



UNHCR

United Nations High Commissioner for Refugees

Haut Commissariat des Nations Unies pour les réfugiés



Refugee Protection and Human Trafficking

Selected Legal Reference Materials

First Edition – December 2008

Cover Photo: *UNHCR/G.M.B.Akash/June 2006*



UNHCR

**The UN
Refugee Agency**

Refugee Protection and Human Trafficking

Selected Legal Reference Materials

First Edition – December 2008

Protection Policy and Legal Advice Section (PPLAS)
Division of International Protection Services (DIPS), UNHCR

Acknowledgements:

This binder has been compiled with the assistance of Tony Navaneelan, PPLAS intern.
Edited by the Status Determination and Protection Information Section.

TABLE OF CONTENTS

Introduction	11
Note on Terminology	13
PART I: UNIVERSAL INSTRUMENTS AND POLICY RELATING TO HUMAN TRAFFICKING.....	17
INTERNATIONAL CRIMINAL LAW.....	19
Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) [“Anti-Trafficking Protocol”]	21
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000) [“Anti-Smuggling Protocol”]	29
Rome Statute of the International Criminal Court (1998) [“Rome Statute”]	39
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	42
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).....	45
International Convention for the Suppression of the Traffic in Women of Full Age (1933).....	50
Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention (1926) [“Slavery Convention”].....	52
International Convention for the Suppression of the Traffic in Women and Children (1921)	54
International Convention for the Suppression of the “White Slave Traffic” (1910).....	56
International Agreement for the Suppression of the “White Slave Traffic” (1904).....	59
INTERNATIONAL HUMAN RIGHTS LAW.....	61
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	63
Convention on the Rights of the Child (1989)	69
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).....	72
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000).....	74
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).....	76
Convention on the Elimination of All Forms of Discrimination Against Women (1979).....	78
International Covenant on Civil and Political Rights (1966)	80

International Covenant on Economic, Social and Cultural Rights (1966)	85
Declaration on the Elimination of Violence Against Women (1993)	88
UN Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002)	91
UN Global Initiative to Fight Trafficking (UN.GIFT) Vienna Forum to Fight Trafficking Conference Report (2008).....	104
WHO Ethical and Safety Recommendations for Interviewing Trafficked Women (2003).....	114
UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006)	118
IOM Handbook on Direct Assistance for Victims of Trafficking (2007)	128
INTERNATIONAL REFUGEE LAW	133
United Nations Convention Relating to the Status of Refugees (1951) and its Protocol (1967).....	135
Conclusions of the Executive Committee on the International Protection of Refugees (ExCom)	137
No. 107 (LVIII) – Conclusion on Children at Risk (2007)	137
No. 106 (LVII) – Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons (2006)	138
No. 105 (LVII) – Conclusion on Women and Girls at Risk (2006)	138
No. 98 (LIV) – Conclusion on Protection from Sexual Abuse and Exploitation (2003)	139
No. 97 (LIV) – Conclusion on Protection Safeguards in Interception Methods (2003)	143
No. 96 (LIV) – Conclusion on the Return of Persons Found Not to be in Need of International Protection (2003).....	145
No. 90 (LII) – General (2001)	147
No. 87 (L) – General (1999).....	147
No. 84 (XLVIII) – Conclusion on Refugee Children and Adolescents (1997)	147
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	149
INTERNATIONAL LABOUR LAW.....	167
ILO Convention No. 182: Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)	169
ILO Convention No. 138: Convention Concerning Minimum Age for Admission to Employment (1973)	172
ILO Convention No. 105: Convention concerning the Abolition of Forced Labour (1957).....	175
ILO Convention No. 29: Convention concerning Forced or Compulsory Labour (1930).....	177
RECENT RESOLUTIONS OF THE U. N. GENERAL ASSEMBLY RELATED TO HUMAN TRAFFICKING	183
Resolution adopted by the United Nations General Assembly [on the report of the Third Committee (A/62/433 (Part II))] 62/132: Violence Against Women Migrant Workers (2007).....	185

Resolution adopted by the United Nations General Assembly [on the report of the Third Committee (A/62/439/Add.2)] 62/156: Protection of Migrants (2007)	190
Resolution adopted by the United Nations General Assembly [on the report of the Third Committee (A/61/444)] 61/180: Improving the Coordination of Efforts Against Trafficking in Persons (2006)	194
Resolution adopted by the United Nations General Assembly [on the report of the Third Committee (A/61/438)] 61/144: Traffic in Women and Girls (2006)	198
Resolution adopted by the United Nations General Assembly [on the report of the Third Committee (A/58/499)] 58/137: Strengthening International Cooperation in Preventing and Combating Trafficking in Person and Protecting Victims of Such Trafficking (2003)	204
PART II: REGIONAL LAW AND POLICY RELATING TO HUMAN TRAFFICKING.....	209
THE AMERICAS	211
American Convention on Human Rights (1969) [“Pact of San José”].....	213
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994) [“Convention of Belém do Pará”]	215
Inter-American Convention on International Traffic in Minors (1994)	216
Inter-American Convention on International Return of Children (1989).....	222
ASIA	225
SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)	227
Memorandum of Understanding (MOU) on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-region (2004).....	233
ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007).....	240
ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004)	243
ASEAN Inter-Parliamentary Organization Resolution on the Role of Parliament in Combating Trafficking in Women and Children in the ASEAN Region (2004).....	245
Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime: Co-Chair’s Statement (2002)	247
ASEM Action Plan to Combat Trafficking in Persons, Especially Women and Children (2001)	251
Bangkok Declaration on Irregular Migration (1999)	255
EUROPE	259
Council of Europe Convention on Action against Trafficking in Human Beings (2005)	261
Charter of Fundamental Freedoms of the European Union (2000) (2007)	268

Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts (1997) [“Amsterdam Treaty”].....	269
Council of the European Union 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.....	270
Council of the European Union Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (2002).....	277
Council of the European Union Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the Internet (2002).....	287
Council of the European Union Resolution 2000/C 260/C of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women (2000).....	292
Report from the European Commission to the European Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2006).....	295
Communication from the European Commission to the European Parliament and the European Council – Fighting trafficking in human beings: an integrated approach and proposals for an action plan (2005).....	301
OSCE Ministerial Council Decision No. 8/07: Combating Trafficking in Human Beings for Labour Exploitation (2007).....	310
OSCE Ministerial Council Decision No. 14/06: Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach (2006).....	313
OSCE Ministerial Council Decision No. 13/05: Combating Trafficking in Human Beings (2005).....	316
OSCE Ministerial Council Decision No. 13/04: The Special Needs for Child Victims of Trafficking for Protection and Assistance (2004).....	318
OSCE Permanent Council Decision No. 557: OSCE Action Plan to Combat Trafficking in Human Beings (2003).....	320
OSCE Permanent Council Decision No. 685: Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance (2005).....	336
Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002).....	339
MIDDLE EAST AND AFRICA	353
African Charter on Human and Peoples’ Rights (1981) [“Banjul Charter”].....	357
Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003).....	358
African Charter on the Rights and Welfare of the Child (1990).....	359
Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (2006).....	362
Arab Charter of Human Rights (Revised) (1994).....	369
Arab Declaration on International Migration (2006).....	371

**PART III: REFERENCES TO ADDITIONAL RESOURCES
RELATED TO HUMAN TRAFFICKING 377**

- 1. Reports on the scope and profile of human trafficking 379
- 2. UNHCR documents relevant to human trafficking 381
- 4. Resources for law-and policy-makers 382
- 5. Websites 382

Introduction

Due to its irregular and clandestine nature, there are no accepted statistics for the exact number of incidents of the human trafficking occurring in the world or the precise demographics of its victims. According to the U.S. Department of State, approximately 800,000 people were trafficked across national borders in 2007, a number which does not include the higher instances of trafficking that occur within countries. It is estimated that upwards of 80 per cent of trafficked victims are women and girls, and up to 50 per cent are minors.¹ According to then-UN Secretary-General Kofi Annan, “[t]he trafficking of persons, particularly women and children, for forced and exploitative labor, including sexual exploitation, is one of the most egregious violations of human rights which the United Nations now confronts.”²

This rise in incidents of human trafficking in the past decade has been paralleled by an increase in activity by the international community to introduce anti-trafficking measures. Chief among these has been the creation of a number of new legal instruments designed to combat human trafficking at both the international and regional level. These instruments complement and expand the existing anti-trafficking legal regime, in place since the late nineteenth century. As a result, human trafficking is now governed by a nexus of international law which includes international criminal law, international human rights law, international labour law, regional international law, and, of course, international refugee law. Each branch of law addresses a specific aspect of the phenomenon and has distinct objectives. While these various objectives may overlap, they are not always commensurate with one another. Thus, international criminal law is primarily focused on deterring the crime and apprehending its perpetrators whereas international human rights law tends to focus on the dignity and protection of victims. This compilation is intended to assist UNHCR colleagues and other interested professionals to better understand the inter-relationship between these different areas of law and how they collectively govern this complex problem.

Victims of human trafficking as a group do not fall within the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR).³ Nonetheless, individual trafficking victims can trigger the Office’s engagement when their particular situation brings them within UNHCR’s area of responsibility. The Office’s involvement with these individuals usually relates to three important activities. Firstly, the UNHCR has a responsibility to ensure that refugees,⁴ internally displaced persons (IDPs), stateless persons and other persons of concern do not become victims of human trafficking. Secondly, UNHCR has a responsibility to ensure that individuals who have been trafficked and who have a well-founded fear persecution if returned to their

¹ US Department of State, *Trafficking in Persons Report 2007*, 12 June 2007, Washington D.C. [<http://www.state.gov/g/tip/rls/tiprpt/2007/>], at p. 7.

² From statement released by the United Nations Secretary-General Kofi Annan at the International Conference of Palermo on Transnational Organized Crime on 12 December 2000 [http://www.unodc.org/unodc/en/speech_2000-12-12_1.html].

³ The mandate of UNHCR is established by the *Statute of the Office of the United Nations High Commissioner for Refugees*, adopted as an annex to UN General Assembly Resolution 428 (V) of 14 December 1950 [<http://www.unhcr.org/refworld/docid/3ae6b3628.html>]; it has since been progressively expanded by subsequent resolutions of the UN General Assembly.

⁴ UNHCR’s mandate for refugees includes all persons who are outside their country of nationality or, in the case of stateless persons, who are outside their country of former habitual residence, who are in need of international protection because of a serious threat to their life, liberty or security of person in their country of origin as a result of persecution, armed conflict or serious public disorder.

country of origin are recognized as refugees and afforded international protection. Lastly, as part of the UN's inter-agency response to combat trafficking, UNHCR has a responsibility to ensure that victims of trafficking without international protection needs are referred on to appropriate actors which can provide them with support and assistance.

While all victims of trafficking are subject to grave abuses of their human rights, not every victim will qualify for international refugee protection. In order to be recognized as a Convention refugee, an individual who has been trafficked must meet all the requirements of the 1951 *Convention Relating to the Status of Refugees* and/or its 1967 Protocol.⁵ Victims of trafficking who do not meet the criteria of the 1951 Convention but are nevertheless in need of international protection may qualify for complementary forms of protection based on *non-refoulement* obligations under international human rights law or the national law of the country in which they are in. Other victims of trafficking may be entitled to various forms of assistance under either the *Anti-Trafficking Protocol*⁶ or regional anti-trafficking conventions. Such measures, however, vary considerably from one state to another and, in all cases, are outside the international refugee regime. Additional entitlements may arise under international human rights law.

The compilation is divided into two parts. PART I contains universal instruments and policy relating to human trafficking and is included in the print version of the compilation. PART II contains regional law and policy relating to human trafficking and is only available in the electronic version of the compilation on the UNHCR website, which contains both parts. The compilation is not comprehensive but rather compiles the relevant provisions of each document. For an exhaustive survey of international refugee and human rights law, consult the UNHCR's *Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to the UNHCR*⁷ Similarly, for a detailed survey of the law relating to the interception of migrants and asylum-seekers, particularly at sea, please consult the UNHCR's *Rescue at Sea* compilation.⁸ In all instances, an internet link has been provided to the original document. Readers interested in a more thorough understanding of a particular document should consult its full text and reservations. Please note, however, that UNHCR cannot be responsible for the content of external websites.

The publishers are grateful for any comments on the compilation or recommendation for the inclusion of further material in the next edition.

DIPS/PPLAS

UNHCR Geneva, December 2008

⁵ Victims of human trafficking for whom return to their country would place them (1) at risk being re-trafficked; (2) at risk of reprisal from members of the trafficking network; or (3) at risk of being punished or ostracized by family or community members out of a sense of shame, may face persecution with the meaning of the 1951 *Convention Relating to the Status of Refugees*, and thus qualify for international refugee protection.

⁶ *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (2000) [<http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext>], UN General Assembly Res. 55/25, Annex II, U.N. GAOR, U.N. Doc. A/45/49 (2001), which entered into force on 25 December 2003.

⁷ *Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to the UNHCR*, UNHCR (Geneva) June 2007 [<http://www.unhcr.org/publ/PUBL/455c460b2.html>].

⁸ *Rescue at Sea, Maritime Interception and Stowaways: Selected Reference Materials*, UNHCR (DIPS/PPLAS) (Geneva), November 2006 [<http://www.unhcr.org/refworld/docid/45b8d8b44.html>].

Note on Terminology

Human trafficking is a distinct practice that has been governed by its own international legal regime since the late nineteenth century. Until recently, however, considerable confusion has persisted over its exact definition and the activities included in its scope. This confusion has two sources. Firstly, over the past century, the definition of human trafficking in international law has been progressively modified with the enactment of each new anti-trafficking convention. While earlier definitions of trafficking were restricted to the trafficking of women and girls for ‘immoral purposes’, newer definitions are normally gender-neutral and focus on trafficking for exploitive purposes. The second source of confusion derives from the fact that many activities that qualify as human trafficking are also proscribed by parallel legal regimes concerned with other illegal practices. For example, activities which constitute human smuggling, slavery, forced labour, child labour or crimes against humanity under international law may, in certain circumstances, also come within the definition of human trafficking. In these instances, multiple legal regimes may apply concurrently to suppress different aspects of the same activity – blurring the conceptual distinctions between them in the process.

More clarity as to the definition of **human trafficking** came with the adoption of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* (2000) (hereafter “*Anti-Trafficking Protocol*”).⁹ This Protocol provides a definition of human trafficking which is now widely recognized by the international community and is adopted by this compilation in referring to the term. Article 3(a) of the Protocol defines ‘trafficking in persons’ 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;

Thus human trafficking can be identified by the confluence of three factors: (1) *the act* (the recruitment, transportation, transfer, harbouring or receipt of persons); (2) *the means* (by threat or use of force or other forms of coercion); and (3) *the purpose* (for the purpose of exploitation). In addition, Article 3(c) of the Protocol provides a separate definition for trafficking in children which requires elements (1) and (3) above, but does not require the use or threat of force or coercion in achieving them.

Human trafficking is most frequently confused with **human smuggling**, a related yet distinct practice. An internationally recognized definition of human smuggling is provided by Article 3(a) of the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, (2000) (hereafter “*Anti-Smuggling Protocol*”)¹⁰. It states:

⁹ *Anti-Trafficking Protocol*, see above footnote 6.

¹⁰ *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* (2000) [<http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext>], UN General Assembly Resolution 55/25, Annex II, U.N. GAOR, U.N. Doc. A/45/49 (2001), which entered into force on 28 January 2004.

“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;

Based on this definition, there are three principal differences between human trafficking and human smuggling. Firstly, the *act*: smuggling, by definition, is transnational in nature whereas trafficking may occur within a single country (although the application of the *Anti-Trafficking Protocol* is limited to transnational trafficking).¹¹ Secondly, the *means*: while trafficking requires, except for children, the threat or use of force or coercion, smuggling may not involve any of these means – in fact, many persons are smuggled willingly. Lastly, the *purpose*: trafficking must involve an exploitive purpose (e.g., to facilitate prostitution or servitude). Smuggling, by contrast, merely requires that the perpetrator obtain a financial or material benefit from the activity. Beyond the legal definition, there is also a gendered distinction between trafficking and smuggling; most adult victims of human trafficking are women whereas the majority of smuggled adults are men.¹²

Human trafficking is also frequently confused with two other practices: **slavery** and **forced labour**. These terms are defined by the *Slavery Convention*¹³ and the *Convention Concerning Forced or Compulsory Labour*,¹⁴ respectively. Both of these practices are explicitly mentioned in the *Anti-Trafficking Protocol* as examples of an exploitive purpose, meaning the involuntary transfer of persons to such conditions would constitute trafficking. It is important to note, however, that the *Anti-Trafficking Protocol* is not concerned with prohibiting the use of slavery or forced labour *per se*. That is the goal of the abovementioned slavery and labour conventions. Rather the *Anti-Trafficking Protocol* is concerned with prohibiting the preparatory or facilitative acts which occur prior to or alongside these human rights abuses and make them possible. In this respect, the *Anti-Trafficking Protocol* complements, rather than substitutes, various conventions aimed at prohibiting slavery, forced labour and other forms of exploitation.

There does exist, however, considerable legal overlap between the terms human trafficking and the **slave trade** in international law. This latter term is defined by Article 1(2) of the *Slavery Convention*, which states:

The slave trade 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 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.

¹¹ Article 4 of the *Anti-Trafficking Protocol* states that “[t]his Protocol shall apply...where those offences [i.e., human trafficking] are transnational in nature and involve an organized crime group as well as to the protection of victims of such offences.” Other conventions, such as the *Council of Europe Convention on Action against Trafficking in Human Beings*, address trafficking both within and across national borders.

¹² Jenna Shearer Demir, *The trafficking of women for sexual exploitation: a gender-based and well-founded fear of persecution?* New Issues in Refugee Research: Working Paper No. 80, UNHCR (Geneva) March 2003 [<http://www.unhcr.org/research/RESEARCH/3e71f84c4.pdf>], at p. 7.

¹³ See Article 1(1): *Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention* (1926), 60 L.N.T.S. 253, entry into force 9 March 1927.

¹⁴ See Article 2: *ILO Convention No. 29: Convention concerning Forced or Compulsory Labour* (1930), 39 U.N.T.S. 55, entry into force 5 May 1932.

Presuming that slavery necessarily involves the use or threat of force or coercion against its victims, the term human trafficking would include all instances of the slave trade, based on the above definition. The two terms, however, are not interchangeable; human trafficking is broader than the slave trade. This is because human trafficking also includes the involuntary transfer of individuals to outcomes other than slavery, such as sexual exploitation and forced labour.

**PART I:
UNIVERSAL INSTRUMENTS
AND POLICY RELATING TO
HUMAN TRAFFICKING**

INTERNATIONAL CRIMINAL LAW

Full text:

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) [“Anti-Trafficking Protocol”]*

Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

Entered into force on 25 December 2003 – 124 State Parties as of December 2008

The basic purpose of the Protocol is to prevent and combat trafficking, to protect and assist victims and to promote international cooperation. The protection of, and assistance to, victims is specified as a core purpose of the Protocol. Article 3 of this *Protocol* provides an internationally-recognized definition of human trafficking. Although this definition does not require cross-border activities, Article 4 limits the application of the *Protocol* to instances where human trafficking is transnational in nature and involves organized crime. The *Protocol* requires states to establish criminal liability for human trafficking and to adopt preventative and cooperative measures to deter it. It also requires State Parties to provide a robust regime of health and social services to victims, including the possibility of remaining temporarily or permanently in the receiving country. Article 14 of the *Protocol* precludes any effect of the *Protocol* on international humanitarian and human rights law obligations, and specifically mentions the 1951 *Convention* and 1967 *Protocol Relating to the Status of Refugees*.

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

* UN General Assembly Resolution 55/25, Annex II, U.N. GAOR, U.N. Doc. A/45/49 (2001) [<http://www2.ohchr.org/english/law/protocoltraffice.htm>]

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

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.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol,

where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall 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.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

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

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the

provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Full text:

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000) [“*Anti-Smuggling Protocol*”]*

Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

Entered into force on 28 January 2004 – 117 State Parties as of December 2008

The *Protocol* provides an internationally recognized definition of human smuggling which focuses on procuring the illegal entry of a foreign national into the territory of a State Party in exchange for financial or other material benefit. The Protocol requires State Parties to establish criminal liability for human smuggling and to adopt other cooperative and preventative measures to deter it. Victims of human smuggling, however, are explicitly excluded from criminal liability under the *Protocol* and are instead entitled to protection and assistance measures. Article 19 of the *Protocol* precludes any effect of the *Protocol* on international humanitarian and human rights law obligations and specifically mentions the 1951 *Convention* and 1967 *Protocol Relating to the Status of Refugees* in that provision.

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

* UN General Assembly Resolution 55/25, Annex II, U.N. GAOR, U.N. Doc. A/45/49 (2001) [<http://www2.ohchr.org/English/law/organizedcrime.htm>]

Also *concerned* that the smuggling of migrants can endanger the lives or security of the migrants involved,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

Article 3

Use of terms

For the purposes of this Protocol:

- (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;
- (b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;
- (c) "Fraudulent travel or identity document" shall mean any travel or identity document:
 - (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
 - (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
 - (iii) That is being used by a person other than the rightful holder;
- (d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Article 5

Criminal liability of migrants

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Article 6

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

(a) The smuggling of migrants;

(b) When committed for the purpose of enabling the smuggling of migrants:

(i) Producing a fraudulent travel or identity document;

(ii) Procuring, providing or possessing such a document;

(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:

(a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or

(b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

II. Smuggling of migrants by sea

Article 7

Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

Article 8

Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, *inter alia*:

- (a) To board the vessel;
- (b) To search the vessel; and
- (c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9

Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

- (a) Ensure the safety and humane treatment of the persons on board;

- (b) Take due account of the need not to endanger the security of the vessel or its cargo;
 - (c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;
 - (d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.
2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.
 3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:
 - (a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
 - (b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.
 4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

III. Prevention, cooperation and other measures

Article 10

Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:
 - (a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;
 - (b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;
 - (c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;
 - (d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;
 - (e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and
 - (f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.
2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the

commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Article 14

Training and technical cooperation

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

(a) Improving the security and quality of travel documents;

(b) Recognizing and detecting fraudulent travel or identity documents;

(c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;

- (d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and
- (e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15

Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.
2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.
3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16

Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.
3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.
4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.
5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Article 17

Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or

(b) Enhancing the provisions of this Protocol among themselves.

Article 18

Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.
2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.
3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.
4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.
6. States Parties may cooperate with relevant international organizations in the implementation of this article.
7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.
8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. Final provisions

Article 19

Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-*refoulement* as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 20

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Selected provisions:

Rome Statute of the International Criminal Court (1998) **["Rome Statute"]***

Adopted on 17 July 1998

Entered into force on 1 July 2002 – 108 State Parties as of December 2008

The *Rome Statute* establishes criminal liability for genocide, crimes against humanity, war crimes and the crime of aggression. It also establishes the International Criminal Court with jurisdiction to prosecute individuals responsible for such crimes where national authorities are unwilling or unable to do so. Article 7(1) details offences which constitute crimes against humanity, and includes enslavement, forcible transfer, rape, sexual slavery and enforced prostitution, all of which may be relevant in the context of human trafficking and smuggling. Article 7(2), specifically states that enslavement “means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons.”

The States Parties to this Statute,

...

Have agreed as follows:

...

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

...

Article 7

Crimes against humanity

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- ...
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;

* 2187 U.N.T.S. 90 [http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_120704-EN.pdf].

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

...

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

...

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

...

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

...

Article 11

*Jurisdiction *ratione temporis**

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction

by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

...

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 86

General obligation to cooperate

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

...

Article 88

Availability of procedures under national law

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

...

Selected provisions:

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

Adopted by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956

Entered into force on 30 April 1957 – 123 State Parties as of December 2008

The *Convention* supplements the 1926 *Slavery Convention*, selected provisions of which are included in this compilation. Its most important contribution is to prohibit the following practices, regardless of whether or not they are included under the definition of slavery in the *Slavery Convention*: debt bondage, serfdom, servile marriage and child servitude. Articles 3 and 4 address the prohibitions on the slave trade, a term which includes human trafficking when this results in conditions of slavery for the trafficked victim. In these instances, both this *Convention* and the *Anti-Trafficking Protocol* would apply concurrently to prohibit the activity.

The States Parties to the present Convention,

Considering that freedom is the birthright of every human being,

Mindful that the peoples of the United Nations reaffirmed in the Charter their faith in the dignity and worth of the human person,

Considering that the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations as a common standard of achievement for all peoples and all nations, states that no one shall be held in slavery or servitude and that slavery and the slave trade shall be prohibited in all their forms,

Recognizing that, since the conclusion of the Slavery Convention signed at Geneva on 25 September 1926, which was designed to secure the abolition of slavery and of the slave trade, further progress has been made towards this end,

Having regard to the Forced Labour Convention of 1930 and to subsequent action by the International Labour Organisation in regard to forced or compulsory labour,

Being aware, however, that slavery, the slave trade and institutions and practices similar to slavery have not yet been eliminated in all parts of the world,

Having decided, therefore, that the Convention of 1926, which remains operative, should now be augmented by the conclusion of a supplementary convention designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery,

Have agreed as follows:

SECTION I – INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

Article 1

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

* 226 U.N.T.S. 3 [<http://www.unhchr.ch/html/menu3/b/30.htm>]

- (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
 - (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.

Article 2

With a view to bringing to an end the institutions and practices mentioned in article 1 (c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

SECTION II – THE SLAVE TRADE

Article 3

1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.
2. (a) The States Parties shall take all effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves and to punish persons guilty of such acts or of using national flags for that purpose.
(b) The States Parties shall take all effective measures to ensure that their ports, airfields and coasts are not used for the conveyance of slaves.
3. The States Parties to this Convention shall exchange information in order to ensure the practical co-ordination of the measures taken by them in combating the slave trade and shall inform each other of every case of the slave trade, and of every attempt to commit this criminal offence, which comes to their notice.

Article 4

Any slave who takes refuge on board any vessel of a State Party to this Convention shall ipso facto be free.

SECTION III – SLAVERY AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

Article 5

In a country where the abolition or abandonment of slavery, or of the institutions or practices mentioned in article 1 of this Convention, is not yet complete, the act of mutilating, branding or otherwise marking a slave or a person of servile status in order to indicate his status, or as a punishment, or for any other reason, or of being accessory thereto, shall be a criminal offence

under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

Article 6

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

2. Subject to the provisions of the introductory paragraph of article 1 of this Convention, the provisions of paragraph 1 of the present article shall also apply to the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to being accessory thereto, and to being a party to a conspiracy to accomplish any such acts.

SECTION IV – DEFINITIONS

Article 7

For the purposes of the present Convention:

(a) “Slavery” means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and “slave” means a person in such condition or status;

(b) “A person of servile status” means a person in the condition or status resulting from any of the institutions or practices mentioned in article 1 of this Convention;

(c) “Slave trade” means and 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 or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.

SECTION V – CO-OPERATION BETWEEN STATES PARTIES AND COMMUNICATION OF INFORMATION

Article 8

1. The States Parties to this Convention undertake to co-operate with each other and with the United Nations to give effect to the foregoing provisions.

2. The Parties undertake to communicate to the Secretary-General of the United Nations copies of any laws, regulations and administrative measures enacted or put into effect to implement the provisions of this Convention.

3. The Secretary-General shall communicate the information received under paragraph 2 of this article to the other Parties and to the Economic and Social Council as part of the documentation for any discussion which the Council might undertake with a view to making further recommendations for the abolition of slavery, the slave trade or the institutions and practices which are the subject of this Convention.

...

Selected provisions:

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*

Approved by UN General Assembly resolution 317(IV) on 2 December 1949

Adopted on 21 March 1950

Entered into force on 25 July 1951 – 81 State Parties as of December 2008

This *Convention* is part of a series of international treaties (detailed in the preamble below) which aimed to eradicate trafficking in women for the purposes of prostitution. Article 1 of the *Convention* provides a definition of human trafficking which differs from the *Anti-Trafficking Protocol*, with the latter now treated as the international standard. In particular, the definition in this *Convention* does not require trafficking to occur by means of threat or use of force, or some other form of coercion (unlike the *Anti-Trafficking Protocol*). It is also limited to trafficking for the purpose of prostitution (while the *Anti-Trafficking Protocol* applies more generally to trafficking for the “purposes of exploitation”). Articles 17-20 relate to the transnational trafficking of women, in particular, and generally call for repatriation once identity has been established. Both this *Convention* and the *Anti-Trafficking Protocol* are in force and thus both apply concurrently to suppress trafficking.

Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community, *Whereas*, with respect to the suppression of the traffic in women and children, the following international instruments are in force:

- (1) International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948,
- (2) International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol,
- (3) International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947,
- (4) International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol,

Whereas the League of Nations in 1937 prepared a draft Convention extending the scope of the above-mentioned instruments, and

Whereas developments since 1937 make feasible the conclusion of a convention consolidating the above-mentioned instruments and embodying the substance of the 1937 draft Convention as well as desirable alterations therein:

Now therefore

The Contracting parties

Hereby agree as hereinafter provided:

* 96 U.N.T.S. 271 [<http://www.unhchr.ch/html/menu3/b/33.htm>]

Article 1

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

- (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
- (2) Exploits the prostitution of another person, even with the consent of that person.

Article 2

The Parties to the present Convention further agree to punish any person who:

- (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;
- (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

Article 3

To the extent permitted by domestic law, attempts to commit any of the offences referred to in articles 1 and 2, and acts preparatory to the commission thereof, shall also be punished.

Article 4

To the extent permitted by domestic law, intentional participation in the acts referred to in articles 1 and 2 above shall also be punishable.

To the extent permitted by domestic law, acts of participation shall be treated as separate offences whenever this is necessary to prevent impunity.

Article 5

In cases where injured persons are entitled under domestic law to be parties to proceedings in respect of any of the offences referred to in the present Convention, aliens shall be so entitled upon the same terms as nationals.

Article 6

Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

Article 7

Previous convictions pronounced in foreign States for offences referred to in the present Convention shall, to the extent permitted by domestic law, be taken into account for the purposes of:

- (1) Establishing recidivism;
- (2) Disqualifying the offender from the exercise of civil rights.

Article 8

The offences referred to in articles 1 and 2 of the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereafter be concluded between any of the Parties to this Convention.

The Parties to the present Convention which do not make extradition conditional on the existence of a treaty shall henceforward recognize the offences referred to in articles 1 and 2 of the present Convention as cases for extradition between themselves.

Extradition shall be granted in accordance with the law of the State to which the request is made.

Article 9

In States where the extradition of nationals is not permitted by law, nationals who have returned to their own State after the commission abroad of any of the offences referred to in articles 1 and 2 of the present Convention shall be prosecuted in and punished by the courts of their own State.

This provision shall not apply if, in a similar case between the Parties to the present Convention, the extradition of an alien cannot be granted.

Article 10

The provisions of article 9 shall not apply when the person charged with the offence has been tried in a foreign State and, if convicted, has served his sentence or had it remitted or reduced in conformity with the laws of that foreign State.

Article 11

Nothing in the present Convention shall be interpreted as determining the attitude of a Party towards the general question of the limits of criminal jurisdiction under international law.

Article 12

The present Convention does not affect the principle that the offences to which it refers shall in each State be defined, prosecuted and punished in conformity with its domestic law.

Article 13

The Parties to the present Convention shall be bound to execute letters of request relating to offences referred to in the Convention in accordance with their domestic law and practice.

The transmission of letters of request shall be effected:

- (1) By direct communication between the judicial authorities; or
- (2) By direct communication between the Ministers of Justice of the two States, or by direct communication from another competent authority of the State making the request to the Minister of Justice of the State to which the request is made; or
- (3) Through the diplomatic or consular representative of the State making the request in the State to which the request is made; this representative shall send the letters of request direct to the competent judicial authority or to the authority indicated by the Government of the State to which the request is made, and shall receive direct from such authority the papers constituting the execution of the letters of request.

In cases 1 and 3 a copy of the letters of request shall always be sent to the superior authority of the State to which application is made.

Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the State to which the request is made may require a translation in its own language, certified correct by the authority making the request.

Each Party to the present Convention shall notify to each of the other Parties to the Convention the method or methods of transmission mentioned above which it will recognize for the letters of request of the latter State.

Until such notification is made by a State, its existing procedure in regard to letters of request shall remain in force.

Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.

Nothing in the present article shall be construed as an undertaking on the part of the Parties to the present Convention to adopt in criminal matters any form or methods of proof contrary to their own domestic laws.

Article 14

Each Party to the present Convention shall establish or maintain a service charged with the co-ordination and centralization of the results of the investigation of offences referred to in the present Convention.

Such services should compile all information calculated to facilitate the prevention and punishment of the offences referred to in the present Convention and should be in close contact with the corresponding services in other States.

Article 15

To the extent permitted by domestic law and to the extent to which the authorities responsible for the services referred to in article 14 may judge desirable, they shall furnish to the authorities responsible for the corresponding services in other States the following information:

- (1) Particulars of any offence referred to in the present Convention or any attempt to commit such offence;
- (2) Particulars of any search for any prosecution, arrest, conviction, refusal of admission or expulsion of persons guilty of any of the offences referred to in the present Convention, the movements of such persons and any other useful information with regard to them.

The information so furnished shall include descriptions of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

Article 16

The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention.

Article 17

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

- (1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route;
- (2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;
- (3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;
- (4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.

Article 18

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law, to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State. The information obtained shall be communicated to the authorities of the State of origin of the said persons with a view to their eventual repatriation.

Article 19

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations thereunder and so far as possible:

- (1) Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance;
- (2) To repatriate persons referred to in article 18 who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Repatriation shall take place only after agreement is reached with the State of destination as to identity and nationality as well as to the place and date of arrival at frontiers. Each Party to the present Convention shall facilitate the passage of such persons through its territory.

Where the persons referred to in the preceding paragraph cannot themselves repay the cost of repatriation and have neither spouse, relatives nor guardian to pay for them, the cost of repatriation as far as the nearest frontier or port of embarkation or airport in the direction of the State of origin shall be borne by the State where they are in residence, and the cost of the remainder of the journey shall be borne by the State of origin.

Article 20

The Parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

...

Article 27

Each Party to the present Convention undertakes to adopt, in accordance with its Constitution, the legislative or other measures necessary to ensure the application of the Convention.

Article 28

The provisions of the present Convention shall supersede in the relations between the Parties thereto the provisions of the international instruments referred to in subparagraphs 1, 2, 3 and 4 of the second paragraph of the Preamble, each of which shall be deemed to be terminated when all the Parties thereto shall have become Parties to the present Convention.

...

Selected provisions:

International Convention for the Suppression of the Traffic in Women of Full Age (1933)*

Adopted on 11 October 1933

Entered into on 24 August 1934 – 38 State Parties as of December 2008

This *Convention* complements the 1910 and 1921 *Conventions on the Suppression of the Traffic in Women and Children*, selected provisions of which are included in this compilation. The *Convention*'s most important contribution is found in Article 3 which obliges State Parties to share information with each other on any individual who has committed or attempted to commit an act prohibited under the *Convention*. Article 1 of the *Convention* provides a definition of human trafficking which differs from the *Anti-Trafficking Protocol*, with the latter now treated as the international standard. In particular, the definition in this *Convention* does not require trafficking to occur by means of threat or use of force, or some other form of coercion (unlike the *Anti-Trafficking Protocol*). It also includes all trafficking for "immoral purposes" (while the *Anti-Trafficking Protocol* applies more specifically to trafficking for the "purposes of exploitation"). By virtue of UN General Assembly resolution 126 (II) of 20 October 1947, this *Convention* and the 1921 *Convention on the Traffic in Women and Children* (provisions of which are included in this compilation), both negotiated under the auspices of the League of Nations, were adopted as United Nations treaties.

...

Article 1

Whoever, in order to gratify the passions of another person, has procured, enticed or led away even with her consent, a woman or girl of full age for immoral purposes to be carried out in another country, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.

Attempted offences, and, within the legal limits, acts preparatory to the offences in question, shall also be punishable.

For the purposes of the present Article, the term "country" includes the colonies and protectorates of the High Contracting Party concerned, as well as territories under his suzerainty and territories for which a mandate has been entrusted to him.

Article 2

The High Contracting Parties whose laws are at present inadequate to deal with the offences specified in the preceding Article agree to take the necessary steps to ensure that these offences shall be punished in accordance with their gravity.

Article 3

The High Contracting Parties undertake to communicate to each other in regard to any person of either sex who has committed or attempted to commit any of the offences referred to in the present Convention or in the Conventions of 1910 or 1921 on the Suppression of the Traffic

* 150 L.N.T.S. 431 [http://treaties.un.org/doc/Treaties/1933/10/19331011_06-00_AM/Ch_VII_5p.pdf]. This Convention has been superseded by the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, as regards State Parties to the 1949 Convention.

in Women and Children, the various constituent acts of which were, or were to have been, accomplished in different countries, the following information (or similar information which it may be possible to supply under the laws and regulations of the country concerned):

- (a) Records of convictions, together with any useful and available information with regard to the offender, such as his civil status, description, finger-prints, photograph and police record, his methods of operation, etc.
- (b) Particulars of any measures of refusal of admission or of expulsion which may have been applied to him.

These documents and information shall be sent direct and without delay to the authorities of the countries concerned in each particular case by the authorities named in Article 1 of the Agreement concluded in Paris on 18 May 1904 and, if possible, in all cases when the offence, conviction, refusal of admission or expulsion has been duly established.

...

Selected provisions:

Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention (1926) [“*Slavery Convention*”]*

Adopted by 25 September 1926

Entered into force on 9 March 1927 – 99 State Parties as of December 2008

Article 1 of this *Convention* defines both slavery and the slave trade. The latter can be considered as a definition of trafficking when this results in conditions of slavery for the trafficked victim. Article 2 requires State Parties to “prevent and suppress the slave trade” and to bring about the “complete abolition of slavery in all its forms.” Akin to the *Anti-Trafficking Protocol*’s requirement for States to establish criminal liability for human trafficking, Article 6 of this *Convention* obliges States to impose “severe penalties” for perpetrators of slavery. Following the dissolution of the League of Nations, the Convention was officially rendered a United Nations treaty through the *Protocol amending the Slavery Convention*.[∞]

...

Considering, moreover, that it is necessary to prevent forced labour from developing into conditions analogous to slavery, have decided to conclude a Convention and have accordingly appointed as their Plenipotentiaries [names omitted]

...

have agreed as follows:

Article 1

For the purpose of the present Convention, the following definitions are agreed upon:

- (1) 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.
- (2) The slave trade 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 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.

Article 2

The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps:

- (a) To prevent and suppress the slave trade;
- (b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.

* 60 L.N.T.S. 253 [<http://www.unhchr.ch/html/menu3/b/f2sc.htm>]. This Convention has been superseded by the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, as regards State Parties to the 1949 Convention.

[∞] 182 U.N.T.S. 51, *entered into force* 7 December 1953 [<http://www.unhchr.ch/html/menu3/b/f2psc.htm>]

Article 3

The High Contracting Parties undertake to adopt all appropriate measures with a view to preventing and suppressing the embarkation, disembarkation and transport of slaves in their territorial waters and upon all vessels flying their respective flags.

The High Contracting Parties undertake to negotiate as soon as possible a general Convention with regard to the slave trade which will give them rights and impose upon them duties of the same nature as those provided for in the Convention of June 17th, 1925, relative to the International Trade in Arms (Articles 12, 20, 21, 22, 23, 24 and paragraphs 3, 4 and 5 of Section II of Annex II), with the necessary adaptations, it being understood that this general Convention will not place the ships (even of small tonnage) of any High Contracting Parties in a position different from that of the other High Contracting Parties.

It is also understood that, before or after the coming into force of this general Convention, the High Contracting Parties are entirely free to conclude between themselves, without, however, derogating from the principles laid down in the preceding paragraph, such special agreements as, by reason of their peculiar situation, might appear to be suitable in order to bring about as soon as possible the complete disappearance of the slave trade.

Article 4

The High Contracting Parties shall give to one another every assistance with the object of securing the abolition of slavery and the slave trade.

Article 5

The High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

It is agreed that:

- (1) Subject to the transitional provisions laid down in paragraph(2) below, compulsory or forced labour may only be exacted for public purposes.
- (2) In territories in which compulsory or forced labour for other than public purposes still survives, the High Contracting Parties shall endeavour progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labour exists, this labour shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence.
- (3) In all cases, the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned.

Article 6

Those of the High Contracting Parties whose laws do not at present make adequate provision for the punishment of infractions of laws and regulations enacted with a view to giving effect to the purposes of the present Convention undertake to adopt the necessary measures in order that severe penalties may be imposed in respect of such infractions.

Article 7

The High Contracting Parties undertake to communicate to each other and to the Secretary-General of the League of Nations any laws and regulations which they may enact with a view to the application of the provisions of the present Convention.

...

Selected provisions:

International Convention for the Suppression of the Traffic in Women and Children (1921)*

Adopted by 30 September 1921

Entered into force on 15 June 1922 – 46 State Parties as of December 2008

This *Convention* brings the provisions of the 1904 *Agreement* and 1910 *Convention on the Suppression of “White Slave Traffic”* (included in this compilation) under the auspices of a League of Nations treaty. Almost all of its provisions are drawn from those two earlier international legal documents. One notable exception is Article 5, which raises the age of maturity with respect to trafficking from 20 years in the 1910 *Convention* to 21 years in the current *Convention*. By virtue of UN General Assembly resolution 126 (II) of 20 October 1947, this *Convention* and the 1933 *Convention on the Traffic of Women of Full Age* (selected provisions of which are included in this compilation) were adopted as United Nations treaties.

...

Article 1

The High Contracting Parties agree that, in the event of their not being already Parties to the Agreement of 18 May 1904 and the Convention on 4 May 1910 mentioned above, they will transmit, with the least possible delay, their ratifications of, or adhesions to, those instruments in the manner laid down therein.

Article 2

The High Contracting Parties agree to take all measures to discover and prosecute persons who are engaged in the traffic in children of both sexes and who commit offences within the meaning of Article 1 of the Convention of 4 May 1910.

Article 3

The High Contracting Parties agree to take the necessary steps to secure the punishment of attempts to commit, and, within legal limits, of acts preparatory to the commission of, the offences specified in Articles 1 and 2 of the Convention of 4 May 1910.

Article 4

The High Contracting Parties agree that, in cases where there are no extradition Conventions in force between them, they will take all measures within their power to extradite or provide for the extradition of persons accused or convicted of the offences specified in Articles 1 and 2 of the Convention of 4 May 1910.

Article 5

In paragraph B of the final Protocol of the Convention of 1910, the words “twenty completed years of age” shall be replaced by the words “twenty-one completed years of age”.

* 9 L.N.T.S. 415, 116 B.F.S.P. 547 [http://treaties.un.org/doc/Treaties/1921/09/19210930_05-59_AM/Ch_VII_3p.pdf]. This Convention has been superseded by the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, as regards State Parties to the 1949 Convention.

Article 6

The High Contracting Parties agree, in case they have not already taken legislative or administrative measures regarding licensing and supervision of employment agencies and offices, to prescribe such regulations as are required to ensure the protection of women and children seeking employment in another country.

Article 7

The High Contracting Parties undertake in connection with immigration and emigration to adopt such administrative and legislative measures as are required to check the traffic in women and children. In particular, they undertake to make such regulations as are required for the protection of women and children travelling on emigrant ships, not only at the points of departure and arrival, but also during the journey, and to arrange for the exhibition, in railway stations and in ports, of notices warning women and children of the danger of the traffic and indicating the places where they can obtain accommodation and assistance.

...

Selected provisions:

International Convention for the Suppression of the “White Slave Traffic” (1910)*

Adopted by 4 May 1910

Entered into force generally on 15 June 1922, and for Australia on 28 June 1922

This document is the first international treaty to directly address cross-border trafficking in women. The *Convention* largely restates the provisions found in the earlier 1904 *International Agreement for the Suppression of the “White Slave Traffic.”* Article 1 of the *Convention* provides a definition of human trafficking which differs significantly from that provided by the *Anti-Trafficking Protocol*, with the latter now treated as the international standard. In particular, the definition in this *Convention* does not require trafficking to occur by means of threat or use of force, or some other form of coercion (unlike the *Anti-Trafficking Protocol*), and includes all trafficking for “immoral purposes” (whereas the *Anti-Trafficking Protocol* applies more specifically to trafficking for the “purposes of exploitation”). By virtue of the *Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and the International Convention for the Suppression of the White Slave Traffic* (1949), the *Convention* was updated to allow for cooperation and coordination with the United Nations.[∞]

...

Article 1

Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.

Article 2

Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes, shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.

Article 3

The Contracting Parties whose legislation may not at present be sufficient to deal with the offences contemplated by the two preceding Articles engage to take or to propose to their respective legislatures the necessary steps to punish these offences according to their gravity.

* 20 U.K.T.S. 269, 211 Consol. T.S. 45, 103 B.F.S.P. 244 [[http://treaties.un.org/doc/Publication/UNTS/Volume 98/volume-98-I-1358-English.pdf](http://treaties.un.org/doc/Publication/UNTS/Volume%2098/volume-98-I-1358-English.pdf)]. This Convention has been superseded by the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, as regards State Parties to the 1949 Convention.

[∞] 30 U.N.T.S. 23, *entered into force* 21 June 1951 [[http://treaties.un.org/doc/Publication/UNTS/Volume 30/volume-30-I-446-English.pdf](http://treaties.un.org/doc/Publication/UNTS/Volume%2030/volume-30-I-446-English.pdf)]

Article 4

The Contracting Parties shall communicate to each other, through the intermediary of the Government of the French Republic, the laws which have already been or may in future be passed in their States relating to the object of the present Convention.

Article 5

The offences contemplated in Articles 1 and 2 shall, from the day on which the present Convention comes into force, be deemed to be lawfully included in the list of offences for which extradition may be granted in accordance with Conventions already existing between the Contracting Parties.

In cases in which the above provision cannot be made effective without amending existing legislation, the Contracting Parties engage to take or to propose to their respective legislatures the necessary measures.

Article 6

The transmission of Letters of Request relating to offences covered by the present Convention shall be effected:

1. Either by direct communication between the judicial authorities;
2. Or through the intermediary of the diplomatic or consular agent of the demanding State in the country to which the demand is addressed. This agent shall forward the Letter of Request direct to the competent judicial authority, and will receive direct from that authority the documents establishing the execution of the Letter of Request; (in these two cases a copy of the Letter of Request shall always be addressed at the same time to the superior authority of the State to which the demand is addressed);
3. Or through the diplomatic channel.

Each Contracting Party shall make known, by a communication addressed to each of the other Contracting Parties, the method or methods of transmission which it recognises for Letters of Request emanating from that State.

All difficulties which may arise in connection with transmissions effected in cases 1 and 2 of the present Article shall be settled through the diplomatic channel.

In the absence of any different understanding, the Letter of Request must be drawn up either in the language of the State on whom the demand is made or in the language agreed upon between the two States concerned, or else it must be accompanied by a translation made in one of these two languages and duly certified by a diplomatic or consular agent of the demanding State, or by a sworn translator of the State on whom the demand is made.

The execution of the Letters of Request shall not entail repayment of expenses of any kind whatever.

Article 7

The Contracting Parties undertake to communicate to each other the records of convictions in respect of offences covered by the present Convention where the various acts constituting such offences have been committed in different countries.

These documents shall be forwarded direct by the authorities designated in conformity with Article 1 of the Agreement concluded at Paris on 18 May 1904, to the corresponding authorities of the other Contracting States.

...

Article 12

The present Convention, which shall be dated 4 May 1910, may be signed in Paris up to 31 July following, by the plenipotentiaries of the Powers represented at the second Conference for the Suppression of the "White Slave Traffic".

DONE at Paris, the 4th May, 1910, in a single copy, of which a certified copy shall be communicated to each of the Signatory Powers.

...

FINAL PROTOCOL

At the moment of proceeding to the signature of the Convention of this day, the undersigned plenipotentiaries deem it expedient to indicate the sense in which Articles 1, 2, and 3 of that Convention are to be understood, and in accordance with which it is desirable that the Contracting States, in the exercise of their legislative sovereignty, should provide for the execution of the stipulations agreed upon or for their extension.

A. The stipulations of Articles 1 and 2 are to be considered as a minimum, seeing that it is self-evident that the Contracting Governments remain entirely free to punish other analogous offences, such, for example, as the procuring of women over age, even where neither fraud nor compulsion may have been exercised.

B. As regards the suppression of the offences provided for in Articles 1 and 2, it is fully understood that the words "woman or girl under age, woman or girl over age" refer to women or girls under or over twenty completed years of age. A law may, nevertheless, fix a more advanced age for protection, on condition that it is the same for women or girls of every nationality.

C. With a view to the suppression of the same offences the law should decree, in every case, a punishment involving loss of liberty, without prejudice to other penalties, principal or accessory; it should also take into account, apart from the age of the victim, the various aggravating circumstances which exist in the case, such as those referred to in Article 2, or the fact that the victim has been in effect delivered over to an immoral life.

