



Human Rights and Trafficking in Women and Young People in Europe

MANUAL FOR TEACHERS



University of Padua, Interdepartmental Centre on
Human Rights and the Rights of Peoples



La Strada Foundation against
Trafficking in Persons and Slavery, Poland



Ludwig Boltzmann Institute
of Human Rights



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Human Rights and Trafficking in Women and Young People.
An Educational Toolkit for Teachers and Students

Manual for Teachers

Authors: Paola Degani

Translation: Lara Fabiano

Project coordinator: Paola Degani in collaboration with Cinzia Clemente
University of Padua, Interdepartmental Centre on Human Rights and the Rights of Peoples

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Via Martiri della Libertà, 2 - 35137 Padova

Phone: +39 049 827 1813 / 17 Fax: +39 049 827 1816

E-mail: info@centrodirittumani.unipd.it Web: www.centrodirittumani.unipd.it

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INTRODUCTION

In the last few years, Europe's old and new countries have, with ever greater insistence, had the words human trafficking, smuggling, sexual exploitation of women, young people and children, new forms of slavery and servitude, on their lips. Periodically, media reports give alarming figures on the number of victims of trafficking whose rights have been severely violated, or who were forced into grave forms of submission and exploitation. The credibility of the reports however, at times does not reflect the truth as there are factors at play that can influence assessment as: different way to formulate estimates of single countries, distinct legislations, different commitment on the part of governments to monitor and combat such phenomena, and the close relationship between such conditions and illegal immigration, in addition to other elements that can also influence such assessment making a realistic and objective picture difficult. In the last few years an increasing number of national, regional, and international governmental and non-governmental institutions and bodies have been addressing the issue from a number of perspectives to produce periodic reports that ought to serve to provide a clearer picture of the mechanisms involved in this phenomenon including its rapid transformations.

Actually, from a political and cultural viewpoint, the theme of trafficking places itself at the heart of a series of blistering issues as: migration, sexual violence, multiple discrimination, cultural diversity, security, sex work, transnational crime, and "globalization" -all problems that can certainly induce human trafficking as inspired to ideological maxims or unacceptable forms of displaying pain that are of little use to solve the problems of those who are trapped in such situations.

Currently, the violent exposure of the bodies of women, young people and children undoubtedly constitutes a serious violation of their fundamental human rights. It is furthermore an explicit denial of the cultural and social progress western women attained in 1960s from the international feminist movement that fought for a more active participation of women in institutional political life.

The goal this report has set itself is to formulate a synthetic but comprehensive overview and to examine the issue from a human rights perspective in order to understand the complex human, social and political problems that underlie the drama of those who are victims of trafficking in human beings especially for the purpose of sexual exploitation, in particular within the European Union context.

Lately, the problem of subjection and exploitation of thousands of individuals on the sex market, who for the most part are young women and children, has now begun to be considered as a problem related to the protection of human rights of those who are trafficked. Yet for quite some time trafficking in human beings has represented a mere appendix of the problem governments faced with illegal immigration or the prostitution policies.

Today, though these profiles remain, the perspectives adopted in political debates to face these issues have changed. They have begun to incorporate fundamental human rights; cooperation and intervention policies are being revised to reassess the position of those migrants who settle in a country to seek improved economic conditions, often lured by the idea of easy earnings and a new freedom but instead of a better life away from their country end up being abducted, blackmailed, and trafficked by ruthless exploiters of human beings.

As illustrated by a vast number of studies and by police evidence gathered in the past few years, it is essential to help and assist even all those who, in the initial phase of the migration project willingly agreed to enter the territory of a third country, even illegally, and ended up being trapped in a criminal network of exploitation. At times thus, to determine where trafficking begins, where it overlaps with illegal immigration, where an illegal project culminates in violence, deception, abuse of power or of vulnerability, slavery and servitude is not always easy.

The manual, strives to offer a series of analytical educational tools for teachers to enable them to reflect on the dramatic and complex nature of trafficking. The perspective that has been adopted is one that promotes the protection of human rights and at the same time provides an interdisciplinary key featuring the many profiles that concur and are embodied in trafficking. Today, human rights are not solely promoted by the international community and associations promoting human rights but also by the European Union which stresses the importance of applying an integrated approach in combating trafficking. The goal of the Manual is to raise young people's awareness on such issues and, at the same time, offer a way out to the thousands of victims that are exploited and enslaved. Please note that all human rights legislation and even the acts of recommendation contained in the Manual are for the most part available from the International Legal Pocket Compilation. It is therefore advised to integrate the reading of the Manual by also consulting the other part entitled International Legal Pocket Compilation.

CHAPTER 1 - TRAFFICKING IN HUMAN BEINGS: CONTEMPORARY DEFINITIONS AND THE HUMAN RIGHTS PERSPECTIVE

WHAT IS TRAFFICKING IN HUMAN BEINGS?

Of late, the problem of sexual exploitation of thousands of women and children and, more in general, the re-establishment of certain forms of traditional work that are characterized by extremely harsh conditions of servitude and subjugation, can be strictly associated to processes of migration.

Even though legitimate forms of enslavement or servitude are illegal, cases of severe exploitation have reemerged in segments of the employment market, in sectors of traditional employment as well as in highly technologic employment. For far too long, the progressive decline of slavery, and its actual fading away, at a juridical level, ought not be confused with its actual disappearance. Arguably this factor led to the taking no notice of the new and heavy forms of enslavement which significantly emerged in the early 1970s¹.

After the abolition of legal slavery, different forms of servitudes were reproduced and sometimes reinvigorated as for instance those deriving from debt, *corvée*, forced labour of prisoners, peonage as well as sexual exploitation of thousands of women and children and forced domestic work that are founded, above all, on the obligatory coexistence of female, often unskilled, and foreign, workers with their employers.

In fact, economic liberalization and the fall of the socialist regime has impoverished entire social sectors exponentially boosting the demand for individuals who, in seeking opportunities to survive or simply to improve their personal status, become a market commodity that is available at lower and lower prices.

In Europe, the fall of communist regimes and the wars in former Yugoslavia in the 1990s, have unquestionably altered not only the order of international

¹ See for instance: P. Arlacchi, *Schiavi. Il nuovo traffico di esseri umani*, Milano, Rizzoli, 1999.

relations but also the socio-economic scenario of many countries that are forced to face a difficult period of democratic transition today and have to apply the dynamics inspired by a capitalism that is ever more aggressive and liberist.

The problem of why Europe, in its current geographic context, is confronted with the question of trafficking in human beings, in particular in cases involving women and children destined for the sex market can be better understood if, in addition to the above mentioned factors, the elements of organized criminal activities -which exploit illegal immigration of thousands of individuals, and cultural heritage -which keeps its weakest members of society subjugated and controlled by means of extortions leading to unheard levels of violence, are added to the list.

Currently, Europe is made up of two macro areas: the west, essentially the destination basin, and the East, the area from where thousands of individuals depart or transit each year with such uncertain modes and means, intent and objectives, that it is often difficult to understand where free will starts and blackmail, deception and violence set in to pave the way for trafficking in which even the roles of "victim" and executioner are not always obvious.

The new forms of enslavement and subjection that are closely related to the phenomenon of trafficking in human beings and of smuggling of migrants have thus the sole and exclusive end which is the economic exploitation of an individual.

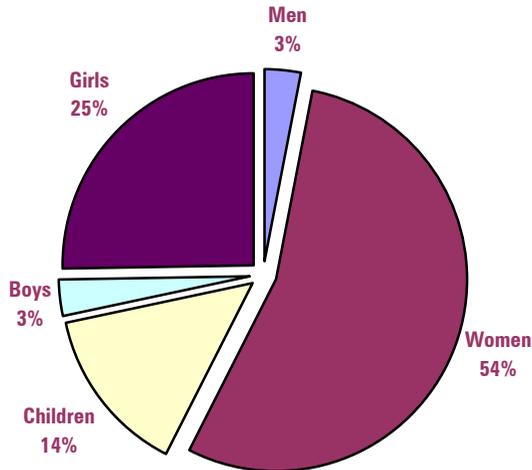
At present, millions of women and children are sexually exploited; many are underaged and end up on a transnational market that has come to resemble ever more closely a true sex market that on the one hand exploits the desperate poverty of millions of individuals and on the other sees the sexual discrimination and racism of many men speculate on the social and economic vulnerability of those who almost always are obliged to sell their body as they possess nothing else.

Trafficking in human beings is obviously a phenomenon that involves men, women, young boys and girls and children. Yet, with regard to a European dimension, the forced involvement of women onto the sex market for money is surely the most striking. Based on information collected nationally, a recent United Nations Office Drug and Crime Prevention (UNODC) Report² supports this

² United Nations Office for Drug Control and Crime Prevention (Unodc), *Trafficking in Persons. Global Patterns*, April 2006, available on-line from the web site: <http://www.unodc.org/>

hypothesis. Minors too represent a significant proportion of the population that is considered as a victim of trafficking.

**Reported profile of victims, Central and SouthEasternEurope
in the Unodc Report
(total number of sources 60)**



In the last decade, the extremely close relation between the actions and situations that favour the illegal entry of migrants and the trafficking in human beings has induced the international community to come up with definitions that clearly distinguish the two conducts.

As set out by United Nations conventions, the distinction at the base of smuggling of migrants and trafficking in human beings depends on the different relation that is established between the trafficked and migrant, and on other distinctive elements between the aiding and abetting of illegal immigration (smuggling) and trafficking finalized in the subsequent act of exploiting the people who are commercialized (trafficking).

In 2000, the United Nations in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the

United Nations Convention Against Transnational Organized Crime³, formulated an initial definition of the notion of trafficking in human beings describing, in-depth, the nature of the crime and consequently highlight the relation between trafficking in human beings and migrations⁴.

The Protocol in article 3 states:

For the purposes of this Protocol:

(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;

(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;

(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;

(d) "Child" shall mean any person under eighteen years of age.

The qualifying points contained in the definition deal with the concept of "abuse of a situation of vulnerability" within the use of coercion, irrelevant of consent on the part of the victim even when such coercion is applied. Both thesis serve to protect victim. The constitutive element that is characteristic of trafficking is the aim of exploitation (sexual or economic) not the crossing of borders. The

³ The *Protocol* was adopted jointly with the *Convention against Transnational Organized Crime* and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, with Resolution 55/25 of 15 November 2000 at the United Nations General Assembly. The Convention entered into force on 29 September 2003, the Protocol on trafficking on 25 December 2003 and the Protocol on smuggling of migrants on 28 January 2004. Reference to the agreements in the International Legal Pocket Compilation. In the section Appendix, see the status of ratification of Protocol by the states of the European area and by Commonwealth of Independent States (CIS).

⁴ See footnote n. 3.

measures of aid foreseen by the Protocol for the victims are not always bind States, yet many Countries, especially those of the European Union, have devised or are devising measures to protect the victims.

☞ **Elements that characterize trafficking in persons as defined by the United Nations Protocol**

The action of: recruitment, transportation, transfer, harbouring or receipt of persons;

- By means of: 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 purpose of exploitation, which includes, at a minimum, exploiting the prostitution of others, other forms of sexual exploitation, forced labour or services, slavery or similar practices, and the removal of organs.

Based on: Unodc, *Trafficking in Persons.cit.*

As stated by the Protocol on smuggling of migrants supplementing the UN Convention on Organized Transnational Crime the above definition on trafficking in human beings establishes many fundamental differences with the smuggling of migrants. Article 3 of this Protocol affirms:

(a) “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; (...)

Therefore, the role of the migrant is different in trafficking and in smuggling. Whereas in the former individuals are mostly recruited directly by those who organize and run the trade of human beings through abuse of power and terror to exploit them in another country, in the latter the contact is initiated by potential

immigrants themselves who, disposing of personal capital, consent to being transferred by the representatives of organisations who manage their move⁵.

« Differences between *trafficking in human beings* and *smuggling of migrants*

Consent: The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.

Exploitation: Smuggling ends with the migrants' arrival at their destination, whereas trafficking in persons involves the ongoing exploitation of the victims in some manner to generate illicit profits 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 revictimization and other forms of further abuse than are smuggled migrants.

Transnationality: Finally, smuggling is always transnational, whereas trafficking in persons may not be. 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.

Organized criminal group: 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.

Based on: Unodc, *Trafficking in Persons*. cit.

⁵ An example of an Italian case is P. Romani, *Condizioni della persona trafficata e mercati di inserimento*; or F. Pastore, *L'Italia nel sistema internazionale del traffico di persone. Risultanze investigative, ipotesi interpretative, strategie di risposta*, Department of social affairs – Presidency of the Council of Ministers, Working Paper n. 5, 1999. The same publication also contains G. Sciortino, *Un'analisi dell'industria dell'ingresso clandestino in Italia*.

Only of late has it been increasingly common to see migrants who, unaware of the realistic costs and situation which they will have to face to migrate become the victims of organisations dealing with the transfer from one country to another that is conducted in much the same way as the practice of trafficking in human beings with the two conditions both leading to the same situation of exploitation.

Today such realities are true for thousands of immigrants who come to Western Europe via the Mediterranean or even those who cross the borders as they come from Asian countries or countries torn by ethnic or religious conflicts experience. In reaching their countries of destination, migrants fall prey to organisations which bond the victims with debts acquired for transportation to the country of destination and through exploitation that is then transformed into modalities of forced labour and servitude.

The debt mechanism thus prevents the victims from earning money for their activity until the loan is paid off though, in reality, it cannot be. This is the type of relation that binds the women victims of sexual exploitation to those who materially control and manipulate them enables enslavement to occur.

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children:

Assistance and protection of victims (Article 6,7,8)

Measures to discourage demand (Article 9, 5°)

Measures for the collaboration of States (Article 10,11)

For an effective protection and assistance to the victims, the States must adopt legislative measures that enable individuals to stay in the territory of the State of destination. Moreover, States must guarantee physical, psychological and social assistance to victims, in particular:

Appropriate housing;

Counselling and information, in particular as regards to their legal rights, in the language that the victims of human trafficking can understand;

Medical, psychological and material assistance;

Employment, education and training

Furthermore the following direct measures are also necessary:

protect the privacy and identity of victims;

guarantee sufficient information on administrative and court procedures;
guarantee legal assistance for criminal proceedings;
guarantee physical safety;
guarantee access to compensation for the damage suffered.

Prevention (Article9)

The States are called upon to implement policies and programmes of prevention that comprise:

undertake measures such as research, information and mass media campaigns;
social and economic initiatives to reduce poverty, underdevelopment, the lack of equal opportunities and therefore the trafficking in persons;
adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

In carrying out these measures of prevention and assistance the States will avail themselves of the cooperation of NGOs.

International Cooperation (Article10,11)

Police force and other authorities must cooperate to exchange information so as to identify the traffickers and victims, the documents used to cross international borders, and the methods used to recruit and transport victims.

The Training of police and judiciary operators (Article10)

The States must guarantee the training of police, judiciary operators and competent migration officials even on the protection of rights of the victims.

Based on: ENATW, The European, Network against Trafficking in Women for Sexual Exploitation, *Guida al Protocollo Onu contro la tratta*, available from: www.aretusa.net

DEFINITIONS OF TRAFFICKING IN HUMAN BEINGS UNDER EUROPEAN LEGISLATION AND THE HUMAN RIGHTS PERSPECTIVE

In fact, the theme of trafficking in human beings is one of the most evident examples of the way different categories, or “generations”, of human rights are strictly interdependent.

It traces the violations of basic human rights that are recognized to all individuals, regardless of sex, nationality, social status, employment and any other possible differences.

Human trafficking violates such inalienable rights as: the right to life, freedom, equality, dignity and security, non-discrimination, health as well as all the rights related to labour protection. This conduct usually spreads in places where there is economic precariousness and grave social privation which at times degenerate into situations of enslavement.

Moreover, experience from the past years has shed light on the cultural models and social relations that socially legitimize a violent exploitation of women and children on the sex market.

Of late and due to the complex nature of factors that fall within the phenomenon of human trafficking, notable efforts have been made by legislators who recognize the need to reconcile the indictment of certain conducts while paying greater attention to the human rights of victims and considering the validity of this paradigm not only on the axiological plane but also from the perspective of profit.

Subsequently, at a regional level, other fundamental instruments were added to the United Nations Protocol, which on the one hand support the general norms and on the other are specifically geared to criminalise trafficking, protect victims and have states cooperate at different levels and on the diverse realities involved in this domain.

