

# THE UNITED NATIONS PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN: A TOOL FOR CRIMINAL JUSTICE PERSONNEL

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## I. INTRODUCTION

This paper will present the main characteristics of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. I will focus briefly on the background to the Protocol and the phenomenon of trafficking in persons, before going into detail with the Protocol. I will also present some comments to the articles of the Protocol. Finally I will look at some examples of combating trafficking in persons and the implementation of the Protocol mainly from the European region.

I will in this paper talk broadly about trafficking in persons. However, I will give special attention to trafficking in women and children for the purpose of sexual exploitation.

## II. TRAFFICKING IN PERSONS - CHARACTERISTICS AND BACKGROUND TO THE UN PROTOCOL

### A. Characteristics of Trafficking in Persons

Trafficking in human beings includes illegal transport of people for the purposes of labour exploitation and sexual exploitation. Trafficking in persons is not limited to the sex industry and prostitution, but includes also different forms of bonded labour.

Trafficking in persons is a global phenomenon. Although it seems to have increased in intensity during the last 10-15 years, it is not a new phenomenon. Slavery and trafficking in persons, either for sexual exploitation or for labour, has taken place in different forms throughout history. The recent growth seems to be facilitated by increased globalisation and modern communication techniques. There are, however, also those that argue that the recent focus on trafficking in women and children for sexual exploitation is partly a result of an increased focus on the phenomenon, rather than a result of an increasing problem. It is difficult to obtain figures on trafficking in persons. The United Nations Centre for International Crime Prevention has set up a database on global trends, cross national routes and the volume of trafficking in persons and smuggling of migrants, as well as data on victims and offenders of trafficking and responses of criminal justice systems to this criminal activity. The database is not yet publicly available. This type of database is the first of its kind and will be used to facilitate development of strategies to combat trafficking both nationally and globally.

Increasing global economic disparity, poverty, lack of education prospects, lack of adequate employment opportunities and the disruption of traditional livelihoods contribute to the existence of trafficking in persons. Trafficking in persons for the purpose of sexual exploitation is also directly linked to the increasing proportion of women among the world's poor and to women's disadvantaged social, economic and legal situation in many countries.

Trafficking does not only exist due to an increase in supply of potential persons to be trafficked. The global demand for cheap and undeclared labour as well as the demand for women and children in the globalised sex market together with large numbers of potential immigrants form a lucrative ground for traffickers to engage in this crime.

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Trafficking in persons has become a very profitable business for different organised crime groups. Trafficking in persons is practised alongside the more traditional forms of crime such as drug trafficking and the illegal arms trade. In many instances trafficking in persons has overtaken the more traditional forms of crime since profits tend to be bigger and risks lower. So far, penalties have also been relatively lenient.

## **B. Approaches to Trafficking**

Trafficking in persons, especially trafficking in women for sexual exploitation, can be approached from a variety of perspectives. Many actors, including authorities and non-governmental organisations around the world, are currently paying immense attention to the problem of trafficking in persons. This means that there are many simultaneous and sometimes opposed views on the same phenomenon. The following approaches and the analysis of them outline some of the complexities of dealing with trafficking in persons, especially trafficking in women<sup>1</sup>.

### 1. Migration Problem

In this approach, the focus is on trafficking in persons as a problem of migration. Preventive measures in this approach include monitoring the movement of persons e.g. through increased border control, through increased control of travel documentation or through preventing migration in the first place.

Trafficking in persons is indeed linked to migration. Many persons who are trafficked are persons who themselves wish to migrate, e.g. for better work opportunities. Trafficking can thus be a form of irregular migration. However, trafficking in persons differs from illegal migration in that persons who are trafficked are by definition exploited in the country of destination. They are not only taken over the border but also exploited. Illegal or smuggled migrants, on the other hand, are usually only assisted over the border. The transporters might expose the smuggled migrants to inhumane treatment during the trip, but their contact is usually cut when the migrants reach their destination. While smuggling of migrants can be seen as a crime against state sovereignty, trafficking is foremost a crime against the individual and only secondarily a crime against state sovereignty. In seeing trafficking only as a form of migration, there is a risk of insensitivity towards individual victims at the expense of protecting the state from undesired aliens.

### 2. Criminal Problem

This approach sees trafficking in persons from a penal viewpoint, treating trafficking as a crime. The aim in the criminalistic approach is to introduce more effective ways of investigation, prosecution and punishment of trafficking in persons. This approach also aims at intensifying police and judicial co-operation in order to facilitate prosecution of international criminal groups that organise trafficking in persons. The criticism against the criminal approach focuses on the insensitivity towards the victims of trafficking. In some instances the victims' security and protection is placed in a subordinate position to the interests of prosecution and trial. This means that victims of trafficking are seen foremost as witnesses or informants, rather than as victims of a serious crime. On the other hand, victims of trafficking might themselves be proven guilty of offences, e.g. migration offences, drug crimes, or as recruiters for trafficking<sup>2</sup>. A trafficked person might therefore simultaneously be an offender, an illegal migrant, a victim, and a witness. This complexity poses a challenge for the criminal justice authorities dealing with trafficking in persons.