D. The case of detention, against her will, of a woman or girl in a brothel could not, in spite of its gravity, be dealt with in the present Convention, seeing that it is governed exclusively by internal legislation.

The present Final Protocol shall be considered as forming an integral part of the Convention of this day, and shall have the same force, validity, and duration.

DONE AND SIGNED at Paris in a single copy, the 4th May, 1910.

Full text:

International Agreement for the Suppression of the “White Slave Traffic” (1904)*

Adopted by 18 May 1904

Entered into force on 18 July 1905

This document is the first international agreement (as opposed to a treaty) to directly address cross-border trafficking in women. Article 1 of the Agreement provides a definition of human trafficking which does not require the trafficking to occur by means of threat or use of force, or some other form of coercion (unlike the 2000 *Anti-Trafficking Protocol*), and includes all trafficking for ‘immoral purposes’ (the 2000 *Anti-Trafficking Protocol* applies more specifically to trafficking for the “purposes of exploitation”). While repatriation is always foreseen as the ultimate outcome, Article 3 states that “[r]epatriation shall only take place after agreement as to identity and nationality, as well as place and date of arrival at the frontiers.” By virtue of the *Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and the International Convention for the Suppression of the White Slave Traffic* (1949), this Agreement was updated to allow for cooperation and coordination with the United Nations.[∞]

...

Article 1

Each of the Contracting Governments undertakes to establish or name some authority charged with the coordination of all information relative to the procuring of women or girls for immoral purposes abroad; this authority shall be empowered to correspond direct with the similar department established in each of the other Contracting States.

Article 2

Each of the Governments undertakes to have a watch kept, especially in railway stations, ports of embarkation, and en route, for persons in charge of women and girls destined for an immoral life. With this object instructions shall be given to the officials, and all other qualified persons, to obtain, within legal limits, all information likely to lead to the detection of criminal traffic.

The arrival of persons who clearly appear to be the principals, accomplices in, or victims of, such traffic shall be notified, when it occurs, either to the authorities of the place of destination, or to the diplomatic or consular agents interested, or to any other competent authorities.

Article 3

The Governments undertake, when the case arises, and within legal limits, to have the declarations taken of women or girls of foreign nationality who are prostitutes, in order to

* 35 Stat. 1979, 1 L.N.T.S. 83 [[http://treaties.un.org/doc/Publication/UNTS/Volume 92/volume-92-I-1257-English.pdf](http://treaties.un.org/doc/Publication/UNTS/Volume%2092/volume-92-I-1257-English.pdf)]. This Convention has been superseded by the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, as regards State Parties to the 1949 Convention.

[∞] 30 U.N.T.S. 23, entered into force 21 June 1951 [[http://treaties.un.org/doc/Publication/UNTS/Volume 30/volume-30-I-446-English.pdf](http://treaties.un.org/doc/Publication/UNTS/Volume%2030/volume-30-I-446-English.pdf)]

establish their identity and civil status, and to discover who has caused them to leave their country. The information obtained shall be communicated to the authorities of the country of origin of the said women and girls, with a view to their eventual repatriation.

The Governments undertake, within legal limits, and as far as can be done, to entrust temporarily, and with a view to their eventual repatriation, the victims of a criminal traffic when destitute to public or private charitable institutions, or to private individuals offering the necessary security.

The Governments also undertake, within legal limits, and as far as possible, to send back to their country of origin those women and girls who desire it, or who may be claimed by persons exercising authority over them. Repatriation shall only take place after agreement as to identity and nationality, as well as place and date of arrival at the frontiers. Each of the Contracting Countries shall facilitate transit through its territory.

Correspondence relative to repatriation shall be direct as far as possible.

Article 4

Where the woman or girl to be repatriated cannot herself repay the cost of transfer, and has neither husband, relations, nor guardian to pay for her, the cost of repatriation shall be borne by the country where she is in residence as far as the nearest frontier or port of embarkation in the direction of the country of origin, and by the country of origin as regards the rest.

Article 5

The provisions of the foregoing Articles 3 and 4 shall not affect any private Conventions existing between the Contracting Governments.

Article 6

The Contracting Governments undertake, within legal limits, to exercise supervision, as far as possible, over the offices or agencies engaged in finding employment for women or girls abroad.

Article 7

Non-Signatory States can adhere to the present Agreement. For this purpose they shall notify their intention, through the diplomatic channel, to the French Government, who shall acquaint all the Contracting States.

Article 8

The present Agreement shall come into force six months after the exchange of ratifications. If one of the Contracting Parties denounces it, this denunciation shall only have effect as regards that party, and that only twelve months after the date of denunciation.

Article 9

The present Agreement shall be ratified, and the ratifications shall be exchanged, at Paris, with the least possible delay.

IN FAITH WHEREOF the respective plenipotentiaries have signed the present Agreement, and thereunto affixed their seals.

DONE at Paris, the 18th May, 1904, in single copy, which shall be deposited in the archives of the Ministry of Foreign Affairs of the French Republic, and of which one copy, certified correct, shall be sent to each Contracting Party.

INTERNATIONAL HUMAN RIGHTS LAW

Selected provisions:

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)*

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/45/158 of 18 December 1990

Entered into force on 1 July 2003 – 40 State Parties as of December 2008.

The *Convention* constitutes a comprehensive regime for the protection of both documented and undocumented migrant workers' rights and their families. The *Convention* does not create new rights. Instead, it emphasizes that migrant workers are entitled to the basic protections of international human rights law, regardless of their location or immigration status. Most of its provisions are copied verbatim from other major human rights treaties, primarily the ICPCR and the ICESCR. The *Convention* recognizes that documented migrants have the legitimacy to claim more rights than undocumented migrants, but it stresses that undocumented migrants (which would include victims of trafficking) must see their fundamental human rights respected. The *Convention* also obliges State Parties to "detect and eradicate" irregular migration in its territory (Articles 68-69), notably through the fight against misleading information inciting people to migrate irregularly, and through sanctions against traffickers and employers of undocumented migrants. To date, no major destination-country for migrants has acceded to the *Convention*.

Preamble

The States Parties to the present Convention,

...

Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

* UN Document A/RES/45/158; 30 ILM 1517 [http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm]

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

...

Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

Article 2

For the purposes of the present Convention:

1. The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

...

Article 3

The present Convention shall not apply to:

...

(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;

...

Article 4

For the purposes of the present Convention the term “members of the family” refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

Article 5

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

...

Article 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

Article 9

The right to life of migrant workers and members of their families shall be protected by law.

Article 10

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term “forced or compulsory labour” shall not include:

- (a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;
- (b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

...

Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.
2. Migrant workers and members of their families shall be 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.
3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law.
4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.
5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may

be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

...

Article 17

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

...

Article 21

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

...

Article 24

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

...

Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

...

Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part VI of the present Convention.

...

Article 64

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

Article 65

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

- (a) The formulation and implementation of policies regarding such migration;
- (b) An exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;
- (c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;
- (d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

...

Article 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

- (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
 - (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;
 - (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.
2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-a-vis their employer arising from employment shall not be impaired by these measures.

Article 69

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.
2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

...

Selected provisions:

Convention on the Rights of the Child (1989)*

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

Entered into force on 2 September 1990 – 193 State Parties as of December 2008.

The *Convention* is the most widely-adopted human rights treaty. It provides a comprehensive regime for protecting the rights of children in both the public and private sphere. In all circumstances where the rights set out in the *Convention* are implicated, public or private, Article 3 requires State Parties to ensure the Best Interests of the Child is a primary consideration. With respect to human trafficking, Article 35 specifically states that “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.” Article 22 requires State Parties to take “appropriate measures” to ensure child refugees receive appropriate protection and humanitarian assistance in the enjoyment of rights set out in the *Convention*.

...

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

...

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

...

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

* 1577 U.N.T.S. 3 [<http://www.unhchr.ch/html/menu3/b/k2crc.htm>]

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

...

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

...

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

...

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

...

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

...

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

- (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.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

...

Selected provisions:

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)*

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000

Entered into force on 18 January 2002 – 129 State Parties as of December 2008.

The *Optional Protocol* supplements the *Convention of the Rights of Child*, providing specialized protection in the areas of child trafficking, child prostitution, child pornography and the worst forms of child labour. The *Optional Protocol* promotes international law enforcement through provisions covering diverse issues such as jurisdictional factors; extradition; mutual assistance in investigations; criminal or extradition proceedings; and seizure and confiscation of assets. Unlike the *Anti-Trafficking Protocol*, the *Optional Protocol* requires State Parties to establish criminal liability for child trafficking for the purposes of exploitation or contrary to international adoption instruments, regardless of whether it is transnational or domestic in nature, or whether it occurs on an individual or organized basis.

The States Parties to the present Protocol,

...

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

...

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

- (a) 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;

...

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

- (a) In the context of sale of children as defined in article 2:
 - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;

* UN Document A/RES/54/263 [<http://www.unhcr.ch/html/menu2/6/crc/treaties/opsc.htm>]

- c. Engagement of the child in forced labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

...

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

...

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

...

Selected provisions:

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)*

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000

Entered into force on 12 February 2002 – 125 State Parties as of December 2008.

Under Article 3(c) of the *Anti-Trafficking Protocol*, it is widely accepted that the recruitment, transportation, transfer, harbouring or receipt of child for the purpose of rendering them a child soldier amounts to trafficking; this is the case regardless of whether the use or threat of force is present or whether the child ‘consents’. The *Optional Protocol* supplements the *Convention of the Rights of Child*, providing a specialized regime to govern the recruitment and use of child as soldiers in armed conflict. The *Protocol* commits State Parties to “take all feasible measures” to ensure persons under the age of 18 already present in their armed forces do not take part in hostilities and “to ensure” that no further children are recruited. Article 4, in contrast, enacts a complete prohibition on the recruitment of children to the armed forces of non-state actors and requires States Parties to criminalize such activity.

The States Parties to the present Protocol,

...

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

...

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment

* UN Document A/RES/54/263 [<http://www2.ohchr.org/english/law/crc-conflict.htm>]

into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary;
- (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- (c) Such persons are fully informed of the duties involved in such military service;
- (d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

...

Selected provisions:

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)*

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 on 10 December 1984

Entered into force on 26 June 1987 – 146 State Parties as of December 2008.

The *Convention* provides a categorical ban on all forms of torture, a term which is defined in Article 1. There are no exceptions or derogations permitted, even in times of war or emergency. Article 3 prohibits the *refoulement* of persons to a State “where there are substantial grounds for believing that he would be in danger of being subjected to torture.” The prohibition on the use of, and *refoulement* to, torture are generally understood to reflect and codify international customary law and are thus, legally binding on States which have not ratified the *Convention*.

...

Article 1

1. For the purposes of this Convention, the term “torture” means 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 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.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

* 1465 U.N.T.S. 85 [http://www.unhchr.ch/html/menu3/b/h_cat39.htm]

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

...

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

...

Selected provisions:

Convention on the Elimination of All Forms of Discrimination Against Women (1979)*

Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979

Entered into force on 3 September 1981 – 185 State Parties as of December 2008.

The *Convention* is one of the core UN human rights treaties, dedicated to the active elimination of all forms of discrimination and violence against women. While all of its provisions have relevance to female migrants and refugees, who are especially prone to gender-based discrimination and violence, Article 6 specifically requires State Parties to adopt measures to suppress the trafficking and related exploitation of women. Article 16 details protections against forced marriage which are also relevant to victims of human trafficking.

...

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

...

Article 6

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

...

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

* 1249 U.N.T.S. 13 [<http://www.unhchr.ch/html/menu3/b/1cedaw.htm>]

- (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

...

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

...

Selected provisions:

International Covenant on Civil and Political Rights (1966)*

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

Entered into force on 23 March 1976 – 163 State Parties as of December 2008.

The *Covenant*, along with the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights*, are widely termed the ‘International Bill of Rights’. It provides for the basic human rights which must be respected by State Parties, in many cases regardless of whether the individual is a citizen or not, or whether they are legally present in the country or not. Article 4(1) provides that certain rights may be derogated from in times of emergency, however, Article 4(2) enumerates rights which are non-derogable. The latter includes the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment under Article 7. In its “General Comment No 20 (1992),” the UN Human Rights Committee ruled that this article also prohibits *refoulement* to such conditions.

...

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by

* 999 U.N.T.S. 171 [http://www.unhchr.ch/html/menu3/b/a_ccpr.htm]

the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

...

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

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

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

...

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

...

Article 24

- 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
- 2. Every child shall be registered immediately after birth and shall have a name.
- 3. Every child has the right to acquire a nationality

...

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

...

Article 40

- 1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
- (b) Thereafter whenever the Committee so requests.

...

Selected provisions:

International Covenant on Economic, Social and Cultural Rights (1966)*

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

Entered into force on 3 January 1976 – 159 State Parties as of December 2008

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provides for the entitlement of individuals to certain standards in the realm of welfare, health, education, cultural participation family life and workplace organization. Together the Universal Declaration of Human Rights, the ICESCR and the ICCPR are widely termed the ‘International Bill of Rights’. Article 2 concerns the application of the *Covenant* to non-nationals, which would include trafficking victims. While Article 2(2) provides a general non-discrimination clause for the enjoyment of rights set out in the *Covenant*, including on the basis of “national origin,” Article 2(3) allows developing states to “determine to what extent they would guarantee the economic rights recognized in the present *Covenant* to non-nationals.”

...

Article 2

1. Each State Party to the present *Covenant* undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present *Covenant* by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present *Covenant* undertake to guarantee that the rights enunciated in the present *Covenant* will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present *Covenant* to non-nationals.

Article 3

The States Parties to the present *Covenant* undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present *Covenant*.

Article 4

The States Parties to the present *Covenant* recognize that, in the enjoyment of those rights provided by the State in conformity with the present *Covenant*, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

...

* 993 U.N.T.S. 3 [http://www.unhchr.ch/html/menu3/b/a_ceschr.htm]

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

...

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

...

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

...

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

...

Full text (citations omitted; emphasis added):

Declaration on the Elimination of Violence Against Women (1993)*

*Proclaimed by United Nations General Assembly resolution 48/104 on 20 December 1993
(A/RES/48/104)*

The *Declaration* complements the broader *Convention on the Elimination of All Forms of Discrimination Against Women*, providing framework for UN and State-based efforts to eliminate violence against women. Unlike the *Convention*, however, the *Declaration* is a resolution of the UN General Assembly and is not legally binding on States. The *Declaration* defines violence against women in Article 2, and includes “trafficking in women and forced prostitution”. Article 4 lists a set of recommendations for State action to combat these illegal acts.

The General Assembly

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,

Noting that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process,

...

Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,

...

Solemnly proclaims the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

Article 1

For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

* [<http://www.un.org/documents/ga/res/48/a48r104.htm>]

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, nonspousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, *inter alia*:

- (a) The right to life;
- (b) The right to equality;
- (c) The right to liberty and security of person;
- (d) The right to equal protection under the law;
- (e) The right to be free from all forms of discrimination;
- (f) The right to the highest standard attainable of physical and mental health;
- (g) The right to just and favourable conditions of work;
- (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- (a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
- (b) Refrain from engaging in violence against women;
- (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- (d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- (e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;
- (f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women

does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women's movement and nongovernmental organizations world wide in raising awareness and alleviating the problem of violence against women;

(p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;

(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

...

Full text:

UN Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002)*

Report of the United Nations High Commissioner for Human Rights to the United Nations Economic and Social Council, 20 May 2002 (E/2002/68/Add.1)

The primacy of human rights

1. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.
3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.

Preventing trafficking

4. Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.
5. States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.
6. States shall exercise due diligence in identifying and eradicating public-sector involvement or complicity in trafficking. All public officials suspected of being implicated in trafficking shall be investigated, tried and, if convicted, appropriately punished.

Protection and assistance

7. Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.
8. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.
9. Legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers. States shall provide protection and temporary residence permits to victims and witnesses during legal proceedings.

* UN Document No. E/2002/68/Add.1 [<http://www.un.org/Docs/journal/asp/ws.asp?m=E/2002/68/Add.1>]

10. Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Child victims of trafficking shall be provided with appropriate assistance and protection. Full account shall be taken of their special vulnerabilities, rights and needs.

11. Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.

Criminalization, punishment and redress

12. States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct.

13. States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.

14. States shall ensure that trafficking, its component acts and related offences constitute extraditable offences under national law and extradition treaties. States shall cooperate to ensure that the appropriate extradition procedures are followed in accordance with international law.

15. Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences.

16. States shall, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking. To the extent possible, confiscated assets shall be used to support and compensate victims of trafficking.

17. States shall ensure that trafficked persons are given access to effective and appropriate legal remedies.

Recommended Guidelines on Human Rights and Human Trafficking

Guideline 1: Promotion and protection of human rights

Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked.
2. Consulting with judicial and legislative bodies, national human rights institutions and relevant sectors of civil society in the development, adoption, implementation and review of anti-trafficking legislation, policies and programmes.
3. Developing national plans of action to end trafficking. This process should be used to build links and partnerships between governmental institutions involved in combating trafficking and/or assisting trafficked persons, and relevant sectors of civil society.
4. Taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory manner.
5. Protecting the right of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe upon this right.
6. Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through the effective application of the principle of non-refoulement.
7. Establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions. Consideration should be given to assigning this role to independent national human rights institutions where such bodies exist. Non-governmental organizations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures.
8. Presenting detailed information concerning the measures that they have taken to prevent and combat trafficking in their periodic reports to the United Nations human rights treaty monitoring bodies.
9. Ensuring that bilateral, regional and international cooperation agreements and other laws and policies concerning trafficking in persons do not affect the rights, obligations or responsibilities of States under international law including human rights law, humanitarian law and refugee law.

10. Offering technical and financial assistance to States and relevant sectors of civil society for the purpose of developing and implementing human rights-based anti-trafficking strategies.

Guideline 2: Identification of trafficked persons and traffickers

Trafficking means much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process –such deception, force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place.

States are also obliged to exercise due diligence in identifying traffickers, including those who are involved in controlling and exploiting trafficked persons.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.
2. Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above.
3. Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.
4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.
5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.
7. Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.

Guideline 3: Research, analysis, evaluation and dissemination

Effective and realistic anti-trafficking strategies must be based on accurate and current information, experience and analysis. It is essential that all parties involved in developing and implementing these strategies have and maintain a clear understanding of the issues.

The media have an important role to play in increasing public understanding of the trafficking phenomenon by providing accurate information in accordance with professional ethical standards.

States and, where appropriate, intergovernmental and non-governmental organizations, should consider:

1. Adopting and consistently using the internationally agreed definition of trafficking contained in the Palermo Protocol.
2. Standardizing the collection of statistical information on trafficking and related movements (such as migrant smuggling) that may include a trafficking element.
3. Ensuring that data concerning individuals who are trafficked is disaggregated on the basis of age, gender, ethnicity and other relevant characteristics.
4. Undertaking, supporting and bringing together research into trafficking. Such research should be firmly grounded in ethical principles including an understanding of the need not to re-traumatize trafficked persons. Research methodologies and interpretative techniques should be of the highest quality.
5. Monitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact. In particular, ensuring that distinctions are made between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one place or group to another.
6. Recognizing the important contribution that survivors of trafficking can, on a strictly voluntary basis, make to developing and implementing anti-trafficking interventions and evaluating their impact.
7. Recognizing the central role that non-governmental organizations can play in improving the law enforcement response to trafficking by providing relevant authorities with information on trafficking incidents and patterns taking into account the need to preserve the privacy of trafficked persons.

Guideline 4: Ensuring an adequate legal framework

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation.

States should consider:

1. Amending or adopting national legislation in accordance with international standards so that the crime of trafficking is precisely defined in national law and detailed guidance is provided as to its various punishable elements. All practices covered by the definition of trafficking such as debt bondage, forced labour and enforced prostitution should also be criminalized.
2. Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons for trafficking offences in addition to the liability of natural

persons. Reviewing current laws, administrative controls and conditions relating to the licensing and operation of businesses which may serve as cover for trafficking such as marriage bureaux, employment agencies, travel agencies, hotels and escort services.

3. Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances including offences involving trafficking in children or offences committed or involving complicity by State officials.

4. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund.

5. Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.

6. Ensuring that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family.

7. Providing legislative protection for trafficked persons who voluntarily agree to cooperate with law enforcement authorities, including protection of their right to remain lawfully within the country of destination for the duration of any legal proceedings.

8. Making effective provision for trafficked persons to be given legal information and assistance in a language they understand as well as appropriate social support sufficient to meet their immediate needs. States should ensure that entitlement to such information, assistance and immediate support is not discretionary but is available as a right for all persons who have been identified as trafficked.

9. Ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.

10. Guaranteeing that protections for witnesses are provided for in law.

11. Making legislative provision for the punishment of public sector involvement or complicity in trafficking and related exploitation.

Guideline 5: Ensuring an adequate law enforcement response

Although there is evidence to suggest that trafficking in persons is increasing in all regions of the world, few traffickers have been apprehended. More effective law enforcement will create a disincentive for traffickers and will therefore have a direct impact upon demand.

An adequate law enforcement response to trafficking is dependent on the cooperation of trafficked persons and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses because they lack confidence in the police and the judicial system and/or the absence of any effective protection mechanisms. These problems are compounded when law enforcement officials are involved or complicit in trafficking. Strong measures need to be taken to ensure that such involvement is investigated, prosecuted and punished. Law enforcement officials must also be sensitized to the paramount

requirement of ensuring the safety of trafficked persons. This responsibility lies with the investigator and cannot be abrogated.

States and, where applicable, intergovernmental and non-governmental organizations should consider:

1. Sensitizing law enforcement authorities and officials to their primary responsibility to ensure the safety and immediate well-being of trafficked persons;
2. Ensuring that law enforcement personnel are provided with adequate training in the investigation and prosecution of cases of trafficking. This training should be sensitive to the needs of trafficked persons, particularly those of women and children, and should acknowledge the practical value of providing incentives for trafficked persons and others to come forward to report traffickers. The involvement of relevant non-governmental organizations in such training should be considered as a means of increasing its relevance and effectiveness.
3. Providing law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers. States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony.
4. Establishing specialist anti-trafficking units (comprising both women and men) in order to promote competence and professionalism.
5. Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation.
6. Implementing measures to ensure that “rescue” operations do not further harm the rights and dignity of trafficked persons. Such operations should only take place once appropriate and adequate procedures for responding to the needs of trafficked persons released in this way have been put in place.
7. Sensitizing police, prosecutors, border, immigration and judicial authorities, and social and public health workers to the problem of trafficking and ensuring the provision of specialized training in identifying trafficking cases, combating trafficking and protecting the rights of victims.
8. Making appropriate efforts to protect individual trafficked persons during the investigation and trial process and any subsequent period when the safety of the trafficked person so requires. Appropriate protection programmes may include some or all of the following elements: identification of a safe place in the country of destination; access to independent legal counsel; protection of identity during legal proceedings; identification of options for continued stay, resettlement or repatriation.
9. Encouraging law enforcement authorities to work in partnership with non-governmental agencies in order to ensure that trafficked persons receive necessary support and assistance.

Guideline 6: Protection and support for trafficked persons

The trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring, in cooperation with NGOs, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.
2. Ensuring, in partnership with NGOs, that trafficked persons are given access to primary health care and counselling. Trafficked persons should not be required to accept any such support and assistance and they should not be subject to mandatory testing for diseases including HIV/AIDS.
3. Ensuring that trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons. These provisions would not apply to trafficked asylum seekers.
4. Ensuring that legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being.
5. Providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters. Victims should be provided with information in a language that they understand.
6. Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.
7. Ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely).
8. In partnership with NGOs, ensuring that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking. Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing, and educational and employment services for returned trafficking victims.

Guideline 7: Preventing trafficking

Strategies aimed at preventing trafficking should take into account demand as a root cause. States and intergovernmental organizations should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. Effective prevention strategies should be based on existing experience and accurate information.

States, in partnership with intergovernmental and non-governmental organizations and where appropriate, using development cooperation policies and programmes, should consider:

1. Analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.
2. Developing programmes that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.
3. Improving children's access to educational opportunities and increasing the level of school attendance, in particular by girl children.
4. Ensuring that potential migrants, especially women, are properly informed about the risks of migration (e.g. exploitation, debt bondage, and health and security issues including exposure to HIV/AIDS) as well as avenues available for legal, non-exploitative migration.
5. Developing information campaigns for the general public aimed at promoting awareness of the dangers associated with trafficking. Such campaigns should be informed by an understanding of the complexities surrounding trafficking and of the reasons why individuals may make potentially dangerous migration decisions.
6. Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect on women of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws.
7. Examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.
8. Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking as a preventive measure. This includes ensuring that law enforcement agencies comply with their legal obligations.
9. Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.

Guideline 8: Special measures for the protection and support of child victims of trafficking

The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.

States and, where applicable, intergovernmental and non-governmental organizations, should consider, in addition to the measures outlined under Guideline 6:

1. Ensuring that definitions of trafficking in children in both law and policy reflect their need for special safeguards and care including appropriate legal protection. In particular, and in accordance with the Palermo Protocol, evidence of deception, force, coercion, etc. should not form part of the definition of trafficking where the person involved is a child.
2. Ensuring that procedures are in place for the rapid identification of child victims of trafficking
3. Ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.
4. In cases where children are not accompanied by relatives or guardians, taking steps to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of trafficked children with their families where this is deemed to be in their best interest
5. In situations where the safe return of the child to his or her family is not possible or where such return would not be in the child's best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked child.
6. In both the situations referred to in the previous two paragraphs, ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, particularly concerning decisions about his or her possible return to the family, the views of the child being given due weight in accordance with his or her age and maturity.
7. Adopting specialized policies and programmes to protect and support children who have been victims of trafficking. Children should be provided with appropriate physical, psychosocial, legal, educational, housing and health-care assistance.
8. Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.
9. Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.
10. Taking measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking

Guideline 9: Access to remedies

Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible. These remedies may be criminal, civil or administrative in nature.

2. Providing information as well as legal and other assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands.
3. Making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.

Guideline 10: Obligations of peacekeepers, civilian police, and humanitarian and diplomatic personnel

The direct or indirect involvement of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic personnel in trafficking raises special concerns. States, intergovernmental and non-governmental organizations are responsible for the actions of those working under their authority and are therefore under an obligation to take effective measures to prevent their nationals and employees from engaging in trafficking and related exploitation. They are also required to investigate thoroughly all allegations of trafficking and related exploitation and to provide for and apply appropriate sanctions to personnel found to have been involved in trafficking.

States, and, where appropriate, intergovernmental and non-governmental organizations, should consider:

1. Ensuring that pre- and post-deployment training programmes for all peacekeeping, peace-building, civilian policing, humanitarian and diplomatic staff adequately address the issue of trafficking and clearly set out the expected standard of behaviour. This training should be developed within a human rights framework and delivered by appropriately experienced trainers.
2. Ensuring that recruitment, placement and transfer procedures (including those of private contractors and sub-contractors) are rigorous and transparent.
3. Ensuring that staff employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions do not engage in trafficking and related exploitation or use the services of persons in relation to which there are reasonable grounds to suspect they may have been trafficked. This obligation also covers complicity in trafficking through corruption or affiliation with any person or group of persons who could reasonably be suspected of engaging in trafficking and related exploitation.
4. Developing and adopting specific regulations and codes of conduct setting out expected standards of behaviour and the consequences of failure to adhere to these standards.
5. Requiring all personnel employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions to report on any instances of trafficking and related exploitation that come to their attention.
6. Establishing mechanisms for the systematic investigation of all allegations of trafficking and related exploitation involving personnel employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions.
7. Consistently applying appropriate criminal, civil and administrative sanctions to personnel shown to have engaged in or been complicit in trafficking and related exploitation. Intergovernmental and non-governmental organizations should, in appropriate cases, apply disciplinary sanctions to staff members found to be involved in trafficking and related

exploitation in addition to and independently of any criminal or other sanctions decided on by the State concerned. Privileges and immunities attached to the status of an employee should not be invoked in order to shield that person from sanctions for serious crimes such as trafficking and related offences.

Guideline 11: Cooperation and coordination between States and regions

Trafficking is a regional and global phenomenon which cannot always be dealt with effectively at the national level: a strengthened national response can often result in the operations of traffickers moving elsewhere. International, multilateral and bilateral cooperation can play an important role in combating trafficking activities. Such cooperation is particularly critical between countries involved in different stages of the trafficking cycle.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Adopting bilateral agreements aimed at preventing trafficking, protecting the rights and dignity of trafficked persons and promoting their welfare.
2. Offering, either on a bilateral basis or through multilateral organizations, technical and financial assistance to States and relevant sectors of civil society for the purpose of promoting the development and implementation of human rights-based anti-trafficking strategies.
3. Elaborating regional and subregional treaties on trafficking, using the Palermo Protocol and relevant international human rights standards as a baseline and framework.
4. Adopting labour migration agreements which may include provision for minimum work standards, model contracts, modes of repatriation, etc. in accordance with existing international standards. States are encouraged effectively to enforce all such agreements in order to help eliminate trafficking and related exploitation.
5. Developing cooperation arrangements to facilitate the rapid identification of trafficked persons including the sharing and exchange of information in relation to their nationality and right of residence.
6. Establishing mechanisms to facilitate the exchange of information concerning traffickers and their methods of operation.
7. Developing procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned States. In recognition of the value of direct contacts, provision should be made for direct transmission of requests for assistance between locally competent authorities in order to ensure that such requests are rapidly dealt with and to foster the development of cooperative relations at the working level.
8. Ensuring judicial cooperation between States in investigations and judicial processes relating to trafficking and related offences, in particular through common prosecution methodologies and joint investigations. This cooperation should include assistance in identifying and interviewing witnesses with due regard for their safety; in identifying, obtaining and preserving evidence; in producing and serving the legal documents necessary to secure evidence and witnesses; and in the enforcement of judgements.
9. Ensuring that requests for extradition for offences related to trafficking are dealt with by the authorities of the requested State without undue delay.

10. Establishing cooperative mechanisms for the confiscation of the proceeds of trafficking. This cooperation should include the provision of assistance in identifying, tracing, freezing and confiscating assets connected to trafficking and related exploitation.
11. Exchanging information and experience relating to the implementation of assistance, return and integration programmes with a view to maximizing impact and effectiveness.
12. Encouraging and facilitating cooperation between NGOs and other civil society organizations in countries of origin, transit and destination. This is particularly important to ensure support and assistance to trafficked persons who are repatriated.

Selected provisions:

UN Global Initiative to Fight Trafficking (UN.GIFT) Vienna Forum to Fight Trafficking Conference Report (2008)*

Published by the United Nations Global Initiative to Fight Trafficking in 2008

UN.GIFT was launched in March 2007 by the United Nations Office on Drugs and Crime (UNODC). It is managed in cooperation with the ILO, IOM, UNICEF, the Office of the High Commissioner for Human Rights (OHCHR), and the Organization for Security and Co-operation in Europe (OSCE). Its mandate calls for it to increase knowledge and awareness on human trafficking; promote effective rights-based responses; build capacity of state and non-state actors; and foster partnerships for joint action against human trafficking. From 13-15 February 2008, UN.GIFT hosted the Vienna Forum to Fight Trafficking, which brought together government representatives, IGO, and NGOs to discuss strategies to combat trafficking. This document is the report issued by UN.GIFT following the Forum. Due to its length, only the introductory pages have been reproduced in this compilation. The full report is available through the internet link below.

* [<http://www.ungift.org/docs/ungift/pdf/vf/ebook2.pdf>]

**The United Nations Global Initiative
to Fight Human Trafficking
(UN.GIFT)**

**The Vienna Forum report:
a way forward to combat
human trafficking**



UNITED NATIONS
New York, 2008

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-2	1
II. Situation analysis	3-9	1
A. Human trafficking worldwide	3-5	1
B. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	6	2
C. The United Nations Global Initiative to Fight Human Trafficking: mission statement	7-9	2
III. Objectives of the Vienna Forum to Fight Human Trafficking	10-25	3
A. Vienna Forum	10-11	3
B. Attendance	12	3
C. Plenary sessions	13-25	3
1. The response of Governments	14	3
2. Opening session	15-18	4
3. Closing session	19-25	5
IV. Themes: vulnerability, impact and action	26-300	6
A. Vulnerability	26-78	6
1. Demand for forced labour and sexual exploitation: how and why it fuels human trafficking	28-35	7
2. Communities in crisis	36-48	8
3. Corruption and human trafficking: the grease that facilitates the crime	49-58	10
4. Trafficking in persons for removal of organs and body parts	59-68	12
5. Profiling the traffickers	69-78	14
B. Impact	79-128	16
1. Quantifying human trafficking, its impact and the response to it	81-90	17
2. Health and human trafficking	91-101	18
3. The consequences of sexual exploitation, especially for women and children	102-110	20
4. The role of the media in building images	111-119	22
5. Transnational organized crime and human trafficking	120-128	25
C. Action	129-216	27
1. From protection to prosecution	130-137	27

	<i>Paragraphs</i>	<i>Page</i>
2. The effectiveness of legal frameworks and anti-trafficking legislation	138-146	29
3. The roles of employers' organizations, businesses and trade unions in combating trafficking for labour exploitation ...	147-152	31
4. National and regional responses: action plans, coordinating structures and national monitoring mechanisms	153-160	32
5. Repatriation and reintegration of victims of human trafficking	161-170	34
6. Criminal justice responses to human trafficking	171-182	36
7. Technology and human trafficking	183-190	39
8. Supply chain management: eliminating the risks of forced labour and trafficking	191-200	41
9. Proactive prevention; what works: reducing the risks and providing protection	201-209	43
10. Building bridges: civil society organizations and law enforcement cooperation	210-216	45
D. Special sessions	217-285	47
1. International cooperation: identifying and overcoming obstacles	217-227	47
2. The role of parliamentarians: Parliamentary Forum	228-237	48
3. The role of the private sector	238-258	50
4. The role of women leaders: Women Leaders' Council to fight human trafficking	259-261	54
5. The role of the arts	262-273	55
6. The role of youth in the fight against human trafficking ..	274-280	57
7. Side event. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime ..	281-285	58
E. Conclusion	286-300	59
1. Awareness-raising	287-288	59
2. Forging new partnerships and facilitating cooperation ...	289-290	59
3. Future action and recommendations	291-300	60

Annexes

I. Summary of the Chairperson	63
II. Closing remarks by the Executive Director of the United Nations Office on Drugs and Crime	67
III. Decisions adopted by the Commission on Crime Prevention and Criminal Justice	71

I. Introduction

1. The present report describes the discussions, activities and accomplishments of the Vienna Forum to Fight Human Trafficking, held in Vienna from 13 to 15 February 2008. Twenty-eight panels, workshops, special sessions and side events were held as part of the Forum with a view to exploring the themes of vulnerability, impact and action and to offering an opportunity for dialogue on preventing and combating trafficking in persons. Additional special exhibits held throughout the City of Vienna as part of the Forum increased the visibility of the issue of human trafficking among the public.
2. This report summarizes the discussions, findings and proposed recommendations of each of those sessions and events.

II. Situation analysis

A. Human trafficking worldwide

3. The adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,¹ and other related United Nations instruments precipitated intense activity around the world to stop human trafficking. The Trafficking Protocol, along with individual country programmes and laws, is the basis on which future actions to fight human trafficking must be built, with the human rights of the trafficked persons at the centre of anti-trafficking efforts.
4. However, despite increasing global attention and significant national responses, human trafficking is still a tragic reality. While the majority of Member States have ratified the Protocol and other international instruments, human trafficking remains a crime with low risks and high profits.
5. Improved knowledge of the nature of human trafficking, its underlying conditions and the profiles of traffickers and victims is necessary in order to take the right steps to combat

¹United Nations, *Treaty Series*, vol. 2225, No. 39574.

trafficking in persons. Some basic patterns and trends are apparent. Human trafficking is a process characterized by people being abducted or recruited in the country of origin, transferred through transit regions and exploited in the country of destination, which highlights the need for a holistic anti-trafficking approach that emphasizes both international cooperation and innovative partnerships.

B. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

6. The Trafficking Protocol provided the first internationally accepted definition of the term “trafficking in persons” and remains the primary international legal instrument addressing human trafficking as a crime. The Protocol emphasizes the need to balance criminal justice concerns with a human rights approach to the protection and assistance of victims. Cooperation among States to meet these objectives is also promoted in the Protocol. As at March 2008, 118 countries had ratified the Protocol.

C. The United Nations Global Initiative to Fight Human Trafficking: mission statement

7. The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) aims to mobilize state and non-state actors to eradicate human trafficking by: (a) reducing both the vulnerability of potential victims and the demand for exploitation in all its forms; (b) ensuring adequate protection and support to those who fall victim; and (c) supporting the efficient prosecution of the criminals involved while respecting the fundamental human rights of all persons.

8. In carrying out its mission, UN.GIFT increases knowledge and awareness of human trafficking; promotes effective rights-based responses; builds the capacity of state and non-state actors; and fosters partnerships for joint action against human trafficking.

9. The Steering Committee for UN.GIFT is composed of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Office on Drugs and Crime (UNODC), the United Nations Children’s Fund, the International Labour Organization (ILO), the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE).

III. Objectives of the Vienna Forum to Fight Human Trafficking

A. Vienna Forum

10. The framework of UN.GIFT provided for a global conference, the Vienna Forum to Fight Human Trafficking, held in Vienna from 13 to 15 February 2008 (see annex III for the enabling decisions of the Commission on Crime Prevention and Criminal Justice). The Forum offered a unique opportunity to bring together representatives of Member States, United Nations entities, non-governmental and international organizations, the business community, academia and civil society.

11. The Vienna Forum was a step towards generating consolidated support and political will behind the goals of UN.GIFT. Its aims were to raise awareness of all forms of trafficking, to facilitate cooperation and partnerships among participants, to take stock of progress and to set the directions for follow-up measures to prevent and counter human trafficking. The Forum also provided an opportunity to assess lessons learned regarding the dimensions of the issue and current actions being taken in response to trafficking in persons.

B. Attendance

12. Over 1,500 senior government officials, delegates of Member States, business leaders, representatives of non-governmental organizations (NGOs) and of the United Nations and international and regional organizations, academics, activists and victims of trafficking from over 116 countries participated in the Vienna Forum, which provided a platform for a new campaign of coordinated action to tackle trafficking in persons. Additionally, 150 journalists were accredited to the meeting.

C. Plenary sessions

13. The issue of human trafficking was addressed in the plenary sessions. Within the three themes of vulnerability, impact and action, Governments contextualized the various dimensions of human trafficking and its relation to security, development and human rights.

1. The response of Governments

14. The Vienna Forum represented a new approach, combining experts in the field, the general public and other new partners. Governments made presentations concerning their

efforts to combat human trafficking, highlighting the progress made in their countries. Forty-seven delegates made statements; one was made at the presidential level and six at the ministerial level.

2. Opening session

15. The Executive Director of UNODC opened the Vienna Forum to Fight Human Trafficking. He thanked the Crown Prince of Abu Dhabi for his generous support for UN.GIFT. He also recognized the efforts of Governments in general, but called on Member States to be more aggressive in honouring their commitments and implementing the Trafficking Protocol, noting the role of UN.GIFT in that process. He emphasized several outcomes that should result from the Forum, including additional research to allow action on the guiding framework of the three Ps (prevention, prosecution and protection) based on solid information. He spoke of the role of all partners and segments of society in combating human trafficking and pointed out that the Vienna Forum needed to be a platform to launch innovative, practical anti-trafficking measures, such as codes of conduct to curb sex tourism and controls over supply chain management. He also mentioned the importance of the decision by the General Assembly to hold a thematic debate on human trafficking in 2008.

16. In her address, Ursula Plassnik, the Federal Minister for International and European Affairs of Austria, referred to the Vienna Forum as a new form of multilateral diplomacy that would set in motion a global and sustained process to end human trafficking. She spoke of the need to raise awareness and generate political will, and highlighted Austria's efforts to combat human trafficking at the national and international levels. Suzanne Mubarak, wife of the President of the Arab Republic of Egypt, emphasized the responsibility of countries to eliminate the root causes of trafficking, noting Egypt's special attention to potential victims, such as marginalized children and vulnerable women. She also pointed to the instrumental roles of women, youth and the private sector in eradicating human trafficking.

17. Actress Emma Thompson, speaking as Chair of the Helen Bamber Foundation, gave a detailed account of the life of a woman trafficked for sexual exploitation, which Ms. Thompson had helped turn into the internationally viewed art installation, "The Journey against Sex Trafficking", featured as part of the Forum. Entertainer Ricky Martin closed the speeches of the opening plenary session by describing the anti-trafficking activities of the Ricky Martin Foundation, with its special emphasis on children. The opening session was followed by the acceptance by the Executive Director of a declaration with 1.5 million signatures, presented by Stop the Traffik (a global coalition of more than 1,000 anti-trafficking organizations), requesting that Governments and the United Nations work together to stop human trafficking.

18. All speakers called for the Vienna Forum to be the basis from which to launch new partnerships and aggressive action against trafficking in persons.

3. Closing session

(a) *Outlook and innovative initiatives*

19. The closing session was used to showcase good practices in the fight against human trafficking.

20. The representative of the International Centre for Missing and Exploited Children (ICMEC) outlined the Centre's technology-based initiatives to stem trafficking, child pornography and child sexual exploitation. A technology coalition of five major online companies was being used to develop and deploy technology solutions that disrupted the ability of predators to use the Internet. Additionally, ICMEC had joined with the National Center for Missing and Exploited Children of the United States of America, 29 financial institutions and Internet industry leaders to form the Financial Coalition against Child Pornography. The Financial Coalition, covering 90 per cent of the credit card industry, aimed to eradicate child pornography by following the flow of funds and shutting down the payment accounts being used by those illegal enterprises. ICMEC had also developed a CyberTipline, which had helped in establishing a clearinghouse for information-sharing between the Coalition and law enforcement. The goal of ICMEC and its partners has to stop such crimes by making them too expensive and too risky.

21. The head of Drehscheibe Augarten in Vienna presented the model used by that crisis management centre to help identify trafficked children and repatriate them to their home countries. The centre established a close working relationship with the countries of origin so as to ensure standard agreements for repatriation and that victims had a secure place to return to upon repatriation. Centres based on that model had been established in Bulgaria and Romania. The working methodology between centres included a six-month monitoring period with social workers and the submission of regular progress reports. The Vienna centre had also undertaken site visits to the countries of origin to confirm and monitor the working arrangements.

22. The former head of the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons presented a counter-trafficking profiling and software system developed by the Clearinghouse for arms smuggling and discussed its potential for adaptation to detecting and disrupting human trafficking. He pointed out that trafficking in arms and people were both forms of transnational organized crime and both involved licit companies fronted by businesses licensed to engage in activities that facilitated the movement of goods and people. He also pointed out that traffickers left traces wherever they operated, which could be used to help create generic profile indicators. Such profile indicators, combined with risk assessments and ratings systems, could then be used to develop easy-to-use software. Adapting such software required information from front-line experts on trafficking networks and their models.

(b) *Closing of the Vienna Forum*

23. In her closing remarks, Helga Konrad, an international consultant on combating trafficking in persons, emphasized that dialogue was important but not enough. Political

will to implement relevant laws and commitments was necessary along with cooperation. Everything, however, must lead to expedient action if it were to produce meaningful results. Better research must lead to better monitoring and evaluation to improve responses to human trafficking. Ms. Konrad contended that law enforcement should adopt a victim-centred approach, because the primary reason to fight human trafficking was the harm it caused people.

24. The Chairperson of the Vienna Forum, Renuka Chowdhury, Minister of Women and Child Development of India, presented the Chairperson's summary, in which she stressed the need to aggressively address all forms of exploitation, including forced labour, and underscored the critical role of UN.GIFT in continuing to build and expand alliances. She stated that the Vienna Forum had met its immediate objectives, but that meaningful action must follow useful dialogue. She also reiterated some of the salient findings of the panels and workshops, such as the need for more monitoring and research, the important role of Governments in combating trafficking and the value of innovative partnerships. (The full text of the Chairperson's summary appears in annex I.)

25. In his closing remarks, the Executive Director of UNODC noted the successful completion of the Vienna Forum and called for greater impact in fighting human trafficking. He acknowledged that the Forum had raised awareness, but pointed to the critical lack of a mechanism for reviewing implementation of the Trafficking Protocol and other related international instruments, calling for expediting implementation by States parties to the Protocol. He stressed that the ideas discussed at the Forum must be put into practice, building on initiatives such as those presented at the closing session on tracking the finances of trafficking, disrupting trafficking routes and better protection for victims. He cited a number of enabling conditions needed in order to move forward, such as increased resources, an improved knowledge base and strengthened alliances. He urged participants to tackle the issues of supply and demand, gender-based exploitation and forced labour. The Executive Director emphasized that the Vienna Forum was just the beginning of the process and that it was urgent to build on the momentum and energy generated by it. (The full text of the Executive Director's closing remarks appears in annex II.)

IV. Themes: vulnerability, impact and action

A. Vulnerability

26. Issues such as disempowerment, social exclusion and economic vulnerability are the result of policies and practices that marginalize entire groups of people and make them vulnerable to being trafficked. Individuals are vulnerable to trafficking not only because of conditions in their countries of origin. The allure of opportunity, the relentless demand

Selected provisions:

**WHO Ethical and Safety Recommendations for
Interviewing Trafficked Women (2003)***

Published by the United Nations World Health Organization in cooperation with the London School of Hygiene and Tropical Medicine and the Daphne Programme of the European Commission in 2003

* [http://www.who.int/gender/documents/en/final_recommendations_23_oct.pdf]

TABLE OF CONTENTS

Acknowledgements	
Introduction	1
The complex circumstances of women who have been trafficked	2
The ten guiding principles to the ethical and safe conduct of interviews with women who have been trafficked	4
1. Do no harm	5
1.1 Deciding to conduct an interview	5
2. Know your subject and assess the risks	6
2.1 Understanding the range of risks	6
2.2 Stages of the interview process: risks and recommendations	8
stage one: making the initial contact	8
stage two: identifying a time and a place for conducting the interview	9
stage three: conducting the interview	10
stage four: closing the interview	11
3. Prepare referral information: Don't offer advice or make promises that you cannot fulfill	12
3.1 Identifying available resources and support services	12
3.2 Making contact and knowing the organizations on your referral list	13
3.3 Being discreet when providing referral information	13
4. Adequately select and prepare interpreters and co-workers	14
4.1 Considering the risks and benefits of working with interpreters and others	14
4.2 Considering the issues related to employing a male interpreter or interviewer	15
4.3 Considering the physical safety and psychological well-being of co-workers and interviewers	16
5. Ensure anonymity and confidentiality	18
5.1 Ensuring confidentiality	18
6. Get informed consent	19
6.1 Appropriate ways to request consent	19
7. Listen to and respect each woman's assessment of her situation and risks to her safety	21
7.1 Offering advice or assistance	21
7.2 Respecting a woman's choices regarding her situation	22
8. Do not re-traumatize a woman	23
8.1 Avoiding re-traumatizing a woman	23
9. Be prepared for emergency intervention	24
9.1 Responding to a woman who asks for urgent or immediate help	24
9.2 Being prepared to follow-up on intervention efforts	25
9.3 Issues related to contacting authorities	26
10. Put information collected to good use	27
10.1 Using information in an ethical way	27
Conclusion	28
References	29

WHO ETHICAL AND SAFETY RECOMMENDATIONS FOR INTERVIEWING TRAFFICKED WOMEN

INTRODUCTION

The trafficking of women and girls into forced prostitution and other slavery-like or exploitative conditions is increasingly recognized as one of the world's fastest growing crimes and most significant human rights violations. *The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* defines trafficking as:

“the recruitment, transportation, transfer, harbouring or receipt of persons by means of 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 minimum, the exploitation of 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.”¹

In response to the rapid global rise in trafficking and growing demand for information on trafficking by policy-makers, donors, service providers, and the media, women who have been trafficked are increasingly being interviewed to discuss their experiences. Women are being interviewed both while they are in trafficking situations under the control of traffickers, employers, or pimps,

and after they have left the trafficking setting, such as while in shelters, under the care of service agencies, or once they have returned home or re-established their lives elsewhere.

In any of these situations, interviewing a woman who has been trafficked raises a number of ethical questions and safety concerns for the woman, others close to her, and for the interviewer. Having a sound understanding of the risks, ethical considerations, and the practical realities related to trafficking can help minimize the dangers and increase the likelihood that a woman will disclose relevant and accurate information.

These recommendations are intended primarily for use by researchers, members of the media, and service providers unfamiliar with the situation of trafficked women. They do not explicitly discuss the different risks and obligations of interviewing females who are minors, although many of the same principles will apply.

The recommendations were drafted in consultation with a group of experts on trafficking and violence against women, most of whom have worked directly with women who have been trafficked.

