can be no exceptions, no cultural or socio-economic rationalizations that prevent the rescue of children from sexual servitude. Terms such as “child sex worker” are unacceptable because they falsely sanitize the brutality of this exploitation.

Sexual exploitation of children is a shameful assault on the dignity of children and a form of violent child abuse. It has devastating consequences for minors, which may include long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possibly death.

Several countries have experimented with legalizing prostitution. These countries might argue that regulation can provide standardized protection from disease and violence, prevent the involvement of organized crime, impose government oversight

⁶⁹ European Commission COM (1996) 547, p.15

⁷⁰ European Commission COM (1996) 547, p.16

on a sector that previously existed beyond the law, and even help reduce sex trafficking.

Germany and the Netherlands legalized prostitution within a government-regulated sector between 1999 and 2002. New Zealand and several states in Australia did too. Other countries - including Austria, Belgium, France, Italy, and Switzerland - also regulate prostitution.⁷¹ However, where there is legal prostitution, governments have found they have to address ways that sex trafficking continues to flourish. Legalization and regulation have not dried up sex trafficking, which has continued apace. Organized crime networks simply do not register with the government, pay taxes, or protect people in prostitution. As government policies have shifted, so have criminal methods. Practices show⁷² that in those countries where prostitution is legalized, on one hand, the business moves to private houses, and/or to neighbouring countries.

1.6.2. Economic exploitation

Although sexual exploitation appears to be the most discussed form of trafficking in human beings, we should not overlook the reality of trafficking for economic exploitation, like domestic workers, sweatshops (garment and textiles sectors, etc.), catering and services industry, begging and street peddling, sports – in particular in the field of football. They take place in mainstream economic sectors, such as agriculture, construction or the service industry where there is a high demand for cheap and exploitable labour.

It is largely a hidden crime which has traditionally not been a priority for law enforcement action, in general terms it has remained undetected.

Forced Labour

For several years, human trafficking for sexual exploitation has dominated discussions concerning the purpose of trafficking in persons. Trafficking in persons for forced labour, has not been viewed as a major problem in many countries, and the identification of trafficking victims who are exploited through forced labour has been even less successful than in the case of sexual exploitation. In many countries,

⁷¹ US Trafficking in Persons Report [2008], p.29

⁷² European Commission study is expected on the issue

human trafficking for forced labour has only been included in legislation in recent years in order to comply with the definition of the Trafficking Protocol. While women and girls are identified as victims of trafficking in human beings for sexual exploitation, men are expected to be trafficked for forced labour purposes. With regard to further reasons for this, there might be a limited awareness among authorities in many countries of labour situations that are actually incidents of human trafficking. Forced labour is a form of human trafficking that can be harder to identify and estimate than sex trafficking. It may not involve the same criminal networks profiting from transnational sex trafficking, but may instead involve individuals who subject anywhere from one to hundreds of workers to involuntary servitude, perhaps through forced or coerced household work or work at a factory.

In some countries, trafficking for forced labour is not seen as a crime but rather an issue to be dealt with in the area of labour regulations and trade unions. In addition, there is the opinion that public media finds sexual exploitation a more appealing topic compared to forced labour, and, thereby, is naturally biased in favour of reporting instances of sexual exploitation.

Forced labour is not defined in the Trafficking Protocol. When seeking to identify whether sources reported cases of forced labour, the International Labour Organization's (ILO) definition was used.

Definition of forced labour by ILO

“all work or service which is exact from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”⁷³

According to the ILO definition, forced labour comprises two basic elements, which are: (a) the work or service of the trafficked person is exacted under the menace of penalty; and, (b) it is undertaken involuntarily. Based on the definition, domestic servitude, begging and other forms of slavery-type practices were included in the category of forced labour.

Forced Child Labour

Most international organizations and national laws recognize that children may legally engage in light work. In contrast, the worst forms of child labour are being

⁷³ Article 2(1) of the ILO Forced Labour Convention, 1930 (No.29)

targeted for eradication by nations across the globe. The sale and trafficking of children and their entrapment in bonded and forced labour are clearly among the worst forms of child labour. Any child who is subject to involuntary servitude, debt bondage, peonage, or slavery through the use of force, fraud, or coercion is a victim of trafficking in persons regardless of the location of that exploitation.

Bonded Labour

One form of force or coercion is the use of a bond, or debt, to keep a person under subjugation. This is referred to in law and policy as “bonded labour” or “debt bondage.” It is a form of exploitation related to trafficking in the UN TIP Protocol. Many workers around the world fall victim to debt bondage when traffickers or recruiters unlawfully exploit an initial debt the worker assumed as part of the terms of employment, or when workers inherit debt in more traditional systems of bonded labour. Bonded labour is characteristic mostly on South Asia, where huge numbers of people are enslaved from generation to generation.

Involuntary Domestic Servitude

Domestic workers, mainly women may be trapped in servitude through the use of force or coercion, such as physical (including sexual) or emotional abuse. Children are particularly vulnerable. It is them who most likely evolve the Stockholm syndrome.⁷⁴ Domestic servitude is particularly difficult to detect because it occurs in private homes, which are often unregulated by public authorities. For example, there is great demand in some wealthier countries of Asia and the Middle East for domestic servants who sometimes fall victim to conditions of involuntary servitude. According to UNODC, where the form of exploitation is reported, sources reporting human trafficking cases for sexual exploitation outnumber those reporting cases of forced labour in all regions. The degree to which there is a discrepancy between these two types of exploitation varies between regions and sub-regions. In Central and South Eastern Europe, sexual exploitation is the predominant form of

⁷⁴ Stockholm syndrome describes the behaviour of kidnapped victims who, over time, become sympathetic to their captors. The name derives from a 1973 hostage incident in Stockholm, Sweden. At the end of six days of captivity in a bank, several kidnap victims became emotionally attached to their victimizers, they actually resisted rescue attempts, and afterwards refused to testify against their captors. It's important to note that these symptoms occur under tremendous emotional and often physical coercion. The behaviour is considered a common survival strategy for victims of interpersonal abuse, and has been observed in battered spouses, abused children, prisoners of war, and concentration camp survivors.

exploitation reported, in comparison to forced labour. Sexual exploitation is also highly reported in Latin America and the Caribbean, Western Europe and the Commonwealth of Independent States. In Africa, forced labour cases are reported by almost 40% of the sources reporting the form of exploitation in that region. Forced labour is also frequently reported in Asia, Oceania and North America by sources reporting cases of trafficking in persons in those regions.

1.6.3. Other forms of trafficking in human beings

It is evident that trafficking is an evolving phenomenon. Traffickers change their mechanisms and *modus operandi* according to the changing conditions they find in the field. A comparable mechanism for the ongoing adjustment of anti-trafficking policies is lacking at national and regional levels. Furthermore, counter-trafficking policies are not evaluated with respect of their impact.

Besides the „classic“ forms of trafficking, there are many other forms of exploitation of people, such as forced begging, forced marriages, human trafficking for surrogate mothering or reproduction, trafficking in children for illegal adoption, human trafficking for exploitation in military formations, exploitation of soldiers and prisoners for forced labour as well as organ trafficking.

This classification is not exhaustive, as the forms of human trafficking have the capacity to reinvent themselves. Traffickers adapt quickly to the anti-trafficking-measures taken against them, as well as to changing social, economic or political situations, with new forms of human trafficking constantly emerging. As a result, it is important to keep this classification open.

Trafficking for forced begging

Among the myriad dangers street children face, forced begging is one of the most common. Children naturally garner sympathy from passers-by, making them prime targets for organized criminal gangs and others seeking to exploit them for profit. In some cases traffickers trick children into forced begging with false promises of better opportunities in the city or in foreign countries.⁷⁵ Street children, without the support of families or social services, are also vulnerable to trafficking for forced begging.

⁷⁵ US Trafficking in Persons Report [2008], p.33

All children forced into begging face conditions such as harsh weather, abuse by other beggars, harassment from the public and police, and physical and verbal assault by their captors. The gangs also get children addicted to drugs and sexually harass the girls to extend their control. When the children do not return with a minimum amount of money, they are sometimes severely beaten, to the point of having permanent scars. These children rarely keep any of their earnings from the money they receive from patrons.

Another new phenomenon is the trafficking of disabled people for begging for the same reasons and methods as of begging of street children.

Forced marriages

A forced marriage is considered as a form of trafficking in persons and is a severe human rights violation. “No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.”⁷⁶

A forced marriage is a marriage that is performed under coercion and without the full and informed consent or free will of both parties. Being under coercion includes both physical and emotional pressure. Some victims of forced marriage are tricked into going to another country by their families. Victims fall prey to forced marriage through deception, abduction, coercion, fear, and inducements. Victims of forced marriages might be exploited in domestic situations, (e.g. housemaids), and might be forced to take care for sick and aged relatives. They often experience physical violence, rape (e.g. forced pregnancies and child bearing), abduction, torture, false imprisonment and enslavement, sexual abuse, mental and emotional abuse, and at times, murder.

A forced marriage may be between children, a child and an adult, or between adults. Forced marriages are not limited to women and girls, as boys and men are also forced to marry against their will.

⁷⁶ Article 1 of Convention on consent to marriage, minimum age for marriage and registration of marriages, Office of the High Commissioner for Human Rights, Resolution 1763 A (XVII) of 7 November 1996

Illegal adoption as a form of trafficking

An adoption responds to the need of a child to live in a family and to the wish of a couple to be parents. Terre des hommes⁷⁷ considers that international adoption is an “industry”, generating a turnover of some 8 billion Swiss Francs a year. Started in a humanitarian spirit, inter-country adoption is becoming today a business which often takes on the form of traffic.

In theory, governments and competent authorities in both countries of origin and destination agree on the principle for the right of the child to have a family and not the contrary (the right to have a child). And yet, in practice, existing procedures very seldom allow this precept to be respected. The trafficking of children for international adoption has grown steadily over the past twenty years. The decrease of adoptable children in Western countries and the imbalance between the number of applicants and the limited number of suitable children has resulted in the development of an illegal alternative market.

Trafficking for international adoption can be organized by the future adoptive parents themselves or a third party. In the first case, the abuses result from the action of the adopters; in the second case, middle-men kidnap children, put pressure on mothers to abandon their children or bribe high-ranking officials. Trafficking for adoption can consist of the “purchase” of children from their natural parents, the obtaining of the biological parent's consent through fraud, by exercising considerable pressure on single mothers or even by kidnapping babies. In this latter case, the kidnapping is combined with the falsification of the civil status of the newborn child.

According to the Council of Europe's fact-finding mission⁷⁸ in Ukraine and Moldova, some maternity clinics were involved in trafficking newborn children for illegal adoption. There have been cases, where mothers had given birth to babies who were in perfect health but had been taken away from them immediately. They of course never saw them again and were told that they had died shortly after birth. None of the mothers was allowed to see the body, which, according to the hospital authorities, had been buried by the hospital staff. Most probably these children ended

⁷⁷ Terre des Hommes is a network of eleven national organisations working for the rights of children and to promote equitable development without racial, religious, political, cultural or gender-based discrimination.

⁷⁸ Parliamentary Assembly of the Council of Europe Report: Disappearance of newborn babies for illegal adoption in Europe, Doc:11461, 7 December 2007

up in the arms of traffickers. According to some NGOs the disappearances are not an isolated instance and there have been similar occurrences in Moldova, Bulgaria, Romania and many other countries. In Moldova, according to staff of La Strada, illegal adoption exists mainly among prostitution victims. The women concerned avoid giving birth in hospital and go abroad. Young women who abandon their children are generally involved in networks whose ringleaders allow the mothers no parental rights.

According to the European Parliament's study⁷⁹ within the European Union there has been no case of trafficking which would have required referral to the Permanent Bureau of the Hague Conference. Despite this, receiving countries do admit that it is no easy matter for the competent authorities to achieve a complete overview of all adoption.

Some countries point out that most cases of trafficking and abuse relate to countries that have not ratified the Hague Convention and thus it is particularly difficult to monitor enactment of the principle of subsidiarity in non-Hague adoptions.⁸⁰ However there have been reports in the media about cases where adopted children have been sexually abused or maltreated in their adoptive family.⁸¹

Child Soldiers

Child soldiering is a unique and severe manifestation of trafficking in persons that involves the unlawful recruitment of children through force, fraud, or coercion to be exploited for their labour or to be abused as sex slaves in conflict areas. Such unlawful practices may be perpetrated by government forces, paramilitary organizations, or rebel groups. UNICEF estimates that more than 300,000 children under 18 are currently being exploited in more than 30 armed conflicts worldwide. While the majority of child soldiers are between the ages of 15 and 18, some are as young as 7 or 8 years of age.⁸²

⁷⁹ European Parliament's DG for internal policies, Policy Department C Citizens' Rights and Constitutional Affairs: International Adoption in the European Union, 2009, p.129

⁸⁰ European Parliament's DG for internal policies, Policy Department C Citizens' Rights and Constitutional Affairs: International Adoption in the European Union, 2009, p.129

⁸¹ European Parliament's DG for internal policies, Policy Department C Citizens' Rights and Constitutional Affairs: International Adoption in the European Union, 2009, p. 130

⁸² US Trafficking in Persons Report [2008], p.21

Many children are abducted to be used as combatants. Others are made unlawfully to serve as porters, cooks, guards, servants, messengers, or spies. Many young girls are forced to marry or have sex with male combatants and are at high risk of unwanted pregnancies. Male and female child soldiers are often sexually abused and are at high risk of contracting sexually transmitted diseases.

Some children have been forced to commit atrocities against their families and communities. Child soldiers are often killed or wounded, with survivors often suffering multiple traumas and psychological scarring. Their personal development is often irreparably damaged. Returning child soldiers are often rejected by their home communities.

Child soldiers are a global phenomenon. The problem is most critical in Africa and Asia, but armed groups in the Americas and the Middle East also unlawfully use children in conflict areas.

Organ trafficking

Rapid progress in medical science and technology has transformed organ transplantation, and kidney transplantation in particular, into a routine medical procedure practiced in hospitals across the world. Five-year survival rates for most organ transplantation programmes are reaching the level of 70%, thereby rapidly increasing the demand for organ donation.

Trafficking in organs – like trafficking in human beings or drugs – is demand driven. Desperate patients are willing to travel great distances and take a great risk of insecurity to obtain the transplants they need. In Western Europe alone, 40 thousand patients are waiting for a kidney transplant. Some 15% to 30% of patients die on waiting lists, as a result of chronic shortage of organs. The waiting time for transplantation, currently about three years, will reach almost ten years by the year 2010. The demand for organs is fuelling a whole black market. International criminal organisations have identified this lucrative opportunity caused by the “gap” between organ supply and demand, putting more pressure on people in extreme poverty to resort to selling their organs.

Organ trafficking is not a new problem worldwide. In the 1980s experts began to notice, what was to become known as “transplant tourism” when prosperous Asians

began travelling to India and other parts of Southeast Asia to receive organs from poor donors. Since then, other destinations have opened up and the market has expanded.

While current estimations show that organ trafficking remains on a relatively modest scale in Europe, the issue is nevertheless of serious concern, since it is very likely that further progress in medical science will continue to increase the gap between the supply of, and demand for, organs. It has been left out of the EU Framework Decision on combating trafficking in human beings because the EU Member States, on the investigation of Europol, have answered that they have no case of organ trafficking.

The trade in kidneys is the most widespread,⁸³ but the press and Organs Watch investigations have also revealed illegal trafficking in corneas, lungs, livers and hearts. Trade in blood and plasma is the most obvious but there is also trafficking in skin (arms, legs, torso), sperm and ovocytes.

The organisation has found, on the basis of these investigations, that organ trafficking exists in both rich countries and in poor ones. We can differentiate organ-exporting and organ-importing countries. The term “organ-importing countries” refers to the countries of origin of the patients going overseas to purchase organs for transplantation. A report by Organs Watch, an organization based at the University of California, USA, identified Australia, Canada, Israel, Japan, Oman, Saudi Arabia and the USA as major organ-importing countries.⁸⁴ On the other hand, India was the most commonly known organ-exporting country. However, after passing a law banning the organ trade, Philippines has become a real open-air human organ market.⁸⁵ Other organ-exporting countries are Pakistan, Bolivia, Brazil, Iraq, Israel, the Republic of Moldova, Peru and Turkey.⁸⁶

⁸³ Kidneys are generally supplied by live ‘donors’ in underdeveloped countries to developed ones; “...the circulation of kidneys followed established routes of capital from South to North, from East to West, from poorer to more affluent bodies, from black and brown bodies to white ones and from female to male or from poor, low status men to more affluent men. Women are rarely the recipients of purchased organs anywhere in the world.” Sheper-Hughes, Nancy., „Keeping an eye on the global traffic in human organs“, In: UN.GIFT background paper

⁸⁴ Shimazono Yosuke [2007]: The state of the international organ trade: a provisional picture based on integration of available information

⁸⁵ Nancy Scheper-Hughes, a researcher who founded Organs Watch, explains that the worst place for organ trafficking is undoubtedly the Philippines. Kidneys are sold there for less than 1000 USD (the price of a motorcycle or a television).

⁸⁶ Shimazono Yosuke [2007]: The state of the international organ trade: a provisional picture based on integration of available information

The new route for this clandestine surgery is said to link primarily three countries: Israel, Turkey and Moldova. Three countries with three separate functions: Israel provides the purchasers, Moldova the vendors and Turkey is the location for these rather special transplant operations. Along the same lines, a network linking Brazil (vendors), Israel (purchasers) and the port of Durban in South Africa (clinic) was dismantled in 2004.

Concerning China, there is no doubt any longer that the trafficking of organs of sentenced to death prisoners actually existed. It is established that the organs of those sentenced to death were used for transplants without the consent of the prisoners concerned. It is difficult, however, to estimate the scale of this phenomenon. Serious elements lead to think that Falun Gong practitioners are victims of live organ harvesting. This practice would be in conformity with the repression's policy carried out by the authorities in order to eradicate Falun Gong practitioners, considered dangerous by the power in place. Either the practitioners concerned would die because of the surgical intervention, or they would be killed after it. But, in all the cases, they would be incinerated.⁸⁷

As with human trafficking for other exploitative purposes, victims of trafficking for the purpose of organ removal are often recruited from vulnerable groups (for instance, those who live in extreme poverty) and traffickers are often part of transnational organised crime groups. Organized crime groups lure people abroad under false promises and convince or force them to sell their organs. Recipients of the organs must pay a much higher price than donors receive, part of which benefits brokers, surgeons and hospital directors, who have been reported to be involved in the organized criminal network. The commission of this crime can be distinguished from other form of trafficking in persons in terms of the sectors from which traffickers and organ 'brokers' derive; doctors and other health-care practitioners, ambulance drivers and mortuary workers are often involved in organ trafficking in addition to those involved in other human trafficking networks.

⁸⁷ An independent investigation published in July 2006 concludes that "the government of China and its agencies in numerous parts of the country, in particular hospitals but also detention centres and "people's courts" since 1999 have put to death a large but unknown number of Falun Gong prisoners of conscience. Their vital organs, including hearts, kidneys, livers and corneas, were virtually simultaneously seized involuntarily for sale at high prices, sometimes to foreigners, who normally face long waits for voluntary donations of such organs in their home countries." In: Matas, D. and Kilgour, D.: Report into allegations of organ harvesting of Falun Gong practitioners in China, 6 July 2006

The Report of the Secretary-General⁸⁸ touches upon the issue of trafficking in children for the purpose of organ removal. While there is no conclusive evidence regarding such trafficking, it is noted that many abducted or missing children have subsequently been found dead with certain organs removed. The report notes here that it is medically possible to transplant a child's organ into an adult's body.

In the situation of organ removal, many people consent to the removal of their organ, but there may be deception as to the amount of payment for the organ or there will be no payment at all. They also may not be fully informed as to the nature of the procedure, recovery and the impact of the organ removal on their health. Alternatively, consent may be obtained through varying degrees of coercion or abuse of vulnerability. The term "abuse of a position of vulnerability" 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.

The commission of this crime can be distinguished from other forms of trafficking in persons in terms of the sectors from which traffickers and organ 'brokers' derive; doctors and other health-care practitioners, ambulance drivers and mortuary workers are often involved in organ trafficking in addition to those involved in other criminal trafficking networks.

Trade and trafficking in organs allegedly involves two types of "markets" one which is organised on the basis of organs sold "voluntarily" to willing purchasers, and a coercive market, involving organs removed by force. In this context, there are various ways that organs can be procured, including the following *modus operandi*:

Ø Removal of organs by force

- Kidnap, killing and sale of people, especially children, for organs.
- Removal of kidneys through deception or coercion. There have been cases where a victim will go to a doctor or hospital for an unrelated illness or accident, but in the hospital, the person's kidney is removed without their knowledge or consent.

⁸⁸ The Report of the Secretary-General to the Commission on Crime Prevention and Criminal Justice, on Preventing, combating and punishing trafficking in human organs, 21 February 2006, E/CN.15/2006/10, paragraph 81. The full report is available at: <http://www.unodc.org/unodc/en/commissions/CCPCJ/session/15.html>

- Victim is recruited and taken abroad for an unspecified job that then fails to materialize. In some cases, victims may be put under anaesthetic and wake to find their kidney has been removed. Or person may be given ‘option’ to sell a kidney or heavily threatened or coerced into doing so through violence.
- Organs are removed from bodies of people who have been declared brain-dead prematurely.

Ø Removal of organs by consent

- Victims may agree to sell their organ and enter into a formal or informal contract to do so, but they are not paid at all or in full.
- Person may be deceived by surgeon or broker as to the procedures and consequences of the organ removal (e.g. they may tell the victim that the operation is minor, that they can return to work immediately and/or that they will not suffer adverse affects from the removal of one ‘dormant’ kidney.

In cases where the sale of organs is voluntary, the market is sustained by poverty. This market primarily involves the very poorest, who sell an organ to survive. Middlemen, who are paid massive commissions, undertake to recruit donors from the poorest social strata. Apart from the ethical problems posed by this market it entails, above all, unacceptable consequences for the donor, who undergoes an operation in dubious circumstances and does not have any serious medical follow-up due to financial and other reasons.⁸⁹ However, it is not only the donor, who is facing risks but also the recipient, among others transmission of HIV and hepatitis B and C viruses. The operations are mostly carried out in private clinics by unscrupulous surgeons. The operations may take place in the recipient’s country, but as some countries become more vigilant in applying the ban on the trade in organs, medical “transplant tourism” is developing. In their case, arrangements are made for the recipient to stay at well-equipped private clinic in the donor’s country, where the legislation is more permissive or the surgeons are less particular.

As with any criminal offence, trafficking in persons for any exploitative purpose, prosecutions have been relatively low and weak in scope. In prosecutions relating to trafficking in persons for organ removal or trafficking in organs, the focus has been

⁸⁹ The investigation by Organs Watch reveal that donor frequently suffer serious, or even irreversible, medical problems after the organ is removed, and that they are then left to their fate.

on low-level brokers rather than the higher-level medical staff. Sentences have also tended to be light.

Even though, organ theft and trafficking are prohibited in most countries' legislation, which according to the experts is not stopping them becoming increasingly important. The police have virtually no chance against the organ mafia. And when the trade is permitted, the police are up against the silence of a donor who has been rewarded, a recipient who has gained a few years of life, and an intermediary who has taken his cut. The differences between legislation add further to the difficulties.

The issue is raising ethical questions. Should the organ market be legalized? A fundamental debate sets those who advocate a total ban on the sale of organs (prohibition in law, with effective measures to combat violations) against the supporters of a legal, regulated and controlled market in organs. Since appealing for donations produces few results, there are those who advocate, liberalising the market in order to put a stop to its criminal activities. Others, such as the WHO, are categorically opposed to legalising a market in the human body.

A compromise solution has been adopted at this stage by the European Community; this provides for compensation for the donor (reimbursement of medical expenses and compensation for the loss sustained). According to the 2004 Directive on human tissues and cells in the European Union, compensation is permitted provided that it "is strictly limited to making good the expenses and inconveniences related to the donation."

While the prohibition of organ trafficking is legally established in the Council of Europe member states, most countries still have legislative loopholes in this domain. Criminal responsibility in organ trafficking is rarely clearly specified in national criminal codes. Criminal responsibility should include brokers, intermediaries, hospital/nursing staff and medical laboratory technicians involved in the illegal transplant procedures. Medical staff that encourage and provide information on "transplant tourism" should also be liable to prosecution. The medical staff involved in follow-up care of patients who have purchased organs should be accountable if they fail to alert the health authorities of the situation.

1.7. Challenges

Human trafficking is a dehumanizing crime which turns people into mere commodities. On the supply side, criminal networks, corruption, lack of education, and misinformation about employment opportunities and the degrading nature of work promised, together with poverty, make people vulnerable to the lures of trafficking—this is true of both sex trafficking and slave labour. Significant efforts are being made to address these factors that “push” victims into being trafficked, but they alone are not the cause. Any successful effort to combat sex trafficking must confront not only the supply of trafficked humans, but also the **demand** for commercial sex and labour trafficking which perpetuates it. There is little research on the influence of demand on trafficking and the role of clients and employers, including their profiles, awareness level and participation in the market. Such research could form the basis for awareness raising campaigns targeting clients and employers in order to reduce their participation in the trafficking chain.

Another big challenge is to efficiently **target the criminals** who profit from the vulnerability of people trying to escape from poverty, unemployment, hunger and oppression. Traffickers are evil brokers of oppressed people whom they deliver into the hands of exploiters. They capitalize on weak law enforcement and poor international cooperation.

Member States need to **protect the victims** of trafficking taking particular care to address the special needs of women and children. Such assistance is often lacking. Even worse, rescued victims are often re-trafficked because legislators and enforcement officials, despite their best intentions, sometimes produce and have to implement flawed laws that can put these same victims back into the clutches of their exploiters.

Developing a **multi-agency approach** to intervention - given the nature of the trafficking problem and the crimes it involves, the expertise required to address it effectively and the multiple needs of its victims, it is essential that a multi-agency approach is taken in any initiative to combat it, to ensure that the needs of victims are met and law enforcement measures are supported.

Training is recognised as a key element for any strategy or action plan against trafficking in human beings. Its objective is to strengthen the technical capacity of all concerned actors for implementing this strategy. All training should be based on a

human rights approach and raise awareness on anti-discrimination measures, gender equality, as well as the special needs and rights of victims, in particular of children. A multi-disciplinary approach should be adopted to strengthen the understanding of the necessity of co-operation of the various actors and especially between the competent state authorities, non-governmental and intergovernmental organisations. This requires a wide scope of actors to be targeted, such as judges, public prosecutors, police investigators, front-line police and frontier personnel, migration personnel, labour inspectors, trade unions, journalists, psychologists and physicians, school and university teachers, IOs, IGOs, NGOs, international military and police peacekeepers, social workers, consular personnel, and public administration officials. Joint trainings for all parties involved in addressing trafficking and assisting victims (police, prosecutors, victim assistance agencies, etc.) would result in an improved understanding of each other's roles and enhanced co-operation. This would increase both effective prosecution and effective assistance and protection of trafficked persons. A regional and European harmonised approach to training, based on the UN definitions and norms and best practices, will facilitate the concrete co-operation in anti-trafficking measures.

Finally, consideration has to be done in terms of **child trafficking**. Although there is a clear consensus that trafficking in children is growing it is yet difficult to quantify. Children are often invisible in data and statistics, which usually use adults as a unit of analysis.

2. Response of the European Union to the phenomena of trafficking in human beings

Human trafficking is a serious crime against persons that must be addressed as a clear law enforcement priority. It must be converted from a "low risk - high profit" enterprise into a "high risk - low profit" activity. The EU should step up actions in order to eliminate trafficking in human beings and, where profits are made, to seize and confiscate all of them.

2.1 Development of EU policy in the field of trafficking in human beings

Since the mid-1990s, the European Union has been actively engaged in the development of a multidisciplinary approach involving countries of origin, transit and destination to prevent and combat trafficking in human beings. Three major principles have guided this approach: the prevention of trafficking activities, the protection of and support for victims and the efficient prosecution of traffickers. Enhancing the coordination of activities of various public bodies and increasing the cooperation between relevant public agencies and civil society organisations has also been a key consideration for EU policy development. It is necessary to address the phenomenon throughout the trafficking chain (recruiters, transporters, exploiters, other intermediaries and clients). A variety of measures, including preventive ones, as well as those to ensure adequate protection of, support for, and assistance to the victims, is essential. Since women are in a position of higher vulnerability to become victims, there is also a clear need to tackle this problem from the angle of promoting gender equality.

The Treaty on European Union explicitly refers to trafficking in human beings and offences against children.⁹⁰ The Charter of Fundamental Rights of the European Union also explicitly states that trafficking in human beings is prohibited.⁹¹

⁹⁰ *Article 29* (ex Article K.1) of the Treaty of European Union

Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.

That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, **trafficking in persons and offences against children**, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

As the first official step to fight trafficking in human beings on the EU level was the adoption of a set of recommendations by the Council in November 1993. The document contained only five recommendations. First of all, it highlighted the importance of police officers' training. Since many Member States lack special legislation to deal with trafficking in human beings it called for "information campaigns in diplomatic and consular circles and among the border-control authorities". It also recommended considering the possibility of setting up national co-ordination structures by Member States and ensuring international exchange of information. However, this is still not met by the Member States even now. The Council stated that the "work carried out in the fight against trafficking in human beings for the purpose of prostitution will be extended and intensified in the areas of administrative and police cooperation, law enforcement, immigration and entry to national territories." This recommendation was the first step, a cornerstone of the fight against trafficking, even though it dealt solely with trafficking for the purposes of prostitution.

The European Parliament, which always considered itself as a defender of human rights, became aware of the growing scope of trafficking, therefore on 18 January 1996 adopted its resolution on trafficking in human beings⁹², recommending the Commission to step up the fight against this phenomenon. The resolution highlighted that "unfortunately, Title VI of the Treaty of EU, which concerns cooperation in judicial, customs, police and statistical matters, focuses mainly on intergovernmental activities and neglects the democratic control and dynamism which the European Parliament might bring to bear in this sphere." Also called on the Intergovernmental Conferences to define and extend community powers in spheres which threaten a person both physically and mentally, such as trafficking in human beings. It also

-
- closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32;
 - closer cooperation between judicial and other competent authorities of the Member States in accordance with the provisions of Articles 31(a) to (d) and 32;
 - approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).

⁹¹ Article 5 of the Charter of Fundamental Rights of the EU

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

⁹² European Parliament Resolution on 18 January 1996 on trafficking in human beings

called for a joint action when ensuring interconnection between areas of responsibility. Shortcoming of the EP Resolution was that it linked trafficking to an illegal international movement of persons, did not count with domestic trafficking, neither with the possibility that the future victim can enter a country legally and just after that get trafficked.

Following the adoption of this Resolution, the European Commission organised the first European conference on trafficking in women that was held in June 1996 in Vienna. It brought together players from various sectors of society (representatives of governments, parliaments, law enforcement and immigration officials, universities and NGOs). One of the measures proposed by the conference was the development of a comprehensive action plan with a structured approach. The main conclusion was that trafficking cannot be tackled effectively without a multidisciplinary and coordinated approach which involves all concerned players: NGOs and social authorities, judicial, law enforcement and migration authorities, and which involves both national and international cooperation. According to the recommendations, Member States have a “lead responsibility” because many issues either need to be or can best be tackled at national level. However, the issue of human trafficking has a transnational character therefore it requires actions at European level too. Both government authorities and NGOs underlined the lack of efficient contacts between the persons involved in the various stages of help for victims and called for national central coordinating bodies to be set up in the Member States, made up of law enforcement, migration, judicial and social authorities as well as members of NGOs. It recommended the need for interdisciplinary as well as specific training for each professional group. In addition, it called for strengthening the public awareness of civil servants dealing with migration, particularly those at embassies and consulates, and those in charge of delivering visas.

The Vienna conference also called for exchange of information, cooperation between law enforcement authorities, including appointment of national contact points and directory. Furthermore, it also called for clear definitions at national and international level.

Research shows that trafficked women, who are illegally in a country, rarely escape from their traffickers. Being aware of the fact that they are illegally in the country of destination, they fear of repatriation, therefore they do not cooperate with authorities.

And in many cases victims are indeed swiftly repatriated. However, it has to be borne in mind that if the victim is repatriated, he/she would never cooperate with law enforcement authorities, therefore the investigation might be hardened. On the basis of this, Belgium submitted to the JHA Council an initiative including a proposal for a temporary permit of stay of victims prepared to act as witnesses in judicial proceedings, which should cover at least judicial proceedings against traffickers.

Commission Communication on trafficking in women for the purpose of sexual exploitation⁹³

Short after the Vienna conference, the Commission presented its first Communication in the issue. The Communication took up the proposals made by the Vienna conference and formulated practical solutions to combat the phenomenon of trafficking in women who are coming into the EU from third countries and who are sexually exploited through intimidation.⁹⁴

The aim of the Commission was to develop an integrated policy with the participation of all the stakeholders and to identify concrete and rapidly achievable proposals.

The Communication concentrated solely on women but stated that since exploitation of children raises many special issues, therefore it would be specifically addressed as it was later done.

The Commission Communication for the first time defined trafficking, as the “transport of women from third countries into the European Union (including perhaps subsequent movements between Member States) for the purpose of sexual exploitation.” It also noted that distinction must be made between legal and illegal entry, since some women victims might have entered the European Union legally. They might come from a country whose nationals do not need to possess a visa for a short-term stay in the territory of the Member State or they might hold a short stay visa or even a long-term work permit. “Trafficking for the purpose of sexual exploitation” covered women who had suffered intimidation and/or violence through trafficking. According to the Communication, initial consent may not be relevant, as

⁹³ Commission Communication of 20 November 1996 to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation.

⁹⁴ This problem is linked to that of trafficking in children, although the latter requires specific responses which were discussed in another communication from 1996.

some enter the trafficking chain knowing they will work as prostitutes, but who are then deprived of their basic human rights in conditions akin to slavery. Even though this definition covered only women and only for sexual exploitation, one of its main contributions is that it took into consideration the possibility that women might enter the EU legally and that consent is not relevant. Another proceeds is, that it already stated that traffickers are often “large enterprises and international networks creating a sophisticated and well organised “industry” with political support and economic resources in countries of origin, transit and destination.”

Further, the Communication proposed the initiative “STOP” (Sexual Trafficking of Persons) in the field of justice and home affairs, an incentive and exchange programme for persons responsible for combating trafficking in human beings and the sexual exploitation of children.⁹⁵

The document has already formulated the need of reliable data. It needs to be taken into consideration that weakness in data collection methodology and non-comparability of definitions, together with the lack of social and economic research on the structural causes (poverty, inequality, social exclusion) as well as on clients undermines the efficiency of efforts.

To facilitate cooperation between the Member States' police forces, Member States agreed in 1994 to include trafficking in human beings in the Convention to establish Europol.⁹⁶ The first stage of Europol, the Europol Drugs Unit⁹⁷ had a mandate which

⁹⁵ The programme which was established in 1996 was meant to be a useful instrument to fill the gaps identified in the field, particularly in data and research, and also dissemination of information between authorities and training.

⁹⁶ The final agreement on the Convention was reached at the European Council in Florence on 21-22 June 1996. Article 2 of the Convention laid down combating of immigrant smuggling and trade in human beings as two of the priority areas of activity for Europol. In: European Commission COM (1996)567

⁹⁷ The Europol Drugs Unit (EDU) was set up as a forerunner to the European Police Office (Europol). The EDU operated from 1995 to 1999 and was replaced by Europol on 1 July 1999.

The criminal activities under the EDU extended over the years and in the end included illicit drug trafficking; illicit trafficking in radioactive and nuclear substances; crimes involving clandestine immigration networks; **trafficking in human beings**; illicit vehicle trafficking; the criminal organisations involved and associated money-laundering activities.

The EDU had the task of establishing a directory of specialised competences, skills and expertise for the fight against crime. A directory of specialised competence (a list of contact points for law enforcement purposes) was established and updated on the basis of contributions from the Member States. Europol took over management of it.

The Europol Drugs Unit was made up of a coordinator, an assistant coordinator, members of the management team, liaison officers representing the different Member States of the European Union, national experts on secondment and staff of the Drugs Unit.

was extended in March 1995 to include action against clandestine immigration networks and again on 27 September 1996 to traffic in human beings.⁹⁸ Extension of police cooperation to third countries and their training in particular by sensitizing them to the issue of trafficking, particularly those in Central and Eastern Europe was also foreseen.

It was planned to combat social exclusion and reintegrate victims of trafficking through the existing social, educational and health programmes. It was decided to provide assistance to Member States that wanted to set up reception and rehabilitation centres. In order to combat exploitation, stricter criteria on working conditions have been drawn up by certain Member States.

They have realised the importance of training police forces as well as of social and health personnel. Exchange of information on best practice and coordination between both social and health inspectorates and police forces could also improve the better identification of victims of trafficking.

The Communication also encouraged Member States to request “proofs of good character or reputation for employers of bars, dancing establishments, massage parlours and for those running marriage bureaux and escort services, or for those involved in transport of immigrants.”⁹⁹

Commission Communication on combating child sex tourism¹⁰⁰

After the Commission Communication on trafficking in women, the Commission addressed the issue of child sex tourism. The reason was that the Commission had recognised that child sex tourism had increased, mostly because of the increase in the number of business travellers and international tourists.¹⁰¹ Since sex tourism is a driving force of trafficking in children, the Commission has realised that active involvement of tourism industry in the fight against this type of sexual exploitation of children is essential.

The Coordinator had to submit to the Council a six-monthly written report on his management and the activities of the Unit.

⁹⁸ European Commission COM (1996)567

⁹⁹ European Commission COM (1996)567

¹⁰⁰ Communication from the Commission of 27 November 1996 on combating child sex tourism. COM (1996) 547

¹⁰¹ The flow of sex tourists are mainly from the economically developed countries of Western Europe, North America and Australasia to the poorer countries in other regions, mainly concentrated in South East Asia, but later on spread to many countries in Asia, South America, the Caribbean and Africa. In: COM (1996) 547

The Commission by this Communication called on the Member States and the tourism industry to become more closely involved in fighting this scourge.¹⁰² It encouraged the drawing-up and implementation of codes of conduct which are in line with the tourism ethic.¹⁰³

The Commission intended to focus its action primarily on the demand side because tourists sexually exploiting children come mainly from industrialised countries, including EU Member States.

It envisaged coordinated EU-funded public information and awareness-raising campaigns against child sex tourism. The Commission also decided to push for the various branches of the tourism industry to sign up to a basic minimum set of commitments. According to the Communication, all people who are working in the tourist industry being in contact with tourists during the preparation for their journey and during the journey itself should be approached.

Even though, the sexual exploitation of children for commercial purposes is not actually perpetrated by governments, the Commission deemed to apply pressure on countries which appear to be dilatory in this regard. At the same time, there should be political dialogue with the developing countries most affected.

Even though the Vienna Conference made specific recommendation on criminalisation of abuse, confiscation of proceeds and extraterritoriality, protection of witnesses and sharing information on convictions, the above mentioned issues fell primarily in the area of judicial cooperation on criminal matters, so the Commission did not have the right of initiative.¹⁰⁴ Therefore it welcomed the proposal put to the Council to adopt an instrument in the form of a joint action to improve judicial cooperation in the fight against trafficking in human beings.¹⁰⁵

For the first time on the EU level, it was decided to consider the possibility of a joint action to set up judicial cooperation covering trafficking in women as well as harmonising the system of penalising this crime in all the Member States.

¹⁰² Preventive measures could be taken by the national tourism authorities, particularly by providing information for travellers. As well as making them aware of differences between the foreign country and their own, travellers would be reminded of the need to respect the values of the country being visited and to comply with certain basic rules of behaviour.

¹⁰³ as laid down in the Tourism Bill of Rights and the Tourist Code adopted by the World Tourism Organisation in 1985

¹⁰⁴ European Commission COM (1996)567

¹⁰⁵ European Commission COM (1996)567

In November 1996 there was a Join Action adopted by the Council establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children.¹⁰⁶ It called for the programme called STOP¹⁰⁷ for the period of 1996-2000 with a budget of 6.5 million ECU to develop coordinated initiative on combating trafficking in human beings by providing for measures in the field of training, exchange programmes and training courses, organisation of multidisciplinary meetings and seminars, studies and research and dissemination of information for “judges, public prosecutors, police departments, civil servants, public services concerned with immigration and border controls and with social and tax legislation, the prevention or combating of such phenomena and assisting the victims or dealing with the perpetrators.”¹⁰⁸

Short after the first Join Action, there was a new join action adopted in February 1997 at the initiative of the Belgian Government. The Joint Action¹⁰⁹ adopted by the Justice and Home Affairs Council defined “trafficking”¹¹⁰ and “sexual exploitation”¹¹¹ and called on Member States to review their national criminal legislation as regards trafficking in human beings and judicial co-operation as well as to encourage protection of victims in judicial proceedings. It called on Member States to take a multidisciplinary approach to the whole issue of combating trafficking, tougher sentencing and penalisation of those committing the offence, the confiscation of their earning, exchanges of information between law enforcement authorities and training of officials working at frontiers. It needs to be said that sanction against those involved in trafficking needs to reflect the severity of the crime. Too often those who are convicted receive a paltry fine which does nothing to deter future action.

¹⁰⁶ 96/700/JHA

¹⁰⁷ More information on the STOP programme on p. 108

¹⁰⁸ Article I paragraph 2 of the Joint Action 96/700/JHA

¹⁰⁹ Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning actions to combat trafficking in human beings and sexual exploitation of children (Official Journal L 63 of 4 March 1997)

¹¹⁰ “Trafficking” is any behaviour which facilitates the entry into, transit through residence in or exit from the territory of a Member State, for the purpose of sexual exploitation. (Article I, paragraph A (i) of the Join Action 97/154/JHA)

¹¹¹ “Sexual exploitation” in relation to a child, as the following behaviour: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of a child in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials, including the production, sale and distribution or other forms of trafficking in such materials and the possession of such materials. “Sexual exploitation” in relation to an adult, as at least the exploitative use of the adult in prostitution. (Article I, paragraph A (ii) and (iii) of the Joint Action 97/154/JHA)

The Joint Action was followed by a ministerial conference in April 1997 organised by the Dutch Presidency which resulted in a Declaration on European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation. It further developed the ideas of the Joint Action.