### 3. Human Rights Problem

In this approach, trafficking in persons is seen as a violation of human rights. In this approach, all measures to prevent and combat the phenomenon, as well as measures to support and assist victims, are guided by basic human rights principles, guaranteeing the rights of the victims of trafficking. There are many different advocates for the human rights approach. These diverging viewpoints bring up some quite controversial issues for public policy. Some advocates, for example, see trafficking for sexual exploitation as closely linked to prostitution. They see both prostitution and trafficking as forms of sexual exploitation. Other advocates focus solely on the coercive aspects of trafficking and forced

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<sup>1</sup> See Askola, H. (2001) and Strandberg, N. (1999).

<sup>2</sup> See Cordero, T. and Facio, A. (2001).

prostitution. Some advocates, however, do not take a stance for or against prostitution, but only look at the violating aspects of trafficking. All human rights approaches, however, share the notion that trafficking is a serious human rights violation, and that all measures to combat trafficking should guarantee the rights of the victim. The human rights perspective regards trafficking as exploited migration, simultaneously stating that trafficked persons should not be seen as migration criminals.

#### 4. Labour Issue Problem

This approach sees trafficking in persons as a result of foreign migrants' poor status. In this view, trafficking in persons should be prevented through guaranteeing workers' rights for migrants also in the countries of destination. If the working conditions were secured, these persons need not be trafficked in the first place but could instead travel as migrant workers. This approach can be criticised for not focusing on the wishes of the individual persons being trafficked. All trafficked persons do not want to work in the field they end up in. Although it is important to improve working conditions, this might merely function as a treatment of the symptoms, not a remedy to the problem itself. And, it does not necessarily solve the problem of smuggling of migrants.

#### 5. Health Problem

This approach focuses on the side-effects of trafficking in persons. Trafficking especially for the purpose of sexual exploitation is seen as a contributor to the spreading of diseases, especially sexually transmitted ones. In this perspective the focus is on the trafficked persons as transmitters of disease and as a threat to the health of the rest of the population. Preventive measures include awareness raising about sexually transmitted diseases. In some instances, it also includes health control of women in prostitution. This approach can be criticised for only seeing the consequences of trafficking and not the fate of the victims. Additionally, women who are trafficked and held in control by the traffickers do not necessarily benefit from the health measures introduced. This approach also mainly sees trafficking mainly from the perspective of the receiving countries.

The approaches above can roughly be categorised into strategies that repress trafficking in persons, and strategies that focus on victim support. Both strategies can be beneficial and sometimes they can be combined. States and non-governmental organisations that fight trafficking in persons use different approaches depending on their ideologies and goals. In some instances, their interests are opposed. Non-governmental organisations tend to highlight victims' rights, while States are more interested in combating organised crime and protecting State sovereignty, be it sometimes at the expense of individual victims. We as representatives of the criminal justice system are mainly interested in the criminal justice and perhaps also the migration approach to trafficking in persons. However, trafficking is a complex problem, and it seems that it is best combated through combining forces between different organisations and advocates.

United Nations Member States also have diverging interests when it comes to combating trafficking in persons. While some countries mainly function as countries of origin, others are countries of transit and others countries of destination. In some instances, a country can be all three at once. This poses different problems as well as interests for a State in dealing with the problem of trafficking in persons.

### **III. PREVIOUS MEASURES TO TACKLE TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN**

Trafficking in women has been targeted by the international community for many decades. The United Nations has in many of its sub-bodies developed Declarations, Protocols, and Resolutions to target trafficking in persons. Some of these documents do not explicitly talk about trafficking, but focus instead, for example, slavery or women's rights.

#### **A. Human Rights Instruments**

The following is a list of some international, mainly human rights focused instruments directly or indirectly related to trafficking in persons, especially trafficking in women and children<sup>3</sup>.

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<sup>3</sup> See Askola, H. (2001).

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The 1948 Universal Declaration of Human Rights

- Acknowledges the equality, liberty, security, freedom, also from slavery or servitude, of all human beings

The United Nations International Covenant on Civil and Political Rights (1966)

- Forbids slavery and slave-like practices

The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)

- Combined earlier UN Conventions from the three first decades of the 20<sup>th</sup> Century on the suppression of slave trade, “white slave traffic” and traffic in women and children
- Provides an obligation to punish traffickers, even if the person being exploited has consented to the trafficking

1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

- Criminalises the act of “enslaving another person” and requires states to co-operate in combating slavery

The Convention on the Elimination of All Forms of Discrimination against Women

- Mentions trafficking in women and encourages States to take legislative and other measures “to suppress all forms of traffic in women and exploitation of prostitution of women”

**B. Resolutions of the United Nations Commission on Crime Prevention and Criminal Justice**

The United Nations Commission on Crime Prevention and Criminal Justice has especially recently adopted several resolutions related to trafficking in persons. The list below gives an overview of some of the resolutions.