As a starting point, the recommendations build on the World Health Organization's *Putting Women First: Ethical and Safety Recommendations for Research on Domestic Violence Against Women*,² *International Principles and Guidelines on Human Rights and Human Trafficking*,³

CIOMS International Ethical Guidelines for Biomedical Research Involving Human Subjects,⁴ *Human Rights Standards for the Treatment of Trafficked Persons*,⁵ codes of conduct of journalists' unions,⁶ and procedural guidance for law enforcement agencies for interviewing women who have been trafficked or victims of other sexual offences.⁷

The recommendations should be used in conjunction with existing professional standards applicable to the work being conducted. These recommendations provide a set of ten basic standards for interviewing women who are in or have left a trafficking situation. The significance of each issue is explained and examples are offered of how, in practice, each can be addressed. The recommendations should not be taken as a comprehensive guide to working with women who have been trafficked.⁸

THERE ARE TEN GUIDING PRINCIPLES TO THE ETHICAL AND SAFE CONDUCT OF INTERVIEWS WITH WOMEN WHO HAVE BEEN TRAFFICKED.

1. DO NO HARM

Treat each woman and the situation as if the potential for harm is extreme until there is evidence to the contrary. Do not undertake any interview that will make a woman's situation worse in the short term or longer term.

2. KNOW YOUR SUBJECT AND ASSESS THE RISKS

Learn the risks associated with trafficking and each woman's case before undertaking an interview.

3. PREPARE REFERRAL INFORMATION - DO NOT MAKE PROMISES THAT YOU CANNOT FULFILL

Be prepared to provide information in a woman's native language and the local language (if different) about appropriate legal, health, shelter, social support and security services, and to help with referral, if requested.

4. ADEQUATELY SELECT AND PREPARE INTERPRETERS, AND CO-WORKERS

Weigh the risks and benefits associated with employing interpreters, co-workers or others, and develop adequate methods for screening and training.

5. ENSURE ANONYMITY AND CONFIDENTIALITY

Protect a respondent's identity and confidentiality throughout the entire interview process – from the moment she is contacted through the time that details of her case are made public.

6. GET INFORMED CONSENT

Make certain that each respondent clearly understands the content and purpose of the interview, the intended use of the information, her right not to answer questions, her right to terminate the interview at any time, and her right to put restrictions on how the information is used.

7. LISTEN TO AND RESPECT EACH WOMAN'S ASSESSMENT OF HER SITUATION AND RISKS TO HER SAFETY

Recognize that each woman will have different concerns, and that the way she views her concerns may be different from how others might assess them.

8. DO NOT RE-TRAUMATIZE A WOMAN

Do not ask questions intended to provoke an emotionally charged response. Be prepared to respond to a woman's distress and highlight her strengths.

9. BE PREPARED FOR EMERGENCY INTERVENTION

Be prepared to respond if a woman says she is in imminent danger.

10. PUT INFORMATION COLLECTED TO GOOD USE

Use information in a way that benefits an individual woman or that advances the development of good policies and interventions for trafficked women generally.

Selected provisions:

UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006)*

Published by the United Nations Children Fund in September 2006

The following guidelines were published by UNICEF to address the increasing occurrence of trafficking in children, primarily related to child pornography, sex tourism and forced prostitution, and the forced recruitment of child soldiers. They are targeted at a wide audience including law-makers, judicial decision-makers, service providers and NGOs. The guidelines provide a definition of child trafficking as well as recommendations for how identify, protect and rehabilitate its victims. Due to the length of the document, only the 'Table of Contents,' 'Introduction' and 'Basic Principles' are reproduced in this compilation. The complete document is available through the internet link provided below.

* [http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf]

CONTENTS

INTRODUCTION	7
1. DEFINITION	9
2. GENERAL PRINCIPLES	10
2.1 RIGHTS OF THE CHILD	10
2.2 BEST INTERESTS OF THE CHILD	10
2.3 RIGHT TO NON-DISCRIMINATION	10
2.4 RESPECT FOR THE VIEWS OF THE CHILD	10
2.5 RIGHT TO INFORMATION	11
2.6 RIGHT TO CONFIDENTIALITY	11
2.7 RIGHT TO BE PROTECTED	12
2.8 DEFINITION OF ROLES AND STEPS	12
2.9 COORDINATION/COOPERATION	13
3. IDENTIFICATION	14
3.1 PRO-ACTIVE IDENTIFICATION MEASURES	14
3.2 PRESUMPTION OF AGE	15
4. APPOINTMENT OF A GUARDIAN	16
4.1 APPOINTMENT PROCESS	16
4.2 RESPONSIBILITIES OF THE GUARDIAN	17
5. REGISTRATION AND DOCUMENTATION	18
5.1 INITIAL QUESTIONING	18
5.2 INITIAL ACTION	19
5.3 INTERVIEWING THE CHILD VICTIMS ABOUT THEIR EXPERIENCE	19
6. REGULARIZATION OF STATUS	21
7. INTERIM CARE AND PROTECTION	22
7.1 CARE AND PROTECTION	22
7.2 ACCOMMODATION IN A SAFE PLACE	23
8. INDIVIDUAL CASE ASSESSMENT	25
8.1 TRACING	25
8.2 RISK ASSESSMENT	26
8.3 BEST INTEREST DETERMINATION	26
9. IMPLEMENTATION OF DURABLE SOLUTION	28
9.1 LOCAL INTEGRATION	28
9.2 RETURN TO THE COUNTRY OR PLACE OF ORIGIN	28
9.2.1 <i>Reception and reintegration</i>	30
9.3 RESETTLEMENT AND INTEGRATION IN A THIRD COUNTRY	30
9.4 FOLLOW UP.....	31
10. ACCESS TO JUSTICE	32
10.1 CRIMINAL PROCEEDINGS.....	32
10.2 CIVIL PROCEEDINGS	33

10.3 PREVENTION OF DEPRIVATION OF LIBERTY	33
10.4 VICTIM/WITNESS SECURITY AND PROTECTION.....	33
11. COST OF PROCEEDINGS, FINANCIAL ASSISTANCE, REPARATION, COMPENSATION.....	34
12. RESEARCH AND DATA COLLECTION	36
12.1 ETHICAL PRINCIPLES	36
12.2 ETHICAL QUESTIONS	37
12.3. MISINFORMATION AS A COPING STRATEGY	37
BIBLIOGRAPHY	39
APPLICABLE INTERNATIONAL CONVENTIONS:	39
OTHER SELECTED HUMAN RIGHTS INSTRUMENTS AND GUIDELINES.....	40
OTHER PUBLICATIONS.....	42

BOXES

Box 1 Trafficked children, victims, survivors.....	9
Box 2 Confidentiality and risks	11
Box 3 Registration and Documentation	18
Box 4 Balanced assistance	22
Box 5 Individual determination of international protection needs.....	23
Box 6 Protection in Emergencies.....	24
Box 7 Best Interest Determination.....	27
Box 8 Reunification	29
Box 9 Restoration and Compensation: a protection issue.....	35
Box 10 Risk Assessment in doing research	37

INTRODUCTION

The following guidelines set out standards for good practice with respect to protection of and assistance to trafficked children.

These guidelines are based on international human rights instruments and look at the protection of trafficked children from their identification up to their recovery and integration. They shall be used together with other guidelines and tools focussing on prevention.

At the national and regional levels, these guidelines should be used as a platform for developing policies and practices, taking into consideration local circumstances, constraints and resources. The cross-border nature of trafficking may necessitate fostering regional ownership where mechanisms can further the protection of child victims and facilitate implementation at the national level. International, multilateral and bilateral cooperation can also play an important role.

The aim of these guidelines is to assist governments and State actors, international organizations and NGOs or other service providers. The main responsibility for protection of victims lies with the government. In situations where the government lacks or has insufficient capacity to fulfil its responsibility, such duty may be delegated to or shared with international organizations and NGOs. Non-institutional actors such as families, individuals, and communities may play an important and concrete role in protecting trafficked children.

These guidelines are the result of an extensive process started and developed at the local and regional levels by UNICEF and its partners. In response to reports of child trafficking within South Eastern Europe (SEE) and from South Eastern Europe to other parts of Europe, in 2003 UNICEF developed a set of "Guidelines for Protection of the Rights of Child Victims of Trafficking in South Eastern Europe," based on international standards. Since their endorsement by the Stability Pact Task Force on Trafficking for South Eastern Europe and adopted by member States (2003), the guidelines were widely used to inform policy and practice against trafficking in children across Europe. Minimum standards endorsed in the Guidelines informed the Council of Europe Convention on Action Against Trafficking in Human Beings, and the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings.

In West Africa, the UNICEF Regional Office, in collaboration with other UN organizations in the region, such as ILO, UNODC, with other international organizations and NGOs such as IOM, Plan, Save the Children and ENDA adapted the original SEE guidelines to the West African context. Following a regional validation of the guidelines by the Economic Community of West African States (ECOWAS) and the Economic Community of Central African States (ECCAS) at the Regional Expert Meeting on Trafficking in Libreville (May 2006), Benin was the first country to organize a national workshop in order to adapt these guidelines.

In Asia, the UNICEF SEE guidelines were used as major reference for the development of "Proposed Guidelines for the Protection of the Rights of Trafficked Children in Southeast Asia", based on broad consultation at the regional and national levels with field organisations in 7 countries of the region. The process was initiated and coordinated by Asia Acts (a regional network of 76 NGOs working at the grass root level).

Based on these experiences and in order to enhance the global application of Guidelines, the original text was harmonized with recent conventions and guidelines in the area of trafficking, comments from the Committee on the Rights of the Child, and recent guidelines on other related areas such as: separated and unaccompanied children (and in particular the Inter-agency Guiding

Principles on Unaccompanied and Separated Children, developed by UNICEF, Save the Children, IRC, World Vision, UNHCR and IRC), action on children in the criminal justice system, child victims and witness protection, reparation for victims, ethics in research and data collection, national referral mechanisms, and protection of children in emergencies.

A workshop was convened at the UNICEF Innocenti Research Centre to consult with UNICEF colleagues from different Country and Regional Offices, Headquarters and National Committees who are actively involved in projects for the protection of children victims of trafficking.

Finally the draft text of the guidelines has been shared for comments and suggestions among other UN agencies, international organizations and NGOs.

1. DEFINITION

Child trafficking is the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation regardless of the use of illicit means, either within or outside a country.¹

All different forms of exploitation shall be considered within the definition, including: exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude, the removal of organs, use of children associated with armed groups or forces, begging, illegal activities, sport and related activities², illicit adoption, early marriage or any other forms of exploitation.³

The consent of a child victim of trafficking to the intended exploitation is irrelevant even if none of the following illicit means have been used: force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.⁴

A child victim of trafficking is any person trafficked under 18 years of age.⁵

Whenever applicable, these guidelines should also apply also to children who are conceived and subsequently born of trafficked persons.⁶

Box 1 Trafficked children, victims, survivors

The terms “child victims of trafficking” and “trafficked children” are being used throughout this paper to emphasize that harm has been perpetrated against children. Many practitioners prefer to use the term “survivors” to emphasize the resilience of persons who have been exploited or abused. For the purposes of these Guidelines, these terms will be used interchangeably.

Source: IASC, *Guidelines for Gender-based Violence Interventions in Humanitarian Settings*, IASC, 2005.

Footnotes in the text highlight references to articles and comments in international conventions and guidelines. They do not necessarily imply specific quotation. For a full reference (titles, authors, year of publication) see the bibliography.

¹ Palermo Protocol art.3; Refer also to the Council of Europe Convention art.4

² Such as the use of children in Camel Jockey related activities.

³ Palermo Protocol art.3; CRC art.34; ILO182 art.3; Hague Convention#33 art.1

⁴ Palermo Protocol, art.3; The use of illicit means is

⁵ Palermo Protocol art.3; CRC art.1; Council of Europe Convention art.4

⁶ SEA Guidelines art.2.3.2

2. GENERAL PRINCIPLES

These principles shall be taken into account during all stages of caring for and protecting trafficked children in the country or place of origin, transit or destination, and in cases of internal trafficking.⁷

2.1 Rights of the Child

All actions undertaken in relation to child victims shall be guided by applicable human rights standards and in particular by the principles of protection and respect for children's rights as set out in the United Nations Convention on the Rights of the Child (CRC).⁸

State obligations under the CRC apply to each child within the State's territory and to all other children subject to its jurisdiction. Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State, but must also be available to all children - including trafficked children - irrespective of their nationality, immigration status or statelessness.⁹

The involvement of child victims in criminal activities shall not undermine their status as both a child and a victim, or their related rights to special protection.¹⁰

States are required not only to refrain from measures infringing on children's rights, but also to take positive measures to ensure the enjoyment of these rights without discrimination.¹¹

Obligations deriving from the Convention apply to all branches of government, including executive, legislative and judicial. They include the obligation to establish national legislation and administrative structures; and the necessary research, information, data compilation and comprehensive training activities to support such measures.¹²

2.2 Best Interests of the Child

In all actions concerning child victims, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹³

2.3 Right to Non-Discrimination

Child victims have the right to protection, whether they are non-nationals, nationals or residents of the country in which they find themselves. They must be considered as children first and foremost. Every child shall have, without discrimination of any kind as to race, sex, language, religion, ethnic or social origin, birth, or other status, including immigration status, the right to such measures of protection as are required by his or her status as a minor.¹⁴

2.4 Respect for the Views of the Child

⁷ Palermo Protocol art.3; HCHR Guidelines p.3

⁸ SEE Guidelines art.2.1

⁹ CRC art.2; CRC General Comment 06 c.12

¹⁰ CRC art.37, art.40

¹¹ See in detail CRC General Comment 06 c.13

¹² GC05 c13

¹³ CRC art.3; Inter-Agency Guidelines p.17

¹⁴ CRC art.2; Inter-Agency Guidelines p.17

A child victim who is capable of forming his or her views has the right to express those views freely in all matters affecting him or her. Respect for the views of the child will be maintained in relation to the legal process, interim care and protection, and the identification and implementation of a durable solution, particularly in decisions concerning the child's possible return to the family, country or region of origin.¹⁵

The views of the child victim shall be sought and given due weight in accordance with his or her age and maturity.¹⁶

The child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting him or her, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.¹⁷

2.5 Right to Information

Child victims shall be provided with accessible information regarding their situation and their rights, including protection mechanisms, other available services, and the processes of family reunification and/or repatriation.¹⁸

Information shall be provided in a language that the child victim is able to understand. Suitable interpreters shall be provided whenever a child victim is questioned or interviewed, or whenever she or he requests it.¹⁹

2.6 Right to Confidentiality

All necessary measures shall be taken to protect the privacy and identity of child victims to ensure the safety and security of the victim and his or her family. The name, address and all other information that could lead to the identification of the child victim or his or her family members shall not be revealed to the public or media. Exceptions may be made in circumstances such as to facilitate the tracing of family members or otherwise secure the well-being and protection of the child, with the informed consent of the child. Information about a child victim that could endanger the child or the child's family members shall not be disclosed in any case.²⁰

Box 2 Confidentiality and risks

For children victims of trafficking, contacting the authorities of the country or place of origin should be done with caution, to avoid increasing the child's risk and/or the risk of his or her family of being targeted by the authorities.

Organizations must ensure the permanent preservation of their records in such a manner as guarantees confidentiality. They may decide to centralize their records under the responsibility of a competent authority.²¹

States, international organizations, NGOs and other service providers shall promote measures encouraging the media to protect the private life and identity of victims through self-regulation or

¹⁵ CRC art.12; Inter-Agency Guidelines p.17

¹⁶ CRC art.12

¹⁷ CRC art.12

¹⁸ CRC art.9, art.13; Palermo Protocol art.10

¹⁹ CRC art.40; CRC General Comment 06 c.25, c.71

²⁰ Palermo Protocol art.6; CRC art.16; Council of Europe Convention art.11; CRC General Comment 06 c.29-30

²¹ Inter-Agency Guidelines p.39; Record should always follow the child to ensure proper follow-up.

other regulatory measures. Media and journalists shall have direct access to child victims of trafficking only under exceptional circumstances, if and only if the guardian has decided that it will be in the best interest of the children and, where appropriate, the child consents.²²

2.7 Right to be protected

Child victims are entitled to special protection measures, both as victims and as children, in accordance with their specific rights and needs.²³

The State shall protect and assist child victims and to ensure their safety.²⁴

For some trafficked children where there are indications that they cannot return to their country or place of origin due to a well founded fear of persecution, refugee status determination and the granting of corresponding status will be the most appropriate avenue to pursue. In any event all trafficked children should be properly informed of their right to seek and enjoy asylum.²⁵

All decisions regarding child victims shall be taken expeditiously.²⁶

In emergencies such as wars and natural disasters, if large numbers of children are separated from their parents or other relatives, priority should be given to the most vulnerable, whether accompanied or unaccompanied, taking into account that the latter are likely to be more vulnerable.²⁷

2.8 Definition of roles and steps

The State should take positive action to combat child trafficking and to protect and assist trafficked children.²⁸

In defining roles and responsibilities for the protection of child victims of trafficking, the State shall strengthen the existing child welfare system and avoid duplication.²⁹

The State shall define the competent authorities, judicial and administrative bodies, in charge of each of the tasks from identification to determination of the best durable solution.³⁰

The State shall designate a competent authority to assist the relevant judicial and administrative bodies in the acquisition of information and documentation necessary to arrive at an informed decision regarding the future of the child victim.³¹ The same competent authority can carry out multiple tasks

Where the State has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct competent authority to serve the same function for that region or territory. Competent authorities shall ensure the speedy and proper execution or transmission of requests received.³²

²² Council of Europe Convention art.11

²³ CRC art.20

²⁴ CRC art.3(2)

²⁵ Refugee Convention art.1, art.33

²⁶ CRC General Comment 06 c.21

²⁷ Inter-Agency Guidelines p.16

²⁸ CRC art.35

²⁹ Inter-Agency Guidelines p. 37

³⁰ CRC art.9, art.19, art.25; CTOC art.18; Hague Convention#28 art.13

³¹ SEE Guidelines art. 3.8.2

³² CTOC art.18

2.9 Coordination/Cooperation

Trafficking is a regional and global phenomenon that cannot always be dealt with effectively at the national level. International, multilateral and bilateral cooperation plays an important role, particularly between countries involved in different stages of the trafficking cycle.³³

Complementarity and cooperation among all organizations and institutions concerned are critical for the care and protection of child victims.³⁴ Co-operation between governmental and non-governmental sectors should be based on a clear delineation of responsibilities and transparency. Due to the potentially complex legal situations which may arise, it is advisable that cooperation and specific roles be outlined by a written agreement among the key actors.³⁵

Specific lead roles and responsibilities of UN agencies, ICRC, other international organizations and NGOs shall be defined, particularly in situations where a competent authority may not exist, such as in emergencies, conflicts or natural disasters.

All relevant ministries and government bodies (including judicial, police, migration, asylum, and social service authorities, Ministry of Social Affairs, Ministry of Home Affairs and Ministry of Foreign Affairs) involved in the protection of child victims shall adopt policies and procedures which favour information-sharing and networking between agencies and individuals working with child victims.

Each State should designate their own liaison officer/office who shall be responsible for cross-border linkage and referral to the appropriate authorities for immediate response to cases of cross-border trafficking.³⁶

Existing central authorities for the protection of children can be identified as the competent authority in charge of the tasks described in these Guidelines.³⁷

Other co-operative frameworks, such as national referral mechanisms, through which State actors fulfil their obligations to protect and promote the human rights of trafficked children, shall be developed.³⁸

During emergencies such as war or natural disasters, dialogue and coordination mechanisms shall begin in the early phases of the emergency, and be maintained throughout the process.³⁹

Where the State has regions, provinces or territories with separate systems and distinct competent authorities (such as in the case of federal states), it may designate a distinct authority to ensure proper coordination.

³³ OHCHR Trafficking Guidelines g.11

³⁴ Council of Europe Convention art.32; Inter-Agency Guidelines p.18

³⁵ OSCE National Referral Mechanism Handbook p. 69

³⁶ SEA Guidelines art.3.3.1

³⁷ CTOC; Hague Convention#28; Hague Convention#33 art.6

³⁸ OSCE National Referral Mechanism Handbook p.15

³⁹ Inter-Agency Guidelines p.18

Selected provisions:

IOM Handbook on Direct Assistance for Victims of Trafficking (2007)*

Published by the International Organization for Migration in 2007

The Handbook was published by the International Organization for Migration in response to the increasing number of governments, IGOs and NGOs engaged with the issue of human trafficking and providing services to former victims. The purpose of the Handbook is to provide guidance on the legal and ethical obligations of such actors when they are interacting with trafficked victims. It is also to share related good practices gathered by IOM in its 13-year involvement with the issue. Due to the length of the document, only the 'Objectives,' 'Structure of the Handbook', 'Basic Principles' and 'Key Guidelines' sections are reproduced in this compilation. The complete document is available through the internet link provided below.

Objectives

IOM has had some 13 years of experience in implementing counter-trafficking activities and has provided assistance to over 14,000 victims of trafficking in all regions of the world. With a growing number of organizations, especially local NGOs, now providing or intending to provide assistance to victims of trafficking, IOM would like to share its experience and lessons learned. This Handbook summarizes and systematizes this experience. IOM recognizes that each victim is unique and requires and desires different assistance. As well, the nature of trafficking is different around the world and is ever evolving, requiring changing responses. Therefore this Handbook is not meant to provide a single methodology for the provision of assistance to victims of trafficking, but to offer suggestions and guidance, based on IOM's many years of experience. IOM hopes that it will be helpful to all organizations providing such assistance to victims, but especially for organizations who are just beginning to develop victim assistance programmes and can benefit from IOM's experiences.

This Handbook provides guidance and advice necessary to effectively deliver a full range of assistance to victims of trafficking from the point of initial contact and screening up to the effective social reintegration of the individuals concerned. Although the Handbook covers assistance to minors, it does not do so in the depth necessary for the concerned practitioner who should be sure to also refer to UNICEF's Guidelines on the Protection of Child Victims of Trafficking.

Structure of the Handbook

The Handbook is designed to be read as a whole, but it can also be used to refer to specific topics dealt with in specific chapters. All the chapters and appendices are closely interrelated. To address such complex issues in the most professional manner possible, it is important to adopt a holistic approach. In order to gain maximum benefit from this Handbook, the reader is advised to read and develop a sound knowledge of the entire contents.

The Handbook is divided into seven sections described below. The chapters are set out in sequential order. It is recommended for the reader to proceed systematically and become well

* [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT_handbook.pdf]

acquainted with the whole content of each successive chapter. However, where specific guidance is needed on a specific topic, each chapter can also be consulted on its own.

Chapter 1 Security and Personal Safety

Chapter 2 Screening of Victims of Trafficking

Chapter 3 Referral and Reintegration Assistance

Chapter 4 Shelter Guidelines

Chapter 5 Health and Trafficking

Chapter 6 Cooperation with Law Enforcement Authorities

Appendix I Ethical Principles in Caring for and Interviewing Trafficked Persons

Appendix II Interview Checklist

Appendix III Glossary

The various chapters address the following topics and key themes:

Chapter 1 Security and Personal Safety

This chapter sets out the key principles concerning security and personal safety, and covers the topics of risk assessment, high-risk cases, risk management, security of confidential data, best practice in security procedures and personal safety for staff and beneficiaries.

The key theme of the chapter is the recognition of the increased risk to staff when providing assistance and protection to trafficking victims, and the adoption of a set of basic security standards and procedures intended to minimize and manage such risks.

Chapter 2 Screening of Victims of Trafficking

This chapter presents a formula to enable organizations to better distinguish between the different crimes of trafficking in human beings and people smuggling, and outlines a methodology for the screening and identification of individuals seeking assistance as trafficking victims. Topics covered include relevant international legal standards on the issue, the screening process itself, assessment indicators and specific assessment questions, victim response and treatment, additional corroborative material and the final decision-making process.

The key theme of the chapter is to provide guidelines for organizations to accurately identify trafficking victims so as to be in a position to effectively address their needs and provide them with assistance and protection.

Chapter 3 Referral and Reintegration Assistance

This chapter covers the whole area of victim referral and the subsequent provision of a wide range of support measures up to and including successful reintegration. Topics covered include the preparation of and implementation of assisted voluntary return of trafficking victims, assessment and planning for reintegration assistance, and the provision of reintegration support.

The key theme of this chapter is the provision of effective and appropriate assistance and protection to victims of trafficking, on a case-by-case basis in accordance with their needs and fundamental human rights.

Chapter 4 Shelter Guidelines

This chapter covers the establishment of shelters for victims of trafficking, shelter management and staffing, procedures for assisting residents of the shelter, the treatment of shelter residents and the provision of shelter services and assistance.

The key theme of this chapter is the establishment of safe shelters and the provision of appropriate and effective assistance and protection to victims of trafficking in a shelter environment.

Chapter 5 Health and Trafficking

The health chapter provides comprehensive instructions and advice on health and human rights issues, e.g., conceptual frameworks, ethical and safety principles, issues affecting care, special health considerations, medico-legal health aspects, clinical procedures and management, health planning and staff health issues.

The key theme of the chapter is the development of minimum standards of care and the provision of specialized health services in accordance with the needs of the trafficking victim. The chapter focuses on service provision not only against the background of human rights, but also the public health interests of the countries of origin, of transit and of destination.

Chapter 6 Cooperation with Law Enforcement Authorities

The final chapter provides detailed instructions and advice on the sensitive issue of cooperation with law enforcement authorities in combating trafficking in human beings. The chapter sets out the background, risk and rationale of such cooperation and the topics covered include the legal options and rights of trafficking victims, the establishment of Memorandum of Understanding with law enforcement, liaison with police units, technical cooperation and capacity building, intelligence sharing, and transfer of witnesses in criminal proceedings.

The key themes of the chapter are (1) ensuring that victims of trafficking are informed of their criminal justice options and provided an opportunity to realize those options, and (2) the development of an ethical and professional reciprocal cooperative process between service delivery organizations and law enforcement agencies to ensure the better protection of victims' rights under the criminal justice system and to provide the basis for a medium-term strategy to improve the rate of detection and prosecution of traffickers and end the impunity with which they operate.

Appendix I Ethical Principles in Caring for and Interviewing Trafficked Persons

Appendix I provides basic instructions on the appropriate behaviour any staff member should have in order to respect the rights and specific situation of the trafficked person.

Appendix II Interview Checklist

Appendix II provides a checklist of issues to be considered and addressed at the beginning of each interview between service delivery organization staff and individuals who seek assistance as victims of trafficking.

Appendix III Glossary

A glossary is provided to clarify key terms used throughout the Handbook and during the process of identifying and providing assistance and protection to victims of trafficking.

Basic Principles

The instructions and advice offered in this Handbook are themselves based on the following principles governing counter-trafficking activities:

- A commitment to curtail human trafficking and to protect the rights of those who have become victims of trafficking, and to act to achieve respect for and protection of the human dignity and well-being of victims.
- The protection, safety and the respect of human rights of actual and potential trafficking victims are the guiding principles to be followed at all times.
- All services to trafficking victims are provided on the basis of the informed consent of a victim and, concerning support under the Assisted Voluntary Return programme, such assistance shall only be extended to victims who have freely chosen to return home.
- This Handbook reflects the international standards set out in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- It reflects the international standards set out in the United Nations Office of the High Commissioner for Human Rights – Principles and Guidelines on Human Trafficking and Human Rights.
- In providing assistance to children who have become victims of trafficking, organizations should always act in accordance with the best interests of the child.

Key Guidelines

- Do no harm. To do no harm is the first principle of most medical ethical guidance. Given the extreme risks associated with trafficking, the fragile state of many of its victims, and the potential for increased trauma, the significance of this basic rule cannot be overstated. It is the ethical responsibility of every organization providing assistance to victims of trafficking to assess the potential for harm of any proposed action and, if there is any reason to believe that carrying out an interview or conducting an examination or procedure will cause the individual to be worse off than before, it should not be undertaken at that time.
- Individualized treatment and care. While acknowledging that trafficking victims share some common experiences and circumstances, organizations should recognize and respect the individuality of victims and, to the extent possible, provide personalized care and assistance. Throughout the assistance process, staff should strive to provide the most appropriate protection, assistance and support appropriate to the needs and circumstances of the individual victim.
- Continuing and comprehensive care. The range of services outlined in Chapters 3 and 4 of this Handbook are designed to offer a holistic approach to aid the recovery of

trafficking victims, thereby offering a comprehensive continuum of care in accordance with the physical, psychological and social state of the victims.

- Victim interviews and informed consent. Throughout the assistance process, from initial contact and screening up to the final social reintegration, there are numerous instances where trafficking victims are interviewed in relation to a broad range of issues, such as initial screening interview, case history interview, assistance interviews, a range of health interviews and other procedures. Moreover, during many of these encounters, the victim will be required to make decisions and to provide written consent to a number of actions or procedures. Guidelines on the approach to be adopted during the interview and the securing of a victim's informed consent are provided in Appendices I and II to enable staff to conduct interviews in a fair and professional manner, respectful of the human rights of the victims concerned. Staff should read these Appendices carefully before conducting any interviews
- Self-determination and participation. Recognize the right and need of victims to make their own choices and decisions, and encourage them to participate in decision-making as much as possible. By working in collaboration with victims, staff should aim to restore the autonomy of victims and to enable them to take decisions and actions affecting them. Such collaboration will help them to regain control over decisions affecting their lives and increase their confidence to determine the next courses of action.
- Non-discrimination. Staff must provide the best possible assistance to victims of trafficking without discrimination, for example, on the basis of gender, age, disability, colour, social class, race, religion, language, political beliefs or status.
- Confidentiality and right to privacy. Confidential trafficking data should not be disclosed without the victim's prior knowledge and informed written consent. (See Chapter 5 regarding the disclosure of data necessary to enable law enforcement agencies to secure the safety of other victims still under the control of traffickers, or of those who are about to be trafficked.)

...

INTERNATIONAL REFUGEE LAW

Selected provisions:

Convention Relating to the Status of Refugees (1951)^{*} and its Protocol (1967)[∞]

1951 Convention adopted on 28 July 1951; entered into force on 22 April 1954 – 144 State Parties as of December 2008

1967 Protocol adopted on 16 December 1966; entered into force on 4 October 1967 – 144 State Parties as of December 2008

The 1951 Convention provides a definition of who is a refugee and establishes the obligations of State Parties for providing protection and assistance for them. The most important of these obligations is that of *non-refoulement*, set out in Article 33 – which is also widely considered, apart from the Convention, to be a principle of international customary law and thus, binding on non-signatories. Article 35 obliges State Parties to cooperate with the UNHCR in implementing its provisions. The 1967 Protocol modifies the 1951 Convention, striking the geographical and time-based limits of the definition of a refugee.

Article 1. Definition of the term “refugee”

A. For the purposes of the present Convention, the term “refugee”, shall apply to any person who:

...

(2) [As a result of events occurring before 1 January 1951 and][†] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence [as a result of such events], is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

...

Article 31. Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

^{*} 189 U.N.T.S. 150 [http://www.unhcr.ch/html/menu3/b/o_c_ref.htm]

[∞] 606 U.N.T.S. 267 [http://www.unhcr.ch/html/menu3/b/o_p_ref.htm]

[†] State Parties to the *1967 Protocol Relating to the Status of Refugees* agreed to lift the time limitation included in the *1951 Convention’s* refugee definition. Article 1(2) of *1967 Protocol* reads as follows: ‘For the purpose of the present Protocol, the term ‘refugee’ shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of Article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and...” and the words “...as a result of such events”, in Article 1A(2) were omitted.’

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32. Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33. Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

...

Article 35. Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

...

Selected provisions (citations omitted; emphasis added):

Conclusions of the Executive Committee on the International Protection of Refugees (ExCom)

No. 107 (LVIII) – Conclusion on Children at Risk (2007)*

Adopted at the 58th Session of the Executive Committee (2007), Geneva, Switzerland

The Executive Committee,

...

*Taking note of the more recent international developments in relation to the protection of children, in particular **the two Optional Protocols to the 1989 Convention on the Rights of the Child (CRC)**, Security Council resolutions 1612, 1674, and 1325, the Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups and the United Nations Secretary-General's Study on Violence against Children,*

...

*Affirming that children, because of their age, social status and physical and mental development are often more vulnerable than adults in situations of forced displacement; recognizing that forced displacement, return to post-conflict situations, integration in new societies, protracted situations of displacement, and statelessness can increase the vulnerability of children generally; taking into account the particular vulnerability of refugee children to being **forcibly exposed to the risks of physical and psychological injury, exploitation** and death in connection with armed conflict; and *acknowledging* that wider environmental factors and individual risk factors, particularly when combined, can put children in situations of heightened risk,*

Acknowledging that, while both girls and boys face many of the same protection risks, they also experience protection challenges specific to their gender, and reaffirming that, while many risks may be prevalent in all settings, camp and urban environments may generate different protection needs,

...

(c) *Calls on States, UNHCR and other relevant agencies and partners to put in place modalities, as appropriate, for early and continuous identification of children at heightened risk. Risk factors that put children in a situation of heightened risk can include both risks in the wider protection environment and risks resulting from individual circumstances, taking into account the cumulative effects of being exposed to several risk factors, such as:*

...

- ii. Individual risk factors, including, but not limited to: unaccompanied and separated children, particularly those in child-headed households as well as those accompanied by abusive or exploitative adults; stateless children; adolescents, in particular girl mothers and their children; **child victims of trafficking and sexual abuse, including pornography, pedophilia and prostitution**; survivors of torture; survivors of violence, in particular sexual and gender-based violence and other forms of abuse and exploitation; children who get married under the age specified in national laws and/or children in forced marriages; children who are or have been associated with armed forces or groups; children in detention; children who suffer from social discrimination; children with mental or physical disabilities; children living with or affected by HIV and AIDS and children suffering from other serious diseases; and children out of school;

* [<http://www.unhcr.org/excom/EXCOM/4717625c2.html>]

...

(g) *Recommends* that States, UNHCR and other relevant agencies and partners work in close collaboration to prevent children from being put at heightened risk, and respond, as necessary, through the general prevention, response and solution measures listed non-exhaustively below:

...

viii. Develop child and gender-sensitive national asylum procedures, where feasible, and UNHCR status determination procedures with adapted procedures including relevant evidentiary requirements, prioritized processing of unaccompanied and separated child asylum-seekers, qualified free legal or other representation for unaccompanied and separated children, and consider an age and gender-sensitive application of the 1951 Convention through the recognition of child-specific manifestations and forms of persecution, **including under-age recruitment, child trafficking** and female genital mutilation;

...

No. 106 (LVII) – Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons (2006) *

Adopted at the 57th Session of the Executive Committee (2006), Geneva, Switzerland

The Executive Committee,

Remaining deeply concerned with the persistence of statelessness problems in various regions of the world and the emergence of new situations of statelessness,

...

(l) *Encourages* States to seek appropriate solutions for persons who have no genuine travel or other identity documents, including migrants and those who have been smuggled or trafficked, and where necessary and as appropriate, for the relevant States to cooperate with each other in verifying their nationality status, while fully respecting the international human rights of these individuals as well as relevant national laws;

(m) *Calls upon* States Parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime, to respect their obligation to assist in verifying the nationality of the persons referred to them who have been smuggled or trafficked with a view to issuing travel and identity documents and facilitating the return of such persons; and, *encourages* other States to provide similar assistance;

...

No. 105 (LVII) – Conclusion on Women and Girls at Risk (2006) *

Adopted at the 57th Session of the Executive Committee (2006), Geneva, Switzerland

The Executive Committee,

...

Recognizing that, while women and girls may be exposed to certain risks, **such as trafficking**, in any location, the different nature of camp and urban environments can expose women and girls to different protection risks and that in camps, for example, their freedom of

* [<http://www.unhcr.org/excom/EXCOM/453497302.html>]

* [<http://www.unhcr.org/excom/EXCOM/45339d922.html>]

movement and capacity to earn a livelihood may be more restricted and they may be more exposed there to sexual and gender-based violence (SGBV), whereas in urban situations, they may be less able to exercise their rights effectively, to access protection and services or reach UNHCR or implementing partner offices,

...

(a) *Adopts* this Conclusion regarding the identification of women and girls at risk, prevention strategies and individual responses and solutions and *recommends* that UNHCR include a more detailed elaboration of these issues in the UNHCR Handbook on the Protection of Women and Girls.

...

(j) Secure environments are to be established and strengthened, including by partnerships and actions to:

- i. prevent and respond to SGBV in accordance with international standards set out in UNHCR and other relevant guidelines,¹ including through provision of quality health services to address the specific needs of women and girls at risk;
- ii. maintain the civilian and humanitarian character of asylum, which is a primary responsibility of host States;
- iii. ensure the individual documentation of refugee women and separated and unaccompanied refugee girls and register births, marriages and divorces in a timely manner;
- iv. strengthen dispute resolution skills in the displaced community and take measures to assure confidentiality, so as to enable women and girls at risk to remain safely in their community and build relations between host and displaced communities to create a safe and non-exploitative environment;
- v. strengthen justice systems to uphold the rights of women and girls and bring perpetrators of SGBV to justice, **combat trafficking and protect victims**; and
- vi. establish and/or implement codes of conduct, including on the elimination of sexual exploitation and abuse, for all humanitarian staff, including those working in the delivery of services and for other staff in authority, such as border guards, and ensure that confidential and accessible complaints systems are in place which include investigation and follow-up, so as to encourage the reporting of abuse and exploitation where codes of conduct are breached.

...

No. 98 (LIV) – Conclusion on Protection from Sexual Abuse and Exploitation (2003)*

Adopted at the 54th Session of the Executive Committee (2003), Geneva, Switzerland

The Executive Committee,

Reaffirming its Conclusions No. 39 (XXXVI), No. 47 (XXXVIII), No. 54 (XXXIX), No. 60 (XL), No. 64 (XLI), No. 68 (XLIII), No. 73 (XLIV), No. 74 (XLVI), No. 79 (XLVII), No. 84 (XLVIII), No. 85 (XLIX), No. 87 (L), No. 91 (LII) and No. 94 (LIII) and in particular the need to combat sexual and gender-based violence in refugee situations; and recalling also in this context the relevant goals and objectives of the Agenda for Protection;

Recalling the international community's efforts to strengthen the international legal framework for combating sexual abuse and exploitation;

* [<http://www.unhcr.org/excom/EXCOM/3f93b2c44.html>]

Recalling also the report of the United Nations Office of the Internal Oversight Services on the investigation into sexual exploitation of refugees by aid workers in West Africa, and resolution A/RES/57/306;

Noting distressing reports over the last few years that refugees and asylum-seekers, in particular women and children, have been victims of sexual abuse and exploitation during flight or upon arrival in their country of asylum, and deeply concerned that this has negatively impacted their access to basic protection and assistance, including health care and education, the issuance of personal documentation or granting of refugee status;

Recognizing that sexual abuse and exploitation are a consequence of unequal power relationships; a dynamic that is often exacerbated during humanitarian crises characterized by widespread violence, mass displacement, and the breakdown in family structures, social and value systems; and noting with distress, the involvement of humanitarian workers, officials and other persons working closely with refugee populations;

Acknowledging that inadequate protection or inappropriate assistance, particularly the quantity and quality of food and other material assistance, increases the vulnerability of refugees and asylum-seekers to sexual abuse and exploitation;

Recognizing the importance of effective mechanisms to prevent and respond to the occurrence of sexual abuse and exploitation in all phases of the refugee experience;

Recognizing that the best interest of the child shall be a primary consideration in the design and implementation of all prevention and response measures, to ensure the protection of children from all forms of abuse, neglect, exploitation and violence, including sexual abuse and exploitation;

Welcoming the June 2002 Report of the Inter-Agency Standing Committee Task-Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises and its plan of action to address the problem of sexual abuse and exploitation;

Recalling previous UNHCR policies and guidelines intended to address violence against refugees, including the 1989 Policy and 1991 Guidelines on the Protection of Refugee Women; the 1993 Policy on Refugee Children and 1994 Refugee Children: Guidelines on Protection and Care, the 1995 Sexual Violence against Refugees: Guidelines on Prevention and Response, as updated in 2003; and the High Commissioner's 2001 Five Commitments to Refugee Women;

Noting the issuance in May 2003 of UNHCR's revised *Guidelines on Sexual and Gender-Based Violence in Refugee, Returnee and Displaced Situations*, as well as the UNHCR *Guidelines on International Protection, Gender-Related Persecution*, of May 2002, and noting UNHCR's endeavours to address the problem of sexual and gender-based violence in the field and the various training initiatives undertaken to date to provide staff with the practical skills necessary to meet the protection needs of victims of sexual abuse and exploitation;

Welcoming UNHCR's efforts to address the problem through the promulgation and implementation of a Code of Conduct for UNHCR staff, in accordance with the plan of action of the Inter-Agency Standing Committee's Task Force on Protection From Sexual Exploitation and Abuse in Humanitarian Crises; and the amendment of its programme implementation sub-agreements to include a requirement for implementing partners to have similar Codes of Conduct and for these to be implemented fully;

(a) *Calls upon* States, UNHCR and its implementing and operational partners to ensure that appropriate systems to prevent and respond to sexual and gender-based violence, including sexual abuse and exploitation, are in place, ensuring the needs of women and children, as well those of vulnerable persons, are addressed at all times; and recommends that measures to combat sexual abuse and exploitation of refugees and asylum-seekers be guided by the importance of:

1. Ensuring explicit reference in codes of conduct and other relevant policies to the responsibilities of relevant personnel to prevent and respond appropriately to sexual and gender-based violence, including sexual abuse and exploitation;
2. Ensuring the prompt investigation of allegations of sexual abuse and exploitation;
3. Ensuring that actions undertaken on behalf of refugees and asylum-seekers, including women, children and vulnerable persons, enhance their meaningful participation in decision-making processes; that they are provided with sufficient information to form their opinions, and channels for communicating their concerns to humanitarian agencies, and are provided with full information about refugee protection and available assistance;
4. Ensuring that needs assessments, evaluations and reports, identify vulnerabilities to sexual exploitation and abuse and provide a basis for improved programme planning that minimizes risks and opportunities for sexual abuse and exploitation, and that protection and assistance processes, taking into account the quantity and quality of assistance and distribution methods, including supervision, are designed and implemented in a manner that reduces the risk of sexual abuse and exploitation;
5. Ensuring that camp governance is conducted in an equitable manner that empowers women, children and vulnerable groups and that the physical layout of camps is designed in such a way as to make such individuals less vulnerable to sexual abuse and exploitation;
6. Ensuring that easily accessible and confidential complaint and redress mechanisms are in place for victims of sexual abuse and exploitation, and that they appropriately apply sanctions to perpetrators and ensure that such mechanisms respect due process rights of the accused, and safeguard the security and rights of the victim or witnesses;
7. Ensuring the existence of adequate remedial measures in order to appropriately care for victims of sexual abuse and exploitation;
8. Conducting training and capacity building on the prevention and response to sexual abuse and exploitation;

(b) *Calls upon* UNHCR to continue to pursue its ongoing activities taken in the area of sexual abuse and exploitation with particular attention to:

1. Ensuring full implementation of respective policies, codes of conduct, the guidelines on sexual and gender-based violence in refugee, returnee and internally displaced situations, as well as the UNHCR guidelines on gender-related persecution;
2. Implementing the relevant recommendations from the evaluations of UNHCR's activities in the area of refugee women, refugee children and community services;
3. Ensuring adequate levels of monitoring and supervision of programmes for prevention and protection from sexual abuse and exploitation, including through physical presence, and to support staff at field level to implement concrete programmes of action;
4. Developing mechanisms to ensure accountability, including at senior levels, in the implementation of all protection and assistance activities to prevent sexual and gender-based violence;
5. Promoting gender balance in staff at all levels, both at headquarters and in the field, as well as expert and specialist competence, while having regard to merit selection principles;

(c) *Urges* all States, consistent with applicable international refugee, human rights and humanitarian law:

1. to protect refugees and asylum-seekers, especially children, from all forms of abuse, neglect, exploitation and violence; and
2. to cooperate in eliminating all forms of discrimination, sexual exploitation and violence against female refugees and asylum-seekers, and to promote their active involvement in decisions affecting their lives and communities;

(d) *Urges* States to respect and ensure the right of all individuals within their territory and subject to their jurisdiction, to security of person, *inter alia* by enforcing relevant national laws, consistent with international law, and by adopting concrete measures, where they do not exist, to prevent and combat sexual abuse and exploitation including through:

1. The development and implementation of training programmes, guidelines and other practical measures aimed at promoting respect by all government officials, as well as persons acting on behalf of the State, who have contact with refugee populations, for the right of every individual to security of person and at promoting protection from sexual abuse and exploitation;
2. Appropriate follow-up action in response to allegations of sexual violence and exploitation including, where necessary, by implementation of remedies, such as facilitating the filing and investigation of complaints of sexual violence and exploitation, the prosecution of offenders, and timely and proportional disciplinary sanctions in cases of abuse of power or gross negligence resulting in sexual exploitation;
3. Complaint and redress mechanisms, where appropriate, which are easily accessible, do not compromise the security of the survivors or other informants, and give due regard to confidentiality. Such complaint mechanisms should, where feasible, provide victims and witnesses with referrals to support services with appropriately trained personnel, including in particular female counsellors;

(e) *Calls on* States to ensure that all humanitarian agencies funded by them and working with refugees integrate and promote policies consistent with the core principles of the plan of action of the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises;

(f) *Calls on* UNHCR to support its internal investigation capacity within the Inspector General's Office to ensure that the Office is able to react swiftly and effectively to ascertain the veracity of any allegations of sexual abuse or exploitation by UNHCR or implementing partner staff;

(g) *Calls upon* the international community in cooperation with UNHCR and other international organisations to mobilize the resources necessary to ensure the provision of protection and material assistance in support of host countries, based on international solidarity, cooperation, burden and responsibility-sharing, since inadequate protection, or inadequate, inappropriate or poorly distributed assistance can increase the vulnerability of refugees and asylum-seekers to sexual abuse and exploitation;

(h) *Calls upon* UNHCR to continue its cooperation with other actors to ensure protection from exploitation and abuse of refugees and asylum-seekers, including through participation in the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, and other coordination mechanisms;

(i) *Calls upon* UNHCR to continue to report on a regular basis on progress made in the implementation of measures to combat sexual abuse and exploitation.

No. 97 (LIV) – Conclusion on Protection Safeguards in Interception Methods (2003)*

Adopted at the 54th Session of the Executive Committee (2003), Geneva, Switzerland

The Executive Committee,

Noting the discussions which took place on interception measures at the Standing Committee as well as in the context of the Global Consultations on International Protection;

Concerned about the many complex features of the evolving environment in which refugee protection has to be provided, including the persistence of armed conflict, the complexity of current forms of persecution, ongoing security challenges, mixed population flows, the high costs that may be connected with hosting asylum-seekers and refugees and of maintaining individual asylum systems, the growth in trafficking and smuggling of persons, the problems of safeguarding asylum systems against abuse and of excluding those not entitled to refugee protection, as well as the lack of resolution of long-standing refugee situations;

Recognizing that States have a legitimate interest in controlling irregular migration, as well as ensuring the safety and security of air and maritime transportation, and a right to do so through various measures;

Recalling the emerging legal framework for combating criminal and organized smuggling and trafficking of persons, in particular the Protocol Against the Smuggling of Migrants by Land, Sea and Air, which, *inter alia*, contemplates the interception of vessels enjoying freedom of navigation in accordance with international law, on the basis of consultations between the flag State and the intercepting State in accordance with international maritime law, provided that there are reasonable grounds to suspect that the vessel is engaged in the smuggling of migrants by sea;

Noting the saving clauses contained in each of the Protocols and the reference to the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and the principle of *non-refoulement*;

Recalling also the duty of States and shipmasters to ensure the safety of life at sea and to come to the aid of those in distress or in danger of being lost at sea, as contained in numerous instruments of the codified system of international maritime law; *recalling also* Conclusions of the Executive Committee of relevance to the particular needs of asylum-seekers and refugees in distress at sea⁷ and *affirming* that when vessels respond to persons in distress at sea, they are not engaged in interception;

Recognizing also that States have international obligations regarding the security of civilian air transportation and that persons whose identities are unknown represent a potential threat to the security of air transportation as contained in numerous instruments of the codified system on international aviation law;

Understanding that for the purposes of this conclusion, and without prejudice to international law, particularly international human rights law and refugee law, with a view to providing protection safeguards to intercepted persons, interception is one of the measures employed by States to:

* [<http://www.unhcr.org/excom/EXCOM/3f93b2894.html>]

- i. prevent embarkation of persons on an international journey;
- ii. prevent further onward international travel by persons who have commenced their journey; or
- iii. assert control of vessels where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law;

where, in relation to the above, the person or persons do not have the required documentation or valid permission to enter; and that such measures also serve to protect the lives and security of the travelling public as well as persons being smuggled or transported in an irregular manner;

(a) *Recommends* that interception measures be guided by the following considerations in order to ensure the adequate treatment of asylum-seekers and refugees amongst those intercepted;

- i. The State within whose sovereign territory, or territorial waters, interception takes place has the primary responsibility for addressing any protection needs of intercepted persons;
- ii. All intercepted persons should be treated, at all times, in a humane manner respectful of their human rights. State authorities and agents acting on behalf of the intercepting State should take, consistent with their obligations under international law, all appropriate steps in the implementation of interception measures to preserve and protect the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment of persons intercepted;
- iii. Interception measures should take into account the fundamental difference, under international law, between those who seek and are in need of international protection, and those who can resort to the protection of their country of nationality or of another country;
- iv. Interception measures should not result in asylum-seekers and refugees being denied access to international protection, or result in those in need of international protection being returned, directly or indirectly, to the frontiers of territories where their life or freedom would be threatened on account of a Convention ground, or where the person has other grounds for protection based on international law. Intercepted persons found to be in need of international protection should have access to durable solutions;
- v. The special needs of women and children and those who are otherwise vulnerable should be considered as a matter of priority;
- vi. Intercepted asylum-seekers and refugees should not become liable to criminal prosecution under the *Protocol Against the Smuggling of Migrants by Land, Sea or Air* for the fact of having been the object of conduct set forth in article 6 of the Protocol; nor should any intercepted person incur any penalty for illegal entry or presence in a State in cases where the terms of Article 31 of the 1951 Convention are met;
- vii. Intercepted persons who do not seek or who are determined not to be in need of international protection should be returned swiftly to their respective countries of origin or other country of nationality or habitual residence and States are encouraged to cooperate in facilitating this process;
- viii. All persons, including officials of a State, and employees of a commercial entity, implementing interception measures should receive specialized training, including available means to direct intercepted persons expressing international protection needs to the appropriate authorities in the State where the interception has taken place, or, where appropriate, to UNHCR;

(b) *Encourages* States to generate and share more detailed information on interception, including numbers, nationalities, gender and numbers of minors intercepted, as well as information on State practice, having due consideration for security and data protection concerns subject to the domestic laws and international obligations of those States;

(c) *Encourages* States to further study interception measures, including their impact on other States, with a view to ensuring that these do not interfere with obligations under international law.

