

INTERNATIONAL CONFERENCE THE INTERFACE BETWEEN TRAFFICKING IN HUMAN BEINGS AND ASYLUM

Organized jointly by
the Bulgarian National Commission for Combatting Trafficking in Human Beings
the Council of Europe and
the United Nations High Commissioner for Refugees (UNHCR)



TRAFFICKING

La traite des êtres humains constitue l'une des formes les plus inacceptables de la criminalité organisée qui contrevient aux valeurs fondamentales des droits de l'Homme, notamment au respect de la dignité humaine.



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Organizers

Bulgarian National Commission for Combatting Trafficking in Human Beings

Council of Europe

Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings

United Nations High Commissioner for Refugees

UNHCR Representation to the European Institutions in Strasbourg

With the help of the *Hanns Seidel Foundation*

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Programme

Tuesday, 23 June 2015

09:00 - 09:30 **Registration of participants**

09:30 – 10:10 **Opening remarks**

Moderator: Kamelia DIMITROVA, Secretary General of the NCCTHB, Council of Ministers of the Republic of Bulgaria

- Tsviatko GEORGIEV, Deputy Minister of Internal Affairs of the Republic of Bulgaria
- Mariya GABRIEL, Member of the European Parliament, Vice Chair of the Group of the European People's Party (written statement)
- Gianluca ESPOSITO, Head of Equality and Human Dignity Department, Council of Europe
- Roland-François WEIL, Representative, UNHCR Bulgaria
- Bogdan MIRTCHEV, Representative of the Hanns Seidel Foundation for Bulgaria

10.10 – 10.40 **Key note speeches**

- Siobhán MULLALLY, Vice-President of GRETA, Professor of Law and Director of the Centre for Criminal Justice and Human Rights at University College Cork
- Gert WESTERVEEN, Representative, UNHCR Representation to the European Institutions in Strasbourg

10:40 - 11:00 **Coffee break**

11:00 – 12:30 **Theme 1: The identification of victims of trafficking in asylum procedures**

- The identification of victims of trafficking in asylum procedures

Moderator: Mats LINDBERG, Administrator, Council of Europe

Speakers:

- Inkeri MELLANEN, Senior Adviser, Finnish National assistance system for victims of trafficking
- Albena IGNATOVA, Head of Unit "Integration", Bulgarian State Agency for Refugees
- Constantin HRUSCHKA, Head of the Protection Department, Swiss Refugee Council
- Rita DUCA, Anti-trafficking Field Expert, International Organization for Migration, Italy

Discussion

12:30 - 14:00 **Lunch**

14:00 – 15:30 **Theme 2: The identification of protection needs for victims of trafficking, with special attention to unaccompanied asylum-seeking minors**

- Identification and reception of (potential) minor victims of human trafficking
- Trafficking and the right to seek and receive asylum

Moderator: Petya KARAYANEVA, National Protection Officer, UNHCR Bulgaria

Speakers:

- Joop VAN DER SCHUIT, Policy advisor, Central Agency for the Reception of Asylum Seekers (COA), the Netherlands and Otto SCHUURMAN, Sector manager at Jade Zorggroep, the Netherlands
- Radoslav STAMENKOV, Chief of Mission of IOM Bulgaria
- Bistra ZOGRAFOVA, State expert, Bulgarian State Agency for Child Protection

Discussion

15:30 – 16:00 **Coffee Break**

16:00 – 17:30 **Theme 3: The international protection of victims of trafficking under the CoE Convention on Action against Trafficking in Human Beings and the 1951 Convention relating to the Status of Refugees**

- The identification and referral to assistance of victims of trafficking
- Refugee status for victims of trafficking

Moderator: Dobryana PETKOVA, Senior expert, NCCTHB

Speakers:

- Gert WESTERVEEN, Representative, UNHCR Representation to the European Institutions in Strasbourg
- Melita GRUEVSKA-GRAHAM, Project Manager, ICMPD
- Siobhán MULLALLY, Vice-President of GRETA, Professor of Law and Director of the Centre for Criminal Justice and Human Rights at University College Cork

Discussion

19:00 **Dinner**

Wednesday, 24 June 2015

09:00 – 10:30 **Workshops** (one to be held in English only and the other one with interpretation)

1. Identification of victims, review, needs and challenges

Moderator: Kamelia DIMITROVA, Secretary General of the National Commission for Combating Trafficking in Human Beings

2. The Dublin III Regulation – application and consequences in a trafficking context

Moderator: Constantin HRUSCHKA, Head of the Protection Department, Swiss Refugee Council

10:30 – 11:00 **Coffee break**

11:00 - 11:30 **Reports from workshops**

Rapporteur Group 1: Emilia PAUNOVA, Senior expert, NCCTHB

Rapporteur Group 2: Delphine LENEUTRE, Legal Associate, UNHCR Representation to the European Institutions in Strasbourg

11:30 – 12.00 **Closing Session: The interactions between the CoE Convention on Action against Trafficking in Human Beings and the 1951 Convention relating to the Status of Refugees: Conclusions of the conference and closing remarks**

- Kamelia DIMITROVA, Secretary General of the National Commission for Combating Trafficking in Human Beings
- Gianluca ESPOSITO, Head of Equality and Human Dignity Department, Council of Europe
- Gert WESTERVEEN, Representative, UNHCR Representation to the European Institutions in Strasbourg

12:00 **Lunch and departure of participants**

Report of the conference

Background

The recent UNHCR Global Trends 2014 report showed that the number of refugees in Europe (the Council of Europe 47 member States) increased from approximately 1.77 million by the end of 2013 to an estimated 3.1 million by the end of 2014. It also revealed that approximately 2 million internally displaced people resided in Europe (the Council of Europe 47 member States), including over 820 000 in Ukraine by the end of 2014¹. It is further estimated that, as of 26 November 2015, over 860 000 refugees and migrants had arrived by sea in Europe in 2015². According to UNHCR estimates, another 600 000 refugees and migrants should reach Europe between November 2014 and February 2016, which would bring the number of arrivals to over one million³. The number of asylum applications in 2014 in the 28 countries of the European Union reached 626 000 (398 200 asylum-seekers were registered in the EU during the first six months of 2015)⁴.

Europe is faced with an increase in asylum applications as a result of a number of violent conflicts, such as, *inter alia*, in Syria, Iraq, and Libya, as well as from regions further away (Eritrea, Afghanistan). Many refugees fleeing violence, conflicts and persecution in search of safety in third countries are unable to seek and find safety through regular means.

In the European context in particular, with fewer opportunities to enter Europe by regular means and more restrictive border control measures, thousands of people threatened by persecution and serious human rights violations in their home countries are taking dangerous sea and land routes.

The vulnerability of asylum-seekers places them at a significant risk of being trafficked and it is likely that a number of persons applying for refugee status have indeed already been victims of trafficking in human beings (THB). Similarly, it is recognised that asylum-seekers and refugees may subsequently become victims of THB, after they have entered the territory

¹ UNHCR, *UNHCR Global Trends 2014: World at War*, 18 June 2015, available at: <http://www.refworld.org/docid/558292924.html>.

² UNHCR, *Europe's Refugee Emergency Response - Update #12, 20 – 26 November 2015*, 26 November 2015, available at: <http://www.refworld.org/docid/565fe4254.html>.

³ Reuters, "U.N. expects Europe's refugee flow to top 1 million in 2015", article available at: <http://www.reuters.com/article/2015/11/05/us-europe-migrants-un-idUSKCN0SU1F320151105#2wwkrXh8ZKXKg4Oc.99>.