1994	Organised Smuggling of Migrants International Trafficking in Minors
1995	Combating the Organised Smuggling of Illegal Migrants
1996	Violence Against Women International Trafficking in Children
1997	Violence Against Women
1998	Draft Resolution on Illegal Migrants and Trafficking in Persons
1999	Resolutions concerning the Palermo convention

These resolutions formed some of the background to the elaboration of the new instruments for combating different forms of organised crime.

**C. Background to the UN Protocol - Increase in Organised Crime and the Need for Increased International Co-operation**

1. Organised Crime and Trafficking in Persons

Although trafficking in persons, especially in women for the purpose of prostitution, has been on the international agenda for many decades, many national laws have been poorly equipped to combat the

new forms of trafficking in persons. During the last decade of the 20<sup>th</sup> Century it seemed that the extent of trafficking in persons was increasing and that it took new forms. This change was linked to the increase in transnational organised criminal activities.

The technological developments during the late 20<sup>th</sup> Century opened up internationalisation and interdependence among businesses. In the same manner as legal businesses expanded internationally, so did criminal enterprises<sup>4</sup>. Trafficking in persons has become a profitable business for different organised crime groups. Trafficking in persons is practised alongside the more traditional forms of crime such as drug trafficking and the illegal arms trade. In many instances trafficking in persons has overtaken the more traditional forms of crime since profits tend to be bigger and risks lower. So far, penalties have also been relatively lenient.

As an example of the profits involved, according to some estimates in Thailand, women who wish to migrate end up paying up to 40 000 US\$ to traffickers. These women find themselves in indentured service, most often in prostitution. Although they may earn up to 7 000 US\$ per month, they often receive very little of that money themselves<sup>5</sup>.

Governments realised the threats posed by the increase in transnational crime during the late 1990's and started to develop a new international instrument for combating transnational organised crime.

## 2. The Elaboration of the Convention and the Protocols

The Declaration adopted at the meeting of the Ministers of Interior and Justice in Naples in 1996 called for actions to combat organised crime. As a result, Poland drafted a first outline for a convention against organised crime. The General Assembly founded an Ad-hoc Committee in 1998 with the aim to draft the Convention against Transnational Organised Crime. The first meeting for the development of the convention took place in Warsaw, Poland in February 1998. During the Seventh Session of the Commission on Crime Prevention and Criminal Justice in 1998, Argentina suggested drafting a new convention against trafficking in minors. On the suggestion by Greece, Member States decided to expand the scope of the instrument and included all forms of trafficking in persons. Women and children were given special attention, as they tend to be especially vulnerable to this form of crime. It was agreed that the instrument would be elaborated as a Protocol to the UN Convention against Transnational Organised Crime. The Convention includes three optional Protocols:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>6</sup>
- Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

The Committee convened at the United Nations in Vienna eleven times. Some 120 countries participated in the negotiations together with a large group of non-governmental organisations. The negotiations for the Trafficking Protocol were finalised in October 2000. The General Assembly of the United Nations adopted the Convention together with two Protocols<sup>7</sup> on 15 November 2000. The Trafficking Protocol was opened up for signatories at the Signing Conference in Palermo, Italy in December 2000. Almost eighty states signed it at that occasion. Currently (as of 15 August 2002) there are 106 signatories to the Protocol and 14 ratifications. The Protocol enters into force when forty Member States have ratified it.

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<sup>4</sup> Adamoli, S. et al (1998).

<sup>5</sup> Conference Report of the two Transatlantic Workshops on Human Smuggling

<sup>6</sup> Henceforth referred to as the (Trafficking) Protocol.

<sup>7</sup> I.e. the Trafficking Protocol and the Illegal Migrants Protocol. The Firearms Protocol was adopted in May 2001.

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The Trafficking Protocol is primarily a law enforcement instrument but it also encompasses the protection of victims. The concept adopted during the negotiations for the Protocol aims at keeping a balance between the penal and the human rights perspective to trafficking. It combines traditional law enforcement measures with measures for victim protection. While criminalising the traffickers, the Protocol highlights that prosecution and punishment should not endanger the safety of the victim.

#### IV. OUTLINE OF THE TRAFFICKING PROTOCOL

The Protocol is divided into three main parts:

Part I - General Provisions (articles 1-5)

- purpose (art. 2)
- definition (art. 3)
- scope of application (art. 4)
- criminalisation (art. 5)

Part II - Protection of Victims of Trafficking in Persons (articles 6-8)

- assistance and protection of victims (art. 6)
- status of victim in receiving state (art. 7)
- repatriation of victims (art. 8)

Part III - Prevention, Co-operation and Other Measures

- prevention of trafficking in persons (art. 9)
- information exchange and training (art. 10)
- border measures (art. 11)
- security and control of documents (art. 12)
- legitimacy and validity of documents (art. 13)

The final part (art. 14-20) of the Protocol deals with the technicalities of the document.