No. 96 (LIV) – Conclusion on the Return of Persons Found Not to be in Need of International Protection (2003) *

Adopted at the 54th Session of the Executive Committee (2003), Geneva, Switzerland

The Executive Committee,

Expressing appreciation for the timely and useful discussion which took place on the return of persons found not to be in need of international protection, in the context of the Global Consultations on International Protection, and which led to Goal 2, objective 7 of the Agenda for Protection;

Bearing in mind that the efficient and expeditious return of persons found not to be in need of international protection is key to the international protection system as a whole, as well as to the control of irregular migration and prevention of smuggling and trafficking of such persons;

Concerned by the difficulties experienced by many countries of asylum in different parts of the world in effecting the return of persons found not to be in need of international protection, which have served to undermine the integrity of individual asylum systems;

Recalling the obligation of States to receive back their own nationals, as well as the right of States, under international law, to expel aliens while respecting obligations under international refugee and human rights law;

Recalling also that the 2000 United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air sets out the obligation of States parties to facilitate and accept, without undue or unreasonable delay, the return of a person who has been smuggled and who is its national or who has the right of permanent residence in its territory at the time of return;

Observing that, for the purposes of this Conclusion, the term “persons found not to be in need of international protection” is understood to mean persons who have sought international protection and who after due consideration of their claims in fair procedures, are found neither to qualify for refugee status on the basis of criteria laid down in the 1951 Convention, nor to be in need of international protection in accordance with other international obligations or national law;

(a) *Reaffirms* the right of everyone to leave any country, including his or her own, and to return to his or her own country as well as the obligation of States to receive back their own nationals, including the facilitation thereof, and remains seriously concerned, as regards the return of persons found not to be in need of international protection, that some countries continue to restrict the return of their own nationals, either outright or through laws and practices which effectively block expeditious return;

(b) *Emphasizes* that the credibility of individual asylum systems is seriously affected by the lack of prompt return of those who are found not to be in need of international protection;

(c) *Reiterates* that return of persons found not to be in need of international protection should be undertaken in a humane manner, in full respect for human rights and dignity and, that

* [<http://www.unhcr.org/excom/EXCOM/3f93b1ca4.html>].

force, should it be necessary, be proportional and undertaken in a manner consistent with human rights law; and *emphasizes* that in all actions concerning children, the best interests of the child shall be a primary consideration;

(d) *Recognizes* the importance that persons found not to be in need of international protection cooperate with return arrangements;

(e) *Calls on* States to cooperate regarding the efficient and expeditious return of persons found not to be in need of international protection, to their countries of origin, other countries of nationality or countries with an obligation to receive them back, notably by;

- i. cooperating actively, including through their diplomatic and consular offices, in establishing the identity of persons presumed to have a right to return, as well as determining their nationality, where there is no evidence of nationality in the form of genuine travel or other relevant identity documents for the person concerned;
- ii. finding practical solutions for the issuance of appropriate documentation to persons who are not or no longer in possession of a genuine travel document;

(f) *Calls upon* States parties to the 1951 Convention and the 1967 Protocol to facilitate the return of persons found not to be in need of international protection by providing facilities for the transit of such persons taking into account, where applicable, agreements concerning the mutual recognition of asylum determination decisions;

(g) *Recalls* further that Annex 9 to the 1944 Convention on International Civil Aviation requires that States, when requested to provide travel documents to facilitate the return of one of its nationals, respond within a reasonable period of time, and not more than 30 days after such a request is made, either by issuing a travel document or by satisfying the requesting State that the person concerned is not one of its nationals;

(h) *Refers to* its Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and protection of stateless persons, and *urges* States to take steps to avoid cases of statelessness as well as to adopt measures leading to the grant of a legal status to stateless persons;

(i) *Welcomes* the expertise developed by IOM in the assisted voluntary return of persons found not to be in need of international protection and *notes* UNHCR's cooperation with IOM in this area;

(j) *Recommends*, depending on the situation, that UNHCR complement the efforts of States in the return of persons found not to be in need of international protection by:

- i. Promoting with States those principles which bear on their responsibility to accept back their nationals, as well as principles on the reduction of statelessness;
- ii. Taking clear public positions on the acceptability of return of persons found not to be in need of international protection,
- iii. Continuing its dialogue with States to review their citizenship legislation, particularly if it allows renunciation of nationality without at the same time ensuring that the person in question has acquired another nationality and could be used to stop or delay the return of a person to a country of nationality;

(k) *Takes note of* UNHCR's readiness, on a good offices basis, to support States, upon their request, in their endeavours to return persons found not to be in need of international protection, in particular where obstacles to return are encountered and provided that the involvement of the Office is not inconsistent with its humanitarian mandate to provide international protection to refugees;

(l) *Stresses* the importance of ensuring the sustainability of returns and of avoiding further displacements in countries emerging from conflict, and *notes* that phasing returns of persons found not to be in need of international protection can contribute to this; while *also recognizing* that once a person found not to be in need of international protection has made an informed decision to return voluntarily, this should take place promptly;

(m) *Notes* the value of State data on return of persons found not to be in need of international protection to assist in analysing the rate of return and the scope of the problem of achieving returns.

No. 90 (LII) – General (2001)*

Adopted at the 52nd Session of the Executive Committee (2001), Geneva, Switzerland

The Executive Committee:

...

(s) *Strongly* condemning the trafficking of persons, especially women and children, which represents a grave violation of their human rights; expressing concern that many victims of trafficking are rendered effectively stateless due to an inability to establish their identity and nationality status; *calls upon* States to cooperate in the establishment of identity and nationality status of victims of trafficking so as to facilitate appropriate resolutions of their situations, respecting the internationally recognized human rights of the victims.

No. 87 (L) – General (1999)*

Adopted at the 50th Session of the Executive Committee (1999), Geneva, Switzerland

The Executive Committee:

...

(l) *Reaffirms* Conclusion No. 58 (XL) on irregular movements; *notes* with concern that refugees who have already found and continue to enjoy protection in a first country of asylum continue to move in an irregular manner to other countries on a significant scale; and *encourages* UNHCR, States and other relevant actors to enhance cooperation to address the causes of such movements, in particular with a view to ensuring treatment of asylum-seekers and refugees in accordance with the highest possible standards of protection in first countries of asylum, and to creating awareness as to the risks and dangers linked to irregular movements, notably exploitation by traffickers; and further *encourages* UNHCR to work with transit and destination countries to ensure that the protection and assistance needs of such asylum-seekers and refugees are met;

No. 84 (XLVIII) – Conclusion on Refugee Children and Adolescents (1997)*

Adopted at the 48th Session of the Executive Committee (1997), Geneva, Switzerland

...

(a) Calls upon States and relevant parties to respect and observe rights and principles that are in accordance with international human rights and humanitarian law and that are of particular

* [<http://www.unhcr.org/excom/EXCOM/3bd3e3024.html>]

* [<http://www.unhcr.org/excom/EXCOM/3ae68c6ec.html>]

* [<http://www.unhcr.org/excom/EXCOM/3ae68c68c.html>]

relevance to international refugee protection, especially to safeguarding child and adolescent refugees, including:

...

(iii) preventing sexual violence, exploitation, trafficking and abuse; addressing the needs and rights of child and adolescent victims through provision of appropriate legal and rehabilitative remedies; and by following up on the Plan of Action of the 1996 Stockholm World Congress on the Sexual Exploitation of Children;

...

Full text:

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[∞]

HCR/GIP/06/07, 7 April 2006

UNHCR's series of "Guidelines on International Protection" provides interpretative legal guidance on Article 1 of the *1951 Convention relating to the Status of Refugees* for governments, legal practitioners, decision-makers and the judiciary, as well as for UNHCR staff carrying out refugee status determination in the field. UNHCR issues these Guidelines pursuant to its supervisory responsibility as contained in the 1950 *Statute of the Office of the United Nations High Commissioner for Refugees* in conjunction with Article 35 of the *1951 Convention relating to the Status of Refugees* and Article II of its *1967 Protocol*.

[∞] [<http://www.unhcr.org/refworld/docid/443679fa4.html>]

**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**

UNHCR issues these Guidelines pursuant to its mandate, as contained in the 1950 *Statute of the Office of the United Nations High Commissioner for Refugees* in conjunction with Article 35 of the *1951 Convention relating to the Status of Refugees* and Article II of its *1967 Protocol*. These Guidelines complement the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (1979, re-edited, Geneva, January 1992). They should additionally be read in conjunction with UNHCR's Guidelines on International Protection on gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/01) and on "membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/02), both of 7 May 2002.

These Guidelines are intended to provide interpretative legal guidance for governments, legal practitioners, decision-makers and the judiciary, as well as for UNHCR staff carrying out refugee status determination in the field.

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

I. INTRODUCTION

1. Trafficking in persons, the primary objective of which is to gain profit through the exploitation of human beings, is prohibited by international law and criminalized in the national legislation of a growing number of States. Although the range of acts falling within the definition of trafficking varies among national jurisdictions, States have a responsibility to combat trafficking and to protect and assist victims of trafficking.

2. The issue of trafficking has attracted substantial attention in recent years, but it is not a modern phenomenon. Numerous legal instruments dating from the late nineteenth century onwards have sought to address various forms and manifestations of trafficking.¹ These instruments remain in force and are relevant to the contemporary understanding of trafficking and how best to combat it. The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter the “Trafficking Protocol”)² supplementing the 2000 United Nations Convention against Transnational Organized Crime (hereinafter the “Convention against Transnational Crime”)³ provides an international definition of trafficking. This represents a crucial step forward in efforts to combat trafficking and ensure full respect for the rights of individuals affected by trafficking.

3. Trafficking in the context of the sex trade is well documented and primarily affects women and children who are forced into prostitution and other forms of sexual exploitation.⁴ Trafficking is not, however, limited to the sex trade or to women. It also includes, at a minimum, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁵ Depending on the circumstances, trafficking may constitute a crime against humanity and, in armed conflict, a war

¹ It has been estimated that between 1815 and 1957 some 300 international agreements were adopted to suppress slavery in its various forms, including for example the 1910 International Convention for the Suppression of the White Slave Traffic, the 1915 Declaration Relative to the Universal Abolition of the Slave Trade, the 1926 Slavery Convention, the 1949 Convention for the Suppression of the Traffick in Persons and of the Exploitation of the Prostitution of Others and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

² Entered into force on 25 December 2003.

³ Entered into force on 29 September 2003.

⁴ Bearing in mind the prevalence of women and girls amongst the victims of trafficking, gender is a relevant factor in evaluating their claims for refugee status. See further, UNHCR, “Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees” (hereinafter “UNHCR Guidelines on Gender-Related Persecution”), HCR/GIP/02/01, 7 May 2002, paragraph 2.

⁵ See Article 3(a) of the Trafficking Protocol cited in paragraph 8 below.

crime.⁶ A common characteristic of all forms of trafficking is that victims are treated as merchandise, “owned” by their traffickers, with scant regard for their human rights and dignity.

4. In some respects, trafficking in persons resembles the smuggling of migrants, which is the subject of another Protocol to the Convention against Transnational Crime.⁷ As with trafficking, the smuggling of migrants often takes place in dangerous and/or degrading conditions involving human rights abuses. It is nevertheless essentially a voluntary act entailing the payment of a fee to the smuggler to provide a specific service. The relationship between the migrant and the smuggler normally ends either with the arrival at the migrant’s destination or with the individual being abandoned en route. Victims of trafficking are distinguished from migrants who have been smuggled by the protracted nature of the exploitation they endure, which includes serious and ongoing abuses of their human rights at the hands of their traffickers. Smuggling rings and trafficking rings are nevertheless often closely related, with both preying on the vulnerabilities of people seeking international protection or access to labour markets abroad. Irregular migrants relying on the services of smugglers whom they have willingly contracted may also end up as victims of trafficking, if the services they originally sought metamorphose into abusive and exploitative trafficking scenarios.

5. 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 and/or its 1967 Protocol relating to the Status of Refugees (hereinafter “the 1951 Convention”) are recognized as refugees and afforded the corresponding international protection.

6. Not all victims or potential victims of trafficking fall within the scope of the refugee definition. To be recognized as a refugee, all elements of the refugee definition have to be satisfied. These Guidelines are intended to provide guidance on the application of Article 1A(2) of the 1951 Convention to victims or potential victims of trafficking. They also cover issues concerning victims of trafficking arising in the context of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The protection of victims or potential victims of trafficking as set out in these Guidelines is additional to and distinct from the protection contemplated by Part II of the Trafficking Protocol.⁸

⁶ See, for instance, Articles 7(1)(c), 7(1)(g), 7(2)(c) and 8(2)(xxii) of the 1998 Statute of the International Criminal Court, A/CONF.183/9, which specifically refer to “enslavement”, “sexual slavery” and “enforced prostitution” as crimes against humanity and war crimes.

⁷ The 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air (entered into force on 28 January 2004).

⁸ Part II of the Trafficking Protocol concerns the protection of victims of trafficking. It covers areas such as ensuring the protection of privacy and identity of the victims; providing victims with information on relevant court and administrative proceedings, as well as assistance to enable them to present their views and concerns at appropriate stages of criminal proceedings

II. SUBSTANTIVE ANALYSIS

a) Definitional issues

7. The primary function of the Convention against Transnational Crime and its supplementary Protocols against Trafficking and Smuggling is crime control. They seek to define criminal activities and guide States as to how best to combat them. In doing so, they nevertheless provide helpful guidance on some aspects of victim protection and therefore constitute a useful starting point for any analysis of international protection needs arising as a result of trafficking.

8. Article 3 of the Trafficking Protocol reads:

“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.”

9. The Trafficking Protocol thus defines trafficking by three essential and interlinked sets of elements:

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

The means: by threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, or of giving or receiving of payments or benefits to achieve the consent of a person having control over the victim;

The purpose: exploitation of the victim, including, 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.⁹

against offenders; providing victims with support for physical, psychological and social recovery; permitting victims to remain in the territory temporarily or permanently; repatriating victims with due regard for their safety; and other measures.

⁹ For the purposes of these Guidelines, the Trafficking Protocol definition is used as it represents the current international consensus on the meaning of trafficking. In order to understand the legal meaning of terms used within the Protocol definition fully, it is nevertheless necessary to refer further to other legal instruments, for example, a number of International Labour Organization Conventions, including the 1930 Convention No. 29 on

10. An important aspect of this definition is an understanding of trafficking as a process comprising a number of interrelated actions rather than a single act at a given point in time. Once initial control is secured, victims are generally moved to a place where there is a market for their services, often where they lack language skills and other basic knowledge that would enable them to seek help. While these actions can all take place within one country's borders,¹⁰ they can also take place across borders with the recruitment taking place in one country and the act of receiving the victim and the exploitation taking place in another. Whether or not an international border is crossed, the intention to exploit the individual concerned underpins the entire process.

11. Article 3 of the Trafficking Protocol states that where any of the means set forth in the definition are used, the consent of the victim to the intended exploitation is irrelevant.¹¹ Where the victim is a child,¹² the question of consent is all the more irrelevant as any recruitment, transportation, transfer, harbouring or receipt of children for the purpose of exploitation is a form of trafficking regardless of the means used.

12. Some victims or potential victims of trafficking may fall within the definition of a refugee contained in Article 1A(2) of the 1951 Convention and may therefore be entitled to international refugee protection. Such a possibility is not least implicit in the saving clause contained in Article 14 of the Trafficking Protocol, which states:

“1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.”¹³

Forced or Compulsory Labour, the 1957 Convention No. 105 on the Abolition of Forced Labour, the 1975 Convention No. 143 on Migrant Workers (Supplementary Provisions) and the 1999 Convention No. 182 on the Worst Forms of Child Labour. These are referred to in the first report of the Special Rapporteur on trafficking in persons, especially women and children, Ms Sigma Huda, E/CN.4/2005/71, 22 December 2004, paragraph 22. Her second report entitled “Integration of the Human Rights of Women and a Gender Perspective”, E/CN.4/2006/62, 20 February 2006, goes into this issue in further detail in paragraphs 31–45. The Special Rapporteur was appointed in 2004 pursuant to a new mandate created by the 60th Session of the Commission on Human Rights (Resolution 2004/110).

¹⁰ The Council of Europe Convention on Action against Trafficking in Human Beings, opened for signature in May 2005, addresses the question of trafficking within national borders directly.

¹¹ Article 3(b) of the Trafficking Protocol. See also, the second report of the Special Rapporteur on trafficking in persons, cited above in footnote 9, paragraphs 37–43 on the “irrelevance of consent”.

¹² Article 3(c) of the Trafficking Protocol follows the 1989 Convention on the Rights of the Child in defining a child as “any person under eighteen years of age”.

¹³ The Agenda for Protection, A/AC.96/965/Add.1, 2002, Goal 2, Objective 2, calls upon States to ensure that their asylum systems are open to receiving claims from individual victims of trafficking. This interpretation of the Article 14 saving clause as imposing an obligation on States to consider the international protection needs of victims of trafficking is strengthened by paragraph 377 of the Explanatory Report accompanying the Council of Europe Convention. This states in relation to Article 40 of that Convention:

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.”

13. A claim for international protection presented by a victim or potential victim of trafficking can arise in a number of distinct sets of circumstances. The victim may have been trafficked abroad, may have escaped her or his traffickers and may seek the protection of the State where she or he now is. The victim may have been trafficked within national territory, may have escaped from her or his traffickers and have fled abroad in search of international protection. The individual concerned may not have been trafficked but may fear becoming a victim of trafficking and may have fled abroad in search of international protection. In all these instances, the individual concerned must be found to have a “well-founded fear of persecution” linked to one or more of the Convention grounds in order to be recognized as a refugee.

b) Well-founded fear of persecution

14. What amounts to a well-founded fear of persecution will depend on the particular circumstances of each individual case.¹⁴ Persecution can be considered to involve serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm or intolerable predicament, as assessed in the light of the opinions, feelings and psychological make-up of the asylum applicant.

15. In this regard, the evolution of international law in criminalizing trafficking can help decision-makers determine the persecutory nature of the various acts associated with trafficking. Asylum claims lodged by victims of trafficking or potential victims of trafficking should thus be examined in detail to establish whether the harm feared as a result of the trafficking experience, or as a result of its anticipation, amounts to persecution in the individual case. 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.

The fact of being a victim of trafficking in human beings cannot preclude the right to seek and enjoy asylum and Parties shall ensure that victims of trafficking have appropriate access to fair and efficient asylum procedures. Parties shall also take whatever steps are necessary to ensure full respect for the principle of *non-refoulement*.

Additionally, the Office of the High Commissioner for Human Rights (OHCHR) “Recommended Principles and Guidelines on Human Rights and Human Trafficking” presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights, E/2002/68/Add. 1, 20 May 2002, available at <http://www.ohchr.org/english/about/publications/docs/trafficking.doc>, address in Guideline 2.7 the importance of ensuring that procedures and processes are in place for the consideration of asylum claims from trafficked persons (as well as from smuggled asylum-seekers) and that the principle of *non-refoulement* is respected and upheld at all times.

¹⁴ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1979, re-edited 1992, paragraph 51 (hereinafter the “UNHCR Handbook”).

16. In cases where the trafficking experience of the asylum applicant is determined to be a one-off past experience, which is not likely to be repeated, it may still be appropriate to recognize the individual concerned as a refugee if there are compelling reasons arising out of previous persecution, provided the other interrelated elements of the refugee definition are fulfilled. This would include situations where the persecution suffered during the trafficking experience, even if past, was particularly atrocious and the individual is experiencing ongoing traumatic psychological effects which would render return to the country of origin intolerable. In other words, the impact on the individual of the previous persecution continues. The nature of the harm previously suffered will also impact on the opinions, feelings and psychological make-up of the asylum applicant and thus influence the assessment of whether any future harm or predicament feared would amount to persecution in the particular case.

17. Apart from the persecution experienced by individuals in the course of being trafficked, they may face reprisals and/or possible re-trafficking should they be returned to the territory from which they have fled or from which they have been trafficked.¹⁵ For example, the victim's cooperation with the authorities in the country of asylum or the country of origin in investigations may give rise to a risk of harm from the traffickers upon return, particularly if the trafficking has been perpetrated by international trafficking networks. Reprisals at the hands of traffickers could amount to persecution depending on whether the acts feared involve serious human rights violations or other serious harm or intolerable predicament and on an evaluation of their impact on the individual concerned. Reprisals by traffickers could also be inflicted on the victim's family members, which could render a fear of persecution on the part of the victim well-founded, even if she or he has not been subjected directly to such reprisals. In view of the serious human rights violations often involved, as described in paragraph 15 above, re-trafficking would usually amount to persecution.

18. In addition, the victim may also fear ostracism, discrimination or punishment by the family and/or the local community or, in some instances, by the authorities upon return. Such treatment is particularly relevant in the case of those trafficked into prostitution. In the individual case, severe ostracism, discrimination or punishment may rise to the level of persecution, in particular if aggravated by the trauma suffered during, and as a result of, the trafficking process. Where the individual fears such treatment, her or his fear of persecution is distinct from, but no less valid than, the fear of persecution resulting from the continued exposure to the violence involved in trafficking scenarios. Even if the ostracism from, or punishment by, family or community members does not rise to the level of persecution, such rejection by, and isolation from, social support networks may in fact heighten the risk of being re-trafficked or of being exposed to retaliation, which could then give rise to a well-founded fear of persecution.

¹⁵ See, "Report of the Working Group on Contemporary Forms of Slavery on its twenty-ninth session", E/CN.4/Sub.2/2004/36, 20 July 2004, Section VII Recommendations adopted at the twenty-ninth session, p. 16, paragraph 29. This "[c]alls upon all States to ensure that the protection and support of the victims are at the centre of any anti-trafficking policy, and specifically to ensure that: (a) No victim of trafficking is removed from the host country if there is a reasonable likelihood that she will be re-trafficked or subjected to other forms of serious harm, irrespective of whether she decides to cooperate in a prosecution".

c) Women and children victims of trafficking

19. The forcible or deceptive recruitment of women and children for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence, which may constitute persecution.¹⁶ Trafficked women and children can be particularly susceptible to serious reprisals by traffickers after their escape and/or upon return, as well as to a real possibility of being re-trafficked or of being subjected to severe family or community ostracism and/or severe discrimination.

20. In certain settings, unaccompanied or separated children,¹⁷ are especially vulnerable to trafficking.¹⁸ Such children may be trafficked for the purposes of irregular adoption. This can occur with or without the knowledge and assent of the child's parents. Traffickers may also choose to target orphans. In assessing the international protection needs of children who have been trafficked, it is essential that the best interest principle be scrupulously applied.¹⁹ All cases involving trafficked children require a careful examination of the possible involvement of family members or caregivers in the actions that set the trafficking in motion.

d) Agents of persecution

21. There is scope within the refugee definition to recognize both State and non-State agents of persecution. While persecution is often perpetrated by the authorities of a country, it can also be perpetrated by individuals if the persecutory acts are “knowingly tolerated by the authorities or if the authorities refuse, or prove unable to

¹⁶ See UNHCR Guidelines on Gender-Related Persecution, above footnote 4, paragraph 18. The Commission on Human Rights also recognized that such violence may constitute persecution for the purposes of the refugee definition, when it urged States “to mainstream a gender perspective into all policies and programmes, including national immigration and asylum policies, regulations and practices, as appropriate, in order to promote and protect the rights of all women and girls, including the consideration of steps to recognize gender-related persecution and violence when assessing grounds for granting refugee status and asylum”. See Resolution 2005/41, Elimination of violence against women, 57th meeting, 19 April 2005, operational paragraph 22.

¹⁷ As indicated in the *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, 2004, “separated children are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives”, while unaccompanied children are “children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so”.

¹⁸ There are a number of international instruments which offer specific guidance with respect to the needs and rights of children. These should be given due consideration in assessing the claims of child victims. See, for example, the 1989 Convention on the Rights of the Child, the 2000 Optional Protocol to that Convention, on the sale of children, child prostitution and child pornography, the 1980 Hague Convention No. 28 on the Civil Aspects of International Child Abduction, the 2000 Trafficking Protocol and the 1999 ILO Convention No. 182 on the Prohibition of the Worst Forms of Child Labour. See also, generally, Committee on the Rights of the Child, “General Comment No. 6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin”, CRC/CG/2005/6, 1 Sept. 2005.

¹⁹ See, *UNHCR Guidelines on Formal Determination of the Best Interests of the Child*, provisional release April 2006; UN Children's Fund (UNICEF), “Guidelines for Protection of the Rights of Child Victims of Trafficking”, May 2003 and in the process of being updated.

offer effective protection”.²⁰ In most situations involving victims or potential victims of trafficking, the persecutory acts emanate from individuals, that is, traffickers or criminal enterprises or, in some situations, family or community members. Under these circumstances, it is also necessary to examine whether the authorities of the country of origin are able and willing to protect the victim or potential victim upon return.

22. Whether the authorities in the country of origin are able to protect victims or potential victims of trafficking will depend on whether legislative and administrative mechanisms have been put in place to prevent and combat trafficking, as well as to protect and assist the victims and on whether these mechanisms are effectively implemented in practice.²¹ Part II of the Trafficking Protocol requires States to take certain steps with regard to the protection of victims of trafficking, which can be of guidance when assessing the adequacy of protection and assistance provided. Measures relate not only to protecting the privacy and identity of victims of trafficking, but also to their physical, psychological and social recovery.²² Article 8 of the Trafficking Protocol also requires State Parties, which are facilitating the return of their nationals or permanent residents who have been trafficked, to give due regard to the safety of the individuals concerned when accepting them back. The protection measures set out in Part II of the Trafficking Protocol are not exhaustive and should be read in light of other relevant binding and non-binding human rights instruments and guidelines.²³

23. Many States have not adopted or implemented sufficiently stringent measures to criminalize and prevent trafficking or to meet the needs of victims. Where a State fails to take such reasonable steps as are within its competence to prevent trafficking and provide effective protection and assistance to victims, the fear of persecution of the individual is likely to be well-founded. The mere existence of a law prohibiting trafficking in persons will not of itself be sufficient to exclude the possibility of persecution. If the law exists but is not effectively implemented, or if administrative mechanisms are in place to provide protection and assistance to victims, but the individual concerned is unable to gain access to such mechanisms, the State may be deemed unable to extend protection to the victim, or potential victim, of trafficking.

²⁰ See, UNHCR *Handbook*, above footnote 14, paragraph 65; UNHCR, “Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees” (hereinafter “Interpreting Article 1”), April 2001, paragraph 19; UNHCR Guidelines on Gender-related Persecution, above footnote 4, paragraph 19.

²¹ See Part II of the Trafficking Protocol outlined in footnote 8 above.

²² *Ibid.*

²³ See, United Nations High Commissioner for Human Rights, “Recommended Principles and Guidelines on Human Rights and Human Trafficking”, above footnote 13, which states in Principle No. 2: “States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons”. Numerous instruments of a binding and a non-binding nature highlight the obligation of States to uphold the human rights of victims of trafficking. See, for example, the Council of Europe Convention cited above at footnote 10, the 2002 South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the 2003 Organization for Security and Cooperation in Europe (OSCE) Action Plan to Combat Trafficking in Human Beings.

24. There may also be situations where trafficking activities are *de facto* tolerated or condoned by the authorities or even actively facilitated by corrupt State officials. In these circumstances, the agent of persecution may well be the State itself, which becomes responsible, whether directly or as a result of inaction, for a failure to protect those within its jurisdiction. Whether this is so will depend on the role played by the officials concerned and on whether they are acting in their personal capacity outside the framework of governmental authority or on the basis of the position of authority they occupy within governmental structures supporting or condoning trafficking. In the latter case, the persecutory acts may be deemed to emanate from the State itself.

e) Place of persecution

25. In order to come within the scope of Article 1A(2) of the 1951 Convention, the applicant must be outside her or his country of origin and, owing to a well-founded fear of persecution, be unable or unwilling to avail her- or himself of the protection of that country. The requirement of being outside one's country does not, however, mean that the individual must have left on account of a well-founded fear of persecution.²⁴ Where this fear arises after she or he has left the country of origin, she or he would be a refugee *sur place*, providing the other elements in the refugee definition were fulfilled. Thus, while victims of trafficking may not have left their country owing to a well-founded fear of persecution, such a fear may arise after leaving their country of origin. In such cases, it is on this basis that the claim to refugee status should be assessed.

26. Whether the fear of persecution arises before leaving the country of origin or after, the location where the persecution takes place is a crucial aspect in correctly assessing asylum claims made by individuals who have been trafficked. The 1951 Convention requires that the refugee demonstrate a well-founded fear of persecution with regard to her or his country of nationality or habitual residence. Where someone has been trafficked within her or his own country, or fears being trafficked, and escapes to another in search of international protection, the link between the fear of persecution, the motivation for flight and the unwillingness to return is evident and any international protection needs fall to be determined in terms of the threat posed to the individual should she or he be obliged to return to the country of nationality or habitual residence. If no such well-founded fear is established in relation to the country of origin, then it would be appropriate for the State from which asylum has been requested to reject the claim to refugee status.

27. The circumstances in the applicant's country of origin or habitual residence are the main point of reference against which to determine the existence of a well-founded fear of persecution. Nevertheless, even where the exploitation experienced by a victim of trafficking occurs mainly outside the country of origin, this does not preclude the existence of a well-founded fear of persecution in the individual's own country. The trafficking of individuals across international borders gives rise to a complex situation which requires a broad analysis taking into account the various forms of harm that have occurred at different points along the trafficking route. The continuous and interconnected nature of the range of persecutory acts involved in the context of transnational trafficking should be given due consideration. Furthermore,

²⁴ See UNHCR *Handbook*, above footnote 14, paragraph 94.

trafficking involves a chain of actors, starting with those responsible for recruitment in the country of origin, through to those who organize and facilitate the transport, transfer and/or sale of victims, through to the final “purchaser”. Each of these actors has a vested interest in the trafficking enterprise and could pose a real threat to the victim. Depending on the sophistication of the trafficking rings involved, applicants may thus have experienced and continue to fear harm in a number of locations, including in countries through which they have transited, the State in which the asylum application is submitted and the country of origin. In such circumstances, the existence of a well-founded fear of persecution is to be evaluated in relation to the country of origin of the applicant.

28. A victim of trafficking who has been determined to be a refugee may additionally fear reprisals, punishment or re-trafficking in the country of asylum. If a refugee is at risk in her or his country of refuge or has particular needs, which cannot be met in the country of asylum, she or he may need to be considered for resettlement to a third country.²⁵

f) The causal link (“for reasons of”)

29. To qualify for refugee status, an individual’s well-founded fear of persecution must be related to one or more of the Convention grounds, that is, it must be “for reasons of” race, religion, nationality, membership of a particular social group or political opinion. It is sufficient that the Convention ground be a relevant factor contributing to the persecution; it is not necessary that it be the sole, or even dominant, cause. In many jurisdictions, the causal link (“for reasons of”) must be explicitly established, while in other States, causation is not treated as a separate question for analysis but is subsumed within the holistic analysis of the refugee definition.²⁶ In relation to asylum claims involving trafficking, the difficult issue for a decision-maker is likely to be linking the well-founded fear of persecution to a Convention ground. Where the persecutor attributes or imputes a Convention ground to the applicant, this is sufficient to satisfy the causal link.²⁷

30. In cases where there is a risk of being persecuted at the hands of a non-State actor for reasons related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention-related. Alternatively, where a risk of persecution at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.

31. Trafficking in persons is a commercial enterprise, the prime motivation of which is likely to be profit rather than persecution on a Convention ground. In other words, victims are likely to be targeted above all because of their perceived or potential commercial value to the traffickers. This overriding economic motive does not, however, exclude the possibility of Convention-related grounds in the targeting and selection of victims of trafficking. Scenarios in which trafficking can flourish

²⁵ UNHCR, *Resettlement Handbook*, November 2004 edition, chapter 4.1.

²⁶ See UNHCR Guidelines on Gender-related Persecution, above footnote 4, paragraph 20.

²⁷ See UNHCR “Interpreting Article 1”, above footnote 20, paragraph 25.

frequently coincide with situations where potential victims may be vulnerable to trafficking precisely as a result of characteristics contained in the 1951 Convention refugee definition. For instance, States where there has been significant social upheaval and/or economic transition or which have been involved in armed conflict resulting in a breakdown in law and order are prone to increased poverty, deprivation and dislocation of the civilian population. Opportunities arise for organized crime to exploit the inability, or lack of will, of law enforcement agencies to maintain law and order, in particular the failure to ensure adequate security for specific or vulnerable groups.

32. Members of a certain race or ethnic group in a given country may be especially vulnerable to trafficking and/or less effectively protected by the authorities of the country of origin. Victims may be targeted on the basis of their ethnicity, nationality, religious or political views in a context where individuals with specific profiles are already more vulnerable to exploitation and abuse of varying forms. Individuals may also be targeted by reason of their belonging to a particular social group. As an example, among children or women generally in a particular society some subsets of children or women may be especially vulnerable to being trafficked and may constitute a social group within the terms of the refugee definition. Thus, even if an individual is not trafficked solely and exclusively for a Convention reason, one or more of these Convention grounds may have been relevant for the trafficker's selection of the particular victim.

g) Convention grounds

33. The causal link may be established to any one single Convention ground or to a combination of these grounds. Although a successful claim to refugee status only needs to establish a causal link to one ground, a full analysis of trafficking cases may frequently reveal a number of interlinked, cumulative grounds.

Race

34. For the purposes of the refugee definition, race has been defined as including "all kinds of ethnic groups that are referred to as 'races' in common usage".²⁸ In situations of armed conflict where there is a deliberate policy of exploitation or victimization of certain racial or ethnic groups, persecution may manifest itself by the trafficking of members of that group. This kind of targeting of victims may occur in conjunction with an economic motivation which above all seeks to obtain financial gain. In the absence of armed conflict, members of one racial group may still be particularly targeted for trafficking for varied ends, if the State is unable or unwilling to protect members of that group. Where trafficking serves the sex trade, women and girls may also be especially targeted as a result of market demands for a particular race (or nationality). As the Special Rapporteur on trafficking has noted, such demand "is often further grounded in social power disparities of race, nationality, caste and colour".²⁹

²⁸ UNHCR, *Handbook*, paragraph 68.

²⁹ See, Report of the Special Rapporteur, "Integration of the Human Rights of Women and a Gender Perspective", above footnote 9, paragraphs 48 and 66.

Religion

35. Individuals may similarly be targeted by traffickers because they belong to a particular religious community, that is, they may be targeted because their faith or belief identifies them as a member of a vulnerable group in the particular circumstances, if, for instance, the authorities are known not to provide adequate protection to certain religious groups. Again the profit motive may be an overriding factor, but this does not obviate the relevance of religion as a factor in the profiling and selection of victims. Alternatively, trafficking may be the method chosen to persecute members of a particular faith.³⁰

Nationality

36. Nationality has a wider meaning than citizenship. It can equally refer to membership of an ethnic or linguistic group and may overlap with the term “race”.³¹ Trafficking may be the method chosen to persecute members of a particular national group in a context where there is inter-ethnic conflict within a State and certain groups enjoy lesser guarantees of protection. Again, even where the primary motive of the trafficker is financial gain, someone’s nationality may result in them being more vulnerable to trafficking.

Membership of a particular social group³²

37. Victims and potential victims of trafficking may qualify as refugees where it can be demonstrated that they fear being persecuted for reasons of their membership of a particular social group. In establishing this ground it is not necessary that the members of a particular group know each other or associate with each other as a group.³³ It is, however, necessary that they either share a common characteristic other than their risk of being persecuted or are perceived as a group by society. The shared characteristic will often be one that is innate, unchangeable or otherwise fundamental to identity, conscience or the exercise of one’s human rights.³⁴ Persecutory action against a group may be relevant in heightening the visibility of the group without being its defining characteristic.³⁵ As with the other Convention grounds, the size of the purported social group is not a relevant criterion in determining whether a social group exists within the meaning of Article 1A(2).³⁶ While a claimant must still demonstrate a well-founded fear of being persecuted based on her or his membership of the particular social group, she or he need not demonstrate that all members of the group are at risk of persecution in order to establish the existence of the group.³⁷

³⁰ See generally, UNHCR, “Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees”, HCR/GIP/04/06, 28 April 2004.

³¹ UNHCR, *Handbook*, paragraph 74.

³² See generally, UNHCR, “Guidelines on International Protection: Membership of a Particular Social Group within the context of Article 1A(2) of the 1951 Convention and 1967 Protocol relating to the Status of Refugees”, HCR/GIP/02/02, 7 May 2002.

³³ *Ibid.*, paragraph 15.

³⁴ *Ibid.*, paragraph 11.

³⁵ *Ibid.*, paragraph 14.

³⁶ *Ibid.*, paragraph 18.

³⁷ *Ibid.*, paragraph 17.

38. Women are an example of a social subset of individuals who are defined by innate and immutable characteristics and are frequently treated differently to men. As such, they may constitute a particular social group.³⁸ Factors which may distinguish women as targets for traffickers are generally connected to their vulnerability in certain social settings; therefore certain social subsets of women may also constitute particular social groups. Men or children or certain social subsets of these groups may also be considered as particular social groups. Examples of social subsets of women or children could, depending on the context, be single women, widows, divorced women, illiterate women, separated or unaccompanied children, orphans or street children. The fact of belonging to such a particular social group may be one of the factors contributing to an individual's fear of being subjected to persecution, for example, to sexual exploitation, as a result of being, or fearing being, trafficked.

39. Former victims of trafficking may also be considered as constituting a social group based on the unchangeable, common and historic characteristic of having been trafficked. A society may also, depending on the context, view persons who have been trafficked as a cognizable group within that society. Particular social groups can nevertheless not be defined exclusively by the persecution that members of the group suffer or by a common fear of persecution.³⁹ It should therefore be noted that it is the past trafficking experience that would constitute one of the elements defining the group in such cases, rather than the future persecution now feared in the form of ostracism, punishment, reprisals or re-trafficking. In such situations, the group would therefore not be defined solely by its fear of future persecution.

Political opinion

40. Individuals may be targeted for trafficking because they hold a certain political opinion or are perceived as doing so. Similar considerations apply for the other Convention grounds, that is, individuals may, depending on the circumstances, be targeted because of their actual or perceived political views which make them vulnerable and less likely to enjoy the effective protection of the State.

III. STATELESSNESS AND TRAFFICKING

41. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness establish a legal framework setting out the rights of stateless persons, the obligations of States Parties to avoid actions that would result in statelessness and the steps to be taken to remedy situations of statelessness. The 1954 Convention applies to anyone who is “not considered as a national by any State under the operation of its law”,⁴⁰ that is, it applies for the benefit of those who are denied citizenship under the laws of any State. The 1961 Convention generally requires States to avoid actions that would result in statelessness and explicitly forbids the deprivation of nationality if this would result

³⁸ Ibid., paragraph 12. See also UNHCR Guidelines on Gender-related Persecution, above footnote 4, paragraph 30.

³⁹ See UNHCR Guidelines on Membership of a Particular Social Group, above footnote 32, paragraph 14.

⁴⁰ See Article 1(1) of the 1954 Convention.

in statelessness.⁴¹ This constitutes a prohibition on actions that would cause statelessness, as well as an obligation to avoid situations where statelessness may arise by default or neglect. The only exception to this prohibition is when the nationality was acquired fraudulently.⁴²

42. When seeking to assess and address the situation of someone who has been trafficked, it is important to recognize potential implications as regards statelessness. The mere fact of being a victim of trafficking will not *per se* render someone stateless. Victims of trafficking continue to possess the citizenship they had when they fell under the control of their traffickers. If, however, these traffickers have confiscated their identity documents, as commonly happens as a way of establishing and exerting control over their victims, they may be unable to prove citizenship. This lack of documentation and temporary inability to establish identity is not necessarily unique to victims of trafficking. It should be, and in many cases is, easily overcome with the assistance of the authorities of the State of origin.⁴³

43. Everyone has the right to return to their own country.⁴⁴ States should extend diplomatic protection to their nationals abroad. This includes facilitating their re-entry into the country, including in the case of victims of trafficking who find themselves abroad. If, however, the State withholds such assistance and fails to supply documentation to enable the individual to return, one practical consequence may be to render the individual effectively stateless.⁴⁵ Even if the individuals were not previously considered stateless by their State of nationality, they may find themselves effectively treated as such if they attempt to avail themselves of that State's protection.⁴⁶ UNHCR's statelessness mandate may mean it needs to take action to assist individuals in such circumstances.⁴⁷

⁴¹ See Article 8(1) of the 1961 Convention.

⁴² In addition to the 1954 and 1961 Statelessness Conventions, other international or regional instruments set out similar principles. See, for instance, the 1965 Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1997 European Convention on Nationality, the 1969 American Convention on Human Rights and the 1990 African Charter on the Rights and Welfare of the Child.

⁴³ In such circumstances, it is necessary to respect principles of confidentiality. These require amongst other things that any contact with the country of origin should not indicate either that the individual concerned has applied for asylum or that she or he has been trafficked.

⁴⁴ 1948 Universal Declaration of Human Rights, Article 13(2). See also, Article 12(4) of the International Covenant on Civil and Political Rights, which reads: "No one shall be arbitrarily deprived of the right to enter his own country."

⁴⁵ See, Executive Committee Conclusion No. 90 (LII), 2001, paragraph (s), in which the Executive Committee of UNHCR expresses its concern that many victims of trafficking are rendered effectively stateless due to an inability to establish their identity and nationality status.

⁴⁶ This is so, despite relevant State obligations contained in the 1961 Convention on the Reduction of Statelessness, in addition to Article 8 of the Trafficking Protocol.

⁴⁷ When the 1961 Convention on the Reduction of Statelessness came into force, the UN General Assembly designated UNHCR as the UN body entrusted to act on behalf of stateless persons. Since 1975, General Assembly Resolutions have further detailed UNHCR's responsibilities regarding the prevention of statelessness and the protection of stateless persons.

44. There may also be situations where stateless individuals are trafficked out of their country of habitual residence. The lack of documentation coupled with lack of citizenship may render them unable to secure return to their country of habitual residence. While this alone does not make someone a refugee, the individual concerned may be eligible for refugee status where the refusal of the country of habitual residence to allow re-entry is related to a Convention ground and the inability to return to the country leads to serious harm or a serious violation, or violations, of human rights amounting to persecution.

IV. PROCEDURAL ISSUES

45. Given the broad range of situations in which trafficking cases come to light and victims of trafficking can be identified, it is important that mechanisms be put in place at the national level to provide for the physical, psychological and social recovery of victims of trafficking. This includes the provision of housing, legal counselling and information, medical, psychological and material assistance, as well as employment, educational and training opportunities in a manner which takes into account the age, gender and special needs of victims of trafficking.⁴⁸ It is also necessary to ensure that victims of trafficking have access to fair and efficient asylum procedures as appropriate⁴⁹ and to proper legal counselling, if they are to be able to lodge an asylum claim effectively. In view of the complexities of asylum claims presented by victims or potential victims of trafficking, such claims normally require an examination on their merits in regular procedures.

46. In the reception of applicants who claim to have been victims of trafficking, and in interviewing such individuals, it is of utmost importance that a supportive environment be provided so that they can be reassured of the confidentiality of their claim. Providing interviewers of the same sex as the applicant can be particularly important in this respect. Interviewers should also take into consideration that victims who have escaped from their traffickers could be in fear of revealing the real extent of the persecution they have suffered. Some may be traumatized and in need of expert medical and/or psycho-social assistance, as well as expert counselling.

47. Such assistance should be provided to victims in an age and gender sensitive manner. Many instances of trafficking, in particular trafficking for the purposes of exploitation of the prostitution of others or other forms of sexual exploitation, are likely to have a disproportionately severe effect on women and children. Such individuals may rightly be considered as victims of gender-related persecution. They will have been subjected in many, if not most, cases to severe breaches of their basic human rights, including inhuman or degrading treatment, and in some instances, torture.

48. Women, in particular, may feel ashamed of what has happened to them or may suffer from trauma caused by sexual abuse and violence, as well as by the

⁴⁸ See Article 6 in Part II of the Trafficking Protocol.

⁴⁹ See Agenda for Protection, Goal 2 Objective 2, and the OHCHR, “Recommended Principles and Guidelines on Human Rights and Human Trafficking”, above footnote 13, Guideline 2.7, and the Council of Europe Convention, Explanatory Report, paragraph 377.

circumstances surrounding their escape from their traffickers. In such situations, the fear of their traffickers will be very real. Additionally, they may fear rejection and/or reprisals by their family and/or community which should be taken into account when considering their claims. Against this background and in order to ensure that claims by female victims of trafficking are properly considered in the refugee status determination process, a number of measures should be borne in mind. These have been set out in Part III of UNHCR's Guidelines on International Protection on gender-related persecution and are equally applicable in the context of trafficking-related claims.⁵⁰

49. Children also require special attention in terms of their care, as well as of the assistance to be provided in the presentation of asylum claims. In this context, procedures for the rapid identification of child victims of trafficking need to be established, as do specialized programmes and policies to protect and support child victims, including through the appointment of a guardian, the provision of age-sensitive counselling and tracing efforts which bear in mind the need for confidentiality and a supportive environment. Additional information on the appropriate handling of claims by child victims of trafficking can be found in the UN Children Fund (UNICEF) "Guidelines for the Protection of the Rights of Child Victims of Trafficking",⁵¹ in the "Recommended Principles and Guidelines on Human Rights and Human Trafficking" of the Office of the High Commissioner for Human Rights⁵² and General Comment No. 6 of the of the Committee on the Rights of the Child.⁵³

50. An additional and specific consideration relates to the importance of avoiding any linkage, whether overt or implied, between the evaluation of the merits of a claim to asylum and the willingness of a victim to give evidence in legal proceedings against her or his traffickers. Providing evidence to help identify and prosecute traffickers can raise specific protection concerns that need to be addressed through specially designed witness protection programmes. The fact that an individual has agreed to provide such evidence will nevertheless not necessarily make her or him a refugee, unless the repercussions feared upon a return to the country of origin rise to the level of persecution and can be linked to one or more of the Convention grounds. Conversely, the fact that a victim of trafficking refuses to provide evidence should not lead to any adverse conclusion with respect to her or his asylum claim.

⁵⁰ See UNHCR Guidelines on Gender-related Persecution, above footnote 4. Complementary information can be found in World Health Organization, London School of Hygiene and Tropical Medicine and Daphne Programme of the European Commission, *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women*, 2003, available at <http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf>.

⁵¹ See above footnote 19.

⁵² See above footnote 13. Guideline 8 addresses special measures for the protection and support of child victims of trafficking.

⁵³ See above, footnote 18, especially paragraphs 64–78.

INTERNATIONAL LABOUR LAW

Selected provisions:

ILO Convention No. 182: Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)*

Adopted on 17 June 1999

Entered into force on 19 November 2000 – 169 State Parties as of December 2008

The *Convention* is the most widely endorsed labour treaty negotiated under the ILO Convention process and is one of the ILO's "fundamental conventions". It strengthens the provisions of the earlier *ILO Convention No. 138: Convention Concerning Minimum Age for Admission to Employment*. The *Convention* obliges states to take "immediate and effective measures" to prohibit and eliminate child labour in their territories. Article 3 of the *Convention* provides a definition of the term 'worst forms of child labour' which explicitly includes "trafficking of children." All of the activities listed under Article 3(a), (b) and (c) would meet the definition of child trafficking under Article 3(c) of the *Anti-Trafficking Protocol*.