At a European level, in the last few years, the States have adopted different regional instruments to suppress trafficking as the European Convention on extradition⁶ and the Protocols supplementing the Europol Convention⁷ specifically on the cooperation on criminal issues.

⁶ Council of Europe, adopted 13 December 1957 entry into force 18/04/1960

⁷ Adopted by the European Council on 26/07/1995 entry into force on 1/10 1998. For police cooperation, the Europol Convention gives Europol the following tasks: " to prevent and combat unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant

Other treaties as the Amsterdam treaty effective starting May 1999 contain norms on this problem⁸. Such instruments are fundamental for the cooperation in judicial and police matters in the fields of extradition and data collection.

Lately, the human rights approach has gained noteworthy ground. A renewed sensitivity on the part of European legislators towards trafficking is to be found in the definitions provided by the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) and the European Union. Each of these organisations operates with different mandates yet a common feature to all is that questions related to trafficking in persons have been incorporated in their respective political agendas.

The Council of Europe, already in its Recommendations R (2000)11⁹ recognized trafficking as an offence to the dignity and integrity of individuals. Sexual exploitation, in this document, qualified as a form of slavery, and women and young girls were identified as the victims that trafficking privileged.

OSCE, too, in its final Report compiled at the Meeting on the dimension of human trafficking proposed a definition of trafficking which placed the problems of human rights violations and the victims of trafficking in the forefront¹⁰.

Making trafficking in human beings a cardinal point in human rights law has yielded a series of immediate consequence, the first that the victims are not liable to be criminalized as subjects who violate immigration laws.

The human rights approach implies that states must regard norms on international protection of human rights and therefore must apply greater political pressure so that the dignity and freedom of victims are respected.

The European Union, in 2002, to tackle the phenomenon of trafficking in human beings at a regional level, to make its commitments effective and to follow-up on other juridically binding acts approved years earlier¹¹, adopted a *Framework*

smuggling, trade in human beings and motor vehicle crime".

⁸ Amsterdam Treaty which modified the Treaty on European Union, the Treaties establishing the European Communities and some acts related to, signed in Amsterdam on 2 October 1997, entry into force May 1, 1999. References to Consolidated version of the Treaty on European Union in the *International Legal Pocket Compilation*.

⁹ Council of Europe, Rec (2001)11E, 19 September 2001, on the Guiding principles on the fight against organised crime.

¹⁰ OSCE, *Final Report of the Supplementary Human Dimension Meeting on Human Trafficking*, June 2000.

¹¹ To outline the most significant steps which have led to the adoption of this Decision and more in general for an overview of the acts of the European Union on the topic see the web page: <http://europa.eu/scadplus/leg/it/s22009.htm>

*Decision of the Council*¹² dedicated to combating the trafficking in human beings for labour and sexual exploitation. In article 1, Member States must criminalise the conducts listed below:

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 threat, 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 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.

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.

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.

4. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age.

As a result of the European Union's provisions of 2005, the Council of Europe adopted the Convention on Action against Trafficking in Human Beings¹³ with the goal, in article 1, to prevent and combat trafficking so as to guarantee equality

¹² Council Framework Decision 629/2002/JHA: on combating trafficking in human beings, entry into force 1.08.2002 expected date of acceptance among Member States 1.08.2004

¹³ Council of Europe, *Convention on Action against Trafficking in Human Beings*, adopted in Warsaw on 16/5/2005, not entry into force. References in the *International Legal Pocket Compilation*.

without distinction of sex, to protect the human rights of the victims of trafficking and to promote international cooperation in order to contrast such unlawful practice.

As set out by article 2, the Convention can be applied both in case of transnational trafficking as well as in trafficking within a state, that may or may not be connected to organized crime. As stated in Article 4 of the Convention:

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;

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;

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;

d "Child" shall mean any person under eighteen years of age;

e "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

The above-mentioned juridical agreements are especially focused on repressing and preventing unlawful acts regarding trafficking, with special attention to protecting the human rights of victims and reinforcing cooperation, not merely judiciary, among states.

Whereas the United Nations Protocol, in article 3, considers organ trafficking too, in the European Union's Framework Decision pornography is mentioned as a type of sexual exploitation.

The Convention of the Council of Europe instead, coherent in its tradition to promote and protect fundamental human rights of individuals, is characterized

for its approach that is particularly rooted in a human rights dimension and for its more extended scope of application.

“The European Union in its Framework Decision of the Council of Europe, of 19 July 2002, adopted the definition of trafficking proposed in the United Nations Protocol. EU member states must be aligned to the Framework Decision of 1 August 2004.

TRAFFICKING IN HUMAN BEINGS, ENSLAVEMENT AND SEXUAL EXPLOITATION IN INTERNATIONAL HUMAN RIGHTS LAW

International human rights law is a fundamental instrument to better identify the multiple violations that the complex nature of trafficking generates and to investigate any neglect on the part of States to the obligations endorsed by the ratification of international covenants. A consistent list of international norms proves pertinent to the different forms of trafficking for the purpose of sexual exploitation of millions of women and minors¹⁴.

The first definition of slavery dates back to the 1926 *Slavery Convention* by the League of Nations¹⁵. Article 1.1 affirms that slavery is:

the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised,

whereas slave trade (article 2.2) includes:

...all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale

¹⁴ On this issue, see documents contained in the *International Legal Pocket Compilation*.

¹⁵ Slavery Convention signed at Geneva on 25 September 1926 Entry into force: 9 March 1927.

or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

However, subsequent to the adoption of the Treaty the need for a more comprehensive list of situations that fall within the notion of slavery became evident.

In 1956, the United Nations held an international Conference in Geneva in which the Supplementary Convention on Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, was adopted¹⁶.

The Convention does not substitute the 1926 Convention but provides in a more operative way enhanced dispositions, prescribing the obligations States have to repress slave trade as well as their obligation to cooperate with the United Nations. The most significant innovation of this international treaty was that it listed, in a more detailed and specific way, the institutions and practices of slavery which involve, for those who fall prey, a state of “servility”.

The situations in article 1 of the Convention comprise:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

¹⁶ Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956 Entry into force: 30 April 1957.

- (ii) *The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or*
- (iii) *A woman on the death of her husband is liable to be inherited by another person;*
- (d) *Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.*

In article 3 the international legislator defines trafficking above all as:

The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, (.....)

thus setting a series of measures States must ensure to stop the conveyance of slaves (articles 3.2, 3.3).

But in the domain of sexual exploitation, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others adopted in 1949 by the United Nations¹⁷, still today represents an international point of reference, even though, after recent attention on the phenomenon of sex trade and trafficking, much has been said about the shortcomings of the Convention in tackling the problem of prostitution¹⁸. The Convention's disposition on prostitution accepts the principle of impunity for prostitution as such, and commits governments to punish any person who induces prostitution, exploitation and the organisation of prostitution or runs a brothel or even rents a building for such activity (article 1 and 2). With the adoption of the Convention, member States bind themselves to abolish all regulation of activities of prostitution (special registration etc...) and therefore also are committed to close down brothels which were widespread in the past..

The ban on slave labour and on forcing such condition onto any individual is found in the international human rights code, specifically in the *Universal Declaration of Human Rights*¹⁹ and in the *International Covenant on Civil and*

¹⁷ Adopted by the United Nation's General Assembly with resolution 317 (IV) of 2 December 1949. Entry into force 25 July 1951. References in the *International Legal Pocket Compilation*.

¹⁸ To know more about prostitution see in the text.

¹⁹ The Universal Declaration of Human Rights, adopted and proclaimed by General Assembly with

*Political Rights*²⁰ respectively in articles 4 and 8 containing the analogous affirmation:

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

In the *Universal Declaration* the prescription of a law that is expressly oriented to the problem of enslavement found in the chapter on the right to *physical integrity* points to the peremptory character of such issue within the frame of international human rights law.

In the *Covenant on Civil and Political Rights* the prohibition to coerce anyone into a state of slavery or servitude falls into the category of non-derogable rights, not even in case of emergency, and it acquires the same status as the right to life, to not being subjected to torture or other inhumane and degrading punishments.

Even the *International Covenant on Economic, Social and Cultural Rights*²¹ is important since the type of rights affirmed therein prove to be of noteworthy significance on the topic of women's condition and discrimination against them, especially in consideration to their risk of poverty and condition of personal and social vulnerability that is to be linked to women's economic weakness.

Still today, in the framework of international human rights law, the *Convention on Elimination of Discrimination Against Women*²² constitutes a fundamental law for the equal rights of women. In article 6, the States that ratified the Convention agree to take all measures possible, including of legislative nature, to suppress all forms of trafficking in women, their exploitation and prostitution. Article 6 states:

Res.217 A (III) of 10 December 1948. References in the *International Legal Pocket Compilation*.

²⁰ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, references in the *International Legal Pocket Compilation*.

²¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27. References in the *International Legal Pocket Compilation*.

²² Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1). References in the *International Legal Pocket Compilation*.

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Although traffic in young women for sexual exploitation and more in general immigrant women who are illegal or irregular are often the victims of crime, they are frequently identified by the local population of their country of destination in much the same way as those who exploit their condition of vulnerability. The media, often encouraged by the anti-immigration policies adopted by governments, at times fuels and diffuses an image of immigrants that is often distorted and thus powers racial discrimination even towards the victims of exploitation. The United Nations *Convention on the Elimination of all forms of Racial Discrimination*²³²⁶ defines in article 1.1 racial discrimination as:

(...)any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Uncontroversially, the instances that document the active involvement of police officers in human trafficking are numerous. A State must unquestionably be responsible for the action of its agents, even if such conduct occurs out of context, when the agent is not officially operating. In reference to such cases, the *Convention Against Torture*²⁴ is the appropriate international human rights instrument to tackle the issues related to trafficking. According to article 1, the term “torture” is defined as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or

²³ Adopted by the General Assembly on 21 December 1965. Entry into force 4 January 1969. References in the *International Legal Pocket Compilation*.

²⁴ Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. Entry into force 26 June 1987, in accordance with article 27 (1). References in the *International Legal Pocket Compilation*.

intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

In ratifying the Convention, the States bind themselves to guarantee to victims of torture the right to adequate compensation (article 14). The victim's rights are extended to provisions against cruel, inhuman or degrading treatment or punishment when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (article 16.1).

The issue of sexual exploitation is obviously considered in the conventions that are inherent to securing the human rights of the child.

The United Nations *Convention on the Rights of the Child*, of 1989²⁵ to date has been international convention with the largest number of ratifications. Its article 32 affirms:

(...)the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

In Articles 34 and 35 it covers the need to protect the Child from all forms of sexual exploitation, binding the States to undertake all appropriate measures to prevent the abduction and the sale of children or the traffic in children for any purpose or in any form:

Article 34:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in

²⁵ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, Entry into force 2 September 1990, in accordance with article 49. References in the *International Legal Pocket Compilation*

particular take all appropriate national, bilateral and multilateral measures to prevent: With

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35:

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

The relevance of the Convention on the problem of new forms of enslavement and exploitation is also outlined in the sections on economic, social and cultural sphere which establish numerous rights.

With reference to reinforcing the instruments prescribed by the international human rights code, one that is worthy of mention is the adoption of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*²⁶. The Protocol defines the measures that States Parties must undertake to guarantee the protection of the child from the sale of children, child prostitution and child pornography. In article 2 of the Protocol, *the Sale of Children* is defined as:

Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

Child prostitution means:

the use of a child in sexual activities for remuneration or any other form of consideration;

²⁶ Adopted and opened for signature, ratification and accession by General Assembly resolution 54/263, of 25 May 2000. Entry into force on 18 January 2002. References in the *International Legal Pocket Compilation*.

Child pornography means:

any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

On the specific theme of sexual exploitation and traffic in persons for the sex market, the activity undertaken by ILO is significant. In Ilo Convention n. 182, *the Worst Forms of Child Labour Convention*²⁷, the exploitation of children in prostitution is recognized as “one of the worst forms of child labour”.

Its article 3 subdivides child labour into four categories:

a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

International human rights law also takes into consideration migrant workers - the discrimination they face and their rights. The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*²⁸, adopted by the United Nations General Assembly resolution in 1990 strives to bring about measures inherent to both civil and political rights, as well as

²⁷ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour n. 182, adopted in Geneva, Session of the Conference 87, on 17/06/1999. Entry into force on 19/11/ 2000. References in the *International Legal Pocket Compilation*.

²⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990. Entry into force July 2003, in accordance with article 87 (1). References in the *International Legal Pocket Compilation*.

economic, social and cultural rights, also granting additional rights to the families of migrant workers. Article 2 of the Convention focuses specifically on the definition of this category of workers.

The articles that are more closely related to the problem of human trafficking concern certain freedoms like the freedom to leave any State, including their State of origin (article 8); the migrant worker's right not to be held in slavery or servitude (article 11).

The Convention establishes a series of obligations that State parties respect in the area of the human rights of migrants: for instance there must be the protection from torture or cruel, inhuman or degrading treatment or punishment (article 9), with reference to freedom and security, migrant workers are entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions (article 16) and in relation to the confiscation, destruction or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits (article 21). Other guarantees include the Migrant workers and members of their families have the right not to be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually (article 22) checking the work recruit agencies that employ workers abroad.

CHAPTER 2 - MIGRATION, TRAFFICKING AND CRIMINAL ACTIVITIES IN EUROPE

THE TRAFFICKING OF HUMAN BEINGS IN THE CONTEXT OF MIGRATION TODAY

The phenomenon of migration continues to grow worldwide.

In the International Organisation for Migration's (IOM)²⁹ latest Report of the year 2005 there were anywhere from 185 to 192 million people migrating (45% of migrants being women).

The European Union at present counts 492,8 million inhabitants³⁰. Nowadays, the presence of foreigners within single EU countries is markedly diversified and depending on the national contexts even the percentage is different.

The restrictive measures many European countries adopted against foreigners starting in the mid 1970s have in fact notably restricted the chances to legally enter a country for work reasons, regulating, in a progressively stricter manner, the chances of joining family members, or obtaining access to seasonal employment -even in those countries which boast privileged or preferential "claims" owing to their colonial past.

Progressively, the criteria that single countries have adopted in relation to immigration have become very similar, especially with regard to the goals that ought to be pursued. Closing borders seems to be the final objective of many provisions which, in time, made *ex post* regularization of irregular situations ever more difficult.

Currently, the tendency is to devise a set of laws that are not always adequate under the profile of securing fundamental rights and freedoms, one need only to think about the problem of asylum seekers.

Human trafficking is a phenomenon that is closely linked to the adoption, on a regional scale, of systems that regulate migration flow.

²⁹ IOM, *World Migration Report 2005*, at: www.iom.int

³⁰ Estimates available at: http://en.wikipedia.org/wiki/Demographics_of_the_European_Union

The first stage of the industry of trafficking in human beings arose in the early 1980s. Shortly after, a series of functional specializations emerged in the different fields of exploitation.

Within the criminal domain the *sex business* in all its forms constitute a significant new international market run for the most part by more or less structured criminal organisations as the mafia that branch out into different countries thanks to corruption and the code of silence, especially in countries of origin and transit of migrants.

In Europe migration flow was studied observing the following aspects:

- legal/illegal migration and asylum seekers;
- legal, irregular and undocumented migration;
- illegal organized immigration;
- trafficking in human beings or smuggling of migrants.

In the socio-criminological context of analysis, illegal immigration and trafficking in persons represent the two most relevant categories. According to a Europol investigation conducted in Europe already in the year 2000³¹, both phenomena seemed to be expanding. Illegal immigration in Spain and Italy are striking. Other important countries of destination are Austria, Belgium, France, Germany, Greece, the Netherlands, Sweden and Great Britain³².

Still according to the latest Europol Report, in the last five years the number of trafficked persons in Europe increased, particularly in the Russian Federation, Ukraine, and in central South-Eastern Europe. Other areas in the world that supply victims of trafficking are countries of Eastern Europe, Western Africa and Latin America³³.