#### V. PRESENTATION OF THE PROTOCOL<sup>8</sup>

##### A. General Provisions (articles 1-5)

The first article of the Protocol outlines the relationship between the Convention on Organized Crime and the Protocol. The relationship is built on three principles.

- 1)The Protocol supplements the Convention and shall be interpreted together with the Convention
- 2)The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein
- 3)The offences established in article 5 of the Protocol shall be regarded as offences as established in accordance with the Convention

The relationship between the Protocol and the Convention was rather difficult to establish during the negotiations. The Protocol was negotiated in parallel with the Convention. The negotiations proceeded at a different pace causing difficulties in determining the scope of the application of the Protocol. Some Member States e.g. were of the opinion that the Protocol should not only cover criminal acts falling under the definition of organised crime, but should also include acts committed by one or two persons.

In order to become a Party to the Protocol, States must first be a Party to the Convention. The Protocol contains several additional provisions to the Convention. The principle of *mutatis mutandis*

<sup>8</sup> For the full document as well as for the interpretative notes and reports of the ad-hoc group, please visit the website of the United Nations Office of Drug Control and Crime Prevention at: [www.odccp.org](http://www.odccp.org)

means that the criminalisations that are covered by the Protocol should be applied as such. In implementing the Protocol, the Convention is thus subordinate to the Protocol if the Protocol states something additional to the Convention.

The Trafficking Protocol has three main purposes as outlined in article 2, namely to:

- **prevent and combat trafficking** in persons paying particular attention to women and children
- **protect and assist the victims** of such trafficking, with full respect for their human rights; and
- **promote co-operation** among States in order to meet those objectives

Besides combating organised crime and promoting international co-operation, victim protection is a crucial element of the Protocol. The definition of trafficking as outlined in article 3 defines a variety of practices and actors that can be involved in trafficking. 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.

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.

This is the first time the international community agreed on a common definition of trafficking in persons. The crime of trafficking in persons consists of three parts. The crime involves a measure which is carried out through one or some of the means listed above, for the purpose of exploitation of a person. The definition furthermore outlines the minimum meaning of exploitation.

The definition was perhaps the most difficult aspect of the Protocol during negotiations. On one hand the definition is regarded to include many elements that are difficult for prosecutors to prove. On the other hand, the Protocol is seen to provide a good ground for prosecuting all forms of trafficking since it outlines also the more subtle forms of threat and coercion that leads a person to become a victim of trafficking. The reference to “abuse of power or of a position of vulnerability” is in the interpretative notes of the Protocol defined as referring to a situation where the person has no real and acceptable alternative but to submit to the abuse. This definition recognises that trafficking can also occur without any actual threat or use of force - simply that a person who might not have had any means to refuse being trafficked should still be regarded as a victim of trafficking.

The definition of exploitation is one of the more controversial aspects of the Protocol. Countries have different laws and views on prostitution. During the negotiations, some participants, including non-governmental organisations and States, wanted to classify all prostitution as trafficking in persons (referring to the definition above - abuse of power or position of vulnerability) while others wanted to include only forced labour, slavery or servitude in the definition. Consensus was reached with defining trafficking as involving slavery, forced labour and servitude, and leaving exploitation of the prostitution of others and sexual exploitation undefined. The Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The interpretative notes highlight that States may interpret the article according to their domestic legislation.

Exploitation also includes, in the Protocol, servitude and the removal of organs. The removal of organs was included on the request by some states. The interpretative notes further clarify that the removal of organs should not include the removal of organs from a child with the consent of a parent or guardian for legitimate medical reasons. Furthermore, illegal adoption also falls under the scope of the Protocol.

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Article 3 (b) deals with the consent of the victim.

3 (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.

This definition states that the consent of the victim of trafficking is irrelevant to the prosecution of the traffickers. The article recognises that although some of the persons who are trafficked are aware that they may be used for labour or prostituted in the country of destination, their initial “consent” is a result of their vulnerable or difficult situation and should not dispense the traffickers from legal responsibility. Even though a person would initially agree to travel abroad, to work in bad conditions for little salary and with little freedom, the person would still be a victim of trafficking if the trafficker uses force, deception, abduction or the victim’s position of vulnerability. During negotiations, some participants called for limiting the definition to only those persons who could prove that they had been forced into trafficking without their own consent. If this definition had been adopted, the focus would have been more on the victim of trafficking than on the actions of the traffickers. The current definition leaves instead the burden of proof on the State or the public prosecutor in accordance with domestic law. In order to reach convictions, prosecutors must therefore show that the trafficker used coercion and fraud as outlined in article 3 to exploit the victim. The interpretative notes add that there should be no restrictions on the right of the accused persons to a full defence and to the presumption of innocence.