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and

Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations

* 2133 U.N.T.S.161 [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>]

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

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999.

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term *the worst forms of child labour* comprises:

- (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.

Article 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.
2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.
3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
 - (a) prevent the engagement of children in the worst forms of child labour;
 - (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
 - (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
 - (d) identify and reach out to children at special risk; and
 - (e) take account of the special situation of girls.
3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

...

Selected provisions:

ILO Convention No. 138: Convention Concerning Minimum Age for Admission to Employment (1973)*

Adopted on 26 June 1973

Entered into force on 19 June 1976 – 151 State Parties as of December 2008

The *Minimum Age Convention* is one of the ILO's "fundamental conventions" and follows a series of industry specific instruments on the minimum age for admission to employment. Article 1 requires State Parties to "pursue a national policy designed to ensure the effective abolition of child labour" and to progressively raise the minimum age of employment in their jurisdiction. Article 2(3) sets the normal minimum age to be 15 years. Article 3(1), however, sets the minimum age for employment in conditions "likely to jeopardise the health, safety or morals of young persons" to be eighteen years. No provision explicitly proscribes the recruitment, transportation, transfer, harbouring or receipt of children to employment contrary to the *Convention*.

...

Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Article 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.
2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.
3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.
4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.
5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement--
 - (a) that its reason for doing so subsists; or
 - (b) that it renounces its right to avail itself of the provisions in question as from a stated date.

* 1015 U.N.T.S. 297 [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>]

Article 3

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.
2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.
3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 4

1. In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.
2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.
3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

Article 5

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.
2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.
3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.
4. Any Member which has limited the scope of application of this Convention in pursuance of this Article--
 - (a) shall indicate in its reports under Article 22 of the Constitution of the International Labour Organisation the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;
 - (b) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance

with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--

- (a) a course of education or training for which a school or training institution is primarily responsible;
- (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
- (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--

- (a) not likely to be harmful to their health or development; and
- (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

Article 8

1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

Article 9

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.

3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

...

Selected provisions:

ILO Convention No. 105: Convention concerning the Abolition of Forced Labour (1957)*

Adopted on 25 June 1957

Entered into force on 17 January 1959 – 169 State Parties as of December 2008

Together with *ILO Convention No. 29* (1930) (immediately above), this *Convention* is considered one of the ILO's four "fundamental human rights conventions". While *ILO Convention No. 29* banned all use of forced labour in the private sector, it permitted the continued use of forced labour in the public sector under certain circumstances. This *Convention* significantly limits these remaining permissible circumstances, particularly through the terms Article 1. Article 2 requires State Parties to adopt "effective measures to secure the immediate and complete abolition of forced or compulsory labour." This *Convention* has particular relevance for victims of human trafficking and smuggling who are frequently diverted into conditions of servitude, slavery and forced prostitution in destination countries.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fortieth Session on 5 June 1957, and

Having considered the question of forced labour, which is the fourth item on the agenda of the session, and

Having noted the provisions of the Forced Labour Convention, 1930, and

Having noted that the Slavery Convention, 1926, provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and that the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956, provides for the complete abolition of debt bondage and serfdom, and

Having noted that the Protection of Wages Convention, 1949, provides that wages shall be paid regularly and prohibits methods of payment which deprive the worker of a genuine possibility of terminating his employment, and

Having decided upon the adoption of further proposals with regard to the abolition of certain forms of forced or compulsory labour constituting a violation of the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-seven the following Convention, which may be cited as the Abolition of Forced Labour Convention, 1957:

* 320 U.N.T.S. 291 [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>]

Article 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour--

- (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination.

Article 2

Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.

Article 3

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 4

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

...

Selected provisions:

ILO Convention No. 29: Convention concerning Forced or Compulsory Labour (1930)*

Adopted on 28 June 1930

Entered into force on 5 May 1932 – 173 State Parties as of December 2008

Together with *ILO Convention No. 105 (1957)* (immediately below), this *Convention* is considered one of the ILO's four "fundamental human rights conventions". Articles 4 and 5 ban the use of forced or compulsory labour "for the benefit of private individuals, companies or associations." As many victims of human trafficking and smuggling are diverted into slavery, servitude and forced prostitution, this provision would explicitly prohibit such practice. Article 4(1) requires State Parties to "completely suppress" such activities if and when they occur. The *Convention*, however, allows the continued use of compulsory labour in the public sector, although Article 9 and 10 provide the conditions under which it must occur.

...

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.
2. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.
3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

Article 2

1. For the purposes of this Convention 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.
2. Nevertheless, for the purposes of this Convention, the term *forced or compulsory labour* shall not include--
 - (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
 - (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
 - (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
 - (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests,

* 39 U.N.T.S. 55 [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>]

and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

Article 3

For the purposes of this Convention the term *competent authority* shall mean either an authority of the metropolitan country or the highest central authority in the territory concerned.

Article 4

1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

2. Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.

Article 5

1. No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.

2. Where concessions exist containing provisions involving such forced or compulsory labour, such provisions shall be rescinded as soon as possible, in order to comply with Article 1 of this Convention.

Article 6

Officials of the administration, even when they have the duty of encouraging the populations under their charge to engage in some form of labour, shall not put constraint upon the said populations or upon any individual members thereof to work for private individuals, companies or associations.

Article 7

1. Chiefs who do not exercise administrative functions shall not have recourse to forced or compulsory labour.

2. Chiefs who exercise administrative functions may, with the express permission of the competent authority, have recourse to forced or compulsory labour, subject to the provisions of Article 10 of this Convention.

3. Chiefs who are duly recognised and who do not receive adequate remuneration in other forms may have the enjoyment of personal services, subject to due regulation and provided that all necessary measures are taken to prevent abuses.

Article 8

1. The responsibility for every decision to have recourse to forced or compulsory labour shall rest with the highest civil authority in the territory concerned.

2. Nevertheless, that authority may delegate powers to the highest local authorities to exact forced or compulsory labour which does not involve the removal of the workers from their place of habitual residence. That authority may also delegate, for such periods and subject to such conditions as may be laid down in the regulations provided for in Article 23 of this Convention, powers to the highest local authorities to exact forced or compulsory labour which involves the removal of the workers from their place of habitual residence for the

purpose of facilitating the movement of officials of the administration, when on duty, and for the transport of Government stores.

Article 9

Except as otherwise provided for in Article 10 of this Convention, any authority competent to exact forced or compulsory labour shall, before deciding to have recourse to such labour, satisfy itself--

- (a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do work or render the service;
- (b) that the work or service is of present or imminent necessity;
- (c) that it has been impossible to obtain voluntary labour for carrying out the work or rendering the service by the offer of rates of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work or service; and
- (d) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work.

Article 10

1. Forced or compulsory labour exacted as a tax and forced or compulsory labour to which recourse is had for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished.

2. Meanwhile, where forced or compulsory labour is exacted as a tax, and where recourse is had to forced or compulsory labour for the execution of public works by chiefs who exercise administrative functions, the authority concerned shall first satisfy itself--

- (a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service;
- (b) that the work or the service is of present or imminent necessity;
- (c) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work;
- (d) that the work or service will not entail the removal of the workers from their place of habitual residence;
- (e) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.

Article 11

1. Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour. Except in respect of the kinds of labour provided for in Article 10 of this Convention, the following limitations and conditions shall apply:

- (a) whenever possible prior determination by a medical officer appointed by the administration that the persons concerned are not suffering from any infectious or contagious disease and that they are physically fit for the work required and for the conditions under which it is to be carried out;
- (b) exemption of school teachers and pupils and officials of the administration in general;
- (c) the maintenance in each community of the number of adult able-bodied men indispensable for family and social life;
- (d) respect for conjugal and family ties.

2. For the purposes of subparagraph (c) of the preceding paragraph, the regulations provided for in Article 23 of this Convention shall fix the proportion of the resident adult able-bodied males who may be taken at any one time for forced or compulsory labour, provided always that this proportion shall in no case exceed 25 per cent. In fixing this proportion the competent authority shall take account of the density of the population, of its social and physical development, of the seasons, and of the work which must be done by the persons

concerned on their own behalf in their locality, and, generally, shall have regard to the economic and social necessities of the normal life of the community concerned.

Article 12

1. The maximum period for which any person may be taken for forced or compulsory labour of all kinds in any one period of twelve months shall not exceed sixty days, including the time spent in going to and from the place of work.
2. Every person from whom forced or compulsory labour is exacted shall be furnished with a certificate indicating the periods of such labour which he has completed.

Article 13

1. The normal working hours of any person from whom forced or compulsory labour is exacted shall be the same as those prevailing in the case of voluntary labour, and the hours worked in excess of the normal working hours shall be remunerated at the rates prevailing in the case of overtime for voluntary labour.
2. A weekly day of rest shall be granted to all persons from whom forced or compulsory labour of any kind is exacted and this day shall coincide as far as possible with the day fixed by tradition or custom in the territories or regions concerned.

Article 14

1. With the exception of the forced or compulsory labour provided for in Article 10 of this Convention, forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the district in which the labour is employed or in the district from which the labour is recruited, whichever may be the higher.
2. In the case of labour to which recourse is had by chiefs in the exercise of their administrative functions, payment of wages in accordance with the provisions of the preceding paragraph shall be introduced as soon as possible.
3. The wages shall be paid to each worker individually and not to his tribal chief or to any other authority.
4. For the purpose of payment of wages the days spent in travelling to and from the place of work shall be counted as working days.
5. Nothing in this Article shall prevent ordinary rations being given as a part of wages, such rations to be at least equivalent in value to the money payment they are taken to represent, but deductions from wages shall not be made either for the payment of taxes or for special food, clothing or accommodation supplied to a worker for the purpose of maintaining him in a fit condition to carry on his work under the special conditions of any employment, or for the supply of tools.

Article 15

1. Any laws or regulations relating to workmen's compensation for accidents or sickness arising out of the employment of the worker and any laws or regulations providing compensation for the dependants of deceased or incapacitated workers which are or shall be in force in the territory concerned shall be equally applicable to persons from whom forced or compulsory labour is exacted and to voluntary workers.
2. In any case it shall be an obligation on any authority employing any worker on forced or compulsory labour to ensure the subsistence of any such worker who, by accident or sickness arising out of his employment, is rendered wholly or partially incapable of providing for himself, and to take measures to ensure the maintenance of any persons actually dependent upon such a worker in the event of his incapacity or decease arising out of his employment.

...

Article 23

1. To give effect to the provisions of this Convention the competent authority shall issue complete and precise regulations governing the use of forced or compulsory labour.

2. These regulations shall contain, inter alia, rules permitting any person from whom forced or compulsory labour is exacted to forward all complaints relative to the conditions of labour to the authorities and ensuring that such complaints will be examined and taken into consideration.

Article 24

Adequate measures shall in all cases be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied, either by extending the duties of any existing labour inspectorate which has been established for the inspection of voluntary labour to cover the inspection of forced or compulsory labour or in some other appropriate manner. Measures shall also be taken to ensure that the regulations are brought to the knowledge of persons from whom such labour is exacted.

Article 25

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

...

RECENT RESOLUTIONS OF
THE U. N. GENERAL
ASSEMBLY RELATED TO
HUMAN TRAFFICKING

Full text (citations omitted; emphasis added):

**Resolution adopted by the United Nations General Assembly
[on the report of the Third Committee (A/62/433 (Part II))]
62/132: Violence Against Women Migrant Workers (2007)*†**

*Adopted by the sixtieth session of the United Nations General Assembly on 18 December 2007
(A/RES/62/132)*

The General Assembly,

Recalling all of its previous resolutions on violence against women migrant workers and those adopted by the Commission on the Status of Women, the Commission on Human Rights and the Commission on Crime Prevention and Criminal Justice, and the Declaration on the Elimination of Violence against Women,

Reaffirming the provisions concerning women migrant workers contained in the outcome documents of the World Conference on Human Rights, the International Conference on Population and Development, the Fourth World Conference on Women and the World Summit for Social Development and their five-year reviews,

Noting with appreciation the various activities initiated by entities of the United Nations system, such as the Regional Programme on Empowering Women Migrant Workers in Asia of the United Nations Development Fund for Women, the high-level panel discussion on the gender dimensions of international migration held by the Commission on the Status of Women at its fiftieth session, and the discussions held by the Commission at its fifty-first session, during which it took note, inter alia, of the particular situation of girl migrants, and noting the contribution of the International Labour Organization through the development of a Multilateral Framework on Labour Migration, as well as other activities through which the plight of women migrant workers continues to be assessed and alleviated,

Recalling the discussions during the High-level Dialogue on International Migration and Development, held on 14 and 15 September 2006, which recognized, inter alia, the need for special protection for migrant women,

Recognizing the increasing participation of women in international migration, driven in large part by socio-economic factors, and that this feminization of migration requires greater gender sensitivity in all policies and efforts related to the subject of international migration,

Stressing the shared responsibility of all stakeholders, in particular countries of origin, transit and destination, relevant regional and international organizations, the private sector and civil society, in promoting an environment that prevents and addresses violence against women migrant workers,

Acknowledging the contribution that women migrant workers make to development through the economic benefits that accrue to both the country of origin and the country of destination,

* [<http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/62/132>]

† Similar U.N. General Assembly resolutions on “Violence Against Women Migrant Workers” can be found in U.N. documents: A/RES/60/139 (2005), A/RES/58/143 (2003), A/RES/56/131 (2001).

Recognizing the particular vulnerability of women and their children at all stages of the migration process, extending from the moment of deciding to migrate, and including transit, engagement in formal and informal employment, and integration into the host society, as well as during their return to their countries of origin,

Expressing deep concern at the continuing reports of grave abuses and violence committed against migrant women and girls, including gender-based violence, in particular sexual violence, trafficking, domestic and family violence, racist and xenophobic acts, abusive labour practices and exploitative conditions of work,

Recognizing that the intersection of, inter alia, gender, age, class and ethnic discrimination and stereotypes can compound the discrimination faced by women migrant workers,

Reaffirming the commitment to protect and promote the human rights of all women, including, without discrimination, indigenous women who migrate for work, and in this regard noting the attention paid in the United Nations Declaration on the Rights of Indigenous Peoples⁶ to the elimination of all forms of violence and discrimination against indigenous women, as appropriate,

Noting with concern that many migrant women who are employed in the informal economy and in less skilled work are especially vulnerable to abuse and exploitation, and underlining in this regard the obligation of States to protect the human rights of migrants so as to prevent abuse and exploitation,

Emphasizing the need for objective, comprehensive and broad-based information, including sex- and age-disaggregated data and statistics, and gender-sensitive indicators for research and analysis, and a wide exchange of experience and lessons learned by individual Member States and civil society in the formulation of policies and concrete strategies to address the problem of violence against women migrant workers,

Realizing that the movement of a significant number of women migrant workers may be facilitated and made possible by means of fraudulent or irregular documentation and sham marriages with the object of migration, that this may be facilitated through, among other things, the Internet, and that those women migrant workers are more vulnerable to abuse and exploitation,

Recognizing the importance of joint and collaborative approaches and strategies at the bilateral, regional, interregional and international levels in protecting and promoting the human rights and welfare of women migrant workers,

Recognizing also the importance of exploring the link between migration and trafficking in order to further efforts towards protecting women migrant workers from violence, discrimination, exploitation and abuse,

Encouraged by some measures adopted by some countries of destination to alleviate the plight of women migrant workers residing in their areas of jurisdiction, such as the establishment of protection mechanisms for migrant workers, facilitating their access to mechanisms for reporting complaints, or providing assistance during legal proceedings,

Underlining the important role of relevant United Nations treaty bodies in monitoring the implementation of human rights conventions and the relevant special procedures, within their respective mandates, in addressing the problem of violence against women migrant workers and in protecting and promoting their human rights and welfare,

1. *Takes note with appreciation* of the report of the Secretary-General;

2. **Encourages** Member States to consider signing and ratifying or acceding to relevant International Labour Organization conventions and to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, as well as all human rights treaties that contribute to the protection of the rights of women migrant workers;

3. **Takes note** of the reports of the Special Rapporteur of the Human Rights Council on the human rights of migrants and the Special Rapporteur of the Council on violence against women, its causes and consequences, with regard to violence against women migrant workers, and encourages all special rapporteurs whose mandates relate to the subject of violence against women migrant workers to address the issue of violence against women migrant workers and their human rights, in particular the problems of gender-based violence and discrimination, as well as trafficking in women;

4. **Notes** the findings contained in the World Survey on the Role of Women in Development, 2004: Women and International Migration, including its recommendations for concrete actions aimed at helping to empower migrant women, including women migrant workers, and reducing their vulnerability to abuse;

5. **Requests** all Governments to continue to cooperate fully with the Special Rapporteurs mentioned in paragraph 3 above in the performance of their tasks and mandated duties, including by making available to them requested information on violence against women migrant workers and by reacting promptly to their urgent appeals, and encourages Governments to give serious consideration to inviting them to visit their countries;

6. **Calls upon** all Governments to incorporate a human rights and gender perspective in legislation and policies on international migration and on labour and employment, inter alia, for the prevention and protection of migrant women from violence and discrimination, exploitation and abuse, and to take effective measures to ensure that these do not reinforce discrimination and bias against women;

7. **Calls upon Governments to adopt or strengthen measures to protect the human rights of women migrant workers, regardless of their immigration status, including in policies that regulate the recruitment and deployment of women migrant workers, and to consider expanding dialogue among States on devising innovative methods to promote legal channels of migration, inter alia, in order to deter illegal migration;**

8. **Urges** Governments to enhance bilateral, regional, interregional and international cooperation to address violence against women migrant workers, fully respecting international law, including international human rights law, as well as to strengthen efforts in reducing the vulnerability of women migrant workers, including by fostering sustainable development alternatives to migration in countries of origin;

9. **Also urges** Governments to adopt or strengthen measures to promote and protect the human rights of migrant girls, including unaccompanied girls, regardless of their immigration status, to prevent their labour and economic exploitation, discrimination, sexual harassment, violence and sexual abuse in the workplace, including domestic work;

10. **Further urges** Governments, in cooperation with international organizations, civil society, including non-governmental organizations, and the private sector, to strengthen the focus on

and funding support for the prevention of violence against women migrant workers, in particular by promoting the access of women to meaningful and gender-sensitive information and education on, inter alia, the costs and benefits of migration, rights and benefits to which they are entitled in the countries of origin and employment, overall conditions in countries of employment and procedures for legal migration, as well as to ensure that laws and policies governing recruiters, employers and intermediaries promote adherence to and respect for the human rights of migrant workers, particularly women;

11. *Calls upon* Governments, in cooperation with international organizations, non-governmental organizations, the private sector and other stakeholders, to provide women migrant workers who are victims of violence with the full range of immediate assistance and protection, such as access to counselling, legal and consular assistance and temporary shelter, as well as mechanisms to allow the views and concerns of victims to be presented and considered at appropriate stages of proceedings, including other measures that will allow victims to be present during the judicial process, to the extent possible, as well as to establish reintegration and rehabilitation schemes for returning women migrant workers;

12. *Also calls upon* Governments, in particular those of the countries of origin and destination, to put in place penal and criminal sanctions to punish perpetrators and intermediaries of violence against women migrant workers, and redress and justice mechanisms that victims can access effectively, as well as to ensure that migrant women victims of violence do not suffer from re-victimization, including by authorities;

13. *Urges* all States to adopt effective measures to put an end to the arbitrary arrest and detention of women migrant workers and to take action to prevent and punish any form of illegal deprivation of the liberty of women migrant workers by individuals or groups;

14. *Encourages* Governments to formulate and implement training programmes for their law enforcers, immigration officers and border officials, prosecutors and service providers with a view to sensitizing those public-sector workers to the issue of violence against women migrant workers and imparting to them the necessary skills and attitude to ensure the delivery of proper, professional and gender-sensitive interventions;

15. *Invites* Governments, the United Nations system and other concerned intergovernmental and non-governmental organizations to cooperate towards a better understanding of the issues concerning women and international migration, and to improve the collection, dissemination and analysis of sex- and age-disaggregated data and information in order to assist in the formulation of migration and labour policies that are, inter alia, gender-sensitive and that protect human rights, as well as to aid in policy assessment;

16. *Encourages* concerned Governments, in particular those of the countries of origin, transit and destination, to avail themselves of the expertise of the United Nations, including the Statistics Division of the Secretariat, the United Nations Development Fund for Women and the International Research and Training Institute for the Advancement of Women, to develop appropriate national data collection and analysis methodologies that will generate comparable data and tracking and reporting systems on violence against women migrant workers;

17. *Encourages* the Committee on the Elimination of Discrimination against Women to continue its work on a general recommendation on the situation of women migrant workers;

18. *Requests* the Secretary-General to report to the General Assembly at its sixty-fourth session on the problem of violence against women migrant workers and on the implementation of the present resolution, taking into account updated information from the organizations of the United Nations system, in particular the International Labour

Organization, the United Nations Development Programme, the United Nations Development Fund for Women, the International Research and Training Institute for the Advancement of Women and the United Nations Office on Drugs and Crime, as well as the reports of the Special Rapporteurs mentioned in paragraph 3 above, and other relevant sources, such as the International Organization for Migration, including non-governmental organizations.

*76th plenary meeting
18 December 2007*

Full text (citations omitted; emphasis added):

**Resolution adopted by the United Nations General Assembly
[on the report of the Third Committee (A/62/439/Add.2)]
62/156: Protection of Migrants (2007)*†**

*Adopted by the United Nations General Assembly on 18 December 2007 (A/RES/62/156) **

The General Assembly,

Recalling all its previous resolutions on the protection of migrants, the most recent of which is resolution 61/165 of 19 December 2006, and recalling also Commission on Human Rights resolution 2005/47 of 19 April 2005,

Reaffirming the Universal Declaration of Human Rights, which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Reaffirming also that everyone has the right to freedom of movement and residence within the borders of each State, and to leave any country, including his own, and return to his country,

Recalling the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Vienna Convention on Consular Relations⁸ and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

Recalling also the provisions concerning migrants contained in the outcomes of all major United Nations conferences and summits,

Underlining the importance of the Human Rights Council in promoting respect for the protection of the human rights and fundamental freedoms of all, including migrants,

Taking note of advisory opinion OC-16/99 of 1 October 1999 on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law and advisory opinion OC-18/03 of 17 September 2003 on the Juridical Condition and Rights of Undocumented Migrants, issued by the Inter- American Court of Human Rights,

Taking note also of the Judgment of the International Court of Justice of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals*, and recalling the obligations of States reaffirmed therein,

* UN Document No. A/RES/62/156 [http://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/62/A_RES_62_156_EN.pdf]

† Similar U.N. General Assembly resolutions on the “Protection of Migrants” can be found in UN documents: A/RES/61/165 (2006), A/RES/60/169 (2005), A/RES/59/194 (2004) and A/RES/58/190 (2003).

* The UN General Assembly adopted Resolution A/RES/63/184 (*Protection of Migrants*) on 18 December 2008. The final text is not yet available at the time of printing of this Compilation, but it will be available in due course at <http://www.un.org/ga/63/resolutions.shtml>.

Recalling the High-level Dialogue on International Migration and Development, held in New York on 14 and 15 September 2006 for the purpose of discussing the multidimensional aspects of international migration and development, which recognized the relationship between international migration, development and human rights, and taking note of the first meeting of the Global Forum on Migration and Development, organized and hosted by the Government of Belgium from 9 to 11 July 2007,

Emphasizing the global character of the migratory phenomenon, the importance of international, regional and bilateral cooperation and dialogue in this regard, as appropriate, and the need to protect the human rights of migrants, particularly at a time in which migration flows have increased in the globalized economy and take place in a context of new security concerns,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences of the phenomenon, as well as the full respect for the human rights and fundamental freedoms of migrants,

Noting that many migrant women are employed in the informal economy and in less skilled work compared with that of men, which puts those women at greater risk of abuse and exploitation,

Concerned about the large and growing number of migrants, especially women and children, who place themselves in a vulnerable situation by attempting to cross international borders without the required travel documents, and underlining the obligation of States to respect the human rights of those migrants,

Underlining the importance for States, in cooperation with non-governmental organizations, to undertake information campaigns aimed at clarifying opportunities, limitations and rights in the event of migration, so as to enable everyone to make informed decisions and to prevent them from utilizing dangerous means to cross international borders,

1. *Calls upon* States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability;

2. *Also calls upon* States to ensure that their laws and policies, including in the areas of counter-terrorism and combating transnational organized crime such as trafficking in persons and smuggling of migrants, fully respect the human rights of migrants;

3. *Takes note with interest* of the report of the Special Rapporteur of the Human Rights Council on the human rights of migrants;

4. *Calls upon* States that have not done so to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a matter of priority, and requests the Secretary-General to continue his efforts to raise awareness of and promote the Convention;

5. *Urges* States parties to the United Nations Convention against Transnational Organized Crime¹² and supplementing protocols thereto, namely, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress

and Punish Trafficking in Persons, Especially Women and Children, to implement them fully, and calls upon States that have not done so to consider ratifying or acceding to them as a matter of priority;

6. *Takes note* of the report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on its fifth and sixth sessions;

7. *Requests* all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon and to give due consideration to international, regional and bilateral cooperation in this field, including by undertaking dialogues on migration that include countries of origin, destination and transit, as well as civil society, including migrants, with a view to addressing, in a comprehensive manner, inter alia, its causes and consequences and the challenge of undocumented or irregular migration, granting priority to the protection of the human rights of migrants;

8. *Expresses concern* about legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants, and reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants;

9. *Requests* States to adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, to train public officials who work in those facilities and in border areas to treat migrants respectfully and in accordance with the law, and to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants, inter alia, arbitrary detention, torture and violations of the right to life, including extrajudicial executions, during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders;

10. Urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification;

11. *Underlines* the right of migrants to return to their country of citizenship;

12. *Reaffirms emphatically* the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, in particular with regard to the right of all foreign nationals, regardless of their immigration status, to communicate with a consular official of the sending State in case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention;

13. *Strongly condemns* the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, including on the basis of religion or belief, and urges States to apply the existing laws when xenophobic or intolerant acts, manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts;

14. *Requests* all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers' labour relations and

working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association;

15. *Encourages* all States to remove obstacles that may prevent the safe, unrestricted and expeditious transfer of remittances of migrants to their country of origin or to any other countries, in conformity with applicable legislation, and to consider, as appropriate, measures to solve other problems that may impede such transfers;

16. *Welcomes* immigration programmes, adopted by some countries, that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious, tolerant and respectful environment, and encourages States to consider the possibility of adopting these types of programmes;

17. *Requests* Member States, the United Nations system, international organizations, civil society and all relevant stakeholders, especially the United Nations High Commissioner for Human Rights and the Special Rapporteur on the human rights of migrants, to ensure that the perspective of the human rights of migrants is included among the priority issues in the ongoing discussions on international migration and development within the United Nations system, bearing in mind the discussions of the High-level Dialogue on International Migration and Development held pursuant to General Assembly resolution 58/208 of 23 December 2003;

18. *Requests* the Secretary-General to provide the resources necessary, from within existing resources of the United Nations, for the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to meet for two separate sessions in 2008, the first session to be of two consecutive weeks' duration and the second session to be of one week's duration, for the purpose of meeting the demands of the workload arising from the increasing number of reports of States parties that have been submitted to the Committee, and invites the Committee to consider ways of further improving the effectiveness of its working sessions;

19. *Also requests* the Secretary-General to report on the implementation of the present resolution at its sixty-third session and to include in that report an analysis of the ways and means to promote the human rights of migrants, including through the use of data and statistics on the contribution of migrants to recipient countries, taking into account the views of the Special Rapporteur on the human rights of migrants, and decides to examine the question further under the item entitled "Promotion and protection of human rights".

*76th plenary meeting
18 December 2007*

Full text (citations omitted):

**Resolution adopted by the United Nations General Assembly
[on the report of the Third Committee (A/61/444)] 61/180:
Improving the Coordination of Efforts Against Trafficking
in Persons (2006)***

*Adopted by the United Nations General Assembly on 18 December 2006 (A/RES/61/180)**

The General Assembly,

Recalling its resolutions 55/25 of 15 November 2000, 58/137 of 22 December 2003, 59/166 of 20 December 2004 and other relevant General Assembly resolutions on trafficking in persons and other contemporary forms of slavery,

Recalling also Economic and Social Council resolution 2006/27 of 27 July 2006 on strengthening international cooperation in preventing and combating trafficking in persons and protecting victims of such trafficking, and previous Council resolutions on trafficking in persons that have emerged from the Commission on Crime Prevention and Criminal Justice,

Recalling further the United Nations Convention against Transnational Organized Crime¹ and, in particular, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,

Welcoming the progress achieved by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime in accordance with article 32 of the Convention, and by the Working Group on Contemporary Forms of Slavery in accordance with Economic and Social Council decisions 16 (LVI) and 17 (LVI) of 17 May 1974 and 1980/127 of 2 May 1980,

Recognizing that contemporary forms of slavery violate human rights and that trafficking in persons impairs the enjoyment of human rights, continues to pose a serious challenge to humanity and requires a concerted international response,

Recognizing also that Member States have an obligation to exercise due diligence to prevent trafficking in persons, to investigate this crime and to ensure that perpetrators do not enjoy impunity,

Recognizing further that Member States have an obligation to provide protection for the victims, and acknowledging the necessity for Member States to adopt, in accordance with their international obligations, measures for prosecuting traffickers, preventing trafficking in persons and protecting and assisting its victims,

* [<http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/61/180>]

* The UN General Assembly adopted Resolution A/RES/63/194 (*Improving the coordination of efforts against trafficking in persons*) on 18 December 2008. The final text is not yet available at the time of printing of this Compilation, but it will be available in due course at <http://www.un.org/ga/63/resolutions.shtml>.

Welcoming international cooperation in order to promote and protect the human rights of persons exploited through trafficking and other contemporary forms of slavery and to advocate for their liberation and for economic, educational and other means of support to victims of trafficking and other contemporary forms of slavery,

Welcoming also the efforts of Member States and intergovernmental and nongovernmental organizations in preventing and combating trafficking in persons and other contemporary forms of slavery and enhancing the protection of and assistance to victims of trafficking in persons and other contemporary forms of slavery,

Taking note of the reports of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, and of the Working Group on Contemporary Forms of Slavery on its thirty-first session,

Underlining the need to continue to work towards a comprehensive, coordinated and holistic approach to the problem of trafficking in persons and other contemporary forms of slavery, including devising, enforcing and strengthening effective measures to prosecute traffickers, prevent trafficking in persons and other contemporary forms of slavery and protect their victims,

1. *Recognizes* that broad international cooperation between Member States and relevant intergovernmental and non-governmental organizations is essential for effectively countering the threat of trafficking in persons and other contemporary forms of slavery, and invites them to foster a global partnership against trafficking in persons and other contemporary forms of slavery, with a view to eliminating all contemporary forms of slavery and trafficking in persons and protecting and assisting their victims;

2. *Underlines* the importance of bilateral, subregional and regional partnerships, initiatives and actions, and encourages their development;

3. *Urges* Member States that have not yet done so to consider taking measures to ratify or accede to the United Nations Convention against Transnational Organized Crime¹ and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,² and to implement fully all aspects of these instruments;

4. *Also urges* Member States that have not yet done so to consider taking measures to ratify or accede to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Convention on the Elimination of All Forms of Discrimination against Women, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and to implement fully all aspects of these instruments;

5. *Recognizes* the need to arrive at a better understanding of what constitutes demand and how to combat it, decides to strengthen efforts to counter the demand for victims of trafficking in persons, and encourages Member States to consider adopting legislative or other measures, such as educational, social or cultural measures, to discourage and reduce the demand that fosters all forms of exploitation of persons, especially women and children, and that thus promotes trafficking;

6. *Also recognizes* the need to address the factors that make persons, especially women and children, vulnerable to trafficking, including poverty, underdevelopment and lack of equal opportunities, lack of equal access to education and lack of equal access to the labour market, and encourages Member States to adopt measures, including through bilateral or multilateral cooperation, to counter those factors;

7. *Invites* Member States to give necessary guidelines and provide training and adequate resources to law enforcement bodies and other relevant authorities to combat trafficking in persons, to care for the rights and needs of the victims and to consider establishing coordination and cooperation mechanisms at the national and international levels on extradition, mutual legal assistance and sharing police intelligence information, as appropriate, taking into account the information and communication tools offered by Interpol;
8. *Also invites* Member States to improve and promote the collection, compilation and dissemination of statistics and indicators on trafficking in persons, including by strengthening bilateral, regional and international cooperation and coordination;
9. *Further invites* Member States to take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social integration of human beings who have become victims of exploitation, violence and abuse as a result of trafficking in persons and other contemporary forms of slavery;
10. *Encourages* Member States to initiate and develop working-level contacts among countries of origin, transit and destination, especially among police, prosecutors and social authorities;
11. *Welcomes* the holding, in Tokyo on 26 and 27 September 2006, of a meeting of United Nations offices, funds and programmes with other international organizations to enhance cooperation on trafficking in persons, as requested by the Economic and Social Council in its resolution 2006/27, and encourages continued collaboration to eliminate gaps and overlaps in the activities of the concerned bodies;
12. *Requests* the Secretary-General to improve upon the fledgling interagency coordination group on trafficking in persons in order to enhance cooperation and coordination and facilitate a holistic and comprehensive approach by the international community to the problem of trafficking in persons;
13. *Also requests* the Secretary-General to entrust the Executive Director of the United Nations Office on Drugs and Crime with coordinating the activities of the inter-agency coordination group, which should be based in Vienna, bearing in mind the availability of extrabudgetary resources;
14. *Encourages* the United Nations Office on Drugs and Crime to cooperate with relevant international organizations outside of the United Nations system and to invite such organizations and interested Member States to participate, when appropriate, in the meetings of the inter-agency coordination group and to keep Member States informed of the schedule of the inter-agency coordination group and progress made by the group;
15. *Invites* the inter-agency coordination group, drawing on the comparative advantages of the respective agencies, to promote effective and efficient use of existing resources, using, to the extent possible, mechanisms already in place at the regional and national levels, and to share information, experiences and good practices on anti-trafficking activities of the partner agencies with Governments, international and regional organizations, non-governmental organizations and other relevant bodies;
16. *Invites* Member States to provide voluntary contributions to the United Nations Office on Drugs and Crime in order to facilitate optimum implementation of its coordination functions;
17. *Welcomes* the report of the United Nations Office on Drugs and Crime entitled "Trafficking in persons: global patterns", requests the Office to continue to prepare such

periodic reports, subject to the availability of extrabudgetary resources, and invites the inter-agency coordination group to provide information to the Office and contribute to the elaboration of the periodic comprehensive reports, database and website on trafficking in persons, subject to the availability of extrabudgetary resources;

18. *Invites* Member States to consider the advisability of a United Nations strategy or plan of action on preventing trafficking in persons, prosecuting traffickers and protecting and assisting victims of trafficking;

19. *Requests* the Secretary-General to submit to the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and to the General Assembly at its sixty-third session a report on the implementation of the present resolution and the proposals on strengthening the capacities of the United Nations Office on Drugs and Crime for the efficient implementation of its coordination functions.

*82nd plenary meeting
20 December 2006*

Full text (citations omitted):

**Resolution adopted by the United Nations General Assembly
[on the report of the Third Committee (A/61/438)] 61/144:
Traffic in Women and Girls (2006)*†**

*Adopted by the sixty-first session of the United Nations General Assembly on 20 December 2006 (A/RES/61/144) **

The General Assembly,

Recalling all international conventions that deal specifically with the problem of trafficking in women and girls, such as the Convention on the Elimination of All Forms of Discrimination against Women¹ and its Optional Protocol, the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the United Nations Convention against Transnational Organized Crime and its protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air,⁸ as well as previous resolutions of the General Assembly, the Economic and Social Council and the Commission on Human Rights on the issue,

Reaffirming the provisions pertaining to trafficking in women and girls contained in the outcome documents of relevant international conferences and summits, in particular the strategic objective on the issue of trafficking contained in the Beijing Declaration and Platform for Action⁹ adopted by the Fourth World Conference on Women,

Reaffirming also the commitment made by world leaders at the Millennium Summit and the 2005 World Summit to devise, enforce and strengthen effective measures to combat and eliminate all forms of trafficking in persons to counter the demand for trafficked victims and to protect the victims,

Recalling the reports of the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on trafficking in persons, especially women and children, and the Special Rapporteur on violence against women, its causes and consequences, as well as the information that deals with trafficking in women and girls contained in the in-depth study of the Secretary-General on violence against women,

Recalling also the publication of the United Nations Office on Drugs and Crime entitled “Trafficking in Persons: Global Patterns”, and the attention paid in it to the situation of trafficked women and girls,

Acknowledging the inclusion of gender-related crimes in the Rome Statute of the International Criminal Court, which entered into force on 1 July 2002,

Bearing in mind that all States have an obligation to exercise due diligence to prevent, investigate and punish perpetrators of trafficking in persons, to rescue victims as well as

* [<http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/61/144>]

† Similar U.N. General Assembly resolutions on “Traffic in Women and Girls” can be found in U.N. documents: A/RES/59/166 (2004), A/RES/57/176 (2002) and A/RES/55/67 (2000).

* The UN General Assembly adopted Resolution A/RES/63/156 (*Trafficking in women and girls*) on 18 December 2008. The final text is not yet available at the time of printing of this Compilation, but it will be available in due course at <http://www.un.org/ga/63/resolutions.shtml>.

provide for their protection and that not doing so violates and impairs or nullifies the enjoyment of the human rights and fundamental freedoms of the victims,

Recognizing the need for a stronger gender- and age-sensitive approach in all efforts to fight trafficking and protect its victims, taking into account that women and girls are particularly vulnerable to trafficking for the purposes of sexual exploitation, as well as for forced labour or services,

Recognizing also the need to address the impact of globalization on the particular problem of trafficking in women and children, in particular girls,

Recognizing further the challenges to combating trafficking in women and girls owing to the lack of adequate legislation and implementation of existing legislation, the lack of availability of reliable sex-disaggregated data and statistics, as well as the lack of resources,

Seriously concerned that an increasing number of women and girls from developing countries and from some countries with economies in transition are being trafficked to developed countries, as well as within and between regions and States, and that men and boys are also victims of trafficking, including for sexual exploitation,

Concerned about the use of new information technologies, including the Internet, for purposes of exploitation of the prostitution of others, for trafficking in women as brides, for sex tourism exploiting women and children and for child pornography, paedophilia and any other forms of sexual exploitation of children,

Concerned also about the increasing activities of transnational criminal organizations and others that profit from international trafficking in persons, especially women and children without regard to dangerous and inhuman conditions and in flagrant violation of domestic laws and international standards,

Recognizing that victims of trafficking are particularly exposed to racism, racial discrimination, xenophobia and related intolerance and that women and girl victims are often subject to multiple forms of discrimination and violence, including on the grounds of their gender, age, ethnicity, culture and religion, as well as their origins, and that these forms of discrimination themselves may fuel trafficking in persons,

Noting that some of the demand for prostitution and forced labour is met by trafficking in persons in some parts of the world,

Acknowledging that women and girl victims of trafficking, on account of their gender, are further disadvantaged and marginalized by a general lack of information or awareness and recognition of their human rights and by the stigmatization often associated with trafficking, as well as by the obstacles they meet in gaining access to information and recourse mechanisms in cases of violation of their rights, and that special measures are required for their protection and to increase their awareness,

Recognizing the importance of bilateral, subregional, regional and international cooperation mechanisms and initiatives, including information exchanges on best practices, of Governments and intergovernmental and non-governmental organizations to address the problem of trafficking in persons, especially women and children,

Recognizing also that global efforts, including international cooperation and technical assistance programmes, to eradicate trafficking in persons, especially women and children,

demand the strong political commitment, shared responsibility and active cooperation of all Governments of countries of origin, transit and destination,

Recognizing further that policies and programmes for prevention, rehabilitation, repatriation and reintegration should be developed through a gender and age-sensitive, comprehensive and multidisciplinary approach, with concern for the security of the victims and respect for the full enjoyment of their human rights and with the involvement of involving all actors in countries of origin, transit and destination,

Convinced of the need to protect and assist all victims of trafficking, with full respect for their human rights,

1. *Welcomes* the efforts of Governments, United Nations bodies and agencies and intergovernmental and non-governmental organizations to address the particular problem of trafficking in women and girls, and encourages them to continue doing so and to share their knowledge and best practices as widely as possible;

2. *Calls upon* Governments to eliminate the demand for trafficked women and girls for all forms of exploitation;

3. *Also calls upon* Governments to take appropriate measures to address the factors that increase vulnerability to being trafficked, including poverty and gender inequality, as well as other factors that encourage the particular problem of trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour, in order to eliminate such trafficking, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing perpetrators, through both criminal and civil measures;

4. *Urges* Governments to devise, enforce and strengthen effective gender and age-sensitive measures to combat and eliminate all forms of trafficking in women and girls, including for sexual and economic exploitation, as part of a comprehensive anti-trafficking strategy that integrates a human rights perspective and takes into account the situation of trafficked victims, and to draw up, as appropriate, national action plans in this regard;

5. *Also urges* Governments to consider signing and ratifying and States parties to implement relevant United Nations legal instruments, such as the United Nations Convention against Transnational Organized Crime and the Protocols thereto, in particular the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the Convention concerning Forced or Compulsory Labour, 1930 (Convention No. 29), the Convention concerning Discrimination in respect of Employment and Occupation, 1958 (Convention No. 111) and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No. 182), of the International Labour Organization;

6. *Encourages* Member States to conclude bilateral, subregional, regional and international agreements, as well as to undertake initiatives, including regional initiatives, to address the problem of trafficking in persons, and to ensure that such agreements and initiatives pay particular attention to the problem of trafficking in women and girls;

7. *Calls upon* all Governments to criminalize all forms of trafficking in persons, recognizing its increasing occurrence for purposes of sexual exploitation and sex tourism, and to condemn and penalize all those offenders involved, including intermediaries, whether local or foreign, through the competent national authorities, either in the country of origin of the offender or in the country in which the abuse occurs, in accordance with due process of law, as well as to penalize persons in authority found guilty of sexually assaulting victims of trafficking in their custody;

8. *Urges* Governments to take all appropriate measures to ensure that victims of trafficking are not penalized for being trafficked and that they do not suffer from revictimization as a result of actions taken by Government authorities, and encourages Governments to prevent, within their legal framework and in accordance with national policies, victims of trafficking in persons from being prosecuted for their illegal entry or residence;

9. *Recognizes* the urgent need for broad and concerted cooperation among all relevant actors, including States, intergovernmental organizations and civil society, to counter effectively the threat of trafficking in persons, particularly women and girls;

10. *Invites* Governments to strengthen bilateral, regional and international cooperation aimed at preventing and combating corruption and the laundering of proceeds derived from trafficking, including for purposes of commercialized sexual exploitation;

11. *Also invites* Governments to consider setting up or strengthening a national coordinating mechanism, for example, a national rapporteur or an interagency body, with the participation of civil society, including non-governmental organizations, to encourage the exchange of information and to report on data, root causes, factors and trends in violence against women, in particular trafficking;

12. *Encourages* Governments and relevant United Nations bodies, within existing resources, to take appropriate measures to raise public awareness of the issue of trafficking in persons, particularly in women and girls; to discourage, with a view to eliminating, the demand that fosters all forms of exploitation, including sexual exploitation and forced labour; to publicize the laws, regulations and penalties relating to this issue; and to emphasize that trafficking is a serious crime;

13. *Encourages* Governments to take appropriate measures to eliminate sex tourism demand, especially of children, through all possible preventive actions;

14. *Urges* concerned Governments, in cooperation with intergovernmental and non-governmental organizations, to support and allocate resources for programmes to strengthen preventive action, in particular education for women and men, as well as for boys and girls, on gender equality, self-respect and mutual respect, and campaigns to increase public awareness of the issue at the national and grass-roots levels;

15. *Calls upon* concerned Governments to allocate resources, as appropriate, to provide comprehensive programmes for the physical, psychological and social recovery of victims of trafficking, including through job training, legal assistance including in a language that they can understand, and health care, including for HIV/AIDS, and by taking measures to cooperate with intergovernmental and nongovernmental organizations to provide for the social, medical and psychological care of the victims;

16. *Encourages* Governments, in cooperation with intergovernmental and non-governmental organizations, to undertake or strengthen campaigns aimed at clarifying opportunities, limitations and rights in the event of migration, as well as information on the risks of irregular

migration and the ways and means used by traffickers so as to enable women to make informed decisions and to prevent them from becoming victims of trafficking;

17. *Also encourages* Governments to intensify collaboration with nongovernmental organizations to develop and implement gender- and age-sensitive programmes for effective counselling, training and reintegration into society of victims of trafficking and programmes that provide shelter and helplines to victims or potential victims;

18. *Calls upon* Governments to take steps to ensure that the treatment of victims of trafficking, as well as all measures taken against trafficking in persons, in particular those that affect the victims of such trafficking, pay particular attention to the needs of women and girls and are applied with full respect for the human rights of those victims and are consistent with internationally recognized principles of non-discrimination, including the prohibition of racial discrimination and the availability of appropriate legal redress, which may include measures that offer victims the possibility of obtaining compensation for damage suffered;

19. *Invites* Governments to take steps to ensure that criminal justice procedures and witness protection programmes are sensitive to the particular situation of trafficked women and girls and that they are supported and assisted, as appropriate, in making complaints to the police or other authorities, without fear, and to be available when required by the criminal justice system, and to ensure that during this time they have access to protection and social, medical, financial and legal assistance, as appropriate;

20. *Also invites* Governments to encourage media providers, including Internet service providers, to adopt or strengthen self-regulatory measures to promote the responsible use of media, particularly the Internet, with a view to eliminating the exploitation of women and children, in particular girls, which could foster trafficking;

21. *Invites* the business sector, in particular the tourism and telecommunications industries, including mass media organizations, to cooperate with Governments in eliminating trafficking in women and children, in particular girls, including through the dissemination by the media of information regarding the dangers of trafficking, the rights of trafficked persons and the services available to victims of trafficking;

22. *Stresses* the need for the systematic collection of sex- and age disaggregated data and comprehensive studies at both the national and the international levels and the development of common methodologies and internationally defined indicators to make it possible to develop relevant and comparable figures, and encourages Governments to enhance information-sharing and data-collection capacity as a way of promoting cooperation to combat the trafficking problem;

23. *Urges* Governments to strengthen national programmes to combat trafficking in persons, especially women and girls, through increased bilateral, regional and international cooperation, taking into account innovative approaches and best practices, and invites Governments, United Nations bodies and organizations, intergovernmental and non-governmental organizations and the private sector to undertake collaborative and joint research and studies on trafficking in women and girls that can serve as a basis for policy formulation or change;

24. *Invites* Governments, with the support of the United Nations, when necessary, and other intergovernmental organizations, taking into account best practices, to formulate training manuals and other informational materials and provide training for law enforcement, judicial and other relevant officers, and medical and support personnel, with a view to sensitizing them to the special needs of women and girl victims;

25. *Urges* Governments to provide or strengthen training for law enforcement, judicial, immigration and other relevant officials in the prevention and combating of trafficking in persons, including the sexual exploitation of women and girls, which should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of victims, including protecting the victims from traffickers, to ensure that the training includes human rights and child- and gender-sensitive perspectives, and to encourage cooperation with nongovernmental organizations, other relevant organizations and other elements of civil society;

26. *Encourages* Governments, relevant intergovernmental bodies and international organizations to ensure that military, peacekeeping and humanitarian personnel deployed in conflict, post-conflict and other emergency situations are provided training on conduct that does not promote, facilitate, or exploit trafficking in women and girls, including for sexual exploitation, and to raise the awareness of such personnel of the potential risks to victims of conflict and other emergency situations, including natural disasters, of being trafficked;

27. *Invites* States parties to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the International Covenants on Human Rights¹⁴ to include information and statistics on trafficking in women and girls as part of their national reports to their respective committees and to work towards developing a common methodology and statistics to obtain comparable data;

28. *Requests* the Secretary-General to submit to the General Assembly at its sixty-third session a report that compiles successful interventions and strategies, as well as challenges, in addressing the gender dimensions of the problem of trafficking in persons, that identifies gender-related aspects of anti-trafficking efforts that remain unaddressed or inadequately addressed, and that evaluates the measures taken through appropriate indicators; and invites the Secretary-General to take into account in his report the work of Governments, relevant United Nations agencies and mechanisms and other international organizations.