³¹ Europol, *2000 EU Organised Crime Situation Report*, Europol, l'Aja, 2001, available on line at: www.europol.eu.int

³² The following information is drawn from: Transcrime Report, N. 8, *Trafficking in Persons and Smuggling of Migrants into Italy. Analysing the Phenomenon and Suggesting Remedies. Final Report*. Executed by Transcrime for Italian Ministry of Justice and Italian Ministry for Equal Opportunities according to the Convention between the Italian Ministry of Justice and Transcrime on Realisation of Part of the research approved by the Interministerial Commission Ex Art. 25 of D.P.R. n. 394, 31 August 1999 in collaboration with Direzione Nazionale Antimafia, November 2003, available on line al sito web: <http://transcrime.cs.unitn.it/tc/40.php>

³³ Europol, *Trafficking of Human Beings for Sexual Exploitation in the Eu: a Europol Perspective, 2006*, available on-line at: www.europol.eu.int

The activities of exploitation examined in Europol's Report include sexual exploitation, child pornography, illicit trafficking of children in state di abandonment, illegal work and traffic in human organs and tissue.

In Western Europe figures point to roughly 120,000 women and children being introduced illegally. At present, most of the central and eastern states in Europe have become, in a different measure, countries both of origin, transit and destination that have developed true human being markets for ruthless traffickers and exploiters³⁴.

Though data remain rather imprecise, the most up to date picture of the situation is offered by the numerous operative and analytical initiatives undertaken periodically by the International Organisation for Migration (IOM) that conducts surveys and produces a yearly report on the flow of migration on an international scale³⁵.

Yet it is highly probable that the geographic extention and diffusion of trafficking involves higher figures than those provided by official statistics.

According to the American State Department Report *on human trafficking* in 2005, the overall number of trafficked individuals, per year, internationally, ranges from 600,000 to 800,000 units³⁶.

Data from the United Nations Office on Drug and Crime points to 127 countries as areas of origin and 137 countries of destination³⁷.

³⁴ European Union, *La tratta delle donne. Il dramma dietro al sogno: dalla povertà alla schiavitù sessuale. Una strategia europea globale*, available on-line at: www.ec.europa.eu/justice_home/news/8mars_it.htm

³⁵ IOM, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, IOM Migration Research Series, No. 11, Geneva, September 2002; IOM, *Victims of Trafficking in the Balkans. A Study of Trafficking in Women and Children for Sexual exploitation to, through and from the Balkan Region*, 2001

³⁶ Data from the Unodc Report, *Trafficking in Persons: Global Patterns*, 2006 cit.

³⁷ Unodc, *cit.*

Destination countries for trafficking in the european area ³⁸	Incidence of reporting of origin countries in the european area/ Very high	Incidence of reporting of origin countries in the european area / High	Incidence of reporting of origin countries in the european area / Medium	Countries both of origin and destination in the european area
Belgium	Albania	Czech Republic	Croatia	Poland
Germany	Romania	Estonia	Serbia Montenegro	Bosnia & Herzegovina, Kosovo
Greece	Lithuania	Hungary	Kosovo	Czech Republic
Italy,	Bulgaria	Latvia	Kyrgyztan	
Netherland	Ukraine,	Poland	Bosnia Herzegovina	
Austria	Russian Federation	Slovakia		
Denmark	Moldova	Estonia		
France	Bielorussia	Georgia		
Spain		Armenia		
Switzerland,		Uzbekistan		
United Kingdom		Kazakhstan		

Re-elaboration data available at: Unodc Report, *Trafficking in Persons: Global Patterns*, 2006, op. cit.

Reported human trafficking information by classification of the source

Research Institutes 18%

NGOs 18%

Media 5%

Governmental Institutions 27%

International Organisations 32%

Information source: Unodc *Trafficking in Persons: Global Patterns*, 2006.
ore than 1 person)

³⁸ Nigeria, Colombia and Dominican Republic are the other nationalities more affected by trafficking in the European area.

CRIMINAL ACTIVITIES RELATED TO TRAFFICKING IN HUMAN BEINGS AND THE SMUGGLING OF MIGRANTS

In the trafficking of human beings and illicit activities done for the purpose of aiding and abetting illegal immigration the operative perspective is of paramount importance.

Though human trafficking and illegal immigration are materially different they are run similarly in practice in the phases of transportation and in the transfer to the foreign country.

As previously mentioned herein, the distinctive element is the destiny of victims, that is the exploitation that the victims of trafficking undergo and the consent, always on the part of the migrant, to undertake the migration project. There are however other aspects that are not comparable to one another.

Their similarity becomes apparent primarily when the causes that determine human trafficking and aiding and abetting immigration are established. The factors that can be referred to can be divided into two categories: those that induce the use of *trafficking* services, the so-called *push factors* and those that contribute to making western European countries appealing, the so-called *pull factors*. The push factors include:

- the breakup of multicultural states and ethnic and religious conflicts;
- a greater number of natural catastrophes and emergency situations associated to great disasters
- political instability, wars and continued armed conflicts including civil wars
- the economic situation
- uncontrolled population growth;
- impoverishment from the dissolution of the welfare system.

On the other hand, the pull factors that make European countries appealing include:

- a lack of labour force and the demand for foreign workers
- a positive economic condition;
- a democratic system of governance and political and social stability;
- historic ties;
- a common language;
- an existing community abroad that serves as network;
- expectations.

The International Organisation for Migration also includes the globalization of transportations, markets and employment and, especially, in relation to trafficking in women for sexual exploitation, the socio-economic inequality of women in their countries of origin³⁹. These factors refer to the offer, yet demand must not be disregarded as well since, it too, is an indispensable element to create a new market.

In countries of destination, the labour demand, and the demand for low cost sex continues to surge rapidly, while in countries of origin the need and desire to build a better life are not only a material need but also a psychological need that is more and more diffuse among the peoples. Nowadays, illicit activities therefore intervene with these factors and converge and develop in an increasingly structured manner even if they preserve certain organisational aspects that are familiar and anchored in a specific territorial environment.

Organized crime is an important aspect of the organisation and trafficking in persons and migrants in Europe. Yet in sexual exploitation, particularly in some nationalities, situations that seem to reproduce a familiar or artisanal basis persist in a detached manner from the highly structured criminal reality.

In fact, if in the 1990s, the industry of illegal entries could also serve as a vehicle to transfer trafficked individuals today, the systems used by those who operate activities of sexual exploitation have in part changed.

Access to countries often occurs through legal channels, with borders crossed on buses and in private vehicles with regular documents, as for instance temporary visas that are almost always tourist visas, and which, once expired, make the victim even more vulnerable as she resides irregularly on a foreign territory.

At times, victims cross borders on foot and are intercepted by the *passeur* who in turn transfers the young victims to a contact that awaits for them near the border post. For more extended journeys, as for example in the cases of prostitution coming from Latin America or Nigeria, the destination country is reached via plane, and only in the most desperate cases, women destined to prostitution mix with illegal migrants from areas of the Mediterranean via Libya, Italy or Morocco and Spain towards other destinations.

³⁹ IOM, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, document available on-line from: <http://www.belgium.iom.int/StopConference/Conference%20Papers/10.%20Liz%20Kelly%20IOM%20STOP%20Conference.pdf>, cf. Transcrime *Report*.

Foreign transnational organisations do the recruiting in the countries of origin; at the intermediate level the trafficked are taken from one country to the other; and at the locale level there are people in countries of destination who use their connections with local crime organisations to take advantage of contacts of the sex industry and of the black labour market.

According to IOM, the actors involved in the process of trafficking for exploitation comprise:

1. Organizers from criminal networks;
2. Emissaries who operate in specific territorial contexts and cover particular domains in the single phases or control, other subjects that are not a part of an organisation but who look after certain functions
3. Subjects who have managerial know-how and operate on the sex market;
4. Subjects for logistic support, including people who detain the position/function in the public administration or in the police so they can have access to useful information and legal documents and avoid problems with the law;
5. Taxi drivers and people working in transportation, hotel and accommodation management who provide personnel for logistic support.

According to Europol⁴⁰ cases of human trafficking for sexual exploitation involve unlawful agreements between foreigners and locals to create a more integrated network that confers to locals the running of different kinds of illicit activities, not only from the country of destination where the unlawful activity requires a greater structural⁴¹, set up, but also in the country of origin.

Currently, many countries see women, aged 38 to 45, without family and children, actively conduct prostitution. Their role is extremely important, as they often lure victims into believing their empty promises without suspecting their involvement in crime-related fields. Women operating in trafficking have a variety of duties: they recruit victims; organize the trade in humans, arrange all the phases of transportation across the borders and even supervise all the technical aspects of the *business*.

⁴⁰ Europol, *Crime Assessment. Trafficking of Human Beings into the European Union*, Europol, the Hague, 2002, on-line from the site: www.europol.eu.int

⁴¹ Unodc, *Trafficking in Persons: Global Patterns*, cit. .

Recruiters can include married couples, modelling agencies that offer fake jobs, sports clubs which make phoney promises of prestigious work in companies and tourist agencies and job placement agencies offering work abroad.

☞ **An example of a criminal network specialized in human trafficking for the purpose sexual exploitation**

The example illustrated herein refers to a judicial investigation conducted in a Polish town. It features a specialized Polish trafficking network involved in sexual exploitation. Initially the organisation operated from an area of the Warsaw-Berlin motorway. It transferred girls from Polish territory to German territory as greater profit could be made. Subsequently, the girls would be transferred to German nightclubs in which the Polish group would contact Belarus recruit groups to exploitat the young women in Poland and Germany. The Polish group would buy the girls for 2000 euros and transfer them to Germany where they would pay 3000 euros plus expenses. The transfer operation of the Belarus girls across German borders is more complex hence *passeurs* are used as well as other operators to provide counterfeit documents. The police has intercepted the Poles and arrested them, but due to a lack of collaboration and communication among the countries, the German and Belarus group were not intercepted. In the months that it was operative, figures on the network point to 100 trafficked Bielorussian girls and scores of Polish girls.

Example presented by Doctor Fabrizio Barrica, United Nations Office on Drugs and Crime, at a Conference organized by MIJ, *Quando si tratta di persone*, Verona 26 – 27 October 2006,



The schema is available on-line at: <http://www.stabilitypact.org/trafficking/graph-b.png>

TRAFFICKING IN HUMAN BEINGS, CRIMINAL PROFIT AND CORRUPTION

Criminal profit from trafficking and smuggling of migrants is yet another aspect that deserves consideration.

When focusing on structured criminal conduct it is known that the primary objective is always profit thus this market along with the drug and arms market are considerably convenient as they generate a fundamental source of illicit earnings.

In 2005, as pointed by Europol results, human trafficking was regarded as the highest growing crime⁴². The latest figures provided by UNODC estimate that the turnover ranged anywhere from 7 to 10 billion dollars.

Despite the absence of precise financial information from Member States, the considerable sums of money that criminal organisations generate from human trafficking and smuggling of migrants can be speculated. As claimed by Europol⁴³, the earnings could serve to:

- self-finance the criminal organisation and its business;
- finance other illicit activities that the organisation operates in;
- launder, using the traditional money laundering channels.

An undisputed fact is that human trafficking and the smuggling of migrants remain extremely grave illicit activities which are rooted in pre-existent criminal situations that flourish in conditions of marked social vulnerability. From such a picture, it would seem that this market can only expand rather than shrink⁴⁴.

Moreover, legislative, administrative and investigative response from the police to contrast this phenomenon have not proven adequate when compared to the gravity of the situation. At times, it seems that some Member States have no preset strategy to fight such crimes. Europol, for some time now, has formulated some indications for a joint European and national collaboration.

Corruption is a thorny issue. The system would not be able to operate without conditions of relative security ensured by the complicity of personnel employed

⁴² *Proceeds from Trafficking in Human Beings...* 2005 Council of Europe, Moneyval (2005)7, in Europol, *Trafficking of Human Beings for sexual exploitation in the EU: a Europol perspective*, January 2006. To know more about the proceeds made by traffickers and exploiters in Spain, Italy and Finland, see E.U. Savona, A. Di Nicola, S. Decarli, *Mon-Eu-Traf - A Pilot Study on the Three European Union Key Immigration Points For Monitoring the Trafficking of Human Beings, For The Purpose of Sexual Exploitation Across the European Union*, prepared for the European Commission, Financed by the 2000 Stop Programme of the European Commission, Transcrime Report no. 3, Trento (Italy), 2002.

⁴³ Europol, *Crime Assessment – Trafficking of Human Beings into the European Union*, cited, in Transcrime n. 8, *cit*.

⁴⁴ V. Nikolić-Ristanović S., Čopić S., Milivojević B., Simeunović-Patić B. Mihić (eds.) *Trafficking in people in Serbia*; OSCE, Vds, Belgrade 2004, p.172. on-line at: <http://www.vds.org.yu/File/Trafficking.pdf>

by government offices, tourist agencies, immigration and diplomatic offices, and police officials. The bureaucrats and politicians entangled are generally people who work in ministries or interact with them. They can therefore transmit documents, useful information, issue visas and papers to allow emigration. This illustrates the typical situation of Countries of departure.

Other corruption cases were recorded by agents who work in areas where there is a high crime rate thus near borders and in large airports.

THE SEX MARKET AND WARS: THE MILITARIZATION CASE OF FORMER YUGOSLAVIA

The clients of the sex trade make up an extremely unhomogeneous group comprising men of all ages and from all social backgrounds.

In the last few years, the demand of western Countries for low cost prostitution services from trafficked women in the *sex business* and entertainment industry contribute to expand the demand.

Yet demand for paid sex services is found especially in large metropolitan areas where there is a high concentration of men. In the Balkan States, today, important industrial markets are being established and the military presence from the 1990s war is very consistent. The cases of Bosnia-Herzegovina and the province of Kosovo, administered by the UN, are emblematic⁴⁵ in relation to the issue of trafficking.

In Bosnia-Herzegovina a profitable women trafficking racket was identified to satisfy the demand for paid sexual services on the part of Nato's SFOR (*Stabilisation Force*) military forces. Though the proportions of the phenomenon are not uniform, according to local NGO data, the international presence would count for up to 50% of the turnover of traffickers; while the numbers given by IPTF (*International Police Task Force*)⁴⁶ are lower – at roughly 30%.

⁴⁵ See *Trafficking in Human Beings in Southeastern Europe 2002*, Report by Barbara Limanowska; United Nations Children's Fund, United Nations Office of the High Commissioner for Human Rights, Organisation for Security and Cooperation in Europe/Office for the Democratic Institutions and Human Rights, available on line at http://www.freetheslaves.net/files/09trafficking_see.pdf.

⁴⁶ A body comprising police officers and officials coming from the member states of the United Nations, created in 1995 following the Dayton peace accord with the goal to support and train the

KFOR (Nato Kosovo Force) and UNMIK (United Nations Interim Administration Mission in Kosovo) were publicly identified in early 2000 as a factor in the increase in trafficking for prostitution in Kosovo by the International Organization for Migration (IOM).

The trafficking industry was also assisted by Kosovo's proximity to source countries and well-established trafficking routes via Albania to the European Union (EU), as well as cooperation between Serbian, Albanian, Kosovo Albanian and Macedonian organized criminal networks. A lack of sufficient and experienced police officers and a weak criminal justice system also enabled the development of trafficking.

Although the development of trafficking can be attributed to the presence of the international community, the sex industry has subsequently developed to serve a wider client-base composed by the local community estimate now make up around 80 per cent.

Women are trafficked into Kosovo predominantly from Moldova, Bulgaria and Ukraine, the majority of them via Serbia. At the same time, increasing numbers of local women and girls are being internally trafficked, and trafficked out of Kosovo.

Less than three months after the deployment of international forces and police officers to Kosovo, trafficking had been identified as a problem by the Organization for Security and Cooperation in Europe (OSCE); and by January 2000, UNMIK's Gender Advisor had acknowledged, but not yet acted on, the problem.

The involvement on the part of international operators during the crisis was relevant.

In response to such events, the international agencies working on the territory have intensified the measures of contrast and control, transmitting information material and raising awareness.

local police corps. <http://www.fas.org/irp/ops/smo/docs/ifor/bosch06.htm>

CHAPTER 3 - THE DIFFERENT STAGES OF TRAFFICKING IN THE EUROPEAN CONTEXT

HOW TRAFFICKING WORKS

Prior to briefly examining the way trafficking is managed in Europe, it is important to identify, in broad terms, the basic characteristics of the countries involved in trafficking in this geo-political area:

United Nations considers Central and South Eastern Europe as a sub area, prevalently of origin, from which victims depart to then be placed on markets of exploitation of western countries. Different sources claim these nations are countries of destination for movement within the area as well as countries of transit .

At a national level within this sub-region, Albania, Bulgaria, Lithuania and Romania are considered countries of high incidence where trafficking originates. At a lower level, countries of departure include the Czech Republic, Estonia, Hungary, Latvia, Poland and Slovakia with trafficking oriented towards Western Europe.