In 1997 the European Parliament adopted its Resolution on trafficking in women for the purpose of sexual exploitation. It was a response to the Commission Communication (1996) 567. It called on Member States to adopt a multidisciplinary approach to the fight against trafficking in women and recommended that Member States set up an inter-ministerial coordination which would also provide for NGO participation in coordinated action on trafficking in women.

It stressed “the need to see trafficking in women first and foremost from the point of view of the victims and to treat it as a violation of women’s fundamental human rights, rather than seeing it exclusively in terms of the fight against organised crime or illegal immigration.”¹¹² It called on Member States to prioritise above all the protection of victims, including health and psychological care, emergency telephone lines, legal assistance, safe houses and temporary residence status, legal possibility of damage compensation and so on. One of the most important contribution is that it called on Member States to take measures in order to provide support for women, but which should not be restricted to those women who are willing to bring a formal case against the trafficker. This means the support should be unconditional. It was an important step because in many cases where authorities do not believe they can make a case for prosecution on the basis of the victim’s testimony, these women are not provided with the same protection or assistance. The resolution also mentioned the possibility of regulation, inspection and control of cross-border marriage and employment bureaux.

¹¹² Paragraph 4 of the Resolution

Commission Communication on further action in the fight against trafficking in women¹¹³

Since the first Commission Communication in 1996 there has been a number of initiatives, however the Commission recognised that in spite of these initiatives there was still a large number of women being trafficked into the EU. Therefore the aim of the second Communication was to:

- to ensure that the question of trafficking remains high on the political agenda;
- to reinforce international and European co-operation, including both governments and NGOs in the countries of origin, transit and destination;
- to strengthen a multidisciplinary approach focusing on prevention, research, law-enforcement and effective sentencing of traffickers, as well as on support for victims;
- to make clear to the candidate countries, through the accession process, that they have a responsibility to control trafficking by national measures and co-operation with the EU.

The Communication renewed the definition on trafficking set up by the 1997 Joint Action, according to which “trafficking for the purpose of sexual exploitation covers women who have suffered intimidation and/or violence through the trafficking. Initial consent may not be relevant, as some enter the trafficking chain knowing they will work as prostitutes, but who are then deprived of their basic human rights, in conditions which are akin to slavery.”

The Commission repeatedly underlined that trafficking in human beings cannot be tackled effectively without a multidisciplinary and coordinated approach involving all concerned players: NGOs and social authorities, judicial, law enforcement and migration authorities, and which involves both national and international cooperation. Therefore it welcomed the fact that with the Amsterdam Treaty coming into force, the Commission, while respecting the principle of subsidiarity, will be better placed to develop a full “cross-pillar” approach in the fight against trafficking in women.

¹¹³ Commission Communication of 9 December 1998 to the Council and the European Parliament proposing further action in the fight against trafficking in women

It called for human rights centred approach with the aim to re-establish the victim's human dignity and integrity. The Communication envisaged the proposal for legislative action as regards temporary permits of stay for victims who are ready to act as witnesses and a communication on assistance to victims including victims of trafficking. It is in spite of the fact that the European Parliament called for delinking temporary residence permits from the obligation of cooperation with the law enforcement.

The Commission revealed that the 97 Joint Action called for criminalisation of behaviour such as the sexual exploitation of a person for gain by using coercion or deceit or abuse of authority or other pressure which leave no real choice to that person. However, according to findings¹¹⁴ one of the major problems appear to be that in most Member States legislation does not specifically address the question of sexual exploitation of women trafficked from abroad. Therefore Commission asked Member States to review their existing legal provisions and administrative controls and conditions attached to the functioning of marriage bureaux and escort activities; as such services are used in certain cases to cover the activities of traffickers.

The Communication also highlighted the actions that were taken concerning candidate countries.¹¹⁵

Since May 1999, the European Union's actions to combat trafficking in human beings were explicitly mentioned under the Title VI in the Amsterdam Treaty. These articles cover police and judicial co-operation. Since the Amsterdam Treaty came into effect in 1999, trafficking in human beings has been named as an area of responsibility for the EU as a whole.¹¹⁶

¹¹⁴ Under the STOP Programme a study by the University of Athens in 1998 of the legislative and judicial practices in the Member States demonstrated that there are important discrepancies in the legal situations among the Member States. In COM (1998) 726 p.11

¹¹⁵ The "Accession Partnership" of March 1998 attached great importance to the development of administrative and judicial capacities of the applicant Central and East European countries (about 30 percent of PHARE assistance went to institution building activities in 1998) and identifying priorities each country needs to address, including the fight against organised crime. Justice and Home Affairs is a priority area for all applicant CEECs in the framework of the reinforcement of administrative and judicial capacities. Twinning projects between Member States' and their administration started in 1999. A large number of projects selected in this field contributed to the efficiency of the fight against organised crime and trafficking in women. Furthermore, in 1999 the Commission supported training of police forces from applicant CEECs through the Association of European Police Colleges (AEPC). One training module was specifically devoted to the fight against trafficking in human beings. In COM (1998) 726 p.15

¹¹⁶ www.ipsnews.net/news.asp?idnews=44197

The European Council of Tampere requested further legislative initiatives, in particular in the area of fighting against trafficking in human beings. The conclusions from the European Council in Tampere of October 1999 gave clear priority to the fight against trafficking in human beings.¹¹⁷

As a reaction on the Commission's Communication (1998) 726, the European Parliament proposed the adoption of legislative measures. In its Resolution of 19 May 2000¹¹⁸ it called for a whole range of actions on different levels. Among others, it called on the Member States:

- to improve coordination at national level and set up a central authority to deal with trafficking and related crimes,
- to set up or reinforce special anti-trafficking police units,
- to ensure safe housing which meets the appropriate security requirements and
- to ensure legal counselling.

It called on the Commission to make proposal in order to ensure:

- effective, proportional and dissuasive sanctions against traffickers,

¹¹⁷ THB-related articles of the Conclusions of the European Council in Tampere:

22. The European Council stresses the need for more efficient management of migration flows at all their stages. It calls for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings. A common active policy on visas and false documents should be further developed, including closer co-operation between EU consulates in third countries and, where necessary, the establishment of common EU visa issuing offices.
23. The European Council is determined to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants. It urges the adoption of legislation foreseeing severe sanctions against this serious crime. The Council is invited to adopt by the end of 2000, on the basis of a proposal by the Commission, legislation to this end. Member States, together with Europol, should direct their efforts to detecting and dismantling the criminal networks involved. The rights of the victims of such activities shall be secured with special emphasis on the problems of women and children.
26. The European Council calls for assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States.
48. Without prejudice to the broader areas envisaged in the Treaty of Amsterdam and in the Vienna Action Plan, the European Council considers that, with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime (money laundering, corruption, Euro counterfeiting), drugs trafficking, trafficking in human beings, particularly exploitation of women, sexual exploitation of children, high tech crime and environmental crime.

¹¹⁸ European Parliament Resolution on 19 May 2000 on the communication from the Commission to the Council and the European Parliament "For further actions in the fight against trafficking in women"

- extraterritoriality jurisdiction and extradition for the crime of trafficking in human beings,
- seizure of the proceeds of criminal activities and legal scope for compensation and reparations for victims for the financial, physical and psychological harm they have suffered and
- non-criminalisation of trafficked persons.

The European Parliament called also on the Commission to take immediate measures in the following area:

- collection, analysis and exchange of compatible data between the various actors,
- information and awareness-raising activities with a view to reducing the demand side,
- training for police, prosecution, judicial authorities and staff of embassies,
- exchange of best practices and
- to issue an annual report on progress in these areas.

The European Parliament believed that a clear and harmonised definition of trafficking is a pre-condition for an effective fight against trafficking. It also, for the first time called for widening the scope of the definition of trafficking, so it does not solely cover trafficking of women for sexual exploitation but also forced labour and forced marriage.

The Parliament again emphasised the need to grant temporary residence permit to victims of trafficking in human beings, regardless of whether or not they wish to testify subsequently in court that they have been victims of trafficking, furthermore, called on the Member States to grant, in the framework of readmission agreements, a special permanent residence permit on humanitarian grounds to women victims of trafficking.

Responding to Parliament's expectations, the Council adopted a Framework Decision on combating trafficking in human beings.

Council Framework Decision on combating trafficking in human beings¹¹⁹

This document constituted the main weapon in the European law enforcement arsenal. “Framework decisions can best be compared with the legal instrument of a directive.”¹²⁰ Both instruments are binding upon Member States as to the result to be achieved, but leave to the national authorities the choice of form and method for implementation. “Framework decisions do not have direct effect however. The Commission has no legal action before the Court of Justice to enforce the transposition of a framework decision at Member States level. Nonetheless, the Court of Justice can rule on any dispute between Member States regarding the interpretation or the application, including the transposition of the framework decision.”¹²¹ On the other hand, with directives the Commission has the ability to start infringement procedures against Member States.

Compared to the Commission's initial communications, the Framework Decision was broader because it was not limited to women as victims but covered everyone regardless of the gender. Furthermore, for the first time it also covered labour exploitation besides sexual exploitation. It introduced a new definition, taking as a basis the 2000 UN Palermo Protocol¹²² which was the first comprehensive international tool to combat trafficking in human beings.

UN Palermo Protocol	Council Framework Decision
For the purposes of this Protocol:	1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:
(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of	The recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where: (a) use is made of coercion, force or

¹¹⁹ Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings [Official Journal L 203 of 01.08.2002]

¹²⁰ Article 249 EC Treaty

¹²¹ European Commission COM (2006)187, p.4

¹²² 2000 United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children

<p>fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;</p>	<p>threats, including abduction, or (b) use is made of deceit or fraud, or (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or (d) payments or benefits are given or received to achieve the consent of a person having control over another person</p> <p>for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.</p>
<p>(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;</p>	<p>2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.</p>
<p>(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;</p>	<p>3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.</p>

(d) "Child" shall mean any person under eighteen years of age.	4. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age.
--	---

Instigating trafficking in human beings and being an accomplice or attempting to commit a crime will be also punishable.

The two definitions are very similar. Both of them emphasised that a child is any person below 18 years of age and when it is about a child, not all (or any) means under the definition has to be met. The main difference is that in comparison to the UN Palermo Protocol, the Framework Decision does not include the organ trafficking as a form of trafficking in human beings.

The Framework Decision called on the Member States to take necessary measures to ensure that an offence is punishable by effective, proportionate and dissuasive criminal penalties which may entail extradition. Concerning penalties, the Framework Decision urged Member States to take whatever measures to make the offences punishable by terms of imprisonment of no less than eight years when the victim's life has been endangered or when the offence has been committed against a particularly vulnerable victim.

This Framework Decision aimed to approximate the laws and regulations of the Member States in the field of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings. It also aimed to introduce at European level common framework provisions in order to address certain issues such as criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction and extradition.

In addition, the Framework Decision introduced the concept of criminal and civil liability of legal persons in parallel with that of natural persons. Legal persons should be held liable for offences committed for their benefit by any person acting either individually or a part of the organ of the legal person, or who exercises a power of decision.

According to the Framework Decision, penalties on legal persons should be "effective, proportionate and dissuasive"; they should include criminal or non-criminal fines and specific sanctions such as a temporary or definitive ban on

commercial activities, a judicial dissolution measure or the exclusion from public benefits or advantages.

The document recognised that child victims of trafficking were entitled to special assistance. There was another Framework Decision dedicated to sexual exploitation of children.¹²³

In order that the crime does not go unpunished because of a conflict of jurisdiction, the Framework Decision introduces criteria on jurisdiction. A Member State should have jurisdiction where:

- the offence was committed on its territory (territoriality principle);
- the offender was a national (active personality principle);
- the offence was committed for the benefit of a legal person established in the territory of that Member State.

The second criterion was particularly important for States which refused to extradite their nationals, since they must take the necessary measures to prosecute their nationals for offences committed outside their territory.

The shortcoming of the Framework Decision was that it did not mention any kind of assistance to victims except when the victim was a child. This proved those theories that Member States still treat victims of trafficking as illegal migrants therefore they do not deserve any kind of assistance. On the other side, its big contribution was that it called on Member States to ensure that the victim's accusation was not necessary for investigations and that it already included forced labour.

The Brussels Declaration on preventing and combating trafficking in human beings was adopted as the final conclusion of the "European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21st Century", held at the European Parliament from 18 to 20 September 2002 with participation of EU Member States, candidate countries, neighbouring countries, such as Russia, the Ukraine, the NIS and the countries of the Stabilisation and Association Process as well as US, Canada, China, regions, international organisations, inter-governmental

¹²³ See p. 104

organisations, non-governmental organisations and the institutions of the European Union.

The conference was initiated by the European Commission under the STOP II Programme, and organised by the International Organisation for Migration (IOM), in close cooperation with the European Parliament and the European Commission.

The Brussels Declarations stated that trafficking in human beings is an “abhorrent and worrying phenomenon, involving coercive sexual exploitation, labour exploitation in conditions akin to slavery, exploitation in begging and juvenile delinquency as well as domestic servitude”. It was the first time that “begging” was mentioned as a possible form of trafficking. It also stated that these exploitative practices constitute serious violations of the victims’ human rights as enshrined in international law and the EU Charter on Fundamental Rights of the EU. It called upon the whole international community to match up to the challenges posed by this international crime phenomenon and to provide a comprehensive response at national, European and international level with the aim to work out a “comprehensive, multidisciplinary and effectively coordinated policy that involves actors from all fields concerned.”

The Declaration emphasized that the comprehensive European policy against human trafficking needs to address the entire trafficking chain, comprising countries of origin, transit and destination alike, targeting recruiters, people who transport the victims, exploiters, other intermediaries, clients and beneficiaries.

The Declaration went through all the major parts and concerns of the anti-trafficking policy. It called for cooperation and exchange of information between all international bodies with the aim to achieve a better coordinated response, to avoid overlaps and duplication of work and to maximise the impact of actions. It also urged the appointment of national rapporteurs in order to help the regular evaluation, monitoring and further improvement in the implementation of national policies. Also emphasized the need to address the reduction of the demand for sexual services and cheap labour and the need of general, multidisciplinary and human rights based training for all stakeholders and awareness raising campaigns.

A special attention was dedicated to the victim protection and assistance. This step was of high importance since nowhere before was protection and assistance

considered as an inalienable part of anti-trafficking strategy. It called for a whole range of measures such as “shelter accommodation, physical, sexual and psychological health care and support and independent health, legal and social counselling” which should be guaranteed to all victim of trafficking

“Trafficked victims must be recognised as victims of serious crime. Therefore they should not be re-victimised, further stigmatised, criminalised, prosecuted or held in detention centres for offences that may have been committed by the victim as part of the trafficking process.”¹²⁴ This was an essential paragraph and formulated the core of the fight against trafficking.

The Declaration called on the Commission to set up an Expert Group comprising representatives of governments, NGOs, international bodies, researchers, the private sector such as the transport sector and other stakeholders. This Expert Group was established in March 2003 in order to help the Commission develop new proposals.

Initiative of the Hellenic Republic with a view to adopting a Council Framework Decision concerning the prevention and control of trafficking in human organs and tissues¹²⁵

Trafficking in human organs and tissues comprises serious violation of human dignity and physical integrity, “gives rise to serious risks to public health and infringes on the right of citizens to equal access to health services,” while “undermines citizens’ confidence in the legitimate transplantation system.”

The recent Council Framework Decision 2002/629/EC of 19 July 2002 on combating trafficking in human beings did not include trafficking in organs into the definition of trafficking, while the Council of Europe and the World Health Organisation have repeatedly condemned trafficking in organs and tissues.¹²⁶ For this reason, the Hellenic Republic took the initiative to introduce an initiative of a Council Framework Decision to address this specific form of trafficking.

¹²⁴ Article 3, paragraph 7 of the Brussels Declaration

¹²⁵ OJ C 100/13 26.4.2003 p.27

¹²⁶ As early as 1978, the Council of Europe in its Decision (78)29 on harmonisation of legislation of Member States relating to removal, grafting and transplantation of human substances, which was adopted by the Committee of Ministers of the Council of Europe on 11 May 1978, declared that no human substance may be offered for profit. The WHO’s first resolution in this field was adopted in 1987. In: recitals 3 and 5 of the Initiative of the Hellenic Republic

The initiative followed the line of the Council Framework Decision 2002/629/EC on combating trafficking in human beings. It took the basis of the existing definition of trafficking while added the organ-related parts.¹²⁷

According to the initiative, penalties should be proportionate and dissuasive and no less than 10 years when the offence endangered the life of the victim or the victim was a child, or it caused serious physical harm to the victim.

It also included the liability of legal persons, jurisdiction and prosecution just as it was in the case of the Council Framework Decision 2002/629/EC on combating trafficking in human beings. However, just as in the case of the 2002/629/EC Framework Decision, this initiative did not mention the assistance neither the protection of victims.

However, the initiative was not adopted by the Member States, the process is still pending due to the fact that none of the Member States have given any evidence or case of trafficking in human organs or tissues. However, some researchers estimate the number of cases of trafficking in human organs and tissues in the European Union to 200 per year.

¹²⁷ Each Member State shall take the necessary measures to ensure that the following acts are punishable:

1. The recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
 - a) use is made of coercion, force or threats, including abduction, or
 - b) use is made of deceit or fraud, or
 - c) there is an abuse of authority or of a position of vulnerability, which is such that the person *concerned* has no real or reasonable possibility of avoiding such abuse, or
 - d) payments or benefits are given or received *in order to obtain* the consent of a person having control over another person *with the aim of removal of an organ or tissue from the latter*;
2.
 - a) the removal of an organ from a living donor effected using force, threats or fraud;
 - b) the removal of an organ from a donor who has consented thereto further to the payment or promise of financial consideration;
 - c) the payment, offer or promise of a financial consideration, directly or via third parties, to a donor in order to obtain his consent to the removal of an organ;
 - d) the receipt of or demand for financial consideration by a donor or a third party so that the donor will agree to the removal of an organ;
 - e) action as an intermediary in carrying out any of the acts set out in points (a), (b), (c) and (d);
 - f) the demand for, receipt, payment, offer or promise of financial consideration with the aim of offering or acquiring or, more generally, trafficking in human organs and tissues;
3.
 - (a) the purchase, possession, storage, transport, import, export or transfer of possession of human organs removed by means of one of the acts set out in paragraphs 1 and 2;
 - (b) participation by medical or nursing staff in the transplantation of an organ in the knowledge that it has been the object of one of the abovementioned acts.

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 immigration¹²⁸

The Council Directive was adopted on 29 April 2004 calling on Member States to grant a short-term residence permit to victims of trafficking in human beings who are nationals of third countries even if they have entered the territory of the Member States illegally under the condition that they are willing to cooperate with the competent authorities.

Even though that the Directive was a pioneer in the field, it sets only a minimum as for the assistance to victims. First of all, Member States should grant the victim of trafficking in human beings a so called “reflection period” that allows them to recover and escape the influence of the perpetrators, so that they can decide as to whether to cooperate with the competent authorities. “During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals (...) have access to the treatment”¹²⁹, access to emergency medical treatment, psychological assistance, translation and interpreting services and should not be deported from the territory of the Member State. It also said that Member States might provide the victims with free legal aid, even though, in my view, it should be granted automatically. Victims often are not familiar with legal proceedings; do not know what they are eligible to, what assistance they might get and what the consequences of their decision are. The assistance granted under this directive is the very minimum.

According to the Directive, the reflection period should be valid for at least six months with the possibility to renew if the investigation or the judicial proceedings, or national security require it. However during six month the procedure is (almost) never finished. Just the investigation lasts months or even years, and the prosecution starts just after that.

The residence permit is issued for six months and during it victims are granted the same treatment as in reflection period, while children are granted the access to the educational system as nationals. A questionable thing is that according to the

¹²⁸ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country national who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration (OJ 2004/L 261 of 6 August 2004)

¹²⁹ Article 6, paragraph 2.

Directive, Member States should give access to the employment market, education and vocational training, however it is the Member States who “define the rules” under which conditions will victims have right to enter the labour market, have access to vocational training and education.. The Directive also provides the possibility for Member States to enable the individual to take part in an integration programme with a view to establishing residence or to return to his/her home country.

The Hague Programme adopted by the European Council in November 2004 invited the Commission and the Council to develop a plan in 2005 for developing common standards, best practices and mechanisms to prevent and combat trafficking in human beings which was adopted in December 2005.

Commission Communication on fighting trafficking in human beings: an integrated approach and proposals for an action plan¹³⁰

This Communication aimed to strengthen the commitment of the European Union and Member States to prevent and combat trafficking in human beings committed for purposes of sexual or labour exploitation, and to protect, support and rehabilitate victims. It believed that trafficking in human beings cannot be effectively tackled unless an integrated approach was adopted, based on respect for human rights and taking into account the global nature of the problem. It called for a “coordinated policy response particularly in the areas of freedom, security and justice, external relations, development cooperation, employment, gender equality and non-discrimination.”

The Commission Communication called on the Council to hold at least once a year a political debate on the EU anti-trafficking policy and assess its compliance with human right standards and the need for further action. Furthermore “the Community should strengthen the political dialogue with partner countries at bilateral and multilateral level on the human rights dimension of trafficking and of anti-trafficking policies, as well as continue raising the issue in relevant regional and multilateral

¹³⁰ Communication from the Commission to the European Parliament and the Council - Fighting trafficking in human beings: an integrated approach and proposals for an action plan [COM (2005) 514 final - Not published in the Official Journal].

fora.”¹³¹ The Communication advised to include the anti-corruption strategies to all anti-trafficking policy.

As an important provision, according to the Commission, “Member States should provide protection and assistance to testifying victims as an integral part of effective prosecution and further develop pro-active, intelligence led investigations, which do not depend on the testimony of the victims.”¹³²

The Commission called on the Council to implement biometric identifiers in EU visa and residence permits since more secure documents are helpful for the identification of trafficked persons and not lastly it is harder to falsify them. Furthermore, the Council, the European Parliament and the Commission should as soon as possible complete the development of a common Visa Information System.

It emphasised that it is necessary to collect and compare relevant national data in order to ensure proper monitoring at EU level. Also called on Member States to consider establishing “National Referral Mechanisms ensuring identification and referral of trafficked persons as well as a government coordination structure could draw up, coordinate and evaluate national policies and contribute to mechanisms addressing individual complaints”¹³³ as emphasised by the Experts Group.

By this communication the Commission has laid down the specific means necessary for developing an integrated approach to tackling trafficking in human beings.

EU Plan on best practices, standards and procedures¹³⁴

The objective of the plan was to improve the “collective understanding of the scale and nature of trafficking in human beings by strengthening the commitment of the EU and Member States to prevent and fight against trafficking in human beings committed for the purposes of all forms of exploitation and to protect, support and rehabilitate its victims. For this an integrated, human rights based approach was needed, including a coordinated policy “in the area of freedom, security and justice,

¹³¹ European Commission COM (2005) 514, p.4

¹³² European Commission COM (2005) 514, p.5

¹³³ European Commission COM (2005) 514, p.10

¹³⁴ EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings [Official Journal C 311 of 9.12.2005]

external relations, development cooperation, social affairs and employment, gender equality and non-discrimination.”¹³⁵

The EU recognised that it was indispensable to ensure that the human rights of victims of human trafficking are respected at every stage of the process. For this reason the Member States were encouraged to set up an appropriate governmental coordination structure to evaluate and coordinate national policies and ensure that the victims are treated appropriately.

According to the Plan, the Member States and the Commission should implement policies that reinforce the criminalisation of human trafficking and ensures the protection of vulnerable groups such as women and children in particular by respecting the principles set out in the UN Convention of the Rights of the Child.

In order to combat human trafficking for labour exploitation, it is necessary to increase cooperation with the agencies responsible for the control of working conditions and for financial investigations related to irregular labour. The Plan also emphasised that employers' organisations, trade unions and civil society organisations active in this field should also cooperate with the public authorities.

Member States should provide protection and assistance to victims, while developing “pro-active intelligence led investigations, which do not necessarily depend on the testimony of the victims.”¹³⁶ In the same way, the law enforcement agencies need to work more with Europol, which should regularly participate in exchanges of information, joint operations and joint investigative teams. Eurojust should be consulted to facilitate the prosecution of traffickers.

Strategies to combat human trafficking should be concerted with strategies to combat corruption and poverty. Member States and EU institutions must continue to cooperate with the relevant international organisations such as the United Nations, the OSCE and the Council of Europe.

The Plan underlined that each region has its special needs, special demands. Traffickers are aware of these specialities; they can easily adapt themselves to them. They know how to fulfil the demand, how to adopt their “supply” to the region’s needs. Therefore the answer has to be region-specific as well. According to this,

¹³⁵ Article 1 of the EU Plan

¹³⁶ Article 4, paragraph (vii) of the EU Plan

regional initiatives of the prevention of trafficking in human beings and the protection of its victims need to be developed and promoted. The Member State and the Commission should make greater efforts to promote regional initiatives that supplement and inspire cooperation at EU level.

The action plan should be revised, evaluated and updated regularly on the basis of the annexed table of actions.

European Parliament's Resolution on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation

It is a resolution that does not really fit to the development line of the European anti-trafficking legislation. First of all, it targeted only women and children for sexual exploitation while the 2002/629/JHA Council Framework Decision has already extended trafficking in human beings to every victim and also on forced labour; while the EU Action Plan has also called for tackling trafficking in human beings in all forms.

The EP Resolution stated that in spite of the fact that numerous measures were taken to reduce trafficking in human beings in fact it “have not yielded results in the form of a reduction in the numbers of women and children being exploited in the sex slave trade.”¹³⁷ Such conclusions are however difficult or even impossible to prove since we do not know the exact number of trafficked people. The same problem is with the call to set “visible and credible targets such as halving the number of victims of trafficking in human beings over the next ten years.”¹³⁸ Such calls cannot be monitored, evaluated even proved.

However, in order to keep the objectivity, it needs to be said that the resolution had some positive contribution. It re-emphasised the importance of a human rights based approach, the use of gender mainstreaming and a child sensitive approach by promoting gender equality in all EU policies and the implementation of national legislation on equal opportunities. It also called for including “gender mainstreaming and a child-sensitive approach in the EU development policy and poverty reduction programmes.

¹³⁷ Article 2 of the European Parliament Resolution P6_TA (2006) 498

¹³⁸ Article 2 of the European Parliament Resolution P6_TA (2006) 498

European Parliament's Recommendation to the Council on fighting trafficking in human beings – an integrated approach and proposals for an action plan

This recommendation is the first report produced by the European Parliament that addressed all forms of trafficking in human beings and all victims, not just women and/or children.

The EP emphasised that trafficking in human beings can be tackled only by “means of a coherent policy approach”¹³⁹, involving migration, gender, employment, social, development, external, neighbourhood and visa policy, while consequently criminalising the offenders.

One of the most important parts of the Recommendation is that it called Member States to ensure that “victims of trafficking, whether or not they cooperate with the competent authorities during investigations and as witnesses in criminal procedures, are granted short-term residence statuses, including a reflection/recover period for victims lasting no less than 30 days, and access to information on the legal and administrative procedures in a language that the victims understand, together with free legal assistance.”¹⁴⁰

It reiterated the need of trained law enforcement authorities in order to ensure the proper identification of victims. It emphasised the need of effective labour inspections in order to better fight labour trafficking.

Since providing assistance to victims is a key issue, it called on the Commission and Member States to establish and implement “clear European standards and guidelines on assistance and protection for victims, irrespective of their ability or willingness to act as witnesses, including special standards for the protection of children's rights.”¹⁴¹ It listed those forms of assistances that should be a minimum standards, like “access to specialised shelters, (...), medical services and counselling, legal assistance, (...), language and vocational training courses, cultural induction courses, financial assistance and assistance in finding work, including special legal guardianship for children.”¹⁴²

¹³⁹ Article 1(a) of the European Parliament Resolution P6_TA (2006) 498

¹⁴⁰ Article 1(g) of the European Parliament Resolution P6_TA (2006) 498

¹⁴¹ Article 1(ap) of the European Parliament Resolution P6_TA (2006) 498

¹⁴² Article 1(aq) of the European Parliament Resolution P6_TA (2006) 498

The EP underlined that victims should be returned to their country of origin only if there is no suspicion that their direct return would cause further harm through stigmatization and discrimination.

It also called for an EU anti-trafficking day that was later established by the Commission, setting 18 October as an EU anti-trafficking day. It also urged the Commission and the Member States to establish a multilingual hotline with a single European number with the aim of providing first assistance to the victims.

In accordance with the Council conclusions adopted by the Justice and Home Affairs (JHA) Council on 8-9 November 2007, the Commission issued by the end of 2008 an evaluation and monitoring report¹⁴³ of the EU Action Plan on best practices, standards and procedures adopted in December 2005. In December 2007, the Commission circulated a questionnaire to Member States asking for update information on the implementation of national anti-trafficking policies. Other bodies responsible for implementing some of the actions provided for by the Action Plan were also consulted.

At the end, the Commission emphasised once again those most important provisions that Member States ought to take in order to combat trafficking. In particular, it called on Member States to establish National Rapporteurs or equivalent mechanisms, to support and provide sufficient funding for NGOs that provide assistance to trafficked people, to organise systematic training to key stakeholders, to enhance coordination of investigation and prosecution, including by promoting the use of Europol and Eurojust resources and to strengthen actions concerning external relations.¹⁴⁴

¹⁴³ Commission working document on evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (COM (2008) 657)

¹⁴⁴ European Commission COM (2008) 657, p.11

The Commission's proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims¹⁴⁵

In early 2009 the Commission came out with a proposal for a new Framework Decision. It decided to revise and update the 2002/629/JHA Framework Decision, while supplementing it by non-legislative measures.

The Commission's proposal represented a modern and holistic approach to fight trafficking in human beings. It built upon the Council of Europe's Convention and adopted the same holistic approach, including prevention, prosecution, protection of victims and monitoring. Furthermore, it introduced many new elements in order to improve the 2002/629/JHA Framework Decision.

The most important new elements of the proposals were the followings:

- it improved the old definition of trafficking, by extending it besides sexual exploitation and labour exploitation also to “exploitation of activities associated with begging or of unlawful activities, or the removal of organs,”¹⁴⁶
- in order to ensure effective, proportionate and dissuasive penalties, it defined a minimum imprisonment of six years to punish the cases of trafficking in human beings, furthermore, for aggravating circumstances it increased the minimum imprisonment from eight years to ten years, while in certain cases¹⁴⁷ to twelve years,
- non-application of sanctions to the victim, according to which Member States should not prosecute or impose penalties on victims for their involvement in unlawful activities as a direct consequence of being trafficked,
- investigation into or prosecution of offences should not be dependent on the report or accusation made by a victim and criminal proceedings may continue

¹⁴⁵ The Commission's proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, COM (2009) 136

¹⁴⁶ Article 1 paragraph 3 of the COM (2009) 136

¹⁴⁷ When the offence endangered the life of the victims, the offence was committed by use of serious violence or has caused particularly serious harm to the victim. Article 3, paragraph 3 of the COM (2009) 136

even if the victim has withdrawn his/her statement. It is a very important provision, since traumatised victims are often afraid to testify,¹⁴⁸

- persons, units or services responsible for investigating or prosecuting offences should be trained accordingly,
- extraterritorial jurisdiction rule is broader and more binding – the Member States jurisdiction is extended to cover not just nationals of the Member State concerned but also residents,
- prevention of secondary victimisation by avoiding in particular visual contact between victims and offenders and giving evidence in open court,
- in order to protect victims, they can have access to witness protection programmes and particularly vulnerable victims should have access to free legal counselling and to legal representation,
- the new proposal contains provision on assistance to victims. According to it victims shall be granted the assistance and support that enables him/her “to recover and escape from the influence of the perpetrators, including by providing them with secure accommodation and material assistance, necessary medical treatment including psychological assistance, counselling and information, assistance to enable their rights and interests to be presented and considered in criminal proceedings, and translation and interpretation services where appropriate”¹⁴⁹,
- Member States should seek to discourage demand and shall consider to criminalise clients who knowingly use sexual services of a trafficked victim,
- finally it called on Member States to establish National Rapporteurs or other equivalent mechanisms.

The Commission’s proposal was sent to the Council as well as to the European Parliament. As in every previous case, the European Parliament had just a consultative role, since the fight against trafficking belonged under the third pillar.

¹⁴⁸ There are countries, such as Hungary, where victims of trafficking are treated as witness and according to the law they are obliged to testify.

¹⁴⁹ Article 10 paragraph 4 of the COM (2009) 136

2009 October Declaration on trafficking in human beings “Towards global EU action against trafficking in human beings”

On the occasion of the third EU Anti Trafficking Day, the Swedish Presidency decided to organise¹⁵⁰ an EU Ministerial Conference „Towards Global EU Action against Trafficking in Human Beings“ that took place on 19-20 October 2009 in Brussels. The conference brought together almost 600 participants from EU Member States, as well as many third countries, regional and international organisations, inter-governmental organisations (IGOs), non-governmental organisations (NGOs) as well as EU institutions and agencies with the distinguished presence of Queen Paola of Belgium and Queen Silvia of Sweden.

The overarching objective of the Conference was to provide an opportunity to address the increasingly important challenge for the EU to strengthen its capacity to act in partnership with third countries, regions and international organisations to tackle trafficking in human beings. The Conference reiterated that trafficking in human beings is a violation of human rights, it is “of a nature and complexity that requires actions and coherence across a wide range of policy areas in addition to justice and home affairs, including development cooperation, external relations, social affairs, employment, gender equality and good governance, in order to be effectively tackled at all levels, and involving non-governmental organisations and civil society.”¹⁵¹

It called upon the international community, including at local, regional and governmental level, NGOs, IGOs and other civil society organisations, as well as on the EU institutions and agencies to confront the challenges posed by this transnational crime. It emphasised the need of creating partnerships in order to combat trafficking more effectively. Partnerships should be developed between the EU, third countries, regions and international organisations in order to cover all countries of origin, transit and destination. Among key objectives of these partnerships are the following:

- to address root causes of trafficking, including empowerment programmes,

¹⁵⁰ The conference was hosted by the Belgian Ministry of Foreign Affairs and organised by the Swedish Ministry of Justice together with the IOM, Belgian NGO Payoke.

¹⁵¹ 2009 October Declaration, p.2

- to ensure technical assistance to enhance developing countries' opportunities to address causes of trafficking,
- to discourage demand,
- to ensure that a human rights approach is followed in each country,
- to ensure the exchange of data,
- to improve statistics and data collection and analysis on causes, victims and consequences of trafficking,
- to enhance prevention strategies,
- to strengthen migration management,
- to strengthen transnational investigation mechanisms and transnational law enforcement mechanisms and communication,
- to improve awareness raising and establish education programmes, particularly for young people and children and
- to improve assistance and protection to victims.

The conference was of utmost importance not just because it gathered all stakeholders from the EU but also from the side of third countries, not just government officials but also NGOs and international organisations. It was also significant because it took over the so called forth "P", partnership. The 2000 Palermo Protocol established the "three P" approach: prevention, prosecution and protection. Later on, NGOs and international organisations called for including also the forth "P", partnership in order to fight trafficking more effectively. Before this conference, "partnership" was missing from the EU approach. This conference finally recognised this shortcoming and fully focused on this new element. During the conference this "forth P" was in the spotlight. Each Member State was talking about importance of partnership, mainly focusing on the importance of including NGOs into the process at every stage and level. However, they were forgotten, no one has given them the floor during the whole conference.

Joint Resolution of the European Parliament on the proposal of the Commission¹⁵²

When issuing the proposal of a new Framework Decision, the Commission sent the document to the European Parliament for consultation. The Parliament's intention was to prepare a report on the proposal and send it to the Council, however the Lisbon Treaty that entered into force on 1 December 2009 changed the procedure. All those documents that were not adopted before 1 December 2009 needed to be re-launched. That was the case with the Commission's proposal of a new Framework Decision too. Since the Council has not adopted the Framework Decision till 1 December 2009, the procedure was not close, and it needed to be restarted under the new provisions of the Lisbon Treaty. This brought the European Parliament into a new situation. The Lisbon Treaty strengthened the role of the European Parliament also in this field, it became a co-legislator. An addition to this, the new form of legislation became the directive instead of the framework decision.

According to this new situation, the Parliament has decided to work out a resolution on the original proposal for framework decision, in order to underline and indicate to the Commission which points, parts and provisions would the Parliament like to see in the new proposal for a directive, now that it becomes a co-legislator.

The Parliament reiterated the importance of taking a holistic approach centred on human rights, providing assistance to victims, reducing demand, ensuring that penalties reflect the seriousness of the crime and have dissuasive effect, and establishing cooperation with NGOs active in the field. Among others, it called for an EU anti-trafficking coordinator who would be under the supervision of the Commissioner for Justice, Fundamental Rights and Citizenship and would coordinate EU action and policies in this field, including the activities of the network of national rapporteurs. It also called for an annual joint report by Eurojust, Europol and Frontex to be presented to the European Parliament, national parliaments, the Council and the Commission. This report should be focused on the root causes of trafficking, factors in countries of origin and destination that facilitate trafficking, current trends and travel routes, and different forms of exploitation. However, on the basis of former practice, it is hard to imagine that such joint report could be launched each year. The idea of an annual report is good. The Trafficking in Persons Reports that the US Secretary of State launches every year is a widely recognised report on trafficking by

¹⁵² Adopted on 10 February 2010

summing up the countries' actions in combating trafficking in human beings. However, there is a lack of in-depth information about the trends, routes, forms, causes, and so on, which the European Parliament required to prepare. So, the idea was good, but there are concerns about the actual preparation of this report. What's more, the Parliament asked three agencies independent of each other to prepare these annual reports in order to cover all aspects of anti-trafficking policies, however without any coordinating body who would supervise the preparation of these annual publications, it is hard to imagine that these agencies would be able to launch such joint report each year. There is no doubt, that it would be important to have annual reports on an EU level, however the modus operandi should be modified. It should be the EU anti-trafficking coordinator who could coordinate the preparation of such annual report by asking the agencies to provide concrete and specified information about their field of action, also extending the report to the activities of the Member States on the basis of the information provided by national rapporteurs.

Furthermore, the resolution asked for massive information and awareness-raising campaigns to be carried out in the Member States and in third countries as well as targeted awareness-raising education programmes designed to draw children's attention to traps that can easily lead to trafficking.

It also called for an exhaustive and comprehensive legal framework, including policies to counter cybercrime connected to trafficking to be adopted soon.

The new proposal for a directive was promised to be launched in Spring 2010.

The most important trafficking-related legislation

There is a whole set of proposals, Commission communications, directives and framework decisions that do not address trafficking in human beings directly, however are closely linked to this phenomenon. I have analysed in this section also those legislative tools that address child pornography and child trafficking. The Commission has chosen to deal with child sexual exploitation together with child pornography separately from trafficking in human beings in general saying that it requires special treatment.

Council Decision to combat child pornography on the Internet¹⁵³

In 2000 the EU decided to prevent and combat the production, processing, distribution and possession of child pornography on the Internet. It was the initiative of Austria after the proposal of the Joint Action on child pornography.

Various measures enable the European Union to combat the sexual exploitation of children¹⁵⁴ or the dissemination of messages with an illegal and harmful content on the Internet.¹⁵⁵ However, it has become necessary to introduce a specific instrument to combat child pornography on the internet in view of the scale on which this form of crime is being perpetrated.

Among others, the Member States should take measures to encourage Internet users to inform law enforcement authorities if they suspect that child pornography material is being distributed on the Internet. In order to facilitate cooperation between Member States, a list of 24-hour national contact points and specialised units was planned to be disseminated. Europol had to be informed of suspected cases of child pornography and meetings are held between the national specialised services.

The Member States should investigate all measures which could help to eliminate child pornography on the Internet and exchange information on best practice. They should also examine the possibility of placing Internet providers under an obligation to advise the competent authorities of child pornography material which is distributed through them, to withdraw such material from circulation, to retain such material in order to make it available to the authorities, and to set up their own control systems. In partnership with industry, Member States should encourage the production of filters and other technical means of preventing the distribution and facilitating the detection of such material.

¹⁵³ Council Decision of 29 May 2000 to combat child pornography on the Internet (OJ L 138 of 9.6.2000)

¹⁵⁴ 1997 Joint Action, extension of Europol's mandate

¹⁵⁵ Community action plan on promoting the safer use of the Internet

Council Framework Decision on combating the sexual exploitation of children and child pornography¹⁵⁶

The purpose of this Framework Decision is to approximate the laws and regulations of the Member States in relation to police and judicial cooperation in criminal matters, so as to combat the sexual exploitation of children and child pornography. It introduced a framework of common provisions on criminalisation, sanctions, aggravating circumstances, assistance to victims and jurisdiction.

Since the Council adopted a Joint Action in 1997 on combating human trafficking and the sexual exploitation of children, the number of initiatives being taken has increased at both national and regional levels. The aim of the Framework Decision was to regulate certain aspects of criminal law and procedure more stringently, so as to complement other related instruments, such as those provided for in Join Actions 98/428/JHA and 96/277/JHA, the Decision on combating child pornography on the Internet , and the Safer Internet and Daphne Programmes.

This Framework Decision listed a number of behaviours which as offences related to the sexual exploitation of children should to be considered illegal:

- coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes,
- engaging in sexual activities with a child, where use is made of coercion, force or threats, money or other forms of remuneration or consideration are given as payment in exchange for the child engaging in sexual activities, or abuse is made of a recognised position of trust, authority or influence over the child.