⁴ Eurostat, *Asylum statistics, Data extracted on 21 May 2015* available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

of a particular European state. However, the increasing influx of persons seeking international protection in Europe puts reception and asylum procedures in many European countries under severe pressure. This results in many states struggling with the key challenge of meeting protection needs and due diligence obligations towards asylum-seekers and THB victims. It is therefore essential for states to ensure and facilitate appropriate access to asylum procedures as well as to specialist protection mechanisms for victims of THB.

Set against the backdrop of these challenges, the theme of the conference focused on exploring the interactions between trafficking in human beings and asylum. In particular, the interface between protection mechanisms established under the 1951 Convention relating to the Status of Refugees (the 1951 Refugee Convention) and under the Council of Europe Convention on Action against Trafficking in Human Beings (the CoE Anti-Trafficking Convention) were examined.⁵ Whilst these instruments and their respective regimes have developed independently, they address separate but increasingly interrelated issues of asylum and THB.

The CoE Anti-Trafficking Convention is a regional treaty, but it is open to accession by countries which are not members of the CoE. The Convention places obligations on states to take measures, in partnership with civil society and in co-operation with other states, in the areas of prevention, protection of victims' rights, including identification and assistance, as well as effective investigation and prosecution of traffickers. States' compliance with the obligations arising from the Convention is regularly monitored by the Group of Experts on Action against Trafficking in Human Beings (GRETA).

The 1951 Refugee Convention is a treaty which establishes the system of international protection afforded to asylum-seekers, it remains the cornerstone of refugee protection, and the legal principles enshrined therein have permeated into countless other international, regional and national laws and practices. Although the Refugee Convention does not explicitly relate to THB, it is accepted that the instrument can be of relevance in THB context. It is recognised that asylum-seekers and refugees may become victims of THB and that victims of THB may apply for international protection under the 1951 Refugee Convention.

⁵ In the Convention "Trafficking in human beings" is defined as 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.

As such, the 1951 Refugee Convention may apply to victims of THB and, if the victim of THB applies for international protection in Europe, both instruments may be applicable.

The interactions between the two regimes have been identified in Articles 14(5) and 40(4) of the CoE Anti-Trafficking Convention⁶ as well as by the UNHCR.

Key issues

The conference focused on three key themes:

- The identification of victims of THB in asylum procedures;
- The identification and protection needs of victims of THB with a special focus on unaccompanied asylum-seeking minors;
- The international protection of victims of THB under the CoE Anti-Trafficking Convention and the Refugee Convention 1951.

With regard to the latter, the discussions focused on the implications of the Dublin system (established by Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast); hereinafter Dublin III Regulation⁷), which is an EU procedural instrument, on the application of protection mechanisms existing under the CoE Anti-Trafficking Convention and the Refugee Convention 1951. The overarching objective of the discussions was to explore various avenues for strengthening the protection of victims of THB and to explore the issue of access to international protection under the Refugee Convention for victims of THB.

Theme 1: Identification of victims of trafficking in human beings in asylum procedures

The session was moderated by **Mats Lindberg** (Administrator, Council of Europe), with the participation of **Inkeri Mellanen** (Senior Adviser, Finnish National Assistance System for Victims of Trafficking), **Albena Ignatova** (Head of Unit “Integration”, Bulgarian State Agency for Refugees), **Constantin Hruschka** (Head of Protection Department, Swiss Refugee Council) and **Rita Duca** (Anti-trafficking Field Expert, International Organization for Migration, Italy).

⁶ See Bibliography p. 36 Council of Europe Convention on Action against Trafficking in Human Beings no.197, 2005.

⁷ Published in the European Union Official Journal L 180/31, 29.6.2013.

The discussions in this plenary session were supplemented by Workshop 1 on "Identification of victims: review, needs and challenges" which was held on the second day of the conference (24 June 2015) moderated by **Kamelia Dimitrova** (Acting Secretary of the Bulgarian National Commission for Combatting Trafficking in Human Beings) and reported on by Emilia Paunova (Senior expert at the National Commission for Combatting Trafficking in Human Beings).

The session focused on the identification of victims of THB as central to ensuring that victims receive appropriate protection and assistance. Early identification is of paramount importance as it is a gateway for the application of protection mechanisms designed to assist victims of THB, as well as triggering state obligations under the CoE Anti-Trafficking Convention. The primary obligation to identify victims of THB lies with the state. Article 10⁸ of the CoE Anti-Trafficking THB Convention places a positive obligation on state parties to adopt measures to identify victims of THB. Parties must adopt relevant legislative and other measures to facilitate the identification of victims and provide their competent authorities with personnel who are qualified and trained in preventing and combating THB and in identifying victims. If reasonable grounds have been established for believing that a person is a victim of THB, this automatically prevents the state from removing a person from its territory until the identification procedure has been completed. The identification process provided for in Article 10 is independent of any criminal proceedings against those responsible for the trafficking. Furthermore, identification of victims is seen as a collaborative process involving state authorities and victim support organisations. The involvement of various stakeholders in this process is generally encouraged and has been highlighted as a good practice by GRETA.⁹

The discussions indicated that significant gaps exist in the identification of victims of THB, particularly amongst asylum-seekers. A victim of THB can often be a refugee within the meaning of the 1951 Refugee Convention as a person who has been or is at risk of being trafficked and may have a well-founded fear of persecution. Nonetheless, such a link is generally insufficiently explored and only a few state parties to the CoE Anti-Trafficking Convention provide data on victims of THB in asylum procedures.¹⁰ Limited efforts to

⁸ Council of Europe Convention on Action against Trafficking in Human Beings, Article 10 – Identification of the victims: "Paragraph 1 places obligations on Parties so as to make it possible to identify victims and, in appropriate cases, issue residence permits in the manner laid down in Article 14 of the Convention."

⁹ GRETA, *4th General Report on GRETA's activities covering the period from 1 August 2013 to 30 September 2014*, Council of Europe, 2015, p. 41.

¹⁰ Including the following countries evaluated by GRETA: GRETA Report; Norway, para.205; GRETA Report: Poland, para.175; GRETA Report: UK, para.217.

proactively identify victims were highlighted as one of the key shortcomings in current practice. There is a considerable reliance on self-identification by victims of THB, although it is recognised that many victims are hesitant to come forward and give account of their experience of being trafficked and exploited. A point was also raised in relation to difficulties in identifying victims of THB for purposes other than sexual exploitation. It was indicated that especially in the context of trafficking for the purpose of forced labour, lack of consent may often be difficult to establish. Furthermore, responses to severe trauma suffered as a result of THB may additionally diminish the capacity of individuals to present a coherent narrative to authorities, which in turn may have a damaging effect on a victim's credibility. Some victims of THB who apply for asylum hesitate to admit their victimhood during asylum procedures for fear of having their asylum claim rejected. Although GRETA and UNHCR have called upon states to take appropriate measures to ensure that their asylum systems enable victims of trafficking to seek asylum, not all states allow for asylum applications to be made while potential victims are in an identification procedure. Furthermore, in some countries victims of THB still have to withdraw their asylum application in order to be eligible for the recovery and reflection period.