A large number of those who are trafficked come from Belarus, Moldavia, the Russian Federation and Ukraine -countries of departure with a high incidence, while countries like Armenia, Georgia, Kazakhstan and Uzbekistan have a lower incidence. To these countries others involved in migration need to be added as Africa, Latin America and the Caribbean.

It must be underscored that each single phase of trafficking occurs in a determined location⁴⁷.

In particular:

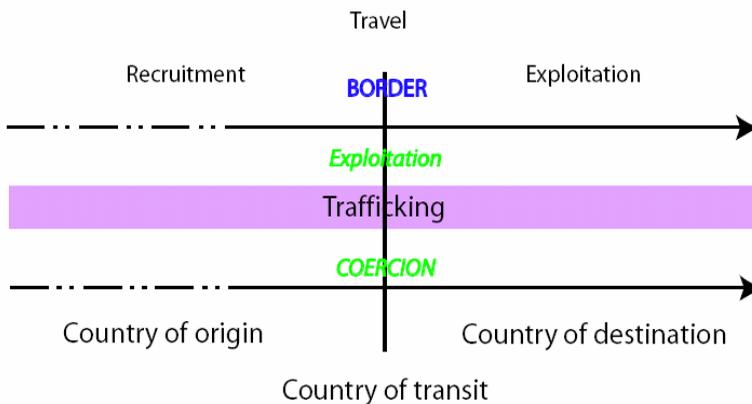
- recruitment occurs in the victim's country of origin;
- transportation involves the crossing of various countries and areas depending on the origin and the destination, and on the preset route;
- exploitation usually occurs in the country of destination, though cases of exploitation in the transportation phase are not uncommon.

⁴⁷ See Transcrime, *Report* n. 8, 2004

Debt bondage continues to play a pivotal role in actions of blackmail and exploitation, especially for prostitution originating from the Horn of Africa - Nigeria in particular. Debt bondage is accompanied by various kinds of physical and psychological violence which at times goes as far as to include family members of the victim in the homeland⁴⁸.

Generally, in multiethnic networks the local organisations contact the victims in their country of origin to offer them easy earnings abroad in jobs that are not related to the sex industry. Recruiters establish a relation of trust with victims which then radically changes in the phases of transport and destination, escalating to include violence and segregation, also owing to the fact that the number of subjects involved in the criminal operation has risen.

A common phenomenon in Europe involves the rotation of victims in which they are transferred in the hands of criminal groups operating from different locations. In cases related to women is not rare that they are exploited by criminal bands of different nationalities. The situation also applies both in case of trading young girls as in the cases that require that the victims be kept in total isolation from their surrounding context.

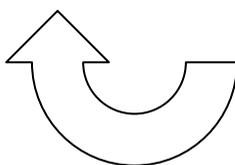


Fonte, IOM, *Counter-Trafficking Activities, 2004*, available on-line from:
http://www.un.org/events/women/iwd/2004/brochure_web.pdf

⁴⁸ On the role of violence as a means to control the exploitation of prostitution and, in general, as a fundamental component of the man-woman relation in some contexts see in the text.

IOM, Counter-Trafficking Interventions

Country of origin	Country of destination or transit
Prevention activities	Direct assistance
<ul style="list-style-type: none"> • Awareness raising/ Mass information 	<ul style="list-style-type: none"> • Protection/Shelter
<ul style="list-style-type: none"> • Capacity building and training 	<ul style="list-style-type: none"> • Health assistance
<ul style="list-style-type: none"> • Research/Data collection 	<ul style="list-style-type: none"> • Legal counselling
<ul style="list-style-type: none"> • Law enforcement training 	



Voluntary return and reintegration
<ul style="list-style-type: none"> • Travel assistance
<ul style="list-style-type: none"> • Reception assistance

Source IOM , *Counter-Trafficking Activities*, cit.

INNER AND OUTER ROUTES TO THE EUROPEAN UNION

Over the years the routes undertaken by traffickers have multiplied owing to the marked rise of migration flow and the progressive growth of countries involved in trafficking.

Transcrime distinguishes the routes in the following way:

The Baltic route

The route departs from the inner regions of Russia and the Baltic states and stretches to the coasts using maritime transport -mostly ferryboats. Victims are designated to Scandinavian countries. Though limited, there is also a land border which stretches into Finland and Northern Sweden.

The East European Route

The route crosses Poland, Hungary, the Czech Republic to reach Germany at first and then Scandinavia. Such itinerary is also the end journey for those who come by plane from Eastern Asia, Africa and South America.

The Central European Route

The route stretches from central European countries to Austria and Northern Italy entering through borders and mountain passes. This route uses motorways or buses to link the capitals of Eastern Europe to the biggest cities of the European Union, especially those in the east. Borders are at times crossed on foot with victims undertaking what seems as an endless march.

The Balkan Route

Access into the EU is obtained by crossing the Balkans, including Moldavia and Bulgaria. Generally, Italy and Greece are the first countries to be reached via small boats since there many unpatrolled areas.

Generally, the itineraries for this kind of transfers adopt the principal routes which have become customary, at times though they may change to avoid being caught by the police. The presence of patrols however is not the sole reason for which traffickers chose new paths; their choices are also oriented towards emerging new markets or political crisis of nations into which the trafficked must transit, the conditions forecast to obtain a visa to move freely across some Countries and the greatest or least support that local criminal bands offer to the illicit activities operated by foreigners.

The African Route

The route goes from Western African countries across Morocco and/or Algeria. Entry into the EU involves crossing the Gibraltar Strait to then landing in Spain and Portugal. The route is also used as a final connection for the victims coming from Asia, other areas of Africa and Latin America.

Nigeria⁴⁹ however is a case of its own. It is one of the most significant countries of origin for the trafficking in human beings for sexual exploitation. Nigerian girls travel by plane from the main cities in their country, (Lagos, Benin City), to Europe's biggest airports, (Paris, Berlin, Amsterdam, Milan and Rome).

⁴⁹ For further information see what follows in text.

To enter into the EU, aside from these transnational routes there are other inner ones which serve for transfers to places of destination. This phase is surely simpler as the free movement of people – prescribed by the Schengen Agreement– allows every individual on EU territory to move freely within the EU. According to Europol, Greece, Italy and Spain are the centres of transit and distribution of trafficked victims in the EU. From these countries, routes towards Northern Europe develop to touch Belgium, France, the Netherlands and can stretch to include Scandinavian countries via land, or Great Britain when crossing the Channel by train or ferry.

A similar itinerary can apply to the trafficking via land across Austrian and German borders. To this network transfers following the victims' arrival by plane to the EU have to be considered. Capitals thus are the privileged direct destinations as in major airports the checks are more superficial and airport security personnel seem more corruptible.

Furthermore, large cities enable transfers to final destinations by public means or by car.

CHAPTER 4 - TRAFFICKING IN HUMAN BEINGS AMID EXPLOITATION AND DISCRIMINATION

THE DIFFERENT WAYS TO EXPLOIT THE VICTIMS OF TRAFFICKING

In Europe, the sex market is unquestionably the market that absorbs the vastest number of victims of trafficking. Girls ending up in the sex industry are placed in either the segment of prostitution practiced outside, along roads or in prostitution operating indoor, in brothels, apartments, hotels, motels, nightclubs, beauty or massage centres.

Other activities that normally exploit women are those related to forced labour and domestic work⁵⁰ (54) and forced marriage. In the former case the condition is one of servility and forced labour.

The element of coercion is certainly a useful index in the definition of forced labour. According to Convention n. 29 on forced labour by the International Labour Organisation⁵¹ article 2.1 indicates that:

the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily

The phenomenon was identified in some countries, specifically in Great Britain⁵² where it was recently monitored. What emerged was a close relation between forced labour and the informal sector. Such labour contexts generate grave human rights violations. In synthesis the following scenarios could occur:

⁵⁰ Working paper Anti-Slavery International 2006, *Trafficking in women forced labour and domestic work*, in the context of the Middle East and Gulf region, available on-line from: <http://www.antislavery.org/>

⁵¹ Ilo Convention on forced labour, n. 29, Geneva, 28 June 1930. References on International Legal Pocket Compilation.

⁵² K. Skrivsankoka, *Trafficking for forced labour in UK countries*, International Anti-Slavery Report, 2005, available on-line from: [www:antislavery.org](http://www.antislavery.org)

- Lack of negotiable terms for personal work conditions due to isolation and the impossibility of voicing one's rights
- exclusion or at any rate marked limitations to have access to public infrastructures and social benefits
- restrictions on laws related to access and residence in the territory of a foreign country and to debts related to the travel or the obligation to pay and buy the work placement from different kinds of agencies progressively deducting the price from the pay⁵³.

Male victims of trafficking instead tend to be used for activities of irregular forced labour and in different kinds of jobs and companies, even if conditions of sexual servitude exist in particular among South American transsexuals⁵⁴. The areas of work in which men are employed most include the construction sector, the agricultural field, manufacturing companies and the service sector, especially restaurants and hotels.

The activities associated to labour exploitation obviously involve the problem of protecting workers and the development of illegal jobs.

Forms of enslavement surely also include begging, especially when the subjects are disabled. The treatment these people are subjected to is grave and is comparable to the treatment of those who are trafficked for sexual exploitation.

⁵³ *ibidem*

⁵⁴ Other references in the next section.

“Some examples of the purposes of trafficking

- forced prostitution
- domestic work
- illegal labor
- bonded labor
- servile marriage
- false adoption
- sex tourism and entertainment
- pornography
- begging
- use in criminal activities

From the *Coalition to abolish slavery and trafficking* at: www.traffickedwomen-org

MALE SEXUAL EXPLOITATION

In Europe, though the trafficking in human beings destined for sexual exploitation affects a striking number of women, men are also involved.

It has become increasingly common to hear of episodes of sexual exploitation of young boys and men, especially in the sex business that reserves a segment for transsexuals. The latter are subjected and exposed to the type of abuses that are similar to those women face. Yet male sexual exploitation today sees a growing proportion of young boys sell themselves on the sex market, or bound to situations of servitude linked to debts bonds in order to integrate other sources of income for survival or simply to overcome the failure of their migration project. Most of these boys end up prostituting themselves on the homosexual market, at times occasionally without it becoming a systematic activity. This type of

sexual exploitation scenario is known to apply quite diffusely to young Romanians, Maghrebines and Kurds. In this very segment of the prostitution market it is often difficult to distinguish between severe conditions of enslavement from those that occur through consent. In Europe, the most portion of the male prostitution of those who are trafficked comes from South America. In fact, immigrant transsexual prostitution, until recently considered totally free, today seems to be likened to the trafficking in girls. Transsexuals and gay transvestites, contract a debt bond with those who exploit them, giving them the chance to operate abroad, particularly in the initial phase of exploitation where conditions of enslavement and control entail a rather harsh discipline that can lead to assault and abduction. The exploitation of transsexuals has a lot in common with the acts perpetrated against Nigerian girls; similarly to the latter which see a mature woman exploiter (known as "*maman*" or "*madame*"), almost always a former, or in some cases still a prostitute, the recruiting and exploitation of transsexuals is also prevalently run by mature transsexuals (men or women), frequently still working as sex workers and belonging to the first generation of transsexuals who had reached Europe to prostitute themselves. Here too exploitation is secured by local criminals (this phenomenon occurs in Italy) who at times establish an affective bond. The two also share a similar debt bond mechanism.

As with the trafficking in women, transsexual immigrants too have difficulties in obtaining means of self-sustainment from work in their economically disadvantaged countries. Moreover, in these subjects, the marked desire to approach the sexual gender they feel closest to often influences their choices and leads to their being trapped in debt bonds and blackmail. They sometimes follow the example of someone they know, or are recruited by local scouts from local networks in Europe. Today, transsexual prostitution associated to trafficking has the same dynamics as its women counterpart. If, in the past, these subjects were commonly associated with their need to affirm their femininity, today the emerging reality embodies other characteristics. Frequently they are extremely young, therefore just children. In such cases next to the traditional figures who operate the business, a special figure in charge of operative control and road protection is flanked, obviously for money.

As with women, these men also depart from being subjected to heavy exploitation and in time this can be transformed into an active role within the organisation that recruits and exploits other young victims. A type of physiological evolution whose alternative is the chance, once the debt has been

paid off, to change the way the activity of prostitution is conducted, preferring the indoor activity and possibly reaching clients through ads on internet and in newspapers.

The dimension and condition to define slavery and servitude.

Dimension	Condition
Social	Marginalization and exclusion Isolation and existential solitude Dependency due to lack of sociality Condition of blackmail No protection
Economic	State of extreme need Underpaid work by 2/3 Inadequate sustenance for rent Degrading physical work for over 12 hours daily No power to negotiate pay State of debt
Juridical	Lack of valid ID and residence documents Juridic Vulnerability Difficulty to plan to return to their homeland
Political	Civil invisibility Non recognition of status No representation Lack of collective participation and no recognition of the political rights
Psychological	State of enslavement Subordination and submissiveness Low behavioural reactivity State of stress from dependency Agire servile e corrispondente alla volontà dello sfruttatore
Cultural	Acceptance and respect of the agreement Inability to understand exploitation Idea of subjection as a temporary condition Lack of points of reference

Table reformulating the original proposal contained in F. Carchedi, *Introduzione*, in F. Carchedi, G. Mottura, E. Pugliese, *Il lavoro servile e le nuove schiavitù*, Milano, F. Angeli, 2003.

MINORS

Children who are victims of trafficking deserve special mention. They are exploited in many activities that range from begging, prostitution and pornography, theft and other illicit activities as pickpocketing, made to sell on streets, railway stations, subways and shopping centres. Other activities that are now seeing their involvement include drug dealing, and in some circumstances even their exploitation in agriculture and in pastoral farming.

In the European context, the problem related to children emerged in tandem with the economic and institutional readjustment period Eastern European countries have had to face in the last few years.

Stories of child abduction, of poor families selling their children, or abduction from orphanages in Eastern European countries are by now not only reported in newspapers but also appear in many investigation and judicial reports conducted in a number of countries of destination.

After being trafficked in Western countries and adequately educated in the task through means that involve violence and mistreatment of unheard-of cruelty, they are coerced into giving their earnings to their exploiters who demand to be paid for the debt they have contracted on their journey, thus justifying their right to vindicate power over them and enslaving them.

Even unaccompanied foreign minors are a category of minors that tend to fall prey to conditions of severe exploitation. Such phenomenon is extremely recent and complex due to the many factors that characterize it. The risk of leading children to conditions of being victimized even more and being subjected to violence deriving from erroneous and unclear policies on immigration is a realistic one. Hence, in the perspective of securing an individual's rights and, in particular, in considering the principle on the best interest of child affirmed in the *International Convention on the Rights of the Child*⁵⁵, the minors involved are the first and foremost victims, even though the activities which they are exploited for make them commit crimes.

Information obtained from the 2004 Save the Children Report conducted along with the European Network Against Child Trafficking⁵⁶ examines six countries

⁵⁵ References in the text and in the *International Legal Pocket Compilation*

⁵⁶ Save the Children, European Network Against Child Trafficking, *A Report on Child Trafficking. Bulgaria, Denmark, Italy, Romania, Spain, United Kingdom*, march 2004, Publication by Progetto Enact, co-financed by European Commission in the Framework of Stop II Programme. On line at:

which were grouped into three main geographic areas: South-Eastern Europe (Bulgaria and Romania), South-Western Europe (Italy and Spain), and North-Western Europe (Denmark and the United Kingdom). They were respectively identified as areas of origin, transit and destination, and only destination. Yet the data on the state of things for the child who are victims of trafficking prove to be fragmented and incoherent. In some countries, there is the perception that such phenomenon is present but objective evidence is difficult to obtain. Regarding the monitoring of single countries, Italy resulted affected by such phenomenon but mainly as a country of transit of minors trafficked from Eastern Europe and Northern Africa to be destined for Central and Northern Europe. The acquired knowledge was based mainly on the number of minors who had used the programmes of social protection.