The following is deemed to be punishable conduct that constitutes an offence related to child pornography, whether undertaken by means of a computer system or not:

- production of child pornography,
- distribution, dissemination or transmission of child pornography,
- supplying or making available child pornography,
- acquisition and possession of child pornography.

¹⁵⁶ Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

Each Member State is obliged to take the necessary measures to ensure that instigation of one of the aforementioned offences and any attempt to commit the prohibited conduct is punishable.

Each Member State must make provision for criminal penalties which entail imprisonment for at least one to three years. For certain offences committed in aggravating circumstances, the penalty must entail imprisonment for at least five to ten years. The Framework Decision provided a list of aggravating circumstances, which does not preclude the recognition of other circumstances under national law:

- the victim is a child below the age of sexual consent under national law,
- the offender has deliberately or by recklessness endangered the life of the child,
- the offences involve serious violence or caused serious harm to the child,
- the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA.

Each Member State may take measures to ensure that a natural person, i.e. an individual, convicted of one of the aforementioned offences be prevented from exercising professional activities related to the supervision of children.

Just as in the case of Framework Decision on combating trafficking in human beings, in addition the Framework Decision established the criminal and civil liability of legal persons. This liability is complementary to that which is borne by natural persons. A legal person is deemed to be liable if an offence is committed for its benefit by another person who acts individually or as part of an organ of the legal person, or who has decision-making powers.

Sanctions on legal persons must include criminal or non-criminal fines and other sanctions such as temporary or permanent disqualification from the practice of commercial activities, a judicial winding-up order or exclusion from entitlement to public benefits or aid.

To prevent a crime from going unpunished because of a conflict of jurisdiction, the Decision established criteria for determining jurisdiction. A Member State has jurisdiction if:

- the offence is committed within its territory (territoriality principle),

- the offender is a national of that Member State (active personality principle),
- the offence is committed for the benefit of a legal person established in the territory of that Member State.

A Member State that refuses to extradite its nationals must take the necessary measures to prosecute them for offences committed outside its territory.

The Commission Roadmap¹⁵⁷ for equality between men and women identifies eradication of human trafficking as one of its priority areas. The Commission is committed to follow up the Communication and the Action Plan, and to promote the use of all existing instruments, including the European Social Fund, for the integration into society of victims of violence and human trafficking.

The Commission Communication (2006) “Towards on EU Strategy on the Rights of the Child” takes stock of the plight of children trafficking, making a commitment to maximise existing policies and to adopt additional specific measures.

The Commission proposal for a Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA

At EU level, Council Framework Decision 2004/68/JHA, introduced a minimum of approximation of Member States’ legislation to criminalise the most serious forms of

¹⁵⁷ The Roadmap for Equality between women and men for the period 2006-2010 was adopted on 1 March 2006. It is built on the experience of the Framework Strategy for equality between women and men for the period 2001-2005. The Roadmap combines the launch of new actions and the reinforcement of successful existing activities. It reaffirms the dual approach of gender equality based on gender mainstreaming (the promotion of gender equality in all policy areas and activities) and specific measures.

The Roadmap represents the Commission's commitment to driving the gender equality agenda forward as well as reinforcing partnership with Member States, and other actors.

The Roadmap for Equality between women and men outlines six priority areas for EU action on gender equality:

- Equal economic independence for women and men;
- Reconciliation of private and professional life;
- Equal representation in decision-making;
- Eradication of all forms of gender-based violence;
- Elimination of gender stereotypes;
- Promotion of gender equality in external and development policies.

The Roadmap foresees the improvement of the governance of gender equality.

For each area, it identifies priority objectives and actions. It will be followed by an implementation report in 2008 and an evaluation with a follow-up proposal in 2010.

child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims. Even though, national legislations cover some of the problems of sexual abuse of children but they are not strong or consistent enough to provide a vigorous social response to this disturbing phenomenon. Another reason for updating the current EU legislation is that it did not address new forms of abuse and exploitation using information technology, did not remove obstacles to prosecuting offences outside national territory, did not meet all the specific needs of child victims, and did not contain adequate measures to prevent offences.

Some new elements of the proposals are the following:

- Serious forms of child sexual abuse and exploitation currently not covered by EU legislation would be criminalised. This includes, for instance, the organisation of travel arrangements with the purpose of committing sexual abuse, something particularly relevant, but not exclusively, in the context of child sex tourism.
- New forms of sexual abuse and exploitation facilitated by the use of IT would be criminalised. This includes knowingly obtaining access to child pornography, to cover cases where viewing child pornography from websites without downloading or storing the images does not amount to "possession of" or "procuring" child pornography.
- Rules on jurisdiction are amended to ensure that child sexual abusers or exploiters from the EU face prosecution even if they commit their crimes outside the EU, via so-called sex tourism.
- New provisions are included to ensure that victims have easy access to legal remedies and do not suffer from participating in criminal proceedings.
- It includes provisions to restrict access to child pornography on the internet. The aim is to reduce the circulation of child pornography by making it more difficult to use the publicly-accessible Web. It is not a substitute for action to remove the content at the source or to prosecute offenders.

Just as in the case of the proposal for repealing the Council Framework Decision 2002/629/JHA on trafficking in human beings, this procedure was also cancelled

because of the Lisbon Treaty entering into force. The Commission promised to launch its new draft directive in this field in Spring 2010.¹⁵⁸

Further interrelated documents

- Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property
- Council Framework Decision on the standing of victims in criminal proceedings¹⁵⁹
- Council Framework Decision on the fight against organised crime¹⁶⁰

2.2. Programmes, projects funded by the EU to combat trafficking in human beings

Since 1996, the European Union has taken a comprehensive and multidisciplinary approach to the fight against this phenomenon by adopting various legal instruments (such as the Framework-Decision 2002/629/JHA) and a series of programmes including:

- a programme of incentives and exchanges for persons responsible for combating trade in human beings and the sexual exploitation of children (STOP I and II);
- a programme on preventive measures to fight violence against children, young people and women (DAPHNE Programme);
- a framework programme on police and judicial cooperation in criminal matters (AGIS).

¹⁵⁸ On contrary to the proposal for a new Framework Decision on preventing and combating trafficking in human beings, where the EP has worked out its resolution indicating the Commission their preferences, in this case the EP has chosen not to work out a resolution since it considered as its valid resolution the one prepared to the Commission Communication “Towards on EU Strategy on the Rights of the Child”.

¹⁵⁹ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)

¹⁶⁰ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300 p.42 of 11.11.2008)

2.2.1. The STOP and AGIS Programmes

The STOP I Programme¹⁶¹

The objective of the STOP Programme was to encourage, support and reinforce networks and practical co-operation between the various persons responsible for action against trafficking in human beings and sexual exploitation of children in the Member States, and to improve and adapt their training and skills. The programme was aimed at judges, public prosecutors, police departments, civil servants, and public services concerned with immigration and border controls, social and tax legislation, trafficking and sexual exploitation, victim-support and treatment for perpetrators. The programme was also open for NGOs which have been involved in around 25 % of the projects since 1996.

The programme started in 1996 for a four-year period with a budget of €6.5 million. In the five-year period of implementation, the programme has co-financed 85 projects. Besides support to actions enhancing law enforcement and judicial co-operation in the areas, special importance has been attached to developing co-operation and methods to assist the victims and to prevent trafficking and the sexual exploitation of children. Research and studies has also formed an important part of the activities under the STOP Programme. Projects which also involved those responsible for preventing and combating trafficking in candidate countries with a view to helping them prepare for accession to the European Union have received special attention.

The STOP II Programme¹⁶²

Since the STOP Programme came to an end on 31 December 2000, the Commission proposed to extend it for a period of two years, calling it the STOP II Programme, just to ensure a continued support. The programme provided funds amounting at 4 million EUR for the two-year period.

¹⁶¹ Joint action 96/700/JHA, of 29 November 1996, adopted by the Council pursuant to Article K.3 of the Treaty on European Union, establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children [Official Journal L 322, 12.12.1996].

¹⁶² Council Decision of 28 June 2001 establishing a second phase of the programme of incentives, exchanges, training and cooperation for persons responsible for combating trade in human beings and the sexual exploitation of children (STOP II) [Official Journal L 186, 07.07.2001].

The aim of the programme was:

- to develop, implement and evaluate a European policy in this field,
- to encourage networking, the dissemination of information and the improvement of scientific and technical research,
- to facilitate participation by countries that have applied to join the European Union in the projects that are developed,
- to encourage cooperation with non-Union countries and the relevant international organisations.

The proposal put the candidate countries in special focus. It also underlined the importance of co-operation with third countries and international organisations.

Just as in the case of STOP I, the STOP II was aimed at judges, public prosecutors, law enforcement authorities, public immigration and social service authorities, researchers and representatives of charitable organisations. To be eligible for co-financing, projects had to involve at least three Member States (or two Member States and one applicant country).

The programme covered the following types of project:

- training,
- exchanges and work-experience placements,
- studies and research,
- meetings and seminars and
- dissemination of the results obtained under the programme.

The Commission was responsible for managing and implementing the programme, in cooperation with the Member States. It was responsible for evaluating and selecting projects on the basis of a series of criteria including, among other things, their European dimension, the scope for participation by the applicant countries, complementarity with other cooperation projects, and quality in terms of project design and the presentation of expected results.

The Commission undertook an annual evaluation of the measures carried out and sent a report on implementation of the programme to Parliament and the Council each year.

Framework programme concerning police and judicial cooperation in criminal matters (AGIS)¹⁶³

At the Tampere European Council, the Member States undertook to create an area of freedom, security and justice in the European Union and to step up cooperation in preventing and fighting organised crime. As the Grotius II – Criminal, Oisin II, Stop II, Hippocrates and Falcone programmes expired on 31 December 2002, the Commission proposed a new framework programme to run from 1 January 2003 to 31 December 2007.

AGIS was a framework programme to help police, the judiciary and professionals from the EU Member States and candidate countries to cooperate in criminal matters and in the fight against crime by providing co-financing for projects relating to police and judicial cooperation.

The projects covered specific areas such as judicial cooperation in general and criminal matters, cooperation between law enforcement authorities and other organisations involved in preventing and fighting crime, and assistance to victims of crime.

The proposal was directed at the following groups:

- legal practitioners
- officials and officers from law enforcement or victim assistance services,
- officials in other government departments and
- representatives of victim assistance services.

Although originally intended to run until 2007, AGIS ended a year early in 2006 so that it could be succeeded by new programmes in the area of internal security and criminal justice. These programmes are due to run over the period 2007-2013. Under the framework programme "Fundamental Rights and Justice", the new specific programme is called "Criminal Justice"¹⁶⁴. Together with the programme "Prevention of and Fight against Crime", it replaces the former AGIS programme. Its aim is to promote a reduction in existing legal obstacles to the good functioning of

¹⁶³ Council Decision 2002/630/JHA of 22 July 2002 establishing a framework programme on police and judicial cooperation in criminal matters (AGIS) [Official Journal L 203 of 01.08.2002].

¹⁶⁴ With a budget amounting to cca. 200 million eur.

In: http://ec.europa.eu/justice_home/funding/jpen/funding_jpen_en.htm

judicial cooperation, with a view to strengthening the coordination of investigations and to increase compatibility of the existing judicial systems in the Member States.

2.2.2. The DAPHNE Programmes

The Daphne Programme (2000-2003), a four-year multi-annual programme of Community action on preventive measures to fight violence against children, young people and women, grew out of the Daphne Initiative, which ran from 1997 to 1999 on an annual basis. The Initiative arose as part of the European Commission's response to growing concern about violence aimed against children, young people and women in Europe. Its remit was wide: to facilitate, through a funding line of 11.8 million ECU over the course of the Initiative, NGO and multi-sectoral action. Violence was understood in the widest possible sense, from sexual abuse to domestic violence, from commercial exploitation to bullying in schools, from trafficking in women to discrimination-based violence against disabled, minority, migrant or other vulnerable people. In 1997, the Daphne Initiative funded 46 projects, in 1998 49, and in 1999 54 projects were approved for funding.

Action to combat violence against children, young persons and women: the DAPHNE programme¹⁶⁵

With the introduction of the Daphne Programme (2000-2003), the remit of possible activity has widened in three principle areas: a wider group of organisations was eligible to submit applications for funding; the geographical coverage was extended; projects could run for more than one year. The programme provided funds amounting to 5 million EUR per year (20 million EUR in total). For the year 2000, 47 projects were funded. Among them were projects dealing specifically with trafficking in women.

It covered all forms of violence against women and children – physical, sexual and psychological violence. Three novelties have been introduced into the new programme. It was no longer limited to NGOs and the voluntary sector, but public institutions may apply. It was open to the Central and Eastern European Applicant

¹⁶⁵ Decision No 293/2000/EC of the European Parliament and of the Council of 24 January 2000 adopting a programme of Community action (the Daphne programme) (2000 to 2003) on preventive measures to fight violence against children, young persons and women [Official Journal L 34 of 09.02.2000].

States, as well as to Cyprus, Malta, Turkey and the EEA/EFTA countries. Furthermore, multi-annual project could be funded. These changes provided an added value to the effectiveness of the programme. The fact that the applicant countries could participate was crucial as the Central Eastern European countries were important origins for both victims of trafficking and perpetrators.

The four-year Daphne programme was designed to provide information on violence against children, young people and women while being a significant complementary aid to existing programmes.¹⁶⁶

The most important added value was that this programme represented very much a beginning of cooperative action by European non-governmental organisations (NGOs) and voluntary organisations in the fight against violence towards children, young people and women. In many cases, they provided services where the public authorities lacked the ability or the power to provide. The Daphne programme encouraged and stimulated the dissemination of good practices.

The budget for the Daphne programme which ran from 1 January 2000 to 31 December 2003 was set at 20 million EUR.

According to the evaluation report,¹⁶⁷ most of the projects financed by the programme, were dealing with sexual violence in all its forms, followed by gender/family-related violence, internet pornography and violence against children. A majority of projects dealt with prevention of and protection against violence, and as for the methods used to implement these objectives, the most important was networking, followed by dissemination of good practice, production of materials, awareness-raising and training.

Action to prevent violence against children, young people and women: the DAPHNE II programme (2004-08)

Daphne II followed up the Daphne I programme, which expired at the end of 2003. Daphne I was a great success and met a real need in terms of strategies to combat violence. The financial framework for the second phase of the programme (2004-

¹⁶⁶ Information campaigns were organised to raise the awareness of public opinion of the detrimental personal and social effects of violence on victims, in the family and the community and society.

¹⁶⁷ Report from the Commission to the European Parliament and the Council on the Daphne Programme (2000-2003) (COM(2002)169 final)

2008) was 50 million EUR, as against 20 million EUR for the first phase. Daphne funded projects which aimed to provide support to victims of violence and to prevent their being exposed to violence in future. Projects of this kind should help to raise awareness of the personal and social damage that violence does to victims, families, communities and society at large. It involved development of networking, exchanges of information and good practice and awareness-raising measures.

Three target groups have been clearly identified. These were children (up to the age of 18), young people (12-25 years old) and women.

Just as in case of Daphne I, all types of violence (physical, sexual and psychological) and all aspects of this phenomenon were concerned, whether occurring in public or in private. It included violence in the family, in schools and other educational institutions or in the workplace, commercial sexual exploitation, genital mutilation and human trafficking.

Combating violence towards children, adolescents and women: DAPHNE III programme (2007-2013)¹⁶⁸

This programme is the third phase of the Daphne programme and covers the period 2007-2013 with a budget of 116.85 million EUR. It supplements the existing programmes in the Member States and builds on the policies and objectives of the two previous Daphne programmes (Daphne and Daphne II). The programme is designed for target groups, such as families, teachers, social workers, police, medical staff, judicial staff, non-governmental organisations (NGOs) and public authorities.

All three Daphne programmes were opened to the Member States of the EU and the European Free Trade Association (EFTA) States that are parties to the European Economic Area (EEA) Agreement, as well as, under certain conditions, to the candidate countries and the countries of the Balkans and to participation by public or private not-for-profit organisations and institutions (local authorities at the relevant level, university departments and research centres) working to prevent and combat violence against children, young people and women, to provide support for victims,

¹⁶⁸ Decision No 779/2007/EC of the European Parliament and of the Council of 20 June 2007 establishing for the period 2007-2013 a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General Programme Fundamental Rights and Justice

to promote rejection of such violence or to encourage attitude and behaviour change towards vulnerable groups and victims of violence.

2.2.3. Other programmes and initiatives

Action Plan for a Safer Internet 1999-2004¹⁶⁹

The "Safer Internet" action plan aimed to foster a favourable environment for the development of the Internet industry by promoting safe use of the Internet and combating illegal or harmful content. The programme was based on three lines of action:

- creating a safer environment by establishing a European network of hotlines and encouraging self-regulation and codes of conduct,
- developing filtering tools and
- raising awareness.

The four-year action plan (1 January 1999 to 31 December 2002) has been granted total funding of 25 million EUR. The action plan was extended until 31 December 2004 and the budget increased by 13.3 million EUR to cover the two extra years.

Safer Internet Programme 2005-2008 (Safer Internet Plus)¹⁷⁰

In 2005 the Council adopted a Decision establishing the Safer Internet Plus programme aimed at promoting the safer use of the Internet and new online technologies. The programme covered the years 2005-2008 and continued the Safer Internet Action Plan (1999-2004).

The new programme has been broadened in scope to include the new media (e.g. videos) and was explicitly designed to combat racism and also content unwanted by the end-user ("spam"). It focused more closely on end-users: parents, educators and

¹⁶⁹ Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks

¹⁷⁰ Decision No. 854/2005/EC of the European Parliament and of the Council of 11 May 2005 establishing a multiannual Community Programme on promoting safer use of the Internet and new online technologies.

children, since according to the evaluation report¹⁷¹ there was too little knowledge among parents on how to handle filtering systems and the progress made in developing these technologies remained unsatisfactory. The new programme was geared towards, among others, supporting telephone helplines for children confronted with illegal and harmful content

Both of these programmes were opened for participation of legal entities established in the Member States. It was also open to legal entities established in the candidate countries in accordance with bilateral agreements in existence or to be concluded with those countries.

A budget of 45 million EUR has been allocated to the programme for the period 2005-08, of which 20 million EUR was for 2005 and 2006. Nearly half the budget was for awareness-raising measures.

In addition to direct support given to victims of trafficking, there is a need to improve exchange of information and best practice between Member States and candidate countries on the various means to prevent and combat trafficking.

Alongside the STOP and DAPHNE specific programmes, other Community programmes and initiatives in the field of employment, social affairs and gender equality can contribute to combating and preventing trafficking. For instance:

- the EQUAL Initiative supported transnational partnerships to develop and disseminate new ways of tackling discrimination and inequality in the field of employment. EQUAL encouraged partnerships to help the integration of asylum-seekers in its priorities. Depending on the official status of the asylum seekers, assistance was provided for new ways of helping them enter the labour market or for training for unsuccessful asylum-seekers prior to their leaving the EU. The total of the European Union's contribution to EQUAL, provided through the European Social Fund, was 2,847 million EUR over the period 2000-2006.
- the new EU Gender Equality Programme, 2001-2005 has been designed to provide financial support to the implementation of the Community framework

¹⁷¹ Communication from the Commission of 6 November 2006: Final evaluation of the implementation of the multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks (COM (2006) 663)

strategy on gender equality. This strategy embraced all Community policies and actions aimed at achieving gender equality. In conjunction with other Community programmes, the Gender Equality Programme supported and financed general activities in the fields of economic life, equal participation and representation, social rights, civil life, gender roles and stereotypes.

Eligible projects had to be transnational and contribute to promoting and disseminating the values and practices underlying gender equality, improving the understanding of issues related to gender equality and developing the capacity of players to promote gender equality effectively. All relevant actors, in particular non-governmental organisations, had access to the programme. Access has also been opened up to the candidate countries. It was up to them to choose which programmes they wished to participate in and PHARE provided for the matching co-financing.

Social support for victims of trafficking under the European Social Fund

The European Social Fund is the main source of European funding for local, regional and national measures linked to the European employment strategy. The ESF supports Member States' investment in modernising and expanding their labour markets, and developing their human resources.

As part of the Employment Strategy, Member States produce national action plans each year to implement the commonly agreed employment policy guidelines. In the guidelines, special attention is given to promoting equal access to the labour market for all. Guideline 7 urges the Member States to identify and combat all forms of discrimination that restrict access to the labour market, education and training for groups such as ethnic minorities and migrant workers. Guideline 9 calls on Member States to combat undeclared work and to encourage the transformation of such work into regular employment.

New perspectives have been opened when the Lisbon European Council in March 2000 invited the Member States to use the Structural Funds to fight poverty and social exclusion and to develop priority actions for specific target groups. Italy is for instance using the European Social Fund to combat trafficking and provide support for its victims.

Victims of trafficking are in a particularly vulnerable position for discrimination and social exclusion, which the social inclusion and employment strategies are designed to combat with support from the ESF and other Community programmes. Accordingly, Community assistance including ESF may be available for rehabilitation measures and other forms of support for victims of trafficking who reside in Member States after escaping from perpetrators.

2.2.4. The EU Anti-Trafficking Day

The EU Anti-Trafficking Day is an opportunity for awareness-raising to trafficking in human beings as well as exchanging best practices and revealing the weak points of the anti-trafficking policies and practices.

In 2007 the Commission decided to dedicate the 18 October to the fight against trafficking in human beings, calling it the EU Anti-Trafficking Day. This was proposed by the Commission in its Communication¹⁷² and underlined by the European Parliament.¹⁷³ In 2007 on the first EU Anti-Trafficking Day a Conference was held in Brussels, focussing on victims' identification and assistance. The first EU Anti-Trafficking Day had a motto "Time for action", to underline the need for more effective initiatives. On that occasion, the Commission presented its "Recommendations on the identifications and referral to services of victims of trafficking in human beings"¹⁷⁴, which called for the establishment of national mechanisms based on cooperation between governments and civil society organisations.

On the occasion of the second EU Anti-Trafficking Day on the 18 October 2008, the European Commission approved an evaluation of the implementation of the EU Action Plan to prevent and combat trafficking in human beings. The Commission concluded that the EU had developed a dynamic process of approximation of

¹⁷² Commission communication to the European Parliament and the Council on Fighting trafficking in human beings: an integrated approach and proposals for an action plan (COM 2005(415))

¹⁷³ European Parliament recommendation to the Council on fighting trafficking in human beings – an integrated approach and proposals for an action plan (2006/2078(INI)) Bauer report (P6_TA(2006)0498))

¹⁷⁴

http://ec.europa.eu/justice_home/news/information_dossiers/anti_trafficking_day_07/documents_en.htm

legislation, both in the fields of criminal law and victims' support. However, there still remained a serious gap between legislation and implementation.

Vice-President Jacques Barrot, EU Commissioner responsible for Justice, Freedom and Security, stated: "Although the Commission, the Council and Member States have been active in the field of anti-trafficking policy, the factual situation shows substantial weaknesses. Figures concerning criminal proceedings are not high enough. As to victims' assistance and protection, only a few countries have adopted policies that can be considered a real response to the estimated scale of the criminal phenomenon, meaning hundred thousands people trafficked in Europe every year".¹⁷⁵

The Commission called on the EU and Member States to make an extra push in 2009, and commit themselves to implement a few anti-trafficking key-actions indicated in the Commission Working Document "Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings". At the end of 2009 the Commission should assess if there was substantial improvement and would establish a new strategy for the future. It was also preparing the revision of the Framework Decision on trafficking submitting it in March 2009.

On the occasion of the third EU Anti-Trafficking Day on the 19-20 October 2009 Sweden organised a high-level ministerial conference in Brussels. The focus was on EU's external relations in the fight against trafficking "Towards EU Global Action against Trafficking in Human Beings". The main purpose of the conference was to achieve a political commitment on the next steps forward according to the lessons and best practices learnt. The conference brought together ministers from EU Member States, Eastern and Southern EU, Transatlantic partners and from selected Asian, African and South American countries, representatives of EU Institutions, EU agencies, like Europol, Eurojust, Frontex, Agency of Fundamental Rights and NGOs. As the outcome, they adopted the 2009 October Declaration.¹⁷⁶

¹⁷⁵

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1544&format=HTML&aged=0&language=EN&guiLanguage=en>

¹⁷⁶ More on the 2009 October Declaration on p.100

2.3. Specialised bodies to fight trafficking in human beings

Experts Group on Trafficking in Human Beings

The recommendations attached to the Brussels Declaration called for an experts group to be set up to consolidate and develop the validity and performance of standards and best practices of the counter trafficking policy. It was done by the Commission Decision¹⁷⁷ in order to provide the European Commission with expertise in preventing and fighting trafficking in human beings.

The Experts Group took the form of a consultative group in accordance with current practice in other areas. The aim was to provide the European Commission with expertise in the shape of opinions or reports relating to the prevention of and the fight against trafficking in human beings. The group was required to submit a report within nine months of being set up, to enable the Commission to launch new initiatives at European level.

The group consisted of experts in the fight against trafficking in human beings. They must have acquired experience from activities in entities involved in the fight against trafficking in human beings. The number of experts in the group was set at 20 including seven from the administrations of EU Member States, four from the administrations of the candidate countries and nine from inter-governmental, international and non-governmental organisations engaged in activities at European level with proven competence and experience in the fight against trafficking in human beings. The office was established for one year with the possibility of renewing.

Since 2003, the work of this group enabled the Commission to develop its anti-trafficking policy. This led in 2005 to the adoption of the European Union Action Plan on best practices, standards and procedures for combating and preventing trafficking in human beings, which was largely based on the report drawn up by the Experts Group at the end of 2004.

¹⁷⁷ Commission Decision [2003/209/EC](#) of 25 March 2003 setting up a consultative group to be known as the "Experts Group on Trafficking in Human Beings".

New Group of Experts on Trafficking in Human Beings

The European Commission set up a new Group of Experts to play a consultative and supportive role in the Commission action in the area of combating trafficking in human beings. The particular task of this Group, which continues the work of the previous Experts Group set up in 2003, is to make suggestions for harmonisation of the various practices in the European Union.

The aim of establishing the "Group of experts on Trafficking in Human Beings"¹⁷⁸ was that the Commission may consult on any matter relating to combating trafficking in human beings.

In particular, its terms of reference consist of:

- establishing cooperation between Member States, inter-governmental, international and non-governmental organisations and the Commission regarding human trafficking,
- issuing opinions and ensuring a coherent approach to the subject and
- helping the Commission in assessing the evolution of policy in the field at national, European and international levels and in identifying possible relevant measures at European and national levels across the range of the anti-trafficking policy.

The Group is composed of 21 members taken from:

- administrations of the Member States (up to 11 members),
- inter-governmental, international and non-governmental organisations active at European level in the area of trafficking in human beings (up to 5 members),
- social partners and employers' associations operating at European level (up to 4 members),
- Europol (1 member) and
- experts from public or private universities or institutes in Member States (up to 2 members).

¹⁷⁸ Commission Decision 2007/675/EC of 17 October 2007 setting up the Group of Experts on Trafficking in Human Beings. This new Decision takes account of the EU enlargement and extends the scope of the group of experts to adapt it to the developments in the area of the trafficking in human beings.

The members of the Group are appointed by the Commission, apart from the member from Europol. Their term of office is 3 years and is renewable.

European Police Office (Europol)

The Council Act of 26 July 1995¹⁷⁹ established the European Police Office known as Europol in The Hague, Netherlands. Europol has legal personality and its objective is to improve police cooperation between the Member States in order to combat terrorism, unlawful drug trafficking and other serious forms of international organised crime. The Member States are setting up national units to liaise between Europol and the national authorities responsible for fighting crime.

Europol started operations on 1 July 1999, when it replaced the Europol Drugs Unit (EDU), which had been set up on a provisional basis in 1995.

This Convention is open to accession by any state that becomes a member of the European Union. Reservations are not permissible.

Two protocols to the Convention were adopted by the Council in November 2002 and November 2003. They have given Europol new powers to assist the Member States, including coordinating joint investigation teams, requesting investigations, allowing third countries (with which Europol has concluded operational agreements) to take part in analysis groups, etc.

Unlike the police services of the Member States, Europol does not have executive powers. It cannot detain individuals; nor can it conduct home searches. Its task is to facilitate the exchange of information, analyse it and coordinate operations involving several Member States.

“It can provide access to intelligence databases and offers operational support through the exchange of intelligence and expert advice. It shall facilitate the exchange of information and provide operational analysis for Member States and generate strategic reports on the basis of the information and intelligence supplied by Member States, generated by Europol or gathered from other resources. However, the information flow from Member States to Europol is small compared to the number of investigations. It would appear that investigations are based more on

¹⁷⁹ Council Act of 26 July 1995 drawing up the Convention on the establishment of a European Police Office (Europol Convention)

spontaneous bi-or multilateral cooperation and the regular structures and mechanisms are seen as options.”¹⁸⁰

As part of police cooperation between the Member States, Europol:

- facilitates the exchange of information between the Member States,
- collates and analyses information and intelligence,
- notifies the competent authorities of the Member States without delay via the national units of information concerning them and informs them of any connections identified between criminal offences,
- aids investigations in the Member States,
- maintains a computerised system of information collected,
- helps Member States train members of their competent authorities,
- facilitates technical assistance between Member States and
- serves as the contact point for combating euro counterfeiting.

Europol takes action when one or two Member States are affected by serious international organised crime such as trafficking in human beings.¹⁸¹

Since the establishment of Europol, ongoing exchange of information between liaison officers based in the Hague as well as the analysis of trends and methods has taken place. In addition, Europol is hosting expert meetings and is providing training for law enforcement officers. Also the STOP Programme has co-financed a number of law enforcement training events and a subsequent increase in the involvement of Europol in actions under the programme has been noted.

The Europol has worked with the European Commission and international organizations on many trafficking in persons-related issues on projects linked to data collection and victim identification and referral. It provided support for a number of other initiatives as well, and provided EU member states and neighbour states with expert training and advice, primarily through participation in trafficking in persons investigators’ courses and awareness programmes.

¹⁸⁰ European Commission COM (2005)514, p.5

¹⁸¹ Other areas are preventing and combating terrorism, drug trafficking, illegal immigrant smuggling, trafficking in nuclear and radioactive substances, motor vehicle crime, counterfeiting and forgery of means of payment, money laundering (except for predicate offences).

In 2007, Europol supported a number of international agencies, including the United Nations Office on Drugs and Crime (UNODC) in producing an advanced training manual for investigators. It also assisted the International Labour Organization (ILO) in developing forced labour indicators, and the International Centre for Migration Policy Development in two projects: one on data collection and information management and the other aimed at developing a trans-national referral mechanism for victims of trafficking.¹⁸²

EUROJUST

Eurojust is a unit composed of national prosecutors, magistrates or police officers with equivalent competence detached from each Member State. Its task is to facilitate the proper co-ordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases.

Eurojust, based in the Hague (NL) was established as a result of a decision taken by the European Council of Tampere, held in October 1999. On 14 December 2000, a provisional judicial cooperation unit was set up under the name Pro-Eurojust. This was Eurojust's forerunner, a sort of round table of prosecutors from all Member States.

The terrorist attacks of 11 September 2001 in the USA served as a catalyst to setting up a judicial coordination unit, and Eurojust was established in 2002 by Council Decision 2002/187/JHA. Shortly after its establishment, Eurojust faced the challenge of the European Union enlargement: in May 2004, ten new states joined the EU, and in January 2007 two more were added, bringing the total number to 27.

Combating trafficking in human beings is one of its targets. Its aim is “to deal more effectively with serious cross-border crime, particularly when it is organised, and involves two or more Member States”.¹⁸³ Eurojust supports in any way possible the competent authorities of the Member States to render their investigations and prosecutions more effective when dealing with cross-border crime. Eurojust's competence covers the same types of crime and offences for which Europol has competence, such as terrorism, drug trafficking, trafficking in human beings, counterfeiting, money laundering, computer crime, crime against property or public

¹⁸² Europol Annual Report 2007, European Police Office, The Hague, 2008 p.17

¹⁸³ JHA Council Decision of 14 December 2000

goods including fraud and corruption, criminal offences affecting the European Community's financial interests, environmental crime and participation in criminal organisations. For other types of offences, Eurojust may assist in investigations and prosecutions at the request of a Member State.

Since the enlargement, Eurojust has been very active in working towards signing cooperation agreements allowing the exchange of judicial information and personal data. Agreements were concluded with Europol, Norway, Iceland, the USA, Croatia, OLAF, Switzerland, and FYROM. Liaison prosecutors from Norway and the USA are permanently based at Eurojust.

In 2007 71 cases of trafficking in human beings have been recorded by Eurojust. This is a substantial increase on the 32 new cases in 2006.¹⁸⁴

FRONTEX

Frontex, based in Warsaw, was created as a specialised and independent body tasked to coordinate the operational cooperation between Member States in the field of border security. Frontex complements and provides particular added value to the national border management systems of the Member States.

The removal of internal border controls within the EU has resulted a significant reduction in the opportunities for many EU law enforcement agencies to intercept traffickers and identify victims of human trafficking. The absence of physical border controls provides significant opportunities for organised criminal groups and individuals. Therefore it is of the Member States' high interest to protect the external borders more effectively. Frontex was created particularly to coordinate and enhance border security by ensuring the coordination of Member States' operational cooperation in order to help Member States to fight against all kind of threats that could happen at or through the external border of the Member States of the European Union.

Frontex promotes a pan-European model of Integrated Border Security, which consists not only of border controls but also other important elements. The first tier of the model is formed by exchange of information and cooperation between Member States, immigration and repatriation. The second tier is represented by

¹⁸⁴ European Commission COM (2008) 657, p.8

border and customs control including surveillance, border checks and risk analysis. The third tier is linked with cooperation with border guards, customs and police authorities in neighbouring countries. The fourth tier is connected with cooperation with third countries including common activities.

Frontex strengthens border security by ensuring the coordination of Member States' actions in the implementation of EU measures relating to the management of the external borders. Another important role is that it helps Member States with the training of national border guards, also by establishing common training standards. It also provides Member States with the necessary support in organising joint return operations.

3. Practices and recommendations

3.1 Practices of the EU Member States

According to the 2002/629/JHA Council Framework Decision, Member States should have taken the necessary measures to comply with the provisions of the Framework Decision by 1 August 2004. However, not all Member States have transmitted to the Commission all relevant information on their implementing provisions in a timely fashion.¹⁸⁵

By August 2004 only four countries¹⁸⁶ had notified the Commission of the measures taken to implement the Framework Decision. By February 2005 fifteen Member States¹⁸⁷ had provided the Commission with the relevant information. Italy, the Netherlands and Slovenia replied before May 2005, Denmark in July 2005 and Belgium in September 2005. Poland provided the information just on 4 January 2006 while four Member States¹⁸⁸ are not included in the report since they have not replied in due time.

The aim of the Framework Decision was to “approximate the laws of the Member States in the area of police and judicial cooperation in criminal relating to the fight against trafficking in human beings.”¹⁸⁹

According to the information provided, the requirements set out in the Framework Decision seem to have been met by most of the Member States – either as a result of pre-existing domestic law, or through the implementation of new and specific legislation.¹⁹⁰ However, “it needs to be noted that Member States legal systems can vary greatly and that in many cases legal concepts and expressions cannot always be easily compared to one another. Furthermore, the existence of legislation does not always guarantee full implementation.”¹⁹¹

¹⁸⁵ On the basis of the collected information the Commission had to prepare a report on implementation and transposition of the framework decision into national legislation. It is known under the name “Report from the Commission to the Council and the European Parliament of 2 May 2006 based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings COM (2006) 187”

¹⁸⁶ Austria, Cyprus, Finland and France. In: European Commission COM (2006)187, p.3

¹⁸⁷ Czech Republic, Estonia, Germany, Greece, Hungary, Latvia, Malta, Slovak Republic, Spain, Sweden and United Kingdom In: European Commission COM (2006)187, p.3

¹⁸⁸ Ireland, Lithuania, Luxembourg and Portugal. In: European Commission COM (2006)187, p.3

¹⁸⁹ European Commission COM (2006)187, p.5

¹⁹⁰ European Commission COM (2006) 525, p.8

¹⁹¹ European Commission COM (2006)187, p.6

Table 2: Sanctions for committing trafficking in human beings

Imprisonment for committing trafficking in human beings	
The maximum penalty that should be no less than 8 years when the offence has been committed in aggravated circumstances (EU 2002/629/JHA Framework Decision)	
Austria	<ul style="list-style-type: none"> • up the 3 years, • when violence or dangerous threats are used: 6 months to 5 years, • aggravated circumstances: between 1 to 10 years¹⁹²
Belgium	<ul style="list-style-type: none"> • between 5 to 20 years¹⁹³
Cyprus	<ul style="list-style-type: none"> • more than 8 years, • trafficking in a child: maximum of 15 years and/or a fine • sexual exploitation of a child: maximum of 20 years¹⁹⁴
Czech Republic	<ul style="list-style-type: none"> • crime against minors, sexual exploitation and slavery, or forced labour: between 2 to 10 years • crime resulting in a critical health situation, death or is aimed at benefiting financially from exploitation or prostitution: imprisonment between 5 to 12 years • when offender is part of an organised group: imprisonment between 5 to 12 years • committed by a criminal organisation and leads to serious damage, death or other serious consequences¹⁹⁵
Denmark	<ul style="list-style-type: none"> • maximum of 8 years¹⁹⁶
Estonia	<ul style="list-style-type: none"> • imprisonment between 8 to 20 years or life imprisonment¹⁹⁷
Finland	<ul style="list-style-type: none"> • between 4 months to 10 years¹⁹⁸, • when a child is involved: between 2 to 10 years

¹⁹² Article 104a of the Austrian Criminal Code

¹⁹³ Article 433 (5), (7) and (8) of the Belgian Criminal Code

¹⁹⁴ Section 3 and 5 of Law No. 3(1)2000

¹⁹⁵ Section 232 of Czech Criminal Law 140/1961

¹⁹⁶ Section 262 of the Danish Penal Code

¹⁹⁷ Estonian Penal Code deals with torture, sale or purchase of children, enslaving and abduction but there is no specific definition of human trafficking. It could listed under paragraph 89 which defines the “crime against humanity” and establishes the above mentioned sentences.

¹⁹⁸ Chapter 25 Article 3 of Finnish Criminal Code

France	<ul style="list-style-type: none"> • 7 year, • when aggravated circumstances¹⁹⁹: imprisonment for life²⁰⁰
Germany	<ul style="list-style-type: none"> • between 6 months to 10 years, • aggravated circumstances: between 1 to 10 years²⁰¹
Greece	<ul style="list-style-type: none"> • up to 10 years²⁰²
Hungary	<ul style="list-style-type: none"> • between 2 to 9 years²⁰³
Ireland*	
Italy	<ul style="list-style-type: none"> • maximum of 20 years, • in aggravated circumstances it can be increased²⁰⁴
Latvia	<ul style="list-style-type: none"> • no less than 3 years and no more than 8 years²⁰⁵ • if involved children between 5 to 12 years
Lithuania*	
Luxembourg*	
Malta	<ul style="list-style-type: none"> • imprisonment between 4 to 12 years • committed against a child or involvement of a criminal organisation, the penalty is increased²⁰⁶
Netherlands	<ul style="list-style-type: none"> • maximum of 6 years, • when severe physical injury or risk of life: maximum of 12 years, • when a child less than 16 years old: maximum 8 years²⁰⁷
Poland	<ul style="list-style-type: none"> • sexual exploitation of a child: between 1 to 10 years²⁰⁸
Portugal*	
Slovakia	<ul style="list-style-type: none"> • between 3 to 10 years, • when committed against children: imprisonment between

¹⁹⁹ Such as involving children, vulnerable people, torture, barbaric acts, and so on

²⁰⁰ Article 225-4-1 of the French Criminal Code.

²⁰¹ Articles 232 and 233 of the German Criminal Code

²⁰² Article 323A of Greek Criminal Code 3064/2002

²⁰³ Article 387 of the Hungarian Criminal Code

²⁰⁴ Article 602 of the Italian Penal Code 228/2003

²⁰⁵ Section 154(1) of the Criminal Code

²⁰⁶ Article 248/A/C/E of the Maltese Criminal Code

²⁰⁷ Article 273 of the Dutch Penal Code

²⁰⁸ General penalty, neither the concrete articles of the Polish Penal Code were not specified by the COM (2006)525

	5 to 12 years ²⁰⁹
Slovenia	• maximum of 10 years ²¹⁰
Spain	• between 6 to 10 years ²¹¹
Sweden	• between 2 to 10 years ²¹²
United Kingdom	• maximum of 14 years ²¹³

Source: European Commission COM (2006) 525

*countries which have not provided information in the required timeframe

First of all I would like to stress that according to the 2002/629/JHA Council Framework Decision, the maximum penalty that should be no less than 8 years when the offence has been committed in aggravated circumstances. Now we can see, that there is a significant problem with definitions and implementation. Not all Member States have transposed the provisions of the Framework Decision properly. Just a few examples: in case of Austria, when violence and threats are used, the imprisonment is between 6 months and 5 years, instead of a “normal” sentence of up to 3 years. The definition explicitly says use of “coercion, abuse”, so using violence or threat should be taken as a “normal case” of trafficking in human beings. Or, another case of not appropriate transposition of the definition is the case of the Netherlands, according to whom children are those who are less than 16 years old,²¹⁴ while the Framework Decision, just as the UN Convention on the Rights of the Child say that children are those under 18 years. In case of Poland, offenders of sexual exploitation of children can “escape” with 1 year imprisonment. In Czech Republic an aggravating circumstance is for example to financially benefit, however that is the main purpose of trafficking, to gain money.

Furthermore, the penalties should be effective, proportionate and dissuasive, giving six months of imprisonment as in the case of Austria, or even a fine in case of a sexual exploitation of a child in Cyprus is everything but dissuasive.