Another area of concern is that the identification of victims of THB happens predominantly in the context of criminal proceedings. This puts victims of THB in a particularly precarious position regarding their protection needs, which frequently become dependent on the outcome of criminal proceedings. This is despite the fact that the CoE Anti-Trafficking Convention affords protection to all victims of THB, irrespective of their co-operation with the authorities during investigations and criminal proceedings. This significant obstacle to protection of victims of THB was identified by GRETA as one of the 10 main gaps in the implementation of the Convention. In GRETA's 4th General Report, it was noted that GRETA had urged 51% of the 35 countries evaluated by September 2014 (i.e. 18 states) to delink the provision of support given to victims of THB from co-operation with law enforcement authorities.¹¹

Maintaining the link between assistance to victims and their co-operation with law enforcement authorities has significant implications on the future of victims and their security. In particular, victims who co-operate with authorities find themselves at risk of vengeance from traffickers after having denounced them. This situation is well illustrated by the decision

¹¹ GRETA, *4th Report*, p.33.

of the French National Asylum Court from March 2015, which was discussed during the conference.¹²

France-CNDA, Decision No. 10012810, 24 March 2015

The case concerned a young Nigerian woman who was trafficked to France in 2009 and forced to engage in prostitution. She denounced the traffickers to the police who subsequently found the information provided unusable (French: “inexploitable”) for the purposes of building a case against the traffickers. On the one hand, this resulted in no action being taken against the alleged perpetrators, whilst on the other hand this left the woman without adequate assistance and protection as a victim of THB. Furthermore, the victim applied for asylum in June 2010, which was denied in August 2010. Following the appeal procedure, the victim was granted refugee status only in March 2015. As the case illustrates, the identification of victims of THB is crucial from the start to ensure that they receive special protection.

However, the ECtHR decision in *L.O. v. France* (Application No. 4455/14, Judgment, 18 June 2015)¹³ found that Nigerian prostitutes from the State of Edo could receive appropriate protection and assistance from the Nigerian authorities upon return. The Court therefore concluded that there were no serious and current grounds to believe that the applicant would be at real risk of treatment contrary to Article 3 upon return to Nigeria, and rejected her application. This considerably weakens the jurisprudence of the French Court of Asylum Law (Cour nationale du droit d’asile CNDA) given in March 2015 (even if the analytical approach was not exactly the same) and which recognised, under restrictive conditions, the existence of a social group of victims of trafficking. In its findings the CNDA essentially followed UNHCR position given in the case before the French Council of State (Conseil d’Etat) in 2012.

The above decision of the CNDA illustrated the need for a more nuanced understanding of THB victimhood as possible grounds for recognising refugee status under the Refugee Convention 1951 and the intersection between the two legal regimes. The determination that someone is not a victim of THB has negative implications for subsequent asylum procedures. Firstly, a formal determination of non-victimhood by one state agency may be binding on decision making of other state agencies and, secondly, refusal to identify a person as a

¹² France-CNDA, *Decision No. 10012810, 24 March 2015*.

¹³ ECtHR, *L.O. v. France*, 18 June 2015, No. 4455/14, available at: <http://hudoc.echr.coe.int/eng?i=001-155655>.

victim of THB may have negative implications on the assessment of the credibility of the victim in the context of future asylum procedures.

In light of these challenges, the discussions concluded that it is essential that the competent national authorities tasked with the identification of victims of THB take proactive steps towards the early identification and protection of victims.

Theme 2: The identification of protection needs of victims of trafficking, with a special focus on unaccompanied asylum-seeking minors

The session was moderated by **Petya Karayaneva** (National Protection Officer, UNHCR Bulgaria), with the participation of **Joop van der Schuit** (Policy Advisor, Central Agency for the Reception of Asylum Seekers (COA), the Netherlands), **Otto Schuurmann** (Sector Manager at Jade Zorggroep, the Netherlands), **Radoslav Stamenkov** (Chief of Mission, International Organization for Migration, Bulgaria) and **Bistra Zografova** (State Expert, Bulgarian State Agency for Child Protection).

The discussions in this plenary session were supplemented by Workshop 1 on "Identification of victims: review, needs and challenges" which was held on the second day of the conference (24 June 2015) and moderated by **Kamelia Dimitrova** (Acting Secretary General of the National Commission for combatting Trafficking in Human Beings).

The second session focused mainly on protection needs of unaccompanied asylum-seeking children. Recent years have shown an increase in the numbers of unaccompanied children entering Europe to seek asylum. According to Eurostat, minors in the European Union aged less than 18 accounted for approximately one quarter (26 %) of the total number of applicants.¹⁴ 23 100 asylum applications were submitted by unaccompanied children in Europe in 2014.¹⁵ It was highlighted that unaccompanied children who seek refuge in Europe are at risk of falling victim to THB. Their age, dependency, presence in a foreign country and lack of knowledge of the local language make them particularly vulnerable to exploitation. The precarious position of child victims is recognised in the CoE Anti-Trafficking Convention, which lists special measures and provisions for children in the context of prevention of THB

¹⁴ Eurostat, *Asylum Quarterly Report*, data extracted on 16 September 2015 available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report.

¹⁵ *Ibid.*

(Article 5), identification of victims (Article 10), assistance (Article 12), return of victims (Article 16) and protection of victims (Article 28)¹⁶.

From the perspective of protecting children, two key areas of concern were discussed: the type of assistance given to unaccompanied children and the appointment of a legal guardian. It is particularly disconcerting that a significant number of unaccompanied children go missing from local authority care and accommodation centres. In Bulgaria alone, it is estimated that 30 to 50 children disappear each week from accommodation centres. Child victim identification, services and the appointment of a legal guardian have been identified by GRETA as the main gap in the implementation of the CoE Anti-Trafficking Convention, with 89% of the countries evaluated being “urged” by GRETA to take steps to address these issues.¹⁷

All procedures taken in relation to unaccompanied children should be guided by the applicable human rights standards, in particular the principles of protection and respect for children’s rights as set out in the UN Convention on the Rights of the Child 1989 and in its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Child victims are entitled to special protection measures, irrespective of their legal status, both as victims and as children, in accordance with their special rights and needs. In all actions concerning children at risk and child victims, the best interests of the child shall be the primary consideration.¹⁸

It was noted that the physical and psychological well-being of unaccompanied children is addressed through protection mechanisms provided for by the CoE Anti-Trafficking Convention and underpinned by the best interests principle.

The discussions indicated that the type and level of assistance might vary between countries. A shortage of suitable accommodation for children across many European states was identified as one of the shortcomings in the current provision of assistance to unaccompanied children. Language difficulties were also identified as a barrier to obtaining information about unaccompanied children and their journey to the destination country,

¹⁶ See Bibliography p. 36, Council of Europe Convention on Action against Trafficking in Human Beings, no.197, 2005.

¹⁷ GRETA, *4th General Report*, p.33.

¹⁸ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking*, September 2006, available at: http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf General Principles, p. 10-13; UNHCR, *Prevent. Combat. Protect: Human Trafficking*, November 2011, available at: <http://www.refworld.org/docid/4edcbf932.html> (Joint UN Commentary on EU Directive).

especially where no interpreters were available. This obstacle has significant implications for determining a child's credibility, but also for establishing whether a child requires any special assistance.

Furthermore, the existing trend in disappearances of unaccompanied minors from accommodation centres and local care facilities is a particular cause for concern from a protection perspective. This issue raised the question of the effectiveness of states' actions in addressing this problem. In particular, ways in which states best meet their protection obligations under the CoE Anti-Trafficking Convention whilst applying the principle of the best interests of the child as a primary consideration were debated. In this context, the practice in some countries of putting restrictions on the mobility of children in reception centres was raised as a somewhat questionable solution.

Although unaccompanied children should be provided with a legal guardian as a matter of priority, the discussions showed that practical aspects as well as the efficiency of the procedure vary among countries. It was highlighted that the main challenge is caused by the differences in the definitional understanding of a 'legal guardian' between states. This is often aggravated by a lack of effective mechanisms for the appointment of legal guardians in some countries, including Bulgaria. It was stressed that the appointment of a legal guardian can have a preventive effect on the disappearances of unaccompanied children.

The Dutch 'barrier model' against THB in children was identified, which takes into consideration the state obligations towards victims of THB as well as the mandates of various agencies and actors working in the field.

The discussions concluded that greater inter-agency co-operation is one of the key factors towards improving protection of unaccompanied minors. Specialist care and procedures which take account of a child's age, gender, background and past experiences were identified as crucial in fulfilling the obligation under the CoE Anti-Trafficking Convention to provide effective assistance to child victims of THB. This includes the setting up of special referral mechanisms which take account of children's needs and experiences.