In Italy, the trafficking in children is closely linked to sexual exploitation. However, in the last decade, other forms of exploitation and abuse as for instance child labour, begging, illegal international adoptions, and in a few cases, the trafficking in organs, have also clearly surfaced. Yet until now, there is no official data on such phenomena. In Italy children are sexual exploited in a range of ways that include paedophilia, child pornography and prostitution. Almost always the young age of the girls engaged as prostitutes is an added value that is explicitly requested by the market. Based on figures provided by social workers and associations, from 2001 until spring 2002, the incidence of child prostitution in Italy counted between 4.2% to 6.2%, that is anywhere from 542 to 663 victims of the total,. Most were trafficked from Eastern European countries, in particular Albania, Moldavia and Romania, as well as Nigeria. Currently the numbers are much higher even if a detailed analysis of the different areas would be required.

In considering Bulgaria, national statistics point to 2,128 children as victims of abuse solely in the year 2002. Such figure is 50% higher compared to the previous year. Victims are aged between 8 and 13. Always according to national statistics, 42 children were said to be kidnapped, 99 were forced to beg and 40 coerced into prostitution. The same surge in tendency applies to trafficking. Based on figures of the Bulgarian Ministry of Interior, from 1995 to 2000, the number of ascertained kidnappings reported were 158. Bulgaria is to be considered a country of origin and of transit for trafficking. The countries of

www.savethechildren.it/2003/download/publicazioni/enact/enact.pdf. The Project has produced also the website: www.enact.it.

destination of children which transit to Bulgaria are Greece, Turkey, Italy, Cyprus, Macedonia, Albania and Central and Western European countries. Even in this case trafficking is mainly for sexual exploitation. In the Save the Children Report, mention is also made to the sale of Bulgarian babies sold to Greek or Spanish families; similar episodes have been reported in Italy too⁵⁷. Traffickers identify pregnant women – who are normally poor – and convince them to sell their children. A trip to Greece is usually organised so that babies can be born there and the required documents prepared. The cost of each newborn is approximately 15,000 euros for boys and 7,000 for girls. The trafficking in organs in these children is not excluded, but to date there is still no objective evidence. The recruitment of traffic victims for sexual exploitation occurs in a number of ways: abductions, false promises of employment or of a better life; it is often the relatives, friends or husbands of the child victims that sell them to the traffickers. Some victims, originating from other nations, stay for several weeks in Bulgaria, where they undergo all sorts of abuse and physical and psychological violence which makes these children even more remissive. Upon arrival to their destination, young girls have their documents confiscated and they land onto the sex market.

In Romania, the Bucharest office of the IOM represents the most important institution in collecting data as it is committed to identifying and returning trafficked victims to their homeland. Of the overall people who received assistance in the period 2000-2003, 22% comprised children. Statistics show that there is an upturn in percentage on the number of children trafficked (roughly 25% in 2000 – and 36% in 2003). Romania is a country of transit for those heading for Bosnia, Serbia, Macedonia, Kosovo, Albania, Greece, Turkey, Italy, Belgium, Norway, Holland, Germany, France, Ireland, Spain and Austria, and a country of destination for those coming from Moldavia and the Ukraine.

The chance for citizens to travel in the countries that have signed the Schengen agreement has given rise to a greater migration flow for reasons of employment, to the traffic in children for labour exploitation, to prostitution and begging. The age of children ranges from 15 to 17 years of age. Criminal organisations are very well structured and efficient. They adopt the same strategies as the ones used in the traffic in adults. In the case of children who are destined for sexual

⁵⁷ An investigation conducted in 2006 by the Procura distrettuale antimafia of Trieste (Italy) on the traffic in newborn children is worthy of mention.

exploitation, the victim can be sold several times with methods of recruiting that include the usual promises of easy earnings or promises to the family of marriage. It is not uncommon for families to approve the “recruitment” of the children, despite their conscience knows what fate will await them.

Knowledge of the Danish reality is very limited. Minors are known to be present in the prostitution racket though their number is not significant. According to a study, part of the 155 irregular foreign women expelled, from January 2001 and October 2003, were adolescent at the time of their entry. The number of children, who came from mostly Romania, and are trafficked in Denmark for criminal purpose however continues to grow. Victims of trafficking come from Latvia, Lithuania, Poland, Romania and the Czech Republic; their ages ranges from 15 to 17.

From the Save the Children report on Spain, 274 children were sexually exploited in 2002, 168 of which were girls and 98 of the girls ended up in prostitution and 38 in pornography. Investigations by Spain’s Ministry of Interior in 2002, state that there were 8,401 cases of missing children. Girls originate mainly from Romania, and a high number of foreign children are unaccompanied - over 6,000 – they reach the country alone, without parents or relatives, especially from Africa. The majority of children involved in sexual exploitation are under the age 12. The methods of recruitment are always the same. Criminal organisations look after every aspect: documents, invitation letters, tickets and small loans for the victims (about 2,000 euros), to make border-checks less tight by simulating entry for tourist reasons⁵⁸.

No official statistics on trafficking in the United Kingdom are available. What is generally known is that victims come for the most part from the Balkans, the Baltic states and from Thailand, though a rising number of cases are also recorded coming from Western Africa, Vietnam and Cambodia. Minors are prey to trafficking for reasons of sexual exploitation and even for labour.

In relation to minors, the theme of illegal adoptions must furthermore be considered. It would seem that Bulgarian groups have become active in

⁵⁸ Save the Children, Enact, *A Report on Child Trafficking. Bulgaria, Denmark, Italy, Romania, Spain, United Kingdom*, cit. In October 2006 Save the Children presented its Policy Paper: *Visible Evidence – Forgotten Children* on the identification of the victims of child pornography to the European Parliament. The data is drawn from Interpol’s database on roughly 200,000 photos that are proof of the sexual abuse that over 20,000 children are subjected to, and less than 500 were identified. On line at: http://www.savethechildren.it/2003/download/pubblicazioni/Stop-it/Visible_Evidence_Forgotten_Children2006.pdf

trafficking, acquiring a prime role in such illegal activity. Cases were studied in Italy, France and Portugal and investigation has shown that Bulgarians tend to work in complicity with local subjects. Evidence seems to confirm the existence of a global market that involves more than 1 million children and yields a turnover of over a billion of euros a year. Last year, after the the number foreign adoptions surpassed the adoptions of Russians, the Russian government prescribed a series of measures to contrast illegal adoptions. As demonstrated by the statistics that came to be public at the end of 2004⁵⁹, the past decade has witnessed over 45,000 Russian children adopted in foreign countries, and 9,000 adoptions just last year.

THE VICTIMS OF TRAFFICKING

The information collected by numerous international, local, government and non-governmental organisations tackling the phenomenon of trafficking can serve to outline a rather complete profile of the women involved in the process of sexual exploitation of women⁶⁰

Average age among the subjects ranges between 14 and 32⁶¹; while most of the people identified, who eventually used the assistance offered to them by organisations that specialize in the rehabilitation and reintegration of victims, was between 18 and 24.

Furthermore, in the last few years, the number of subjects who are minors surged though this aspect is in contrast with other elements, for example with the entry of foreigners into countries with regular residence permits or tourist visas.

⁵⁹ Europol, EU Organised Crime Report (Public version), on line at www.europol.europa.eu/publications/EUOrganisedCrimeSitRep/2005/EU_OrganisedCrimeReport2005.pdf

⁶⁰ International Organisation for Migration, Stability Pact for South Eastern Europe, International Catholic Migration Commission, Counter-Trafficking Regional Clearing Point, First Annual Report on Victims of Trafficking in South Eastern Europe, Vienna, 2003.

⁶¹ Much evidence on the issue is available with a minimal margin of discrepancies. For information see: V. Nikolić-Ristanović, S. ĆCopic, S. Milivojević, B. Simeunović Patić, B. Mihić (eds.), *Trafficking in people in Serbia*, p. 57.

After Albania, the most important country of origin from the mid 1990s, other countries that were involved in trafficking in a significant way from Eastern Europe include Moldavia, Romania, Bulgaria and Albania itself, from 2000 to 2003⁶². Lately however the nationalities mixed up in trafficking have grown.

Recently European prostitution markets have seen a rise in the presence of Asian women, mostly from China, the Philippines and Sri Lanka, as well as women from Morocco which, until a few years ago, were engaged for sexual services though only for clients of their nationality. For women of Chinese descent (and Nigerian women), debt bonds and the involvement of the family in the initial phase are key factors that affect the success of the exploitation that ensues. In the Mediterranean countries of Europe as Italy, Spain and Greece, the prostitution of Chinese women is still a reality that is mostly confined to the community, whereas in Northern European countries where the Chinese community has established itself for some time now, as in France, Great Britain, Belgium, Holland and Norway, Chinese prostitution is present on streets, brothels, appointment houses and bars.

In general and regardless of nationality, the women who are particularly exposed the risk of trafficking include:

- Single women of all regions represent the majority, 65% of the total, of the victims that are trafficked.
- Divorced/separated women as they are an appealing prey for their fragile position and since they are often unable to support themselves alone.
- Widows whose condition is similar to that of divorced/separated women. They are often incapable of finding regular employment in a short span of time and to support themselves. They thus lower their guard and tend to trust those who promise them a secure and immediate job.
- Migrant women who leave their homeland to seek employment. Many resort to illicit means to pursue their objectives making them easy prey to traffickers. They cannot even appeal to the police as they would be promptly sent back to their homeland.
- Women and girls who fled their Countries due to conflicts and seek refuge in refugee camps. They are easy prey not only for exploiters but also for soldiers who use their sexual services

⁶² See *Regional Clearing Point*, p. 14.

- Women who have to leave their home due to inner conflicts, vast industrial projects, natural disasters which make it impossible for them to live in their area.
- Disabled women and women with mental or physical disability or limitations.
- Girls living in orphanages or institutions for the poor whose possible disappearance would go almost unnoticed.
- Mothers seeking employment to support their children⁶³.
- Women of ethnic minorities who must often face different sorts of discrimination.
- Girls, and most of all adolescents, who live in public national assistance institutes.

In most cases, the women who enter the sex *market* have little education compared to the average population of a particular country. Differences can be observed when comparing the levels of education of different nationalities: for instance girls coming from Kosovo and Albania often have a lower education⁶⁴ than Moldavian girls who attended high school, at least the first years of high school, prior to being victimized by criminal organisations. The importance of attending school is unquestionably fundamental to learn about the threat of *trafficking*.

Indicators on the *period of time in which women/girls are exploited* cannot be quantified though prostitution follows certain cycles.

There is a short cycle of prostitution that lasts three/four months. Here victims find a way out and succeed to escape because they react to a situation of grave enslavement or earn enough money during that period. An intermediate cycle of prostitution of a year or two which can be interrupted for the same reasons mentioned above, and a long period in which violence generally subsides and terms of compromise with their exploiters are reached alongside a greater degree of submission.

⁶³ The number of mothers that are victimized and fall prey to trafficking was estimated to be approximately 15% of the total. Data reflect Moldavia, but are similar and therefore applicable to other states.

⁶⁴ *Ivi* pag. 15. Figures show that over 85% of girls from Albania and Kosovo have not even finished elementary school; and 15% of Albanians and 5% of Kosovarian girls have never been to school.

“The chain of sexual exploitation of girls: an example within the Nigerian community

Nigerian migration to Europe has attracted considerable attention both from governments and in the media. This is partly because some elements of this migration flow are related to trafficking in persons and other criminal activities. (...) Traffickers offer young women to travel to Europe, usually luring them with promises of good jobs. Although women are increasingly becoming aware that they will have to work in the sex business, for many this often comes as a surprise. Before the journey, the woman and the traffickers agree that she incurs a debt in the order of, say, US\$ 40,000-100,000, which normally takes between one to three years to pay back. The pact is sealed through religious rituals and is perceived as binding. In Europe, these rituals are often characterized as voodoo and presented in a sensational manner.

Once they have repaid the debt, it is not uncommon for the prostitutes themselves to enter the trafficking networks and recruit new women. (...) For many Nigerians travelling to Europe without a valid passport and visa, the journey leads through a third country where the forgery is not as easily detected. Others travel by road through the Sahara and are smuggled into Europe by ship.(...).

In short, there are three roads to Europe for Nigerians who wish to emigrate: a residence permit, a visitors visa or illegal entry. (...)

The widespread wish to emigrate, combined with the obstacles, create favourable conditions for trafficking. (...) Young women first contact with the trafficking network almost always happens through informal networks. (...) In many cases, friends or relatives of the woman are the first link. The conversations about travelling to Europe often take place in her home or in other familiar surroundings (...). In this phase, the women are lured with promises of work as maids, sales personnel, or hairdressers, or with work in factories or restaurants, or with educational possibilities (...).

The emigration of Nigerians to the European prostitution market is very concentrated in one area, namely to Edo State and its capital Benin City (...). Since Benin City is known as the main junction for prostitution related emigration, women from other parts of Nigeria go to Benin City if

they wish to travel to Europe (...). Most women leaving Edo State for Europe to work as prostitutes go to Italy, followed by the Netherlands, Spain, Germany, Belgium and Austria (...). Early Nigerian emigration to Italy in the 1980s was not dominated by prostitution, and those who did arrive to work in the sex industry were often independent and not victims of traffickers. (...) Nigerian trafficking in Europe is built on a pact between the person trafficked and the traffickers and has a specific organisational form. (...). As mentioned, the first contact (...) puts the woman in touch with a “madam” who is the most important person in the network in Nigeria. Sometimes there is a third person who acts as a sponsor and finances the trip. However, the sponsor and the *madam* will often be the same person (...). In addition to the *madam* in Nigeria, there is a *madam* in Italy who is responsible for the woman after she has arrived. The *madam* in Europe is closely connected to the *madam* in Nigeria; often, they will belong to the same extended family. The other central persons are a religious leader (*ohen*) in Nigeria, the human smugglers who are responsible for the journey (*trolleys*), and a male assistant to the *madam* in Italy (*madams black boy*). (...) The sponsor is responsible for paying all costs of the journey and settling abroad.

These make up a debt that the woman is required to pay back. It normally takes between one and three years as a prostitute in Europe to pay back this amount (...).

Excerpts from: Carling Jorgen; International Organization for Migration (IOM) *Migration, Human Smuggling and Trafficking from Nigeria to Europe*, Oslo, International Organization for Migration, 2006

SEXUAL EXPLOITATION OF WOMEN AS A SPECIFIC FORM OF VIOLENCE

Women decide to migrate, often becoming prey to *trafficking* networks, to escape conditions of economic deprivation and the absolute void of perspectives. All the countries that "export" women to place them on the prostitution market have serious problems in their structure that relate to a marked sexual discrimination. In addition to this situation, there can often be cultural hardship, strong limitations to personal freedom or precarious family situations that are to be associated to the above.

The exploitation industry and the interest it nurtures in women only reconfirm the fact that there is no gender equality but only a marked dominion and control on the part of men over women and children.

Women, young people and children are mostly subjected to violence and abuses that are for the most part of sexual nature which rarely touch adult men, or if it does touch them it is because they are in the homosexual or transsexual segment. In such circumstances man takes on the connotations that are reserved to women and is thus subjected to the same type of violence women and children suffer.

The issue of sexual discrimination, especially the violence it generates against women, introduces a series of meaningful implications to the trafficking for the purpose of sexual exploitation as it becomes one of the "structural elements" that bonds the victim to her trafficker.

The physical, psychological and sexual violence is surely the mechanism applied to secure and guarantee the dependence and submission of the young victims of trafficking to the organisation that exploits them. If the more consolidated scheme in the 90s was based on, initially, a treatment of blackmail for "educational" purposes, in the phase that followed, the act of prostituting oneself occurred, at least at first, in ways that left no room for discretion.

The methods organisations adopt to manage the victims always involve: strong limitations to their personal freedom, isolation, the control of money, coercion to use drugs and alcohol, exposing the victims in pornographic films and using physical and sexual violence as methods to secure enslavement and dependence.

Physical force against the trafficked and blackmailing their family very often commonly adopted instruments to overcome any possible resistance on the part of the victims and to regulate their subordination in daily life.

The methods of physical violence are very frequently real and systemic tortures that are applied for extended periods of time.

Hence the systematic use of physical and psychological violence on women serves to instill in the victim the conviction that they cannot oppose the reality that surrounds them and therefore induces them to passively accept such dimension. Furthermore, the use of violence can serve to obtain specific results: it can be a punishment for the meagre results obtained from their activities, a punishment for their non-compliance to the rules imposed by those who control the operation, a mechanism of dissuasion to impede any possible craving for freedom, escape or emancipation of the victim, as an instrument to resolve any possible conflict, or it can also be a form of pressure to keep any possible contacts with the outside world at bay and above all to keep the police or associations committed to this issue away⁶⁵. Forms of atrocious violence against Nigerian victims of trafficking still seem widespread and it comes in tandem with religious magic rituals that create in victims a total psychological incapability to react.