The Framework Decision introduced the concept of liability of legal persons in parallel with that of natural persons. According to the Commission’s report the

²⁰⁹ Section 246 of the Slovak Criminal Code

²¹⁰ Article 387 of the Slovenian Criminal Code

²¹¹ Article 318 of the Spanish Penal Code

²¹² Chapter 4 Article 1 of the Swedish Criminal Code

²¹³ 2003 Act – not further specified

²¹⁴ Under the Dutch criminal law, persons aged 16 or more have reached the age of sexual majority. In: European Commission COM (2006)187, p.12

legislation of most of the Member States provided for the possibility of sanctioning legal persons by means of criminal or administrative measures. It is only the Czech Republic, Latvia and the Slovak Republic²¹⁵ that legal persons could not be held liable for criminal offences.

According to the findings of the Commission²¹⁶, each Member State had already recognised this form of trafficking “as a specific criminal offence, different from exploitation of prostitution and punished more severely.”²¹⁷ However, the protection of victims appears to be insufficient. Many countries have undertaken actions targeting prevention, in particular information and awareness raising campaigns and training for law enforcement authorities. Long-term preventive measures are however still insufficient.

Member States that have the highest number of investigation and prosecution of trafficking for the purpose of sexual exploitation:

Table 3: Number of investigations in Member States

Best Member States	Number of investigation in 2006
Austria	128
Belgium	291
Bulgaria	291
Germany	353
Italy	214
Portugal	65
United Kingdom	54
EU in all MS	1569

Source: European Commission COM (2008) 657

²¹⁵ European Commission COM (2006) 187, p.7

²¹⁶ On the request of the Council from November 2007, the Commission circulated a questionnaire to Member States asking for updated information on the implementation of national anti-trafficking policies. 23 Member States and Norway provided answers. The document’s name is “Commission working document on evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings, COM (2008) 657”

²¹⁷ European Commission COM (2008) 657 p.2

The shortcoming of the document is that the evaluation does not provide exhaustive information about all Member States, it picks only those countries that have significant efforts and results.

The total number of cases investigated in the EU has an increasing tendency: 195 in 2001, 453 in 2003, 1060 in 2005 and 1569 in 2006, but these numbers are not high enough to reflect the presumed scale of the crime; especially if we take into consideration the IOM estimates of about 500.000 people being trafficked to Europe every year.²¹⁸ Investigation in labour trafficking is even less advanced.

Even though, Member States say that victim protection programmes exist, when providing concrete data on it, very few countries are able to give the number of victims who have received protection.²¹⁹ However, there is one positive case, Italy, where all victims who were placed in the social integration programmes also received police protection.²²⁰

Another shocking data (or lack of data) is the number of victims being compensated. While the right to compensation is ensured by legislative measures and many countries even have a public fund for compensation²²¹, the only available figures show that the number of victims of trafficking who have received compensation is very low.²²²

Even though the Directive 2004/81/EC on residence permit issued to victims of trafficking has been transposed by all Member States, there is a lack of substantial implementation.²²³ The Commission's evaluation says that almost every Member States²²⁴ provides residence permit for victims of trafficking and also gives information about duration²²⁵ of such residence permit, however gives no detail at all about how many residence permits were issued by Member States.

²¹⁸ European Commission COM (2008) 657, p. 3

²¹⁹ For example in Finland 5 victims have received protection, in Lithuania only 1 victim and in Poland 11 victims. In: COM (2008) 657, p.3

²²⁰ 2039 victims in 2005 and 2143 in 2006. In: COM (2008), 657 p.3

²²¹ Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Hungary, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Sweden and United Kingdom. In: COM (2008) 657, p.3

²²² Denmark 1, France 5, Netherlands 18, United Kingdom 4. In: COM (2008) 657, p.3

²²³ Only five countries dispose of relevant figures on providing reflectin period. The total number in 2006-2007 was 56, of which 30 cases were in Norway. In: COM (2008) 657, p.4

²²⁴ Except Denmark, United Kingdom, Poland and Luxembourg. In: COM (2008) 657, p.4

²²⁵ 6 months in AT, CY, CZ, FI, FR, PL, SE, IT, 1 year in NL, SI, ES, PT and 40 days in SK. In: COM (2008) 657, p. 4

Another problematic issue is the number of provided assistance to trafficked victims. Only a few Member States have given data on it, and these data are very low if we take again into consideration the IOM's estimation of 500.000 people being trafficked to Europe.

Table 4: Number of assisted victims in Member States

	Number of assisted victims
Austria	162
Belgium	121
Bulgaria	81
Czech Republic	14
Finland	9
Italy	2143
Latvia	96
Poland	10
Slovenia	40

Source: European Commission COM (2008) 657 p.4

The European Parliament in its recommendation in 2006 asked for individual risk assessment prior the return of a victim in order to avoid his/her stigmatization, discrimination or re-victimisation. On the other hand, the reality shows that in many countries risk assessment by law enforcement authorities before return is not regulated, or have very limited implementation.²²⁶

Concerning national coordinating mechanisms, only two countries (the Netherlands, and Sweden) have appointed National Rapporteurs and eight indicated the appointment of comparable mechanisms²²⁷ in spite of the fact that already the 1993 Council Recommendation has asked for it.

²²⁶ Belgium 3 cases, Czech Republic 6 cases, Slovenia 2 cases. In: COM (2008) 657, p.4

²²⁷ Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, Portugal, United Kingdom. In: COM (2008) 657, p.4

Best practices

Austria

The Federal Ministry of the Interior uses Interpol for operational cooperation with third-countries and is engaged in several bilateral and multilateral projects and initiatives, which cover the fight against human trafficking. Amongst others, the Federal Ministry of the Interior cooperates on bilateral level to protect family members of victims of trafficking in their home countries and trains law enforcement officers in the identification and protection of possible victims of trafficking in third countries.

Cooperation with Austria-based foreign representations of countries of origin was further intensified. In this context the inclusion of the topic of human trafficking in consular staffs' training curriculum and the dissemination of information folders in the respective national language at the Austrian representations abroad contribute to further raising staff's awareness and sensitising them to the topic of human trafficking before issuing a visa.²²⁸

As regards victim protection and cooperation with third countries, the city of Vienna created a special shelter for children and for this purpose established a new institution in 2003 "Die Drehscheibe" – which would be translated into English as the "Revolving disk" - a centre for victims of child trafficking and unaccompanied minor foreigners. The aim was not only to take care of these children but also to cooperate with the countries of origin such as Romania, Bulgaria, Slovakia, Hungary, Georgia and China in order to find long-term solutions. Social workers from Vienna hold training courses for the staff in the countries of origin, and also supports the construction of "crisis centres." These long-term measures of the "Drehscheibe" provide children with the possibility of a safe return to their home countries.²²⁹

Belgium

Belgium was always a pioneer in fighting trafficking in human beings. Together with the Netherlands they have always been prime destinations for traffickers, also for "their liberal prostitution policies."²³⁰ Due to the high number of trafficked people,

²²⁸ Action-Oriented Paper, p.25

²²⁹ Action-Oriented Paper, p.26

²³⁰ Women from the CEECs working as prostitutes were recognised there in the early 1990s and since then their number has increased exponentially. In: Locher (2007) p.162

the public and political awareness of the problem of trafficking was exceptionally high even in the early 1990s.

The Belgian Ministry of Foreign Affairs issues directives for diplomatic staffs based in certain positions. Indeed, referring to the National Action Plan, it has been asked to diplomatic staff in twelve specific countries to provide the Ministry with an evaluation on the following questions/issues:

1. How does the return of victims in countries of origin proceed? In particular:
2. Do specialized shelters exist in these specific countries?
3. How do local authorities react towards victims of human trafficking?
4. How high are the risks that victims of human trafficking are being re-victimized by local traffickers?²³¹

A good example of bilateral projects between country of destination and origin might be the project that the Immigration Office plans to launch towards Brazil. The Immigration Office is willing to finance up to 50 thousand EUR Brazilian official institutions or NGOs, if relevant, to launch an information campaign in the states of Goiás and Minas Gerais, Brazilian regions with the aim to raise awareness to the issue of human trafficking. As a matter of fact, Brazilian nationals, especially from the states of Goiás and Minas Gerais, are often victims of traffickers in human beings in Belgium. Brazilian victims are usually recruited in their home country before being taken to the Belgian territory where they often are economically exploited by traffickers.²³²

Moreover, Belgium has been involved in prevention activities aimed at raising awareness among potential victims in their country of origin. Indeed, a project of 'flyer' has been developed by the Belgian Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in Human Beings. The 'flyer' is to be inserted in visas which are delivered by Belgian embassies in 'sensitive' countries (i.e. countries whose population is highly represented among THB victims). The idea is to inform migrants about the risk of being trafficked in the country of destination.²³³

²³¹ Action-Oriented Paper, p.26

²³² Action-Oriented Paper, p. 27

²³³ Action-Oriented Paper, p. 27

Bulgaria

The National Commission for Combating Trafficking in Human Beings conducts awareness and information campaigns in partnership with institutions, international and non-governmental organizations on national and local levels. One of the most interesting campaigns conducted in 2008, was the campaign „Safe Vacation“²³⁴ which aimed to increase students' awareness about the problem and the methods of involvement in trafficking. The campaign targeted possible threats for students during their summer vacation.

Another interesting campaign was conducted on the occasion of the second EU Anti-Trafficking Day, 18 October 2008, within which they organised a ten-day campaign, during which a school lesson was conducted dedicated to the problem of human trafficking for students from the 5th to the 12th grade in more than 3,000 schools in the country.

Czech Republic

In 2008 the Ministry of Foreign Affairs distributed preventive materials drawn up by the IOM in 2007 for consular official working in ten selected source countries (Russia, Ukraine, Belarus, Moldova, Serbia, Macedonia, Albania, Bosnia and Herzegovina, Romania, and Bulgaria). At the same time there were training sessions being held for consular officials before their departure to a consulate or embassy. Training was provided predominantly to officials sent to work in the above mentioned countries.²³⁵

There was also an awareness-raising information campaign targeting the clients of prostitution and indirectly on victims of trafficking in human beings for the purpose of sexual exploitation. The slogan of the campaign was 'Don't Be Afraid to Say It on Her Behalf'. Web sites in the Czech, English and German languages have been implemented.²³⁶

Another action worth of mentioning is the manual prepared and issued in May 2005 by the Czech Society for Protection of Children on the basis of the project of Medical Prevention of Crime assigned by the Ministry of Health. The doctor's manual informs about the issue of human trafficking, lists the signs on the basis of which the

²³⁴ Action-Oriented Paper, p.29

²³⁵ Action-Oriented Paper, p.33

²³⁶ www.rekni-to.cz, www.say-it.cz, www.sage-es-cz

victim may be identified (including symptoms) and instructs them how to act in such cases.²³⁷

The Netherlands

In some countries they support projects aimed at improving security at seaports and airports, in order to counter a broader range of forms of trafficking (of people, drugs and weapons).

In order to prosecute traffickers and to transfer investigative skills to source countries, the Netherlands has conducted joint investigations with source countries. Like in 2007 the Netherlands police and prosecution services conducted an extensive investigation of human trafficking flows (code name „Operation Koolvis“) from Nigeria towards the Netherlands and other European destinations. The investigation led to simultaneous arrests in October 2007 of traffickers in the Netherlands, in other European countries and in Nigeria itself. A large number of victims were liberated from their tormentors. Building on this successful police operation, the Netherlands has now set up a programme for training and technical assistance to relevant Nigerian agencies. This project started in July 2009. It includes various training courses for Nigerian detectives and prosecutors as well as courses for Nigerian airport personnel in detecting passport fraud.²³⁸

The Netherlands, together with Belgium has always been the pioneers in fighting trafficking. This following best practice proves it too. While many Member States do not address the issue of forced labour, the Government of the Netherlands is working on making their global supply chains are free from exploitative practices. The Netherlands also supports the Decent Work Agenda of the ILO for the period 2006 - 2010. The Dutch contribution is used to fund Decent Work Country Programmes in 10 developing countries. Some activities are specifically directed at combating forced labour and child labour, some at broader labour issues. Bilateral Dutch aid to Bangladesh and Indonesia includes programmes to take children away from debilitating working conditions and back to school.²³⁹

Starting in 2008, the Netherlands is furthermore funding a three-year-long project of Terre des Hommes aimed at providing legal support to victims of child-sex tourism,

²³⁷ Action-Oriented Paper, p.35

²³⁸ Action-Oriented Paper, p.70

²³⁹ Action-Oriented Paper, p.70

encouraging them to act as a witness and developing the capacity of local NGOs to pressure law enforcement authorities to take action when needed. Moreover the Netherlands supports an ECPAT project aimed at getting tour operators to approve and implement a code of conduct to prevent and discourage child sex tourism.²⁴⁰

The list of best practices is not exhaustive; it does not include all Member States, neither all national programmes. I tried to pick the most interesting examples to show how different they are and this way could serve as a real best practice worth of exchanging with other Member States. The most common activities that Member States do are awareness raising, training of law enforcement authorities and signing bilateral agreements with those third countries from which most of their trafficked victims come, like Central European Member States (Hungary, Slovakia, Poland and Czech Republic) have agreements with Ukraine, Moldova, Belgium, Netherlands, while Italy and Portugal with North African countries, Nigeria and so on. As in every issue, there are countries that take their role seriously and do the utmost and there are also those who are the “bad students”. Without naming and shaming, unfortunately, there are some Member States that cannot serve with any best practice. They transpose the definition of the Palermo Protocol but with shortcomings, lack to ratify the Council of Europe’s Convention which is the most comprehensive international convention for the moment and instead of granting the victims protection and assistance they supposed to be provided, they treat them as witnesses with the obligation to testify against offenders in a public interrogation, not taking into account that the victim was threatened, beaten, abused, and traumatised.

It also needs to be stressed, that the fact, that a country is listed, does not mean that it fully complies with the EU legislation or international conventions. The reason of being listed is that the aim of exchange of best practices is to hold “brainstorming” among Member States and exchange know-how.

From the examples it is evident, that even a new Member State can be successful in fighting trafficking by conducting good initiatives and giving the appropriate attention to the issue.

²⁴⁰ ECPAT helps local NGOs in Thailand, the Philippines, Gambia, Dominican Republic and Brazil to build capacity for awareness campaigns and lobbying tour operators, hotels and so on. In: Action-Oriented Paper, p.71

The EU presidencies' efforts²⁴¹

In the last years, there was a tendency to address trafficking in human beings during each EU presidency. This should be kept as a continuous trend, while more coordination should be implemented. To put the fight against human trafficking on the agenda of the trio presidency, just to maintain political priority and the attention to the issue should be established since it enables greater policy continuity in priorities. The trio presidency should ensure that trafficking in human beings will be on the agenda as a constant point and dividing between the presidencies the priorities what they will focus on.

United Kingdom together with the Commission and Sweden as Chair of the Nordic Baltic Task Force against Trafficking in Human Beings organised a conference "Tackling human trafficking: Policy and best practice in Europe" on 19-20 October 2005. It also organised a conference human trafficking and illegal immigration on 24-25 October 2005 in Gatwick. The conference gathered criminal justice representatives with the aim to share best practices and improve the effectiveness of prosecutions.

Austria organised together with the Commission an expert conference on the "Implementation of the EU Plan on Trafficking in Human Beings" on 28-29 June 2006 in Brussels. The reason of this conference was that in order to fulfil the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, many measures required close cooperation between various actors, notable between the Council Presidency and the European Commission. The aim of the conference was to develop proposals for coordination and cooperation mechanisms needed at EU level. It also held an international training seminar for law enforcement officers to share best practices and recommendations regarding the fight against child trafficking, including the identification of child victims of trafficking.

Finland held a seminar on the EU Action Plan on combating trafficking in human beings on 31 October and 1 November 2006 in Helsinki. The aim of the seminar was to share best practices in respect of the identification of children at risk of becoming victims of human trafficking. The objective was to strengthen expertise and share good practices among the actors operating against human trafficking while also

²⁴¹ Information gathered on the EU presidencies' activities was collected from the websites of the presidencies concerned.

identifying the ways in which all these actors can better cooperate in identifying and protecting those children deemed to be at risk.²⁴²

German Presidency issued a Declaration on the behalf of the EU on the commemoration of the 200th anniversary of the abolition of the transatlantic slave trade on 26 March 2007. It commemorated the death of millions of men, women and children being shipped to the Americas in order to become slaves and the millions who died in the slave hunts in Africa. This anniversary served “as a timely reminder that slavery is still a common practice in many parts of the world and that modern forms like bonded labour and human trafficking are spreading more and more.”²⁴³

Portugal hosted a conference on “Trafficking in human beings and gender” on 8-9 October 2007 in Porto widely attended by government, international organisations and NGO representatives.

France organised a conference “Fighting trafficking in children: what is to be done in the European Union?” on 16 October 2008 in Paris. It gathered 200 experts from civil society and public authorities on the occasion of the EU Anti-Trafficking Day. The conference was initiated by “Secours Catholique”, the “Ensemble contre la traite des êtres humains” collective, Caritas Europe, Caritas Internationalis and the Coatnet worldwide network. The aim was to identify existing obstacles and to consider the changes necessary to enable an effective application of the EU Framework Decision and directives just as the Council of Europe Convention, with a particular attention to children.

Czech Republic organised a conference on “Joint Analysis, Joint Action” – on EU national rapporteurs on trafficking in human beings between 30 March and 1 April 2009 in Prague. The aim of the conference was to build and maintain effective and efficient cross-border cooperation and exchange of information exchange on trafficking in human beings on the EU level, through enhancement of the role of National Rapporteurs or equivalent mechanisms within 27 Member States. The conference has been organized in response to urgent calls for establishing National Rapporteurs and equivalent mechanism and aims to promote stronger working relations of existing National Rapporteurs and equivalent mechanisms within the EU. At the end of the conference, the organisers distributed a map of contacts of National

²⁴² Council of the EU document No. 15024/06

²⁴³ www.eu2007.de/en/News/CFSP_Statements/March/0326Abschaffung.html

Rapporteurs, with basic information on the national institutions responsible for monitoring and reporting the situation and other issues in the field of combating trafficking in human beings. Moreover, the map also included details on existing roles and tasks of National Rapporteurs, common standards, and introduced the spectra of possible activities of the National Rapporteurs institute.

Sweden organised a high-level ministerial conference on the occasion of the third EU Anti-Trafficking Day, on 19-20 October 2009 in Brussels. The focus was on EU's external relations in the fight against trafficking "Towards EU Global Action against Trafficking in Human Beings". The main purpose of the conference was to achieve a political commitment on the next steps forward according to the lessons and best practices learnt. The conference brought together ministers from EU Member States, Eastern and Southern EU, Transatlantic partners and from selected Asian, African and South American countries, representatives of EU Institutions, EU agencies, like Europol, Eurojust, Frontex, Agency of Fundamental Rights and NGOs. As the outcome, they adopted the 2009 October Declaration.

Spain will organise a conference on unaccompanied children during the first half of 2010. The focus will be on unaccompanied children within the European Union, since there is a significant increase in the number of these children from outside the European Union to the different EU Member States. The aim is to adopt an Action Plan at the end of the conference.

EU external activities to fight human trafficking

Except from international bilateral agreements between the Member States and third countries, the European Union as itself is also active in the fight against trafficking in human beings abroad by conducting several activities.

For over a decade now, the Commission has been funding a number of activities in the fight against trafficking around the world, through a comprehensive approach that addresses prevention, protection of victims and prosecution of traffickers. The Commission's scope of work includes both addressing trafficking from third countries to the European Union and intra-regional trafficking for labour and sexual exploitation in third countries.

The fight against trafficking is a priority in several thematic instruments, such as former AENEAS Programme (2004-2006) and currently, the Thematic Programme on Migration and Asylum, the Instrument for Human Rights (EIDHR), and the thematic programme 'Investing in People', particularly regarding child trafficking and child labour. Projects are spread around the world, from North, Sub-Saharan and South Africa, to the Middle East and the Gulf, Eastern Europe, Central and Southeast Asia and Latin America.²⁴⁴

A number of short-term actions have also been conducted in the framework of the TAIEX instrument, namely seminars for law enforcement, prosecution, police and social services from the candidate and potential candidate countries, as well as study visits to Member States.²⁴⁵

One of the main differences between the anti-trafficking policies within the EU and towards third countries is, that while in the internal anti-trafficking policies trafficking in human beings is still considered as an issue of justice and home affairs, and Member States and/or EU decision-makers still take the fight against human trafficking as a fight against illegal migration, in spite of the many efforts from the side of the NGOs, European Parliament and the Commission. On the contrary, towards third countries the fight against trafficking is an issue of human rights violation, so the EU addresses it from a human rights perspective.

The Commission participates in the external fight against trafficking by addressing it directly, or indirectly through addressing factors that makes people more vulnerable to trafficking, such as poverty, unemployment, gender inequality, illiteracy or fighting against illegal migration. The biggest tool to combat trafficking in human beings abroad is to provide funding of projects. However, there is no specific data, how much is spent directly on fighting trafficking in human beings. The reason is that there is not concrete budget line for that. Projects on fighting human trafficking are mainly financed from funds to eliminate gender violation or to promote gender empowerment. Even though the Commission is financing lot of projects, they are not so visible and traceable because of lack of monitoring and evaluation. In order to ensure a more efficient EU external anti-trafficking policy, more needs to be done.

²⁴⁴ Council Action-Oriented Paper

²⁴⁵ Council Action-Oriented Paper

There has to be new tools, and those that already exist needs to be improved. There should be direct programmes and project to fight against human trafficking, and not just one little part of the project, while their proper monitoring and evaluation should be ensured. Furthermore, other activities should be also taken, like involving the issue of trafficking in human beings into the dialogue with third countries. Special attention should be given to countries with which the EU has closer cooperation, like the ACP countries and the neighbouring countries.

Key area where focus should be made is on support and training for the implementation of anti-trafficking legislation, investigation and prosecution.²⁴⁶

Another key area could be the protection of victims in third countries, through legal, medical, and social support services, the establishment of shelters, and the protection of the rights of trafficked victims in host third countries or helping to raise awareness among children.

A document that closed the gap in its field, is the “Action oriented paper on the external dimension of EU justice and home affairs” (AOP) adopted on 1 December 2009 by the EU Council of Ministers in its last meeting under the Swedish Presidency. It includes an integrated compendium of external actions as well as cooperation measures on countering trafficking in human beings and addressing the root causes of human trafficking in the countries of origin.

It summarised the basic steps taken and suggested further improvement, however not just in the field of external relations, like emphasising the establishment of national rapporteurs or equivalent mechanisms, the EU Network of national rapporteurs, or the importance of training. It also emphasised the importance of providing assistance to victims, include safe and appropriate accommodation, counselling and information, legal assistance, health care, psychological and material assistance. In support of the implementation of existing international instruments, the establishment and development of a reflection period for the victim and the possibility of issuing temporary residence permits are essential.

The Action-Oriented Paper emphasised that trafficking in human beings is already addressed in numerous agreements between the EU and third countries²⁴⁷ and raised

²⁴⁶ The EC is funding a €6,3 million project in South Africa to increase the government’s capacity to deal with trafficking and enhance inter-sectoral coordination and cooperation. In: Council Action – Oriented Paper

in the political dialogue with third countries, in particular in the framework of Human Rights Dialogues held with over 30 countries worldwide. The EU also supported international efforts by advocating at various UN fora the prevention of trafficking in human beings, victim protection and assistance, the establishment of a legislative framework, policy development and law enforcement, international cooperation and coordination on trafficking in human beings.²⁴⁸

The AOP not just summarised the EU anti-trafficking actions in its external relations but its aim was to strengthen the commitment and coordinated actions for the purposes of all forms of exploitation in partnership with third countries, regions and organisations at international level. It is intended to promote a proactive rather than a reactive approach. In order to effectively address human trafficking, the AOP called for an integrated, holistic and multidisciplinary approach, having as its basis the respect for human rights and the rule of law, including a gender and child rights perspective.

A good sign is that the Commission and the Council would systematically monitor the progress of the actions and activities outlined in this Action-Oriented Paper and will report to the Justice and Home Affairs Council and the General Affairs and External Relations Council every 18 months, with the first report due by June 2011.

3.2. United States of America's anti-trafficking policy

According to the US Department of State approximately 600,000 to 800,000 victims annually are trafficked across international borders worldwide, and between 14,500 and 17,500 of those victims are trafficked into the United States. These estimates include women, men and children. Victims are generally trafficked into the US from

²⁴⁷ such as the Africa-European Union Strategic Partnership, signed in Lisbon in December 2007, in which the implementation of the EU-Africa Plan of Action on trafficking in human beings is one of priority actions in the section on "Partnership on Migration, Mobility and Employment", and the Stabilization and Association Agreements between the EC and the Western Balkans. The issue of trafficking in human beings is also addressed in the Ministerial Declarations agreed at the second Euro-African Ministerial Conference on Migration and Development (Paris, 25 November 2008) with a focus on the Western-African migratory route and at the Ministerial Conference on "Building Migration Partnerships" (Prague, 27-28 April 2009) with a focus on the eastern and south-eastern regions neighbouring the EU. trafficking in human beings is also addressed in numerous Country Strategy Papers and National and Regional Indicative Programmes, for example in South Asian and Southeast Asian countries where the problem is persistent at both country and regional levels, as well as in several bilateral Action Plans with ENP countries.

²⁴⁸ Action-Oriented Paper p.6

Asia, Central and South America and Eastern Europe. Many victims trafficker into the US do not speak and understand English and are therefore isolated and unable to communicate with service providers, law enforcement and others who might be able to help them.²⁴⁹

It was the Clinton Administration who started to deal with the issue of trafficking in human beings. In 2000, the Congress passed and President Clinton signed into law the Trafficking Victims Protection Act (TVPA), which was a breakthrough legislation framing initial policies and responsibilities.

The Act defines “severe forms of trafficking in persons” as:

- a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- b) the recruitment, harbouring, transportation, provisions, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

The legislation emphasized in line with the UN Palermo Protocol the need to focus on three keystones: prevention, protection and prosecution. That means, the goal is to:

- prevent human trafficking overseas,
- protect victims and help them rebuild their lives in the US with Federal and state support and
- prosecute traffickers of persons under stiff Federal penalties

The comprehensive provisions of the TVPA acknowledged that prosecution alone is not enough to combat trafficking effectively. The law therefore strengthened the ability of the federal government to combat trafficking in human beings by providing explicit protection to victims, including immigration status, social service benefits and specific legal rights.

The 2003²⁵⁰, 2005²⁵¹ and 2008²⁵² reauthorization of the TVPA added additional requirements, responsibilities, funding and protection for victims. Under these laws

²⁴⁹ Department of Health and Human Services Human Trafficking Fact Sheet

²⁵⁰ The 2003 Trafficking Victims Protection Reauthorisation Act (TVPRA) mandated in particular new information campaigns to combat sex tourism, added refinements to the federal criminal law

key agencies have been vested with the authority to act as well as to provide grants for a myriad of assistance programs both in the United States and abroad.²⁵³

The TVPA created the President's Interagency Task Force to Monitor and Combat Trafficking (PITF), chaired by the Secretary of State and comprised of cabinet members and other officials as designed by the President to coordinate the US Government's anti-trafficking efforts. It meets at least once a year. The role of the Task Force is, among other activities, to:²⁵⁴

- measure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection and assistance to victims,
- expand interagency procedures to collect and organise data,
- engage in efforts to facilitate cooperation among countries,
- examine the role of the international sex tourism industry and
- engage in consultation and advocacy with governmental and non-governmental organisations.

The TVPA also authorised the Secretary of State to establish the Office to Monitor and Combat Trafficking in Persons within the Department of State to support the Task Force as well as the Secretary of State. The Act also authorised staffing the Office from the various Task Force agencies.²⁵⁵ The Office was created in 2002. In

provisions, and created a new civil action that allows trafficking victims to sue their traffickers in federal district court. In addition, the TVPRA 2003 required an annual report from the Attorney General to Congress. In: Attorney General's 2009 report, p.2

²⁵¹ The 2005 Trafficking Victims Protection Reauthorisation Act (TVPRA) authorised new anti-trafficking resources, including (1) grant programs to assist state and local law enforcement effort in combating trafficking in persons and to expand victim assistance programs to US citizens or resident aliens subjected to trafficking; (2) pilot programs to establish residential rehabilitative facilities for trafficking victims, including one program aimed at juveniles; and (3) extraterritorial jurisdiction over trafficking offenses committed overseas by persons employed by or accompanying the federal government. In: Attorney General's 2009 report, p.2

²⁵² The 2008 Trafficking Victims Protection Reauthorisation Act (TVPRA) authorised new measures to combat human trafficking, among others: (1) creates new crimes imposing severe penalties on those who obstruct or attempt to obstruct the investigations and prosecutions of trafficking crimes. These violations are now punishable to the same extent as the trafficking crimes themselves. (2) Enhances the penalty for conspiring to commit trafficking-related crimes. The maximum penalty for violating this provision is now equal to the penalty for the underlying substantive offense. (3) Allows the US government to prosecute trafficking crimes committed outside the United States, where the alleged offender is a national or lawful permanent resident of the United States or is present in the United States. (4) Expands the US Government's authority to detain pending trial defendants who have been charged with trafficking offenses as a risk of flight or a danger to the community. In: Attorney General's 2009 report, p.3

²⁵³ The Action Group to end Human Trafficking (2008) p.16

²⁵⁴ Attorney General's 2009 report, p.2

²⁵⁵ The Action Group to end Human Trafficking (2008) p.16

the 2003 reauthorization of the TVPA, the Director was upgraded to “Ambassador at Large”.

The Senior Policy Operating Group (SPOG) was created within the Task Force in 2003 and was created to follow up on PITF initiatives and to implement US Government anti-trafficking policies and guidelines and to coordinate activities of federal departments and agencies. It is chaired by the Ambassador at Large and includes senior officials from various US Departments, and meets quarterly.²⁵⁶

Department of Homeland Security

Bureau of Immigration and Customs Enforcement is charged with dismantling domestic and international criminal organisations involved in trafficking by forming a unified enforcement response. It investigates cases of trafficking and is an important partner in victim identification.

Departments within Department of Homeland Security hold anti-trafficking training programmes to educate federal, state, local and foreign law enforcement agencies.²⁵⁷

The US Citizenship and Immigration Services awards the so-called T visa, a new tool established by the TVPA and Continued Presence status. The T visa allows victims of trafficking to become temporary residents of the US because returning victims to their home country is not always the best solution and is not in the best interest of the victim.

²⁵⁶ Members of the PITF and SPOG include the Department of State, Justice, Health and Human Services, Homeland Security, Labor and Defense together with the United States Agency for International Development, Office of Management and Budget, and the Office of the Directorate of National Intelligence. The National Security Council also regularly participates. Most recently the Office of the U.S. Global AIDS Coordinator and the Department of Education have participated. In: www.state.gov

²⁵⁷ The Action Group to end Human Trafficking (2008) p.38

Table 5: Number of applications for T visas²⁵⁸

Applications for T-visas	2005	2006	2007	2008
Victims				
Applied	229	346	230	394
Approved	112	182	279	247
Denied	213	46	70	64
Family of victims				
Applied	124	301	149	290
Approved	114	106	261	171
Denied	18	39	52	19

The recipients of a T visa, after three years, may be eligible for permanent residence status if they meet the following conditions:²⁵⁹

- they are a person of good moral character,
- they have complied with any reasonable request for assistance in the investigation during the three-year period and
- they will suffer extreme hardship if they are removed from the US.

The Act authorises up to 5000 victims of trafficking each year to receive permanent residence status after three years from issuance of their temporary residency visas. It is evident from the table above that the Federal government do not make a full use of this possibility. It is hard to imagine that it is because of the lack of victims since according to estimation there might be around 14,500 to 17,500 foreign victims of trafficking in the US.

The T visa signifies a shift in the immigration law policy, which previously resulted in many victims being deported as illegal aliens. The law also makes victims of trafficking eligible for the Witness Protection Program.²⁶⁰

²⁵⁸ Attorney General's 2009 report, p.32

²⁵⁹ Department of Health and Human Services Fact Sheet: Certification for victims of trafficking

²⁶⁰ Department of Health and Human Services Fact Sheet: Trafficking Victims Protection Act of 2000

Department of Health and Human Services

Department of Health and Human Services is the designated agency responsible for helping victims become eligible for benefits and services. It is this Department that after consultation with the Attorney General and the Secretary of Homeland Security, certifies victims of trafficking who are non-US citizens so they may qualify for the same assistance, federally funded benefits and services available to refugees. Victims of trafficking who are US citizens do not need to be certified to receive benefits, they may already be eligible for many benefits.

To receive certification, an individual must:²⁶¹

- be a victim of human trafficking as defined by the TVPA,
- be willing to assist with the investigation and prosecution of traffickers and
- have completed a bona fide application to a T visa or
- have received Continued Presence status from the US Department of Homeland Security

Child victims of human trafficking are not required to cooperate with law enforcement authorities in order to receive benefits; they are immediately eligible for benefits – they do not need to apply for a T-visa or get Continued Presence status. For such victims the Department Health and Human Services issues, once it has received proof that the child is a victims of trafficking, a “letter of eligibility”.²⁶² The victim or the victim’s advocate may then present the letter to social service providers as proof of eligibility.

²⁶¹ Department of Health and Human Services Fact Sheet on Victim Assistance

²⁶² Department of Health and Human Services Fact Sheet on Victim Assistance

Table 6: Number of certifications and letters of eligibility in the US²⁶³

Fiscal year	Children	Adults	Total
2001	4	196	198
2002	18	81	99
2003	6	145	151
2004	16	147	163
2005	34	197	231
2006	20	214	234
2007	33	270	303
2008	31	286	317
Total	162	1534	1696

all victims certified in 2008



Of the victims certified in fiscal year 2008, 45 percent were male, compared to 30 percent in fiscal year 2007 and 6 percent in fiscal year 2006. Overall, 76 percent of all victims certified in fiscal year 2008 were victims of labour trafficking, 17 percent were exploited through sex trafficking, and 5 percent were victims of both labour and sex trafficking.²⁶⁴

In comparison, 77 percent of child victims who received Eligibility Letters in fiscal year 2008 were female. 55 percent of child victims who received Eligibility Letters were victims of sex trafficking. 26 percent were victims of labour trafficking,

child victims in 2008



²⁶³ Attorney General's 2009 report, p.10

²⁶⁴ Attorney General's 2009 report, p.9

and 6 percent were victims of both labour and sex trafficking.²⁶⁵

However, it needs to be underlined that number of certifications should not be equated with victim identification. Not all victims are willing to cooperate with the law enforcement authorities, not all victims are eligible and some foreign victims may choose to return back to their home country without seeking any benefits in the US.

Certified and eligible victims of human trafficking can receive benefits and services necessary for the safety and protection of their lives, including²⁶⁶:

- housing or shelter assistance
- food assistance
- income assistance
- employment assistance
- English language training
- health care assistance
- mental health services
- assistance for victims of torture.

Since many victims fear of being deported, one of the services of the Department is to connect victims with NGOs prepared to assist them and address their specific needs. These organisations can provide counselling, case management and benefit coordination.

After three years, a T visa recipient can apply for permanent residence status. In certain situations, it enables victims of human trafficking to get T visas for family members as well.

It is also running a major public awareness campaign to alert victims of trafficking in the US that helps is available through a hotline number.

Subcontractors that receive grants must report on the effectiveness of the activities carried out with these funds to the Secretary or Attorney General, depending on specific circumstances.²⁶⁷

²⁶⁵ Attorney General's 2009 report, p.9

²⁶⁶ See the list of some specific benefits available to certified adult and eligible child victims of human trafficking in Annex.

²⁶⁷ The Action Group to end Human Trafficking [2008], p.37

Department of Justice is responsible for prosecuting traffickers, assisting state and local officials in identifying victims, protecting victims and providing services to certain victims.²⁶⁸ It works closely with the FBI, the Department of Homeland Security and local law enforcement agencies to investigate and prosecute cases.

The TVPA created new law enforcement tools to strengthen the prosecution and punishment of traffickers, making human trafficking a Federal crime with severe penalties.²⁶⁹

Department of Labor

The Secretary is responsible for carrying out activities to monitor and combat forced labour and child labour in foreign countries through the Bureau of International Labor Affairs. The Secretary must also monitor the use of forced labour and child labour in violation of international standards. The Secretary must provide information about trafficking in human beings for the purpose of forced labour to the Office to Monitor and Combat Trafficking.²⁷⁰ The Wage and Hour Division investigates labour law violations and plays a crucial role in the identification of victims. Occupational Safety and Health inspector, Wage and Hour inspectors and other DOL officers and regulators have an important role to play in identifying victims of trafficking for labour exploitation among immigrants, undocumented and exploited workers.²⁷¹

In addition, the Department of Labor offers programmes such as job-search, job-placement assistance and job-counselling services as well as educational and training services and referral to supportive services such as transportation, childcare and housing, through its One-Stop Career Center System, which victims can access after the Department of Health and Human Services' certification.

²⁶⁸ The Action Group to end Human Trafficking [2008], p.30

²⁶⁹ For example, if a trafficking crime results in death or if the crime includes kidnapping, an attempted kidnapping, aggravated sexual abuse, attempted aggravated sexual abuse, or an attempt to kill, the trafficker could be sentenced to life prison. Traffickers who exploit children (under the age of 14) using force, fraud or coercion, for the purpose of sex trafficking, can be imprisoned for life. If the victim was a child between the age of 14 and 18 and the sex trafficking did not involve force, fraud or coercion, the trafficker could receive up to 20 years in prison. In: Department of Health and Human Services Fact Sheet: TVPA of 2000

²⁷⁰ The Action Group to end Human Trafficking [2008], p.35

²⁷¹ The Action Group to end Human Trafficking [2008], p.35

Department of Defense

The Department of Defense has implemented a zero-tolerance stand against any actions by Defense personnel that contribute to human trafficking and instituted a service-wide mandatory training programme.²⁷²

A number of recommendations have been made over the years to ensure that civilian and military personnel, including contractors, are not engaged in activities that further exploit women trafficked into brothels or use exploited workers.²⁷³

It also ensures that training is provided to all levels of military and civilian contractors to make clear that engagement in human trafficking will not be tolerated.

Department of State

Each year, the Secretary must submit a report to Congress detailing the status of trafficking in persons. This report must include a list of countries that fully comply with standards to eliminate trafficking, countries that are making significant efforts but do not yet comply and finally countries that do not comply and are not making any efforts to change. The 2005 TVPRA required TIP Report to include information on actions to prevent the involvement of employees, contract personnel, and peacekeeping forces in trafficking by the UN, OSCE, NATO and other appropriate multilateral organisations in which the US participates.²⁷⁴

Before a vote on creating or reauthorizing a UN, NATO or other multilateral peacekeeping mission, the Secretary State should submit to the Committee on International Relations of the Senate (or any other appropriate congressional committee) a report that describes measures taken by the organization to prevent personnel involved in the peace-keeping mission from contributing to trafficking in persons. The department is also mandated to specifically enhance anti-trafficking protection in port-conflict and humanitarian emergency assistance programmes.²⁷⁵

²⁷² Department of State [2007]

²⁷³ The Action Group to end Human Trafficking [2008], p.39

²⁷⁴ The Action Group to end Human Trafficking [2008], p.33

²⁷⁵ The Action Group to end Human Trafficking [2008], p.33

In 2008 the Congress has strengthened anti-trafficking legislation and contributed several milliard dollars in funding last year for efforts abroad to end slavery. The US is providing money around the world for:²⁷⁶

- rehabilitation and work training centres for victims
- special housing shelters for victims
- law enforcement training and legal reform assistance
- information and awareness campaigns
- voluntary repatriation for displaced victims
- training for immigration officials, medical personnel and social workers
- combating sex tourism
- rescuing victims from slavery

International efforts of the USA

Trafficking in persons report (TIP report)

Every year the Department of State produces its annual report assessing governments of countries with a significant number of victims of severe forms of trafficking in human beings. It is a diplomatic tool to engage foreign governments in combating trafficking.

Countries in this annual report are rated in tiers, based on governments' efforts to combat trafficking:²⁷⁷

- Tier 1: countries whose governments fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards for the elimination of trafficking
- Tier 2: countries whose governments do not fully comply with the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards.
- Tier 2 Watch List: countries whose governments do not fully comply with the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards AND:

²⁷⁶ Department of State [2007] TIP Report

²⁷⁷ Department of State [2009] TIP Report, p.49

- Ø the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing,
 - Ø there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year or
 - Ø the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments to take additional future steps over the next year.
- Tier 3: countries whose governments neither satisfy the minimum standards nor demonstrate a significant effort to come into compliance. Countries in this tier are subject to potential non-humanitarian and non-trade sanctions.

The Trafficking Victims Reauthorization Act (TVPRA) of 2003 added to the original TVPA law a new requirement that foreign governments provide the Department of State with data on trafficking investigations, prosecutions, convictions and sentences in order to be considered in full compliance with the TVPA's minimum standards for the elimination of trafficking (Tier 1). The 2004 TIP report collected this data for the first time.²⁷⁸

Table 7: Number of prosecutions and convictions around the world

Year	Prosecutions	Convictions	New or amended legislation
2003	7992	2815	24
2004	6885	3025	39
2005	6178	4379	40
2006	5808	3160	21
2007	5682 (490)	3427 (326)	28
2008	5212 (312)	2983 (104)	26

Numbers in parentheses are those of labour trafficking prosecutions and convictions

Source: Trafficking in Persons Report 2009, Department of State

Previously the report did not deal with trafficking in the United States. It looked on trafficking as a crime of abroad that does not affect the US. The new administration of Barack Obama has changed this practices and Secretary Hillary Clinton when launching the new 2009 TIP report proudly introduced that this TIP report already

²⁷⁸ US Department of State website www.state.gov

includes a small chapter also on the efforts of the US and this will continue in the future as well.