Theme 3: International protection of victims of trafficking under the CoE Anti-Trafficking Convention and the Refugee Convention

The session was moderated by **Dobryana Petkova** (Senior Expert, National Commission for Combating Trafficking in Human Beings, Bulgaria), with the participation of **Gert Westerveen** (Representative, UNHCR Representation to the European Institutions in Strasbourg), **Melita Gruevska-Graham** (Project Manager, International Centre for Migration Policy Development) and **Siobhán Mullally** (Vice-President of GRETA, Professor of Law and the Director of the Centre for Criminal Justice and Human Rights at University College Cork, Ireland).

The discussions in this plenary session were supplemented by Workshop 2 on “The Dublin III Regulation”: application and consequences in a trafficking context” which was held on the second day of the conference (24 June 2015) moderated by **Constantin Hruschka** (Head of the Protection Department, Swiss Refugee Council) and reported by Delphine Leneutre (Legal Associate, UNHCR Representation to the European Institutions).

The final session explored the relationship between the 1951 Refugee Convention and the CoE Anti-Trafficking Convention in relation to international protection of victims of THB, particular attention was paid to the application of these instruments in the context of the Dublin III Regulation.

The CoE Anti-Trafficking Convention is the key instrument protecting victims of trafficking in Europe. It addresses THB as a human rights violation and provides for a series of rights for victims of THB. It is recognised that the Convention was not designed to address matters of asylum for victims of THB. Rather, in matters concerning international protection for asylum-seekers, it should be viewed as a mechanism which compliments the 1951 Refugee Convention and is applicable to asylum-seekers who happen to be victims of THB. Whilst THB victimhood and refugee protection occupy separate domains in international law, it is acknowledged that the two issues may overlap. In such cases, it was considered to be essential that the two mechanisms operate on the basis of complementarity, with a view to achieving maximum adequate protection and assistance to victims of THB.

UNHCR recognises that victims of THB may have a well-founded fear of persecution (within the meaning of the 1951 Refugee Convention as a result of the experience of being

trafficked.¹⁹ However, the issue of refugee status for victims of THB is often confronted with the question of the causal link between the victim's well-founded fear of being persecuted and at least one of the five Convention grounds under Article 1(A)(2) of the 1951 Refugee Convention. UNHCR issued a set of Guidelines on International Protection on the application of refugee law to victims of trafficking and persons at risk of being trafficked.²⁰ The Guidelines clarified that not all victims or potential victims of trafficking fall within the scope of the refugee definition, and that being a victim of trafficking is not sufficient in itself for claiming refugee status.²¹ However, UNHCR highlighted that "in some cases, trafficked persons may qualify for international refugee protection if the facts inflicted by the perpetrators would amount to persecution for one of the reasons contained in the 1951 Convention definition, in the absence of effective national protection".²²

For instance, THB for purposes of sexual exploitation is often characterised as gender-based persecution. As such, it would normally be addressed under the category of 'membership of a particular social group' under the 1951 Refugee Convention. According to the Norwegian Immigration Act and Immigration Rules, victims of THB in Norway are considered 'members of a special social group' within the context of the 1951 Refugee Convention and therefore deemed eligible for a refugee status.²³ However, the grounds for persecution or risk thereof may intersect with other factors listed in Article 1(A)(2), such as race or nationality. It was further noted that an additional obstacle is created by the fact that not all victims of THB automatically fulfil the criteria required to prove 'membership of a particular social group' within the meaning of the 1951 Refugee Convention.

Although the CoE Anti-Trafficking Convention establishes a comprehensive system of protection and assistance for victims of THB, its scope is rather short-to-mid-term. In contrast, the possibility of obtaining international protection under the Refugee Convention 1951 offers a longer-term solution and may be of particular importance to persons trafficked across borders, who may be at risk of persecution if returned to their country of origin.

¹⁹ UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, available at: <http://www.refworld.org/docid/443679fa4.html>, at para.15.

²⁰ *Ibid.*

The UNHCR Trafficking Guidelines form part of a series issued by UNHCR ("Guidelines on International Protection") to provide interpretative legal guidance on article 1 of the Refugee Convention for Governments, legal practitioners, decision makers, and the judiciary as well as for UNHCR staff

²¹ UNHCR, *Trafficking Guidelines*, at para.6.

²² UN doc, "Refugee Protection and Migration Control: Perspectives from UNHCR and IOM," Global Consultations on International Protection, 2nd Meeting, EC/GC/01/11, 31 May 2001, at para. 32.

²³ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action Against Trafficking in Human Beings by Norway. First evaluation round*, 7 May 2013, para.12.

However, it was noted that in the context of victims of trafficking, asylum procedures are still largely approached as a ‘fallback option’. This is particularly the case in situations where assistance to victims is dependent upon co-operation with law enforcement and ceases due to the closure of the case. Furthermore, it was noted that European law precludes EU nationals from applying for asylum in another EU member state.²⁴ Although an option of obtaining a residence permit as a victim of THB exists, this poses a limitation on the right to asylum for victims of THB in Europe who are EU nationals.

In addition, the discussions highlighted the lack of relevant and reliable data on how many registered victims of trafficking were identified during asylum procedures. Further data is also needed with regard to how many registered victims of THB received international protection, refugee status or subsidiary protection, or a residence permit on the grounds of their personal situation within the scope of Article 14(1)(a) of the CoE Anti-Trafficking Convention. Whilst some evidence exists in GRETA’s country evaluation reports regarding identification during asylum procedure, the scope of this identification remains unspecified. It was concluded that such data would allow for better understanding of the scope of the problem of identification of victims of THB within asylum proceedings as well as in the context of procedures under the “Dublin III Regulation”, leading to a strengthening of the overall protection afforded to victims of THB.

Workshop: Protection of victims of THB and the Dublin III Regulation

The discussions explored problematic aspects of the “Dublin III Regulation” in the context of the protection of victims of THB. The “Dublin III Regulation”, which was designed to determine which state should bear responsibility for assessing an applicant’s asylum claim, prioritises time efficiency in asylum procedures. The intersection between THB victimhood and asylum has become increasingly prominent, especially in relation to the protection of victims of THB. In this context, the question of how to incorporate a human-rights based approach to the application of the “Dublin III” Regulation was discussed.

The “Dublin III Regulation” only mentions THB in relation to child applicants. Article 6(3) requires states to take “safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking” into account when assessing the best interests of the child. Whilst the need for consideration of possible THB victimhood is certainly welcome in relation to cases involving children, it was nonetheless argued that the

²⁴ Treaty of Amsterdam, Protocol on Asylum for Nationals of Member States of the European Union.

human rights of all victims of THB should be a key concern for states. In addition, in cases involving unaccompanied children, the Court of Justice of the European Union considered that the state responsible for the asylum procedure is the one where a family member or a sibling of the child is legally present (Article 8), as confirmed in CJEU Judgment *M.A. and Others v. Secretary of State for the Home Department* (Case C-648/11, 6 June 2013).

Time and place considerations have been identified as crucial factors in consideration of the protection rights of victims of THB in the context of the “Dublin III Regulation”. It was noted that trafficking and exploitation may happen in several countries. Therefore, a victim of THB may decide to flee a country where they have been exploited in order to seek protection in another country. The complexities of such situations have been explored in the following case study.

Dublin III Regulation – Article 13

A 17 year old girl from Cameroon arrived in Switzerland via Spain and France, having entered Spain some 2 years earlier. She claimed that she had been forced into prostitution in Morocco and Spain and later taken to France by her traffickers. She had stayed in France for 5 months. Following her arrival in Switzerland, she applied for asylum.