Today the organisations involved in exploitation tend to focus on establishing a relationship with their victims which ensures their loyalty as well as continuous earnings. They adopt different types of persuasive behaviour to guarantee their control of the victim's earnings. Methods include offering the victims greater individual freedom, the chance to enjoy themselves by going for instance to the disco, gifts or techniques directed to flatter girls with the intent of perpetuating their control.

The evolution of the way exploitation is managed by certain criminal organisations is a prerogative that certain groups adopt like, for instance, the Romanians who rather than resorting to physical violence tend to exert different kinds of pressure, especially psychological pressure and threats. Managing the exploitation business in such a way makes it possible for the offenders to face fewer risks as by shifting the perspective and proving the victim is partially involved in the criminal plan, face less severe accusations. Therefore, the

⁶⁵ P. Romani, *Condizioni della persona trafficata e mercati di inserimento*, in F. Pastore, *cit.*

tendency to subject victims who work in prostitution to less inhumane treatment and conditions stems from a calculation of opportunities.

Thus such calculations are the response of organisations when faced with enhanced actions of contrast and greater custodial sentences for crimes of trafficking in the countries that adopt regional laws and the United Nations Protocols on human and migrant trafficking.

RACIAL DISCRIMINATION, TRAFFICKING AND SEXUAL EXPLOITATION

In human trafficking, the problem of the racial or ethnic barriers of victims is closely related to the violence against women⁶⁶.

The systemic inequality of women in such circumstances is further exacerbated by additional social disadvantages of different sort. When observing the categories that run a greater risk of becoming victims to trafficking, often, the association between social marginalisation and race are immediately evident.

The effects that such a combination produces can be particularly grave both in the migrant's country of destination -as it can heavily affect the treatment they receive from the local population and from other ethnic groups in the territory, and in the country of departure -since a racist ideology can fuel the commerce of women coming from particular areas of the world⁶⁷.

An unquestionably meaningful element in the analysis of the inter-relation between gender/race involves the existing relation between prostitution activities and the earnings gained by the subjects involved. As in all segments of the job market, even in the commerce of sexual activities there are particularly heavy work conditions at the lowest hierarchical levels of the profession and the

⁶⁶ A first accusation of the importance of the racial discrimination issues in relationship with gender dimension can be traced to the Beijing *Declaration and Action Platform* adopted during the IV international United Nations Conference in 1995.

⁶⁷ The existing relation between the trafficking in human beings and racial discrimination were addresses in a debate at the World Conference on Racism, Racial discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, on 31 August, 7 September 2001.

treatment reserved to victims can vary a lot depending on the nationality and ethnic background. Liberalism in prostitution is the condition that occurs when new and particularly weak women are placed on the market and their placement creates uncertainty in the progress their senior and more professional counterparts had achieved. Subdividing the work structure according to national, ethnic or racial background does not only constitute an economic factor but rather it becomes a core element on which social and cultural distance that lead to the condition of isolation of women and children are built. Yet for exploiters it is guarantee of dependence, of loyalty and of blind obedience.

CHAPTER 5 - TRAFFICKING IN HUMAN BEINGS AND POLICIES ON PROSTITUTION

MIGRATION, TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION AND PROSTITUTION: NOT SOLELY A MODERN PROBLEM

If the expansion of the *sex business* as a transnational corporation is inextricably linked to the development of human trafficking and the spread of new forms of slavery, one must not forget the close bond established historically between migration flow and prostitution, (as the trafficking in white women).

No doubt that throughout history, prostitution has had different faces but, in debates, the problem of the enslavement of women for the purpose of sexual exploitation has been ongoing while voluntary prostitution has always been marginal to the exploitation dimension that characterizes it.

Pino Arlacchi⁶⁸ underscores that sexual exploitation of women was historically exposed in two separate phases and both were concluded with remarkable political success. The first phase arose in England in the second half of the 1800s. It concerned, above all, criticism against the public regulation of brothels that is, the legitimacy on the part of the State to manage environments where prostitutes worked and operated legally in a considerable condition of human degradation and of exploitation by the protector.

The second instead, set at the beginning of the 1900s, focuses on a period in which the market assumed a supranational dimension and on the organisational levels that were set up to run the sexual trade of women.

The development of transoceanic migration in fact represents a privileged channel for the commerce in women. Even in olden days, as is the case today, the international market in women came into being in contexts of deprivation. Thousands of individuals who lacked the means of subsistence due to great socio-economic upheavals believed that expatriation and migration to the city was their opportunity of salvation.

⁶⁸ P.Arlacchi, *cit.*, pp. 70 – 81.

Hence in that particular historical phase, and the same logic also proves true to military settlements, the market responds to meet "sexual demand" and in general to meet men's reproductive needs in highly developed industrial areas. From this period on, sexual slavery will take on massive proportions associated to significant social connotations. The factors that determined such growth include not only the migration and urbanization of men but the organisation of true structures for the enslavement of women in countries afflicted by armed conflicts and in highly militarised areas.

POLICIES ON PROSTITUTION IN EUROPEAN UNION COUNTRIES. TRAFFICKING CONNECTIONS AND THE NEW MARKETS OF SEXUAL EXPLOITATION

At the supranational level, the first agreements among States to combat organized trafficking in white women and prostitution-related trade can be traced to the end of the 19th century inscribed in the struggle to abolish slavery.

Then, a few decades later, the shortcomings of having the State manage the prostitution business became evident and proved inappropriate since the prostitution and criminal markets were connected to trafficking. This led to the affirmation of an abolitionist orientation, a perspective that became consolidated after World War II by the United Nations⁶⁹.

In 1949, the international community organized the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others⁷⁰ that to date continues to be the most authoritative international treaty on the issue. The adhesion to the provisions of the Convention

⁶⁹ A concise reconstruction of the relations between State and prostitution is proposed by A. M. Isastia, *Stato e prostituzione* in G.Conti Odorisio (eds), *Gli studi sulle donne nelle Università: ricerca e trasformazione del sapere*, Edizioni Scientifiche Italiane, Napoli – Roma, 1988, pages 127 – 135. To consult a review on the policies on prostitution in Europa see: D. Danna, *Le politiche prostituzionali in Europa*, in *On the road: Manuale di intervento sociale nella prostituzione di strada*, Milano, Franco Angeli 2003.

⁷⁰ References in the text and in the International Legal Pocket Compilation.

have made many brothels close down and have led to criminalise the instigation and exploitation of prostitution

The motivations of this international Convention were inspired to laws and principles that recognize the need to criminalize all form of sexual exploitation, trafficking and organisation of prostitution and consequently affirm the right to practise such activity autonomously, and consequently forbid explicit activities that include invitations to libertinism or harrasement.

In fact, in the 1950s prostitution and prostitutes were progressively decriminalized.

Abolitionism was not adopted everywhere. A number of countries as for example Germany, Austria, Denmark, Holland, Portugal, the United Kingdom, Sweden and Switzerland, have adopted interventions that are aimed at regulating, with more or less restrictive criteria, prostitution, so as to limit hygienic risks among users by prescribing periodic sanitary controls of prostitutes.

Historically, institutional policies have developed from substantially three distinct models: the prohibitionist, regulationist and abolitionist model. Yet the implementation of the measures adopted within single national contexts often resulted as hybrid, and at times contradictory, since the issue required a number of consistent interventions of different orientation on the part of legislators.

Currently, regulatory principles have been reintroduced, with renewed contents and forms compared to past, giving rise to intervention defined as "neo-regulationist", or to forms of repression of prostitution conducted to "criminalize the client " or in more forceful way with "neo-prohibitionism". The latter approach is surely the one that, more than all others expresses a type of moral condemnation towards prostitutes and prostitution; laws on the criminalization abettors that make no profit, passive partners, the keeping records of prostitutes and their obligatory hygienic-sanitary check-up also follow such direction.

Repression itself, in any case, is not an instrument that can wipe prostitution activities out but on the contrary it only leads to criminalization, blackmail and control.

Abolitionism too, in decriminalizing voluntary prostitution, in fact succeeded to partially dismantle only the mechanisms by which women are exploited.

The institutional abolition of prostitution has not meant that it has disappeared in reality. Even the countries that have instituted regulations that comply with the 1949 UN Convention directives have in fact witnessed the revival of illicitly

organized structures, or ones that are disguised as legitimate, in which the figure of the protector plays such a pivotal role that it assumes the characteristics that are now distinctive and widespread of migrant prostitution exploitation.

On the other hand, it is important to bear in mind that systems of exploitation greatly benefit from the illegality and non-transparency that characterizes prostitution. The exchange established between the prostitute and her protector arises from the very fact that she needs "protection" against the difficulties and the risks associated to her work. The illegitimate aspect of prostitution activities and their being socially reprehensible makes it highly improbable that any of their fundamental rights are respected and furthermore they are even criminalized when operating legally. Thus resorting to the pimp's "protection" means finding partial physical protection from the violence that is encountered on streets and from clients, but also implies, once again, coming to terms with their social minority, so much so that a prostitute cannot vindicate her rights even from them always subject the victims to terms of exploitation and violence

As foreign street prostitution spread in Western countries, the political tendency has been to distinguish and manipulate some fundamental differences in prostitution: the prostitution that is linked to trafficking in human beings and the other, voluntary prostitution, or in any case, a prostitution that is not violently operated – such differences are the basic principles behind the logic of state and normative interventions on prostitution and trafficking in human beings.

It cannot be excluded *a priori* that the market offers more or less ample spaces for activities of sexual services that do not involve apparent situations of exploitation, as instead is claimed by the different parties. An incontestable fact remains that sex workers exist and offer themselves on the sex market autonomously.

Another worthy consideration is that even the girls that are coerced into prostitution activities stay in it since it often represents their only chance in life. In fact, even when control is no longer exerted by the organisations of exploitation, and the victim could regain discreet margins of personal autonomy, their social stigma and difficulties to enter other segments of the employment market, which are almost always less profitable, contribute to consolidate keeping the victim bonded to the world of sex business, especially those forms of activities that are not immediately perceived as forms of prostitution.

«The four models on prostitution in the EU member states

Abolitionism: a country falls under this model if outdoor and indoor prostitution are not prohibited: The State decides to tolerate prostitution and not to intervene on the issue. The prostitution of adults is not subject to punishment, but gaining profit from another person's activity of prostitution is however criminalised.

New abolitionism This model is a development from the abolitionist model. A country falls under this model if outdoor and indoor prostitution are not prohibited, but with reference to the latter the State intervenes to explicitly prohibit the existence of brothels

Prohibitionism A country falls under this model if outdoor and indoor prostitution are prohibited. Parties involved in prostitution can be liable to penalties, including, in some cases, the clients.

Regulationism A country falls under this model if outdoor and indoor prostitution are regulated by the State and therefore not prohibited when exercised according to this regulation. Prostitutes are often registered by local authorities and are in some cases obliged to undergo controls.

Source, Transcrime, *Study on National Legislation on Prostitution, and the Trafficking in Women and Children*, with the financial support from the European Parliament, edited by A.Di Nicola, I, Orfano, A. Cauduro, N. Conci, Final Study, August 2005 on line at: www.transcrime.it

Legislation typologies/ models on prostitution in the EU Member States⁷¹

⁷¹ The schedules and the data that follow in the text do not consider Romania and Bulgaria policies on prostitution and trafficking because they are related to a study carried out before the entry of both these countries in the European Union.

In Bulgaria prostitution is not prohibited by law; however, a variety of activities often associated with prostitution, such as pimping, are illegal and prostitutes are routinely fined on alternative grounds. Street workers are charged for "breaking public order" or "endangering traffic". Both street and in-door sex workers are charged for "gaining money in an immoral way", a clause introduced by the recent Amendment to the Public Order Law (November 2005). Forced prostitution is illegal, but remains a serious problem. Poor socioeconomic conditions and poverty contribute to a disproportionate number of women drawn into organized prostitution. The Bulgarian Law on Combating the Illegal Trafficking in Human Beings has come into force on 1st January 2004. This Law brings the UN Protocol's definition of trafficking within the Bulgarian domestic legal order. The Act is focused on prevention measures and the protection of victims, with little

Model of prostitution	Outdoor prostitution	Indoor prostitution	Member states	States % on the member states
Abolitionism	Not prohibited	Not prohibited	Czech Republic; Poland; Portugal; Slovakia; Slovenia; Spain	24%
New abolitionism	Not prohibited	Not prohibited (prohibited in the brothels)	Belgium; Cyprus; Denmark; Estonia; Finland; France; Italy; Luxemburg	32%
Prohibitionism	Prohibited	Prohibited	Ireland; Lithuania; Malta; Sweden	16%
Regulationism	Regulated and therefore not prohibited when exercise according to the regulation	Regulated and therefore not prohibited when exercise according to the regulation	Austria; Germany; Greece; Hungary; Latvia; the Netherlands; United Kingdom	28%

Source, Transcrime, *Study on National Legislation on Prostitution, and the Trafficking in Women and Children*, cit..

emphasis on the prosecution of traffickers.

Informationa at: <http://www.legislationline.org/news.php?tid=178&jid=10>

and <http://www-rohan.sdsu.edu/faculty/rwinslow/europe/bulgaria.html>

<http://www.state.gov/g/drl/rls/hrrpt/2003/27830.htm>

Romania, which is struggling to combat human trafficking and sexual exploitation, plans to tackle the rise in prostitution by legalising it and a draft law should be ready for public consultation in a short term. Selling sexual favour is now a crime punishable by fines or up to three years in prison in Romania. Romania, is among 11 countries listed by the United Nations as the biggest sources of human trafficking, based on reported numbers of victims. On 4 December 2002, Romania has ratified the UN Protocol on trafficking and on 21 August 2006 the Council of Europe Convention on Action against Trafficking in Human Beings.

(source: <http://www.legislationline.org/?tid=178&jid=41&iid=0&less=true>)

THE WAY DIFFERENT MODELS AFFECT INDOOR AND OUTDOOR PROSTITUTION

European prostitution models and the dynamics of human trafficking for sexual exploitation have been the theme of an *ad hoc* study conducted by Transcrime for the European Parliament. All the hereafter considerations will therefore refer to this study⁷². In regulationist countries prostitution is connected to trafficking and it is practiced prevalently indoor. It is very likely that traffickers/exploiters, in a State that has not banned indoor and outdoor prostitution if practiced respecting State laws, do not choose to exploit their victims outdoor since such violation would be very visible and, therefore, riskier. This case applies to Austria, Germany and Holland.

A further example is illustrated by Italy's political debate on the amendment proposal referring to the law on prostitution (the Bossi-Fini-Prestigiacomo Bill) which would have a considerable impact on the dynamics of street prostitution. The bill, in fact, proposes to forbid outdoor prostitution in favour of highly regulated and rigid indoor forms of prostitution. It should be noted that outdoor prostitution is declining also due to the pressure police has exerted that was triggered by the population living in districts where there is a high ratio of activities are developed prostitution. Fear of expulsion no doubt induces to seek solutions indoor.

Differently from above, in the abolitionist model, the prostitution that is associated to trafficking is run prevalently indoor. Examples include the Czech Republic, Poland and Spain. This stems from the fact that traffickers/exploiters are free to choose where to operate their criminal activities and it is thus very probable that they opt for less visible places. Furthermore, as illustrated by the Spanish case, abolitionist States often tolerate indoor prostitution more since it creates less unease among the population and most of the police force can be concentrated on the outdoor market. The neo-abolitionist model instead sees "trafficked" prostitution is most often run from streets. Examples of this model include France and Italy, which tolerate outdoor and indoor prostitution but criminalize brothels. To criminalize one of main forms of indoor prostitution could be a cause for the market to expand outdoor. Belgium on the other hand, though a "neo-abolitionist" State, presents a different situation since it concretely shows greater tolerance towards indoor prostitution, as it is less visible, than outdoor prostitution.

⁷² Transcrime, *Study on National Legislation on Prostitution, and the Trafficking in Women and Children*.cit.

Instead, in the prohibitionist model prostitution is run primarily indoor. Sweden is one such example. Following the introduction in 1998 of Law n. 408 (which introduced criminalization of the client), the figures related to indoor prostitution have risen. Prior to Law 1998:408, indoor "trafficked" prostitution was estimated to be roughly two thirds of the overall prostitution. Subsequent to the introduction of the law, indoor "trafficked" prostitution is estimated to have reached 80% of the whole market. Visible street prostitution has declined and such outcome could be in part attributed to the new law.