*81st plenary meeting
19 December 2006*

Full text (citations omitted):

**Resolution adopted by the United Nations General Assembly
[on the report of the Third Committee (A/58/499)] 58/137:
Strengthening International Cooperation in Preventing and
Combating Trafficking in Person and Protecting Victims of
Such Trafficking (2003)***

Adopted by the United Nations General Assembly on 22 December 2003 (A/RES/58/137)

The General Assembly,

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,

Taking note of guideline 8, Special measures for the protection and support of child victims of trafficking, contained in the report of the United Nations High Commissioner for Human Rights,

Recalling the Convention on the Rights of the Child, and noting the entry into force of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,

Recalling also the International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No. 182), which prohibits forced or obligatory labour of all people under the age of 18,

Recalling further paragraphs 25 and 27 of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,

Recalling its resolution 55/25 of 15 November 2000, by which it adopted the United Nations Convention against Transnational Organized Crime, and in particular the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,

Condemning trafficking in persons as an abhorrent form of modern-day slavery and as an act that is contrary to universal human rights,

Decrying the treatment of human beings as commodities bartered, bought or sold by traffickers, in particular exploiters,

Deeply concerned at the worldwide occurrence of trafficking in persons for the purpose of exploitation of all kinds by transnational organized criminal groups, many of which are also involved in other forms of illegal activity, including trafficking in firearms, money-laundering, drug trafficking and corruption,

Profoundly alarmed by the fact that trafficking in persons is a growing and profitable trade in most parts of the world, aggravated by, inter alia, poverty, armed conflict, inadequate social and economic conditions and demand in the illicit labour and sex markets,

* [<http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/58/137>]

Expressing dismay at the ability of criminal networks to avoid punishment while preying on the vulnerabilities of their victims,

Noting the distinctions and interlinkages between the two criminal behaviours of trafficking in persons, as set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and of smuggling of migrants, as set forth in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,

Convinced of the urgent need for broad and concerted international cooperation among all Member States, employing a multidisciplinary, balanced and global approach, including adequate technical assistance, in order to prevent and combat trafficking in persons,

Convinced also that civil society, including non-governmental organizations, can play a role in reducing existing and future opportunities for victimization in the field of trafficking and in assisting Governments in promoting the protection of victims through comprehensive and non-stigmatizing social and appropriate economic assistance to victims, including in the areas of health, education, housing and employment,

Welcoming efforts of Member States, in particular countries of origin, transit and destination, to create awareness in civil society concerning the seriousness of the crime of trafficking and of its various forms, as well as the role of the public in preventing victimization and assisting victims of trafficking,

Noting the thematic discussion on trafficking in human beings, especially women and children, held by the Commission on Crime Prevention and Criminal Justice at its twelfth session,

1. *Urges* Member States to employ a comprehensive approach to combating trafficking in persons, incorporating law enforcement efforts and, where appropriate, the confiscation and seizure of the proceeds of trafficking, the protection of victims and preventive measures, including measures against activities that derive profit from the exploitation of victims of trafficking;

2. *Calls upon* Member States to collaborate with a view to preventing trafficking in persons, especially for the purpose of sexual exploitation, through:

(a) Improved technical cooperation to strengthen local and national institutions aimed at preventing trafficking in persons, especially women and children, in countries of origin;

(b) Information campaigns on the techniques and methods of traffickers, programmes of education aimed at prospective targets, as well as vocational training in social skills and assistance in the reintegration of victims of trafficking into society;

(c) A focus on post-conflict regions where patterns of human trafficking are emerging as a new phenomenon and the incorporation of anti-trafficking measures into early intervention;

3. *Recognizes* that broad international cooperation between Member States and relevant intergovernmental and non-governmental organizations is essential to counter effectively the threat of trafficking in persons;

4. *Urges* Member States to take measures to ratify or accede to the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and

Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and to implement those instruments by, inter alia:

(a) Criminalizing trafficking in persons;

(b) Promoting cooperation among law enforcement authorities in combating trafficking in persons;

(c) Establishing the offence of trafficking in persons as a predicate offence for money-laundering offences;

5. *Invites* Member States to adopt measures, in accordance with their domestic law and capacity, inter alia:

(a) To fight sexual exploitation with a view to abolishing it, by prosecuting and punishing those who engage in that activity;

(b) To raise awareness, especially through training, among criminal justice officials and others, as appropriate, of the needs of victims of trafficking and of the crucial role of victims in detecting and prosecuting this crime by, inter alia:

(i) Investigating all cases reported by victims, preventing further victimization and, in general, treating victims with respect;

(ii) Treating victims and witnesses with sensitivity throughout criminal judicial proceedings, in accordance with articles 24 and 25 of the United Nations Convention against Transnational Organized Crime and article 6, paragraph 2, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

6. *Also invites* Member States to adopt measures, in accordance with their domestic law and capacity, inter alia:

(a) To provide assistance and protection to victims of trafficking in persons, including measures to permit victims of trafficking to remain in their territory temporarily or permanently, as appropriate;

(b) To promote the legislative and other measures necessary to establish a wide range of assistance, including legal, psychological, medical and social assistance and, if appropriate, compensation or restitution, to the actual victims of trafficking, subject to the determination of the existence of victimization;

(c) To provide humane treatment for all victims of trafficking, taking into account their age, gender and particular needs, in accordance with article 6, paragraphs 3 and 4, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

(d) To assist in the reintegration of victims of trafficking into society;

7. *Further invites* Member States, as appropriate, to develop guidelines for the protection of victims of trafficking before, during and after criminal proceedings;

8. *Urges* Member States to ensure that measures taken against trafficking in persons, especially women and children, are consistent with internationally recognized principles of

non-discrimination and that they respect the human rights and fundamental freedoms of victims;

9. *Invites* Member States to set up mechanisms for coordination and collaboration between governmental and non-governmental organizations with a view to responding to the immediate needs of victims of trafficking;

10. *Also invites* Member States to allocate appropriate resources for victim services, public awareness campaigns and law enforcement activities directed at eliminating trafficking and exploitation and to foster international cooperation, including adequate technical assistance and capacity-building programmes, to improve the ability of Member States to take effective measures against trafficking in persons;

11. *Encourages* Member States to examine the role of the exploitation of the prostitution of others in encouraging trafficking in persons;

12. *Also encourages* Member States to adopt legislative or other measures to reduce the demand that fosters all forms of trafficking in persons, including by cooperating with non-governmental organizations and civil society and by raising public awareness of how sexual and other forms of exploitation degrade their victims and the related risks of trafficking in persons, especially women and children;

13. *Further encourages* Member States to take measures, including raising public awareness, to discourage, especially among men, the demand that fosters sexual exploitation, in accordance with article 9, paragraph 5, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

14. *Encourages* Member States to target the link, where appropriate, between trafficking in persons for purposes of sexual and other forms of exploitation and other types of crime;

15. *Encourages* the Centre for International Crime Prevention of the United Nations Office on Drugs and Crime to continue its close cooperation and coordination with relevant international and regional organizations in this area;

16. *Encourages* Member States to make voluntary contributions to further strengthen and support the Centre and its Global Programme against Trafficking in Human Beings, in particular in the area of technical assistance activities;

17. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its fourteenth session on the implementation of the present resolution.

*77th plenary meeting
22 December 2003*

**PART II: REGIONAL LAW AND
POLICY RELATING TO
HUMAN TRAFFICKING**

THE AMERICAS

Selected provisions:

American Convention on Human Rights (1969) [“Pact of San José”]*

Adopted on 22 November 1969

Entered into force 18 July 1978 – 24 State Parties of the 35 OAS Member-States as of December 2008

The *Convention* is the foundational human rights document for the Organization of American States (OAS). Article 6 of the *Convention* specifically mentions “slave trade and traffic in women” in its categorical prohibition on slavery. Article 22(7) provides for the right to asylum and Article 22(8) codifies the principle of *non-refoulement*. The *Convention* has been ratified by all OAS states except the United States, Canada and the Anglo-Caribbean states.

...

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, “person” means every human being.

...

Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

...

Article 22. Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

2. Every person has the right to leave any country freely, including his own.

3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.

6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.

* OAS Treaty Series No. 36 (B-32) [<http://www.oas.org/juridico/English/treaties/b-32.html>]

7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.

8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

...

Selected provisions (emphasis added):

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994) **["Convention of Belém do Pará"]***

Adopted on 9 June 1994

Entered into force 5 February 2005 – 32 State Parties of the 35 OAS Member-States as of December 2008

The *Inter-American Convention* provides a robust regime for protecting the right of women to be free from violence within both the public and private spheres. Article 2(b) specifically lists “trafficking in persons” as a form of violence against women regardless of whether it involves the knowledge or acquiescence of state agents. The *Convention* has been ratified by every member of the Organization of American States except the United States and Canada.

...

Article 2

Violence against women shall be understood to include physical, sexual and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, **trafficking in persons**, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

...

Article 9

With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their **status as migrants, refugees or displaced persons**. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.

...

* 33 ILM 1534 (1994) [<http://www.oas.org/juridico/English/treaties/a-61.html>]

Selected provisions:

Inter-American Convention on International Traffic in Minors (1994)*

Adopted at the Fifth Inter-American Specialized Conference on Private International Law, 18 March 1994

Entered into force 15 August 1997 – 14 State Parties as of December 2008

The *Inter-American Convention* is an instrument of the Organization of American States and is complemented by the earlier *Inter-American Convention on the International Return of Children* (1989) (selected provisions of which are included in this compilation). Article 2(b) provides a definition of child trafficking which “means the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means.” In both instances, the use of the term ‘unlawful’ in the definition includes “any other means unlawful in either the State of the minor’s habitual residence or the State Party where the minor is located.” The *Convention* has only been ratified by Central and South American states.

CONSIDERING the importance of ensuring comprehensive and effective protection for minors, through appropriate mechanisms to guarantee respect for their rights;

AWARE that the international traffic in minors is a universal concern;

TAKING INTO CONSIDERATION conventions on international protection of minors, particularly the provisions of Articles 11 and 35 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989;

CONVINCED of the need to regulate civil and penal aspects of the international traffic in minors; and

REAFFIRMING the importance of international cooperation to achieve effective protection of the best interests of minors,

Have agreed upon the following:

CHAPTER ONE – GENERAL PROVISIONS

Article 1

The purpose of the present Convention, with a view to protection of the fundamental rights of minors and their best interests, is the prevention and punishment of the international traffic in minors as well as the regulation of its civil and penal aspects.

Accordingly, the States Parties to this Convention undertake to:

- a) ensure the protection of minors in consideration of their best interests;
- b) institute a system of mutual legal assistance among the States Parties, dedicated to the prevention and punishment of the international traffic in minors, as well as adopt related administrative and legal provisions to that effect; and
- c) ensure the prompt return of minors who are victims of international traffic to the State of their habitual residence, bearing in mind the best interests of the minors.

* OAS Treaty Series No. 79 (B - 57) [<http://www.oas.org/juridico/English/treaties/b-57.html>]

Article 2

This Convention shall apply to any minor who is habitually resident in a State Party or is located in a State Party at the time when an act of international traffic occurs in respect of him or her.

For the purpose of the present Convention:

- a) “Minor” means any human being below the age of eighteen.
- b) “International traffic in minors” means the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means.
- c) “Unlawful purpose” includes, among others, prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor’s habitual residence or the State Party where the minor is located.
- d) “Unlawful means” includes, among others, kidnaping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institution having care of the child, or any other means unlawful in either the State of the minor’s habitual residence or the State Party where the minor is located.

Article 3

This Convention shall also cover the civil aspects of the wrongful removal, transfer, or retention of minors internationally, not dealt with by other international conventions on this subject.

Article 4

To the extent possible, States Parties shall cooperate with States that are not Parties in preventing and punishing international traffic in minors, and in protecting and caring for minors who are victims of that wrongful act.

The competent authorities of a State Party are to notify the competent authorities of a State that is not a Party whenever a minor is within its territory who has been a victim of international traffic in minors in a State Party.

Article 5

For the purposes of the present Convention, each State Party shall designate a Central Authority and shall inform the General Secretariat of the Organization of American States of that designation.

A federal State, or a State in which several legal systems apply, or a State with autonomous territorial units may designate more than one Central Authority, specifying the legal or territorial area covered by each of them. The State making use of this possibility shall designate the Central Authority to which all communications should be addressed.

Should a State Party designate more than one Central Authority, it shall so inform the General Secretariat of the Organization of American States.

Article 6

States Parties shall protect the minor’s interests with a view to ensuring that all procedures applied pursuant to the present Convention shall remain confidential.

CHAPTER TWO – PENAL ASPECTS

Article 7

The States Parties undertake to adopt effective measures, under their domestic law, to prevent and severely punish the international traffic in minors defined in this Convention.

Article 8

The States Parties to the present Convention undertake to:

- a) assist each other promptly and expeditiously through their Central Authorities, as permitted by the domestic laws of each State and by applicable international treaties, to conduct judicial and administrative proceedings, to take evidence, and to take any other procedural steps that may be necessary for fulfilling the objectives of this Convention;
- b) establish through their Central Authorities mechanisms for the exchange of information about any domestic statute, case law, administrative practices, statistics and modalities regarding international traffic in minors in their States; and
- c) order such measures as may be necessary to remove any obstacles that might affect the enforcement of this Convention in their States.

Article 9

The following shall have competence in cases of crimes involving international traffic in minors:

- a) the State Party where the wrongful conduct occurred;
- b) the State Party that is the habitual residence of the minor;
- c) the State Party in which the alleged offender is located if said offender has not been extradited.
- d) the State Party in which the minor who is a victim of said traffic is located.

For the purposes of the preceding paragraph, the State Party that first conducted formal proceedings concerning the wrongful act shall have preference.

Article 10

If one of the States Parties where extradition is subject to the existence of a treaty receives a request for extradition from a State Party with which it has no such treaty, or if it has such a treaty, this crime is not among the extraditable offenses, it may consider the present Convention as the legal grounds needed to grant extradition in the case of the international traffic in minors.

Further, States Parties that do not make extradition conditional on the existence of a treaty shall recognize the international traffic in minors as a basis for extradition between them. Where no extradition treaty exists, extradition shall be subject to the other conditions required by the domestic laws of the requested State.

Article 11

The actions taken in accordance with the provisions of this chapter shall not prevent the competent authorities of the State Party where the minor is located from ordering, at any time, said minor's immediate return to the State of his or her habitual residence, bearing in mind the best interests of the minor.

CHAPTER III – CIVIL ASPECTS

Article 12

A request for locating and returning a minor under the present Convention shall be lodged by those entitled to do so by the laws of the State where the minor habitually resides.

Article 13

The judicial or administrative authorities of the State Party of the minor's habitual residence, or those of the State Party where the minor is or is assumed to be retained, shall be competent to hear the request for the minor's location and return, at the option of the complainants.

When in the complainants' view there are urgent reasons, the request may be submitted to the judicial or administrative authorities of the State Party where the wrongful act occurred.

Article 14

The request for locating and returning shall not require authentication and shall be processed through the Central Authorities or directly through the competent authorities referred to in Article 13 of the present Convention. The requested authorities shall decide upon the most expeditious procedures for effecting it.

After receiving the request, the requested authorities shall order the necessary steps taken in accordance with their domestic laws to initiate, facilitate, and assist the judicial and administrative procedures involved in locating and returning the minor. In addition, steps shall be taken to ensure the immediate return of the minor, and where necessary, to ensure his or her care, custody or provisional guardianship, depending on the circumstances, and, as a preventive measure, to bar the minor from being wrongfully removed to another State.

The request, stating grounds for location and return of the minor, shall be lodged within one hundred and twenty days after the wrongful removal or retention of the minor has been detected. If the request for location and return is lodged by a State Party, the latter shall do so within one hundred and eighty days.

When it is necessary to take action before locating the minor, the above-mentioned period shall run from the day on which a person or authority entitled to file the request is informed that the minor has been located.

Irrespective of the above, the authorities of the State Party where the minor is retained may at any time order his or her return if it is in the minor's best interests.

Article 15

The authentication or similar formalities otherwise required shall be unnecessary when requests for cooperation encompassed by this Convention are transmitted via consular or diplomatic channels or via the Central Authorities, and when conveyed directly from one tribunal to another in the border area of the States Parties. No authentication in the requesting State Party shall be required in the case of related documents returned via the same channels.

Where necessary, the requests shall be translated into the official language or languages of the State Party to which they are addressed. With respect to attachments, a translation of the summary of the essential information shall suffice.

Article 16

Having confirmed that a victim of traffic in minors is present within their jurisdiction, the competent authorities of a State Party shall take such immediate measures as may be necessary for the minor's protection, including those of a preventive nature to ensure that the minor is not improperly removed to another State.

The Central Authorities shall inform the competent authorities of the State of the minor's previous habitual residence of all such measures. The intervening authorities shall take such steps as may be necessary to keep the persons or authorities seeking the minor's location and return duly informed of the measures adopted.

Article 17

In keeping with the purposes of this Convention, the Central Authorities of the States Parties shall exchange information and cooperate with their competent judicial and administrative authorities on all matters concerning control of the entry of minors into and departure from their territories.

Article 18

Adoptions and other similar legal proceedings performed in a State Party shall be subject to annulment if they had their origin or purpose in international traffic in minors.

In such annulment, the minor's best interests shall be taken into account at all times.

The annulment shall be subject to the law and the competent authorities of the State where the adoption or legal proceedings concerned took place.

Article 19

Care or custody of a minor may be revoked whenever it has its origin or purpose in the international traffic in minors, under the same conditions provided for in the preceding article.

Article 20

A request for locating and returning a minor may be lodged without prejudice to the annulment and revocation actions provided for in Articles 18 and 19.

Article 21

In any proceeding provided for under this chapter, the competent authority may order the person or organization responsible for international traffic in minors to pay the costs and expenses of locating and returning the minor if such person or organization is a party to the proceeding.

A person or authority lodging a request for the return or, where applicable, the competent authority may bring a civil action to recover costs, including legal fees and the expenses of locating and returning the minor, unless said costs were already assessed in a criminal proceeding or a proceeding under this chapter.

The competent authority or any injured person or authority may bring a civil action for damages against the persons or organizations responsible for the international traffic in minors involving the minor.

Article 22

The States Parties shall adopt the measures needed to ensure that no costs are charged for proceedings to secure the return of the minor, in accordance with their laws and shall advise persons legitimately interested in the return of the minor of the public defender services, benefits to the needy and other forms of free legal aid to which they may be entitled under the laws and regulations of the respective States Parties.

CHAPTER IV – Final Clauses

Article 23

Each State Party may, at the time of signature, ratification, or accession to the present Convention or at any time thereafter, declare that it will recognize and execute criminal judgments handed down in other States Parties in respect of awards of damages resulting from the international traffic in minors.

...

Article 27

The competent authorities in border areas of the States Parties may, at any time, directly agree on more expeditious procedures to locate and return minors than those provided for in the present Convention and without prejudice thereto.

None of the provisions in the present Convention shall be interpreted as restricting the more favorable practices that the competent authorities of the States Parties may agree to follow for the matters covered by this Convention.

...

Article 32

None of the provisions in this Convention shall be construed as limiting other bilateral or multilateral treaties or other agreements entered into between the Parties.

...

Selected provisions:

Inter-American Convention on International Return of Children (1989)*

Adopted by the Fourth Inter-American Specialized Conference on Private International Law on 15 July 1989

Entered into force 11 April 1994 – 13 State Parties as of December 2008

The *Inter-American Convention* is primarily concerned with instances of the abduction or unlawful removal of children in the context of parental custody disputes. Nonetheless, the scope of its definition is sufficiently broad to allow for the application of the *Convention* to instances of transnational child trafficking provided the act occurs without the consent of the child's guardian (see Article 4). Article 25 allows States to refuse a child's return if the return would be in violation of the child's human rights.

SCOPE

Article 1

The purpose of this Convention is to secure the prompt return of children habitually resident in one State Party who have been wrongfully removed from any State to a State Party or who, having been lawfully removed, have been wrongfully retained. This Convention further seeks to secure enforcement of visitation and custody rights of parties entitled to them.

Article 2

For the purposes of this Convention, a child shall be any person below the age of sixteen years.

Article 3

For the purposes of this Convention:

- a) Rights of custody include rights relating to the care of the child and, in particular, the right to determine the child's place of residence;
- b) Rights of visitation include the right to take a child for a limited period of time to a place other than the child's habitual residence.

Article 4

The removal or retention of a child shall be considered wrongful whenever it is in breach of the custody rights that parents, institutions or others having such rights individually or jointly exercise over the child under the law of the child's habitual residence immediately prior to the removal or retention.

Article 5

Any party designated by Article 4 may, in the exercise of custody or similar rights, bring an action for the child's return.

* OAS Treaty Series No. 70 (B - 53) [<http://www.oas.org/juridico/english/treaties/b-53.html>]

Article 6

Judicial or administrative authorities of the State Party in which the child habitually resided immediately before the removal or retention shall have jurisdiction to consider a petition for the child's return.

In urgent cases, the applicant may choose, instead, to file a request for the child's return directly with authorities of the State Party in whose territory the wrongfully removed or retained child is or is thought to be when the request is made, or with the authorities of the State Party in which the wrongful act giving rise to the request took place.

Making a request in the manner described in the preceding paragraph shall in no way alter the jurisdiction authorized by the first paragraph of this article.

...

RETURN PROCEEDINGS

Article 8

A party seeking a child's return may file an application or petition with the competent authorities in accordance with Article 6:

- a) By a letter rogatory;
- b) By filing a request with a central authority; or
- c) Directly, or through diplomatic or consular channels.

...

Article 10

The requested court, Central Authority, or other competent authorities of the State where the child is found shall, where appropriate, take all measures conducive to the voluntary return of the child.

Should a voluntary return not take place, the judicial, or administrative authorities, after verifying compliance with Article 9, shall forthwith meet with the child and take such measures to provide for its temporary custody or care as the circumstances may dictate, and shall, where appropriate, immediately order its return. Further, the agency charged by domestic law with protecting the child's welfare shall be notified.

In addition, while the application for return is pending, the competent authorities shall take the necessary steps to prevent the child from leaving their jurisdiction.

Article 11

A judicial or administrative authority of the requested State is not required to order the child's return if the party raising objections to the return establishes that:

- a) The party seeking the child's return was not actually exercising its rights at the time of the removal or retention, or had consented to or subsequently acquiesced in such removal or retention; or
- b) There is a grave risk that the child's return would expose the child to physical or psychological danger.

The requested authority may also refuse to order the child's return if it finds that the child is opposed to it and if, in the judgment of the requested authority, the child's age and maturity warrant taking its views into account.

...

Article 25

A child's return under this Convention may be refused where it would be manifestly in violation of the fundamental principles of the requested State recognized by universal and regional instruments on human rights or on the rights of children.

...

ASIA

Full text:

SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)*

Adopted on 5 January 2002

Entered into force in December 2005 – All seven members of SAARC are State Parties

The South Asian Association for Regional Cooperation was established in 1985, with this Convention being adopted at its eleventh summit in Kathmandu, Nepal, in 2002. The Convention calls on State Parties to establish criminal liability for trafficking and to cooperate with one another on police, extradition and judicial proceedings to combat it. Article IX obliges State Parties to provide health and social services as well as temporary housing to victims of trafficking, but the Convention envisions that such persons must eventually be repatriated rather than remain in the destination country. The Convention has strong implementation language in Article X. Furthermore, Article VIII(3) establishes a “Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.”

THE MEMBER STATES OF THE SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC),

PARTIES TO THE PRESENT CONVENTION

EMPHASISING that the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honour of human beings and is a violation of basic human rights;

RECALLING the decision of the Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored;

RECALLING ALSO the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of all Forms of Discrimination against Women, 1979; International Covenant on Civil and Political Rights, 1966; and the Convention on the Rights of the Child, 1989;

GIVING due regard to the implementation of the recommendations of the various pertinent International Bodies and Conferences including the Fourth World Conference on Women at Beijing (1995);

NOTING with concern the increasing exploitation by traffickers of women and children from SAARC countries and their increasing use of these countries as sending, receiving and transit points;

* [http://www.humantrafficking.org/uploads/publications/SAARC_Convention_on_Trafficking_Prostitution.pdf]

RECOGNISING in this regard the importance of establishing effective regional cooperation for preventing trafficking for prostitution and for investigation, detection, interdiction, prosecution and punishment of those responsible for such trafficking;

EMPHASISING the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking for prostitution;

HAVE AGREED as follows:

ARTICLE I

Definitions

For the purpose of this Convention:

- 1) "Child" means a person who has not attained the age of 18 years;
- 2) "Prostitution" means the sexual exploitation or abuse of persons for commercial purposes;
- 3) "Trafficking" means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking;
- 4) "Traffickers" means persons, agencies or institutions engaged in any form of trafficking;
- 5) "Persons subjected to trafficking" means women and children victimised or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means;
- 6) "Protective home" means a home established or recognised by a Government of a Member State for the reception, care, treatment and rehabilitation of rescued or arrested persons subjected to trafficking.
- 7) "Repatriation" means return to the country of origin of the person subjected to trafficking across international frontiers.

ARTICLE II

Scope of the Convention

The purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.

ARTICLE III

Offences

1. The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.
2. The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes

part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.

3. Any attempt or abetment to commit any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.

ARTICLE IV

Aggravating Circumstances

1. The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz.

- a) the involvement in the offences of an organised criminal group to which the offender belongs;
- b) the involvement of the offender in other international organised criminal activities;
- c) the use of violence or arms by the offender;
- d) the fact that the offender holds a public office and that the offence is committed in misuse of that office;
- e) the victimisation or trafficking of children;
- f) the fact that the offence is committed in a custodial institution or in an educational institution or social facility or in their immediate vicinity or in other places to which children and students visit for educational, sports, social and cultural activities;
- g) previous conviction, particularly for similar offences, whether in a Member State or any other country.

ARTICLE V

Judicial Proceedings

In trying offences under this Convention, judicial authorities in Member States shall ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counselling and legal assistance.

ARTICLE VI

Mutual Legal Assistance

1. The State Parties to the Convention shall grant to each other the widest measure of mutual legal assistance in respect of investigations, inquiries, trials or other proceedings in the requesting State in respect of offences under this Convention. Such assistance shall include:

- a) taking of evidence and obtaining of statements of persons;
- b) provision of information, documents and other records including criminal and judicial records;
- c) location of persons and objects including their identification;
- d) search and seizures;

- e) delivery of property including lending of exhibits;
- f) making detained persons and others available to give evidence or assist investigations;
- g) service of documents including documents seeking attendance of persons; and
- h) any other assistance consistent with the objectives of this Convention.

2. Requests for assistance shall be executed promptly in accordance with their national laws and in the manner requested by the Requesting State. In the event that the Requested State is not able to comply in whole or in part with a request for assistance or decides to postpone execution it shall promptly inform the Requesting State and shall give reasons for the same.

ARTICLE VII

Extradition or Prosecution

1. The offences referred to in the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereinafter be concluded, between any of the Parties to the Convention.
2. If a State Party which makes extradition conditional on the existence of a treaty, receives a request for extradition from another State Party with which it has no extradition treaty, the Requested State shall, if so permitted by its laws, consider this Convention as the basis for extradition in respect of the offences set forth in Article III.
3. Extradition shall be granted in accordance with the laws of the State to which the request is made.
4. The State Party in whose territory the alleged offender is present shall, if it does not extradite him or her, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution in accordance with the laws of that State.
5. In States where extradition of their nationals is not permitted under their law, nationals who have committed offences under the present Convention shall be prosecuted and punished by their courts.

ARTICLE VIII

Measures To Prevent and Interdict Trafficking In Women And Children

1. The State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention.
2. The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.
3. The State Parties to the Convention shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.

4. The State Parties to the Convention may also, by mutual agreement, set up bilateral mechanisms to effectively implement the provisions of the Convention, including appropriate mechanisms for cooperation to interdict trafficking in women and children for prostitution.

5. The State Parties to the Convention shall exchange, on a regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes used by the traffickers through land, water or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

6. The State Parties to the Convention may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment.

7. The State Parties to the Convention shall endeavour to focus preventive and development efforts on areas which are known to be source areas for trafficking.

8. The State Parties to the Convention shall promote awareness, inter-alia, through the use of the media, of the problem of trafficking in Women and Children and its underlying causes including the projection of negative images of women.

ARTICLE IX

Care, Treatment, Rehabilitation and Repatriation of the Victims

1. The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin.

2. Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.

3. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counselling, job training and health care facilities for the victims.

4. The State Parties to the Convention may also authorise the recognised non-governmental organisations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

5. The State Parties to the Convention shall encourage recognised non-governmental organisations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

ARTICLE X

Implementation

The State Parties to the Convention shall adopt, in accordance with their respective Constitutions, the legislative and other measures necessary to ensure the implementation of the Convention.

ARTICLE XI

Higher Measures

The measures provided for in the Convention are without prejudice to higher measures of enforcement and protection accorded by relevant national laws and international agreements.

ARTICLE XII

Signature And Ratification

The Convention shall be open for signature by the Member States of SAARC at the Eleventh SAARC Summit at Kathmandu and thereafter, at the SAARC Secretariat at Kathmandu. It shall be subject to ratification.

The instruments of Ratification shall be deposited with the Secretary General.

ARTICLE XIII

Entry into Force

This Convention shall enter into force on the fifteenth day following the day of the deposit of the seventh Instrument of Ratification with the Secretary General.

ARTICLE XIV

Depositary

The Secretary-General shall be the depositary of this Convention and shall notify the Member States of signatures to this Convention and all deposits of Instruments of Ratification. The Secretary-General shall transmit certified copies of such instruments to each Member-State. The Secretary-General shall also inform Member States of the date on which this Convention will have entered into force in accordance with Article XIII.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE at Kathmandu on this Fifth Day of January, Two Thousand and Two, in nine originals, in the English Language, all texts being equally authentic.

[Signatures omitted]

Full text:

Memorandum of Understanding (MOU) on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-region (2004)*

Adopted on 29 October 2004 by Cambodia, China Laos, Myanmar, Thailand and Vietnam

This Memorandum of Understanding was adopted by the six nations of the Greater Mekong sub-region in an effort to combat the high rates of trafficking and smuggling which occur across their national frontiers. The document provides robust recommendations in four thematic areas: (1) policy and cooperation; (2) legal framework and enforcement; (3) protection and recovery of victims; and (4) preventative measures. A fifth area of agreement details mechanisms to implement and monitor compliance with the MOU. Article 32 calls on states to create national task forces and to collaborate with the United Nations Inter-Agency Project Against Trafficking in the Greater Mekong Sub-region (UNIAP). Similarly, Article 28 calls on the State Parties to develop a Sub-Regional Action Plan Against Trafficking in Persons, 2005-2007, which has since occurred with UNIAP's assistance. MOUs, however, are not considered binding law and this document does not give rise to binding legal obligations.

* [http://www.no-trafficking.org/content/web/30COMMIT_process/SOM2IMM/COMMIT_MOU/final_COMMIT_mou.pdf]

Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region

We, the representatives of the Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Vietnam:

Deeply Concerned over the suffering caused by the trafficking in persons within the Greater Mekong Sub-Region and from the Greater Mekong Sub-Region States to other regions of the world;

Asserting that it is completely unacceptable that human beings are traded, bought, sold, abducted, placed, and maintained in exploitative situations, thus being denied their most fundamental and inalienable rights;

Recognizing that poverty, lack of access to education, and inequalities, including lack of equal opportunity, make persons vulnerable to trafficking;

Further recognizing the link between trafficking and the growing demand for exploitative labour and exploitative sexual services;

Acknowledging that trafficking is intensified by discriminatory attitudes, practices and policies based on gender, age, nationality, ethnicity, and social grouping;

Emphasizing that children and women who become victims of trafficking are particularly vulnerable, and need special measures to ensure their protection and well being;

Concerned by the involvement of both community members and organised criminal groups in trafficking in persons;

Recognizing the need for a strengthened criminal justice response to trafficking in order to secure justice for victims of trafficking and end impunity for traffickers and others who derive benefits from this crime;

Acknowledging the importance of effective and proportionate penalties for traffickers, including provision for freezing and confiscating their assets, and for the proceeds to be used for the benefit of victims of trafficking;

Recognizing the important contribution that survivors of trafficking can, on a strictly voluntary basis, make to developing, implementing, and evaluating anti-trafficking interventions, and in securing the prosecution of traffickers;

Acknowledging the important role played by victim support agencies in the areas of prevention, protection, prosecution, rescue, repatriation, recovery and reintegration, as well as in supporting a strengthened criminal justice response;

Recognizing that each Government hereby undertakes to take steps, individually and through international assistance and co-operation, to the maximum of its available resources, with a view to achieving progressively the full realization of the commitments recognized in this MOU by all appropriate means;

Recalling the Universal Declaration of Human Rights, particularly Article 4, which states that 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms';

Commending those Greater Mekong Sub-Region States which have ratified and/or acceded to the key international legal instruments concerning trafficking and related exploitation including the:

- United Nations Convention Against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- United Nations Convention on the Rights of the Child (CRC), and its Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography, and on the Involvement of Children in Armed Conflict;
- ILO Forced Labour Conventions (29 & 105);
- ILO Convention (182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

and encourage those States which have not yet done so, to accede to these instruments at the earliest possible time;

Reaffirming the importance of the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking contained in the report of the UNHCHR (2002) to the United Nations Economic and Social Council;

Reaffirming existing regional initiatives and commitments to combat trafficking in persons;

Welcoming the pioneering Memorandum of Understanding between Thailand and Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (2003) and efforts to develop similar bilateral anti-trafficking arrangements within the Greater Mekong Sub-Region;

Welcoming the importance of bilateral agreements, such as the Memoranda of Understanding on Cooperation in the Employment of Workers between Thailand and Cambodia, Lao PDR and Myanmar respectively, in promoting safe, orderly, well-regulated migration as this serves to reduce the demand for illegal migration services which provide opportunities for traffickers;

Intending fully that this MOU reflects the continuing political will of our Governments to cooperate to combat trafficking in persons; and

Calling upon all countries outside the GMS to join our countries in the fight against human trafficking;

Hereby solemnly commit to the following actions:

I. *In the area of Policy and Cooperation (national and international):*

1. **Encouraging** the use of the definition of trafficking contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention on Transnational Organised Crime;
2. **Developing** national plans of action against trafficking in persons in all its forms;
3. **Working towards** establishing and strengthening a national, multi-sectoral committee on trafficking in persons with a mandate to coordinate the implementation of the National Plan of Action and other anti-trafficking interventions;
4. **Creating** mechanisms to strengthen regional cooperation and information exchange, and designating a national focal point on combating trafficking;
5. **Improving** regional cooperation against trafficking, in particular through bilateral and multilateral agreements; and
6. **Strengthening** cooperation between Governments, international organizations and non-governmental organizations in combating trafficking in persons.

II. *In the area of Legal Frameworks, Law Enforcement and Justice:*

7. **Adopting and enforcing**, as quickly as possible, appropriate legislation against trafficking in persons;
8. **Adopting** appropriate guidelines and providing training for relevant officials to permit the rapid and accurate identification of trafficked persons and to improve the investigation, prosecution and judicial process;
9. **Investigating**, arresting, prosecuting, and punishing perpetrators of trafficking in accordance with national law;
10. **Making** available to trafficked persons legal assistance and information in a language they understand;
11. **Developing** realistic and effective cooperation in the criminal justice system to remove impunity for traffickers and provide justice for victims;
12. **Strengthening** cross-border cooperation in law enforcement among the six GMS countries to combat trafficking through criminal justice process;
13. **Providing** the necessary personnel and budgetary support for trafficking response capacities within national law enforcement authorities; and

14. **Promoting** bilateral or multilateral agreements among the GMS countries to assist each other in the judicial process.

III. In the area of Protection, Recovery, and Reintegration:

15. **Promoting** greater gender and child sensitivity in all areas of work dealing with victims of trafficking;
16. **Ensuring** that persons identified as victims of trafficking are not held in detention by law enforcement authorities;
17. **Providing** all victims of trafficking with shelter, and appropriate physical, psycho-social, legal, educational, and health-care assistance;
18. **Adopting** policies and mechanisms to protect and support those who have been victims of trafficking;
19. **Strengthening** the capacity of the embassies and consulates to ensure that they can more effectively assist trafficked persons;
20. **Ensuring** cross-border cooperation in the safe return of trafficked persons, including support to ensure their well-being; and
21. **Working together** to facilitate the successful recovery and reintegration of trafficked persons and to prevent them from being re-trafficked.

IV. In the area of Preventive Measures:

22. **Adopting** measures to reduce vulnerability including: supporting poverty reduction programs; increasing economic opportunities; ensuring access to quality education and skill training; and providing necessary personal legal documentation, including birth registration;
23. **Supporting** the development of community protection and surveillance networks for early identification and intervention for those at risk;
24. **Raising** public awareness at all levels, including through public information campaigns and advocacy, both of the dangers and negative impacts of trafficking, and of assistance available to victims;
25. **Applying** national labour laws to protect the rights of all workers based on the principles of non-discrimination and equality;
26. **Encouraging** destination countries, including those from outside the Greater Mekong Sub-Region, to effectively enforce relevant national laws in order to reduce acceptance of exploitation of persons that fuels the continuing demand for the labour of trafficked persons, and to suppress the crime of trafficking in women and children through mutual cooperation; and
27. **Increasing** cooperation with the private sector, especially the tourism and entertainment industries, to take an active role in the fight against trafficking

V. In the area of Mechanisms for Implementation, Monitoring and Evaluation of this Memorandum of Understanding:

28. **Developing** an initial Sub-Regional Plan of Action against Trafficking in Persons, 2005-2007 and undertaking all necessary efforts to fully implement this Plan;
29. **Developing** procedures for the collection and analysis of data and information on trafficking cases and ensuring that anti-trafficking strategies are based on accurate and current research, experience and analysis;
30. **Establishing** a monitoring system for the implementation of the Plan of Action to evaluate the status quo and the progress of each country in implementing the commitments covered in this MOU including, at the minimum, annual senior officials meetings;
31. **Reviewing** the implementation of the Plan of Action and adopting a new Sub-Regional Plan of Action through a GMS Ministerial meeting in late 2007;
32. **Creating** a national task force to collaborate with the COMMIT Secretariat (United Nations Inter-Agency Project against Trafficking in the Greater Mekong Sub-Region) and other partners;
33. **Inviting** government funding agencies, as well as relevant United Nations and other inter-governmental and non-governmental organizations and the private sector, to provide financial, material and technical assistance to support GMS countries in their anti-trafficking efforts, including the implementation of this MOU and the forthcoming Plan of Action; and
34. **Recognizing** that amendments to this MOU may be desirable in the future, the Governments set out the following process for amending this MOU: (1) if four of the six undersigned Governments believe that the MOU should be changed, and inform the Secretariat in writing, a procedure for consultation shall be undertaken by the Secretariat in a mutually convenient manner; (2) the purpose of such a procedure shall be to propose changes to the MOU; (3) any changes to the MOU shall be agreed to unanimously by the six Governments, and the approval of each Government shall be communicated to the Secretariat in writing.

Done at Yangon, on this 29th day of October 2004.

**FOR THE GOVERNMENT
OF THE KINGDOM OF CAMBODIA**



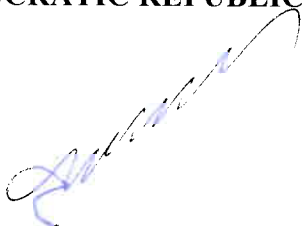
**(Ith Samheng)
Minister of Social Affairs,
Veterans and Youth Rehabilitation**

**FOR THE GOVERNMENT
OF THE PEOPLE'S REPUBLIC OF CHINA**



**(Huang Qingyi)
Vice Chairperson
National Working Committee
for Children & Women under the State Council**

**FOR THE GOVERNMENT
OF THE LAO PEOPLE'S
DEMOCRATIC REPUBLIC**



**(Somphanh Phengkhammy)
Minister of Labour and Social Welfare**

**FOR THE GOVERNMENT
OF THE UNION OF MYANMAR**



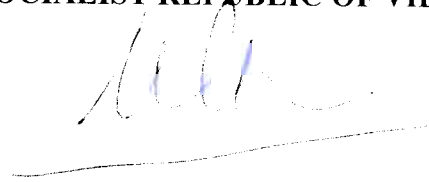
**(Colonel Tin Hlaing)
Minister of Home Affairs**

**FOR THE GOVERNMENT
OF THE KINGDOM OF THAILAND**



**(Wanlop Phloytattim)
Permanent Secretary
Ministry of Social Development
and Human Security**

**FOR THE GOVERNMENT
OF THE SOCIALIST REPUBLIC OF VIETNAM**



**(Lieutenant-General Le The Tiem)
Vice Minister of Public Security**

Full text:

ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007)*

Adopted by the Heads of State/Government of the Member Countries of the Association of Southeast Asian Nations (ASEAN), at the 12th ASEAN Summit on 13 January 2007 in Cebu, Philippines

WE, the Heads of State/Government of the Member Countries of the Association of Southeast Asian Nations (hereinafter referred to as ASEAN), attending the 12th ASEAN Summit on 13 January 2007 in Cebu, Philippines:

RECALLING the Declaration of ASEAN Concord II adopted at the 9th ASEAN Summit in Bali, Indonesia, which stipulated the establishment of an ASEAN Community resting on three pillars: an ASEAN Security Community, an ASEAN Economic Community and an ASEAN Socio-Cultural Community;

RECALLING also the Universal Declaration on Human Rights adopted and proclaimed by General Assembly Resolution 217(A)(III) of 10 December 1948, as well as other appropriate international instruments which all the ASEAN Member Countries have acceded to, in order to safeguard the human rights and fundamental freedoms of individuals such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child;

RECALLING further the Vientiane Action Programme adopted at the 10th ASEAN Summit in Vientiane, Lao PDR, which provides for, inter alia, the promotion of human rights and obligations to realise an open, dynamic and resilient ASEAN Community;

CONFIRMING our shared responsibility to realise a common vision for a secure and prosperous ASEAN Community by improving the quality of life of its people and strengthening its cultural identity towards a people-centered ASEAN through, among others, measures on the protection and promotion of the rights of migrant workers;

RECOGNISING the contributions of migrant workers to the society and economy of both receiving states and sending states of ASEAN;

RECOGNISING further the sovereignty of states in determining their own migration policy relating to migrant workers, including determining entry into their territory and under which conditions migrant workers may remain;

ACKNOWLEDGING the legitimate concerns of the receiving and sending states over migrant workers, as well as the need to adopt appropriate and comprehensive migration policies on migrant workers;

ACKNOWLEDGING also the need to address cases of abuse and violence against migrant workers whenever such cases occur;

REITERATING that ASEAN should make further progress as a cohesive and caring society committed to enhancing the quality of life and well being of its people, especially those in the vulnerable and disadvantaged sectors;

HEREBY DECLARE AS FOLLOWS:

* [<http://www.aseansec.org/19264.htm>]

GENERAL PRINCIPLES

- 1.** Both the receiving states and sending states shall strengthen the political, economic and social pillars of the ASEAN Community by promoting the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of respective ASEAN Member Countries;
- 2.** The receiving states and the sending states shall, for humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented;
- 3.** The receiving states and the sending states shall take into account the fundamental rights and dignity of migrant workers and family members already residing with them without undermining the application by the receiving states of their laws, regulations and policies; and
- 4.** Nothing in the present Declaration shall be interpreted as implying the regularisation of the situation of migrant workers who are undocumented.

OBLIGATIONS OF RECEIVING STATES

Pursuant to the prevailing laws, regulations and policies of the respective receiving states, the receiving states will:

- 5.** Intensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers;
- 6.** Work towards the achievement of harmony and tolerance between receiving states and migrant workers;
- 7.** Facilitate access to resources and remedies through information, training and education, access to justice, and social welfare services as appropriate and in accordance with the legislation of the receiving state, provided that they fulfill the requirements under applicable laws, regulations and policies of the said state, bilateral agreements and multilateral treaties;
- 8.** Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers;
- 9.** Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states; and
- 10.** Facilitate the exercise of consular functions to consular or diplomatic authorities of states of origin when a migrant worker is arrested or committed to prison or custody or detained in any other manner, under the laws and regulations of the receiving state and in accordance with the Vienna Convention on Consular Relations.

OBLIGATIONS OF SENDING STATES

Pursuant to the prevailing laws, regulations and policies of the respective sending states, the sending states will:

- 11.** Enhance measures related to the promotion and protection of the rights of migrant workers;

12. Ensure access to employment and livelihood opportunities for their citizens as sustainable alternatives to migration of workers;

13. Set up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin; and

14. Establish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies.

COMMITMENTS BY ASEAN

For purposes of protecting and promoting the rights of migrant workers, ASEAN Member Countries in accordance with national laws, regulations and policies, will:

15. Promote decent, humane, productive, dignified and remunerative employment for migrant workers;

16. Establish and implement human resource development programmes and reintegration programmes for migrant workers in their countries of origin;

17. Take concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities;

18. Facilitate data-sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states;

19. Promote capacity building by sharing of information, best practices as well as opportunities and challenges encountered by ASEAN Member Countries in relation to protection and promotion of migrant workers' rights and welfare;

20. Extend assistance to migrant workers of ASEAN Member Countries who are caught in conflict or crisis situations outside ASEAN in the event of need and based on the capacities and resources of the Embassies and Consular Offices of the relevant ASEAN Member Countries, based on bilateral consultations and arrangements;

21. Encourage international organisations, ASEAN dialogue partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in this Declaration; and

22. Task the relevant ASEAN bodies to follow up on the Declaration and to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers, consistent with ASEAN's vision of a caring and sharing Community, and direct the Secretary-General of ASEAN to submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting.

DONE at Cebu, Philippines, this Thirteenth Day of January in the Year Two Thousand and Seven, in a single original copy in the English Language.

[signatures omitted]

Full text:

ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004)*

Adopted on 29 November 2004 by all ten Member States of ASEAN

This declaration was adopted at ASEAN (Association of South-East Asian Nations)'s Heads of State/Governments meeting in Vientiane, Laos. It calls on states to "undertake concerted efforts" to promote national and regional actions against human trafficking. Despite being adopted four years after the *Anti-Trafficking* and *Anti-Smuggling Protocols*, it fails to mention these legal instruments and does not include several of their key provisions. Article 5 of the Declaration addresses the treatment of victims of trafficking. Although calling for human treatment and medical assistance for such victims, it also calls for their "prompt repatriation to their respective countries of origin." Declarations do not give rise to binding legal obligations.

WE, the Heads of States/Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Socialist Republic of Viet Nam, members of the Association of the Southeast Asian Nations, hereinafter referred to as ASEAN,

REAFFIRMING the Ha Noi Declaration of 1998 and the Ha Noi Plan of Action, which, among others, committed to intensify individual and collective efforts to address transnational crimes, including the trafficking in persons;

EXPRESSING the urgent need for a comprehensive regional approach to prevent and to combat trafficking in persons, particularly women and children;

ACKNOWLEDGING that social, economic and other factors that cause people to migrate also make them vulnerable to trafficking in persons;

RECOGNIZING that the immorality and inhumanity of this common concern elicits the need to strengthen legislative, law enforcement and judicial responses to ensure deterrent action is taken against persons involved in individual or syndicated activities of trafficking in persons, particularly women and children;

APPRECIATING that a successful campaign against the scourge of trafficking in persons, particularly women and children, requires continuing dialogue, exchange of information and cooperation among ASEAN;

REAFFIRMING ASEAN's unwavering desire to embrace the spirit behind the United Nations Convention against Transnational Organized Crime and its relevant protocols as it reflects the commitment of the Member States of the United Nations to prevent and combat transnational organized crime;

REAFFIRMING through this Declaration a commitment to human development and security, and the improvement of the quality of life of the peoples of ASEAN;

* [<http://www.aseansec.org/16793.htm>]

HEREBY DECLARE, to the extent permitted by their respective domestic laws and policies, to undertake concerted efforts to effectively address an emerging regional problem, namely the trafficking in persons, particularly women and children, through the following measures:

1. To establish a regional focal network to prevent and combat trafficking in persons, particularly women and children, in the ASEAN region;
2. To adopt measures to protect the integrity of their respective passports, official travel documents, identity and other official travel documents from fraud;
3. To undertake regular exchange of views, information sharing on relevant migratory flows, trends and pattern, strengthening of border controls and monitoring mechanisms, and the enactment of applicable and necessary legislations;
4. To intensify cooperation among our respective immigration and other laws enforcement authorities;
5. To distinguish victims of trafficking in persons from the perpetrators, and identify the countries of origin and nationalities of such victims and thereafter ensure that such victims are treated humanely and provided with such essential medical and other forms of assistance deemed appropriate by the respective receiving/ recipient country, including prompt repatriation to their respective countries of origin;
6. To undertake actions to respect and safeguard the dignity and human rights of genuine victims of trafficking in persons;
7. To undertake coercive actions/measures against individual and/or syndicate engaged in trafficking in persons and shall offer one another the widest possible assistance to punish such activities; and
8. To take measures to strengthen regional and international cooperation to prevent and combat trafficking in persons.

All Member Countries reaffirm their commitment to accomplish the elements of this Declaration through maximum efforts by such appropriate instruments as may be necessary and consistent with their respective national laws and policies.

ADOPTED by the Heads of State/Government of ASEAN Member Countries on this Twenty-ninth Day of November 2004 in Vientiane, Lao People's Democratic Republic.