Under the “Dublin III” Regulation, the state of entry is responsible for the examination of an application for international protection submitted only in the first 12 months following the date of irregular entry (Article 13(1)). As the girl entered Spain over 2 years earlier, the obligations of the state of entry under Article 13(1) had ceased. However, as she had stayed illegally in France for 5 months, this had triggered France’s obligations under Article 13 (2) of the Dublin Regulation to take responsibility for the applicant.

Another complexity was added by the age of the victim, which was disputed. Following an age assessment, it was confirmed that the girl was less than 18 years old. This gave rise to the application of Article 8 of the “Dublin III” Regulation, rendering the return of the girl to France impossible and placing the responsibility for her asylum application on the Swiss authorities.

Under the CoE Anti-Trafficking Convention, the obligations of states in the area of protection of victims of THB are not restricted in time. The Convention provides for a recovery and reflection period of at least 30 days from the moment there are reasonable grounds to believe a person is a victim of THB. In contrast, Article 2(l) and Article 12 of the “Dublin III Regulation” provide for temporary residence arrangements and provision of a residence

permit whilst a Dublin procedure takes place. However, according to Article 19(1) of the “Dublin III Regulation”, “where a member state issues a residence document to the applicant, the obligations specified in Article 18(1) shall be transferred to that Member State”. Therefore, if a state identifies a victim of THB and allows a period of recovery and reflection in accordance with its obligations under the CoE Anti-Trafficking Convention, the application of the Dublin procedure is automatically excluded, even in the case of discretionary decisions taken under Article 17 of the “Dublin III Regulation”.

The preoccupation of the Dublin system with time efficiency was considered as a hurdle in the process of identifying victims of THB. It was highlighted during the proceedings that the recovery and reflection period established under the CoE Anti-Trafficking Convention clashes with the logic of the Dublin system. Furthermore, the underlying assumption of the Dublin system that all EU member states are equally safe for the purposes of transferring the applicant was questioned. The increasing impact of European human rights law, particularly Article 3 of the European Convention on Human Rights (ECHR), was welcomed. As the ECtHR judgments *MSS v. Belgium and Greece* and *Tarakhel v. Switzerland* demonstrate, Article 3 of the ECHR has growing influence on the development of a human rights-based approach to the Dublin system.²⁵ Both cases examined a question of compatibility of the Dublin II Regulation with the European Convention on Human Rights regarding transfers of asylum-seekers to Greece and Italy (respectively). The applicant in *MSS v. Belgium and Greece* entered Greece before arriving in Belgium where he applied for asylum. In accordance with the Dublin II Regulation, the Belgian Aliens Office transferred the applicant to Greece which was deemed responsible for determination of the applicant’s asylum status. The applicant complained in particular about the detention and living conditions in Greece and alleged that he had had no effective remedy in Greek law in respect of these complaints. The ECtHR found both respondent States had acted in violation of Article 3 and 13 ECHR. Greece was held in violation of Article 3 taken in conjunction with Article 13 with respect to the detention and living conditions and the deficiencies in the Greek authorities’ examination of the asylum application whilst Belgium was held to be in violation of Article 13 taken in conjunction with Article 3 of the Convention because of the lack of an effective remedy against the applicant’s expulsion order. The reasoning of the ECtHR in respect of the Dublin Regulation in *MSS v. Belgium and Greece* was somewhat similar in *Tarakhel v. Switzerland*.

²⁵ ECtHR, *MSS v. Belgium and Greece*, 21 January 2011, No.30696/09, available at: [http://hudoc.echr.coe.int/eng?i=001-103050#{"itemid":\["001-103050"\]}](http://hudoc.echr.coe.int/eng?i=001-103050#{). ECtHR, *Tarakhel v. Switzerland*, 4 November 2014, No.29217/12, available at: [http://hudoc.echr.coe.int/eng?i=001-148070#{"itemid":\["001-148070"\]}](http://hudoc.echr.coe.int/eng?i=001-148070#{).

It was concluded that a human rights-based approach to Dublin procedures should be encouraged, in order to develop and implement protection-oriented solutions. In particular, a risk assessment should be introduced in relation to all victims prior to returning them to their country of origin. The assessment should take into account the following recommendations:

- The assessment regarding the entitlement of an applicant to international protection should take place in a procedure that takes account of the individual needs of the victim.
- Due consideration ought to be given to the preferences of the victim.
- Legal advice regarding protection under the CoE Anti-Trafficking Convention as well as with regard to international protection under the Refugee Convention 1951 should be made available to victims.
- A pool of specially trained asylum case workers should be developed, with a view to enhancing proactive identification of victims of THB.

Good practices

Throughout the sessions, participants highlighted examples of good practice in relation to the identification and protection of victims of THB, including as regards unaccompanied children:

- In the Netherlands, victims of THB are entitled to a three-month reflection period. During this period, they are entitled to specialist assistance and are placed in specialised shelters for foreign victims of human trafficking. A person is informed of the availability of the reflection period even if only “the slightest indication” exists that he/she might be a victim of THB.
- In Belgium, the Royal Decree of 18 April 2013 introduced specialised reception centres for victims of THB, which include provision of legal assistance and psychological support to the victims. Multidisciplinary staff including educators, criminologists and social workers is present in all centres.
- In Norway, a statutory duty exists to identify possible victims of THB and to refer them to the relevant authorities and assistance programmes. All possible victims of THB are treated as such unless the contrary is proven.
- In Italy, Article 18 of the Consolidated Immigration Act introduced two ways for victims of THB to be granted a residence permit: the “social path” and the “judicial path”. Under the “social path”, a residence status is requested by an NGO or public social services if they consider that a person is a victim of trafficking. The “judicial path”

involves granting of residence status when a victim co-operates with law enforcement authorities in the framework of criminal proceedings against the alleged perpetrators.

- In response to the increased number of Nigerian female victims of THB for sexual exploitation, Italy has introduced specialist support sessions for these victims. The sessions are conducted by specially trained cultural mediators and focus on providing support and information regarding victim's rights and available protection.

Participants identified a number of possible solutions to the problems addressed in the conference. It was said that specialist training of staff as well as multidisciplinary teams are essential in order to improve identification of victims of THB and provide assistance and protection that respond to the victims' individual needs. These steps should include provision of special police officers dealing with THB and sensitivity training for frontline border force officers. The discussions also called for greater inter-agency co-operation, both at international and national levels.

Although the majority of efforts focus on the provision of assistance to identified victims of THB, the discussions emphasised the need for integration of asylum-seekers and refugees who are at risk of becoming victims of trafficking, including provision of free information regarding the labour market, employment rights and rights of migrants in general. These measures can prevent asylum-seekers and refugees from becoming victims of THB and exploitation. Furthermore, targeted information campaigns amongst asylum seekers regarding THB and the rights of victims of THB (protection, compensation) are also viewed as a useful step towards greater identification of victims of THB. The development of a comprehensive list of indicators for the authorities responsible for the identification of victims of THB was identified as a much needed measure.

Conclusions of the conference

Throughout the conference deliberations, it was emphasised that the CoE Anti-Trafficking Convention and the Refugee Convention 1951 establish separate protection mechanisms but are not in conflict with one another. Rather, both systems were developed with their own logic and are now challenged by contemporary events. It is important to maintain this distinction, whilst recognizing that steps need to be taken to ensure that the two mechanisms operate in a complimentary manner. In order to achieve this goal, further and more profound understanding of the complex character of THB is required. For instance, a deeper understanding of the phenomenon of trafficking requires more information from law

enforcement agencies about the traffickers and their networks. Although a body of data about THB exists, further data collection is needed, especially in relation to unaccompanied migrant children in Europe and identified victims of THB.