If an evaluation on the degree of victimization and violence against exploited women in the sexual trade is integrated into the above-mentioned models, it is evident that it is not easy to establish a direct relation between prostitution policies and the violence they are subjected to⁷³. In human trafficking, violence is a structural datum and it is highly probable that the level of violence is influenced by other factors than the legislative prostitution model, (for example the level and complexity that the organized crime presents in the State, the level of application of the legislation, the measures against trafficking, etc.). It must be emphasised that the forms of violence practiced to control victims seem to have changed sensibly in both markets (indoor and outdoor) particularly in countries of destination. Yet, if a general rule is to be formulated, (whose confirmation should be supported by improved data compared to what is currently available), from the data of Transcrime, the following considerations ensue: it would seem that the "abolitionist" and "neo-abolitionist" models are the models that generate a slightly higher level of violence compared to others.

Traffickers and/or exploiters may be prone to adopt a more violent behaviour in the States where such models are enforced; whereas they may be more tolerant in States where they perceive a lower risk of being arrested.

Widespread opinion claims that the exploitation of trafficked victims is more violent in the outdoor rather than indoor market but such claim has no confirmation. Indeed, in outdoor and indoor prostitution, the level of violence is quite homogeneous and in some States (as Austria and Spain), the level of indoor violence is currently greater than its outdoor counterpart.

With regards to the number of trafficking victims, it can be affirmed that old European Union countries seem to have a greater incidence but this is probably due to the fact that these national contexts offer more reliable data and that they

⁷³ Transcrime, *cit.*

are often countries of destination. Once again a lack of solid estimates regarding such phenomenon makes its general analysis difficult.

Estimates of the total number of trafficked victims for sexual exploitation in 11 pre-selected countries for the study 2000-2002

Country/ Estimates victims per year	2000		2001		2002	
	Min	Max	Min	Max	Min	Max
Austria	1.430	2.860	1.830	3.660	2.080	4.160
Belgium			Min. 1730	Max 3460		
France	3.260	6.520	3.560	7.120	5.740	11.480
Germany	9.260	18520	9870	19740	11080	22.160
Italy	17.550	35500	18360	36720	17979	35.949
Lithuania	160	320	100	200	120	240
Netherlands	3.410	6820	2840	5680	3430	6.860
Poland	1.720	3440	930	1860	1670	3.340
Czech republic	350		360		370	
Spain	4.600	9.200	6.010	12.020	7.500	15.000
Sweden	200	500	200	500	200	500
Total	41.940	84.030	44.060	87.860	50.160	100.050

Original source in Italian of the *Sintesi* of Transcrime, *Study on National Legislation on Prostitution, and the Trafficking in Women and Children*, cit

Legislative models on prostitution and extent and nature of trafficking of women and children for sexual exploitation in selected EU member states: abolitionism

ABOLITIONISM									
EU Member States	General index of victims of THB for sexual exploitation		Outdoor trafficking prostitution			Indoor trafficked prostitution			Most significant intervening factors
	min	max	%of the total market	Violence index	% earnings kept by prostitutes	%of the total market	Violence index	% earnings kept by prostitutes	
Czech Republic	9		20	83,4	0 - 30	80	69,9	30 - 50	-Differential in the level of welfare -Strict migratory regulations -Feminilation of poverty and rate of unemployment
Poland	10	19	20	79,3	-	80	75,2		-Geographical position -Strict migratory regulations -Feminilation of poverty and rate of unemployment - Lack of coordination between public policies
Spain	36	72	10	24,8	-	90	86,7	30 - 50	-Geographical position -Strict migratory regulations -Entrance into the EU of new member states -Differential in the level of welfare -Differential in the level of welfare -Feminilation of poverty and rate of unemployment

Source: Transcrime, *Study on National Legislation on Prostitution, and the Trafficking in Women and Children*, cit.

Legislative models on prostitution and extent and nature of trafficking of women and children for sexual exploitation in selected EU member states: new-abolitionism

NEW ABOLITIONISM									
EU Member States	General index of victims of THB for sexual exploitation		Outdoor trafficking prostitution			Indoor trafficked prostitution			Most significant intervening factors
	min	Max	%of the total market	Violence index	% earnings kept by prostitutes	%of the total market	Violence index	% earnings kept by prostitutes	
Belgium	42	85	5	59,9	0 - 50	95	56,6	0 - 50	<ul style="list-style-type: none"> -Differential in the level of welfare -Strict migratory regulations -Feminisation of poverty and rate of unemployment
France	18	37	70	76,6	0 - 30	30	73,4	0 - 50	<ul style="list-style-type: none"> -Geographical position -Feminisation of poverty and rate of unemployment - Lack of coordination between public policies
Italy	77	154	75	75,1	0 – 30	25	58,4	30 - 50	<ul style="list-style-type: none"> -Geographical position -Strict migratory regulations -Entrance into the EU of new member states -Differential in the level of welfare -Feminisation of poverty and rate of unemployment

Source Transcrime, *Study on National Legislation on Prostitution, and the Trafficking in Women and Children*, cit.

Legislative models on prostitution and extent and nature of trafficking of women and children for sexual exploitation in selected EU member states: prohibitions

PROHIBITIONS									
EU Member States	General index of victims of THB for sexual exploitation		Outdoor trafficking prostitution			Indoor trafficked prostitution			Most significant intervening factors
	min	Max	% of the total market	Violence index	% earnings kept by prostitutes	% of the total market	Violence index	% earnings kept by prostitutes	
Lithuania	10	20	60	70,1	0 – 30	40	73,4	0 – 30	<ul style="list-style-type: none"> -Differential in the level of welfare -Entrance into the EU of new member States -Feminisation of poverty and rate of unemployment -Level of the antitrafficking measures
Sweden	6	14	20	66,5	0-30	80	66,7	0 - 30	<ul style="list-style-type: none"> -Differential in the level of welfare -Feminisation of poverty - Inequality between the sexes

Source Transcrime, *Study on National Legislation on Prostitution, and the Trafficking in Women and Children*, cit.

Legislative models on prostitution and extent and nature of trafficking of women and children for sexual exploitation in selected EU member states: regulationism

REGULATIONISM									
EU Member States	General index of victims of THB for sexual exploitation		Outdoor trafficking prostitution			Indoor trafficked prostitution			Most significant intervening factors
	min	Max	%of the total market	Violence index	% earnings kept by prostitutes	%of the total market	Violence index	% earnings kept by prostitutes	
Austria	59	111	25	54,1	0 - 30	75	75,1	0 - 30	-Feminisation of poverty -Strict migratory regulations - Demand for cheap and insecure labour
Germany	30	60	3,7	49,9	30 - 50	96,3	49,9	30 - 50	- Entrance into the EU of new member States -Strict migratory regulations -Differential in the level of welfare -Feminisation of poverty -Level of the antitrafficking measures
The Netherland	50	101	30	76,8	0 - 30	70	76,8	0 - 30	-Differential in the level of welfare -Entrance into the EU of new member States -Feminisation of poverty

Source Transcrime, *Study on National Legislation on Prostitution, and the Trafficking in Women and Children*, cit.

Annual index of victims of trafficking for the purpose of sexual exploitation in 11 countries of the EU

Country	Year	Estimate of victims		Male population over 15	Annual index of victims (victims per 100.000 male over 15 years)	
		Min	Max		Min	Max
Poland	2003	2.610	5.220	15.022.477	17	35
Czech Rep	2003	340		4.151.167	8	
Spain	2002	7.500	15.000	16.972.207	44	88
Belgium	1999-2001	1.730	3460	4.082.477 ⁷⁴	42	85
France	2003	6.500	13.000	23.248.953	28	56
Italy	2003-2004	19.710	39.420	23.582.032	84	167
Lithuania	2004	190	380	1.296.295	15	29
Sweden	2003	400	600	3.599.876	11	17
Austria	2003	1.420	2.840	3.242.483	44	88
Germany	2003	12.350	24.700	33.973.090	36	73
The Netherland	2003	2.570	5.140	6.475.636	40	79

Based on Transcrime, *Study on National Legislation on Prostitution, and the Trafficking in Women and Children*, cit.

⁷⁴ This number represents male over 15 average for the years 1999, 2000, 2001.

CHAPTER 6 -THE EUROPEAN UNION’S COMMITMENT AGAINST TRAFFICKING: TOWARDS AN INTEGRATED APPROACH

HUMAN RIGHTS AND EUROPEAN UNION POLICIES AGAINST TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF SEXUAL EXPLOITATION

Trafficking in human beings, even in regional legislation is considered a grave human rights violation. The EU Charter of Fundamental Rights in Article 5⁷⁵ affirms:

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.*

The above-mentioned prohibitions are also contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms⁷⁶ in its article 4, as well as in the recent Council of Europe Convention on the Action Against Trafficking in Human Beings⁷⁷.

The European Union’s policies against human trafficking were, from the start, aimed at repressing the traffic in women and minors for sexual exploitation and then were extended to comprise even labour exploitation. Starting in 1996, the European Union has been actively engaged in devising a global and interdisciplinary approach to prevent and combat the traffic in human beings. It has worked together with other bodies as: NGOs, social workers, judicial authorities, the police and corporations that control immigration at a national

⁷⁵ References in the *International Legal Pocket Compilation*.

⁷⁶ The European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe was adopted on 4/11/1950 and entered into force on 3/9/1953. On themes of economic social and cultural rights also refer to the Social European Charter, adopted by the Council of Europe on 18/10/1961 and entered into force on 26/02/1965

⁷⁷ References to this Convention in other parts of the text and in the *International Legal Pocket Compilation*

level. The provisions undertaken were on providing a definition for special juridical protection, as well as preventive and suited measures to guarantee the protection, support and assistance to victims⁷⁸⁷⁹.

Since it is easier for women to fall prey to trafficking, such problem needs to be faced using the perspective of promoting gender equality within a more general framework of preventive measures, strengthening criminal legislation and collaborating with the police and judicial authorities so as to protect, assist, and supporting the victims through adequate cooperation policies.

Not all of the domains mentioned above received the same attention from the EU in the original phase of its commitment against trafficking in human beings. The European Union had started to work especially on elaborating a criminal law, on collaborating with the police and judicial authority rather than preventing human trafficking and protecting the victims. Though, in the past few years, the human rights approach seems to have been integrated into European Commission actions and into legislative documents - undoubtedly shifting greater attention to the victims of such phenomenon.

The first European strategy plan to prevent and combat this phenomenon dates back to 1996 as illustrated by the Commission's Communication on trafficking in women for the purpose of sexual exploitation⁷⁹. Always in the same year, Europol⁸⁰ obtained an extension of its mandate to enable the organisation to operate also within the domain of human trafficking which confirms that greater attention towards such phenomenon and it was also flanked by the adoption of the promotion and exchange programme named Stop, aimed at supporting the actions of those (public officials and NGOs) committed to preventing and combating the trafficking in human beings and the sexual exploitation of children.

⁷⁸ For more information on the protection and support of victims within the European framework see the website: <http://victimsoftrafficking.esclavagemoderne.org/UK/index.html> which compiles legislative reference of a number of European countries. This Internet site has been developed within the framework of the Daphne Programme set up by the European Commission.

⁷⁹ Commission communication of 20 November 1996 to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation, COM(96) 567

⁸⁰ *Cit.*

In February 1997, the Council prescribed a Joint Action⁸¹ in which State member were asked to review their respective criminal legislation on human trafficking, for judiciary collaboration, and to favour the protection of victims in court proceedings. Always in that same year the Daphne Initiative was launched to fight violence against children, young persons and women which was followed, in December 2000, by the Daphne Programme⁸² on preventive measures to fight violence against women and children in general, including trafficking and enhancing the role of NGOs.

A second Communication for further action against the trafficking in women⁸³ came in December 1998. The Commission, in assessing the progress achieved, made a series of new targeted recommendations and enhanced some existing actions with the specific objective to:

- guarantee that the issue of human trafficking in women maintains its relevance in the European Union's policy making;
 - strengthen international and European cooperation, including the cooperation between governments and the NGO's of the countries of origin, transit and destination;
 - improve an interdisciplinary approach, focusing on prevention, research and police activities, assuring that traffickers are adequately sanctioned and that victims receive assistance;
 - convey, during the adhesion process, an explicit message to the countries involved on their responsibilities in controlling trafficking by means of national measures related to the problem, and on collaborating with the European Union;
- Currently, financial programmes have become increasingly important since they contribute to consolidate anti-trafficking policies and the sexual exploitation of

⁸¹ 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 action to combat trafficking in human beings and sexual exploitation of children (Official Journal L 63 of 04.03.1997). Amended by Council Decision 2002/629/JHA of 19 July 2002 concerning trafficking in human beings.

⁸² 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] followed by Decision No 803/2004/EC of the European Parliament and of the Council of 21 April 2004 adopting a programme of Community action (2004 to 2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (the Daphne II programme).

⁸³ Com(1998)726, Communication from the Commission to the Council and the European Parliament, for further actions in the fight against trafficking in women.

children. The funding – including civil society organisations – is available from the Agis framework programme on judiciary and police cooperation in relation to criminal matters⁸⁴.

Agis, in 2003, replaced and absorbed different and more specific financial programmes as, for instance, Stop (1996-2002)⁸⁵. Besides Daphne, there are two other programmes: Argo “administrative Cooperation, operates in the sector of external borders, visas, asylum and migration”⁸⁶ and Aeneas (“financial and technical assistance to third countries in the areas of migration and asylum”)⁸⁷ are important for broader thematic policies against human trafficking that also take into account the aspect of managing migration.

The Commission, launched the European Forum in May 2001, for the prevention of organized crime. Participants included national authorities charged with enforcing the law, commercial and professional associations, academic researchers, NGOs and civil society which debate and analyse different types of new prevention methods against organized crime. In such circles, the issue of human trafficking is frequently addressed.

To focus on the implications of the human trafficking phenomenon at the international level, the Commission has cooperated closely with a number of international organisations as the United Nations, the Council of Europe, Osce, the Europe Stability Pact for southeastern Europe and the G8. In particular, the Council has authorized the Commission to participate in the negotiations that led to the adoption of the Council of Europe Convention on combating human trafficking. Moreover, the European Community also signed the United Nations

⁸⁴Council 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.

⁸⁵ The STOP II programme follows from the initial STOP programme which ran from 1997 to 2000, aimed at developing a coordinated, multidisciplinary approach to preventing and combating trade in human beings and the sexual exploitation of children, involving the various parties responsible for combating these crimes at European Union level. Its aim was to create a framework for training, information, study and exchange programmes for persons responsible for combating trade in human beings and the sexual exploitation of children in all its forms, to prevent those phenomena and to fight them more effectively. The STOP programme was renewed for two years to ensure continuity for the projects it supported.

⁸⁶2004/867/EC: Council Decision of 13 December 2004 amending Decision 2002/463/EC adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme).

⁸⁷ Regulation (EC) No 491/2004 of the European Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS).

Convention on organized transnational crime and the additional Protocol on the trafficking in human beings⁸⁸.

The Commission has also intensified efforts, particularly through the programme named Tacis, to develop initiatives against trafficking (along with campaigns to raise awareness) in countries of origin and transit that include Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Uzbekistan, Russia, Tajikistan, Turkmenistan Ukraine and the Cards programme in Albania, Bosnia-Herzegovina, Croatia, the federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia.

THE EUROPEAN UNION'S MEASURES IN JUDICIAL AND POLICE COOPERATION

Starting May 1999, the European Union undertook proceedings to promote and combat human trafficking as explicitly stated in the 4th Title of the Amsterdam Treaty (judicial and police cooperation).

In the Amsterdam Treaty on the European Union⁸⁹, social marginalization was regarded as a problem that needs to be tackled by combining actions promoting social integration and ones contrasting the trafficking in human beings. Once again even the conclusions of the Tampere European Council, of October 1999, clearly recognize the priority of combating human trafficking⁹⁰

The commitments defined in March 2000 at the Lisbon European Council and those approved in December 2000 at the Nice European Council on employment, healthcare, were also remarkable. The remit to fight and to prevent the trafficking in human beings is also considered, in various ways, in the enlargement process. The EU is actively engaged to help candidate countries

⁸⁸ Reference to the Convention can be found in the text and in the *International Legal Pocket Compilation*. 2001/87/EC: Council Decision of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against transnational organised crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea

⁸⁹ References in the text and in the *International Legal Pocket Compilation*

⁹⁰ Tampere European Council - 15 and 16 October 1999. Presidency Conclusions. Relevant Conclusions : 22, 23, 26, 48.

and allow them to have a chance to participate in the special Community programmes.