Subparagraphs (c) and (d) of article 3 deal with children as victims of trafficking in persons. Any recruiting, transportation, transferral, harbouring or receipt of a person under 18 for the purpose of exploitation is considered as trafficking. The Protocol thus criminalises all forms of exploitation of children. Although the Protocol puts special emphasis on children, some non-governmental organisations have criticised the Protocol for not addressing adequately the special needs of children. They call State parties to also incorporate additional relevant provisions from other UN conventions dealing specifically with the rights of children<sup>9</sup>.

Article 4 deals with the scope of application and article 5 with the criminalisation.

4. The Protocol shall apply, except as otherwise stated herein, to the prevention, investigation, and prosecution of the offences as established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organised criminal group, as well as to the protection of victims of such offences.

The application of article 4 establishes who can be prosecuted and what is the scope of the crime. The crime should be transnational and should involve an organised criminal group<sup>10</sup>.

However, article 4 should be read together with article 5, defining the scope of criminalisation.

5.1 Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

Although article 4 covers only offences that are transnational in nature and involve an organised criminal group, article 5 does not include these two links. Thus national law can criminalise trafficking regardless of whether the conditions of transnationality and involvement of criminal organisations are

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<sup>9</sup> See e.g. the International Human Rights Network’s joint NGO submission to the eighth-session of the Ad-Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime.

<sup>10</sup> The definition of transnational in nature, and organised criminal group is outlined in articles 2 and 3 of the Convention on Organised Crime. An organised criminal group is a structured group of three or more persons with the aim of committing one or more serious offences in order to gain financial or other material benefit. A transnational offence should be committed in more than one State, or planned in more than one State, or involving an organised criminal group, or has effects in another State.



met. In interpreting the Protocol States can ask for international assistance and co-operation from other State Parties with reference to the Protocol only in cases that involve transnational elements and organised crime groups. However, States may commit themselves to a broader scope of criminalisation and also include crimes committed by a single perpetrator within the borders of that nation.

Additionally, article 5 requires State Parties to criminalise also:

- attempting to commit a trafficking offence
- the participation as an accomplice in such an offence, and
- the organisation or directing of other persons to commit such an offence

The legal provisions of article 5 are mandatory. The subparagraph defining attempt caused some discussion during negotiations. Different penal systems have diverging views on attempt. The interpretative notes thus highlight that “attempting to commit an offence” can in some countries be understood as acts perpetrated in preparation for an offence, and also those acts carried out in an unsuccessful attempt to commit the offence, when those acts are punishable under domestic law. It is also important to recognise that “participating as an accomplice” ideally should not cover the victims of trafficking.

The first part of the Protocol clearly outlines that trafficking can and should be considered as a separate offence in criminal provisions.

## **B. Part II - Protection of Victims of Trafficking in Persons (articles 6-8)<sup>11</sup>**

The second part of the Protocol deals extensively with measures to protect victims. During the negotiations for the Protocol this section received intense attention especially from human rights organisations and non-government organisations working with victims of crime.

Article 24 of the Convention covers the protection of witnesses who give testimony, and in appropriate cases, also provide protection for the relatives of the witnesses. Article 25 additionally provides for the assistance and protection of victims. The Protocol contains some more specific measures for protection. The Protocol recognises that victims of trafficking are specially vulnerable and need specific protection. According to article 6 of the Protocol States shall protect the privacy and identity of victims of trafficking in persons, including by making legal proceedings relating to such trafficking confidential. The Protocol thus recognises the importance of protecting the identity of trafficking victims facing retaliation from traffickers. However, the provision does not contain any legal obligations. If possible, States should therefore not reveal the identity of trafficked persons e.g. in connection to trials. The implementation of this provision may call for legislative changes in the State Parties. Currently, for example in Finland the trial documents contain very detailed information on the persons involved in the trial, including addresses and contacts. The accused, the plaintiff and the witness alike have the right to this information. In order to accommodate the safety of victims of trafficking, this practice needs to be reconsidered e.g. so that only authorities can get access to this type of sensitive information.

Additionally, the Protocol highlights the need of trafficked persons to receive information on relevant court and administrative proceedings. Victims should also receive assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings.

Although this subparagraph is also conditional, it can be understood to require States to provide information to victims in their own language through a translator. It also entails that victims should have the right to legal assistance in order to ensure that their views are presented at trial. This is especially the case if investigation, prosecution, and sentencing require the presence of the victim. However, the paragraph should preferably be interpreted to cover any victims, not just those that take part in criminal proceedings as witnesses.

<sup>11</sup> For further discussion on this section, please see Van Dijk, J. (2002).

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Furthermore, States in co-operation with civil society shall consider to provide for the physical, psychological and social recovery of victims or trafficking in persons. This shall include:

- Appropriate housing;
- Counselling and information, especially concerning legal rights, in a language that the victim can understand;
- Medical, psychological and material assistance; and
- Employment, education and training opportunities.

This subparagraph recognises that victims of trafficking in persons have some basic needs. The paragraph also outlines multi-agency co-operation as a model for providing victim assistance. In many instances non-governmental organizations are better equipped to deal with victims in a sensitive way than authorities, be it in sheltering them, giving legal and psychological counselling and training. It is necessary for States to co-operate with civil society in providing victim assistance.