As the current refugee crisis in Europe demonstrates, European states should place greater emphasis on the notions of shared responsibility and increased co-operation in matters concerning refugee protection and protection of victims of THB. Within this context, it is important not only to establish an effective legal framework securing victims' rights, e.g. in terms of assistance and protection measures, but also to emphasize positive obligations of states in relation to victims of THB and asylum seekers, namely as regards identification of victims, investigation of THB offences and proper risks assessments before a possible return of a victim to her or his country of origin.

Annexes

Annex I Keynote speech

Siobhán Mullally (Vice-President of GRETA, Professor of Law and Director of the Centre for Criminal Justice and Human Rights at University College Cork, Ireland)

The intersection between human trafficking and asylum is one that has gained increasing significance and urgency in the context of the current crisis in refugee protection in Europe, ongoing conflict in Syria and tragic deaths on Mediterranean crossings.

The right to seek and to enjoy asylum is protected in the UDHR, reinforced by the 1951 Convention Relating to the Status of Refugees, and in several regional human rights instruments. The Council of Europe Convention on Action against Trafficking in Human Beings reaffirms the importance of the 1951 Convention in the context of states' obligations to combat human trafficking, including, in particular, the core principle of *non-refoulement*.

In its monitoring work, GRETA (the treaty based monitoring mechanism of the Council of Europe Anti-Trafficking Convention), has repeatedly highlighted the need to strengthen identification and protection of victims of trafficking in asylum procedures and in the context of rapidly increasing numbers of people seeking access to protection. The overlaps between forced migration, asylum and the root causes of human trafficking are noted in GRETA's monitoring work, in international cooperation and prevention activities undertaken by States Parties to the Convention, and in recognition of the significance of gender to the phenomenon of human trafficking.

The Preamble to the Council of Europe Convention requires that all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account and adopt a child-rights approach. The significance of gender equality to actions to combat human trafficking is reinforced by the Convention provisions on measures to discourage demand, and in the obligations imposed on States Parties to ensure effective protection of the rights of victims. UNHCR has repeatedly expressed concern at the risks of abuse and sexual violence faced by refugee women and unaccompanied minors forcibly displaced and seeking protection in Europe. Those risks include vulnerability to trafficking, and as such, they engage the positive obligations of states to ensure that the harms of forced displacement do not lead to further violations of human rights.

On the occasion of World Refugee Day, 20 June 2014, GRETA issued a statement expressing 'deep concern' that victims of trafficking are frequently denied effective access to international protection, including asylum, in Europe. In highlighting risk of re-trafficking and reprisals on return to countries of origin, GRETA urged states to recognise that the enactment of laws prohibiting human trafficking does not necessarily eliminate risks on the ground, where implementation and effective enforcement of such laws may be weak or non-existent. Despite repeated calls for more effective access to protection, recognising the nexus between trafficking and asylum, difficulties persist. With the conflict in Syria ongoing and a crisis in refugee protection in Europe, the risks of failures of prevention and protection are great.

Access to Asylum and Protection for Victims of Human Trafficking

It is now well established, as a matter of refugee law, that a victim of human trafficking may have a claim to asylum. As UNHCR has noted:

*Inherent in the trafficking experience are such forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of medical treatment. Such acts constitute serious violations of human rights which will generally amount to persecution.*¹

Risks faced on return to a country of origin, or a third country (of transit, for example), including risks of re-trafficking, are also recognised as potentially giving rise to a claim to asylum.

However, while the legal obligations as stated in legal texts may now be clearer thanks to landmark cases such as *Rantsev v Cyprus and Russia*, the practice of law continues to reveal shortcomings in ensuring that protection obligations are met. In meeting the requirements of the refugee definition, the required nexus with a 1951 Refugee Convention ground is usually established with reference to a 'particular social group', often a form of gender-related persecution, frequently with an intersecting axis of discrimination on grounds of 'race' or ethnicity. Establishing this nexus can be problematic for a victim of trafficking, however, as indicators of vulnerability recognised as heightening the risks of human trafficking do not necessarily fit legal definitions of a particular social group – a highly contested concept in asylum determination.

¹ UNHCR, *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and / or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked* (2006), UN Doc. HCR/GIP/06/07.

On the ground, as noted by GRETA in its monitoring work, gaps in information and knowledge on how or whether trafficking is recognised as a ground for asylum remain. This lack of information is identified in GRETA country evaluations as a gap in data on human trafficking in Europe. It is a gap that limits our understanding of the effectiveness in practice of access to asylum for victims of trafficking. These difficulties are reinforced by limited data on the identification of victims in asylum processes.

Identification of Victims of Trafficking

Discharging a State's positive obligations to combat human trafficking requires the exercise of due diligence to ensure that victims of THB are identified as such, and provided with timely access to international protection, including asylum. The 2014 European Migration Network Synthesis Report concludes that only around half of EU MS have data available on victims of trafficking being identified in asylum procedures. The data sources, the EMN Report notes, are inconsistent and incomplete. As such it is difficult to quantify how many victims remain unidentified in asylum processes and, as a consequence, are denied the protection and assistance that is their right.

The effective functioning of national referral mechanisms, the involvement of a range of agencies, NGOs and multidisciplinary expertise, is essential to a comprehensive approach to identification of victims. It is critical to ensure that asylum determination bodies participate in referral mechanisms and in national coordination structures, at both policy and operational levels.

In GRETA's 4th General Report, it was noted that in a number of States Parties to the Convention, identification of victims of trafficking falls entirely within the competence of law enforcement agencies and depends in practice on the presumed victim's readiness to cooperate in a criminal investigation. In a number of other States Parties, on the other hand, GRETA has highlighted good practices (for example, in Poland, the UK, Austria) through the involvement of a variety of stakeholders and the setting up of multidisciplinary structures to carry out the task of identifying victims of trafficking.

In *Rantsev v Cyprus and Russia*, the European Court of Human Rights noted that states must be capable of effective investigations, leading to the identification of victims of THB, an obligation that, it noted, was not one of result but of means. The functioning of asylum determination procedures can sometimes undermine the due diligence requirements of a 'thorough investigation' and of identification.

Access to regular asylum procedures depends on overcoming initial check-lists concerning routes of travel, documentation of identity and status, and 'fit' with complex legal categories.

Discrimination and violence in all its forms can greatly diminish the capacity of an individual to present a coherent and credible claim for protection. Negative findings on credibility can lead to asylum claims being diverted through accelerated procedures, with reduced time limits and rights of appeal.

Due to their 'complex nature', claims based on the harms of human trafficking are particularly unsuited to accelerated processing and may limit the likelihood of identification of victims. In several country evaluation reports, GRETA has noted the difficulties that persist in decision-making processes at national level, where a victim's testimony is not accepted as credible. In the context of trafficking for the purpose of forced labour, for example, a lack of consent has often proven hard to establish. Such difficulties may also hinder recognition of a related asylum claim. Confusion also persists as to the relationship between the asylum determination process and the identification procedures for victims of trafficking. How or whether these processes are linked, is not always clear, adding to further confusion for victims of trafficking and their legal representatives. In its first evaluation report on Italy, for example, GRETA expressed concern at procedures allowing for the suspension or termination of an international protection procedure, where a possible victim of trafficking was identified.

The recast EU Asylum Procedures Directive includes provisions on 'special procedural guarantees' for applicants who due to, 'consequences of torture, rape or other serious forms of psychological, physical or sexual violence' are in need of such guarantees in order to 'benefit from the rights and comply with the obligations provided for in this Directive'.² The challenge of course is to recognize and identify those fitting these requirements, particularly in the context of accelerated asylum determination procedures. This challenge is recognised in the Directive, itself, which requires Member States to ensure that applicants in need of 'special procedural guarantees' are identified in due time and granted 'sufficient time and relevant supports' so as to fully present their claims. In practice, GRETA in its monitoring work on the ground has encountered concerns that the time and supports needed to properly identify claims to protection linked to human trafficking are often inadequate.