Crime prevention includes all the activities, measures of permanent and structured cooperation, or *ad hoc* initiatives that contribute to stopping or reducing the social phenomenon of crime. For quite some time now, the European Union has worked to prevent the trafficking in women with measures that are more specifically aimed at preventing the phenomenon through information campaigns and the European Forum against organized crime on the one hand and more general initiatives aimed at promoting gender equality and fighting poverty to reduce the number of women that are bought and sold for exploitation.

The Hague Ministerial Declaration of 1997 already featured a chapter on the European guidelines to effectively fight the traffic in women for the purpose of sexual exploitation⁹¹. That same year, following the Council's adoption of the Joint Action⁹² to fight against human trafficking and the sexual exploitation of children, initiatives both at the national and regional level multiplied.

In the moment that human trafficking became one of the European Union's greatest programmes priorities consequently even the policies and legislations of member States also improved. Following the European Council mandate adopted, in 2002, in Framework Decision n.629⁹³, legislative and regulatory dispositions of Member States on judicial and police cooperation in criminal matters were aligned to combat human trafficking and introduce, on a European scale, a common framework disposition to ensure that questions like penalization, sanctions, aggravating circumstances, competence and extradition could be tackled.

The European Union with its Framework Decision on the trafficking in persons of 2002 strives to define this phenomenon as well as to set out precise obligations which states must follow.

Article 1 introduces the definition of human trafficking for the purpose of sexual or labour exploitation. Member States must punish all forms of recruitment, transport, transfer or harbouring if the fundamental rights of persons are

⁹¹ Adopted at the Ministerial Conference, The Hague, 26 April 1997.

⁹² 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 action to combat trafficking in human beings and sexual exploitation of children.

⁹³ Framework Decision 2002/629/GAI of 19 July 2002, on the fight against human trafficking [Official Journal L 203 of 01.08.2002].

violated. Therefore punishing all criminal offences that exploit situations of the person's physical or mental vulnerability.

The victim's consent is irrelevant when the conduct implies the use exploitation as set out by the Framework Decision:

- the use of coercion, force or threats, including abduction;
- the use of deceit or fraud;
- the abuse of authority or influence or the exercise of pressure;
- the offer of payment.

Furthermore, the aiding and abetting of smuggling, its complicity or any attempt to commit such crime are also to be punished.

The punishment of depriving someone of their freedom is applicable only in one of the following circumstances: when the criminal offence poses a threat to the victim's life;

1 when the victim is especially vulnerable (due to age, for example);

2 when the offence is committed within the context of a criminal organisation, pursuant to the definition of Joint Action 98/733/GAI⁹⁴.

Children who are victims of trafficking must be considered particularly vulnerable, as established by Framework Decision 2001/220/GAI⁹⁵ on the position of the victim in criminal proceedings.

To avoid that the offence be unpunished due to a conflict of jurisdiction, the decision introduces three criteria where a State has jurisdiction:

- 1 the offence is committed in whole or in part within its territory, or
- 2 the offender is one of its nationals, or
- 3 the offence is committed for the benefit of a legal person established in the territory of that Member State.

The second particular important criterium concerns any State that does not extradite its own nationals must take the necessary measures to establish its

⁹⁴ Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.

⁹⁵ Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

jurisdiction over and to prosecute, where appropriate, an offence when it is committed by its own nationals outside its territory⁹⁶.

In addition to Europol, another unit called Eurojust⁹⁷ was established. It comprises public prosecutors, magistrates and police officials who have equal jurisdiction, detached from any other member, with the role of favouring the coordination of national judicial authorities and supporting the investigations on organized crime.

The implementation of juridical instruments and EU policies must therefore be supported by both Europol's activities, aimed at advancing a joint investigation and information service, and by Eurojust's criminal activities aimed at coordinating criminal proceedings within the Union so as to facilitate a mutual international juridical assistance. Currently, the status of victims in criminal proceedings (2001)⁹⁸ and their compensation for the criminal offence (2004)⁹⁹ have gained noteworthy ground within the Community's legislative framework.

Recently the Union adopted a Plan on the best practices, norms and procedures that are aimed at fighting human trafficking for the purpose of any type of exploitation, and protecting, assisting and reintegrating the victims¹⁰⁰. The Plan is founded on the principle that an integrated approach based on the respect for human rights and a coordinated political response on sectors like freedom, safety, justice, foreign affairs, development cooperation, social work and employment, gender equality and non-discrimination are fundamental to effectively fight the trafficking in humans beings.

As recognized by the EU, it is vital for Member States to protect victims of trafficking, from the human rights perspective, during all phases of criminal proceedings. Member States shall take the necessary measures to develop an adequate coordinated public structure to assess and coordinate national policies and guarantee that victims be treated appropriately.

As criminalization against human trafficking is being enhanced within the EU, what remains an important task is to consider the vulnerability of minors in order to adopt specific preventive strategies.

⁹⁶ Framework Decision revokes Joint Action 97/154/Gai on the trafficking of human beings.

⁹⁷ Council Decision 2002/187/GAI of 28 February 2002 establishes Eurojust to enhance the fight against all forms of grave crime.

⁹⁸ References in the text.

⁹⁹ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

¹⁰⁰ EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (GU C 311 del 9.12.2005).

THE ASSISTANCE AND PROTECTION OF VICTIMS

To ensure appropriate assistance and protection of victims calls for a multidisciplinary and integrated approach that is founded on the human rights dimension. To protect victims the issue of residence in countries of destination is of fundamental relevance. Currently the EU is tackling a core issue -the recognition of temporary residence permit for victims of trafficking who are prepared to collaborate with the law. On the problem, the Council adopted the Directive 2004/81¹⁰¹ that establishes the possibility to obtain a 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.

To support and assist the needs of victims, the Commission established an Expert Group on trafficking in human beings whose role is to provide reports and assessments on ways to prevent combat trafficking¹⁰².

During the Brussels Conference in September 2002 on Preventing and Combating Trafficking in Human Beings — Global Challenge for the 21st Century was adopted a Declaration that is centred on the human rights dimension. The Declaration provides that a group of experts be established to consolidate and strengthen the validity and effectiveness of the laws and to improve measures that can be used in making policies to combat the phenomenon.

In 2005, the Expert Group on Trafficking in Human Beings¹⁰³ redundant and worked to put the Brussels Declaration into practice with concrete proposals that serve to implement the recommendations contained therein.

The Report has yielded a series of principles that highlight the need to recognize the central dimension of human rights. It focuses on identifying key themes, priorities, and the possible gaps at a European and national level and on the some fundamental recommendations. From a human rights perspective, the main concern is to combat the exploitation of forced labour or conditions of

¹⁰¹ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities *OJ L 261, 6.8.2004*.

¹⁰² 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" [Official Journal L 79 of 26.03.2003].

¹⁰³ Reference in the *International Legal Pocket Compilation*

enslavement, regardless of the fact that such exploitation involves a victim of trafficking, an irregular immigrant or a regular citizen.

Throughout the report the need to contextualize human rights in a framework of an integrated and multidisciplinary approach was underscored. For the complexity of the theme and the many interrelated factors that trafficking embodies, experts have affirmed that a holistic, integrated multidisciplinary approach is necessary. Adopting such approach would create greater equilibrium between *empowerment* strategies -aimed at providing measures of assistance to victims of trafficking, inclusion and the social participation of hardhit groups, and repressive strategies to check crime –aimed at punishing those who are responsible, thus avoiding the unintentional and undesirable side effects of repressive policies which could increase the factors of vulnerability in trafficking.

THE PROTECTION OF CHILDREN WHO ARE VICTIMS OF SEXUAL EXPLOITATION

The Union has adopted a number of Acts even on the Child. One of the many acts that is worthy of mention is Framework Framework decision 2004/68¹⁰⁴ on combating the sexual exploitation of minors and child pornography by integrating the instruments implemented by the Council in relation to human trafficking and sexual exploitation of the child. Following the Council's adoption of a Joint Action to fight traffic of the human beings and sexual exploitation of the child¹⁰⁵, in the 1997, initiatives on the theme have multiplied at both national and regional level. Article 1 in the Framework Decision 2004/68 defines certain fundamental terms as: "child", "child pornography", "computer system" and "legal person". In conformity with the United Nations Convention dispositions on the rights of the child¹⁰⁶, the term refers to anyone who is under the age of 18.

¹⁰⁴ Framework Decision 2004/68/GAI of the Council, of 22 December 2003, on sexual exploitation of the child and child pornography. Reference in the *International Legal Pocket Compilation*.

¹⁰⁵ References in the text.

⁹⁸ Reference to the text and in the *International Legal Pocket Compilation*

¹⁰⁶ Reference to the text in the *International Legal Pocket Compilation*

Article 2 declares a series of conducts that are to be considered as a illicit since they "are offences that involve the sexual exploitation of children":

- coercion of a child into prostitution, exploiting or aiding and abetting in any way such phenomenon or making profit from it;
- engage a child in sexual activities in any of the following ways:
- through force, violence or threats,
- offering a reward as money, valuables or any other form of payment in exchange of sexual service,
- abuse of authority and influence when holding a position that a child trusts.

The conducts "of child pornography" that are subjected to penalties, whether or not they involve the use of the computer system are:

- 1 the production of child pornography;
- 2 the distribution, spread or transmission child pornography material ;
- 3 the offer or distribution of child pornography material;
- 4 the purchase or possession of child pornography material.

Article 5 of the Framework Decision lists the conducts that, excepted circumstances introduced by national legislation, constitute an aggravating circumstance. For instance, when the offence involves the child who, in conformity with national legislation:

- has not reached the age of sexual consent,
- when the perpetrator endangers the life of the child,
- when there are grave violations
- the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA¹⁰⁷

To ensure that the offence does not go unpunished for a conflict of jurisdiction, the Decision introduces three criteria of reference. A State has jurisdiction over an offence when:

- (a) the offence is committed in whole or in part within its territory, or
- (b) the offender is one of its nationals, or

¹⁰⁷: Joint action 98/733/JHA of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union GU L 351 del 29.12.1998.

(c) the offence is committed for the benefit of a legal person established in the territory of that Member.

The European Union, starting 1996, has been engaged, as shown by its various acts, to protect minors in specific areas as: combating child sex tourism¹⁰⁸, implementing measures to combat child sex tourism¹⁰⁹, combating child pornography on Internet¹¹⁰ and finding missing or sexually exploited children¹¹¹. If, on the one hand such measures serve to integrate and complete the framework of acts to combat trafficking and sexual exploitation by setting out the specific obligations that States must follow to criminalise certain conducts, on the other hand they also serve governments to implement policies for the protection of minors that are aligned to international standards and promote the human rights of minors.

¹⁰⁸ Communication from the Commission of 27 November 1996 on combating child sex tourism, Com/96/0547 Final.

¹⁰⁹ Final Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the implementation of measures to combat child sex tourism COM/99/0262 final.

¹¹⁰ Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the Internet.

¹¹¹ Council Resolution 2001/C 283/01 of 9 October 2001 on the contribution of civil society in finding missing or sexually exploited children.

CONCLUSIONS

The manifold implications involved in human trafficking and sexual exploitation make it difficult to conclude an overview on the subject. Yet that such phenomenon ensues from the state of great poverty in which millions of individuals are found and from a consequent degradation of values remains an undisputed fact.

If seen from the human rights paradigm, human trafficking is the sum of many violations that involve different subjects, in particular women and young people, because of their structural and cyclical vulnerability.

There is no question that the phenomenon today needs to be tackled on more fronts, one of it being prevention.

The very need to work on several fronts to combat and reduce and eradicate the pockets of employment that involve enslavement must start from education as it contributes to raising the consciousness of adolescents so they become aware of who is at risk of becoming a victim of trafficking. Yet it is also necessary to stimulate a greater civic sense and culture that works to promote the respect of individuals. Although instruments generated by international legislators and Community law can be adopted judicial and investigation bodies to fight and punish certain conducts, it is however evident that new ways to eradicate such situations must be sought. Indeed, the human needs have to be placed as a central priority. These include: economic, social and cultural needs. Moreover, at present, more extended conditions of citizenship that go beyond national borders have to be recognized. Finally, individuals who are coerced into conditions of violence and enslavement, who away from their homeland are deprived of their inhuman dignity because of their need to seek a better life, must be recognized.

Thus, to confer value to the person is an essential phase to assure that a greater number of women and young people can find the courage and strength to move away from such conditions. Only by predisposing legislation that States are obliged to enforce can there be a guarantee that such conditions be abandoned in favour of valid alternatives. The need to enhance social protection within countries is a condition that would make it possible for prostitution to be viewed differently as the necessary distinctions are made in relation to such a multifaceted reality. By giving women and the young victims of trafficking the

chance to remain on the territory they are in, without making them return to their country of origin, and by giving them the possibility to have an education and professional training, they acquire the tools to build themselves a dignified existence. Furthermore it points to the civil respect that all human beings ought to have.

In this drama, education plays a fundamental role. It is the tool that lies at the basis of knowledge and it is therefore the first and foremost instrument for prevention. At the same time, it instills in young people the consciousness which can lead them to consider this drama from a perspective of solidarity so as to help the victims.

Currently, the attention that one tries to focus on victims is surely proof that there is an enriched awareness -from a social and human point of view- of this drama. At present, all the subjects involved in the problem of trafficking in human beings regard the human rights as the only possible approach capable of offering a valid alternative to contrast this phenomenon. Introducing such approach in schools and discussing the drama of trafficking today, is not only a moral imperative but also the way to bring young people closer, in concrete way, to the topic of humans rights both in the axiological and practical key.

APPENDIX

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in the European area (included the Commonwealth of Independent States ICS)¹¹²

Country	Signature	Ratification
Albania	12 12 2000	21 08 2002
Armenia	15 11 2001	01 07 2003
Austria	12 12 2000	15 09 2005
Azerbaijan	12 12 2000	30 10 2003
Belarus	14 12 2000	25 06 2003
Belgium	12 12 2000	11 08 2004
Bosnia and Herzegovina	12 12 2000	24 04 2002
Bulgaria	13 12 2000	05 12 2001
Croatia	12 12 2000	24 01 2003
Cyprus	12 12 2000	06 08 2003
Czech Republic	12 12 2000	
Denmark ²	12 12 2000	30 09 2003
Estonia	14 12 2000	10 02 2003
European Community	12 12 2000	06 09 2006 (Approval)
Finland	12 12 2000	07 09 2006
France	12 12 2000	29 10 2002
Georgia	13 12 2000	05 09 2006
Germany	12 12 2000	14 06 2006
Greece	13 12 2000	
Hungary	14 12 2000	22 12 2006
Iceland	13 12 2000	
Ireland	13 12 2000	
Italy	12 12 2000	02 08 2006
Kazakhstan		
Kyrgyzstan	13 12 2000	02 10 2003
Latvia	10 12 2002	25 05 2004
Lithuania	25 04 2002	23 06 2003
Luxemburg	13 12 2000	
Malta	14 12 2000	24 09 2003

¹¹² Information available at www.unodc.org (8 March 2007).

Montenegro ³		23 10 2006
Netherlands ⁴	12 12 2000	27 07 2005 (Acceptance)
Poland	4 10 2001	26 09 2003
Portugal	12 12 2000	10 05 2004
Republic of Moldova	14 12 2000	16 09 2005
Romania	14 12 2000	04 12 2002
Russian Federation	12 12 2000	26 05 2004
San Marino	14 12 2000	
Serbia	12 12 2000	06 09 2001
Slovakia	15 11 2001	21 09 2004
Slovenia	15 11 2001	21 05 2004
Spain	13 12 2000	01 03 2002
Sweden	12 12 2000	01 07 2004
Switzerland	02 04 2002	27 10 2006
Tajikistan		08 07 2002 (Adesione)
The former Yugoslav Republic of Macedonia	12 12 2000	12 01 2005
Turkmenistan		28 03 2005 (Adesione)
Ukraine	15 11 2001	21 05 2004
United Kingdom of Great Britain and Northern Ireland	14 12 2000	09 02 2006
Uzbekistan	28 06 2001	

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