Although the United States Government appears to have created a sound and viable infrastructure to create and implement anti-trafficking laws and policy, serious challenges remained unanswered. Several key goals have been achieved, like global awareness raising, creating a governmental structure and beginning to advance understanding of the problem and effective responses. According to the July 2008 PITF report, there are important policy goals that are not being met and improvements that must be made.²⁷⁹

First of all, the problem of the US anti-trafficking approach is that it has a tendency to see trafficking in human beings as a foreign issue or a problem that affects solely other countries. Therefore, when facing specific cases, there is a general approach to see the victims as “foreigners” only. This has two key implications. One is that internal trafficking of domestic is often not recognised. The second, and most important, is that victims are not necessarily perceived as having civil rights on their own.²⁸⁰

One of the biggest challenges is to coordinate the agencies. The lack of their coordination has resulted in a failure to establish, achieve and monitor coherent goals, objectives and timetables. Reports and studies²⁸¹ have repeatedly high-lighted a lack of overall strategy and coordination and called for addressing these serious deficiencies. Despite legislative initiatives establishing the President’s Interagency Task Force (PITF) and Senior Policy Operating Ground (SPOG), past performance has shown that relevant agencies all too often do not work well together absent direction and leadership from the White House. Instead, they have frequently functioned as independent actors, failing to maximise the US investment of resources in this issue and too often working at cross-purposes.²⁸² The Attorney General’s 2009 report has also acknowledged this problem and call for increasing efficacy and coordination of all task forces and offices dealing with aspects of human trafficking

²⁷⁹ The Action Group to end Human Trafficking [2008], p.17

²⁸⁰ Interview with Luis CdeBaca In: IOM (July 2009): Global Eye

²⁸¹ The Action Group to end Human Trafficking [2008], p.8

²⁸² The Action Group to end Human Trafficking [2008], p.18

to ensure victims do not go unidentified due to jurisdictional issues or “turf” considerations.²⁸³

Since its inception in 2004, the Center for Human Smuggling and Trafficking has not played a useful role in combating trafficking, focusing mainly on smuggling and terrorist funding and travel. The Center should be significantly restructured, with clear directives on fighting human trafficking, and staffed with a cadre of experienced professionals.²⁸⁴

Despite 15 million US dollars authorised beginning in 2005 under the Trafficking Victims Protection Reauthorisation Act (TVPRA), to date there has been no funding for programmes created to assist US citizen victims of human trafficking, including the large number of commercially sexually exploited children. Likewise, funding for foreign nationals has not been sufficient to meet their needs either.²⁸⁵

According to the July 2008 Declaration of Achievement submitted by the PITF, 156 prosecution of traffickers have been pursued from 2001-2007 (additional prosecutions do occur under other criminal statutes and prosecution initiatives). Regardless, the final number is clearly not adequate given the extent of the problem.²⁸⁶ In addition, the Department of Health and Human Services aims to increase the number of certified foreign national trafficking survivors to 800 per year by 2011. However, even today with the small percentage of trafficking survivors being identified and served, the department has had to decrease the service eligibility period for certified victims of trafficking from eight to four months.²⁸⁷

Another challenge is to develop indicators in order to document anti-trafficking results. To date activities can be described but results cannot be documented. The lack of field data results in superficial conclusions and ineffective responses by policy makers. Moreover, the lack of independent project evaluation impedes opportunities to improve projects and make better use of limited resources. While agencies/departments are spending a lot of money to actively collect data, many of these collection efforts are not using the same definition, measures or categories of

²⁸³ The Attorney General’s 2009 report, p.7

²⁸⁴ The Action Group to end Human Trafficking [2008], p.28

²⁸⁵ The Action Group to end Human Trafficking [2008], p.22

²⁸⁶ The Action Group to end Human Trafficking [2008], p.24

²⁸⁷ The Action Group to end Human Trafficking [2008], p.37

variables.²⁸⁸ Thus the results are incomparable and uncomplimentary. In addition, collection of raw data alone is not useful. It is inevitable to analyse, understand and correctly interpret the collected data. The Attorney General in its 2009 report called for expansion of trafficking research and data collection, with research projects designed to assist service providers, law enforcement and policymakers.²⁸⁹ However, expansion of data collection should not be the priority but the unification of collecting methods followed by analysis of results.

A general problem is, just as elsewhere around the globe too, traffickers have been held and arrested for immigration violations instead of being charged with human trafficking crimes.²⁹⁰

The Trafficking in Persons Report is a very useful tool of raising awareness of trafficking in human beings. However, there are also major deficiencies with the report. Firstly, most of the information is not particularly in depth, and is not particularly analysed. It is rather a horizontal, on-the-surface report. Secondly, the categorisation of countries sometimes leaves space for concerns. One of these curiosities is ranking Nigeria in Tier 1 while being one of the most significant source countries for thousands of women and men being trafficked to the European Union, or even the case of Colombia, Macedonia and Georgia being ranked also as Tier 1 countries. Ranking 11 EU Member States in Tier 2 might be sufficiently justified, however, putting them into the same Tier as most of the African countries, just as Oman, Nepal, Namibia, Botswana, Rwanda or many Asian countries such as Afghanistan, Kazakhstan or East Timor is another questionable thing.²⁹¹

Even though the 2002 Brussels Declaration already called for consideration and implementation of a joint EU-US information campaign, there is no formal cooperation between the EU and the USA, except on the level of Europol on cases of pornographic websites. This has to be changed. As both are countries of destination, they could exchange best practices and join forces, in order to fight domestic

²⁸⁸ The Action Group to end Human Trafficking [2008], p.28

²⁸⁹ The Attorney General's 2009 report, p.7

²⁹⁰ Attorney General's Report to Congress and Assessment of the US Government Activities to Combat Trafficking in Persons, May 2008, In: The Action Group to end Human Trafficking [2008], p.38

²⁹¹ The Tier placements can be found in Annex

trafficking but also to coordinate the external dimension. Both the US and the EU are donors for financial projects all over the world, however without any mutual cooperation.

3.3. Fighting against human trafficking on the level of international organisations

3.3.1. The United Nations

In some ways the United Nations has been anti-slavery leader for decades. As long as 1904, the international community identified trafficking in persons and modern slavery as a crime which can only be combated by international cooperation. The first global treaty on slavery was a product of the UN in 1926. This was a breakthrough, an agreement that all slavery was forbidden everywhere in the world. When the Universal Declaration of Human Rights was agreed in 1948, slavery was declared illegal in all forms everywhere. Sixty years ago, the United Nations took up the problem more seriously and in 1949 elaborated the “Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others”.

However, a modern day milestone in the fight against trafficking in persons is the so called “Palermo Protocol”²⁹², which was agreed in 2000 as a Protocol of the United Nations Convention against Transnational Organized Crime. This Protocol must be read and applied together with the “parent Convention”. While the Convention deals with transnational organised crime generally, the Palermo Protocol addresses the issue of trafficking in human beings. The Protocol has three main purposes,²⁹³ namely to

- prevent and combat trafficking in persons, paying particular attention to women and children
- protect and assist the victims with full respect for their human rights and
- promote cooperation among states in order to meet those objectives.

The core of this protocol is a new, all-encompassing definition of this crime and human rights violations associated with it. It was the first time that the international

²⁹² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

²⁹³ Article 2 of the Protocol

community succeed to develop and agree to a definition on trafficking in persons. “Essentially, trafficking consists of actions in which offenders gain control of victims by coercive or deceptive means or by exploiting relationships, like those between parents and children, in which one party has relatively little power or influence and is therefore vulnerable to trafficking.”²⁹⁴

Trafficking in persons means:

- the recruitment, transportation, transfer, harbouring or receipt of persons,
- by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or giving or receiving payments or benefits to a person in control of the victim,
- for the purpose of exploitation.

While the definition of exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Since the trafficking in human beings has many forms, and having a single provision is particularly difficult on an international level, therefore the definition, criminalisation, requirements and other elements set only minimum standards.

The role of the victim consent is an important element of the Protocol. According to the Protocol, the victim’s consent should be irrelevant, even though the victim has previously given his/her consent to initial recruitment because it might be based on deception or misinformation about where he/she will be taken and what will happen when they arrive. Law enforcement authorities must bear in mind that consent to initial recruitment is not the same as consent to the entire course of trafficking. Any alleged consent to exploitation must be deemed irrelevant, if any of the means of trafficking listed in the definition have occurred.²⁹⁵

The Protocol calls on the countries to criminalise trafficking in human beings and create penalties that take into account the grave nature of these offences.

Article 24 of the Convention covers the protection of witnesses who give testimony and in appropriate cases, also provide for the relatives of the witnesses. The Protocol

²⁹⁴ http://www.unodc.org/unodc/trafficking_convention.html?print=yes

²⁹⁵ The threat or use of force, coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person such as a parent. In: http://www.unodc.org/unodc/trafficking_convention.html?print=yes

contains some more specific measures for protection. It recognises that victims of trafficking are especially vulnerable and need specific protection. According to that countries shall protect the privacy and identity of the victims. Furthermore, it calls for providing information on relevant court and administrative proceedings. Countries should also consider providing for the physical, psychological and social recovery of victims, and their safety. In addition, countries should consider adopting measures that permit victims of trafficking to gain residence rights and not to be deported straight away. All these assistances are however conditional and do not contain any legal obligations.

Prevention efforts foreseen under the Protocol include informing and educating victims, officials and public. Educating potential victims is crucial. The Protocol's comprehensive prevention policy includes prevention of re-victimisation, research, information campaign, social and economic initiatives and cooperation with civil society.

The Protocol is an instrument that served as a as a model for national legislation, detailing provisions on conduct which should be sanctioned, the severity of punishment and effective measures to combat and prevent trafficking. The Protocol is also important because it gives a new approach, a holistic view, asking for not only criminalising and prosecuting traffickers but also for protecting of victims.

Today the United Nations strongly opposes slavery in words, but rarely has the money needed to take meaningful action. This is discouraging because the UN is one of the best possible organisations to fight slavery. The UN is made up of large number of agencies. Most of these agencies, like to World Health Organisation or the World Food Program, work in places where they are like to come into contact with slaves, and to offer the help that slaves and liberated slaves need to build new lives.²⁹⁶ But for the UN to become an anti-slavery leader requires that the Security Council, the organisation's decision-making body, take the lead. If the five permanent member of the Security Council (UK, China, Russia, France and the US) commit to ending slavery, the UN and its many agencies could lead the way.²⁹⁷ However, for the moment this is not likely to happen.

²⁹⁶ www.freetheslaves.net

²⁹⁷ www.freetheslaves.net

Another important international convention is the Convention on the rights of the child of 1989. It is the most important international child rights instrument includes provisions on child trafficking. The Convention applies to every child under the age of 18 years, an approach which is shared by the Commission. The UN Palermo Protocol must be read in the light of the Convention on the rights of the child, taking into account also other relevant international instruments, such as the Optional Protocol on the sale of children, child prostitution and child pornography of 25 May 2000 and the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour as well as the Hague Convention on the Protection of Children and Co-operation in Respect of Inter Country adoption.’’²⁹⁸

UN.GIFT (the Global Initiative to Fight Human Trafficking) was launched in March 2007 with the aim to mobilise state and non-state actors to eradicate human trafficking by

- Reducing both the vulnerability of potential victims and demand for exploitation in all forms
- Ensuring adequate protection and support to those who do fall victim and
- Supporting the efficient prosecution of the criminals involved, while respecting the fundamental human rights of all persons.

The philosophy of UN.GIFT is premised upon the understanding that human trafficking cannot be dealt with by governments, businesses or civil society alone. Cooperation among all stakeholders is the key to an effective response to this transnational crime. It is coordinated through a Steering Committee composed by UNODC, UNICEF, ILO, OHCHR, IOM, OSCE and the representative of the Crown Prince of Abu Dhabi, the donor to the UN.GIFT project.

Among the expected results of UN.GIFT are partnerships built and the increased role of civil society organisations and the private sector in combating human trafficking, through public-private partnerships, and regional, local and thematic networks.²⁹⁹

²⁹⁸ European Commission COM (2005)514, p.8

²⁹⁹ IOM [2007]: Global Eye

3.3.2 Council of Europe

Council of Europe has been active in the field of combating trafficking in women and forced prostitution since September 1991 when it organised a seminar on action against traffic in women.

The Council of Europe Convention was adopted in 2005 and entered into force on the 1st February 2008. It is not restricted to Council of Europe member states; non-member states and the European Community also have the possibility of becoming Party to the Convention. The Council of Europe Convention is the first international legally binding instrument which affirms that trafficking in human beings constitutes a violation of human rights. The Convention is a comprehensive treaty focusing mainly on the protection of victims of trafficking and the safeguard of their rights. It also aims to prevent trafficking and to prosecute traffickers.

The Convention applies to all victims of trafficking: women, men and children; it addresses all forms of exploitation: sexual exploitation, forced labour or services, slavery or practices similar to slavery or the removal of organs, while the consent of the victim should be irrelevant.³⁰⁰ It covers all forms of trafficking: national and transnational, related or not to organised crime.³⁰¹

Each Party shall promote a human rights based approach and shall use gender mainstreaming and a child-sensitive approach in working out, implementing and assessing anti-trafficking policies.³⁰² The Convention calls on the Parties to take measures to discourage the demand that fosters all forms of exploitation of persons.³⁰³ Member States should ensure training of competent authorities so that they are able to identify and help victims of human trafficking. The Convention is important since it states that victims shall not be removed from the territory of a country until the identification process as victim of an offence has been completed by the competent authorities and that the country concerned shall ensure assistance to victims.³⁰⁴ The Article 12 lists a whole set of assistance that should be guaranteed to each victim, like appropriate and secure accommodation, psychological and material assistance, access to emergency medical treatment, translation and interpretation

³⁰⁰ Article 4 of the Council of Europe Convention

³⁰¹ Article 2 of the Council of Europe Convention

³⁰² Article 5 of the Council of Europe Convention

³⁰³ Article 6 of the Council of Europe Convention

³⁰⁴ Article 10 of the Council of Europe Convention

services when necessary, legal counselling and access to education for children. These assistances should not be made conditional on the victim's willingness to act as a witness.³⁰⁵ Parties should also provide, in their internal law, for the right of victims to compensation from the perpetrators.³⁰⁶

Trafficking should be considered as a criminal offence: traffickers and their accomplices will therefore be prosecuted. The Council of Europe Convention introduces the possibility to criminalise those who use the services of a victim if they are aware that the person is a victim of trafficking in human beings.³⁰⁷ Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, if they were compelled to do so by their situation.

The Council of Europe Convention also calls on the Parties to provide a recovery and reflection period of at least 30 days to enable the victim to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. A renewable residence permit may be granted if their personal situation so requires or if they need to stay in order to cooperate in a criminal investigation.

It sets up an effective and independent monitoring mechanism capable of controlling the implementation of the obligations contained in the Convention. The monitoring mechanism consists of two pillars:³⁰⁸

- the Group of Experts on Action against Trafficking in Human Beings (GRETA), which is a technical body, composed of 10-15 independent and highly qualified experts. It is responsible for monitoring implementation of the Convention by the Parties and publishes reports evaluating the measures taken by the Parties.
- the Committee of the Parties, a more political body, composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives on Parties non-members of the Council of Europe. It may on the basis of the GRETA report and conclusions make recommendations to a Party.

³⁰⁵ Article 13 of the Council of Europe Convention

³⁰⁶ Article 15 of the Council of Europe Convention

³⁰⁷ Article 19 of the Council of Europe Convention

³⁰⁸ Chapter VII of the Council of Europe Convention

The Council of Europe Convention calls on the Parties to establish two different national entities:³⁰⁹

- national coordinating bodies – in order to ensure coordination of the policies and actions of governments’ departments and other public agencies against trafficking in human beings,
- national rapporteurs – in order to monitor the anti-trafficking activities of State institutions and the implementation of national legislation requirements.

3.4. NGOs active in the field

Non-governmental organisations have a very essential role to play in the field of fighting trafficking in human beings. Since NGOs do field-work, they have experience with the real presence of the phenomena of trafficking in human being. Often they are the one who reach directly the victims. In many cases it is the NGOs who identify the victims, help the law enforcement authorities to trace them down. They are the victim’s first contact to the “safe world” providing them shelters, assistance and protection. They have a rich experience and knowledge about the issue of human trafficking, that Member States can never obtain. Therefore they can help Member States to improve their anti-trafficking legislation and strategy.

There are many different NGOs assisting the Member States³¹⁰ and the EU in their anti-trafficking policy. Their field of action is differing too. Some are doing efforts to address the human trafficking within the EU, some outside by carrying out projects in third countries. Some are helping to build and run shelters, some are addressing the demand or trying to raise awareness and/or educate public³¹¹, while others are trying to sensitise the decision-makers by lobbying for legislative changes. They have the ability and expertise to devise innovative ways of reaching and helping victims and raise awareness among public.

³⁰⁹ Article 29 of the Council of Europe Convention

³¹⁰ The most important NGOs in the field is Terre des Hommes, Stop the Traffik, Churches Commission for Migrants in Europe, Save the Children, Anti-Slavery International, La Strada International, ECPAT, Global Alliance against Traffic in Women and Eurochild.

³¹¹ Specific place could have the religion-based NGOs that could more directly and more efficiently educate people by influencing their moral values. Furthermore, they could also involve religious public to get actively involved in helping and assisting victims of trafficking.

They have many good initiatives, for example the NGO Stop the Traffik launched last year a project “International lessons” in order to raise awareness among students by visiting schools and holding lessons for them about human trafficking. Their aim is first to reach 10 thousand English speaking schools and then extend it to other languages and countries, including countries of origin. At the first stage, they reach schools and internet schools then plan to reach street children too, who are one of the most vulnerable groups. The closing event is planned for March 2010 when all participating school should make a play, a drama about trafficking in human beings.

However, they are dependent on the donors’ goodwill, like the EU. During the financial and economic crises many of them were complaining on the lack of finances. Due to the crisis many of their projects were cancelled, they could not carry out them for the lack of funding.

The EU should take the role of NGOs seriously and should ensure their continuous funding, while trying to reduce exaggerated bureaucracy linked to funding projects. The role of NGOs is important if the European Union wants to seize the problem at the very essence. NGOs can provide a helping hand by evaluating the work of EU Member States, shed light on gaps in legislation and work out recommendation.

A good example is the criticism from the side of the child rights advocacy group Terre des Hommes has complained that the issue of trafficking tends to be viewed through the prism of law enforcement and control of immigration. As a result, when authorities identify a child who has been trafficked, their main objective can frequently be to seek information about organised crime, rather than to give protection to the boy or girl in question. In many cases, EU governments go as far as making protection conditional on the child cooperating with the justice system.

In this light, Member States should provide greater attention and resources to support the efforts and activities of NGOs. They should realise that their help is essential and without it they would not be able to adequately address the issue of trafficking.

3.5. Recommendations to the EU for the future anti-trafficking policy

The European Union's anti-trafficking strategy is based on the principle to solve the issue first "at home", within the territory of the Union, at local, national and EU level and when it is done, to spread the know-how to third countries. Nowadays, this strategy is changing a little since the decision-makers have realised, that focusing on the issue of trafficking in human beings exclusively from a "home affairs" perspective cannot guarantee the wanted result, since not addressing the push factors in countries of origin, and not cooperating with the third countries will grab only the one side of the coin. Therefore besides fighting trafficking in human beings solely at home, the EU is starting to make more conscious actions in its external relations.

The European Union considers itself as a global player; it is a defender of human rights, the biggest contributor of international aid, so here is a chance to become a global leader in the fight against trafficking. Many countries, even the Member States might think that the United States of America is the decisive global power even in this field, but this is questionable and definitely can be changed.

I am convinced that trafficking in human beings can be solved only if it is tackled from each side and every level, nationally and globally. For this reason, I have drawn up a list of recommendations, a summary of elementary steps that every Member States and the EU should take in order to achieve the needed results. If the EU fulfils all these expectations, it can easily become the global leader in fighting trafficking in human beings, by closing the gaps in cooperation and coordination.

The list of recommendation follows the so called "three P", established by the Palermo Protocol, namely prevention, prosecution and protection and adds the new "forth P", partnership. The strategy in drawing up these recommendations I have chosen to go step by step, level by level, starting with the actions that should be taken on national level, followed by the EU level, finally summing up the actions what should be done on international level.

3.5.1. Recommendation of actions on national level

Trafficking in human beings cannot be solved by one single Member State but there is a whole range of actions, measures and activities that is in each Member States' responsibility. In this part, I have drawn up those actions that each Member States should take in order to reach the best results on national level.

a) Prevention

1. Establish the National Anti-Trafficking Rapporteur/Coordinator

No single ministry or department is able to fight against trafficking in human beings alone. None of them is even capable of wielding the authority necessary to bring together the full range of anti-trafficking actors and activities across the country. It is a central challenge to ensure an effective inter-ministerial coordination to combat trafficking in human beings. Therefore each Member States should establish the institute of National Anti-Trafficking Rapporteur (National Rapporteur) whose role would be to coordinate all ministries involved. He/she should be impartial in order to ensure its independence from any of the ministries, the government and should have stable funding. Besides coordinating the relevant ministries activities in the field, his/her role would be, among others, to prepare the national action plan, the annual reports, chair to the Network of the Anti-Trafficking Experts, report to the national parliament and represent the Member States toward the EU and on international conferences. He/she would also be member of the European Network of Anti-Trafficking Experts, this way could represent the Member State concerned towards the EU, exchange best practices with other Member States, make use of experiences gained by other Member States and keep good contacts with them. His/her duty would be to collect and analyse data and information too and make recommendations for how the crime can be prevented and combated. He/she should closely monitor and consider the effectiveness of the legislative and policy framework on human trafficking. He/she should evaluate prevention programmes, including prevention against the demand, as well as of protection and assistance programmed for victims, and the effects of anti-trafficking policies regionally and internationally.

The National Rapporteur should have the mandate to hold consultations with all stakeholders, public authorities, members of parliament and legislatures, researchers, representative of countries with diplomatic offices in the Member State, interest groups and NGOs. The National Rapporteur should be adequately funded, there should be direct funding for the activities, rather than through the general budget of a public authority.

Even though that already the 1993 Council Recommendations called for establishing such National Rapporteurs, this has not been fulfilled by Member States, except Sweden and the Netherlands. By appointing a National Rapporteur the Member State would show its commitment to the prevention, prosecution of traffickers and protection of victims nationally and internationally.

2. Clear distinction of responsibilities

All the involved ministries and stakeholders on national and local level must have a clear distinction of responsibilities, competences, mandates and roles in order to ensure that none of the actors act cross-sectorally and the carried-out work is not duplicated. It has to be ensured that all the fields, policies that are needed to be involved in the fight against trafficking are covered, i.e. migration policy, justice and home affairs, social affairs and labour, gender equality, education, foreign affairs, development policy and so on.

It must be ensured that the victim does not “fall between the chairs”, therefore all actors should be aware of their own roles but simultaneously be aware of the roles of the other players, as all sectors are needed for a firm process and rehabilitation of victims.³¹²

3. Creation of the Network of Anti-Trafficking Experts

Each Member State should establish a platform which would be responsible to gather all those experts, decision-makers who are (should be) active in the fight against trafficking in human beings. This Network would be chaired by the National Rapporteur and would gather people responsible from each ministry, representatives of law enforcement authorities, judges, and all relevant authorities, agencies, researchers and NGOs, everyone who is responsible one way or another for creating, adopting, implementing or enforcing anti-trafficking legislation or strategy.

The meetings of the Group should be regular. This should be a forum for gathering information on new findings, new trends, exchanging views, evaluating the steps taken, if needed preparing legislative amendments, and drawing up the future strategy, actions.

³¹² Council of the EU document No: 15024/06

4. National action plans

Every Member State should work out its national action plan in order to facilitate and improve the fight against trafficking in human beings. All the relevant stakeholders should be involved in preparing this action plan, while the leader, the coordinator of it is the National Rapporteur. The national action plan should be prepared for a five year period. It should follow the “3+1 P” principle (prevention, prosecution, protection and partnership) naming out, in details, what should be done to improve the fight against trafficking in human beings in each of these fields, also including the operational organisation. The national action plan should contain the assessment of last terms’ achievements and failures, followed by the consequences drawn. The five-year plan should be include recommendations directed to the different levels of government, lawmakers, law enforcement, the prosecution services and to NGOs in order to strengthen the work to prevent and combat trafficking in human beings and to protect victims of these crimes. There should be a list of short-term and long-term goals, list of activities, planned projects with the relevant funding, and so on.

5. Annual report on trafficking in human beings

Each year the National Rapporteur should prepare the annual report on the Member State’s efforts on fighting trafficking in human beings, including the evaluation of national action plans, collected data on number of investigations, prosecutions and identified and assisted victims. The national annual reports should be an inventory and evaluation of national legislation on trafficking in human beings. It should assess the recent developments, whether the Member States has coped with the challenges. Another part of the annual report should be the evaluation of projects and funding.

It should reveal if the national anti-trafficking legislation is in line with the EU legislation and all relevant international conventions and standards. This report should be presented to the national parliament by the National Rapporteur.

6. Ratification of all anti-trafficking conventions

Member State should sign, ratify and implement if it has not yet done so all relevant conventions, in particular the United Nation’s International Convention against Transnational Crime, its supplementary Protocol to Prevent, Suppress and

Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), the United Nations' Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Council of Europe's Convention on Action against Trafficking in Human Beings, the International Labour Organisation's Convention and core labour standard, in particular No. 29 concerning forced labour, No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and those relating to freedom of association, labour inspection and employment agencies.

7. Revision of migration policy

Many people who are trafficked are simply seen and treated as illegal migrants. The consequences are irreversible, since deporting victims, failing to identify them as victims have severe consequences on their life. It is not just that they do not receive the protection and assistance they should be eligible to, but by returning them to their home countries, they might be stigmatised, discriminated, excluded, left alone, and this way vulnerable of being re-trafficked. The traffickers are very well aware these practices and make use of it to frighten the victims by telling them if they dare to go to the police they are going to be prosecuted or deported, thus the victims do not look for the help of police.

Member States need to develop a more coherent migration policy that meets the needs of the economy and labour market. There will be always migrants in a country. It is up to the country and its migration policy, if these migrants will be legal or illegal. Facilitated entrance for those migrants who are needed for the labour market will increase the number of legal migrants, who can be traceable, will lessen the pressure of the market and hopefully decrease the number of illegal and undocumented migrants. Illegal migrants cause many problems. Being illegally in a country is not good for the country neither for the person concerned. Illegal migrants are not of the country's benefit – they foster black market, keep the wages artificially down, take the jobs from citizens and legal migrants, do not pay taxes, nor social contributions. On the other side, illegal migrants do not have access to health care, social services, have no access to their (labour) rights in that country, might be forced to work in dangerous working conditions, have no

access to justice, cannot claim for damages or unjust procedures on the court, their children cannot attend school – just to mention a few examples.

After all, “trafficking results from the interplay of ever-tighter migration controls attempting to frustrate migration of people without valid travel documents, the desire of people to migrate and the presence of criminals willing to exploit the paradox of migration controls in the era of globalisation.”³¹³

As stated in the 2006 European Parliament’s resolution³¹⁴ “victims of trafficking should not be returned to the country of origin when it may be reasonably suspected that they may suffer further harm through stigmatization and discrimination, risk reprisals or risk being re-trafficked”. It is necessary to ensure safe return, reintegration and access to social inclusion programmes for victims with full respect of victim’s rights to safety and privacy.

8. Involvement of businesses and trade unions

The National Rapporteur should regularly convene a multi-party discussion, conference or workshop with the participation of businesses, trade unions and NGOs in order to develop and improve anti-trafficking policies, programmes and initiatives. The National Rapporteur should work with the private sector and trade union to develop joint strategies to address trafficking in corporate supply chains, prevent all forms of worker exploitation and promote the proper implementation of international labour standards.

9. Involvement of the financial sector

Most of the time, trafficking in human beings is not a separated criminal activity. The traffickers are frequently involved in other clandestine acts, such as trafficking of drugs, weapons or even in terrorist activities. High profits gained by criminal organisations involved in trafficking obviously lead to money laundering activities and often imply the creation of front companies involved in licit activities. Therefore law enforcement and tax/revenue agencies should be engaged in actively investigating alleged trafficking crimes.

However, it is not enough to involve only tax and revenue agencies but also the bank sector should be involved in the anti-trafficking actions. As the 2002

³¹³ Friesendorf, C [2009], p.26

³¹⁴ Article 1(at) of the European Parliament Recommendation (2006)498

Brussels Declaration stated there is “a legal duty of financial institutions to disclose suspect money laundering transactions to law enforcement agencies.” Furthermore, there should be a strict legal duty imposed on financial institution “not to disclose the existence of police enquiries into a suspect’s financial affair.”³¹⁵

10. Strengthening the role and influence of NGOs

Member States should provide greater attention and resources to support the efforts and activities of non-governmental organisations (NGOs). It is the NGOs that have an essential role in fighting trafficking in human beings since they are the one who reach directly the victims. In many cases it is the NGOs who identify the victims, help the law enforcement authorities to trace them down. They are the victim’s first contact to the “safe world” providing them shelters, assistance and protection.

Governments should realise that without the help of NGOs they would not be able to adequately address the issue of trafficking. The government bodies would never gain the expertise that such NGOs active in the field have. Their knowledge is inevitable for the formulation of the anti-trafficking legislation and strategy. They can sensitise the decision-makers by lobbying for legislative changes. They have the ability and expertise to devise innovative ways of reaching and helping victims and raise awareness among public.

Many of the NGOs do not have continuous income, thus their uninterrupted services are not guaranteed either. And the one who loses is the victim. One of the solutions could be creating a long term agreement between the government and the main NGOs on along the public-private partnerships. These public-private partnership (PPP) could solve the problem of insolvency, by signing an agreement of providing services to victims traditionally provided by the public sector while the government makes periodic payments to the service provider concerned. It should be a win-win situation for the government, the NGOs and for the victims too. Government could get “rid of” the burden of directly taking care of the victims by deputing it service-providing to the NGOs’ responsibility. The NGOs would be guaranteed the continuous income for their projects, having

³¹⁵ 2002 Brussels Declaration

a long-term perspective of a stable run of shelters and other assistances and victims would be protected. This can be a way of both increasing access to financing options and delivering efficiency gains while maximising quality of service.

11. Reducing exaggerated bureaucratic burdens on providers of services

Many NGOs have complained about the too complicated funding procedures, making their work harder. Even in cases, when there are projects available for funding of NGOs activities, these projects include too heavy and complex administrative obligations and this have a negative impact on the ability of caseworkers to adequately assist victims, particularly in smaller service organisations. It is understandable that the government wants to keep financing transparent, ensuring a clear tracking and accountability system to determine how much is being spent on actual services for victims but on the other hand too much bureaucratic burdens are at the expense of providing high quality assistance to victims.

12. Addressing employment agencies and labour recruiters

Recruitment for work abroad often involves deception about working conditions, work visas tied to a particular employer and exorbitant recruitment fees leading to debt bondage. Migrant or immigrant workers have a particular vulnerability to human trafficking. In fact, many victims of trafficking start out as persons searching for work as an au-pair, model, waitress and so on. Women, children and men may start out migrating for the promise of well-paid jobs and end up being coerced to work under exploitive conditions rising to the level of human trafficking.

Member States should ensure regular and systematic inspections of these agencies and recruiters in order to reveal every clandestine activity.

13. Labour inspections

Forced labour is increasingly penetrating supply chains of mainstream companies in the economy³¹⁶ and is underrepresented by governments' law enforcement

³¹⁶ An estimated 8.1 million victims of forced labour in the world today are denied more than 20 billion USD due to the perpetrators of forced labour. These stole wages are incurred largely in the developing world and most significantly in Asia and the Pacific, which accounts for 8.9 billion USD,

efforts against human trafficking. Effective and systematic labour inspections can help to uncover victims of trafficking in human beings for labour exploitation. Therefore Member States have to ensure that there is adequate number of inspections, in particular in those sectors that are vulnerable to trafficking in human beings, such as agriculture, fishing, building sector and textile industry.

In order the labour inspectors are fully aware of the phenomenon of trafficking and are able to identify victims, there should be an appropriate training provided by the Ministry of Labour.

14. Education and training materials for officials

Each Member State should develop its educational and training materials, programmes and guidelines for state and local law enforcement authorities. The aim of such materials is to ensure that when undocumented migrants are interviewed, the appropriate questions are asked so as to ensure that victims of trafficking are identified. The aim of such training is to ensure that police, border guards, armed forces, prosecutors and judges to be able to identify and help victims, to investigate and prosecute cases, while not causing any harm by treating victims as criminals.³¹⁷

There should also be guidelines on cooperation, what steps are necessary to be taken in case a victim is identified. Training of all relevant stakeholders on each level is inevitable and should be mandatory in order to ensure that they are able to identify victims at an early stage and ensuring that victims are not treated as criminals or illegal immigrants. Without training, police might simply bring the victims of trafficking to the immigration authorities, risking their deportation and thus re-victimisation.

There should be specific training programmed for law enforcement authorities working on cases of trafficking in human beings, including social and legal aspects, money laundering, psychological training, functioning of reception centres, need to be developed. The availability of female police officers should be also ensured since female victims might feel uncomfortable in the presence of

or almost half of forced labour's costs in the world. As wages denied and not remitted to workers' home countries, these costs can be viewed as an impediment to economic development. In: US Department of State Democracy and Global Affairs, June 2009

³¹⁷ Friesendorf, C. [2009]: p.7

male police officers. Another important thing is to work out a list of interpreters, so that in case of need the interpreter can be immediately contacted.

However, it is not just the police who needs training. Training in victim identification should be extended to those likely to come into contact with victims of labour exploitation, such as labour inspectors, trade union representatives, health professionals as well as law enforcement officials, border agencies and so on.³¹⁸

These training materials should be prepared by the relevant ministry with the help of NGOs.

Training should be also expanded on diplomatic missions' staff and military staff in order to be aware of this shameful crime and be able to identify victims of trafficking abroad and on the other hand to avoid getting involved in this criminal activity. Another important objective should be the training civil servants, front-desk officers at embassies and consulates who are in charge of the delivery of visas. Often these people are the first contact point between the authorities of the home country and the victims or potential victims of trafficking in human beings, as regards the granting of visas and/or safe return. They should be trained among others to reveal suspected cases during the visa application of the victims and to recognise forged documents.

15. Special anti-trafficking police units

While more than 90 percent of murders are cleared up, only 1 percent of slavery cases are ever solved.³¹⁹ This is also because law enforcement authorities lack the capacity to work on cases of trafficking. The issue could be solved if law enforcement authorities had also special anti-trafficking units. It is not enough however, to create such units, the personnel has to be adequately trained in order to be able to identify cases of human trafficking.

16. Active involvement of local law enforcement

In order to reach the best efficiency, steps have to be taken also at local level. Unfortunately, in most of the countries the fight against trafficking has not been

³¹⁸ In: Recommendation from the conference „Trafficking in Human Beings and Gender“ in Porto, Portugal, October 2007.

³¹⁹ www.freetheslaves.net

made a priority at this level. The anti-trafficking efforts have been largely concentrated just on state level, while it is the local people who could help to roll up cases. In the US they have regional coalitions made up of local police, firemen, church, teachers and NGOs. All these people can witness anomalies, can have access to potential victims and such groups can easily raise awareness among locals.

17. Overcoming language barriers

Member States shall provide police and court with translators and interpreters in order to assist victims. There should be a list of interpreters for every possible language that might be needed during a criminal procedure – and as a first contact with the victim who could help to make the victims understand that he/she is finally on a safe place and will be protected.

18. Awareness raising campaigns

Member State shall raise awareness of its citizens so that they are aware of this crime and could avoid becoming victims. There should be a targeted annual awareness raising strategy. Each year the Network of Anti-Trafficking Experts should decide the topic of the annual awareness-raising campaign, with the possibility to be flexible to focus on different forms of trafficking, new findings, and so on.

The awareness raising campaigns need to reach every citizen and resident. The aim of such campaigns are educate citizens and residents that every human beings is equal and should be treated the same way, that people are not commodities; they cannot be sold and exploited. Workers have right to get their wages and need to have safe working conditions. Each human being has his/her dignity and rights that needs to be protected, assured and respected.

Another goal of these awareness-raising campaigns to make people cautious, to avoid to fall prey to traffickers, and in case they have become victims, what to do, who to contact and so on.

To increase the effectiveness of awareness-raising, it should be ensured that info materials are prepared not solely in the state language of the country concerned but also in the languages of minorities living in the country, in the language of

the most common migrants and preferably in the languages of the neighbouring countries as well. The reason for this is to reach the widest public attention.

Leaflets, briefing materials should be permanently displayed in the consular and visa section of diplomatic missions, police departments, health centres, post offices, travel agencies, labour agencies and so on.

19. Raising awareness of children through educating programmes

Special attention has to be paid to the awareness-raising of children and youth since they are the most vulnerable to trafficking in human beings.

Ministry of Education shall ensure that each child in primary and secondary schools is obligatorily reached through anti-trafficking awareness-raising programmes. In order to reach higher effectiveness, the Ministry can make use of the knowledge of NGOs that have experience in the field. One of the solutions could be organising nation-wide awareness-raising days at schools each year, preferably on the occasion of the EU Anti-Trafficking Day, with high media attention.

It needs to be ensured that children hear about trafficking (and prostitution) and it is explained to them properly that trafficking is a bad thing, it is violation of human rights, it is enslavement, it means people (often children) being beaten, raped and forced to sell their bodies or forced to work in inhuman conditions.

It should be also taken into consideration to actively involve children who have become victims of trafficking to tell their stories directly to other children, since they often do not realise in how big dangerous they might be, unless they hear it from a fellow.

20. Important role of the media

The media is critical in shaping public opinion and generating deeper insight into human trafficking. Responsible journalism provides accurate information on a given issue to the public and ensures the protection of individuals from harm as a result of information disclosure.³²⁰ On the other hand they can also misuse their power by creating or sustaining false images of women and men, their role in the society, thus indirectly influencing trafficking in human beings. Advertising

³²⁰ UN.GIFT Background Paper [2008] on the role of the media, p.7

through different types of media is part of our daily lives and can therefore negatively contribute to gender stereotyping and deepen gender discrimination.

The European Parliament has raised its voice through its 2008 resolution³²¹ and called for the elimination of messages which are contrary to human dignity and which convey gender stereotypes from textbooks, toys, video and computer games, internet and new information and communication technologies and from advertising through different types of media. Therefore “Member States should develop awareness-raising actions against sexist insults or degrading images of women and men in advertising and marketing.”³²²

For eliminating spreading the false images, media should have a “code of conduct in order to prevent adverts communicating discriminatory or degrading messages based on gender stereotypes as well as incitement to violence against women, hatred based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”³²³

In order to make media professionals aware of their influence of society and by irresponsible behaviour and acts can contribute to trafficking in human beings, Member States should organise training for them.

Journalists need to be trained not solely for the aim to get information about trafficking in human beings but also to teach them to be cautious when reporting on a story. When journalists wish to tell a story and put a face to victim, they run the danger of victimising them further.³²⁴

So journalists should be educated as comprehensively as possible about the nature and complexity of human trafficking. Regular contact with the media contributes to improving media coverage of human trafficking.³²⁵

³²¹ EP resolution of 3 September 2008 on how marketing and advertising affect equality between women and men (2008/2038 (INI))

³²² EP resolution of 3 September 2008 on how marketing and advertising affect equality between women and men (2008/2038 (INI))

³²³ EP resolution of 3 September 2008 on how marketing and advertising affect equality between women and men (2008/2038 (INI))

³²⁴ UN.GIFT Background Paper [2008] on the role of the media, p.2

³²⁵ UN.GIFT Background Paper [2008] on the role of the media, p.7

b) Prosecution

21. Victims' liability

It needs to be ensured that victims are not held liable for being involved in unlawful activities as a direct consequence of beings subjected to trafficking in human beings.³²⁶

22. Heavy penalties and sanctions on traffickers

Member States should ensure that traffickers are punished heavily, just as their crime is. Those citizens of Member State who commits the crime of trafficking abroad, including involvement in sex tourism needs to be prosecuted and sentenced.³²⁷

Prosecutions around the world, neither in the EU do not reflect the seriousness of the crime. Throughout the world, trafficked women are exploited, abused, raped and finally seen by law enforcement authorities and judges as prostitutes, while giving traffickers probation: giving sentences of community work for rape, for kidnapping, for abduction, for assault.

Sanctions needs to be effective, proportionate and have a dissuasive effect There should also be severe penalties on those who obstruct or attempt to obstruct the investigations and prosecutions of trafficking crimes. These violations are now punishable to the same extent as the trafficking crimes themselves.

23. Sanctioning of entities using forced labour

According to the European Parliament's resolution "access to the labour market of the EU is complicated or even restricted and overregulated, while at the same time there is a clear demand for labour, which factors result in illegal migration, smuggling and trafficking."³²⁸

However, the demand for these undocumented workers trafficked to the EU lead to decreasing the costs but "does so at the expense of human dignity".³²⁹ Labour

³²⁶ This provision has already appeared in the Commission's proposal for a new Framework Decision launched in March 2009 (COM (2009)136)

³²⁷ According to the US Department of State Congress passed legislation Americans who sexually prey on children abroad can be prosecuted and sentenced to as many as 30 years in prison. In: US Department of State [2007]

³²⁸ Recital R of the European Parliament Recommendation (2006)498

³²⁹ Recital T of the European Parliament Recommendation (2006)498

trafficking undermines “labour standards, health and safety measures, fair pay and local and/or state income through a failure to pay taxes and social contributions.”³³⁰

Member States must take such provisions that those entities who found to be using forced labour are subject to civil sanction and companies pledge not to source from these entities.³³¹

Businesses should be held legally responsible for trafficking in persons occurring down the supply chain among sub-contractors.

The Member States should impose effective, proportionate and dissuasive sanctions which shall include criminal, non-criminal fines, including administrative sanctions, “such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.”³³²

This proposal of sanctions was already in the 2002/629/JHA Framework Decision, however it should be implemented.