Obligations of non-refoulement

Failures to protect victims of trafficking are of course closely linked to failures of identification. These failures may be particular evident in risk and assessment procedures prior to removal and to *refoulement*. There is also the linked problem in asylum processes of re-trafficking, not just on return but in countries of transit and destination. In its first evaluation report of

² Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

Spain, GRETA expressed concern at the lack of effective access of victims of trafficking to regular asylum determination procedures, and the risks of *refoulement* arising from gaps in protection.

In its monitoring work, GRETA has repeatedly raised concerns relating to risks of *refoulement*, highlighting States Parties obligations under Article 40(4) of the Convention, and the requirement in Article 16 to ensure that a return of a victim to another state, shall be with due regard for the rights, safety and dignity of that person and shall preferably be voluntary (Article 16(2)). These obligations of protection are further reinforced in the context of child victims, where a return cannot take place if it is not in the best interests of the child. A risk and security assessment is required before any decision on return can be made. In its first evaluation report on Italy, GRETA urged the Italian authorities to adopt a clear legal and policy framework for the return of trafficked persons, reminding the State of its obligations of *non-refoulement*, best interests of the child and obligations of safe and preferably voluntary return. GRETA's recommendations were adopted following a country visit in which repeated concerns were raised as to possible breaches of these obligations.

Unaccompanied Minors and Separated Children

In its second round of evaluations, GRETA has identified child trafficking as a particular focus of its work, given the many gaps in protection identified in country reports. These gaps are highlighted in GRETA's Fourth General Report. Given the rapid increase in the numbers of unaccompanied minors arriving in Europe, and the particular vulnerability of children on the move, among IDPs and in situations of armed conflict, GRETA has repeatedly urged states to strengthen their efforts to prevent trafficking in children, and to ensure that the strongest possible measures of protection are in place to combat this heinous crime.

Article 10(4) of the Council of Europe Anti-Trafficking Convention provides that as soon as an unaccompanied child is identified as a victim, each State Party shall:

- (a) Provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
- (b) Take the necessary steps to establish his/her identity and nationality;
- (c) Make every effort to locate his/her family when this is in the best interests of the child.

These requirements are also found in General Comment no.6 (2005) of the UN Committee on the Rights of the Child, *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, cited in several GRETA country reports.

It remains a matter of concern that in several States Parties, significant numbers of unaccompanied minors, including child victims of trafficking and possible victims, go missing within a short time after arrival. Such patterns of disappearance indicate that children may be at risk of trafficking, and re-trafficking in many cases. In Italy, GRETA expressed concern at the 'alarming' numbers of unaccompanied minors going missing, echoing similar concerns voiced by the UN Committee on the Rights of the Child, and the UN Special Rapporteur on Trafficking in Human Beings.³

As has been noted by GRETA, identification of child victims of trafficking requires specialised training to ensure that where a child is unable to explicitly articulate a concrete fear of persecution, including trafficking, such risks are recognised, and protection provided without delay. Identification of child victims is also essential to the prevention of re-trafficking.

In Serbia, responding to the particular vulnerability of unaccompanied minors and separated children to risks of trafficking, GRETA urged the authorities to pay more attention to the identification of victims among asylum seekers and unaccompanied minors,⁴ and to provide additional training to staff as well as information on the risks of human trafficking to unaccompanied minors. In Hungary, GRETA noted the significant numbers of unaccompanied minors going missing from reception centres,⁵ and urged the authorities to increase efforts to identify child victims of THB among unaccompanied minors and to set up child-specific identification procedures, which take into account the special circumstances and needs of child victims of trafficking.⁶

A critical step in the identification process is that of age assessment. Article 10(3) of the Council of Europe Anti-Trafficking Convention re-states the benefit of the doubt principle and provides that "When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age".

In Hungary, GRETA expressed concern that age assessment carried out by the Office of Immigration and Nationality was limited to the use of x-rays only. In Spain, GRETA noted calls by the Spanish Ombudsman and ECRI to improve age assessment methods and access to asylum for unaccompanied minors.⁷

³ Italy: First evaluation report, para. 133. See also concerns noted in Portugal: First evaluation report, para. 128.

⁴ Serbia: First evaluation report, para. 165.

⁵ Hungary: First evaluation report, para. 153 and Recommendation in para. 155.

⁶ Hungary: First evaluation report, para. 135.

⁷ Spain: First evaluation report, paras. 76 and 215.

GRETA has also noted concerns expressed relating to possible return of unaccompanied minors to countries of origin by the Spanish authorities, without comprehensive risk assessment, and the need for additional measures to meet the obligations of *non-refoulement* and protection of the best interests of the child.⁸

GRETA has also noted that good practices exist in some States Parties. In the Netherlands, for example, a pilot project was launched in 2008 in order to prevent unaccompanied foreign minors disappearing and falling prey to trafficking. In Belgium, GRETA noted that specialised centres to accommodate unaccompanied minors and to provide special protection and assistance measures have been established. In its first evaluation report on Ireland, GRETA welcomed the move to small residential centres and foster care placements for unaccompanied minors, and the significant impact that this had on preventing unaccompanied minors from going missing.⁹

Effective access to asylum may also depend on the prompt appointment of a guardian to represent a child's best interests. In GRETA's first evaluation report on the United Kingdom, it was noted that the appointment of a social worker or voluntary advocate fell short of providing a legal guardian who can act independently with authority and uphold the child's best interests.¹⁰

Assistance to victims of trafficking

The Convention requires that States Parties ensure that the granting of a residence permit shall be without prejudice to the right to seek and enjoy asylum (Article 14(4)). However, States do not always recognise that these protection mechanisms can and should run in parallel.

The State's obligations of due diligence are brought into sharp relief where asylum seekers go missing from reception centres often within a short time after arrival. The absence in some countries of reception centres for women and girls only, or for particularly vulnerable groups, heightens such risk. Such gaps in protection measures were noted in GRETA's first evaluation report of Ireland, for example, where victims of trafficking are accommodated in asylum reception centres under the system of direct provision. GRETA urged the Irish authorities to review the policy of accommodating suspected victims of trafficking in

⁸ Spain: First evaluation report, para. 234.

⁹ Ireland: First evaluation report, para. 153.

¹⁰ UK: first evaluation report, para. 245.

accommodation centres for asylum seekers and to consider setting up specialised shelters for victims of trafficking, with the involvement of NGOs as support providers.

In the context of the current crisis in refugee protection in Europe, it is now more urgent than ever to ensure that States' obligations of prevention and protection of victims of trafficking are urgently met.

Annex II Keynote speech

Gert Westerveen, Representative, UNHCR Representation to the European Institutions in Strasbourg

This year, 2015, the Council of Europe Convention on Action Against Trafficking in Human Beings celebrates its 10th anniversary. This year is also a year which is seeing a considerable increase in the arrival of refugees, asylum-seekers and other migrants in Europe, often in mixed migration movements, across the Mediterranean Sea in a most dramatic form, but also via other routes. Many of these refugees, asylum-seekers and other migrants come from countries or regions experiencing conflict and upheaval. It is generally known, that situations of conflict expose affected populations to increased risks of falling victim to trafficking in human beings. This conference is therefore a good time and occasion to explore the existing or potential interactions between the legal domains of refugee protection and trafficking in human beings. The purpose of exploring these interactions can only be to find ways move forward in countering the crime of trafficking, and providing appropriate protection and assistance to its victims.

1. UNHCR and Trafficking in Human Beings

Let me begin with briefly recalling the mandate of the United Nations High Commissioner for Refugees:

The General Assembly of the UN entrusted UNHCR at its inception in 1951 with the task of providing international protection to refugees, i.e. persons who are outside their country of origin due to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership in a social group, and who cannot or do not want to invoke the protection of their country of nationality or habitual residence.