Full text:

ASEAN Inter-Parliamentary Organization Resolution on the Role of Parliament in Combating Trafficking in Women and Children in the ASEAN Region (2004)*

Adopted on Twenty-Fifth General Assembly of the ASEAN Inter-Parliamentary Organization, 12-17 September 2004, at Phnom Penh, Cambodia (Res. 25GA/2004/Com/WAIPO/02)

This AIPO (ASEAN Inter-Parliamentary Organization) resolution calls on Member States to adopt measures to combat human trafficking in women and children, and to provide protection to its victims. The resolution is advisory in nature and has no legal effect in its own right.

The Twenty-fifth General Assembly:

Acknowledging the Convention on the Elimination of All Forms of Discrimination against Women, the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the Convention against Transnational Organized Crime, and the Convention on the Rights of the Child;

Acknowledging also that the ASEAN sub-Committee on Women (ACW) urged the ASEAN Member Countries to develop and propose activities and projects to further address the Hanoi Plan of Action, priority on women;

Aware that trafficking in women and children is an increasing problem and convinced of the necessity for ASEAN member countries to enhance their efforts to combat trafficking in women and children throughout the ASEAN region, and to contribute to national, regional and international anti-trafficking efforts in defense of human rights and the fight against transnational organized crime;

Noting that the lack of education, unequal treatment and low status of women, poverty and unemployment of women, particularly in the ASEAN region, are major factors contributing to the causes of trafficking of women and minors;

Noting further that in some ASEAN countries existing provisions or laws are inadequate to deter trafficking and law enforcement mechanisms fail to bring traffickers to justice.

Therefore, hereby:

Urgently appeal on the Governments of ASEAN countries to strengthen existing legislation and enforcement mechanisms to punish particularly those who create demand for illicit sex or who use force or fraud to traffic women or minors into the international sex trade, while protecting the rights of the trafficking victims;

Urges the Governments of ASEAN countries to develop and strengthen where applicable nationally and internationally coordinated law enforcement strategies, including legal and police-cooperation and humanitarian aspects, to combat internationally organized crime, particularly in trafficking of women and minors;

* [http://www.no-trafficking.org/content/PDF/aipo_resolution_in_combating_trafficking.doc]

Also urges the ASEAN member countries to promote networks and partnerships between the agencies of Government such as, the police, judicial, migration and social authorities, civil society, and international organizations in member states;

Recommends that countries of origin, transit and destination of trafficking victims conduct information campaigns to raise public awareness and understanding of trafficking;

Calls on the AIPO member parliaments to strengthen their oversight function in their respective countries to preventing trafficking of women and minors, through equal treatment of women and improvement of the status and role of women in society as well as through job training and creation in high risk communities or areas;

Calls also on respective parliaments to consider the establishment of Women Working Group of ASEAN to monitor the fight against trafficking of women and minors and to report its activities to the next AIPO General Assembly.

Full text:

Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime: Co-Chair's Statement (2002)*

Adopted by the Foreign Ministers of the Attending States at the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime on 26-26 February 2002

1. We, the Foreign Ministers of Indonesia and Australia, had the honour to co-chair the Ministerial Regional Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime in Bali, Indonesia, 26-28 February, attended by Afghanistan, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Democratic Republic of Korea, Fiji, France, India, Iran, Japan, Jordan, Kiribati, Laos, Malaysia, Mongolia, Myanmar, Nauru, Nepal, New Zealand, Pakistan, Palau, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syria, Thailand, Turkey, UNTAET/East Timor, Vanuatu and Vietnam, as well as the Director-General of the International Organisation for Migration and the Assistant United Nations High Commissioner for Refugees.
2. Austria, Belgium, Canada, Denmark, Finland, Germany, Italy, Netherlands, Norway, Russian Federation, Spain, Sweden, Switzerland, United Kingdom of Great Britain and the United States of America, the Association of South-East Asian Nations Secretariat, the Pacific Islands Forum Secretariat, European Union, UNDP, World Bank, Asian Development Bank, IGC, INTERPOL, International Committee of Red Cross, International Federation of Red Cross, International Labour Organization, United Nations Office of Drug Control and Crime Prevention attended as observers.
3. Ministers acknowledged the human rights dimensions of the problems of people smuggling and trafficking in persons, particularly women and children, and underlined that illegal movements were growing in scale and complexity worldwide, including in the Asia Pacific Region.
4. Ministers shared the view that these flows were creating significant political, economic, social and security challenges, and that journeys were undertaken without respect for either national sovereignty or borders.
5. Ministers noted with concern that many of the smuggling and trafficking activities were being orchestrated by criminal networks that were also involved in the trafficking of narcotics, document fraud, money laundering, arms smuggling and other transnational crimes. They expressed deep concern about possible links between terrorist elements and people smuggling and trafficking operations and that these activities were now rivalling narcotics in profitability.
6. Ministers were concerned that people smugglers and traffickers in persons could undermine the rule of law in States in which they were active and undermine the integrity of institutional frameworks that were an essential basis for sustainable development.
7. Ministers underlined that people smuggling and trafficking in persons were reprehensible criminal activities that fed on the hopes and aspirations of people and frequently

* [<http://www.baliprocess.net/files/ConferenceDocumentation/BRMC1.pdf>]

infringed basic human rights and freedoms. They were lucrative activities, involved little risk for the smugglers or traffickers, but which endangered peoples' lives.

8. Ministers recognized that the increase in all forms of illegal migration, including overstayers and those who sought to bypass regular migration channels without resorting to smuggling networks, posed a threat to the management of countries' regular migration programs and eroded States' capacity to protect their borders, regulate migration and safeguard their citizens.

9. Ministers expressed the view that States should, within the framework of their international obligations and domestic laws, provide appropriate protection and assistance to the victims of traffickers of people, particularly women and children.

10. Ministers affirmed that the root causes of people smuggling and trafficking in persons were numerous and multi-dimensional, involving economic, social and political aspects. They reaffirmed that poverty, economic disparities, labour market opportunities and conflict were major causes contributing to the global increase in people smuggling and trafficking in persons. Ministers recognised that these problems should be addressed cooperatively and comprehensively.

11. Ministers emphasised that it was very difficult for any individual State to counter people smuggling and trafficking in persons effectively without the support of other States. Ministers underscored that there was a strong shared regional interest and common purpose in cooperating to combat these criminal activities. They expressed their firm political commitment to build on existing agreements and efforts and strengthen States' capacity to respond, collectively and individually, to the threats posed by people smuggling, trafficking in persons, other forms of illegal migration and related transnational crime.

12. Ministers stressed that while people smuggling, trafficking in persons and other forms of illegal migration were global problems involving source, transit and destination countries, which required comprehensive international action, the Asia-Pacific region could make an effective and important contribution to combating these criminal activities. Ministers urged all regional countries to cooperate in combating people smuggling and trafficking in persons.

13. Ministers acknowledged the regional efforts undertaken so far to combat the activities of networks engaged in people smuggling and trafficking in persons.

14. They noted the relevance of the Bangkok Declaration on Irregular Migration and other similar policy statements, as well as the variety of regional institutions and processes that exist in the parts of the world represented by participating governments. They welcomed the ongoing work of the Asia Pacific Consultations on Refugees, Displaced Persons and Migrants, and the existing ASEAN mechanisms in combating people smuggling, trafficking in persons and related transnational crime.

15. Ministers noted that the United Nations Convention Against Transnational Organised Crimes and the Protocols thereto were international instruments for preventing, criminalising and combating people smuggling and trafficking in persons. Ministers agreed that individual countries should consider the benefits of signing and ratifying the Convention and its Protocols.

16. Ministers underlined their strong commitment to developing practical cooperative measures to prevent, intercept and disrupt people smuggling, trafficking in persons and other forms of illegal migration.

17. Ministers agreed that, subject to domestic laws and according to their respective national circumstances, they would work towards:

- developing more effective information and intelligence sharing arrangements within the region to obtain a more complete picture of smuggling and trafficking activities and other forms of illegal migration.
- improving the cooperation of law-enforcement agencies to enhance deterrence and to fight against illegal immigration networks.
- enhancing cooperation on border and visa systems to improve the detection and prevention of illegal movement.
- increasing public awareness of the facts of smuggling and trafficking operations to discourage those considering illegal movement and to warn those susceptible to trafficking, including women and children.- enhancing the effectiveness of return as a strategy to deter illegal migration through the conclusion of appropriate arrangements.
- cooperating in verifying the identity and nationality of illegal migrants, in a timely manner.

18. Ministers agreed that an important strategy to deter and prevent these activities would be to adopt and strengthen legislation, as appropriate, that specifically criminalises people smuggling and trafficking in persons.

19. Ministers agreed that cooperation should be based on an acknowledgment that each State had a sovereign right and legitimate interest to develop and implement its own laws to address people smuggling and trafficking in persons, reflecting the non-binding nature of the Co-Chairs' Statement.

20. Ministers acknowledged that illegal migrants potentially were both offenders of laws and victims. Ministers deplored the inhumane practices of smugglers and traffickers and their lack of regard for human suffering.

21. Ministers urged the international community to assist source countries to address the root causes of the illegal movement of people by providing emergency aid, development assistance, direct support programs for displaced persons and to address the plight of refugees. They agreed on the need for international support for capacity building programs to achieve sustained economic growth and sustainable development and for assistance to countries with large refugee populations. Ministers emphasised that consideration should also be given to encouraging more opportunities for legal channels of migration including access to the international labour market.

22. Ministers agreed that the region should improve its technical capacity to respond to the challenges posed by people smuggling, trafficking in persons, including women and children, and other forms of illegal migration. Ministers reaffirmed commitment to exploring cooperative measures to strengthen technical capacity among countries in the region to enable them to develop more effective legal structures and policy measures to combat this problem.

23. Ministers agreed to establish a follow-up mechanism involving ad hoc meetings of experts, with the voluntary participation of officials from respective countries, to take concrete steps to implement the recommendations of the Regional Conference, and coordinate action that the region could undertake to combat people smuggling, trafficking in persons, other forms of illegal migration and related transnational crime. Ministers appreciated the offer of IOM and UNHCR to assist in the follow-up mechanism, according to their respective fields of competence.

24. The results from the meetings of experts will be submitted for consideration by Ministers at a subsequent meeting to be convened within one year.

25. Ministers agreed that any further follow-up required after this 12 month period would be passed on to existing regional and international mechanisms. Existing bilateral, regional and international mechanisms would, where appropriate, be utilised in following up on the recommendations adopted.

26. Ministers, while acknowledging that the Conference had not been convened to deal directly with the issue of refugees, affirmed that nothing in this statement was intended to prejudice the legitimate rights of genuine refugees to seek and enjoy asylum in accordance with relevant LTN Conventions and Protocols. They called for effective measures to be put in place to ensure that protection is provided, consistent with the international obligations of individual States, while preventing abuse by people smugglers of the relevant UN Conventions on refugee protection. Ministers noted that all countries, - including origin, transit and potential destination, should play a part in finding solutions for refugees, while providing for return in a humane manner for those found not to be refugees. In certain circumstances, for return to be sustainable, the issue of return would require international support and cooperation.

27. Ministers reaffirmed the high value they placed on the work of UNHCR and IOM and other relevant international organisations.

28. Ministerial participants acknowledged with gratitude the host Government of Indonesia for the excellent arrangements that were made for the meeting.

Full text:

ASEM Action Plan to Combat Trafficking in Persons, Especially Women and Children (2001)*

Adopted at the Asia-Europe Meeting (ASEM) Foreign Ministers' Meeting in Beijing, China on 25 May 2001

“The Ministers recognized that trafficking in women and children was a growing concern to all and welcomed the UN Convention against Transnational Organized Crime and its Protocols. ASEM Partners would intensify cooperation to combat the hideous crime of trafficking in human beings with a view to ensuring respect and protection of the rights of victims of trafficking, especially women and children. The Ministers welcomed the action plan prepared by the Core Group Expert Meeting on ASEM initiative on Trafficking in Women and Children.”

(Paragraph 15, Chairman's Statement of the Third ASEM Foreign Ministers' Meeting Beijing, China, 24-25 May 2001)

Background

At ASEM 3 in Seoul in 2000, Leaders expressed their commitment to addressing global issues of common concern such as transnational crime, including smuggling, exploitation of migrants and trafficking of persons, in particular of women and children for the purpose of sexual exploitation.

As a follow-up on the above-mentioned Initiative, the First Experts' Group Meeting on Trafficking in Women and Children was organised in Stockholm on 27 - 28 November 2000, convening experts in relevant fields from ASEM Partners to identify key priority areas and possible workplan.

Action Plan

1. To strengthen knowledge and overall co-ordination

- 1.1 Advance systematic research and effective methodologies for data collection and exchange of information in order to improve and complement assessments of magnitude and nature of the situation of trafficking in women and children in Asia and Europe.
- 1.2 Encourage and develop appropriate mechanisms of regional, sub-regional and interregional co-operation both with regard to prevention of trafficking in persons and protection of and assistance to victims.
- 1.3 Encourage and strengthen co-operation between countries of origin, transit and destination to make national legislations compatible with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- 1.4 Encourage and facilitate cross border information and law enforcement operations.

2. To prevent and combat trafficking

* [<http://www.childcentre.info/projects/traffickin/acf516.doc>]

- 2.1 Apply a gender perspective and address the rights of women in national development policies and programs.
- 2.2 Emphasise the rights of women and children in formal as well as in non-formal education.
- 2.3 Encourage and support fact-finding and research to explore, assess and analyse the demand for the most common forms of exploitation of trafficked women and children, in particular for commercial sex services, in order to design strategies to influence attitudes.
- 2.4 Ensure good quality, relevant basic education, including life skills, as well as livelihood opportunities, in line with the UN Convention of the Rights of the Child, for children most at risk of being trafficked.
- 2.5 Endeavour to provide viable employment or other livelihood opportunities for women in line with the UN Convention on Elimination of All Forms of Discrimination Against Women.
- 2.6 Undertake persistent and pervasive information campaigns targeted at at-risk groups, including families and communities, in consultation with countries concerned. Linking such campaigns to those being carried out to combat the spread of HIV/Aids should be considered.
- 2.7 Strive to mobilise support from non-governmental organisations and other members of civil society, the corporate sector, in particular tourism-related business, and the mass media to raise public awareness.

3. To strengthen law-enforcement and protection of victims of trafficking

- 3.1 Encourage adoption of such legislative and other measures as may be necessary to make trafficking in persons a criminal offence in line with the UN Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- 3.2 Sensitize law enforcement personnel, immigration officers and other officials and staff concerned of trafficking, to ensure that they understand the phenomenon of trafficking, and its consequences, and thus, respect the rights of women and children and their dignity.
- 3.3 Provide victims of trafficking with the physical, psychological and social assistance immediately needed.
- 3.4 Provide victims of trafficking with information on their legal rights, including facilitating the provision of legal aid free of charge in a language they understand.
- 3.5 To the extent possible under its domestic law, undertake measures to protect the privacy and identity of victims of trafficking during legal proceeding and be sensitive to their needs and interests, in particular when dealing with children.
- 3.6 Consider adopting measures that permit victims of trafficking to remain in the country of destination temporarily or permanently, where possible and appropriate.

4. To promote the recovery, repatriation and reintegration of trafficked women and children

- 4.1 Enhance and exchange documentation of experiences and lessons learned regarding recovery, repatriation and reintegration, in order to develop and provide appropriate short and long-term assistance to the victims of trafficking.
- 4.2 Consolidate and institutionalise effective interventions and methods of recovery, repatriation, and reintegration of victims to avoid stigmatisation and revictimisation, and to provide sustainable solutions to their needs.
- 4.3 Facilitate and develop co-operation between governments and non-governmental organisations in order to strengthen the overall capacity to assist the victims. This may include providing victims with appropriate shelter, counselling and other support, both short and longer term.

5. Monitoring and follow-up activities

5.1 Address, where feasible, aspects pertinent to trafficking in women and children in the planning and implementation of already endorsed initiatives by ASEM Leaders, such as

- ASEM Child Welfare Initiative
- Ministerial Conference on Co-operation for the Management of the Migratory Flows Europe-Asia
- Initiative on HIV-Aids
- Symposium on Law Enforcement Organ's Cooperation in Combating Transnational Crimes.
- Anti-Corruption Initiative
- Anti-Money Laundering Initiative

5.2 Support follow-up activities to be developed to facilitate the implementation of the action plan;

- 5.2.1 An experts' meeting to discuss legislative measures required to bring national legislation in line with the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- 5.2.2 A seminar to exchange experience on promotion of gender perspectives in relation to trafficking of women and children for the purpose of commercial sexual exploitation. Such a seminar will discuss various best practices, focussing on patterns of causality and strategies to address trafficking, including, promotion of respect for gender equality.
- 5.2.3 A multi-country study on the prevalence and characteristics of the demand for services provided by trafficked women and children. Such a study should help identify appropriate measures to combat trafficking.
- 5.2.4 A conference for the purpose of sharing experiences, methods and approaches learned from various interventions for recovery, repatriation and reintegration in order to identify and adopt best practice in this respect. Such a conference will examine different models of Government - NGO co-operation.

5.3 The Philippines, Sweden and Thailand as co-partners of the Comprehensive Initiative to Combat Trafficking in Women and Children will initiate the follow-up activities outlined in Paragraph 5, encouraging all ASEM Partners to actively participate in these activities. The three co-partners will submit a progress report on this Initiative through the ASEM Senior Officials' Meeting (SOM) to the ASEM Foreign Ministers' Meeting (FMM), the Ministerial Conference on Co-operation for the Management of the Migratory Flows Europe-Asia and to ASEM 4 in Copenhagen in 2002.

Full text:

Bangkok Declaration on Irregular Migration (1999)*

Adopted by the Ministers and representatives of 18 states and one administrative region at the International Symposium on Migration on 23 April 1999.

We, the Ministers and representatives of the Governments of Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Republic of Korea, Lao PDR, Malaysia, Myanmar, New Zealand, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand, and Vietnam, as well as the Hong Kong Special Administrative Region (hereinafter referred to as “the participating countries and Region”), meeting at the invitation of the Royal Thai Government in Bangkok on 23 April 1999, on the occasion of the International Symposium on Migration, held on 21-23 April 1999, under the chairmanship of H.E. Bhichai Rattakul, Deputy Prime Minister of Thailand, to address the question of international migration, with particular attention to regional cooperation on irregular/undocumented migration:

1. Realizing that international migration is a complex phenomenon which is rooted in human history and is closely associated with social and economic aspirations of each country and region;
2. Recognizing that the process of globalization and liberalization, including the increasing interdependence of economies, has contributed to large flows of people in the Asia-Pacific region, thus providing both opportunity and challenge for governments in the region;
3. Noting that both the supply (push) factor and demand (pull) factor from concerned countries have led to the outflow of migrants from the countries of the region;
4. Being aware that international migration, particularly irregular migration, has increasingly become a major economic, social, humanitarian, political and security concern for a number of countries in the Asia-Pacific region;
5. Noting with concern that the ongoing financial and economic crisis in many Asian countries has led to rising unemployment and other social problems, and has had differing impacts on irregular migrants and on the countries of origin, transit and destination;
6. Noting further that the periodic natural disasters in some Asian countries badly affect their economies and lead to rising unemployment and irregular migration;
7. Gravely concerned by the increasing activities of transnational organized criminal groups and others that profit from smuggling of and trafficking in human beings, especially women and children, without regard to dangerous and inhumane conditions and in flagrant violation of domestic laws and international standards;
8. Underlining that comprehensive, coherent and effective policies on irregular/undocumented migration have to be formulated within the context of a broader regional framework based on a spirit of partnership and common understanding;
9. Noting that over 65 percent of the world’s poorest people live in the Asia- Pacific region, hence poverty and differences in level of development among countries in the region remain important causes of irregular migration;

* [<http://www.baliprocess.net/files/ConferenceDocumentation/Bangkok%20Declaration%20on%20Irregular%20Migration%20sgd%20230499.pdf>]

10. Recognizing a need for international cooperation to promote sustained economic growth and sustainable development in the countries of origin as a long-term strategy to address irregular migration;

11. Noting that there is a number of international conventions and instruments dealing with humanitarian issues relating to migration;

12. Respecting the sovereign rights and legitimate interests of each country to safeguard its borders and to develop and implement its own migration/immigration laws, and also recognizing the obligations of the country of origin to accept its nationals back, and the obligation of the countries of transit and destination to provide protection and assistance where appropriate, in accordance with their national laws;

13. Recognizing the important role and contribution of regional consultative mechanisms, such as the Asia Pacific Consultations on Refugees, Displaced Persons, and Migrants, and the Manila Process, on issues relating to irregular migration;

14. Noting with appreciation the participation of countries from various regions, United Nations bodies and specialized agencies, intergovernmental organizations, as well as non-governmental organizations, in sharing their views and experiences in dealing with migration issues;

15. Noting also with appreciation the discussion papers prepared by the Institute for Population and Social Research, Mahidol University, and the International Organization for Migration (IOM), which provided useful points of discussion and recommendations for the management of irregular migration;

16. Acknowledging with gratitude the timely initiative of H.E. Dr. Surin Pitsuwan, Minister of Foreign Affairs of Thailand, the dynamic chairmanship of H.E. Bhichai Rattakul, Deputy Prime Minister of Thailand, as well as the excellent arrangements provided by the Royal Thai Government, with the valuable support of the IOM;

Declare as follows:

1. Migration, particularly irregular migration, should be addressed in a comprehensive and balanced manner, considering its causes, manifestations and effects, both positive and negative, in the countries of origin, transit and destination;

2. The orderly management of migration and addressing of irregular migration and trafficking will require the concerted efforts of countries concerned, whether bilaterally, regionally or otherwise, based on sound principles of equality, mutual understanding and respect;

3. Regular migration and irregular migration should not be considered in isolation from each other. In order to achieve the benefits of regular migration and reduce the costs of irregular migration, the capacity of countries to manage movement of people should be enhanced through information sharing and technical and financial assistance. In this context, UNITAR, UNFPA, and IOM, joint sponsors of the International Migration Policy and Law Course (IMPLC), are invited to hold, in the near future, a course for middle to senior government officials from the region;

4. A comprehensive analysis of the social, economic, political and security causes and consequences of irregular migration in the countries of origin, transit and destination should be further developed in order better to understand and manage migration;

5. As the causes of irregular migration are closely related to the issue of development, efforts should be made by the countries concerned to address all relevant factors, with a view to achieving sustained economic growth and sustainable development; 6. Countries of origin, as well as countries of transit and destination, are encouraged to reinforce their efforts to prevent and combat irregular migration by improving their domestic laws and measures, and by promoting educational and information activities for those purposes;
7. Donor countries, international organizations and NGOs are encouraged to continue assistance to developing countries, particularly the least-developed countries, in the region aimed at poverty reduction and social development as one means of reducing irregular migration;
8. The participating countries and region should be encouraged to pass legislation to criminalize smuggling of and trafficking in human beings, especially women and children, in all its forms and purposes, including as sources of cheap labor, and to cooperate as necessary in the prosecution and penalization of all offenders, especially international organized criminal groups;
9. The participating countries and Region should exchange information on migration legislation and procedures for analysis and review, with a view to increasing coordination to effectively combat migrant traffickers;
10. The countries of origin, transit and destination are encouraged to strengthen their channels of dialogue at appropriate levels, with a view to exchanging information and promoting cooperation for resolving the problem of illegal migration and trafficking in human beings;
11. Greater efforts should be made to raise awareness at all levels, including through public information campaigns and advocacy, of the adverse effects of migrant trafficking and related abuse, and of available assistance to victims;
12. Concerned countries, in accordance with their national laws and procedures, should enhance cooperation in ascertaining the identity of undocumented/illegal migrants who seemingly are their citizens, with a view to accelerating their readmission;
13. Timely return of those without right to enter and remain is an important strategy to reduce the attractiveness of trafficking. This can be achieved only through goodwill and full cooperation of countries concerned. Return should be performed in a humane and safe way;
14. Irregular migrants should be granted humanitarian treatment, including appropriate health and other services, while the cases of irregular migration are being handled, according to law. Any unfair treatment towards them should be avoided;
15. The participating countries and Region should each designate and strengthen a national focal point to serve as a mechanism for bilateral, regional and/or multilateral consultations and cooperation on questions of international migration;
16. A feasibility study should be conducted on the need to establish a regional migration arrangement, linked to existing international bodies, to provide technical assistance, capacity building and policy support as well as to serve as an information bank on migration issues for the countries in the Asia-Pacific region. The countries in the region are meanwhile encouraged to utilize and strengthen the already existing bilateral and multilateral arrangements;

17. The participating countries and Region will follow-up on the above mentioned issues of irregular migration at the political and senior official levels in ways which may be deemed appropriate;

18. This document shall be given the widest publicity and dissemination possible to encourage governments, non-governmental organizations, the private sector and civil society to join in a collective regional effort to alleviate the adverse effects of irregular migration and to prevent and combat trafficking of human beings, especially women and children.

Bangkok, THAILAND
23 April 1999

EUROPE

Selected provisions:

Council of Europe Convention on Action against Trafficking in Human Beings (2005)*

Adopted by the Council of Europe on 16 May 2005.

Entered into force on 1 February 2008 – 20 State Parties as of December 2008

The *Convention* adopts the definition of trafficking from the *Anti-Trafficking Protocol* as well as many of the latter's substantive provisions for deterring human trafficking. The *Convention* can be distinguished from the *Anti-Trafficking Protocol* in three important respects. Firstly, the former applies to trafficking both within and across national border, whereas the latter is limited to trafficking which is transnational in nature. Secondly, Article 13 requires State Parties to respect a 30 'recovery and reflection' period for suspected trafficking victims, during which removal procedures are to be suspended. Thirdly, Article 15 requires State Parties to establish civil liability for human trafficking and provide a cause of action for victims to obtain reparation. Article 40(4) precludes any effect of the *Convention* on international humanitarian and human rights law obligations, including the *1951 Convention* and *1967 Protocol Relating to the Status of Refugees*.

Article 1 – Purposes of the Convention

1 The purposes of this Convention are:

- (a) to prevent and combat trafficking in human beings, while guaranteeing gender equality
- (b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
- (c) to promote international cooperation on action against trafficking in human beings.

2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

Article 2 – Scope

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.

Article 3 – Non-discrimination principle

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 4 – Definitions

For the purposes of this 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

* [<http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>]

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.

Article 5 – Prevention of trafficking in human beings

1 Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.

2 Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.

3 Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.

4 Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.

5 Each Party shall take specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them.

6 Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

...

Article 10 – Identification of the victims

1 Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.

3 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.

4 As soon as an unaccompanied child is identified as a victim, each 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.

Article 11 – Protection of private life

1 Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

2 Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.

3 Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.

Article 12 – Assistance to victims

1 Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

- (a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
- (b) access to emergency medical treatment;
- (c) translation and interpretation services, when appropriate;
- (d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
- (e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- (f) access to education for children.

2 Each Party shall take due account of the victim's safety and protection needs.

3 In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.

4 Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.

5 Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.

6 Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

7 For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

Article 13 – Recovery and reflection period

1 Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim.

Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

2 During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.

3 The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

Article 14 – Residence permit

1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

(a) the competent authority considers that their stay is necessary owing to their personal situation;

(b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

2 The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

3 The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.

4 If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.

5 Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

Article 15 – Compensation and legal redress

1 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.

2 Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.

3 Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

4 Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

Article 16 – Repatriation and return of victims

1 The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.

2 When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.

3 At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.

4 In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.

5 Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non-governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.

6 Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.

7 Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

Article 17 – Gender equality

Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.

Article 18 – Criminalisation of trafficking in human beings

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.

Article 19 – Criminalisation of the use of services of a victim

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

Article 20 – Criminalisation of acts relating to travel or identity documents

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:

- (a) forging a travel or identity document;
- (b) procuring or providing such a document;
- (c) retaining, removing, concealing, damaging or destroying a travel or identity document of another person.

Article 21 – Attempt and aiding or abetting

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 18 and 20 of the present Convention.

2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an attempt to commit the offences established in accordance with Articles 18 and 20, paragraph a, of this Convention.

Article 23 – Sanctions and measures

1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2 Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.

4 Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of *bona fide* third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

Article 24 – Aggravating circumstances

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

- (a) the offence deliberately or by gross negligence endangered the life of the victim;
- (b) the offence was committed against a child;
- (c) the offence was committed by a public official in the performance of her/his duties;
- (d) the offence was committed within the framework of a criminal organisation.

...

Article 26 – Non-punishment provision

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

...

Article 33 – Measures relating to endangered or missing persons

1 When a Party, on the basis of the information at its disposal has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in immediate danger on the territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.

2 The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, in particular for missing children, if the information available leads them to believe that she/he is a victim of trafficking in human beings. To this end, the Parties may conclude bilateral or multilateral treaties with each other..

...

Article 39 – Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

Article 40 – Relationship with other international instruments

1 This Convention shall not affect the rights and obligations derived from other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for victims of trafficking.

2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.⁽¹⁾

4 Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.

...

Selected provisions:

Charter of Fundamental Freedoms of the European Union (2000)* (2007)[∞]

‘Solemnly proclaimed’ by the European Parliament, the Council of the European Union, and the European Commission on 7 December 2000

Adapted version proclaimed on 12 December 2007

Enacted in the Treaty of Lisbon adopted on 13 December 2007 (with opt-outs from the United Kingdom and Poland)

The *Charter* was ‘solemnly proclaimed’ by the European Parliament, the Council of the European Union and the European Commission on 7 December 2000. Although proclamations do not create binding legal obligations, in practice, EU institutions have acted in conformity with it since its enactment. The *Charter* has since been included in Article 6 of the *Treaty of Lisbon* which was signed by EU Member-States on 13 December 2007. The United Kingdom and Poland have specifically opted-out of Article 6 but, if ratified, the *Treaty* would give the *Charter* legal effect in other EU Member-States. As the time of the publication of this compilation, the *Treaty* had failed to be ratified by voters in Ireland on 12 June 2008. The current status of the on-going ratification process is unclear.

...

Article 5: Prohibition of slavery and forced labour

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

...

Article 51: Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

...

* 2000 O.J. (C 364) 1 (Dec. 7, 2000) [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2000:364:0001:0022:EN:PDF>]

[∞] 2007 O.J. (C 303) 1 (Dec. 14, 2007) [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:EN:PDF>]

Selected provisions (emphasis added):

Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts (1997) [“Amsterdam Treaty”]*

Adopted on 2 October 1997 at Amsterdam, Netherlands

Entered into force on 1 May 1999

...

TITLE VI. Provisions on Police and Judicial Cooperation in Criminal Matters.

Article 29 (ex Article K.1)

Without prejudice to the powers of the European Community, the Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia. That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, **trafficking in persons and offences against children**, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

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

...

* 1997 O.J. (C 340) 1 (Oct. 2, 1997) [<http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html>]

Full text (citations omitted):

Council of the European Union 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 (2004)*

Adopted on 29 April 2004 at Luxembourg

Entered into force on 6 August 2004

All EU Member-States (except for the United Kingdom, Ireland and Denmark, who opted out) were required to have transposed the Directive into domestic legislation by 5 August 2006

Directives of the Council of the European Union can be enacted under Article 249 of the Treaty Establishing the European Community (1958) (Treaty of Rome) and are legally binding upon the EU Member States to whom they are addressed. Article 8 requires Member States to issue a minimum six-month residence permit to victims of human trafficking who have shown a clear intention to cooperate with law enforcement authorities and who have discontinued contact with their traffickers. Article 6 and 7 require a ‘recovery’ period during which the victim can decide whether or not to cooperate without fear of removal, and during which time s/he is entitled to basic health/counseling services. Paragraph 4 of the preamble states that the Directive is without prejudice to the treatment of refugees and asylum-seekers.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point 3 of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Having consulted the Committee of the Regions,

Whereas:

(1) The framing of a common immigration policy, including the definition of the conditions of entry and residence for foreigners and measures to combat illegal immigration, is a constituent element of the European Union’s objective of creating an area of freedom, security and justice.

(2) At its special meeting in Tampere on 15 and 16 October 1999, the European Council expressed its determination to tackle illegal immigration at source, for example by targeting those who engage in trafficking of human beings and the economic exploitation of migrants.

* 2004 O.J. (L 261) 19 (Aug. 6. 2004) [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0019:0023:EN:PDF>]

It called on the Member States to concentrate their efforts on detecting and dismantling criminal networks while protecting the rights of victims.

(3) An indication of the growing concern about this phenomenon at international level was the adoption by the United Nations General Assembly of a Convention against Transnational Organised Crime, supplemented by a Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and a Protocol Against the Smuggling of Migrants by Land, Sea and Air. These were signed by the Community and the 15 Member States in December 2000.

(4) This Directive is without prejudice to the protection granted to refugees, to beneficiaries of subsidiary protection and persons seeking international protection under international refugee law and without prejudice to other human rights instruments.

(5) This Directive is without prejudice to other provisions on the protection of victims, witnesses or persons who are particularly vulnerable. Nor does it detract from the prerogatives of the Member States as regards the right of residence granted on humanitarian or other grounds.

(6) This Directive respects fundamental rights and complies with the principles recognised for example by the Charter of Fundamental Rights of the European Union.

(7) Member States should give effect to the provision of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

(8) At European level, Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings were adopted to strengthen the prevention and the fight against the above offences.

(9) This Directive introduces a residence permit intended for victims of trafficking in human beings or, if a Member State decides to extend the scope of this Directive, to third-country nationals who have been the subject of an action to facilitate illegal immigration to whom the residence permit offers a sufficient incentive to cooperate with the competent authorities while including certain conditions to safeguard against abuse.

(10) To this end, it is necessary to lay down the criteria for issuing a residence permit, the conditions of stay and the grounds for non-renewal and withdrawal. The right to stay under this Directive is subject to conditions and is of provisional nature.

(11) The third country nationals concerned should be informed of the possibility of obtaining this residence permit and be given a period in which to reflect on their position. This should help put them in a position to reach a well-informed decision as to whether or not to cooperate with the competent authorities, which may be the police, prosecution and judicial authorities (in view of the risks this may entail), so that they cooperate freely and hence more effectively.

(12) Given their vulnerability, the third-country nationals concerned should be granted the assistance provided by this Directive. This assistance should allow them to recover and escape the influence of the perpetrators of the offences. The medical treatment to be provided to the third-country nationals covered by this Directive also includes, where appropriate, psychotherapeutical care.

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

(14) This Directive should apply without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating the offences concerned.

(15) Member States should consider authorising the stay on other grounds, according to their national legislation, for third-country nationals who may fall within the scope of this Directive, but who do not, or no longer, fulfill the conditions set by it, for the members of his/her family or for persons treated as members of his/her family.

(16) To enable the third-country nationals concerned to gain their independence and not return to the criminal network, the holders of the residence permit should be authorised, under

the conditions set by this Directive, to have access to the labour market and pursue vocational training and education. In authorising access of the holders of the residence permit to vocational training and education, Member States should consider in particular the likely duration of stay.

(17) The participation of the third-country nationals concerned to programmes and schemes, already existing or to be introduced, should contribute to their recovery of a normal social life.

(18) If the third-country nationals concerned submit an application for another kind of residence permit, Member States take a decision on the basis of ordinary national aliens' law. When examining such an application, Member States should consider the fact that the third-country nationals concerned have been granted the residence permit issued under this Directive.

(19) Member States should provide the Commission, with respect to the implementation of this Directive, with the information which has been identified in the framework of the activities developed with regard to the collection and treatment of statistical data concerning matters falling within the area of Justice and Home Affairs.

(20) Since the objective of introducing a residence permit for the third-country nationals concerned who cooperate in the fight against trafficking in human beings cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at the Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(21) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on the European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(22) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I: GENERAL PROVISIONS

Article 1: Purpose

The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.

Article 2: Definitions

For the purposes of this Directive:

- (a) «third-country national» means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (b) «action to facilitate illegal immigration» covers cases such as those referred to in Articles 1 and 2 of Directive 2002/90/EC;
- (c) «trafficking in human beings» covers cases such as those referred to in Articles 1, 2 and 3 of Framework Decision 2002/629/JHA;
- (d) «measure to enforce an expulsion order» means any measure taken by a Member State to enforce the decision of the competent authorities ordering the expulsion of a third-country national;

(e) «residence permit» means any authorisation issued by a Member State, allowing a third-country national who fulfils the conditions set by this Directive to stay legally on its territory.

(f) «unaccompanied minors» means third-country nationals below the age of eighteen, who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State.

Article 3: Scope

1. Member States shall apply this Directive to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member States.

2. Member States may apply this Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration.

3. This Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned.

By way of derogation, Member States may decide to apply this Directive to minors under the conditions laid down in their national law.

Article 4: More favourable provisions

This Directive shall not prevent Member States from adopting or maintaining more favourable provisions for the persons covered by this Directive.

CHAPTER II: PROCEDURE FOR ISSUING THE RESIDENCE PERMIT

Article 5: Information given to the third-country nationals concerned

When the competent authorities of the Member States take the view that a third-country national may fall into the scope of this Directive, they shall inform the person concerned of the possibilities offered under this Directive.

Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Article 6: Reflection period

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

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

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

3. The reflection period shall not create any entitlement to residence under this Directive.

4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security.

Article 7: Treatment granted before the issue of the residence permit

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.
2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.
3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.
4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

Article 8: Issue and renewal of the residence permit

1. After the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already fulfilled the criterion set out in subparagraph (b), Member States shall consider:
 - (a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and
 - (b) whether he/she has shown a clear intention to cooperate and
 - (c) whether he/she has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2(b) and (c).
2. For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfilment of the conditions referred to in paragraph 1 shall be required.
3. Without prejudice to the provisions on withdrawal referred to in Article 14, the residence permit shall be valid for at least six months. It shall be renewed if the conditions set out in paragraph 2 of this Article continue to be satisfied.

CHAPTER III: TREATMENT OF HOLDERS OF THE RESIDENCE PERMIT

Article 9: Treatment granted after the issue of the residence permit

1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.
2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

Article 10: Minors

If Member States have recourse to the option provided for in Article 3(3), the following provisions shall apply:

- (a) Member States shall take due account of the best interests of the child when applying this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.
- (b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.
- (c) In the case of third-country nationals who are unaccompanied minors, Member States shall take the necessary steps to establish their identity, nationality and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary, in accordance with national law.

Article 11: *Work, vocational training and education*

1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

Such access shall be limited to the duration of the residence permit.

2. The conditions and the procedures for authorising access to the labour market, to vocational training and education shall be determined, under the national legislation, by the competent authorities.

Article 12: *Programmes or schemes for the third-country nationals concerned*

1. The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.

Member States may provide specific programmes or schemes for the third-country nationals concerned.

2. Where a Member State decides to introduce and implement the programmes or schemes referred to in paragraph 1, it may make the issue of the residence permit or its renewal conditional upon the participation in the said programmes or schemes.

CHAPTER IV: NON-RENEWAL AND WITHDRAWAL

Article 13: *Non-renewal*

1. The residence permit issued on the basis of this Directive shall not be renewed if the conditions of Article 8(2) cease to be satisfied or if a decision adopted by the competent authorities has terminated the relevant proceedings.

2. When the residence permit issued on the basis of this Directive expires ordinary aliens' law shall apply.

Article 14: *Withdrawal*

The residence permit may be withdrawn at any time if the conditions for the issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:

- (a) if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c); or
- (b) if the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or
- (c) for reasons relating to public policy and to the protection of national security; or
- (d) when the victim ceases to cooperate; or
- (e) when the competent authorities decide to discontinue the proceedings.

CHAPTER V: FINAL PROVISIONS

Article 15: *Safeguard clause*

This Directive shall apply without prejudice to specific national rules concerning the protection of victims and witnesses.

Article 16: *Report*

1. No later than 6 August 2008, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose any amendments that are necessary. The Member States shall send the Commission any information relevant to the preparation of this report.

2. After presenting the report referred to in paragraph 1, the Commission shall report to the European Parliament and the Council at least every three years on the application of this Directive in the Member States.

Article 17: Transposal

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 6 August 2006. They shall immediately inform the Commission accordingly.

When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 18: Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 19: Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. Mc Dowell

Full text (citations omitted):

Council of the European Union Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (2002)*

Adopted on 19 July 2002 at Brussels, Belgium

Entered into force on 1 August 2004

All EU Member-States were required to have transposed into domestic legislation by 31 July 2004

This framework decision of the Council of the European Union essentially translates the provisions of the *Anti-Trafficking Protocol* into European Community law. These include the requirement that Member States establish criminal liability for human trafficking, take necessary measures to establish jurisdiction over the offense in a number of different circumstances, and provide protection to victims. Article 5, provides for additional commercial and administrative penalties for perpetrators of human trafficking that the *Anti-Trafficking Protocol* does not mention. A framework decision of the Council is European Community law and EU Member States are legally obliged to comply with it (see: Article 34(2)(b) of the *Treaty of the European Union* (1992)). Nonetheless, unlike directives of the Council, framework decisions cannot be directly enforced before the European Court of Justice.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, the Tampere European Council on 15 and 16 October 1999, the Santa Maria da Feira European Council on 19 and 20 June 2000, as listed in the Scoreboard, and the European Parliament in its Resolution of 19 May 2000 on the communication from the Commission “for further actions in the fight against trafficking in women” indicate or call for legislative action against trafficking in human beings, including common definitions, incriminations and sanctions.

(2) Council Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children needs to be followed by further legislative action addressing the divergence of legal approaches in the Member States and contributing to the development of an efficient judicial and law enforcement cooperation against trafficking in human beings.

(3) Trafficking in human beings comprises serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.

* 2002 O.J. (L 203) 1 (Aug. 1, 2002) [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>]

(4) The UN protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organised crimes, represents a decisive step towards international cooperation in this field.

(5) Children are more vulnerable and are therefore at greater risk of falling victim to trafficking.

(6) The important work performed by international organisations, in particular the UN, must be complemented by that of the European Union.

(7) It is necessary that the serious criminal offence of trafficking in human beings be addressed not only through individual action by each Member State but by a comprehensive approach in which the definition of constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, forms an integral part. In accordance with the principles of subsidiarity and proportionality, this Framework Decision confines itself to the minimum required in order to achieve those objectives at European level and does not go beyond what is necessary for that purpose.

(8) It is necessary to introduce sanctions on perpetrators sufficiently severe to allow for trafficking in human beings to be included within the scope of instruments already adopted for the purpose of combating organised crime such as Council Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime and Council 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.

(9) This Framework Decision should contribute to the fight against and prevention of trafficking in human beings by complementing the instruments adopted in this area such as Council Joint Action 96/700/JHA of 29 November 1996 establishing an incentive and exchange programme for persons responsible for combating trade in human beings and sexual exploitation of children (STOP), Council Joint Action 96/748/JHA of 16 December 1996 extending the mandate given to the Europol Drugs Unit, 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, Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network, Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union and Council Joint Action 98/427/JHA of 29 June 1998 on good practice in mutual legal assistance in criminal matters.

(10) Council Joint Action 97/154/JHA should accordingly cease to apply in so far as it concerns trafficking in human beings,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

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

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.

Article 2

Instigation, aiding, abetting and attempt

Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable.

Article 3

Penalties

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.
2. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty that is not less than eight years where it has been committed in any of the following circumstances:
 - (a) the offence has deliberately or by gross negligence endangered the life of the victim;
 - (b) the offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under national law and the offence has been committed for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography;
 - (c) the offence has been committed by use of serious violence or has caused particularly serious harm to the victim;
 - (d) the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA, apart from the penalty level referred to therein.

Article 4

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Articles 1 and 2, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person, or
- (b) an authority to take decisions on behalf of the legal person, or
- (c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 have rendered possible the commission of an offence referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in an offence referred to in Articles 1 and 2.

4. For the purpose of this Framework Decision, legal person shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Article 5

Sanctions on legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 4 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid, or
- (b) temporary or permanent disqualification from the practice of commercial activities, or
- (c) placing under judicial supervision, or
- (d) a judicial winding-up order, or
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 6

Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1 and 2 where:

- (a) the offence is committed in whole or in part within its territory, or
- (b) the offender is one of its nationals, or
- (c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) as far as the offence is committed outside its territory.

3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 1 and 2 when it is committed by its own nationals outside its territory.

4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 7

Protection of and assistance to victims

1. Member States shall establish that investigations into or prosecution of offences covered by this Framework Decision shall not be dependent on the report or accusation made by a person subjected to the offence, at least in cases where Article 6(1)(a) applies.

2. Children who are victims of an offence referred to in Article 1 should be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings(13).

3. Where the victim is a child, each Member State shall take the measures possible to ensure appropriate assistance for his or her family. In particular, each Member State shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family referred to.

Article 8

Territorial scope

This Framework Decision shall apply to Gibraltar.

Article 9

Application of Joint Action 97/154/JHA

Joint Action 97/154/JHA shall cease to apply in so far as it concerns trafficking in human beings.

Article 10

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision before 1 August 2004.

2. By the date referred to in paragraph 1, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Council will, by 1 August 2005 at the latest, on the basis of a report established on the basis of this information and a written report transmitted by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

Article 11

Entry into force

This Framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at Brussels, 19 July 2002.

For the Council
The President
T. Pedersen

Full text:

Observations by the United Nations High Commissioner for Human Rights and the United Nations High Commissioner for Refugees on the Proposal for an EU Council Framework Decision on Combating Trafficking in Human Beings

Geneva 2001

Introduction

1. The United Nations High Commissioner for Human Rights (HCHR) and the United Nations High Commissioner for Refugees (UNHCR) wish, at the outset, to express their support for the work of the European Union against trafficking in human beings and related exploitation. They do so from the viewpoint of two United Nations bodies with different but complementary mandates in this area. Both organisations believe that the present proposal to strengthen common approaches to this issue through the adoption of a Council Framework Decision is an important and timely step forward.

2. HCHR and UNHCR understand from the explanatory memorandum that the proposed Framework Decision seeks to extend the obligations contained in the recently adopted UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime* (A/55/383). While supporting this effort, HCHR and UNHCR are concerned that adopting an approach which differs from that contained in the United Nations Protocol on Trafficking may weaken the link between the two instruments. In addition, it is cause for concern that several aspects of the proposed Framework Decision, in particular those dealing with protection of victims and witnesses, fall considerably short of established international standards. The lack of reference to even basic protective measures for victims and witnesses of trafficking, as well as the omission of a saving clause concerning asylum-seekers and refugees, may create an impression that such protections are both unimportant and optional in the fight against trafficking.

3. On 21 March 2001, the High Commissioner for Human Rights submitted to the European Commission and the Swedish Presidency of the European Union a note addressing the above issues in some detail with the view to assisting the European Union in ensuring that this new regional instrument reinforces the letter and spirit of existing international legal standards. It is not clear as to whether the Council, in reviewing the Commission proposal, has considered taking account of these key concerns of HCHR. In the circumstances, HCHR and UNHCR are making the present joint submission, on the basis of HCHR's earlier comments, to urge the Commission and the Member States of the European Union to ensure the proposed Framework Decision's compatibility with established international standards. It is significant to note that most of the concerns of HCHR and UNHCR regarding the main shortcomings of the proposed Framework Decision are also shared by the European Parliament as evinced by its deliberations during its session on 12 June 2001, including a call for incorporating the definition of trafficking of the Palermo Protocol into the Framework Decision.

Victims and Witnesses of Trafficking

4. The proposed Framework Decision contains only minimal provisions for the protection of victims of trafficking. HCHR and UNHCR have taken note of the provisions of the Council Framework Decision of 15 March 2000 on the standing of victims in criminal proceedings yet believe that the special needs of trafficking victims are not sufficiently covered by these provisions and, moreover, should have their place in a specific EU instrument on trafficking in persons. Therefore, HCHR and UNHCR urge the Commission and Member States to consider the following issues for inclusion in a revised Article on this issue.

(i) Prosecution for status related offences

5. Victims of trafficking should be protected from prosecution for the illegality of their coerced entry or residence, or for the activities they may be coerced to perform as a consequence of their status as trafficked persons. Victims of trafficking should, for example, be able to use the fact of their being trafficked as a defence against status-related offences.

(ii) Protection of and assistance to victims

6. In order to promote uniformity and minimum standards, the protection and assistance provisions of the United Nations Protocol on Trafficking should be incorporated into the proposed Framework Decision as basic obligations. To this end, the proposed Framework Decision should require EU Member States to provide for the physical safety of trafficking victims within their territory, counselling and information as well as basic measures for their physical and psychological recovery. The instrument should also provide for adopting legislative or other measures that permit victims of trafficking to remain in an EU Member State, temporarily or permanently, in appropriate cases. In addition to providing a measure of safety, such a provision would encourage victims of trafficking to co-operate with the authorities and thereby contribute to achieving the law enforcement objectives of the Framework Decision. It is important, in this context, to note that victim protection must be considered separately from witness protection, as not all victims of trafficking will be selected by investigating and prosecuting authorities to act as witnesses in criminal proceedings.

(iii) Witness protection

7. Trafficked persons who agree to testify against their traffickers are at considerable risk of acts of retaliation by trafficking networks. Depending on the circumstances on the case, such witnesses require appropriate protective measures, including preventive measures during the investigation, in-camera hearings at the trial stage, or the granting of temporary or permanent residence. The adoption of separate measures for the protection of witnesses, while meeting their humanitarian needs, can also help to maintain the integrity of asylum systems and procedures in EU Member States.