This paragraph does not give any legal obligations to State Parties although the Convention itself does contain a provision on mandatory, general assistance to victims. During the negotiations for the Protocol participants could not agree on mandatory assistance. It was mainly some of the countries of destination that opposed this obligation referring to its financial implications. As a consequence, the types of assistance as set forth in this subparagraph shall be applicable only to persons who are in a State Party's territory. Thus the measures of assistance are applicable to the receiving state only until the victim has returned to his or her state of origin. Ideally, in implementing the Protocol, all involved States should have an obligation to take care of the victims, also those that have been repatriated. Wealthier countries should preferably provide assistance for poorer countries in fulfilling the demand of providing services for victims.

States shall especially take into account the age, gender and special needs of victims of trafficking in persons, notably the needs of children. The measures taken should be both gender and child sensitive in terms of housing, education and care. This provision shows that States recognise that trafficking in persons has specially harmful effects on women and children.

Furthermore article 6 calls States to provide for the physical safety of victims of trafficking in persons while they are within its territory. This paragraph demands States ensure the safety of all victims of trafficking, not just those who are witnesses at trials. Contrary to the Convention (referring to witnesses), the Protocol does not mention protection of the relatives or other persons close to the victim. Neither does the Protocol create obligations for countries of destination to cater for the protection of victims, or their relatives, once they have been repatriated from the receiving country<sup>12</sup>. In theory, States should co-operate in order to share the responsibility of keeping the victims safe and also provide for security measures after repatriation. Furthermore, it is known that both victims and their relatives or friends can risk retaliation both before and after repatriation.

Additionally, article 6 also outlines compensation measures for victims. States shall ensure that there are measures within the legal system that offer compensation for damages the victim has suffered. While States may provide compensation, the Protocol does not guarantee the right for victims to compensation. The Protocol does not either address who should provide this compensation - the State or the offender. Depending on domestic legislation, this can be solved in different ways. Some countries have, for example established funds for victims of trafficking, financed partly by confiscated assets<sup>13</sup>.

In addition to victim assistance, the Protocol defines the status of victim in receiving States in article 7. Each State shall consider adopting measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. In many countries, victims of

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<sup>12</sup> For a critique of this paragraph and for other comments to the Protocol, see The Annotated Guide to the Complete UN Trafficking Protocol by the International Human Rights Law Group. See also Raymond, J. (2001) for comments to the Protocol.

<sup>13</sup> See Van Dijk, J. (2002), p. 22.

trafficking are deported when detected or after trial. This paragraph highlights the need to provide some residence rights for victims. During negotiations there were extensive discussions on how long a victim has the right to stay in a country of destination. There was general consensus on permitting the victim to stay at least during the court process. Subparagraph 7.2 adds that States shall give appropriate consideration to humanitarian and compassionate factors. Since the Protocol does not oblige states to provide for the safety of victims after repatriation, the “humanitarian and compassionate factors” should preferably receive thorough consideration and should be used for providing victims in jeopardy with a permit to stay.

In addition to protection of victims, and the right to stay in the country of destination, the Protocol deals with repatriation of victims of trafficking. The Protocol facilitates the repatriation of victims through article 8. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

The definition of permanent residence caused some debate during negotiations. Some legislation does not recognise the concept of permanent residence. However, permanent residence was agreed to be better than mere residence. Many victims who have been away for long periods of time might not anymore have a residence in their country of origin while they usually do have the right to permanent residence.

States should take into consideration the safety of the person when repatriating a victim of trafficking. States should also consider the other provisions of the Protocol, such as victims’ rights to justice before repatriating a victim of trafficking. When a State returns a victim, the return shall, besides being safe, also consider the status of possible legal proceedings, and shall preferably be voluntary (art. 8.2). However, the interpretative notes from the negotiations outline that the return can also be involuntary. In repatriating victims States should preferably return only those that want to return, and those whose safety can be guaranteed and whose legal proceedings in the receiving country have been finalised. It is thus necessary to consider the risk of retaliation to the victim and his or her relatives before repatriating him or her. The article shall furthermore be without prejudice to victims’ rights in existing domestic law and to any bilateral or multilateral agreements that govern the return of victims of trafficking.

The rights of the receiving countries are quite strongly outlined in the next paragraphs. In order to facilitate repatriation the Protocol requires countries of origin to co-operate with receiving States in providing information on the nationality of victims (article 8.3) and in issuing travel documents to enable the person to travel and re-enter (article 8.4).

### **C. Part III - Prevention, Co-operation and Other Measures**

Article 9 of the Protocol requires States to implement comprehensive policies and measures to prevent and combat trafficking in persons and to protect victims, especially women and children from revictimisation (subparagraph 9.1). It is known that in some cases persons who have been trafficked and then deported to their country of origin may face being trafficked again. Hence the implementation of the Protocol, including the implementation of the provisions dealing with repatriation, should aim at minimising the risk of revictimisation.