24. Sanctions on diplomatic missions’ and military staff involved in trafficking

Ministry of Foreign Affairs shall train its diplomatic staff posted abroad on trafficking in human beings. Ministry of Defence shall do the same with the military staff serving abroad. If any of the staff gets involved (for example exploiting domestic workers employed by diplomats), it shall serve as an aggravating circumstance and shall be accordingly sanctioned and prosecuted.

³³⁰ Recital T of the European Parliament Recommendation (2006)498

³³¹ Directive 2009/52/EC

³³² Article 5 of the 2002/629/JHA Framework Decision

25. Addressing the demand

Clients using the services of victim trafficked for sexual exploitation, or employing victims of forced labour are creating demand for sexual exploitation or forced labour. Therefore, law enforcement authorities need to realise that clients are part of the chain and they are no less guilty than the traffickers, since they create the demand. Clients in this case need to be prosecuted too.

This provision is part of the new proposal for framework decision made by the Commission in March 2009 but being suspended because of the Lisbon Treaty. Although some Member States had concerns over the obligation to criminalise clients who knowingly use sexual services from a trafficked person, asking that these provision should not be binding, but I am convinced that these provisions should be part of the new proposal for directive that the Commission will launch in Spring 2010.

Even though victims of trafficking might be foreigners, but also nationals, however vast majority of those who buy their services are citizens of the Member States. Thus the Member State has the responsibility to reduce demand for the services of victims of trafficking, no matter who put them there in the first place. Where there is demand there is always supply.

Prosecution of clients even if they commit crime outside the EU, for instance when being involved in sex tourism, should be ensured.

Member States should use all measures to discourage the demand that fosters all forms of exploitation of persons, including adopting and/or strengthening legislative, administrative, educational, social, cultural and other measures. As recommended by the Council of Europe Convention, there should be research on best practices, methods and strategies. Further, Member States should raise awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings and take targeted information campaigns and preventive measures, including educational programmes for boys and girls.³³³

³³³ Article 6 of the Council of Europe Convention

26. Control of agencies

It should be ensured that agencies such as bridal, employment, tourist, escort, au-pair or adoption entities are monitored by state authorities so that “those that act outside of the legal requirements and practices can be identified, and where appropriate, be subjected to adequate sanctions.”³³⁴

27. Confiscate assets

Law enforcement authorities must use all resources to deprive trafficking in human beings of any economic advantage and to seize and confiscate all the assets that have been made via this crime.

c) Protection

28. Victims are human beings

There is a tendency is to see human trafficking as an “exchange of goods” just like drug or weapon trafficking. Even though it is true that trafficking in human beings is an international organised crime, looking at it through these lens might cause a departure from the human rights perspective. It is of critical importance that any counter-trafficking effort has a victim-centred approach. We have to understand that protection of human rights is not a luxury but a necessity and obligation of every society.

29. Unconditional short-term assistance (up to 90 days)

To provide assistance to victims of trafficking is a moral obligation of every Member State. It is also in its own interest, since deported victims often get re-victimised, and re-trafficked back to the Member State.

Even though the term of granting residence permit and reflection period exists in the EU legislation³³⁵ but according to the Directive 2004/81/EC it is left to the Member States to determine how long it should be and what it should cover. The aim of this reflection period is allow third-country nationals “to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.”³³⁶ During this reflection period they should have access to emergency medical

³³⁴ 2002 Brussels Declaration

³³⁵ Directive 2004/81/EC on the residence permit

³³⁶ Article 6 (1) of the Directive 2004/81/EC

treatment, psychological assistance, translation and interpreting services and possibly free legal aid, however this is not enough to recover from such a trauma they were forced to survive.

After the expiry of the reflection period, third-country nationals can be granted a short-term residence permit lasting for at least six months and with the possibility of renewing it if the investigation or the judicial proceedings, or national security require it. The condition for granting the residence permit is linked to the fact that the victims is cooperating with the law enforcement authorities. What's more the assistance granted is not enough, since it calls only for medical assistance, access to labour market, to vocational training and education but this should be limited to the duration of the residence permit.³³⁷

This protection and assistance is not enough, however some Member States are failing in implementing even these provisions. The Commission should launch its report in 2010 evaluating how Member States are proceeding with the transposition of this Directive.

The idea of a reflection period is good, still Member States should ensure that emergency assistance of victims of trafficking is delinked from their cooperation with law enforcement. Victims should be entitled to comprehensive and appropriate short-term protection services solely because they are victims of trafficking. Condition of cooperation with law enforcement should not be placed upon traumatised victims of trafficking who have just escaped or been rescued from their offenders. They should be eligible to receive assistance needed for recovery unconditionally. This so called "reflection period" should last at least 30 days up to 90 days based on an individual assessment, depending on the circumstances and the situation of the victim.

This reflection period is necessary to give the victim the possibility to begin to recover from their ordeal and decide what steps they want to make: to stay in the country of destination with the condition of speaking to the police or to return home. Law enforcement authorities need to realise that victims of trafficking are threatened, do not trust the police, do not know anyone in the country, just the trafficker, they are absolutely dependent on him/her, they might not speak the

³³⁷ Even though these provisions are limited, many Member States have problem with complying with it. The Commission promised a report on evaluation of this Directive

language of the country concerned and the traffickers might have threatened not just her but her family too.

Delinking the short-term assistance from cooperation with the police has its reason. Those victims that have been exploited, beaten, ashamed, threatened and traumatised for long months or years, they cannot testify so easily. It is a huge psychological pressure on them to recall their memories they want to forget. But it is not just their memories they need to get over. They also have fears that traffickers will find them or will fulfil their threats of killing their family or putting their daughter or sisters into prostitution. The worst scenario for them is to testify, give evidence and then be deported.

During this reflection period, each victim should be granted a whole range of unconditional “emergency” assistance that should at least include medical care, psychological counselling, food, clothes, safe housing, translation and quality legal aid free of charge.

Medical and psychological care is the most urging assistance that each victim of trafficking in human beings must get, because a vast majority of women being rescued are physically and psychologically devastated, with all kind of medical problems, sexually transmitted diseases, be disposed to commit suicide. Help of a doctor and/or psychologist is inevitable since it is not easy to forget all those repeated abuses, threat, humiliation and so on. They need the help of a professional to regain the sense of safety, dignity and control over their body and life. Psychologists have a special role here to help to rebuild self-esteem, self-determination, and feeling of security.

Victims need to be provided with food and clothes. Often they are undernourished due to the bad circumstances they needed to live in. They need proper clothes since frequently when rescued by the police they are left in those clothes of a prostitute. Just by wearing it, it humiliates the victim and reminds the months and year of being abused.

Housing is among the most urgent and most consistently needed services for survivors of human trafficking. For adult and children there are currently not enough shelters addressing the special needs of trafficked victims. Therefore it is needed to establish appropriate and adequate amount of shelters for victims of

trafficking while ensuring that funding for human trafficking shelters has no impact on funding for domestic violence or other shelters.

Survivors need immediate access to free legal assistance from lawyers who are able to fully assist them with their complex legal needs. Helping trafficked victims to have access to justice, restitution and other compensation for their suffering is a key element of any effective victim protection strategy. It is particularly crucial in addressing the needs of foreign victims who are not familiar with laws, customs, rights and procedures in the country to which they were trafficked. The laws and legal process in most countries are not easily understood by people who do not have legal training. Access to legal advice and information can help them through the stress and confusion in the weeks and months following their rescue. Legal assistance is essential for victims of trafficking to know their legal rights, status, legal process and to understand the options they have. They should be aware of the possibilities – how to access services and benefits. It is also important to assist them to obtain identity documents, since many of victims of trafficking have no proper documents. They should also get information and help to claim for restitution and compensation for damages against perpetrators.

During thin unconditional short-term assistance it shall not be possible to enforce any expulsion order against the victim, as envisaged in the Council of Europe Convention.

30. Conditional long-term assistance (3years+renewable)

Those victims who wish to stay longer in the territory of a Member State and receive long-term assistance will have to cooperate with the law enforcement authorities. This long-term assistance should be conditional and should be linked to the clear intention of the victim to cooperate with the police.

The conditional long-term assistance should at least include witness-protection programmes, continued legal assistance, access to social services, education, reintegration programmes, language courses, vocational training programmes with the aim to gain skills that will help the victims to enter the labour market.

Member States have to realise that if they deport the victims straight away, without giving them the opportunity to cooperate with law enforcement, then the

trafficking ring cannot be broken. Without the needed information and evidences, it is impossible to have prosecution. So it is in the Member State's interest to get the victims' testimony. They also have to understand that with very restrictive migration policies various forms of trafficking will continue to occur. Some might think that by guaranteeing some form of migration status, it can be misused by illegal migrants and abused by traffickers as well but it is not a sufficient reason to deny assistance to victims. Rather, system of providing migration status should be developed and implemented effectively, minimising the possibility of misuse and in case someone is found trying to do so, he/she should be properly sanctioned.

The conditional long-term assistance should be linked to a special residence permit, or a visa, like the T-visa in the United States of America that turns the victims eligible for benefits and services. This special visa should be issued for 3 years and should be renewable, ending with the possibility to gain citizenship, based on individual assessment. The conditional long-term assistance should be long enough to enable the victim to recover from the horrific crime and get skills, knowledge and help to restart his/her life. But this period should be long enough, so the law enforcement authorities have enough time to finish up investigation and prosecution can be also successfully closed.³³⁸

The conditional long-term assistance can be withdrawn, if the victim contacts the offender or there is evidence that he/she misled the law enforcement authorities.

Long-term assistance should be tailor-made since victims do not form a homogenous group, so each case should be examined and the assistance should meet the victim's particular need.

31. Protection of all victims of human trafficking

The EP resolution of 23 November 1995 on the protection of witnesses in the fight against organised crime (and the resolution on individuals who cooperate

³³⁸ „(In the United Kingdom, victims of trafficking) are allowed to stay in the project for four weeks initially, and up to 16 weeks if they talk to the police. But there are loads of women who have been on the project for a lot longer than 16 weeks, and the reason is that actually they are stuck in the system, because the asylum process takes far too long to get through, or they are in the middle of a police investigation, the police want them to give evidence, and these things take ages to get to court, so we have had no choice but to keep these women on the project.“ Deborah Findig, team leader of the POPPY Project, a government-financed organisation in Great Britain that provides up to four weeks' support to trafficked women. In: Interview with Deborah Findig on the website of Frontline

with the judicial process in the fight against organised crime) applies to all witnesses including victims.³³⁹ In spite of this victims are often treated as illegal migrants. On the other hand, trafficked victims who are nationals are not taken care of by legislation. Many Member States presume that victims can only be foreigners who are trafficked to the Member State concerned. Still there are cases when citizens fall prey to traffickers and get exploited within their home country. These people are somehow forgotten about.

In order to maximise the protection and assistance to victim of human trafficking, they need to be identified first. This can be improved by training of law enforcement authorities and all relevant stakeholders.

There is no legislative provision on assistance and protection that a victim of trafficking who is a citizen of the country concerned should be eligible to. The Directive 2004/81/EC speaks about granting residence permit to third-country nationals who became victim of human trafficking with the possibility of first granting 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 cooperate with the competent authorities.”³⁴⁰ During this reflection period they should have access to emergency medical treatment, psychological assistance, translation and interpreting services and possibly free legal aid. This applies however solely to third country nationals. These victims need to get (at least) the same protection and assistance as their foreigner fellows.

Therefore unconditional short-term assistance, just as conditional long-term assistance should be granted to every single trafficked victim regardless of his/her citizenship.

32. Witness protection

On the basis of individual assessment, in case that the victim's protection requires it, he/she should be involved in “witness protection” programme. “Witness-protection measures should include the provision of shelter or “safe house” accommodation, including the victim's family, change of identity with

³³⁹ European Commission COM (1996)567

³⁴⁰ Article 6 (1) of the Directive 2004/81/EC

supporting documentation, re-location, access to funding, provision of security advice and brief training and the provision of personal security equipment.”³⁴¹

33. Special attention to children

Children are the most vulnerable to trafficking in human beings. They can easily become victims and this has awful and long-lasting consequences on them. For that reason, child victims should receive a special attention, protection and assistance.

First of all, Member States should respect in their legislation as well as in practice, the definition of the “child” according to the UN definition³⁴², i.e. every human being below the age of 18 years shall be considered as a child.

Every Member State’s duty should be to ensure the best interests of the child during the whole procedure of investigation and prosecution. In every action concerning children, whether undertaken by law enforcement authorities, judicial authorities, social welfare institutions, or NGOs, the best interest of the child should be the primary consideration, and this should be regardless of the child’s status, i.e. whether he/she is legally or illegally in the Member State concerned. “However, different operators might have totally different opinions on what is the best interest of the child. Therefore, the meaning of the term should be established first.”³⁴³ Appointment of a legal guardian to all child victims should be guaranteed. Child victims of trafficking should have access to legal representation related to custody, care and juvenile law.

Even though that investigation and prosecution often largely depend on the victim’s testimony, but the need for the child victim’s testimony shall be assessed carefully and avoided if possible. Child victims need to be take care of during and after the process. Therefore, guardianship services and/or social workers should be closely integrated in the system from the very beginning.

Child victim should receive protection and assistance even if they are not willing to cooperate with the investigators. The special circumstances of child victims should be taken into consideration when considering the child’s best interest,

³⁴¹ 2002 Brussels Declaration

³⁴² Article 1 of the UN Convention on the Rights of the Child

³⁴³ Council of the EU document No: 15024/06

return, rehabilitation or family reunification; mostly the parents got the child into the traffickers' hand or knew about the child's abuse and exploitation.

It should be avoided that child victims of trafficking are detained with juvenile offenders or charged with prostitution crimes. Instead it should be ensured that they are treated as victims of a horrific crime. It might be difficult to distinguish child victims of trafficking from other groups of children who are exploited, unaccompanied or in transit.

Social sector authorities as well as the public play an important role in identifying vulnerable children who might end up as victims of trafficking, like those with parents with alcohol, or drugs problem, children not attending school, children living on the streets. During the years there could have been many signs of abuse and ill-treatment which social sector should have noticed. Teachers, doctors, many members of the society have the possibility to ask questions to children and thus identify child victims.

Investigation of cases of children being abused in social care, or missing from social care should be a priority. There are believes that these children are taken for illegal adoption where some cases end up in trafficking, or they are taken for removal of organs.

34. Protection of domestic workers

Many countries' labour laws exclude domestic workers from standard labour protections such as a minimum wage, limits to working hours, adequate rest periods, paid leave and workers' compensation in case of workplace injury.³⁴⁴ Therefore, informal and unregulated sectors, such as domestic work, should be brought within the protection of labour law to ensure that all workers enjoy the same labour rights, and such laws should be systematically enforced.³⁴⁵

Without legislated standards, a domestic worker's workload depends on the whim of his/her employer. The research of Human Rights Watch and many other groups show consistently that employers commonly require a domestic worker to

³⁴⁴ IOM (July 2009): Global Eye

³⁴⁵ In: Recommendation from the conference „Trafficking in Human Beings and Gender“ in Porto, Portugal, October 2007.

work 14-20 hours a day, seven days a week, for wages that are a fraction of prevailing minimum standards.³⁴⁶

Domestic workers' isolation in private homes, their lack of protection from labour and immigration laws, and unfamiliarity with the language and laws of their host country put them at high risk of criminal abuses such as physical and sexual violence, murder, forced confinement in the workplace and trafficking into forced labour.

Domestic workers face many barriers to redress through the criminal justice system, including lack of accessible complaints mechanisms, limited training of police to handle such cases and long waiting periods during which they are barred from working.

35. Providing protection for domestic workers employed by diplomats

Each Member State should take into consideration the possibility to adopt measures addressing cases of trafficking committed by diplomats, for example holding domestic workers in exploitive conditions and should ensure protection and assistance to victims of domestic workers employed by diplomats.

d) Partnership

36. Developing regional partnerships

In case, it is needed, joint investigation teams should be established between the Member States. These teams are most of the times established among neighbour countries, following the line of the traffickers and victims

3.5.2. Recommendation of actions in the EU level

Trafficking in human beings cannot be solved by one single Member State, steps on the EU level must be ensured. In this part, I have drawn up those actions that should be taken on the level of the European Union in order to improve the effect of steps taken on national level.

³⁴⁶ IOM [July 2009]: Global Eye

a) Prevention

37. EU Anti-Trafficking Coordinator

The institute of an EU Anti-Trafficking Rapporteur /Coordinator was already recommended by the European Parliament back in 2000 but this office has still not been established. It is not about creating one more EU agency as many might think but closing the gap, establishing the missing link that would make the EU anti-trafficking efforts work. The EU Anti-Trafficking Coordinator (EU Coordinator) should be the coordinator of all EU anti-trafficking policies, strategies and it should be him/her who would link together the Member States too. While national rapporteurs should be impartial and independent from the government, it is hardly to make possible to ensure that the EU Coordinator could be independent. His/her office should be under the supervision of the Commissioner for Home Affairs.

He/she should be guaranteed such competences that are inevitable for an effective coordination of the EU fight against trafficking in human beings. His/her role should be among others:

- to coordinate the EU's anti-trafficking policy,
- to chair and coordinate the Network of Anti-Trafficking Experts,
- to coordinate the European Commission's DGs' efforts and programmes to fight trafficking in human beings. This coordination is inevitable because many DGs do some efforts to combat human trafficking but these efforts lack coordination and evaluation. However, an efficient coordination can ensure that these programmes implement each other without leaving gaps or overlapping,
- to coordinate the work of national anti-trafficking rapporteurs, with special attention to establishing a unified form of national action plans in order to enable their comparison and evaluate the results on the European level,
- to hold regular meetings with the national rapporteurs in order to improve the cooperation among them,
- to collect and ensure the analysis of data collected from Member States and EU agencies,

- to prepare the EU's annual report on trafficking in human beings, covering all forms of human trafficking,
- to report to the European Parliament, preferably in a form of joint hearing held by the relevant Committees and other committees involved, during which the EU Coordinator can inform the European Parliament on the developments, findings and challenges in the fight against trafficking in human beings,
- to hold contacts with the EU anti-trafficking agencies, in particular the Europol, Eurojust and Frontex,
- to have the mandate to talk directly to national governments if necessary to ensure a strong political commitment and engagement at the highest level,
- to cooperate with international organisations active in the field.

38. Network of Anti-Trafficking Experts

The Network of Anti-Trafficking Experts shall be chaired by the EU Coordinator and members should be the national anti-trafficking rapporteurs, the representatives of relevant DGs from the European Commission, European Parliament, Europol, Eurojust, Frontex, European Union Agency for Fundamental Rights, European Institute for Gender Equality, researchers and NGOs active in the field. The meetings of the Group should be regularly held. Its role should be, among others, to discuss the new trends and forms in the trafficking in human beings, the challenges the EU and Member States face and to exchange views on the recent developments, to evaluate the steps taken, and if needed to prepare legislative amendments, and draw up the future strategy and actions. This Network should give proper forum for exchanging of best practices from the side of national rapporteurs.

39. Annual report on trafficking in human beings

The annual report on trafficking in human beings should be prepared by the EU Coordinator based on the information, data and reports provided by national anti-trafficking rapporteurs, the relevant DGs and EU agencies, such as Europol, Eurojust and Frontex. The report should be an analysis of data provided and results achieved by Member States and also by the European Union. It should be

an inventory and evaluation of actions and measures taken on national and EU level.

The annual report should have (at least) the following obligatory parts:

- trends, analysis of root causes, push and pull factors
- development and challenges of Member States, including information on new legislation, if appropriate
- development and challenges on EU level, including information on new legislation, if appropriate
- development and challenges outside the EU and the EU's role
- projects within and outside the EU and their evaluation
- conclusions – what further steps are necessary, whether legislative or non-legislative measures, and so on.

The evaluation of the situation and developments should be based on using the “3+1 P” approach, assessment of indicators, including the number of investigations, prosecutions, assisted victims, number of projects and their monitoring and evaluation and the effectiveness of the funds available and their use.

The EU Coordinator has to submit this report to the European Parliament and national parliaments.

40. Coordination between EU presidencies

Each EU presidency should keep the issue of trafficking in human beings high on the agenda. Trafficking should be part of the “trio presidency's” discussions and agreements. The trio presidency represents both a special opportunity and obligation. It offers the opportunity to set a balanced policy in the interest of all the Member States, because the team bring together different-sized states from different regions of Europe. In this way, it also enables greater policy continuity in an enlarged European Union. Therefore each trio presidency should divide among the current and two upcoming EU presidencies which topics they will focus on depending on the specialities and priorities of each Member State. The

reason for this is to ensure that each presidency covers at least one aspect of this shameful crime.

41. One single definition of trafficking in human beings

In spite of the efforts of the EU by providing one definition of trafficking in human beings, this is not properly transposed into national legislation. The new framework decision proposal, that the Commission launched in March 2009 contained a new, updated definition of trafficking, which included besides trafficking for sexual exploitation and labour exploitation, also other forms of trafficking, such as organ trafficking, activities associated with begging or of unlawful activities and so on. However, this proposal is suspended due to the Lisbon Treaty, the Commission should come out with a new proposal, this time a directive, in Spring 2010. This new proposal should at least keep this definition, since it is up-to-date and modern. Commission should ensure, that each Member State transposes the definition into the national legislation properly. Without a unified definition, we cannot tackle trafficking in human beings on the EU level, since the EU needs to ensure that when talking about the term “trafficking in human beings” everyone means the same.

42. Coordination of “3+1 Ps” approach

Although the so called “3+1 Ps”, the prevention, prosecution, protection and partnership is the responsibility of Member States as part of their policing powers, the EU can help Member States to make it more effective by exchanging best practicing and views on it.

43. Effective funding and monitoring of EU anti-trafficking projects

The European Commission shall ensure effective funding of anti-trafficking projects but also shall ensure that there is a proper feedback. It should guarantee that each project is monitored and evaluated. Only this method assures appropriate documentation of the anti-trafficking results and enables to draw proper consequences.

The European Commission should also reduce the exaggerated bureaucratic burden, by keeping the finances transparent, put on NGOs or individuals who apply for funding since it might negatively affect the real work of these NGOs or

individuals, taking time away of providing help, protection and assistance to victims and so on.

44. A separate budget line in the EU budget

In order to keep the fight against trafficking high on the EU's agenda, it should be reflected by allocating adequate budget resource. To have a concrete budget line in the EU budget for the fight against trafficking in human beings, including the international fight against trafficking, would give the proper attention to this issue and on the other hand would make possible to monitor and evaluate how much funding was spent on combating this crime.

45. Europol

The operational capabilities of Europol must be guaranteed. It is necessary to find means to ensure that Member States provide Europol with extensive information on matters falling within its responsibility. Member States should ensure that national law enforcement agencies regularly involve Europol in the exchange of information, in joint operations and joint investigative teams and use the potential of Eurojust to facilitate the prosecution of traffickers.

46. Eurojust

Eurojust must be developed on the basis of the gained practical experience. First, the objective should be that the national members of Eurojust enjoy a common minimum standard of competence. Cooperation among Eurojust, the European judicial network and Europol should be facilitated and intensified. The primary task of Eurojust should be to support Member States' national authorities in the coordination of crime investigation and prosecution and to promote cooperation and exchange of information among authorities to prevent cross-border crime. It is necessary to ensure that Member States provide Eurojust with relevant information on matters falling within its responsibility.³⁴⁷

47. Judicial cooperation

Trafficker will continue to take advantage of gaps and limits of the national judicial systems unless judicial cooperation between EU Member States is improved. Victims also need to be able to rely on the judicial system, and forms

³⁴⁷ Report by the Future Group (Informal High-Level Advisory Group on the Future of European Home Affairs Policy) 11960/08, JAI 388 p.27

of witness protection are needed to give victims the opportunity to speak out against their traffickers.³⁴⁸

Currently, the instruments of mutual recognition, both in the field of criminal and civil law, constitute a complicated set of instruments which should be re-assessed as a whole. The aim should be to simplify regulation by harmonising procedures included in the existing provisions and by streamlining fragmented and sometimes inconsistent legislation.³⁴⁹

The creation of minimum requirements for fair legal proceedings would increase Member States' mutual trust and strengthen the position of the individual particularly in cross border cases. When developing legal safeguards, particular attention should be paid to the position of the crime victim and to the fulfilment of the claimants' rights.³⁵⁰

48. Coherent migration and asylum policy

It is necessary to develop a European migration policy that harmonises Member States' migration policies in order to develop a more coherent migration policy that meets the needs of the economy and labour market, while minimises the number of those who try to illegally enter the EU. Member States must realise that there is a lack of labour force and with the diminishing population, it will just get worse. Within several years, the European Union will need to fill up the labour force with immigrants because there will be a lack of economically active population. Without allowing sufficient number of migrant workers to enter the EU through legal mechanisms that demand of the labour market and economy will ultimately be met through illegal mechanisms, whether it is the smuggling of people or trafficking of people. It is not enough that one or two Member States make efforts to adapt their migration policies to the needs of the labour market if the others are not doing it. Due to the free movement of people within the EU's territory enables illegal migrants to move freely once they got into the EU. Therefore a common and coherent EU migration policy is needed.

³⁴⁸ European Commission COM (1996)567

³⁴⁹ Report by the Future Group (Informal High-Level Advisory Group on the Future of European Home Affairs Policy) 11960/08, JAI 388 p.24

³⁵⁰ Report by the Future Group (Informal High-Level Advisory Group on the Future of European Home Affairs Policy) 11960/08, JAI 388 p.25

The role and mandate of Frontex should be strengthened in order to help Member States to defend borders and make it impossible to cross it illegally.

A common asylum policy is also needed because if one Member State grants asylum to a refugee more easily, other Member States can bear its negative consequences. There should be one European asylum system, with the same requirements to grant asylum status to ensure that only real refugees got this status and that they get it for sure. “The creation of a European asylum system should aim at far-reaching legislative harmonisation and its uniform application.”³⁵¹ The EU Asylum Office in Malta to be set up in 2010 can accelerate the creation of a common asylum policy.

The EU's common standards on return should be further developed. The objective should be to establish a common set of effective, human and fair return practices. Practical cooperation with third countries must be further intensified. Special attention should be paid to cases of trafficking in human beings. Victims should be not deported straight away. They should be guaranteed the unconditional short-term assistance first and then should be given the possibility to decide if they want to apply for a special residence permit with the condition of assisting law enforcement authorities or choose the possibility to go home. In that case, the competent authorities should make an individual assessment on the safe return, to avoid exposing victims of trafficking to re-victimisation by deporting him/her home where he/she will fall prey to traffickers too. This is also the case of family reunification. If it was the family who got the victim into abusing circumstances, family reunification will not help their recovery. Family reunification is a good thing but should be in the interest of the victim, so should be ensured if the victim's protection requires it and on the basis of individual assessment.

Common migration and asylum policy can help to minimise the cases of trafficking in human being because common standards can filter out suspicious cases, false identification documents and so on.

The European Union must ensure the establishment of a common visa policy which could significantly contribute to the prevention of illegal immigration and

³⁵¹ Report by the Future Group (Informal High-Level Advisory Group on the Future of European Home Affairs Policy) 11960/08, JAI 388 p.22

also could be a tool of the fight against trafficking in human beings. The common visa policy is one of the essential factors contributing to the management of migration flows which offers means to facilitate legal immigration and cross-border travel and prevent illegal immigration.³⁵² The Visa Information System could contribute to the fight against trafficking in human beings by creating a uniform format of visas and for residence permits for third country nationals, in order to make these documents more secure, harder to falsify and more easily to notice any anomaly. By adding biometric identifiers could also enhance the security of visas and residence permits.

49. Joint teams for domestic human trafficking

Not only foreigners get trapped in trafficking in human beings, even EU citizens can fall prey to traffickers. The number of domestic trafficking has increased with the enlargement of the EU by the ten new countries in 2004 but mostly when Romania and Bulgaria joined the EU in 2007. Both of these countries are commonly known as countries of origin and transit. So, EU is not anymore just a country of destination but has to fight against trafficking in human beings as in complex, getting to know the issue of countries of origin and transit from inside. In spite of this, most of the efforts to combat trafficking address the issue of trafficking as it was something coming into the EU from outside and as if victims of trafficking were foreigners who entered the EU illegally, therefore should be deported and returned to their home countries.

This approach leaves unaddressed the cases of internal trafficking, when traffickers reach citizens of the EU in order to exploit them. They are much easy to transfer, since they are already in the EU, do not have to cross any border illegally. So the biggest risk for the trafficker to be caught at the border is solved. Within the EU they can easily move the victim from one Member States to another, to become invisible for law enforcement authorities. This needs joint reaction from the side of law enforcement authorities with the help of Europol. There should be joint teams in order to join efforts and information.

³⁵² Report by the Future Group (Informal High-Level Advisory Group on the Future of European Home Affairs Policy) 11960/08, JAI 388 p.23

50. Concrete projects in external relations for the fight against human trafficking

The Commission should ensure that there are concrete programmes on the fight against trafficking in its external relations. So far trafficking in human beings was addressed via DG Relex and EuropAid only indirectly through projects on gender empowerment or other projects focusing on human rights. However, this indirect financing cannot be properly monitored and evaluated in relation to real funds spent on combating human trafficking.

51. Data collection

It is necessary to develop common EU standards on the collection and analysis of data on trafficking. The vast majority of countries around the world still have an incomplete picture of trafficking in human beings, which undermines the effectiveness of measures and the investment of funds and human resources made to tackle this problem. It is clear that we lack an overall image of the scope of the issue, the trends but even an accurate assessment of the results of the actions taken. Numerous international instruments stress the importance of data and accurate analysis in order to assess countries' steps and effectiveness in the fight against trafficking in human beings. For this, there is a need to have unified data collecting methods.

52. Funding researchers

The Commission should initiate and fund research and studies on new and so far unrevealed forms of trafficking in human beings, like forced begging, spousal prostitution, organ trafficking, forces that push and pull people to migrate and take the risk of falling prey to traffickers, such as poverty, unemployment, analysing their impact on the vulnerability of populations to trafficking in human beings. There should be also research on the links between trafficking and the demand for cheap labour, the effectiveness of existing anti-trafficking programmes. Another area worth researching is the issue of the clients, what makes them to buy sex, to abuse women and children, to go abroad and be active part of sex tourism. At the present time, there is a fundamental gap in research knowledge on the demand for trafficked prostitution. There were studies on

prostitutes, traffickers, routes, dynamics of the phenomenon but not on demand, even though it plays a decisive role in the development of human trafficking.

Furthermore, the health and psychological consequences of being trafficked should be researched. Interesting topic for researchers should be the practices of agencies who recruit victims for becoming models, au-pairs, dancers or even agencies that offers brides through internet. In addition, the situation of male victims should be also studied. Decision-makers and law enforcement authorities know almost nothing the exploitation of boys and men.

The Commission should also initiate a research “on child trafficking in the sports sector, paying particular attention to cases where some clubs might consider giving contracts to very young children in order to circumvent the home-grown players rule”³⁵³ as it was suggested by the European Parliament.

The field of unanswered questions related to trafficking in human beings is huge.

53. EU Network of NGOs

It is worth of consideration to establish a network of NGOs active in the field of fighting trafficking in human beings, being kind of an umbrella organisation in order to help the local NGOs with information, possibilities and opportunities.

54. EU hotline for trafficked victims

It is needed to establish an emergency hotline, one single number all around the EU, that victims or anyone who have information on potential victims can call throughout the EU. This line would be free of charge and should be operated in the languages of the 27 Member States. The aim of the hotline should be to provide emergency assistance to victims, helping to guide them to a safe place. It should be operable 24 hours a day and well publicised.

55. EU Anti-Trafficking Day

The EU Anti-Trafficking Day was established in 2007 and it was decided that it will be celebrated each year on 18 October. There have been many activities and awareness-raising campaigns organised on this occasion³⁵⁴ but it should be made more visible. It is necessary to continue in these activities and maybe even

³⁵³ Article 1(b) of the European Parliament Recommendation (2006)498

³⁵⁴ See Chapter 2

ensuring more attention, by i.e. organising conferences to reach professionals and experts but also organising concerts with celebrities trying to reach to the youth involving media attention, just to achieve the best results. These activities should be organised EU-wide.

56. EU anti-trafficking website

In the world of information and high technology, it is necessary to keep up with these trends. For this reason I think it is necessary to establish an EU website on trafficking in human beings. Even though the Commission has its website on the issue but this is dedicated solely to EU legislation in the field and projects, however, it is not sufficient. What's more, it is not even regularly updated.³⁵⁵

I think it would be much effective to create a more interactive website, with all the necessary information that researchers, decision-makers, or the wide public would be interested in. There should be information on the EU Anti-Trafficking Coordinator, the Network of Anti-Trafficking Experts, information on Member States with contact list on national rapporteurs, all EU legislation in the field, documents, annual reports, reports (at least links) on EU agencies active in the field, information about data and indicators, available funds with all the necessary details, evaluation of funds; furthermore the EU hotline number, contact on main NGOs, also downloadable information materials, leaflets, factsheets, videos that can be used for public awareness and the latest information on activities (like on the EU Anti-Trafficking Day), calls, conferences and so on.

57. Coordination of national labour inspectorates

Since many traffickers are involved in organised crime, there is a network of criminals, involving employment agencies and labour recruiters not respecting the border of countries. By ensuring regular inspections to the sectors most affected by trafficking in human beings, trafficking could be decreased. In order to improve the effectiveness of the work of national labour inspectors, there should be a network of national inspectors to ensure their coordination and give forum for exchange of information on best practices on inspections, successful stories but also on findings, like recruitment methods of agencies, working conditions of identified victims, and so on.

³⁵⁵ Last update in October 2007

58. Extension of labour legislation

Anti-trafficking goals should be considered in every EU labour legislation, in order to improve the fight against forced labour. Moreover, the Commission should also deal with the question of domestic workers. Many Member States' labour laws exclude domestic workers from standard labour protections such as a minimum wage, limits to working hours, adequate rest periods, paid leave and workers' compensation in case of workplace injury.³⁵⁶ Therefore, it should be worth of consideration to address this issue, drawing up a proposal on EU legislation on unregulated work and to call on the Member States to work out the way how and to what manner should the informal and unregulated sectors, such as domestic work, be brought within the protection of labour law to ensure that all workers enjoy the same labour rights, and such laws should be systematically enforced. National efforts should be harmonised.

59. EU training manuals

If the whole EU anti-trafficking policy is coordinated, though should to be the training of all relevant stakeholders. In order to ensure that all law enforcement authorities, judges and all relevant stakeholders have the minimum European standard training, a European training manual should be worked out by the EU anti-trafficking Coordinator, with close cooperation of Europol, Eurojust, Frontex, Ceuol as well as relevant NGOs and be regularly updated.

These EU training manuals could be an outcome of exchange of best practices, since one Member State can be strong in one aspect while the other Member State in a different one. This could ensure an excellent summary of best practices and improve the training of professionals in each Member State and thus the fight against trafficking could be even more efficient.

It should be ensured that authorities are trained about all forms of trafficking, so they can identify all types of victims, not just victims of sexual exploitation. Special training is required for front-line police and frontier personnel to make them able to identify and rescue victims and to be able to detect forged and altered documents. Furthermore, special attention should be paid on child victims, addressing the complex and special vulnerabilities of child victims.

³⁵⁶ IOM (July 2009): Global Eye

Another group of professionals who need special training is the international military and peace-keepers and related civilian contractors whose training should be focused on how to identify, help, rescue victims of trafficking, plus to ensure that they do not get involvement in any activity that adds to the exploitation of trafficked victims. If so, it should be harshly sanctioned.

60. Member States' permanent representations to the EU free of trafficking in human beings

It should be required from the Member States to keep their permanent representations to the EU free of trafficking in human beings. It should be ensured by training for diplomatic missions' staff in order to be aware of this shameful crime and on the other hand to avoid getting them involved in this criminal activity. Permanent Representation should be free of human trafficking – it should be a moral obligation. In case, someone from the diplomatic staff gets involved into trafficking in human beings should be automatically repealed and ensuring that in prosecution it is treated as aggravating circumstances.

61. Code of conducts for EU officials

The Commission should adopt a proposal for a Code of Conduct for officials of the EU institutions and bodies, particularly for officials on an EU mission to third countries. The Code should express clear disapproval of the purchase of sexual services and should contain necessary sanctions in the case of misconduct. Officials sent on a mission should be given detailed information and training on the issue before being sent on a mission.

62. Involving tourist industry in the fight against sex tourism

Since sex tourism is a driving force of trafficking in children, therefore involving tourist industry in the fight against this type of sexual exploitation of children is essential. All persons working in tourism who are in contact with tourists during the preparation and during the journey itself should be approached.

The tourism sector and internet providers should develop and adhere to code of conducts of hotels and travel agencies in order to prevent trafficking in human beings.³⁵⁷

³⁵⁷ This was an initiative of the NGO „Stop the traffik“.

First and foremost, there should be training for travel agencies. Transport companies active across the EU border should be involved too.

63. Trafficking in organs and human tissues

According to the findings of the European Commission, there is no clear evidence of organ trafficking in the EU. Member States have not reported any case of trafficking in organs. However, some studies estimate that around 200 cases per year appear in the European Union. In spite of this, this form of trafficking in human beings needs attention and further research.

As recommended by the European Parliament “Member States should guarantee the transparency of national registers and waiting lists and establish legal responsibility for irregularities.”³⁵⁸

64. Awareness-raising

Besides the EU Anti-Trafficking Day that offers a whole range of opportunities to raise public awareness, there should be activities carried out during the whole year, not just on that single day. It could be useful to take into consideration the possibility to request celebrities who could be the public face of the EU’s fight against trafficking in human beings, who could serve as an EU goodwill ambassador, reaching out to the youth more easily and efficiently than a politician, for example.

65. Involvement of media

The media should be involved also on EU level to ensure effective public awareness-raising.

It should be also taken into consideration to work out an EU code of conduct of media professionals in order to, among others, avoid creating and promoting false stereotypes of genders and to promote violence against women and other humiliating and degrading activities and also to refuse publicity for the sex trade, with a view to making it as difficult as possible for networks engaged in trafficking in human beings to operate.

³⁵⁸ Article 1(l) of European Parliament Recommendation (2006)498

66. Teaching consumers to buy responsibly

It is inevitable to raise awareness of consumers that not every good is produced in a fair way and that they should care what things they buy. They need to realise that if they buy things that were produced by victims of trafficking, they contribute to the expansion of trafficking in human beings by creating demand.

The IOM has launched a campaign “Buy Responsibly” in order to encourage consumers, particularly in developed countries to play a greater and more proactive role in ending the demand for exploited migrant labour, which is fuelled by the consumer appetite for cheap goods and business’ demand for greater profit margins. Until now, global efforts to prevent trafficking and reduce the incidence of forced labour have largely focused on raising awareness among prospective migrants in developing countries about the risks of irregular migration and human trafficking, with comparatively little work done to tackle the equally-critical issue of demand in developed countries.³⁵⁹ The IOM’s goal is to change consumers’ behaviour and thus have far-reaching consequences in the global battle to address these major issues. The ground has already been prepared to a certain manner. The campaign “Fair trade” has been the first sparrow to raise the consumers’ responsible behaviour.

On the other side, it is not enough to encourage consumers to buy products free of trafficking, if there are no such products on the market. For this, Member States needs to win the stores to be willing to give up selling questionable but cheap products and to change into a “traffic-free” store. This can help the businesses to create a positive image.

The European Commission should organise awareness-raising campaigns in cooperation with the Member States. Posters, banners, flyers, TV-spots should be prepared and spread in order to reach all the consumers with the aim to change their consumer behaviour. However, in order to reach to best effectiveness, these materials should be prepared not just in the state language but also in the language of the minorities and migrants living in Member State concerned.

³⁵⁹ IOM [2007]: Global Eye (October 2009)

67. Improving gender empowerment

Trafficking in human beings has a female face. According to the 2005 ILO report, 80 percent of victims of trafficking are women and girls. In the case of forced labour, 56 percent of victims are women and girls, while in case of trafficking for sexual exploitation 98 percent of victims are women and girls.³⁶⁰

The 2002 Brussels declaration has highlighted that “European anti-trafficking strategy should include combating the gender-based violence and patriarchal structures that foster a favourable environment for trafficking.” Legislation on women’s rights and equal opportunities must be linked to the anti-trafficking legislation in order to protect and strengthen the social situation and position of women and to address all forms of gender discrimination. So, gender empowerment could be an effective tool how to combat trafficking in human beings.

68. Addressing the major European sport events

It was frequently cited by various actors including the European Parliament, IGOs, NGOs and media that major international events, including sports events, risk contributing to a temporary increase in the trafficking of human beings.

Prior to the Football World Cup in Germany in 2006, there was considerable international concern that this event would contribute to a sharp increase in trafficking for sexual exploitation. Media reports suggested that prostitution would increase and that up to 40,000 women might be trafficked.³⁶¹ According to the findings of the IOM,³⁶² none of the data, information and experts’ statements confirmed this and according to them there was no increase in human trafficking, during and after the World Cup.³⁶³ It is necessary to underline that talking about exact numbers is impossible in the case of this crime. There are just estimations about the number of victims of trafficking, so any kind of assumptions of trends is also difficult.

³⁶⁰ ILO [2005]: A global alliance against forced labour

³⁶¹ IOM [2006], p.2

³⁶² IOM [2006] p.2

³⁶³ The current number of known victims of trafficking for sexual exploitation in Germany is around a 1,000 persons per year. (However) It is assumed that only one in ten cases of trafficking are ever discovered. In: IOM [2006], p.2

Therefore, regardless of the limited existing evidence on the link between such large-scale sport events and increased incidences of human trafficking, it is still worthwhile to draw attention to trafficking in human beings, in particular sexual exploitation. Some of the countries of future sport events have already realised this, for example a new Assistant Commissioner has been selected by the Metropolitan Police as head of security of the 2012 Olympics in London to deal with terrorism threats, human trafficking, illegal construction workers and counterfeit operations.