In the 1970s, the General Assembly also gave UNHCR a mandate to address the issue of statelessness and assist stateless persons; and in certain situations, notably large scale emergencies, UNHCR also has a role to play with regard to internally displaced persons.

Trafficking in human beings, or victims of trafficking as such, therefore is not part of UNHCR's mandate. Nevertheless, given that refugees may become victims of trafficking, or that victims of trafficking may have international protection needs, UNHCR has an interest in trafficking.

The first mention of trafficking in human beings that one can find in UNHCR official statements dates back to 1997. In that year the Executive Committee of the UNHCR

adopted its Conclusion No. 84, entitled “Refugee Children and adolescents”, in which it calls upon states to protect child and adolescent refugees from “sexual violence, exploitation, trafficking and abuse”. This conclusion should be seen in the light of the 1996 Stockholm World Congress on the Sexual Exploitation of Children.

The next mention of trafficking comes in 2000, in EXCOM Conclusion No. 87. There the EXCOM refers to the growth in trafficking and smuggling of persons, notes the then ongoing discussions on the interception (at sea) of refugees and asylum seekers, and stresses the importance of adopting comprehensive measures to deal with irregular migration, trafficking and smuggling of persons, “potentially including refugees and asylum-seekers”. Just to refresh your memories, during the 1990s, the irregular crossing of persons from Albania into Italy and from North Africa into Spain was a major worry at the time.¹

In subsequent years, several more EXCOM conclusions make reference to the need to address the risk of trafficking in refugee situations. The last mention of trafficking in EXCOM conclusions was in Conclusion 108 of 2008, where UNHCR’s role in identifying refugees and other persons of concern in mixed migratory movements was affirmed, and the importance of enhanced cooperation to address the complex problems arising In that context, including people smuggling and trafficking was recognized.

Another important UNHCR policy statement is contained in the Agenda for Protection of 2002. The Agenda for Protection was adopted by States in 2002, following the 50th anniversary of the 1951 Refugee Convention, as a common UNHCR and State action plan to improve refugee protection worldwide. One of its six objectives calls for protecting refugees within broader migration movements, and for strengthened international efforts to combat smuggling and trafficking.

During this period, between 1997 and 2008, of course, the UN Protocol on Trafficking was adopted, as was the Council of Europe’s Convention on Action Against Trafficking, as well as the first EU instruments. Together, these instruments have laid the legal foundation for concerted action against trafficking and assistance and protection for victims.

It is essential to note here that the UN Protocol, the Council of Europe Convention, and EU legislation contain savings clauses with regard to the 1951 refugee convention and its non-refoulement principle, thereby recognizing the relation and interaction between the

¹ See for instance : D. Lutterbeck, *Policing Migration in the Mediterranean*, Mediterranean Politics, Vol. 11, No. 1, 59–82, March 2006.

refugee/asylum legal domain, and the trafficking domain, i.e., that victims of trafficking can be refugees, and should be able to access asylum procedures.

In the context of its role of supervising the application of the 1951 Convention Relating to the Status of refugees, UNHCR develops regularly guidance notes for governments on the interpretation or applicability of the refugee definition in certain situations or with regard to certain groups of persons. Following the adoption of the Trafficking Protocol and the Council of Europe Convention, UNHCR also developed guidelines on how to deal with issues of trafficking in refugee status determination procedures: the 2007 Guidelines on “The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked”. In these guidelines, UNHCR defines its role in relation to trafficking as follows: “UNHCR’s involvement with the issue of trafficking is essentially twofold:

Firstly, the Office has a responsibility to ensure that refugees, asylum-seekers, internally displaced persons (IDPs), stateless persons and other persons of concern do not fall victim to trafficking.

Secondly, the Office has a responsibility to ensure that individuals who have been trafficked and who fear being subjected to persecution upon a return to their country of origin, or individuals who fear being trafficked, whose claim to international protection falls within the refugee definition contained in the 1951 Convention are recognized as refugees and afforded the corresponding international protection. “

It is this second aspect, ensuring access to international protection for (potential) victims of trafficking, where there are in my view certain interactions to be noted with the anti-trafficking domain. In this respect, the issue of identification of victims of trafficking is of crucial importance. Identification is the gateway to protection and assistance, to proper legal status, and for combating crime.

2. Some trafficking data

How easy is identification?

According to the 2014 UNODC Global Report on Trafficking in Persons, globally more than 6 in 10 of all victims had been trafficked across at least one international border.² Children comprise nearly one –third of all detected trafficking victims.³ The UNODC report also

² Global report on Trafficking in Persons 2014, UNODC 2015, p. 8.

³ Idem, p. 11.

underlines that armed conflict can have an impact on the level of trafficking in persons in affected communities. It mentions that in the period 2011-2013 eight countries had detected Syrian victims, whereas Syrian nationals were only very rarely detected before the beginning of the turmoil in 2011.⁴

The Eurostat report on trafficking in human beings, 2015 edition, mentions that in the period 2010-2012, 30.146 victims of trafficking were registered in the 28 EU member States.⁵ It further states that the majority (65%) of registered victims (in EU Member States) come from EU member States.⁶ In 2012, over 5,000 victims received some form of assistance, while 1,100 received a temporary residence permit under EU Directive 2004/81.⁷

The fact that 65% of trafficking in EU member States originated from EU member States brings me to the first major interaction between legal domains. Under EU law, EU citizens cannot seek asylum in other EU member States.⁸ EU law here acts possibly to prevent appropriate responses to victims of trafficking. This is probably not a desired consequence, but a consequence nevertheless.

What we do not know, is how many of these registered victims of trafficking were identified in reception systems or during asylum procedures. Whilst there is evidence, on a country basis as shown in GRETA country reports, that there are identifications in reception systems and asylum procedures, the scope of this identification remains unknown. Similarly, we have no knowledge about how many of these registered victims eventually received international protection, refugee status or subsidiary protection, or a residence permit on the grounds of personal situation as meant in Art. 14 1(a) of the Council of Europe Convention. The interaction between the trafficking domain and the refugee protection domain could benefit from improvements in the collection of such data.

3. The current situation in Europe with regard to mixed migration and arrivals of asylum seekers

In a context of conflict and upheaval in Northern Africa, the Middle East, and farther away (Afghanistan), but also in Europe (Ukraine), numbers of refugees and asylum-seekers, as well as other migrants, arriving in Europe have been soaring in recent years. As said before, it is generally considered that people fleeing conflict or violent upheaval, thereby losing

⁴ Idem, p. 42.

⁵ Eurostat Report on Trafficking in Human Beings, 2015 edition, p. 13.

⁶ Idem, p. 11.

⁷ Idem, p. 12.

⁸ Treaty of Amsterdam, Protocol on Asylum for Nationals of Member States of the European Union.

livelihoods, and seeking new survival strategies are prone to fall victims to trafficking. These arrivals often take place in forms of irregular movements across borders and seas. According to UNHCR's recently released Global Trends Report, the refugee population in Europe increased in 2014 from 1.7 million at the beginning of the year, to 3.1 million at the end of the year. This constitutes an increase of almost 75%. The number of asylum application in 2014 in the 28 countries of the European Union was slightly over 700,000. In the 47 member States of the Council of Europe, the number reached 1.1 million.

Confronted with such numbers, reception systems and asylum procedures are under severe stress. Many new arrivals are not registered in the countries of arrival, but move on in an irregular manner. The so-called "Dublin mechanism" of the EU, which allocates responsibility for treating asylum requests is also under severe strain, and is being questioned from various sides. In such circumstances the identification of (potential) victims of trafficking, and of those among them who may be in need of international protection, becomes a daunting task.

I wish you successful deliberations.

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