Furthermore, states shall engage in research, information and mass media campaigns and social and economic initiatives in co-operation with non-governmental organisations and other relevant organisations. Mass-media campaigns have successfully been organised in several countries. E.g. the International Organization for Migration is currently carrying out a large campaign in central and Eastern Europe for raising the awareness about trafficking in women.

Countries shall also strengthen measures to ease the factors that make especially women and children vulnerable to trafficking. States shall thus fight poverty, unemployment and lack of equal opportunity (paragraph 9.4). The Protocol also calls States to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking (para 9.5). The two last paragraphs of article 9 complement each other in preventing trafficking. It is crucial to both

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address the root-causes of trafficking as well as the demand that maintains trafficking. The demand-side can be approached in different ways. One interpretation of this paragraph is that the demand for trafficking for the purpose of sexual exploitation could be reduced through addressing the clientele of prostitution. Additionally, trafficking for the purpose of labour could be reduced through discouraging the demand for migrant workers.

Article 10 deals with information exchange between authorities and training of authorities. Law enforcement, immigration and other relevant authorities shall, as appropriate, co-operate with one another by exchanging information, in order to be able to determine:

- whether individuals crossing borders with travel documents belonging to another person or without travel documents are perpetrators or victims of trafficking (para 10a)
- the types of documents that are used in crossing an international border for the purpose of trafficking (para 10b)
- the means and methods used by organized criminal groups, such as recruitment, transportation, routes and links, and possible measures to detect them (para 10c)

As regards training of authorities, States should provide training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on measures of prevention, prosecution of offenders and protection of victims. The training should also encourage co-operation with civil society and non-governmental organisations. It is important to note that the training shall take into account human rights aspects and be child- and gender sensitive.

Article 11 deals with border measures:

- Without prejudice to international commitments in relation to the free movement of people, State Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

This paragraph calls for a careful balance between freedom of movement and border controls. While States strengthen border control measures to get at traffickers and illegal migrants, it should not happen at the expense of victims' human rights. Training of officials will be crucial in reaching this balance.

Article 11 furthermore requires States to adopt measures to prevent transport operated by commercial carriers. States shall also oblige such commercial carriers or companies to ascertain that all passengers have necessary travel documents and provide for sanctions in case of violations of this obligation. These sanctions could include, for example that the commercial carrier is obliged to return any persons who are found to possess inadequate travel documents.

States can also permit the denial of entry or revocation of visas of persons who are known to engage or suspected of engaging in trafficking crimes. Finally, States shall consider strengthening co-operation among border control agencies by establishing and maintaining direct channels of communication.

Article 12 deals with the security and control of documents, obliging States to:

- ensure that their travel or identity documents cannot easily be misused, falsified or unlawfully altered, replicated or issued
- ensure the integrity and security of these documents and to prevent their unlawful creation, issuance and use

The final article (article 13) of the Protocol deals with the legitimacy and validity of documents. At the request of another State, a State Party shall verify within a reasonable time the legitimacy and validity of travel documents that are suspected of being used for trafficking in persons.

The final part of the Protocol includes the savings clause. The savings clause is similar to the clause in the Migrants Protocol. The Protocol shall not affect any other rights, obligations or responsibilities of

States and individuals under international law, including humanitarian, human rights and refugee laws. Also the notion of non-refoulement is included in the Protocol. Victims of trafficking shall thus have the right to seek asylum in a State regardless of whether they entered the country illegally or not. Furthermore, the Protocol shall not be interpreted in a way that is discriminatory to victims of trafficking.

The final articles cover the normal provisions, including settlement of disputes, ratification measures, entry into force, amendment, and denunciation.

## VI. REQUIREMENTS AND SUMMARY

### A. Summary of the Aims of the Trafficking Protocol

In preventing trafficking in persons, the Protocol obliges states to:

- criminalise trafficking
- investigate, prosecute and convict traffickers
- undertake border control measures

States shall also, within their means:

- provide measures to protect and assist victims
- train law enforcement and border control officials
- inform and educate victims and potential victims, as well as the general public
- co-operate with each other and civil society to reach these aims

Although the international community has attempted to combat trafficking in persons already earlier, it has failed to do so effectively. The strength of the Trafficking Protocol lies in that it provides requirements for legal measures, through combining the human rights and law enforcement approaches to trafficking in persons. The successful implementation of the Protocol, however, requires a careful balance between these two approaches.

### B. Main Ratification Requirements

The main requirement for ratification of the Trafficking Protocol involve the following:

State parties shall:

- Criminalise all forms of trafficking in persons as outlined in article 3
- Undertake legislative or other measures to prevent the misuse of commercial carriers for the smuggling of migrants (article 11)
- Make it a legal obligation for commercial carriers to check passenger travel documents (article 11)
- Prepare travel documents that are difficult to misuse, falsify, alter or replicate (articles 12-13)

It is mainly the criminalisation of all forms of trafficking in persons which will require some legislative changes or additions in many Member States. Additionally, States need to include the victim-centred approach in the ratification of the Protocol.