Summing up, future sport event organisers and host cities should pay extra attention to trafficking in human beings. An early and reliable situation assessment in cooperation with local experts from the police, international organisations and NGOs is essential. Involving the media is important too.

During this period it is important to widen the scope of anti-trafficking activities, not to focus only on sex trafficking, even though this is the main exploitative activity, but also on forced labour, criminal activities and begging.

It is also necessary to involve EU Agencies, as Europol and Frontex as well as increase the cooperation among Member States and with NGOs.

b) Prosecution

69. Harmonisation of sanctions

There are huge differences in approach to sanctions in national legislation.³⁶⁴ In order to ensure effective, proportionate and dissuasive sanctions, it is needed to harmonise these sanctions, at least by determining their minimum level.

70. Combat sex tourism

The causes of the phenomenon of child sex tourism are as numerous as they are complex. Poverty is often quoted as factor but the phenomenon of the demand is also very important. Given the fact that most of the tourists who sexually exploit children come from developed countries, including the Member States of the EU, it is necessary that the EU takes measures to combat this shameful crime against children.

³⁶⁴ See Chapter 3.1.

The fight against sex tourism needs to address both the individuals who abuse children but also the individuals and companies who advertise such “tourist attractions”.

First of all, there should be measures to ban advertising for sex tourism from any Member States. The Member States should hunt out and prosecute those individuals or companies who write and publish travel guides which support sex tourism at least by implication, providing a wealth of information for the child abuser. Measures should be taken also against tour operator companies which promote and facilitate sex tourism by identifying resorts where prostitution is widespread, also negotiating deals with local hotels to ensure that their clients will not be charged for “inviting” companions to their room for the night or even “arranging” 24-hour female “guides” for clients.

Further there should be awareness-raising campaigns saying that tourists from any Member States who abuse a child abroad will be prosecuted at home, treating the abuse of a child as an aggravated circumstance. There should be leaflets on sex tourism with all the legal, social and health consequences in all the main languages. These leaflets should be at the borders (airports, ports, and so on), also at hotels so that when a tourist enters the country he/she should be informed about the crime and its consequences. It can serve as a deterrent tool. Another way is to have short video spots on the borders while waiting for visas and immigration and custom procedures. There should be also a campaign in Member States in order to reach public in general to educate them and to create an overall condemn towards the crime. People caught abusing children abroad should be named and shamed publically, to ensure that the measure has a dissuasive effect. Sex tourism is an excellent example, that it is not solely the paedophiles who abuse children, but also occasional abusers on vacation, such as teachers and doctors.³⁶⁵

71. Interlinking the fight against organised crime

High profits from labour and sexual exploitation are often subject to money laundering and may enable traffickers to engage in other criminal activities and

³⁶⁵ „On this trip, I’ve had sex with a 14 year-old girl in Mexico and a 15 year-old in Colombia. I’m helping them financially. If they don’t have sex with me, they may not have enough food. If someone has a problem with me doing this, let UNICEF feed them.“ This was said by a retired US schoolteacher. In: US Trafficking in Persons Report [2008]

to achieve economic, social or even political power. By keeping the fight against trafficking as a priority high on the political agenda, it would be possible to fight other forms of organised crime. The fight against organised crime can be promoted by interlinking different police units and other intelligence in order to exchange the information and gather all the knowledge and powers.

c) Protection

72. Special attention to children

Special attention should be given to children also on the EU level by addressing their complex and special vulnerabilities. One of the areas could be to work out improved and harmonised methods of age-determination of child victims. Unfortunately, when a child victims is identified, he/she has no identification document and it is very difficult to determine his/her age. It is crucial for one reason, if a child is mistakenly identified as an adult, he/she cannot receive special assistance and protection, that being as a child he/she would be eligible to.

Currently, in some countries, there is no formalised policy on age assessment and/or benefit of doubt concerning age.³⁶⁶ In the case of those Member States that do have such policy, it is not harmonised, they use different methods. In most of the Member States medical tests are carried out³⁶⁷. In a minority of Member States an X-ray of the bones of the child (wrist bone, collar bone or teeth) is made.³⁶⁸ This method is however criticised in various Member States saying that this method is inappropriate for use with multi-ethnic groups. In Greece and Ireland, the age is determined on the basis of interviews with the child. In Finland, Italy and the UK several indicators, such as the victim's physical appearance and mental maturity, are taken into account.³⁶⁹ However, even this method cannot determine the child's age properly, since a child victim from Nigeria looks absolutely differently, with different signs of maturity and physical appearance than a child from India or Vietnam.

³⁶⁶ European Union Agency for Fundamental Rights [2009], p.13

³⁶⁷ In Belgium, Czech Republic, Denmark, Germany, Estonia, Spain, France, Luxembourg, the Netherlands, Poland, Romania and Slovakia. In: European Union Agency for Fundamental Rights [2009], p.54

³⁶⁸ In Belgium, Denmark, Germany, Malta and the Netherlands. In: European Union Agency for Fundamental Rights [2009], p.54

³⁶⁹ European Union Agency for Fundamental Rights [2009], p.54

There should be efforts of the European level to ensure exchange of best practices and to work out a harmonised method of age assessment. Cooperation should be ensured with NGOs.

Another special field that needs attention are the unaccompanied children. This issue is definitely present in the European Union. In the last years, there has been a significant increase in the number of unaccompanied children from outside the European Union arriving in different EU Member States irregularly. Their young age put them at a high risk of being exploited.³⁷⁰ They are particularly vulnerable to human trafficking by being absolutely alone in a strange country, knowing no one, probably neither the language and are able to trust anyone.

The Directive 2004/81/EC on short-term residence permit called on the Member States to “take the necessary steps to establish their identity, nationality and the fact that they are unaccompanied. They shall make efforts to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary.”³⁷¹

This was also reflected by the Council on 21 September 2009 which confirmed that the subject of unaccompanied minors coming to and seeking asylum within the EU represents an important challenge and therefore requested the Commission to present an action plan on unaccompanied minors arriving in the EU by early 2010.³⁷² The issue should be handled as a priority during the Spanish Presidency during the first half of 2010 whose aim is to approve the action plan of unaccompanied children.³⁷³

73. Protection of marginalised people

Marginalised groups can easily fall prey to traffickers because of their special status. Therefore, these marginalised groups, such as street children, homeless, people with disability, under-privileged, alcoholics and drug-addicts should be addressed in order to improve their access to minimal care and living conditions in general and to facilitate their social reintegration.

³⁷⁰ IOM [2009]: Global Eye

³⁷¹ Article 10 (c) of the Directive 2004/81/EC on short term residence permit

³⁷² Action-Oriented Paper p.6

³⁷³ IOM [2009]: Global Eye

d) Partnership

Partnership on EU level is discussed under the part “international level”.

3.5.3. Recommendation of actions on international level

The fight against trafficking in human beings should fit into the EU’s external relations policy and programming activities with third countries, regions and organisations at international level, including development cooperation, and be complemented by action by the Member States and appropriate EU bodies.³⁷⁴ There should be an increased coordination and coherence of EU actions vis-a-vis third countries, regions and organisations at international level; this requires specific coordination mechanisms that avoid duplication of efforts, and increases effectiveness and sustainability.

I have drawn up a list of actions that should be taken on the international level in order to effectively combat human trafficking. I have divided this part into three groups based on the partner-country’s status or whether the partner is an international organisation:

- a) Cooperation and coordination of activities with countries of origin/transfer
- b) Cooperation and coordination of activities with the United States
- c) Cooperation with other countries
- d) Cooperation and coordination of activities with international organisations

a) Cooperation and coordination of activities with countries of origin/transfer

The most important group of countries that should be addressed, helped and assisted is the group of countries of transit and countries of origin. Most of these countries are closely linked to the EU by being a neighbour country or one of the ACP countries. With and towards the neighbouring countries the EU has developed a so called European Neighbourhood Policy. Countries of ACP can also be easily addressed because of their special status in the EU’s external policy, namely through the Cotonou Agreement.

Countries of origin and transit are mostly developing countries, this is what mostly fuels trafficking in human beings towards to EU. With the neighbouring

³⁷⁴ Action-Oriented Paper, p.10

countries besides the other pulling and pushing factors it is also the geographical closeness that also creates a pulling factor.

Currently, it is the area of freedom, security and justice that occupies an increasingly prominent role in the Union's external relations. Cooperation with countries of origin and transit is important in relation to immigration and asylum issues.³⁷⁵ The fight against trafficking in human beings should also be an important part of this cooperation.

The fight against trafficking in human beings should be an active part of the European Neighbourhood Policy (ENP) which is currently the main foreign policy priority of the European Union. Neighbouring countries are strategic partners, so the relation between them and the EU should be special and strategic, ensuring mutual prosperity, stability and security. This policy goes well beyond existing regional and bilateral cooperation, encouraging and supporting the partners' own individual political, economic and social reform and transition. Through the ENP the EU helps its partners to address the many common challenges they face, focusing at the same time on specific priorities through Action Plans.³⁷⁶ These documents are negotiated with and tailor-made for each country, based on the country's needs and capacities, as well as their and the EU's interests. They jointly define an agenda of political and economic reforms by means of short and medium-term (3-5 years) priorities. They cover political dialogue and reform, economic and social cooperation and development, trade-related issues and market and regulatory reform, cooperation in justice and home affairs, different sectors and a human dimension.³⁷⁷

As a stable part of these Action Plans there should be tailor-made measures on fighting trafficking in human beings that should be regularly updated.

The fight against trafficking in human beings should also be an active part of the cooperation with the African, Caribbean and Pacific countries (ACP). In 2010

³⁷⁵ Report by the Future Group (Informal High-Level Advisory Group on the Future of European Home Affairs Policy) 11960/08, JAI 388 p.28

³⁷⁶ 12 such ENP Action Plans are being implemented, with Israel, Jordan, Moldova, Morocco, Occupied Palestinian Territory, Tunisia and Ukraine since 2005 and with Armenia, Azerbaijan, Georgia, Lebanon and Egypt since end 2006/beginning 2007. In: http://ec.europa.eu/world/enp/howitworks_en.htm

³⁷⁷ http://ec.europa.eu/world/enp/howitworks_en.htm

there should be a revision of the second Cotonou Agreement and this would give a good opportunity to have more links to the fight against trafficking.

An additional reason, why trafficking in human beings should be urgently addressed is because of the global financial and economic crisis that has established such conditions that lead to two trends: the global demand for labour has shrunk while the supply of workers willing to take ever greater risks for economic opportunities has grown. This seems as an ideal recipe for greater labour and sexual exploitation of people. Therefore, trafficking in human beings should be addressed in the recovery plans of each country. The EU should call on third countries to do so, by linking this to i.e. development cooperation.

74. Unified definition

The EU could encourage third countries, in particular countries of origin and transit to use one single definition of trafficking in human beings just to ensure that when addressing this crime, every stakeholder in every single country knows what they are talking about. This definition could be the one worked out by the Commission in the future directive on trafficking in human beings.

75. National Anti-Trafficking Rapporteurs

The EU should encourage third countries to establish national anti-trafficking rapporteurs. By establishing this mechanism, third countries would give a sign that they take the issue of fighting trafficking in human beings more seriously. The EU should also help with setting up these mechanisms.

76. International convention

The EU should encourage countries of origin and transit to sign, ratify and implement if it has not yet done so all relevant conventions, in particular the United Nations' International Convention against Transnational Crime, its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), the United Nations' Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Council of Europe's Convention on Action against Trafficking in Human Beings, the International Labour Organisation's Convention and core labour standards in order to provide a solid basis for developing partnerships between the EU and third countries.

77. Capacity building

In most of the countries of origin, there is shortage of capacity in the field of police and judicial authorities. Improvement of administrative structures in key sectors, such as law enforcement agencies, judicial bodies is essential. Without such structures it is difficult to investigate and prosecute criminal organisations involved in organised crime including trafficking in human beings. The EU should help to set up effective law enforcement structures. Other field that needs to be assisted is the field of victim care and the reintegration of victims of human trafficking in the countries of origin.

78. Training for officials in countries of origin and transit

EU could help to work out training manuals for law enforcement authorities with the help of local experts in order to reflect national specialities. EU could also help with the training process by sending training experts. The main goal of these trainings is to teach the law enforcement authorities how to identify victims. Trainings should also address the issue of corruption.

It is also necessary to address with special interdisciplinary training people other than law enforcement but who also deal with the issue of human trafficking, in particular for judges, doctors, social workers and so on.

79. Joint teams

As suggested by the Action-Oriented Paper, it is worth of developing joint efforts in partnership with third countries, as a response to a new trend or pattern in trafficking in human beings, for instance a noticeable increase in the number of victims with a similar background or travelling route. To this end, Swift Action Teams (SATs) may be established by Member States in cooperation with Europol and Frontex. These SATs should be composed of experts from Member States, including liaison officers, as well as Europol and Frontex where appropriate. A SAT should be deployed to support a specific third country, region or international organisation in the area of migration management, for example by assisting third countries in identifying trafficked victims at airports before they board and providing training on the identification of victims and forged identity

papers. Before a SAT starts work, care should be taken to ensure that shelter and assistance are available for any victims identified in that third country.³⁷⁸

80. Improved exchange of information

In order to improve donor coordination, facilitate the development of programming activities and enhance synergies between existing programmes and activities, EU embassies, Member States' development offices in the field and the EC delegations should improve the exchange of information on actions taken on trafficking in human beings. EC delegations should take a leading role in improving donor coordination in third countries and regions at international level.³⁷⁹

Member States have efforts to fight trafficking on the basis of bilateral agreements with third countries. In order to avoid duplication, coordination of bilateral activities should be also considered.

It is also welcomed to improve police and judicial cooperation, in particular with the Central and East European countries.

81. Exchange of best practices

There should be a possibility to exchange best practices visa versa. The EU should not just spread the know-how but should be open to consider studying anti-trafficking approaches from third countries with the aim to learn from them.³⁸⁰

82. Development policy

The main objectives of the Community's development cooperation include the fight against poverty, the promotion of human rights and democracy and sustainable development. The problem of trafficking relates directly to all of these objectives, therefore should be part of the development policy.

³⁷⁸ Action-Oriented Paper, p.14

³⁷⁹ Action-Oriented Paper p.12

³⁸⁰ For example Brazil's National Plan for the Eradication of Slave Labour is one of good examples how to fight labour exploitation. If a company or person gets caught by using slaves is put on an official „dirty list“. In addition to prosecution and imprisonment, that company or person is excluded from receiving any sort of government permits, grants, loans, or credits. This has a big impact of companies or people, since much of the slavery in Brazil occurs where land is being developed in the Amazon and other remote areas. Therefore being denied government benefits can drive slave-using companies out of business. Moreover, companies pledge through the counterpart National Pact not to source from these entities. In: The Action Group to end Human Trafficking [2008], p.20 and www.freetheslaves.net

An effective way to combat trafficking in to address the root causes of human trafficking. The development policy's main aim is to help the developing world to achieve the Millennium Development Goals and therefore it should continue to provide funding for projects that address factors that make persons vulnerable to trafficking, in particular "poverty, lack of access basic and higher education, gender inequality, denial to the right of nationality, discrimination and the lack of access to services and of equal opportunity".³⁸¹.

83. Gender empowering

Development cooperation needs to cover more than addressing just the issue of poverty. "Particular attention should be paid to gender issues, improving economic position of women and their opportunities for income, and empowering local women to take an active part in decision-making at household and community level. A range of "positive action" programmes aims to raise women's low status, increase girls' access to literacy and basic education, and foster women's general confidence and awareness."³⁸²

Trafficking for sexual exploitation has a female face.³⁸³ According to researchers, both the supply and demand sides of the trade in human beings are fed by "gendered" vulnerabilities to trafficking.

In many regions, international migration is increasingly feminized.³⁸⁴ Domestic work is undervalued and poorly regulated, and while domestic workers may find responsible employers who treat them well, many are trapped in situations where they are overworked, underpaid, heavily indebted and at risk of physical and sexual violence.³⁸⁵ Exploitative employers prefer to use trafficked women – traditionally seen as submissive, cheap and pliable – for simple and repetitive

³⁸¹ European Commission COM (2005)514, p.11

³⁸² European Commission COM (1996)567

³⁸³ According to the ILO estimations, 80 percent of trafficked persons are women and girls, while between 40 and 50 percent of all victims are children. According to the ILO, the majority of victims are trafficked for sexual exploitation. In this case up to 98 percent of victims are women and girls. However, not just the sexual exploitation has a female face. According to the same organisation 56 percent of those trafficked into forced labour are also women. In: ILO [2005]: A global alliance against forced labour

³⁸⁴ 50 to 75 percent of documented migrant leaving Indonesia, the Philippines and Sri Lanka are women, most of them hoping to earn money as domestic workers in the Middle East and other parts of Asia. In: IOM [July 2009]: Global Eye

³⁸⁵ IOM [July 2009]: Global Eye

tasks in agriculture, food processing, labour-intensive manufacturing and domestic servitude.

Women often have no individual protection or recognition under law, inadequate access to healthcare and education, poor employment prospects, little opportunity to own property, or high levels of social isolation. A woman who exists only through a male guardian who controls her income, identification, citizenship and physical well-being is more susceptible to becoming a trafficking victim.³⁸⁶ All this makes some women easy targets for harassment, violence and human trafficking. In countries where women's economic status has improved, significantly fewer local women participate in commercial sex.

The biggest problem is that most governments exclude the female-dominated sectors from key legal protections. They do not recognise domestic work as formal employment, reflecting the low status of women and "women's work". Many countries' labour laws exclude domestic workers from standard labour protections such as a minimum wage, limits to working hours, adequate rest periods, paid leave and workers' compensation in case of workplace injury.³⁸⁷ Furthermore, many countries take violence against women as something that is part of the everyday life.

Commission and Member States should give high priority to promoting gender equality and women's rights in negotiations with countries of origin and transit, with special attention to candidate countries and to ensure that the legislation and structures in those countries are sufficient to tackle the problem of trafficking in women and are in line with measure taking in the Member States.

84. Corruption

Trafficking in human beings flourishes through the corruption of public officials. Slavery grows when the rule of law breaks down or is not enforced. When corruption creeps into law enforcement, slaveholders have a field day – they

³⁸⁶ In many countries, new widows must adhere to strict mourning practices, such as a month of isolation, or become outcasts. Despite official inheritance laws, during her isolation the relatives of a deceased man may confiscate the man's property from his widow and children. In many cases, without her husband's permission the destitute widow may not withdraw money from her bank account, register her husband's death or their child's birth, receive a passport, or take a job. Without a birth certificate, she cannot enrol her child in public school or see the doctor at the local clinic. Desperate to feed her child, the widow becomes easy prey for human traffickers. In: US Department of State [2009]: Gender Imbalance in Human Trafficking (June 16, 2009)

³⁸⁷ IOM [July 2009]: Global Eye

bribe police to do whatever they like. Once in massage parlours and brothels, local police take bribes to look the other way.³⁸⁸

Trafficking-related corruption can subject those trafficked to a double or even triple victimisation and abuse of human rights. A trafficked person is first and foremost a victim of criminal gangs; however, there is a second stage of victimisation which occurs when corrupt officials do not assist trafficked persons to escape. A third form of victimisation must also be considered, whereby a state turn a blind eye to their own officers' corrupt involvement in trafficking or when a trafficked person is treated as a criminal rather than a victim.³⁸⁹

There is a whole range of officials who needs to be addressed: from local officials to international peacekeepers, police, custom officers, border guards and those responsible for issuing passports or visas.

First, there is no question that officials in all types of system, including affluent ones, are sometimes tempted to become involved in trafficking; this said, the incomplete evidence available suggests that the problem is usually worse in poorer countries. Second, there is only a few concrete proven cases of corrupt officials being directly involved in trafficking; but this is just the tip of an iceberg, and is explained largely by the difficulties involved in investigating such activities. Third, while many corrupt officers collude with criminal gangs in the trafficking process, some operate in their own right.³⁹⁰

There are numerous measures that governments and international organisations can and should take to reduce both corruption and trafficking. Risk assessments, harsher punishments, immunity, naming and shaming, standardisation of definitions and removal of limits on the number of testimony-related visas that can be issued are a few issues to be tackled. Moreover, several analysts maintain that the single most important factor in combating corruption – generally, not specifically relating to trafficking – is the political will. Just as important as political will is political capacity. This is desirable not only from the human rights perspective but also in terms of the security interests of states.³⁹¹

³⁸⁸ www.freetheslaves.net

³⁸⁹ IOM [July 2009]: Global Eye

³⁹⁰ IOM [July 2009]: Global Eye

³⁹¹ IOM [July 2009]: Global Eye

The EU should encourage the countries of origin and transit to properly penalise cases of corruption by including it into the anti-trafficking legislation. Corruption and cases when officials are involved in trafficking in human beings should be taken as an aggravated circumstance and should be therefore properly sanctioned.

85. Suspension of bilateral and multilateral agreements

All future bilateral agreements with third countries should have a clause whereby such agreements should be suspended where countries are found not to have taken measures to combat trafficking in human beings and/or when the third country's government seriously violate human rights.

86. Linking the fight against human trafficking to the issue of debt forgiveness

It should be considered to incorporate anti-trafficking and slavery conditionality in future debt forgiveness for Heavily Indebted Poor Countries (HIPC). The EU should exercise its influence over the World Bank and IMF, both of which are responsible for determining the eligibility of countries for debt relief. Applicants to the World Bank and IMF should be urged to incorporate slavery eradication as a priority in Poverty Reduction Strategy Papers.³⁹²

87. Involving businesses in the fight against trafficking in human beings

Businesses could be actively involved in the fight against trafficking in human beings. It can have a multiple advantage, among other they can raise awareness and educate customers to be sensitive to cases of trafficking.

A good example is the Gap Inc,³⁹³ which has created its social responsibility approach. In 2007 it was informed by media about an allegation of child labour at a facility in India that was working on one product for Gap Kids. Taking full responsibility for the incident, Gap cancelled the product order in question and ensured that the garment would never be sold, it then tied up with a child advocacy organisation, BBA and the Indian government to ensure that the children found in the makeshift facility were cared for and reunited with their families; the embroidery subcontractor involved was immediately prohibited from any future Gap Inc. production.

³⁹² The Action Group to end Human Trafficking [2008], p.27

³⁹³ Gap Inc is a a leading global speciality retailer offering clothing, accessories and personal care products for men, women, children and babies under the Gap, Banana Republic, Old Navy, Piperlime and Athleta brand names operating more than 3100 stores worldwide. In: IOM [2009]: Global Eye

Such examples have a heavy impact on businesses in the third world therefore involving businesses, well-known trademarks into the fight against trafficking is a key step to success. Businesses, such as Gap Inc. can do more, not just cancel cooperation of this subcontractor but can also go further, as Gap Inc. has done it. With the aim of throwing light on the complexity of the issue of forced labour as well as the broader issue of trafficking in the supply chain, Gap Inc., in collaboration with the Indian Ministry of Women and Child Development and UNODC, organised a one day workshop to discuss the issue of trafficking in garment supply chain.

88. Cooperation for the victims' safe return

As it was previously mentioned, victims should be returned only after they received the unconditional short-term assistance. After this, if the victim wants to return home, or he/she is not willing to cooperate with the law enforcement authorities, he/she should be returned home. However, this should be preceded by individual assessment on the safety of his/her return. This can only be ensured by the active cooperation and coordination of the home country. The source country should establish further assistance to the victim and his/her reintegration, in case it is needed.

89. Special attention to children

Children are the most vulnerable to trafficking. While there is little doubt that the sexual exploitation of children is on the increase, it is difficult, owing to the absence of qualitative and quantitative studies, to form a precise idea of its nature and its extent. Nevertheless, it is recognised that not only is the practice increasing, it is also spreading geographically.³⁹⁴

Special attention should be given to the support and education of children in the countries of origin and transit. According to the UN Convention on the Rights of the Child, each child should be guaranteed his/her rights and the EU should help to have access to these rights by encouraging source countries to guarantee these rights. It could even be linked to commercial conditions.

As a minimum the EU should promote the birth registration of all children. In spite of the fact that the UN Convention on the Rights of the Child calls for

³⁹⁴ European Commission COM (1996)547

registration of every single child immediately after birth, according to the UNICEF more than 51 million children are still not registered. Without birth registration a child is not existing, he/she does not have the right to inherit land or property, to attend school, to have access to free health care, have access to legal protection in courts of law, can be recruited to army before reaching the age of 18 years old, cannot get an ID card or passport, may not receive vital childhood vaccines and immunizations,³⁹⁵ they can be treated as adults not receiving the special services that a child would be eligible to. These children are invisible during wars, conflicts, natural disasters; they can be hardly reunited with their families when displaced. When becoming an adult will not be eligible for loans or not have the right to vote.

“These invisible children together with millions of orphans and street children are the most vulnerable to trafficking, being an easy prey for illegal adoptions or for use in the trade of human organs.”³⁹⁶ Therefore each country must ensure their children the future by making it obligatory to register every single child at birth.

The EU could help by making pressure on third countries to ensure birth registration and should also promote the issue by awareness raising campaign with the help of international organisations and (local) NGOs.

With regards to prevention, it is necessary to fight against trafficking in human beings by promoting education in countries of origin, since education can lead to social and economic development and therefore can avoid children and adults falling prey to traffickers.

Special priority should be given to providing support centres, re-training and rehabilitation centres for street children, especially girls, who are often prime targets for sexual exploitation.

According to the Commission Communication “A Special Place for Children in the EU’s External Action” (2008), the fight against those crimes which particularly affect children, such as trafficking in human beings, must be based on concrete preventive and assistance measures to protect children from violence

³⁹⁵ www.ihaveavoice.eu

³⁹⁶ Recital K of the European Parliament Recommendation (2006) 498

and exploitation and to ensure their rehabilitation, recovery and long-term social inclusion.³⁹⁷

90. Awareness raising

The EU could help to raise awareness jointly with the US and/or international organisation to increase public awareness among the potential victims in the countries of origin through information campaign focusing on the one hand on the opportunities, limitations and rights of individuals in the case of legal migration and the risks linked to illegal migration, including becoming victim of trafficking on the other.

Part of this awareness raising should be leaflets to visa applicants in all EU consular offices in the language of the home country as well as leaflets and short videos can be projected on immigration desks, so potential victims can watch them while waiting to enter the country, and/or collecting luggage.

91. NGOs

The European Union can help to combat trafficking by financing the work of local NGOs, who can directly reach victims and also by financing the creation and development of NGOs specialised in the fight against trafficking in human beings. They are the one who complement the role of public authorities through activities on prevention of trafficking and assistance. On the other hand, when public authorities cannot or wish not cope with the issue, the EU can help the victims through NGOs.

b) Cooperation and coordination of activities with the United States

There should be established a regular EU-US dialogue on trafficking in human beings, concentrating in particular on the exchange of best practices and coordination of efforts, in particular in foreign policy by ensuring to close the gaps and avoid duplicate steps.

The EU Anti-Trafficking Coordinator could closely cooperate with his/her counter partner in the US and set up the main point of cooperation.

³⁹⁷ Action-Oriented Paper [2009], p.5

The EU could coordinate its position with the US in order to jointly step up on international fora and towards countries that violate human rights and close their eyes over trafficking in human beings. They could also joint their forces to put and keep the issue of human trafficking high on international level, in particular on the agenda of G8 and G20 and international development institutions (e.g. World Bank)

They could also cooperate in order to work out a unified definition of trafficking in human beings and to develop common, unified data collecting methods.

c) Cooperation with other countries

Naturally, not all victims of trafficking end up in the territory of the European Union. It is not only trafficking in human beings from third countries into the European Union needs to be addressed, since it is just one side of the coin. Trafficking between third countries also appears to be increasing. There are cases, when victims do not leave their home country or get trafficked to neighbouring countries. However, even in these cases the EU should take a role to help these countries to fight against trafficking in human beings. It can be part of the part of the EU development policy in general, in order to eliminate the main pushing factors, or part of the EU's diplomacy.

The EU could help to assist to create good legislation, train professionals, exchange of best practices, and so on. The EU should also encourage third countries to sign, ratify and implement all relevant international conventions, but most and foremost the Palermo Protocol that sets the minimum standards of the fight against trafficking in human beings.

The EU could also encourage regional economic associations to adopt regional agreements on combating trafficking in human beings, in order to strengthen the efforts and forces. The Union shall in particular make full use of Council of Europe expertise where action is required within its competence and continue to promote regional initiatives that could complement and inspire EU wide cooperation, e.g. the Nordic Baltic Task Force against Trafficking in Human Beings, the Southeast European Co-operative Initiative, the pan-European Budapest Process, the "5+5

dialogue” between the Western Mediterranean countries and the Mediterranean Transit Migration Dialogue.³⁹⁸

Special attention should be paid to combating sex tourism

The causes of the phenomenon of child sex tourism are as numerous as they are complex. Poverty is often quoted as factor but the phenomenon of the demand is also very important. Given the fact that most of the tourists who sexually exploit children come from developed countries, including the Member States of the EU, it is necessary that the EU takes measures to combat this shameful crime against children.

However, developing countries should also take measures to combat child sex tourism. Even though tourism means for many developing countries a major income, they should care about the quality of tourists and do not tolerate or in worst case promote the sexual exploitation of their own children by closing their eyes over these abuses. They should take strict measures, including the extradition of offender to his/her home country and ban his/her return, considering that person as persona non grata for good. Children are the future and it is not a cliché. Abused children will not grow into a high quality working force; they will lack education, good health, motivation, just to mention a few. All they will see is abuse, fraud, threats and pain and these are not the driving forces of a healthy economy.

Since victim protection programmes are often expensive, the European Union through EuropAid could help through special projects aimed at fostering social assistance, protection, treatment and rehabilitation, reintegration and education of sexually abused children by bearing in mind the children’s best interest. It also needs to be taken into consideration that the best interest of the child does not necessarily mean the family reunification. Often parents or other family members sell the child to traffickers. So by giving back the child to the family would cause his/her re-victimisation. There should be special shelters and foster families for these abused children.

d) Cooperation and coordination of activities with international organisations

As envisaged by the Action-Oriented Paper, the EU should engage further with international organisations and regional structures at international level, including the

³⁹⁸ European Commission COM (2005)514, p.11

UNHCR, UNODC, ILO, UN General Assembly, IOM, OSCE, ICMPD, and the Council of Europe in order to maximise the efforts to combat human trafficking.

Special cases when the EU could work closely with the international organisations are the following:

92. Data collection

Without information and statistics, it is difficult to determine the extent of trafficking in human beings and to prepare the appropriate policies and operational and legislative responses and ensure effective implementation of initiatives. Therefore, a serious effort within the EU external dimension on human trafficking should promote a move towards a clearer understanding of the root causes, factors in countries of destination facilitating trafficking, current trends with regard to victims, traffickers and criminal networks, their modus operandi, travel routes and different forms of exploitation.³⁹⁹

In order to get a clearer picture about the extent and characteristics of trafficking in human beings the EU should closely work together with international organisations, in particular with IOM, ILO, UNODC, UNICEF and OSCE, to develop unified data collecting methods.

93. Forced labour

The Commission should cooperate with the ILO to promote awareness of and adoption of ILO tools and programmes to address forced labour in global supply chains among its tripartite partners (business, trade unions and governments). The ILO has decades of experience on the issue, demonstrated expertise in technical cooperation and the capacity to foster business engagement and monitor results.

94. Labour standards

Another key strategy for preventing labour abuses is to promote international cooperation and oversight on the regulation, recruitment and response to abuse of migrant workers. Multilateral agreements that establish minimum standards can avoid a “race to the bottom”, in which labour-sending countries compete for jobs

³⁹⁹ Action-Oriented Paper, p. 16

by lowering their protections for their workers. The ILO and member states should also consider the creation of a specific convention to establish international standards on domestic work.⁴⁰⁰

95. Trafficking on men

Even though trafficking in human beings has a female face, there are cases of male trafficking as well, mostly as forced labour to agriculture, building sector and fishing. Due to the fact, that decision-makers and law enforcement authorities consider trafficking in human beings as sexual exploitation, men are often out of scope of assistance and attention. Men are rather seen as irregular migrants than victims of trafficking⁴⁰¹ Men's attitude has an influence on that too. Even when men did recognise their experience as one of exploitation, the terminology of "trafficking victim" was usually rejected. Being labelled a "victim" may have an impact on how men see themselves, as the term stands in contrast to social norms of men as caretakers of their families.⁴⁰²

The EU together with international organisations should develop such policy that male victims of trafficking are identified and appropriate assistance is provided.

96. Addressing the major world sport events

Major world sports events, like the Olympics and world championships can create demand for prostitutes but also cheap labour force, which can easily end up in increasing demand for trafficking in human beings.

The EU together with the US and other countries jointly with international organisations can raise their voice to this. By prevention campaigns and increased law enforcement efforts the risk of trafficking in human beings might be decreased.

⁴⁰⁰ IOM [July 2009]: Global Eye

⁴⁰¹ In 2005 and 2006, 33 Ukrainian males were trafficked to Russia as illegal fishermen and exploited on two ships in the Russian Sea for a period of six to ten months. They were forced to work long hours every day even when ill, and were allowed no more than three hours of sleep a night. Rooms on the ship were filled with water to knee level, food was poor and insufficient, they lacked fresh drinking water and access to the toilet was limited. Complaints were met with abuse and few men received any payment. They were freed only when the Russian border guard service detained the ship. In: IOM [2007]: Global Eye

⁴⁰² IOM [2007]: Global Eye

A good example is the efforts of the Future Group⁴⁰³ that in regard to the 2010 Olympics in Vancouver published its report “Faster, Higher, Stronger: Preventing Human Trafficking at the 2010 Olympics” which examines the human international sporting events, and makes recommendations in preparation for the upcoming event.

⁴⁰³ www.thefuturegroup.org

Conclusion

Trafficking in human beings is a shameful crime that deprives people of their human rights and freedoms. It is a global health risk and it fuels the growth of organised crime. It has a devastating impact on individual victims, but also undermines the health, safety and security of nations worldwide.

Even though globalisation has much positive influence on economics, and our everyday lives, it definitively has a negative impact on trafficking in human beings. Just an example when globalisation does not help:

- In 1850 it was difficult to capture a slave and then transport him/her to the US. Today, millions of people around the world are potential slaves since thanks to globalisation, transport is much easier, people can travel easily and for less money, so distances are shortening.
- An average slave in the American South in 1850 cost the equivalent of 40,000 US dollars in today's money; while today a slave costs an average of 90 US dollars.⁴⁰⁴ Trafficking in human beings functions just as any market, it is driven by demand and supply. Since there is a huge supply of people willing to take the risk for a promising new job offer, it decreases their price, so today's slaves are cheaper because of the supply. This however, also means that there is a tremendous amount of potential victims, making them cheap, and thus easily replaceable, their lives mean nothing for their "owners". They are not considered as a major investment worth maintaining. If a slave gets sick, injured, useless, or troublesome to the trafficker, he/she is dumped or killed.

It is almost impossible to say if there has been an increase or decrease in trafficking in human beings due to its hidden character. There are no exact data, just estimations. Even though we know the number of documented migrants but we do not know how many of them end up in exploitative businesses. Furthermore, we cannot realistically estimate the number of illegal migrants and the ratio of victims of trafficking coming from illegal migrants. But there is no doubt that it is a huge problem, and a severe violation of human rights.

According to the Europol, trafficking is on the rise. The removal and relaxation of internal border controls within the EU has resulted a significant reduction in the

⁴⁰⁴ www.freetheslaves.net

opportunities for many EU law enforcement agencies to intercept traffickers and identify victims of trafficking. Before “Schengen”, only the more sophisticated crime groups could operate at a cross border level. Thus, the absence of physical border controls provides significant opportunities for smaller or mid-level groups and individuals. In addition, many former source countries are now part of the European Union, like Romania and Bulgaria. Other major source countries such as the Russian Federation, Ukraine, Belarus, Turkey, Moldova and the Western Balkans as a region are now one border crossing away.⁴⁰⁵

Factors and trends that contribute to the rise of modern slavery:

- a fast growth of population reaching almost 7 billion, mostly in the developing world⁴⁰⁶
- at least half of the population lives in the urban area and their suburbs, without “safety net” and no job security⁴⁰⁷
- corruption in the government and law enforcement authorities around the world cause re-victimisation of people being trafficked by allowing slavery to go unpunished.

Financial and economic crisis that leads to the increase of unemployment, making people economically and socially more vulnerable, becoming an easy prey for traffickers Member States should fight trafficking not just because it is prohibited by the Charter of Fundamental Rights of the European Union⁴⁰⁸ and the Universal Declaration of Human Rights,⁴⁰⁹ but also inviolable human dignity is at the very core

⁴⁰⁵ Europol [2009] Trafficking in human beings in the European Union: A Europol Perspective, June 2009, p.2

⁴⁰⁶ According to the UNFPA, in 2009 there were 6,82 milliard people living in the Earth out of which 5,59 milliard were in the less developed countries and 0,83 milliard in the least developed countries. The fertility rate globally is 2,54 while in the developed countries it is 1,64, in the less developed countries 2,70 and in the least developed countries 4,29. In: UNFPA [2009]: The state of world population 2009, Facing a changing world: women, population and climate

⁴⁰⁷ According to the UNFPA, in 2008, for the first time, more than half of the world's population, 3,3 milliard people is living in urban areas. By 2030, towns and cities will be home almost 5 milliard people. Many of the urbanites will be poor. The urban population of Africa and Asia will double in less than a generation. This unprecedented shift could enhance development and promote sustainability—or it could deepen poverty and accelerate environmental degradation. In: UNFPA [2007]: The state of world population 2007, Unleashing the potential of urban growth

⁴⁰⁸ Article 5 Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

⁴⁰⁹ Article 4 of the Declaration: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms

of national constitutions. However, another reason beside the protection of human rights is also that it enables to roll up other forms of organised crime. Traffickers are often engaged in other criminal activities, such as drug trafficking or trafficking in weapons thanks to high profit made from labour and sexual exploitation that is often subject to money laundering. Furthermore, being successful in trafficking, making a huge amount of money helps them to achieve economic, social or even political power. Some networks are large organisations with political and economical contacts at all levels, in both countries of origin and destination. By keeping the fight against trafficking as a priority high on the political agenda, the fight against other forms of organised crime could also get more successful.

Just as in the case of number of people being trafficked, it is also difficult to say, how high profits traffickers are gaining. Only estimations exist, no precise data. However, by knowing the fact that victims of trafficking are paid nothing or very little, it could be estimated that traffickers make huge profits. According to the ILO 2005 report⁴¹⁰ estimates the profits generated by trafficked forced labour at 31,6 milliard USD per year.

Trafficking in human beings is a challenging phenomenon. The main challenge is that it has a changing character and perpetrators can rapidly adjust to new circumstances and get over new obstacles, such as increased border control or adoption of a new piece of legislation. The challenge is to quickly react to these new forms or trends of trafficking. But to be able to react to these new trends, the decision-makers and law enforcement authorities must be aware of them.

It is not enough what the European Union and the Member States are doing currently. They need to invest more into the fight against trafficking, they need to improve their approach and set up more effective tools. The response needs to be not just reacting (reacting on facts and situations) but also proactive.

In my dissertation I collected information and data on Member States achievements. The laws addressing the trafficking in human beings exist, but for some reason they are not being enforced. Figures concerning criminal investigation and prosecution that are not being high enough, suggest the same. A low figure does not mean that the Member State concerned does not have cases of trafficking. It simply means that

⁴¹⁰ ILO [2005]: A Global Alliance against Forced Labour

the efforts to combat trafficking are not effective enough. Even though it is almost impossible to even estimate the extent of this heinous crime, the IOM talks about around 500 thousand people being trafficked into or within the European Union in each year. Contrary to this, the overall number of investigation is only 1569.⁴¹¹ This means there is a serious gap between the legislation in force and actual implementation.

Trafficking continues to be not only a high-profit business, but also a low-risk one. Even though countries are adopting legislation against trafficking, the number of prosecutions is still extremely low, because they do not enforce it (properly). So traffickers can operate unpunished to a large extent.

According to the Free the Slaves NGO, while more than 90 percent of murders are cleared up, only 1 percent of slavery cases are ever solved. Why? Every police department has a homicide squad, but only a handful of police departments have anyone assigned to human trafficking and slavery.⁴¹²

“Bearing in mind that notwithstanding the Treaties, the numerous legislative measures already adopted and the political declaration made, such as the 2002 Brussels Declaration, all of which stress the political priority of fighting trafficking in human beings, and particularly women and children, there are still no perceptible real improvements; whereas on the contrary, trafficking is the fastest – growing criminal activity in comparison to other forms of organised crime.”⁴¹³

If those legislative tools that are already established were implemented and enforced, the fight against trafficking in human beings would be on a much higher level. Unfortunately, Member States still treat victims as illegal migrants, in spite of the numerous recommendations from the side of the European Parliament, communications and report from the European Commission and position papers from NGOs. This is an essential element of an effective anti-trafficking policy.

However, it is not just the Member States who do not fulfil all their obligations and resolutions. On the request of the European Parliament the Commission promised back in March 2006 to launch no later than 2007 a study on both the causal correlation between the various Member States’ legislation on prostitution and

⁴¹¹ European Commission Communication COM (2008) 657

⁴¹² www.freetheslaves.net

⁴¹³ European Parliament Resolution P6_TA (2006)0005

trafficking for sexual exploitation and on the correlation between the various Member States' legislation and policy on migration and trafficking in human beings.⁴¹⁴ These studies are still not available.⁴¹⁵ Furthermore, the Commission should have launched its report to the European Parliament and the Council on the implementation of the Directive 2004/81/EC on short-term residence permit for victims of trafficking till the 6th August 2006. This report has been postponed and should be launched in 2010. Even though this Directive is already obsolete, still many Member States have shortcomings with its transposition.

However these shortcomings and gaps in implementation and enforcement do not mean that there should be no further steps or initiatives taken by the EU. The Commission launched its proposal for a new framework decision in March 2009 in order to review the 2002/629/JHA Framework Decision, since it was already obsolete, even though still not being correctly implemented by some Member States. Since the old framework decision focused only on sexual and labour exploitation, the definition of trafficking in human beings needed to be extended. Furthermore, the sanctions and penalties appeared not to reach their purpose, so the Commission proposed to increase the minimum sentences to offenders, ensuring effective, proportionate and dissuasive penalties. Another important new element was the article on assistance to victims which was missing from the previous framework decision. By the Lisbon Treaty coming into force on the 1 December 2009, the circumstances have changed. The directive became the proper legislative tool. Due to this transition period, all those procedures that were not finished before the Lisbon Treaty entering into force, were suspended and the Commission needs to come forward with a new proposal of directive and the European Parliament will have a role of co-legislator. During the debate on this resolution on the 19 January 2010, the Commissioner Jacques Barrot informed the Members of the EP that the Commission will come out with its new proposal in Spring 2010. This new form of legislation will give more power to the Commission, since it enables to start infringement procedures against Member States which will not comply with the directive. This was not possible when the only tool in the Commission's hand was the framework decision. So this envisages just by itself a more effective anti-trafficking policy. Not negligible the fact, that the Lisbon Treaty gave the Commission to work out an even better

⁴¹⁴ Article 1(z) of the European Parliament Recommendation P6_TA (2006)0498

⁴¹⁵ At least till the end of 2009.

proposal. With the commitment of the new Commissioner, Cecilia Malmström to do everything in order to eliminate human trafficking, it could even be a real possibility.

When working out the directive on trafficking in human beings, emphasis needs to be given at European level to the harmonisation of the various national laws in this sphere and the resulting differences of methods of detection and prosecution.

I am convinced that trafficking in human beings can be solved only if it is tackled from each side and every level, nationally and globally. For this reason, I have drawn up a list of recommendations, a summary of elementary steps that every Member States and the EU should take in order to achieve the necessary results. If the EU fulfils all these expectations, it can easily become the global leader in fighting trafficking in human beings, by closing the gaps in cooperation and coordination.

The list of recommendation follows the so called “three P” approach, established by the Palermo Protocol, namely prevention, prosecution and protection and adds the new “forth P”, partnership. The strategy in drawing up these recommendations I have chosen to go step by step, level by level, starting with the actions that should be taken on national level, followed by the EU level, finally summing up the actions what should be done on the international level.

Trafficking in human beings cannot be solved by one single Member State but there is a whole range of actions, measures and activities that is in each Member States’ responsibility. I have set up those actions that each Member States should take in order to reach the best results on national level.

Among the most important national elements of fighting trafficking in human beings is establishing national anti-trafficking rapporteurs whose main role should be the coordination of all relevant policies and the preparation of the anti-trafficking strategy. Even though, the 1993 Council Recommendation has already called for it, only two Member States have established these bodies.⁴¹⁶ Furthermore, clear distinction of responsibilities has to be ensured, so all ministries, agencies and stakeholders know what is their responsibility and none of the actors act cross-sectorally and the work carried out is not duplicated. For this reason a Network of Anti-Trafficking Experts is reasonable. Member State should also revise their

⁴¹⁶ The Netherlands and Sweden

migration policy and ensure that victims of trafficking are not treated as illegal migrants. It is important that it is not just the government who creates the anti-trafficking policy. A whole range of sectors should be involved, like the financial sector, in order to facilitate to investigate cases of money laundering, often linked to human trafficking. NGOs have a very special and important role, greater attention and stable resources should be provided to them. Involvement of businesses and trade unions has its reason too, while regular labour inspections have to be guaranteed. Training of all stakeholders, but mainly law enforcement authorities is crucial. Awareness-raising and the involvement of media are essential tools of prevention. It has to be also ensured that traffickers get heavy penalties that are dissuasive, and that demand is also addressed. Special attention should be dedicated to victims. I have divided the assistance and protection provided to them into two groups. I have named the first type of assistance as “unconditional short-term assistance” that should be guaranteed to all victims, regardless their will to cooperate with the police, like medical care, psychological counselling and free legal aid. This assistance should be available up to three months during which victims should decide the next step. If they chose to cooperate with the law enforcement, they can be eligible to the so-called “conditional long-term assistance”, covering mostly the access to vocational training, language courses, reintegration programmes and continued legal assistance. This second type of assistance should have a duration of three years linked to a special residence permit and can be renewed on the basis of individual assessment. If the victims do not wish to help the police's work, they will be sent home to their home country.

There is a whole range of steps that has to be ensured on the European Union's level. In the part dedicated to EU actions, I have drawn up those actions that should be taken on the level of the European Union in order to improve the effect of steps taken on national level.

Among others, I have proposed to establish an EU Anti-Trafficking Coordinator, who should be responsible for coordinating the EU's anti-trafficking policy and the work of national anti-trafficking rapporteurs and should work out the annual report on trafficking in human beings, summing up the EU's progress, the development of Member States, any legislative changes, the work of the EU agencies, just as to propose the further steps. Another crucial point is to ensure that each Member States

use the same unified definition of trafficking in human beings. Even though, there are comprehensive definitions provided by the Palermo Protocol, the Council of Europe Convention and also by the 2002/629/JHA Council Framework Decision, Member States however do not transpose these definitions correctly, causing by this further harm to victims by not identifying them as victims of trafficking, not becoming eligible for assistance and protection. Hopefully the new directive will come with the most updated definition. One of the biggest misunderstandings about trafficking in human beings is that despite the term “trafficking” it is not a problem about movement. It is about the use of force, fraud or coercion for the exploitation and abuse of a man, woman or child's human dignity. Member States should work to prevent and punish this crime, as the guarantor of the right to freedom.

Furthermore, working out and implementing unified data collecting methods is also needed, since Member States use different methods, this way the results are not comparable. EU hotline for trafficked victims should also be established, just as an EU anti-trafficking website. Among awareness-raising campaigns, I would like to mention an IOM project “buy responsibly” which aims to decrease demand for products produced by forced labour. Special attention should be given to children, and also to the issue of sex tourism. Given the fact that most of the tourists who sexually exploit children come from developed countries, including the Member States of the EU, it is necessary that the EU takes measures to combat this shameful crime against children. The fight against sex tourism needs to address both the individuals who abuse children but also the individuals and companies who advertise such “tourist attractions”. The principle of extraterritoriality should be applied, if a citizen of a Member State gets involved in sex tourism, abusing a child abroad. Another important thing that the EU should invest to is the funding of researches. There are many fields that are still uncovered, unknown for the law enforcement authorities and decision-makers. There should be research on new trends and forms of trafficking, on the links between trafficking and the demand for cheap labour, the effectiveness of existing anti-trafficking programmes, and on the health and psychological consequences of being trafficked, just to mention a few areas.

Concerning the international level, the EU suppose to take actions towards the developing world, it means countries of origin and transit. The EU should keep focusing on addressing the root causes, like poverty and gender equality, because this

is what makes people to be pushed away from their home countries and trying to make a better life for themselves while taking the risk to fall prey to traffickers. However, the EU should not focus solely on these “indirect” actions but should take more direct and coordinated steps, like exchange of best practices, helping to train law enforcement authorities of countries of origin by working out training manuals for them and also providing professional trainers and expertise. Joint teams could also be set up. Cooperation on the fight against trafficking in human beings should be especially closer with the neighbouring countries with which the EU has developed its European Neighbourhood Policy and with the ACP countries. Another field where the EU fight against trafficking could be improved is the field of building partnerships, especially with the US. Both of them are the two main target countries for trafficking in human beings. Therefore joint efforts should be established: there should be regular cooperation and coordination, exchange of best practices in order to ensure that both learn about the counter partner’s successful actions and they should ensure that their actions do not confront but complement each other. The third level of cooperation should be towards third countries which are neither neighbouring countries nor countries of ACP. Finally special cooperation should be developed with the international organisations.

If the Member States and the European Union fulfil these recommendations there is a real chance that the fight against trafficking in human beings will be more direct, efficient, into the scope and targeted. These actions will not only help to fight this shameful crime but will address a whole set of “side effects and factors”. Fulfilling these requirements will enable the European Union to become a global player and/or leader in this field of fighting trafficking, raising its influence, increasing its international power but nevertheless it will give itself the prestige as the main defender of human rights.

Bibliography

Books

1. **Almond, A.G., Bingham Powell G.** [2003]: Összehasonlító politológia, Osiris Kiadó, Budapest
2. **Askola, Heli** [2007]: Legal responses to trafficking in women for sexual exploitation in the European Union, Oxford - Portland Oregon
3. **Bainbridge, Timothy** [2004]: EU mindentudó, HVG Kiadói Rt., Budapest
4. **Baylis John, Smith, Steve, Owens Patricia** [2008]: The globalization of world politics. An introduction to international relations, Oxford University Press, New York
5. **Balázs Péter** [2003]: Az Európai Unió külpolitikája és a Magyar - EU kapcsolatok fejlődése, KJK-Kerszöv Jogi és Üzleti Kiadó Kft., Budapest
6. **Blahó András** [2004]: Európai integrációs alapismeretek, Aula Kiadó, Budapest
7. **Brownlie, I., Goodwin-Gill, G. S.** [2006]: Basic documents on human rights, Fifth Edition, Oxford
8. European Union [1999]: Selected instruments taken from the Treaties, Book I, Volume I, European Communities, Brussels
9. **Friesendorf, Cornelius** [2009]: Strategies against human trafficking: the role of the security sector, Study Group Information, Vienna and Geneva
10. **Guild, E., Minderhoud, P.** [2006]: Immigration and Criminal Law in the European Union - the legal measures and social consequences of criminal law in Member States on trafficking and smuggling in human beings, Martinus Nijhoff Publishers, Netherlands
11. **Halmai G., Tóth G. A.** [2003]: Emberi jogok, Osiris Kiadó, Budapest
12. **Horváth Jenő** [2003]: Az Európai integráció története 1945-2002, Osiris Kiadó, Budapest
13. **Horváth Zoltán** [2005]: Kézikönyv a Európai Unióról, HVG-Orac Lap- és Könyvkiadó Kft., Budapest
14. **Krass, P. M., Mingst, A. K.** [2004]: International Organizations. The Politics and Processes of Global Governance, Lynne Rienner Publishers, Boulder

15. **Locher, Birgit** [2007]: Trafficking in Women in the European Union - norms, advocacy-networks and policy-change, VS Verlag für Sozialwissenschaften
16. **McClintock, John** [2008]: The Uniting of Nations, an essay on global governance, P.I.E. Peter Lang
17. **Németh István** [2004]: Európa 1945-2000. A Megoszlástól az egységig, Aula Kiadó, Budapest
18. **Palánkai Tibor** [2004]: Az európai integráció gazdaságtana, Aula Kiadó, Budapest
19. **Van den Anker, C. L., Doomernik, J.** [2006]: Trafficking and Women's Rights, Palgrave MacMillan, New York

Reports, researches, periodicals

20. **Danailova-Trainor, G., Belser, P.** [2006]: Globalization and the illicit market for human trafficking: an empirical analysis of supply and demand, International Labour Office, Geneva, December 2006
21. **Kartusch, Angelika** [2001]: Reference Guide for Anti-Trafficking Legislative Review, Ludwig Boltzmann Institute of Human Rights, Vienna
22. **Lammerant, I., Hosteller, M.** [2007]: Adoption: at what cost? For an ethical responsibility of receiving countries in intercountry adoption, Terre des Hommes International Federation, Lausanne
23. **Pearson, Elaine** [2000]: Human rights and trafficking in persons: A handbook, Global Alliance against Traffic in Women, Bangkok
24. Perspectives on Trafficking in Human Beings, Paris, September 2003
25. **Shimazono Yosuke** [2007]: The state of the international organ trade: a provisional picture based on integration of available information, Bulletin of the WHO, volume 85, number 12, December 2007, 901-980
26. **Sykiotou, P. Athanassia** [2007]: Trafficking in human beings: Internet recruitment, Misuse of the Internet for the recruitment of victims of trafficking in human beings, DG of Human Rights and Legal Affairs, Council of Europe

United States of America

27. The Action Group to End Human Trafficking and Modern-Day Slavery (2008): Recommendations for Fighting Human Trafficking in the United States and Abroad – Transition Report for the Next Presidential Administration, November 2008
28. Attorney General's Report to Congress and Assessment of US Government activities to Combat Trafficking in Persons (2009), US Department of State
29. US Department of State (2007): Democracy and Global Affairs: Facts about Human Trafficking, 15 March 2007
30. US Department of State (2007): Democracy and Global Affairs: The link between prostitution and sex trafficking, 15 March 2007
31. US Department of State (2009): Democracy and Global Affairs: Assessment of US Government activities to combat trafficking in Persons released June 2009, 16 June 2009
32. US Department of State (2009): Democracy and Global Affairs: Legal Assistance for trafficking victims, 16 June 2009
33. US Department of State (2009): Democracy and Global Affairs: Gender imbalance in human trafficking, 16 June 2009
34. US Department of State (2009): Democracy and Global Affairs: Forced labor costs considerable: a view from the ILO, 16 June 2009
35. US Department of Health and Human Services Fact Sheet: Federal efforts to assist victims of human trafficking http://www.acf.hhs.gov/trafficking/about/fed_assist.htm (downloaded 17 April 2009)
36. US Department of Health and Human Services Fact Sheet: Certification for victims of trafficking http://www.acf.hhs.gov/trafficking/about/cert_victims.htm (downloaded 17 April 2009)
37. US Department of Health and Human Services Fact Sheet: Trafficking Victims Protection Act of 2000 <http://www.acf.hhs.gov/trafficking/about/TVPA.htm> (downloaded 17 April 2009)

38. US Department of Health and Human Services Fact Sheet: Victim assistance
http://www.acf.hhs.gov/trafficking/about/victim_assist.htm (downloaded 17 April 2009)
39. US Department of Health and Human Services Fact Sheet: Child victims of human trafficking
http://www.acf.hhs.gov/trafficking/about/children_victims.htm (downloaded 17 April 2009)
40. US Trafficking in Persons Report [2005], Department of State, Washington DC, June 2005
41. US Trafficking in Persons Report [2006], Department of State, Washington DC, June 2006
42. US Trafficking in Persons Report [2007], Department of State, Washington DC, June 2007
43. US Trafficking in Persons Report [2008], Department of State, Washington DC, June 2008
44. US Trafficking in Persons Report [2009], Department of State, Washington DC, June 2009

International organisations

45. Anti-Slavery [2003]: The Migration-Trafficking Nexus – combating trafficking through the protection of migrants’ human rights, November 2003, UK
46. Council of Europe Report [2007]: Disappearance of newborn babies for illegal adoption in Europe, Doc:11461, 7 December 2007, Parliamentary Assembly of the Council of Europe
47. Council of Europe report [2005]: Organised crime situation report 2005. Focus on the threat of economic crime, Council of Europe, Strasbourg
48. IOM [2005]: Identification and protection schemes for victims of trafficking in persons in Europe – Tools and best practices , International Organization for Migration, Geneva
49. ILO Report [2005]: A global alliance against forced labour, International Labour Office, Geneva

50. ILO report [2002]: Unbearable to the human heart. Child trafficking and action to eliminate it, International Labour Office, Geneva
51. IOM [2006]: Draft report on Trafficking in Human Beings and the 2006 World Cup in Germany, Vienna
52. IOM [2007]: Global eye on human trafficking, December 2007
53. IOM [2007]: Global eye on human trafficking, March 2008
54. IOM [2009]: Global eye on human trafficking, July 2009
55. IOM [2009]: Global eye on human trafficking, October 2009
56. IOM report [2005]: Data and research on human trafficking. A global survey, International Organization for Migration, Geneva
57. IOM report [2006]: Human trafficking in the Russian Federation – Inventory and analysis of the current situation and responses, report conducted by E.V. Tiurukanova and the Institute for Urban Economics for the UN/IOM Working Group on Trafficking in Human Beings, Moscow 2006
58. UNFPA [2007]: The state of world population 2007, Unleashing the potential of urban growth, UNFPA
59. UNFPA [2009]: The state of world population 2009, Facing a changing world: women, population and climate, UNFPA
60. UN.GIFT Background Paper [2008] for the Vienna Forum to fight Human Trafficking 13-15 February 2008, The role of the Media in Building Images
61. UN.GIFT report [2008]: Human trafficking: An overview, United Nations Office on Drugs and Crime, New York
62. UN.GIFT Workshop [2008]: Human Trafficking for the Removal of Organs and Body Parts, The Vienna Forum to fight Human Trafficking, Background Paper, 13-15 February 2008
63. UNICEF report [2005]: The state of the world's children 2006: Excluded and invisible, UNICEF, New York
64. UNODC report [2006]: Toolkit to Combat Trafficking in Persons. Global Programme against Trafficking in Human Beings, UN Office on Drugs and Crime, United Nations, New York

65. UNODC report [2008]: Toolkit to Combat Trafficking in Person.: Global Programme against Trafficking in Human Beings, UN Office on Drugs and Crime, United Nations, New York
66. UNODC report [2006]: Trafficking in Persons. Global Patterns, UN Office on Drugs and Crime, April 2006
67. UNODC [2009]: Global Report on Trafficking in Persons, UN Office on Drugs and Crime

Legislation and reports of the European Union

68. 2009 October Declaration on trafficking in human beings
69. Brussels Declaration on preventing and combating trafficking in human beings, 2002
70. Commission proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, COM (2009) 136, Commission of the European Communities, 25.3.2009, Brussels
71. Commission report to the Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings COM (2006) 187, Commission of the European Communities, 2.5.2006, Brussels
72. Commission: Report of the Experts Group on Trafficking in Human Beings, European Commission, DG Justice, Freedom and Security, Brussels, 22 December 2004
73. Commission working document “Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings” COM (2008) 657, Commission of the European Communities, 17.10.2008, Brussels
74. Communication from the Commission to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation, COM (1996) 567, Commission of the European Communities, 20 November 1996, Brussels

75. Communication from the Commission on combating child sex tourism, COM (1996) 547, Commission of the European Communities, 27 November 1996, Brussels
76. Communication from the Commission to the Council and the European Parliament “for further actions in the fight against trafficking in women”, COM (1998) 726, Commission of the European Communities, 9 December 1998, Brussels
77. Communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking on human beings, external borders and the return of illegal residents COM (2003) 323, Commission of the European Communities, 3 June 2003, Brussels
78. Communication from the Commission to the European Parliament and the Council on fighting trafficking in human beings – an integrated approach and proposals for an action plan COM (2005) 514, Commission of the European Communities, 18 October 2005, Brussels
79. Council Directive 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 cooperate with the competent authorities (2004/81/EC), OJ L 261/19, 6.8.2004
80. Council EU Action Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01), 9.12.2005
81. Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), OJ L 82/1 22.3.2001
82. Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA), OJ L203/1 1.8.2002
83. Council Framework Decision of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property (2005/212/JHA), OJ L68/49, 15.3.2005

84. Council Framework Decision of 24 October 2008 on the fight against organised crime (2008/841/JHA), OJ L300/42 11.11.2008
85. Council of the European Union recommendation on the fight against trade in human beings, 25 November 1993, Brussels
86. Council of the European Union (2009): Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings, 11450/5/09, 19 November 2009, Brussels
87. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals
88. Initiative of the Hellenic Republic with a view to adopting a Council Framework Decision concerning the prevention and control of trafficking in human organs and tissues (2003/C 100/13), OJ C100/27 26.4.2003
89. Joint Action of the Council establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children (96/700/JHA), 29 November 1996, Brussels
90. Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children (97/154/JHA), 24 February 1997, Brussels
91. Future Group (Informal High-Level Advisory Group on the Future of European Home Affairs Policy) Report No. 11960/08, JAI 388 of 22 July 2008, Brussels
92. European Parliament report [2006]: Study on organ trafficking, European Parliament, Directorate-General for external policies of the Union, Directorate B – Policy Department, 23 January 2006
93. European Parliament resolution of 14 April 1989 on the exploitation of prostitution and the traffic in human beings (OJ C 120, 16.5.1989, p.352)
94. European Parliament resolution of 16 September 1993 on trade in women (OJ C 268, 4.10.1993, p. 141)

95. European Parliament resolution of 18 January 1996 on trafficking in human beings (OJ C 32, 5.2.1996, p. 71)
96. European Parliament resolution of 16 December 1997 on trafficking of women for the purpose of sexual exploitation (OJ C 14, 19.1.1997, p. 19)
97. European Parliament resolution of 19 May 2000 on further actions in the fight against trafficking in women (OJ C 59, 23.2.2001, p. 307)
98. European Parliament resolution of 17 January 2006 on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation (P6_TA(2006)0005)
99. European Parliament recommendation to the Council of 16 November 2006 on fighting trafficking in human beings – an integrated approach and proposal for an action plan (P6_TA(2006)0498)
100. European Parliament resolution of 16 January 2008 „Towards an EU strategy on the rights of the child“ (P6_TA (2008)0012)
101. European Parliament resolution of 3 September 2008 on how marketing and advertising affect equality between women and men (2008/2038 (INI))
102. European Parliament Resolution of 10 February 2010 on preventing trafficking in human beings (P7_TA (2010)0029)
103. European Union Agency for Fundamental Rights [2009]: Child Trafficking in the European Union, Challenges, perspectives and good practices, FRA, Brussels
104. Europol [2008]: Annual Report 2007, European Police Office, The Hague
105. Europol report [2008]: OCTA 2008. EU Organised Crime Threat Assessment, Europol report, European Police Office, The Hague
106. Europol [2009]: OCTA report (EU Organised Crime Threat Assessment), The Hague, Netherlands
107. Europol [2009]: Trafficking in human beings in the European Union: A Europol Perspective, June 2009

Internet sources

www.frontex.europa.eu

www.eurojust.europa.eu

www.eu2007.de

www.eu2008.fr

www.eu2009.cz

www.eu2009.se

www.eu2010.es

Interviews

- Maria-Grazia Giammarinaro, Former expert of the European Commission DG Justice, Freedom and Security, Current OSCE Special Representative and Coordinator of Combating Trafficking in Human Beings, OSCE (11 May 2009)
- Edit Bauer, Member of the European Parliament, Rapporteur of the 2006 EP Report on trafficking in human beings ,Co-rapporteur of the 2010 EP Resolution on trafficking in human beings, European Parliament, Brussels, Belgium (regular)
- Michael Golabek, Policy Officer, DG External Relations, European Commission, Brussels, Belgium (26 June 2009)
- Michael Carlin, Expert on trafficking in human beings, Swedish Permanent Representation to the EU, Brussels, Belgium (25 June 2009)
- Kenéz Andrea, Judge, Court of Budapest (Fővárosi Bíróság), Budapest, Hungary (7 January 2010)
- Helga Konrad, former OSCE Special Representative and Coordinator of Combating Trafficking in Human Beings, OSCE, Vienna, Austria (26 May 2009)
- Lázár Mónika, Programme Manager, Regional Mission for Central and South Eastern Europe, IOM International Organization for Migration, Budapest, Hungary (7 January 2010)
- Torsten Moritz, Project Secretary, NGO Churches Commission for Migrants in Europe, Brussels, Belgium (15 May 2009)

- Salvatore Parata, European Officer, NGO Terre des Hommes International, Brussels, Belgium (19 May 2009)
- Clotild Clark-Foulquier, NGO CARE for Europe, Brussels, Belgium (18 May 2009)
- Miet Vandebroek, NGO Stop the Traffik, Brussels, Belgium (20 May 2009)

Interviews in the USA

- Nan Kennelly, Deputy Director of the Office to Monitor and Combat Trafficking in Human Beings, US Department of State, Washington DC, USA (19 June 2009)
- Maggie Wynne ,Director of the Anti-Trafficking in Persons Division, ACF Office of Refugee Resettlement, Department of Health and Human Services, Washington DC, USA (17 June 2009)
- John F. Awtrey, Jr., Director of OUSD, Law Enforcement Policy and Support, US Department of Defense, Washington DC, USA (17 June 2009)
- Ina Farka, PhD. and Laura Bermudez, International Relations Analyst, Child Labor, Forced Labor & Human Trafficking, Bureau of EU Affairs, US Department of Labor, Washington DC, USA (16 June 2009)
- John J Fitzpatrick, Jr., State Standards Team Leader, Wage and Hour Division, US Department of Labor, Washington DC, USA (16 June 2009)
- Laura Bermudez, International Relations Analyst, Child Labor, Forced Labor & Human Trafficking, Bureau of International Labor Affairs, US Department of Labor, Washington DC, USA (16 June 2009)
- David S. Abramowitz, Chief Counsel, Committee on Foreign Affairs, US House of Representatives, Washington DC, USA (18 June 2009)
- Sheri Rickert, Minority Staff Director, Subcommittee on Africa and Global Health, Legal Counsel to Rep. Chris Smith, US House of Representatives, Washington DC, USA (18 June 2009)
- Frank Schmiedel, Justice and Home Affairs, Delegation of the European Commission to the US, Washington DC, USA (18 June 2009)

Annex 1

Relevant UN international instruments

The most **directly relevant international instruments** are:

- United Nations Convention against Transnational Organized Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

Other relevant international instruments⁴¹⁷

Humanitarian, human rights and other instruments of general application

- Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948⁴¹⁸
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949⁴¹⁹
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949⁴²⁰
- Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949⁴²¹
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949⁴²²
- Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977⁴²³
- Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977⁴²⁴
- International Covenant on Civil and Political Rights, of 16 December 1966⁴²⁵

⁴¹⁷ UNODC Toolkit 2006 p.7

⁴¹⁸ United Nations Resolution 217 A (III) (<http://www.unhchr.ch/udhr/index.htm>)

⁴¹⁹ United Nations, *Treaty Series*, vol. 75, No. 970 (http://www.unhchr.ch/html/menu3/b/q_genev1.htm)

⁴²⁰ United Nations, *Treaty Series*, vol. 75, No. 971 (http://www.unhchr.ch/html/menu3/b/q_genev2.htm)

⁴²¹ United Nations, *Treaty Series*, vol. 75, No. 972 (<http://www.unhchr.ch/html/menu3/b/91.htm>)

⁴²² United Nations, *Treaty Series*, vol. 75, No. 973 (<http://www.unhchr.ch/html/menu3/b/92.htm>)

⁴²³ United Nations, *Treaty Series*, vol. 1125, No. 17512 (<http://www.unhchr.ch/html/menu3/b/93.htm>)

⁴²⁴ United Nations, *Treaty Series*, vol. 1125, No. 17513 (<http://www.unhchr.ch/html/menu3/b/94.htm>)

- Convention relating to the Status of Refugees, of 28 July 1951⁴²⁶
- Protocol relating to the Status of Refugees, of 31 January 1967⁴²⁷
- Convention on the Elimination of All Forms of Discrimination against Women, of 18 December 1979⁴²⁸
- Convention on the Rights of the Child, of 20 November 1989⁴²⁹
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, of 25 May 2000⁴³⁰
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, of 25 May 2000⁴³¹
- Convention for the Protection of Human Rights and Fundamental Freedoms, of 4 November 1950⁴³²
- Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993⁴³³

Instruments against trafficking or slavery in general

- Slavery Convention, of 1926⁴³⁴
- Protocol amending the Slavery Convention signed at Geneva on 25 September 1926⁴³⁵
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, of 7 September 1956⁴³⁶
- Convention concerning Forced or Compulsory Labour International Labour Organization Convention No. 29, of 28 June 1930⁴³⁷
- Convention concerning the Abolition of Forced Labour International Labour Organization Convention No. 105, of 25 June 1957⁴³⁸

⁴²⁵ General Assembly resolution 2200 A (XXI), annex, United Nations, *Treaty Series*, vol. 999, No. 14668 (http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)

⁴²⁶ United Nations, *Treaty Series*, vol. 189, No. 2545 (http://www.unhchr.ch/html/menu3/b/o_c_ref.htm)

⁴²⁷ United Nations, *Treaty Series*, vol. 606, No. 8791 (http://www.unhchr.ch/html/menu3/b/o_p_ref.htm)

⁴²⁸ General Assembly resolution 34/180, annex, United Nations, *Treaty Series*, vol. 1249, No. 20378 (<http://www.unhchr.ch/html/menu3/b/1cedaw.htm>)

⁴²⁹ General Assembly resolution 44/25, annex, United Nations, *Treaty Series*, vol. 1577, No. 27531 (<http://www.unicef.org/crc/>)

⁴³⁰ General Assembly resolution 54/263, annex I, United Nations, *Treaty Series*, vol. 2173, No. 27531 (<http://www.unhchr.ch/html/menu2/6/crc/treaties/opac.htm>)

⁴³¹ General Assembly resolution 54/263, annex II, United Nations, *Treaty Series*, vol. 2171, No. 27531 (<http://www.unhchr.ch/html/menu2/6/crc/treaties/opsc.htm>)

⁴³² *European Treaty Series*, No. 5, United Nations, *Treaty Series*, vol. 213, No. 2889 (<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>)

⁴³³ A/CONF.157/24 (Part I), chap. III (<http://www.ohchr.org/english/law/pdf/Vienna.pdf>)

⁴³⁴ United Nations, *Treaty Series*, vol. 212, No. 2861 (<http://www.unhchr.ch/html/menu3/b/f2sc.htm>)

⁴³⁵ United Nations, *Treaty Series*, vol. 182, No. 2422 (<http://www.unhchr.ch/html/menu3/b/f2psc.htm>)

⁴³⁶ United Nations, *Treaty Series*, vol. 266, No. 3822 (<http://www.unhchr.ch/html/menu3/b/30.htm>)

⁴³⁷ United Nations, *Treaty Series*, vol. 39, No. 612 (<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>)

⁴³⁸ United Nations, *Treaty Series*, vol. 320, No. 4648 (<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>)

- Convention concerning Minimum Age for Admission to Employment
International Labour Organization Convention No. 138, of 26 June 1973⁴³⁹
- Convention concerning the Prohibition and Immediate Action for the
Elimination of the Worst Forms of Child Labour⁴⁴⁰
- ***Instruments concerning slavery or trafficking related to sexual exploitation***
 - International Agreement for the Suppression of the White Slave Traffic, signed
at Paris on 18 May 1904⁴⁴¹
 - International Convention for the Suppression of the White Slave Traffic, signed
at Paris on 4 May 1910⁴⁴²
 - Protocol amending the International Agreement for the Suppression of the White
Slave Traffic, signed at Paris on 18 May 1904, and the International Convention
for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910⁴⁴³
 - International Agreement for the Suppression of the White Slave Traffic signed at
Paris on 18 May 1904, as amended by the Protocol signed at Lake Success, New
York, 4 May 1949⁴⁴⁴
 - International Convention for the Suppression of the White Slave Traffic, signed
at Paris on 4 May 1910, as amended by the Protocol signed at Lake Success,
New York, on 4 May 1949⁴⁴⁵
 - International Convention for the Suppression of the Traffic in Women and
Children, concluded at Geneva on 30 September 1921⁴⁴⁶
 - International Convention for the Suppression of the Traffic in Women of Full
Age, concluded at Geneva on 11 October 1933⁴⁴⁷
 - Protocol signed at Lake Success, New York, on 12 November 1947, to amend
the Convention on the Suppression of the Traffic in Women and Children,
concluded at Geneva on 30 September 1921, and the Convention for the
Suppression of the Traffic in Women of Full Age, concluded at Geneva on 11
October 1933⁴⁴⁸
 - International Convention for the Suppression of the Traffic in Women and
Children, concluded at Geneva on 30 September 1921, as amended by the
Protocol signed at Lake Success, New York, on 12 November 1947⁴⁴⁹

⁴³⁹ United Nations, *Treaty Series*, vol. 1015, No. 14862 (<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>)

⁴⁴⁰ International Labour Organization Convention No. 182, of 17 June 1999, United Nations, *Treaty Series*, vol. 2133, No. 37245 (<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>)

⁴⁴¹ League of Nations, *Treaty Series*, vol. I, No. 11, p. 83

⁴⁴² League of Nations, *Treaty Series*, vol. VIII, p. 278

⁴⁴³ United Nations, *Treaty Series*, vol. 30, No. 446

⁴⁴⁴ United Nations, *Treaty Series*, vol. 92, No. 1257

⁴⁴⁵ United Nations, *Treaty Series*, vol. 98, No. 1358

⁴⁴⁶ League of Nations, *Treaty Series*, vol. IX, No. 269, p. 415

⁴⁴⁷ League of Nations, *Treaty Series*, vol. CL, No. 3476, p. 431

⁴⁴⁸ United Nations, *Treaty Series*, vol. 53, No. 770, p. 13

⁴⁴⁹ United Nations, *Treaty Series*, vol. 53, No. 771, p. 39

- International Convention for the Suppression of the Traffic in Women of Full Age, concluded at Geneva on 11 October 1933, as amended by the Protocol signed at Lake Success, New York, on 12 November 1947⁴⁵⁰
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, of 21 March 1950⁴⁵¹

⁴⁵⁰ United Nations, *Treaty Series*, vol. 53, No. 772, p. 49

⁴⁵¹ General Assembly resolution 317 (IV), annex, United Nations, *Treaty Series*, vol. 96, No. 1342, p. 271 (<http://www.unhchr.ch/html/menu3/b/33.htm>)

Annex 2

Tier Placements in the 2009 US Trafficking in Persons Report

TIER 1			
Australia	Denmark	Lithuania	Norway
Austria	Finland	Luxembourg	Poland
Belgium	France	Macedonia	Slovenia
Canada	Georgia	Mauritius	Spain
Colombia	Germany	The Netherlands	Sweden
Croatia	Italy	New Zealand	Switzerland
Czech Republic	Korea, Rep. of	Nigeria	United Kingdom
TIER 2			
Afghanistan	El Salvador	Laos	Romania
Albania	Estonia	Liberia	Rwanda
Antigua & Barbuda	Ethiopia	Macau	Serbia
Armenia	The Gambia	Madagascar	Sierra Leone
The Bahamas	Greece	Malawi	Singapore
Barbados	Honduras	The Maldives	Slovak Republic
Belarus	Hong Kong	Malta	South Africa
Benin	Hungary	Mexico	Suriname
Bolivia	Iceland	Mongolia	Taiwan
Bosnia & Herzegovina	Indonesia	Morocco	Tanzania
Botswana	Ireland	Mozambique	Thailand
Brazil	Israel	Namibia	Timor-Leste
Brunei	Jamaica	Nepal	Togo
Bulgaria	Japan	Oman	Trinidad & Tobago
Burkina Faso	Jordan	Palau	Turkey
Chile	Kazakhstan	Panama	Uganda
Costa Rica	Kenya	Paraguay	Uruguay
Cyprus	Kosovo	Peru	Vietnam

Ecuador	Kyrgyz Republic	Portugal	Zambia
TIER 2 Watch List			
Algeria	Congo, Rep. of	Iraq	Qatar
Angola	Cote d'Ivoire	Latvia	Russia
Argentina	Djibouti	Lebanon	St. Vincent & Gren.
Azerbaijan	Dominican Republic	Lesotho	Senegal
Bahrain	Egypt	Libya	Sri Lanka
Bangladesh	Equatorial Guinea	Mali	Tajikistan
Belize	Gabon	Micronesia	Tunisia
Burundi	Ghana	Moldova	Turkmenistan
Cambodia	Guatemala	Montenegro	Ukraine
Cameron	Guinea	The Neth. Antilles	United Arab Emirates
Central African Rep	Guinea-Bissau	Nicaragua	Uzbekistan
China (PRC)	Guyana	Pakistan	Venezuela
Congo (DRC)	India	Philippines	Yemen
TIER 3			
Burma	Iran	North Korea	Syria
Chad	Kuwait	Papua New Guinea	Zimbabwe
Cuba	Malaysia	Saudi Arabia	
Eritrea	Mauritania	Sudan	
Fiji	Niger	Swaziland	

EU Member States are in bold.

Annex 3

Status of ratification of the main anti-trafficking conventions and protocols as of 13 January 2010

	UN Palermo protocol ⁴⁵²		CoE Convention ⁴⁵³		UN CRC ⁴⁵⁴		Optional Protocol to CRC ⁴⁵⁵	
	S	R	S	R	S	R	S	R
Austria	x	x	x	x	x	x	x	x
Belgium	x	x	x	x	x	x	x	x
Bulgaria	x	x	x	x	x	x	x	x
Cyprus	x	x	x	x	x	x	x	x
Czech Republic	x					x	x	
Denmark	x	x	x	x	x	x	x	x
Estonia	x	x				x	x	x
Finland	x	x	x		x	x	x	
France	x	x	x	x	x	x	x	x
Germany	x	x	x		x	x	x	x
Greece	x		x		x	x	x	x
Hungary	x	x	x		x	x	x	
Ireland	x		x		x	x	x	
Italy	x	x	x		x	x	x	x
Latvia	x	x	x	x		x	x	x
Lithuania	x	x	x			x		x
Luxembourg	x	x	x	x	x	x	x	
Malta	x	x	x	x	x	x	x	
Netherlands	x	x	x		x	x	x	x
Poland	x	x	x	x	x	x	x	x
Portugal	x	x	x	x	x	x	x	x
Romania	x	x	x	x	x	x	x	x
Slovakia	x	x	x	x		x	x	x
Slovenia	x	x	x	x		x	x	x
Spain	x	x	x	x	x	x	x	x
Sweden	x	x	x		x	x	x	x
UK	x	x	x	x	x	x	x	x
European Union	x	x						

S: signature

R: ratification

⁴⁵² http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en

⁴⁵³ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=-&CL=ENG>

⁴⁵⁴ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

⁴⁵⁵ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en

Annex 4

Some specific benefit programmes provided by the US to victims of trafficking

Program	Description
Temporary Assistance for Needy Families (TANF)	A cash benefit and work opportunities program for needy families with children under age 18.
Food Stamp Program	Used like cash to pay for food at most grocery stores.
Supplemental Security Income (SSI)	A monthly benefit for people who are blind, have severe disabilities, or are at least 65 years old and have limited income and resources.
Torture Treatment Program	Department of Health and Human Services funded social, legal health and psychological services for victims of torture.
State Children's Health Insurance Program (SCHIP)	The public health insurance program for low-income, uninsured children who do not qualify for Medicaid.
Unaccompanied Refugees Minor Program	Assists unaccompanied minor refugees and trafficking victims in developing skills to enter adulthood and achieve economic and social self-sufficiency. Places them in culturally appropriate foster homes, group homes or independent living arrangements, appropriate to their development needs. Provides family reunification assistance where appropriate.
Medicaid	The public health insurance program for people with low income and limited resources.
Health Screening	Provided by the State Department of Public Health for diagnosis, treatment and prevention of any illness (includes screening for TB, parasites, and hepatitis and vaccinations for children).
Refugee Cash and Medical Assistance (RCA&RMA)	Department of Health and Human Services program available to victims who are ineligible for other cash or medical assistance programs such as TANF, SSI and Medicaid. Victims may receive this assistance for the 8 months following issuance of the letter of certification/eligibility.
One-Stop Career Center System	Free job search and employment centers that provide information and assistance for people who are looking for a job, or who need education and training in order to get a job.

Job Corps	Department of Labor residential and job education program for youth aged 16-24.
Matching Grant	Department of Health and Human Services funded self-sufficiency program administered by private agencies. Provides job counselling and placement, case management, cash and living assistance.
Housing	Eligibility for public housing authority assistance.
State-specific Programs	Individual states offer additional programs. More information from the Department of Health and Human Services.

Source: Department of Health and Human Services' Fact Sheet on Victim Assistance

Annex 5

Data Comparison Sheets

Agency	Year of publication	Estimate	Target population
US Dept. of State	2008	600-800.000	transborders
ILO	2008	2,44 millions 1,2 million are minors Specifics: 43% sexual exploitation 32% labour exploitation 25% mixture of both	Trans and intra borders
UNICEF	2005	50% of trafficking victims worldwide are children	Trans and intra borders
UNIFEM	2009	500 000 to 2 million per year	unavailable
UNHCR	2008	Reference to ILO estimation (2,5 million men, women and children) Reference to US Dept. of State estimation (800 000 people)	Trans and intra borders
UNODC	2008	“This report does not estimate the number of victims trafficked. The indicators used in this report are based on the frequency with which the subject is reported by the source institutions.”	The report contains detailed information on 161 countries, including information on persons trafficked from , through, to and within a country; trafficking routes; trafficking for sexual exploitation versus forced labour; and the nationality, sex, and age of victims and

			offenders.
IOM	2008	<p>Information on registered cases such as :</p> <p>Victims (sex, age, socio-economic status, education)</p> <p>Traffickers</p> <p>Trafficking routes and modus operandi</p> <p>Patterns of exploitation and re-trafficking</p>	

Source: UNESCO Bangkok: Data Comparison Sheet

Annex 6

Comparison of the main definitions

UN Palermo Protocol	Council of Europe Convention	Council Framework Decision 2002/629/JHA	New Council Framework Decision proposal
For the purposes of this Protocol:	For the purposes of this Convention:	Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation	Offences concerning trafficking in human beings
<p>(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;</p>	<p>(a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;</p>	<p>1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:</p> <p>The recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where</p> <p>a) use is made of coercion, force or threats, including abduction, or</p> <p>b) use is made of deceit or fraud, or</p> <p>c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or</p> <p>d) payments or benefits are given or received to achieve the consent of a person having control over another person</p> <p>for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to</p>	<p>Each Member State shall take the necessary measures to ensure that the following acts are punishable:</p> <p>1. The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.</p> <p>2. A position of vulnerability occurs when the person has no real or acceptable alternative but to submit to the abuse involved.</p> <p>3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude,</p>

		slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography	exploitation of activities associated with begging or of unlawful activities, or the removal of organs.
(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;	(b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;	2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used	4. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.
(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;	(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;	2. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used	5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking in human beings offence even if none of the means set forth in paragraph 1 have been used
(d) "Child" shall mean any person under eighteen years of age.	(d) "Child" shall mean any person under eighteen years of age;	3. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age.	6. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age.