## VII. SOME EXAMPLES FROM THE EUROPEAN REGION

In the European region, trafficking in persons is currently receiving increasing political priority. The activities include both the prevention of trafficking in women and children for the purpose of sexual exploitation, and trafficking in human beings for the purpose of labour exploitation.

The European Union's actions to combat trafficking in human beings are, since 1999, explicitly mentioned under Title VI in the Amsterdam Treaty covering police and judicial co-operation. As a measure to criminalise trafficking, the Council of the European Union adopted a framework decision on combating trafficking in human beings in June this year<sup>14</sup>. The aim of the decision is to set up

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commonly adopted definitions and penalties in the Member States' legislation. These definitions are largely based on the definitions of the UN Protocol.

Sweden is one of the EU member states that has most recently ratified the UN Protocol. From 1 July 2002, the Swedish legislation criminalises trafficking for the purpose of sexual exploitation where the crime of trafficking involves the crossing of borders. The penalties range from between 2 and 10 years of imprisonment. Attempted trafficking, preparations for trafficking or the endorsement of trafficking is also criminalised in the Swedish legislation.

The newly established unit of EUROJUST, composed of national prosecutors, magistrates and police officers from the EU aims at facilitating co-operation in order to support criminal investigations in organised crime cases. Combatting trafficking in persons through co-operation in investigation and prosecution is also one of its tasks.

There are also several programmes at EU level that contribute to actions aimed at supporting, assisting and protecting victims of trafficking. Many of these programmes focus on providing financial assistance for non-governmental organisations that support victims. With such EU funding non-governmental organisations have e.g. built networks for assisting victims who are repatriated and created means of support for victims both in countries of origin and destination.

Furthermore, there are also some measures to prevent trafficking through information campaigns. The Nordic and Baltic countries of Europe are currently engaged in a campaign to prevent trafficking in women. In the Nordic countries, mainly acting as receiving countries, the campaign addresses the general awareness of the population so that they recognise the existence of the problem. It also addresses clients and potential clients of prostitution, thus aiming at reducing the demand for trafficking in women. In the Baltic countries, which mainly act as countries of origin, the campaign focuses on preventing women from becoming victims of trafficking through media and school campaigns. The campaign also aims at providing recommendations for the ratification of the Protocol in the region.

The Trafficking Protocol provides some excellent guidelines for good practice. Once the Protocol enters into force we will see what effect it has on combating the organised crime groups who engage in the horrendous crime of trafficking in persons - I hope that it will have vast global effects on increasing human safety.

## REFERENCES

Adamoli, S. et al (1998). *Organised Crime Around the World*. HEUNI Publication Series No. 31. HEUNI: Helsinki.

Askola, Heli (2001). *Trafficking in Women in the Baltic States: Legal Aspects*. In *Trafficking in Women and Prostitution in the Baltic States: Social and Legal Aspects*. International Organization for Migration. 2001.

Cordero, T. and Facio, A. (2001). *Trafficking in Women and Children for the Sex Industry: Women's Participation in this Crime. A Contextual Approach*. In Ollus, N. & Nevala, S (eds.). *Women in the Criminal Justice System: International Examples & National Responses*. HEUNI: Helsinki.

Van Dijk, Jan (2002). *Empowering Victims of Organised Crime: On the Concurrence of the Palermo Convention with the UN Declaration on Basic Principles of Justice for Victims*. In *International Review of Victimology*, Vol. 9/1, pp. 15-30.

Raymond, Janice (2001). *The Guide to the New UN Trafficking Protocol*. Coalition Against Trafficking in Women.

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<sup>14</sup> Council Framework Decision on Combating Trafficking in Human Beings. Document 9576/02.

RESOURCE MATERIAL SERIES No. 62

Strandberg, Nina (1999). What is Trafficking in Women and what can be done? In Crossing Borders Against Trafficking in Women and Girls. A Resource Book for Working Against Trafficking in the Baltic Sea Region. Foundation of Women's Forum: Stockholm.

The Annotated Guide to the Complete UN Trafficking Protocol by the International Human Rights Law Group, May 2002. [www.hrlawgroup.org/initiatives/trafficking\\_persons/](http://www.hrlawgroup.org/initiatives/trafficking_persons/)

Conference Report of the two Transatlantic Workshops on Human Smuggling, organised by The European Forum for Migration Studies at the University of Bamberg and the Institute for the Study of International Migration at Georgetown University. Compiled by Heckmann, F., Wunderlich, T., Martin, S., and McGrath, K.

<http://www.uni-bamberg.de/projekte/humsmug/>

International Human Rights Network's joint NGO submission to the eight session of the Ad-Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime.

[www.december18.net/jointsubVienna.htm](http://www.december18.net/jointsubVienna.htm)