(iv) Repatriation of trafficked persons

8. Safe, and as far as possible, voluntary return must be at the core of any credible protective strategy for trafficked persons. The draft Framework Decision should include a provision on the return of trafficked persons in safety and dignity. Such return should occur only after a proper identification of the protective needs of trafficked persons, including in relation to measures for victims and witness protection.

(v) Protecting the right of asylum

9. HCHR and UNHCR acknowledge that being a victim of human trafficking normally does not suffice to establish a valid claim for refugee status. However, this does not exclude that, under exceptional circumstances, trafficked persons may be in need of international refugee protection, for instance if the acts 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. For such persons, HCHR and UNHCR strongly urge the Commission and Member States to incorporate a “saving clause” into the proposed Framework Decision which will maintain the right to submit an application for asylum, in accordance with the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and other relevant international instruments. This clause should state that “nothing in this Framework Decision shall adversely affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and human rights law and, in particular, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement set out therein.”

(vi) Remedies

10. Victims of human rights violations, such as trafficking, have a right under international law to be provided with access to adequate and appropriate remedies. The effective exercise of this right requires that States provide trafficking victims with information on the possibilities of obtaining remedies, including compensation for trafficking and other criminal acts to which they have been subjected, and legal and other assistance to enable them to obtain the remedies to which they are entitled.

(vii) Protecting the Rights and Interests of Trafficked Children

11. Although a separate Framework Decision on combating the sexual exploitation of children and child pornography is currently being discussed, it is essential to acknowledge that the problem of child trafficking is a distinct one requiring separate attention. The power of the Framework Decision to protect the rights and interests of trafficked children would be strengthened through an explicit reference to the fact that children have special rights under international law, in particular the Convention on the Rights of the Child; that child victims of trafficking have special needs that must be recognised and met by EU Member States; that EU Member States are obliged to take measures to prevent trafficking of children; and that in dealing with child victims of trafficking, the best interests of the child (including the right to physical and psychological recovery and social integration) are to be at all times paramount. It is also important to ensure that the trafficked child is not criminalised in any way (for example, through prosecution for status-related offences) and that sensitive and appropriate measures should be taken to reconcile the child with her or his family or to otherwise meet her or his best interests.

Preventing Trafficking

12. The acknowledged root causes of trafficking include economic factors such as poverty, unemployment and indebtedness; social and cultural factors such as violence against women and girls, gender discrimination in the family, the community and by the State; political and legal factors such as a lack of appropriate legislation and public sector corruption; and international factors such as the growing feminisation of labour migration, on the one hand, and increasingly restrictive immigration policies of recipient countries, on the other. While it is clearly beyond the scope of the proposed Framework Decision to address these issues in any depth, the lack of any reference to prevention of trafficking is a source of concern for HCHR and UNHCR.

The Need for a Non-discrimination clause

13. The principle of non-discrimination is a fundamental rule of international law and one of particular relevance to the situation and vulnerabilities of irregular or illegal migrants. Measures aimed at prevention of trafficking have been used in some situations to discriminate against women and other groups in a manner amounting to a denial of their basic right to leave a country and to migrate legally. The inclusion of a general non-discrimination clause would go some considerable way towards ensuring that such discrimination does not become an unintended side effect of the proposed Framework Decision.

27 June 2001

* * *

Full text (citations omitted):

Council of the European Union Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the Internet (2002)*

Adopted on 29 May 2000 at Brussels, Belgium

Entered into force on 9 June 2000

All EU Member-States were required to have transposed into domestic legislation by 31 December 2000

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 34(2)(c) thereof,

Having regard to the opinion of the European Parliament,

Having regard to the initiative of the Republic of Austria,

Taking account of the resolutions adopted by the European Parliament on 19 September 1996 on minors who are victims of violence, 12 December 1996 on measures to protect minors in the European Union, 24 April 1997 on the Commission communication on illegal and harmful content on the Internet and 6 November 1997 on the Commission communication on combating child sex tourism, and the aide-memoire on the European Union's contribution to reinforcing the prevention of the sexual abuse and exploitation of children,

Bearing in mind the Declaration and Agenda for Action, unanimously accepted by delegates at the World Congress against commercial sexual exploitation of children, held in Stockholm in August 1996, and the conclusions and recommendations of the European follow-up conference to the World Congress, held in Strasbourg in April 1998;

Bearing in mind the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950, and in particular Articles 2, 3 and 10 thereof;

Recalling the European Convention on the Exercise of Children's Rights, adopted in Strasbourg on 25 January 1996, and in particular Articles 1, 6, 7, 8, 9, 10, 11, 12 and 15 thereof;

Having regard to the Universal Declaration of Human Rights, adopted by the UN General Assembly in its Resolution 217 A (III) on 10 December 1948 in Paris, and in particular Articles 2, 3, 7, 25 and 26 thereof;

Recalling Article 34 of the Convention on the Rights of the Child of 20 November 1989;

Bearing in mind Council Joint Action 96/700/JHA of 29 November 1996 establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children;

* 2000 O.J. (L 138) 1 (June 9, 2000) [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:138:0001:0004:EN:PDF>]

Bearing in mind the Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, of 17 February 1997 on illegal and harmful content on the Internet;

Bearing in mind Joint Action 97/154/JHA of 24 February 1997 adopted by the Council concerning action to combat trafficking in human beings and sexual exploitation of children;

Bearing in mind the Council decision of 3 December 1998 supplementing the definition of the form of crime “traffic in human beings” in the Annex to the Europol Convention, and having regard to the Declaration of 3 December 1998 approved by the Council;

Taking into account the recommendation adopted by the Council on 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity;

Recalling the action plan adopted by the Council on 28 April 1997 to combat organised crime(11), approved by the Amsterdam European Council in June 1997, and the 10 principles of the G8 regarding high-tech crime of which the Council took note at its meeting on 19 March 1998 as well as the recommendation of the European Council in Vienna on 11 and 12 December 1998 to ensure an effective follow-up to the initiatives for the protection of children at European and international level, especially in the area of child pornography in the Internet;

Taking into account Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks(12);

Recalling Council common position 1999/364/JHA of 27 May 1999 on negotiations relating to the Draft Convention on Cyber Crime held in the Council of Europe on 27 May 1999(13);

Whereas the traffic in human beings and the sexual exploitation of children constitute a serious infringement of fundamental human rights and in particular of human dignity;

Aware of the fact that the sexual abuse of children and the production, processing, possession and distribution of child pornography material may constitute an important form of international organised crime, the extent of which within the European Union gives cause for ever-increasing concern;

Convinced that respect for the physical and emotional integrity of children and the protection of victims of sexual exploitation are of fundamental importance and must lie at the heart of the Union’s concerns;

Aware of the need for further measures by the Union to promote the safe use of the Internet;

In order to prevent and combat the sexual abuse of children and, in particular, the production, processing, distribution and possession of child pornography material through the Internet,

HAS DECIDED AS FOLLOWS:

Article 1

1. Within the framework of Decision No 276/1999/EC of the European Parliament and of the Council and in order to intensify measures to prevent and combat the production, processing,

possession and distribution of child pornography material and to promote the effective investigation and prosecution of offences in this area, Member States shall take the necessary measures to encourage Internet users to inform law enforcement authorities, either directly or indirectly, on suspected distribution of child pornography material on the Internet, if they come across such material. Internet users shall be made aware of ways to make contact with law enforcement authorities or entities which have privileged links with law enforcement authorities, to enable such authorities to fulfil their task of preventing and combating child pornography on the Internet.

2. Where necessary, and taking account of the administrative structure of each Member State, measures for the promotion of effective investigation and prosecution of offences in this area may be the setting-up of specialised units within law enforcement authorities with the necessary expertise and resources to be able to deal swiftly with information on suspected production, processing, distribution and possession of child pornography.

3. Member States shall ensure that the law enforcement authorities act swiftly when they have received information on suspected production, processing, possession and distribution of child pornography material. Law enforcement authorities may defer taking action if and as long as tactically necessary, for instance with a view to getting at those behind the criminal operations, or at networks (child pornography rings).

Article 2

1. Member States shall ensure the widest and speediest possible cooperation to facilitate an effective investigation and prosecution of offences concerning child pornography on the Internet in accordance with existing arrangements and agreements.

2. To ensure a timely and effective response to these offences, Member States shall communicate already established points of contact, which are set up on a 24-hour basis and consist of knowledgeable personnel, as well as the specialised units which are referred to in Article 1(2) and which can be used for exchange of information and for further contacts between Member States. Points of contact, which Member States have already set up for other duties, may also be used for these purposes. Likewise, existing channels for communication, such as Europol and Interpol shall be used.

3. Member States shall ensure that Europol, within the limits of its mandate, is informed of suspected cases of child pornography.

4. Member States, in appropriate cooperation with Europol, shall examine the possibility of organising regular meetings of competent authorities specialising in combating child pornography on the Internet with a view to promoting general information exchanges, analysis of the situation and the coordination of measures in criminal tactics.

5. Each Member State shall notify the General Secretariat of the Council of its organisational unit or units acting as points of contact pursuant to paragraph 2. The General Secretariat shall inform all other Member States of these points of contact.

Article 3

Member States shall engage in constructive dialogue with industry and examine appropriate measures, of a voluntary or a legally binding nature, to eliminate child pornography on the Internet. In particular, Member States shall exchange experiences on the effectiveness of any measures they have taken to eliminate child pornography on the Internet. In this context, they shall examine the following measures, which would place Internet providers under a duty:

(a) to advise the competent entities mentioned in Article 1 (1) or the units mentioned in Article 1(2) of child pornography material of which they have been informed or of which they are aware and which is distributed through them;

(b) to withdraw from circulation child pornography material of which they have been informed or of which they are aware and which is distributed through them unless otherwise specified by the competent authorities;

(c) in accordance with the Council resolution of 17 January 1995 on the lawful interception of telecommunications⁽¹⁴⁾ to retain traffic-related data, where applicable and technically feasible - in particular for criminal prosecution purposes in cases of suspected sexual abuse of children, production, processing and distribution of child pornography - for such time as may be specified under the applicable national law, to allow the data to be made available for inspection by the criminal prosecution authorities in accordance with the applicable rules of procedure;

(d) to set up their own control systems for combating the production, processing, possession and distribution of child pornography material.

Article 4

Member States shall regularly verify whether technological developments require, in order to maintain the efficiency of the fight against child pornography on the Internet, changes to criminal procedural law, while respecting the fundamental principles thereof and, where necessary, shall initiate appropriate new legislation to that end.

Article 5

Member States shall cooperate, in contact with industry, by sharing their experiences and encouraging, as far as possible, the production of filters and other technical means to prevent the distribution of child pornography material and to make possible the detection thereof.

Article 6

1. The Council shall examine the extent to which Member States have fulfilled their obligations pursuant to Joint Action 97/154/JHA and the extent to which the measures proposed in this Decision have proved effective.

2. The examination referred to in paragraph 1 shall be carried out under Joint Action 97/827/JHA adopted by the Council on 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, subject to the following:

(a) evaluation teams shall consist of two experts;

(b) on-the-spot evaluation shall be made so as to avoid cumbersome procedures.

3. The assessment specified in Title IV B of Joint Action 97/154/JHA shall not be carried out. It shall be replaced by the evaluation referred to in paragraph 2 of this Article.

4. On the basis of the information received in the course of the evaluation pursuant to paragraph 2, the Council shall examine any further measure it may wish to take in order to make the combating of child pornography and sexual exploitation of children more effective.

Article 7

This Decision shall apply to Gibraltar.

Article 8

The measures contained in this Decision shall be implemented by the Member States at the latest on 31 December 2000.

Done at Brussels, 29 May 2000.

...

Full text (citations omitted):

Council of the European Union Resolution 2000/C 260/C of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women (2000)*

Adopted on 20 October 2003 at Brussels, Belgium

Resolutions of the Council of the European Union, unlike directives and decisions, are understood to be declaratory in nature and not to give rise to legal obligations on the part of Member-States. This resolution calls on Member-States to implement the *Anti-Trafficking* and *Anti-Smuggling Protocols*, establish National Rapporteurs on Trafficking in Women, and to adopt cooperative measures to further deter human trafficking. As the resolution is non-binding, it does not include a fixed date by which it must be transposed or implemented into national legislation.

THE COUNCIL OF THE EUROPEAN UNION:

RECALLING

- that according to Article 5(3) of the Charter of Fundamental Rights of the European Union trafficking in human beings is prohibited,
- the Hague Ministerial Declaration of 26 April 1997 on European Guidelines for effective measures to prevent and Combat Trafficking in Women for the purpose of sexual exploitation,
- that the Tampere European Council in October 1999 called for action against human trafficking and the sexual exploitation of children,
- Council of Europe Recommendation 11 (2000) on trafficking in human beings for the purpose of sexual exploitation and Recommendation 1545 (2002) concerning campaigns against trafficking in women,
- the UN Convention on the Elimination of All Forms of Discrimination against Women, especially Article 6, and the UN Convention on the Rights of the Child, especially Articles 34 and 35,
- in particular that the Palermo Protocol (2002) to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime, develops a comprehensive approach specifically addressing trafficking in human beings and covers criminalisation, protection and assistance to victims as well as prevention of this phenomenon,
- the conclusions of the Syracuse Conference of December 2002 aiming to raise awareness of the issue of trafficking, particularly with regard to women, and of the need to widen and intensify activities in the Member States,

* 2003 O.J. (C 260) 4 (Oct. 29, 2003) [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:260:0004:0005:EN:PDF>]

- that in this context, the Council (JHA) meeting with the candidate countries on 28 September 2001 agreed on 12 measures to combat trafficking, among them active operational cooperation, organisation of information campaigns and providing assistance to victims,
- the Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings,
- that the Brussels Declaration of September 2002 aims at further developing European and international cooperation, concrete measures, standards, best practices and mechanisms to prevent and combat trafficking in human beings and that the Council Conclusions of 8 May 2003 agree to examine appropriate proposals made to implement specific items contained in the Declaration,
- that the High Commissioner for Human Rights, in 2002, issued Recommended Guidelines and Principles on Human Rights and Human Trafficking stressing that the human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims, where appropriate,
- that action within the European Union is being developed taking a comprehensive and multidisciplinary approach towards preventing and combating these phenomena,
- that in terms of financial support, Community programmes are an important tool with a view to strengthening policies, practices and cooperation in the EU and between EU Member States and candidate countries in the fight against human trafficking and the sexual exploitation of children,
- in particular that the Structural Funds (ESF and ERDF) can financially support actions to provide assistance to victims, as well as undertaking prevention and facilitating the social and economic integration of victims of human trafficking.

RECOGNISING THAT:

- the aforementioned UN instruments form a basis for enhanced global cooperation which is also reflected in developments regarding the European Union's relations with countries outside the Union,
- trafficking in human beings as defined by European Union law is not only a crime aiming at the sexual or labour exploitation of persons, in particular at the sexual exploitation and domestic slavery of women and children, but also shows disregard for the human rights of the victims,
- a variety of measures are required to tackle this present form of human slavery and programmes are also required for the purposes of the prevention of trafficking, the rehabilitation and the social integration of victims, alongside efforts to bring to justice the perpetrators and put a stop to further victimisation,
- eradication of the root causes of trafficking including, but not limited to, gender inequalities as well as unemployment, poverty and all forms of exploitation, should be at the forefront of long-term efforts to fight trafficking in women.

CALLS ON MEMBER STATES TO:

- ratify and fully implement all international conventions and instruments against trafficking in human beings, in particular the Palermo Protocol to Prevent, Suppress and Punish

Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime,

- take into account the Hague Declaration of 26 April 1997, which invites Member States to provide or explore the possibilities for the appointment of National Rapporteurs on Trafficking in women,

- continue their full commitment to pursuing at national, European and international level their activities against trafficking in human beings, in particular women, wherever possible in cooperation with, and where appropriate by providing support to NGOs,

- underline their commitment in respect of concrete measures, such as campaigns, aimed at increasing awareness and to intensify cross-border and international cooperation in the fields of prevention, victim protection and assistance, with a view to achieving tangible results in the fight against trafficking in human beings, especially women, building on good practices and networks at the appropriate levels,

- support and protect victims in accordance with national law in order to make it possible for them to return safely to their countries of origin or to receive adequate protection in their host countries, in the context of measures supported through the Structural Funds and Community Programmes.

INVITES THE COMMISSION AND THE MEMBER STATES TO:

- use the financial resources of the Community Initiative EQUAL to promote, in accordance with national law, the social and vocational integration of its beneficiaries,

- promote measures to set up a monitoring system on trafficking in human beings in order to provide updated data through the continuous and regular collection of information from the competent National Authorities such as National Bureaux and National Rapporteurs,

- ensure that all actions and initiatives to prevent the trafficking of human beings, especially women and children, and to protect the victims, have a gender sensitive perspective, that they are consistent with internationally recognised principles of non-discrimination and that they take into account the respect for the human rights and fundamental freedoms of the victims in accordance with Community and national law.

Full text (citations omitted):

Report from the European Commission to the European Council and the European Parliament based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2006)*

Adopted by the European Commission on 2 May 2006

Forwarded to the European Council and the European Parliament on 2 May 2006

On 19 July 2002, the Council of the European Union adopted a framework decision on combating human trafficking (also included in this compilation). Although such decisions give rise to binding legal obligations on the part of Member States, unlike directives of the Council of the European Council, they cannot be enforced by the European Commission before the European Court of Justice. As such, Article 10 of the framework decision required the European Commission to instead publicly report on the compliance on Member States with the commitments set out in the framework decision. This communication from the European Commission to the European Council and the European Parliament is that report. It details generally positively actions toward compliance by 21 of the 25 EU Member States.

INTRODUCTION

1.1. Background

Under Article 10 (2) of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (hereafter “the Framework Decision”) the Commission has to provide a written report on the measures taken by the Member States to comply with the Framework Decision (see: OJ L 203 – 1 August 2002).

Paragraph (1) of that Article obliges the Member States to take the necessary measures to comply with the provisions of the Framework Decision by 1 August 2004. According to paragraph (2), Member States should forward to the General Secretariat of the Council and to the Commission by the same day the text of the provisions transposing into their national law the obligations arising from the Framework Decision. On the basis of this information, and a written report by the Commission, the Council should, by the 1 August 2005, have assessed the extent to which Member States have taken the necessary measures to comply with the Framework Decision.

The value and punctuality of this report therefore largely depends upon the quality and punctuality of the information received by the Commission from the Member States. The Commission reminded Member States of their obligation to provide the relevant information by means of a letter sent on 29 July 2004.

By 1 August 2004, however, only four Member States (France, Finland, Cyprus and Austria) had notified the Commission of the measures taken to implement the Framework Decision. By February 2005, fifteen Member States (the aforementioned plus Germany, Estonia, Czech Republic, Malta, Spain, Greece, Latvia, Hungary, Slovak Republic, Sweden and the United

* COM/2006/0187 final [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0187:EN:NOT>]

Kingdom) had provided the Commission with the relevant information. Italy, the Netherlands and Slovenia replied before May 2005, Denmark on 13 July 2005 and Belgium provided the final reply on 29 September 2005. Although Poland provided the information on 4 January 2006, the Report contains only limited information on Polish implementation of the Framework Decision.

Finally, by the end of 2005, the Commission had received no or only preliminary information regarding the implementation of the Framework Decision from four Member States: Portugal, Luxembourg, Ireland and Lithuania. As a result, when analysing implementation measures, the Report will not refer to these Member States.

Therefore, although the deadline for forwarding the text of implementing provisions was 1 August 2004, information provided until the end of January 2006 has been taken into account in the Report as far as is possible.

This Report thus takes stock of the national transposing legislation that has been forwarded to the Commission by the end of January 2006. A Commission staff working paper attached to this Report contains a detailed analysis of the national measures taken by Member States in order to comply with the Framework Decision.

2. METHOD AND CRITERIA FOR THE EVALUATION OF THIS FRAMEWORK DECISION

2.1. Framework-Decisions according to Article 34, paragraph (2), point b) of the Treaty on European Union

This Framework Decision is based on the Treaty of the European Union (TEU), and in particular Article 29, Article 31 (e) and Article 34(2) (b) thereof.

Framework decisions can best be compared with the legal instrument of a Directive. Both instruments are binding upon Member States as to the result to be achieved, but leave to the national authorities the choice of form and method for implementation. Framework decisions do not have direct effect however. The Commission has no legal action before the Court of Justice - at least in the current state of development of European Law - to enforce the transposition at Member States level of a Framework Decision. Nonetheless, the Court of Justice can rule on any dispute between Member States regarding the interpretation or the application (including the transposition) of the Framework Decision. The possible exercise of this right requires a solid factual basis, which the Commission's Report can help to establish.

2.2 Evaluation criteria

In order to be able to evaluate on an objective basis whether a framework decision has been fully implemented by a Member State, some general criteria have been developed with respect to Directives which should be applied *mutatis mutandis* to Framework Decisions:

1. The form and methods of implementation of the result to be achieved must be chosen in a manner which ensures that the Directive functions effectively with account being taken of its aims;
2. Each Member State is obliged to implement Directives in a manner which satisfies the requirements of clarity and legal certainty, and thus to transpose the provisions of the Directive into national provisions which have binding force,
3. Transposition need not necessarily require enactment in precisely the same words used in a Directive. Thus, for example, appropriate and pre-existing

- national measures may be sufficient, as long as the full application of the Directive is assured in a sufficiently clear and precise manner;
4. Directives must be implemented within the period prescribed therein.

Both types of instruments are binding 'as to the results to be achieved. That may be defined as a legal or factual situation which does justice to the envisaged result that the Treaty instrument in question was intended to ensure.

The general assessment provided of the extent to which the Member States have complied with the Framework Decision is -where possible- based on the criteria outlined above.

2.3. Context of evaluation

A preliminary observation concerns the legal context and follow up of the evaluation report. As already mentioned, within the first pillar, the Commission has the ability to start infringement procedures against Member States. Since this possibility does not exist within the TEU, the nature and purpose of this report differs from a report on the implementation of a first pillar Directive by Member States. Nevertheless, as the Commission fully participates in third pillar matters, it is coherent to confer on it the task of carrying out a factual evaluation of the implementation measures. This, in turn, will enable the Council to assess the extent to which Member States have taken the necessary measures in order to comply with the Framework Decision.

A second preliminary observation concerns the specific nature of the field being regulated. The Framework Decision is aimed at combating trafficking in human beings, and introducing a minimum harmonisation of penalties.

Since the 1997 adoption of a joint action by the Council concerning measures to combat trafficking in human beings and the sexual exploitation of children, the number of initiatives has increased considerably at both national and regional levels. Both the Vienna Action Plan and the Tampere European Council called for additional provisions in order to further regulate certain aspects of criminal law and criminal procedure.

This Framework Decision was intended to complement the existing instruments used to combat trafficking in human beings.

Though the evaluation can and will refer to each Article, these cannot necessarily be contemplated in isolation from one another. Partial or non-implementation of an Article or part of an Article will also reflect on linked provisions, which considered independently might seem to comply with the requirements of the Framework Decision - it will affect the system as a whole. The evaluation shall take account, as far as appropriate, of the general criminal legal background of the Member States.

3. ASSESSMENT

The objective of the Framework Decision is to approximate the laws of the Member States in the area of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings. Furthermore, it introduces a common framework of provisions at European level in order to address certain issues such as criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction, prosecution as well as protection of and assistance to victims.

In this respect, not all Member States have sent the Commission all relevant texts of their implementing provisions. The factual assessment and subsequent conclusions are therefore sometimes based on incomplete information. The Commission, for example, received no

information pertaining to the implementation of the Framework Decision from Ireland, Luxembourg, Portugal and Lithuania.

It should likewise be noted that Member State legal systems can vary greatly, and that in many cases legal concepts and expressions cannot always be easily compared to one another. Furthermore, the existence of legislation does not always guarantee full implementation – this is also a matter of the degree to which national courts and/or administrations enforce such legislation, and in what spirit. Given the nature of the information submitted, the Commission does not necessarily have the information to evaluate such enforcement.

Article 1

Article 1 defines trafficking in human beings as being for the purpose of labour or sexual exploitation. The Member States must incriminate any form of recruitment, transportation, transfer or harbouring and any other treatment of a person covered by this definition. Thus, in particular all criminal conduct which abuses the physical or mental vulnerability of a person should be punishable.

On this point the legislation of almost all Member States appear to reflect the provisions of the Framework Decision. As such, a large majority of the Member States seem to comply with Article 1 – and so satisfy the Framework’s Decision requirements in this respect. All Member States have established offences specifically related to trafficking in human beings, albeit with some differences due to different methodological traditions. Furthermore, the consent of the victim to the exploitation shall be irrelevant when means such as coercion, deceit, etc. have been used. Some Member States have provisions that comply explicitly with article 1(2) (Germany, Belgium, Italy, Latvia, Sweden, Slovakia, Austria, Malta, France and The Netherlands).

In the document forwarded to the Commission, however, no specific offences as defined in the Framework Decision could be found in Polish and Estonian legislation.

Article 2

According to the information provided to the Commission, most Member States have simply referred to the pre-existing general rules on complicity and inchoate offences under their respective criminal systems. Some Member States did not provide detailed information concerning the provisions on abetting. They mention in their forwarded documents what their provisions were in relation to those who abetted offences (Denmark, Latvia, Slovakia and Estonia). Cyprus and Finland did not provide the Commission of information regarding instigation. Greece and Slovenia did not supply the Commission with information regarding Article 2 of the Framework Decision. In conclusion this requirement of the Framework Decision appears to be satisfied in almost all cases, though only some Member States have specific provisions on the issue. More commonly, Member States generally have general provisions concerning instigation, aiding, abetting and attempt that also apply to offences concerning trafficking in human beings.

Article 3

Human trafficking is a serious crime, often committed against particularly vulnerable persons, and must be punishable with effective, proportional and dissuasive penalties. It must be addressed not only through individual national action, but by a comprehensive approach in which a common definition of the constituent elements of the offence is established within all Member States. Special attention must be paid to penalties for offences that are committed in aggravating circumstances, for example when the life of the victim has been endangered or where serious violence was used against the victim. The question as to whether or not

criminal penalties which can be imposed by Member States are sufficiently effective and dissuasive can be answered in the affirmative. In most cases Member States have provided for severe maximum penalties for offences pertaining to human trafficking; in particular for offences committed in aggravating circumstances, with life imprisonment being the punishment in some cases. According to Article 3 (2) (b) of the Framework Decision Member States have different penalties depending of the age of the victim for offences committed for the purpose of sexual exploitation. However, the question may be raised if all trafficking offences against children (i.e. including trafficking for labour exploitation and covering all persons below the age of eighteen years and not only below the age of sexual consent) should be considered as committed under aggravating circumstances. Such a comprehensive approach seems to ensure more adequate protection for children and to be more consistent with the Convention on the Rights of the Child of 1989 (CRC) as the most important international child rights instrument, which also includes provisions on child trafficking and applies to every child under the age of 18 years.

Article 4 and 5

The Framework Decision introduces the concept of liability of legal persons in parallel with that of natural persons. Legal persons will be held liable for offences committed for their benefit by any person acting either individually or as part of the organ of the legal person, or, for example who exercises a power of decision. Sanctions on legal persons will be “*effective, proportionate and dissuasive*”; they shall include criminal or non-criminal fines and may include specific sanctions such as a temporary or definitive ban on commercial activities, a judicial dissolution measure or exclusion from public benefits or advantages. The legislation of most of the Member States provides for the possibility of sanctioning legal persons by means of criminal or administrative measures. It is only under the legislation of the Czech Republic, Latvia and the Slovak Republic that legal persons cannot be held liable for criminal offences. Article 5 of the Framework Decision states that the minimum obligations as far as sanctions on legal persons are concerned is the imposition of criminal or non criminal fines. As such, Articles 4 and 5 appear to have largely been implemented.

Article 6

All Member States will presumably be able to comply with this Article as regards the application of the territoriality principle as set out in Article 6(1)(a). As regards extra-territorial jurisdiction, a majority of Member States have or will have rules which to different extents cover the principles of active and passive personality, as required in Article 6(1)(b) and (c). It seems that the vast majority of the Member States establish jurisdiction over offences that are committed abroad by their own nationals according by article 6(1)(b). This is particularly important as trafficking in human beings often has a trans-national dimension. The general situation with regard to Article 6(1)(c) of the Council Framework Decision concerning jurisdiction over offences committed for the benefit of a legal person established in the territory of the Member State, is less clear. Some Member States, for example the United Kingdom, implemented the provision. Others, for example Denmark, decided that they will not apply this jurisdiction rule as far as the offence is committed outside its territory and informed the Commission in accordance with Article 6(2) and (4). Also Hungary does not establish its jurisdiction according to Article 6(1)(c) even if the liability of the legal persons is generally regulated by Hungarian law.

Article 7

Article 7 regulates two different issues; firstly, it provides that trafficking offences shall not be dependent upon a report or accusation made by the victim. In general Member States seem to comply with this obligation. Secondly Article 7 obliges the Member States to provide for specific protection of and assistance to victims, in particular children. This mainly concerns

the application of Council Framework Decision 2001/220/JHA of 15 March 2001 on victims in criminal proceedings. However, only a few Member States sent relevant information regarding implementation of Article 7 to the Commission. As such, it is difficult to evaluate this aspect of implementation.

Article 8

The Commission has not received specific information on transposition in Gibraltar.

4. CONCLUSION

It should be noted that not all Member States have transmitted to the Commission all relevant texts of their implementing provisions in a timely fashion. The assessments and conclusions of the Report are therefore sometimes based on incomplete information.

On the basis of the information provided, the requirements set out in the Council Framework Decision appear to have been largely met by Member States – either as a result of pre-existing domestic laws, or through the implementation of new and specific legislation. Where it appears that the Council Framework Decision has not been given effect in national provisions, the Commission invites the relevant Member States to correct this situation as soon as possible through the introduction of implementing legislation.

Nonetheless, as a result of the Council Framework Decision Member States generally now dispose of specific criminal law provisions incriminating trafficking in human beings for the purpose of sexual and labour exploitation, and providing for effective proportionate and dissuasive penalties. Moreover particularly severe penalties are foreseen for offences committed in aggravating circumstances. On the other hand, the levels of penalties in the Member States vary considerably and the Commission may have to examine the possibility of further harmonisation in that regard. In general, there was no need for Member States to amend their domestic legislation in order to comply with Article 6 of the Council Framework Decision, as pre-existing measures were already in place. Generally speaking, Member States comply with Article 7(1) of the Framework Decision; however protection and assistance regimes may be subject to further examination as the Commission received only limited information concerning the implementation of Article 7(2) and (3).

As regards particularly vulnerable victims, the Commission again only received limited information, and thus cannot provide an exhaustive evaluation in this respect. In accordance with the Action Plan adopted by the Council on 1-2 December 2005, the Commission will further develop legislation in respect of vulnerable victims involved in criminal proceedings. In order to do so, the Commission will need further specific information on relevant Member State legislation. Furthermore the Commission may have to gather information reflecting the views of victim support authorities or organizations in order to fully, and as objectively as possible, assess the impact of the Framework Decision on the practice of victim support and assistance. Finally, it should be noted that once a report has been submitted on the Council Framework Decision on combating sexual exploitation and child pornography of 22 December 2003, for which the implementation deadline was 20 January 2006, the Commission will be able to present a fuller picture on the implementation of human trafficking relevant legislation in the Member States. This picture will be further completed by the report on the application of Council Framework Decision 2002/946/JAI on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and evidence, of Directive 2004/81/EC 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, that the Commission is due to present by 6 August 2008 (Article 16 of the Directive).

Full text (citations omitted):

Communication from the European Commission to the European Parliament and the European Council – Fighting trafficking in human beings: an integrated approach and proposals for an action plan (2005)*

Adopted by the European Commission on 18 October 2005

Forwarded to the European Council and the European Parliament on 18 October 2005

This communication from the European Commission proposes actions to strengthen and move beyond the Framework Decision on Combating Human Trafficking, adopted by the Council of the European Union on 19 July 2002 (also included in this compilation). Like most European Union initiatives on the topic, it seeks to situate human trafficking as a human rights issue as well as one of organized crime. The document explicitly calls for a “*human rights centred approach*” [emphasis in original] to be adopted by Member States in addressing human trafficking and protecting its victims. It provides recommendations in a variety of sectors including fighting transnational crime, special protections for women and children, data sharing, and cooperation at the national, regional and global level.

I. INTRODUCTION

This Communication aims at further strengthening the commitment of the European Union, and the Member States to prevent and fight against trafficking in human beings, committed for the purpose of sexual or labour exploitation as defined in the Framework Decision of 19 July 2002 on combating trafficking in human beings, and to the protection, support and rehabilitation of its victims.

It is based on the recognition that in order to effectively address human trafficking an integrated approach is needed, having as its fundament the respect of human rights and taking into account its global nature. This approach calls for a coordinated policy response notably in the area of freedom, security and justice, external relations, development cooperation, employment, gender equality and non discrimination. It also aims to reinforce the broad public-private dialogue in this area.

Such response is required in the Hague Programme, endorsed by the European Council in November 2004, in which the Council and the Commission are invited to develop a plan in 2005 for common standards, best practices and mechanisms to prevent and combat human trafficking and to enhance the fight against illegal immigration.

The Communication that was announced in the Commission and Council Action Plan implementing the Hague Programme, intends to contribute to the establishment of this plan. It takes due account of the comprehensive action plan to combat illegal immigration and trafficking in human beings of 2002 and of the reflection and recommendations presented in the Report of December 2004 of the Expert Group on Trafficking in Human Beings that was set up by the Commission end 2003.

* COM/2005/0514 final [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0514:EN:NOT>]

II. THE FUNDAMENTAL CONCERN: THE PROTECTION OF HUMAN RIGHTS

The persons concerned, their needs and rights shall be at the centre of the EU policy against human trafficking. This means first and foremost a clear commitment of EU institutions and Member States to follow a *human rights centred approach* and to promote it in their external relations and development policies.

Article 5(3) of the Charter of Fundamental Rights of the EU prohibits human trafficking in the context of inviolable human dignity which is at the very core of national constitutions and international human rights instruments binding the Member States.

According to international laws and commitments, the State which condones human trafficking or does not take any effective measure to curb it commits a human rights violation.

EU institutions and Member States shall actively pursue policies reinforcing the prohibition of human trafficking including the protection of real and potential victims at EU as well as at regional and international level.

Third country nationals who are victims of human trafficking but without a legal residence status in the EU should not be excluded from such protection, in particular if they have cooperated with Member States' competent authorities by testifying against their traffickers. Moreover, such persons should not be *de facto* excluded from the possibility of exercising their rights, for example to initiate an action against the perpetrator or for compensation or to seek asylum.

Regular monitoring and follow up at experts and political level ensuring compliance with the above principles throughout the EU is essential.

The Council, in close cooperation with the Commission and on the basis of an in-depth dialogue with civil society, should hold at least once a year a political debate on the EU anti-trafficking policy and assess its compliance with human rights standards and the need for further action, e.g. improving schemes for assistance, protection and social inclusion.

It is legitimate to raise the issue in the political dialogue with third countries, drawing on the human rights essential elements clause which is included in EC trade and co-operation agreements, and in multilateral fora.

The Community should strengthen the political dialogue with partner countries at bilateral and multilateral level on the human rights dimension of human trafficking and of anti-trafficking policies, as well as continue raising the issue in relevant regional and multilateral fora.

The European Initiative for Democracy and Human Rights gave special attention to the issue in 2005/2006 and envisaged specific support under the campaign "Fostering a culture of human rights".

EU institutions and Member States should intensify efforts to address the issue of human trafficking within the EU and in relations with third countries, e.g. by building on efforts to support anti-trafficking initiatives through development co-operation.

III. THE ORGANISED CRIME DIMENSION

Human trafficking is a serious crime against persons, which must be addressed as a form of organised crime linked to other serious offences and as a clear law enforcement priority. High profits from labour and sexual exploitation are often subject to money laundering and may enable traffickers to engage in other criminal activities and to achieve economic, social or even political power.

Human trafficking has to be converted from a “low risk – high reward enterprise for organised crime” into a high risk - low reward one. Law enforcement must use all the resources and capacity available to enforce the prohibition of human trafficking, to deprive it of any economic advantage and, where financial gain has been made, to seize and confiscate any assets. The investigation of human trafficking should be afforded the same priority as other areas of organised crime in that specialist investigative techniques and disruption strategies should be employed.

Member States should provide for necessary organisational structures, specialised personnel and adequate financial resources to their law enforcement authorities to effectively combat human trafficking. Insofar the Council, on the basis of evaluations of the Commission and within the competences of the Union, should ensure regular monitoring and develop standards and benchmarks.

Human trafficking for labour exploitation requires new types of specialisation and cooperation with partners, e.g. agencies responsible for the control of working conditions and financial investigations related to irregular labour.

Anti corruption strategies should make an integral part of any anti trafficking policy.

EU institutions and Member States should promote combating human trafficking as a priority in their law enforcement relations with third countries.

The testimony of the victim is highly important as evidence against a trafficker. Given the increased risk for a testifying victim, the challenge is to find ways to have victims give testimony while ensuring their safety and without exposing them or their relatives to risks.

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

European bodies have been equipped with specific competencies and specialised personnel. Eurojust has a competence for human trafficking. The role of Europol is particularly important. It can provide access to intelligence databases and offers operational support through the exchange of intelligence and expert advice. It shall facilitate the exchange of information and provide operational analysis for Member States and generate strategic reports on the basis of the information and intelligence supplied by Member States, generated by Europol or gathered from other sources.

However, the information flow from Member States to Europol is small compared to the number of investigations. It would appear that investigations are based more on spontaneous bi- or multilateral co-operation and the regular structures and mechanisms are seen as options. There is only one Analytical Work File managed by Europol on behalf of the Member States that is specifically focussed upon human trafficking.

Member States should ensure that national law enforcement agencies regularly involve Europol in the exchange of information, in joint operations and joint investigative teams and use the potential of Eurojust to facilitate the prosecution of traffickers.

The European Police Chiefs should regularly monitor operational cooperation between Member States and, where appropriate, make recommendations for its improvement.

CEPOL should continue to regularly organise specific training for law enforcement personnel.

EU institutions and bodies as well as Member States should support and strengthen regional forms of police cooperation, notably through programmes such as AGIS.

On 4 August 2005, only 15 Member States were party to the UN Trafficking Protocol and only 13 Member States party to the UN Protocol on Migrant Smuggling. The Commission proposed the conclusion of these Protocols by the European Community in August 2003 but the Council has not adopted the relevant decision due to disagreement on the extent of Community competence with regard to the provisions of these Protocols.

The Council should as soon as possible adopt the proposal for a Decision on the conclusion, on behalf of the EC, of the UN Trafficking Protocol submitted by the Commission on 22 August 2003.

EC instruments combating money laundering, in particular to strengthen the criminal law response such as the new Directive recently proposed by the Commission will form a basis to tackle the financial implications of trafficking in human beings. Full use must be made of the new Council Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property. The work of the Financial Action Task Force, in particular of the Working Group on Typologies (WGTYP), which focuses, inter alia, on *Money Laundering Methods Associated with Human Being Trafficking*, must be followed and evaluated in order to develop further political and operational options to combat human trafficking.

IV. THE ILLEGAL MIGRATION DIMENSION

The crime of human trafficking often has a transnational dimension as numerous trafficked persons move or are brought across external borders. For this reason, the prevention of and the fight against human trafficking is an essential element of the EU's efforts to improve the checks and surveillance at the external borders and to enhance the fight against illegal immigration.

Migrant smuggling and human trafficking are linked by the fact that they are frequently organised by internationally operating criminal networks and part of organised crime phenomena linked with the demand for cheap and illegal services. As far as the facilitation of unauthorised entry, transit and residence by such networks is concerned, Directive 2002/90/EC of 28 November 2002 and the Framework Decision of the same day already play an important role to prevent these criminal activities.

In 2002, the Council adopted a comprehensive action plan to combat illegal immigration and trafficking of human beings in the EU, which contains a wide list of measures and actions ranging from visa policy, information exchange, border related measures to return issues and criminal sanctions against the traffickers. A number of measures proposed in the 2002 Action Plan were implemented, in particular:

- (1) Directive 2004/81/EC of 29 April 2004, which defines the conditions for granting a residence permit to third-country nationals who are victims of human trafficking or

who have been subject of an action to facilitate illegal immigration and who cooperate with the authorities, and

(2) Regulation (EC) N° 491/2004 of 10 March 2004, establishing the AENEAS programme for financial and technical assistance to third-countries in the area of migration and asylum, which explicitly allows for the co-financing of projects related to the prevention and the fight against human trafficking.

The same comprehensive approach is also to be found in the UN Protocol on Migrant Smuggling as well as in the UN Trafficking Protocol, which reflect the global recognition of the problem and should be swiftly ratified by all EU actors.

If action against human trafficking is to be reinforced, the following border control and migration management related measures should be taken:

Member States should – in order to improve the status of trafficked persons - speed-up the transposition of Directive 2004/81/EC.

The Commission will consider the possibility of regularly organising meetings of experts from Member States to exchange information on means and methods used for the purpose of migrant smuggling in order to draw practice oriented conclusions for preventing and combating human trafficking, e.g. regarding recruitment and transportation of victims. The European External Borders Agency (FRONTEX) and CEPOL should pay specific attention to these phenomena in their respective training programmes.

The Member States should ensure that, on the basis of the future Regulation establishing a Community Code on the rules governing the movement of persons across borders particular attention will be paid to more efficient and targeted checks at the EU's external border crossing points on potential victims of human trafficking.

The FRONTEX Agency will assist Member States on this task. FRONTEX should take into account the need to combat the traffic of human beings in the coordination and organisation of joint operations and pilot projects at the external borders and in the fulfilment of its risk analysis function. EUROPOL and FRONTEX should cooperate in this domain in the framework of their respective competences.

The Council should as soon as possible implement biometric identifiers in EU visa and residence permits since more secure documents are helpful for the identification of trafficked persons.

Council, European Parliament and Commission should as soon as possible, in accordance with their respective responsibilities, complete the development of a common Visa Information System.

Consular staff in countries of origin should cooperate and exchange experience and be trained in recognising visa applications which could involve human trafficking.

V. SPECIFIC GROUPS, ESPECIALLY WOMEN AND CHILDREN

The promotion of non-discrimination including gender equality, the rights of children, indigenous people and minority groups is particularly relevant as many victims or potential victims of human trafficking are women, children and individuals belonging to ethnic and minority groups who may be subject to discrimination in their place of origin. Human trafficking is not necessarily a gender specific crime as men and, in particular, boys are also

victims of sexual and labour exploitation. However, trafficking in women and girls especially for commercial sexual exploitation is a wide reality.

EU institutions and Member States should promote gender specific prevention strategies as a key element to combat trafficking in women and girls. This includes implementing gender equality principles and eliminating the demand for all forms of exploitation, including sexual exploitation and domestic labour exploitation.

Within the EU, programmes such as Daphne should continue to be used for financial support of projects addressing human trafficking as violence against children, women and other groups at risk, whereas increased attention should be included in development cooperation.

Further attention and research on trafficking in children within Europe are needed. Municipalities confronted with the problem of forced child labour (including 'sweat shops', begging, pick-pocketing and prostitution) should be actively supported. Solutions to address the problem should be developed in close consultation with the countries of origin of the children, in particular coercing children into prostitution or engaging in sexual activities with child prostitutes. The Commission will, in 2006, when evaluating the implementation of the Council Framework Decisions on combating trafficking in human beings and the sexual exploitation of children and child pornography, focus in its evaluation reports on the need for further strengthening of legal framework specifically addressing child trafficking and related offences, in particular coercing children into prostitution or engaging in sexual activities with child prostitutes, and where necessary submit appropriate proposals.

Child trafficking must be tackled in the light of the EU Charter of Fundamental Rights that stresses the child's best interests as a primary consideration in all actions relating to children. The *Convention on the Rights of the Child of 1989 (CRC)* as the most important international child rights instrument includes provisions on child trafficking. The Convention applies to every child under the age of 18 years, an approach which is shared by the Commission. The UN Trafficking Protocol must be read in the light of the CRC, taking into account also other relevant international instruments, such as the Optional Protocol on the sale of children, child prostitution and child pornography of 25 May 2000 and the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour as well as the Hague Convention on the Protection of Children and Co-operation in Respect of Inter Country adoption. The actions decided in this field by the 46 Member States of the Council of Europe at their Warsaw summit should also be accounted for, in particular the 3-year Action Programme on Children and Violence.

EU institutions and Member States should ensure that the EU anti trafficking policy reflects a child rights approach based on globally recognised principles, in particular in the UN Convention on the Rights of the Child. Such approach must consequently apply to any person below the age of 18. Coordination with the Council of Europe Action Programme on Children and Violence (2006-2008) should also be ensured.

Particular attention has to be paid to *unaccompanied minors* or children travelling without an immediate family member in the context of border management as it has been done in the recently adopted *Regulation establishing a Community Code on the rules governing the movement of persons across borders*. Very soon the Commission will address the protection of children in a specific communication.

Development co-operation must provide an effective contribution to address the plight of trafficked children in Developing Countries.

The Commission should ensure that Country and Regional Strategy Papers, wherever relevant and possible, strengthen strategies to address factors facilitating child trafficking such as the failure to secure birth registration or the lack of access to basic education.

VI. RELIABLE DATA

The EU anti trafficking policy must be based on a clear picture of the actual extent of the problem at EU and global level. But precise figures are not available, and law enforcement data, although important, are not sufficient. In 2003, the Council invited the Commission and the Member States to promote measures to set up a monitoring system on human trafficking in order to provide updated data through the continuous and regular collection from the competent national authorities. Taking into account the 2003 Statistics Action Plan and Eurostat data in the area of migration which cover aspects of the phenomenon, the first step for a coherent statistical system is to systematically collect and analyse data - disaggregated by age, sex and other relevant aspects - from *different* sources based on common guidelines at a central place at the national level. When data are adequately gathered at the national level, it becomes essential to collect and compare them at the European level as well as to cooperate at the EU and global level with third countries, international organisations and NGOs. Member States should dispose of independent institutions, e.g. National Rapporteurs or Bureaus, with systematically collecting data, including from NGOs, and monitoring the effects of national action plans.

The Commission will, taking into account existing bodies at EU level and the possible future role of Eurostat examine possibilities for the collection and comparison of relevant national data in order to ensure proper monitoring at EU level.

The future European Union Agency for Fundamental Rights should – in line with its mandate and in close cooperation with the future European Migration Network (EMN) as well as with the Experts Group on Trafficking in Human Beings – collect and analyse data on human trafficking. It should develop methods to improve the comparability and reliability of data at European level, in co-operation with the Commission and the Member States.

The Community and the Member States should promote such approach in the relations with third (in particular Developing) countries and key international organisations.

VII. COORDINATION AND COOPERATION

Appropriate coordination and cooperation structures are necessary but can differ from one country to another as long as they ensure that major aims of an anti-trafficking policy are effectively achieved, in particular proper identification and referral of trafficked persons to protection and support mechanisms. They should bring together and balance different interests of the institutions or organisations involved.

Public-private cooperation

Throughout the EU and worldwide civil society organisations play a crucial role in assisting trafficked persons. The relation between such organisations, furthermore employer organisations, and law enforcement agencies shall be based on mutual understanding and trust.

Member States should consolidate the cooperation of public authorities with civil society organisations related to the prevention of and the fight against human trafficking, e.g. by setting up rules agreed upon by both sides that promote mutual understanding and trust. Where appropriate employer organisations and representatives of specific industries should also be involved.

The Commission shall continue and enhance the dialogue with civil society organisations in this area, notably by way of the Expert' Group in Trafficking in Human Beings and the Forum on Organised Crime.

The Council, further to a contribution from the Commission, should adopt EU guidelines and/or a European Model Protocol of cooperation in order to facilitate such cooperation throughout the EU and in third countries.

National cooperation

The Experts' Group gives special emphasis to establishing *National Referral Mechanisms* as an instrument *of national cooperation*, as already recommended in the OSCE Action Plan to Combat Trafficking in Human Beings

Member States should consider establishing National Referral Mechanisms ensuring identification and referral of trafficked persons as well as A governmental coordination structure could draw up, coordinate and evaluate national policies and contribute to mechanisms addressing individual complaints.

Cooperation at EU level

National cooperation and coordination mechanisms should form the basis for a corresponding mechanism at EU level providing for expert advice and a broad public-private dialogue.

The Commission will examine appropriate coordination and cooperation mechanism at EU level ensuring the development of minimum standards and benchmarks, evaluation rounds of the Member States' anti trafficking policy and the indication of areas for priority action, especially on victim support and protection.

Cooperation with countries of origin, transit and destination

The Commission will continue to address under the AENEAS programme and, where appropriate and possible, other thematic or geographical Community funds to actions in third countries aimed at combating and preventing human trafficking, protecting and assisting victims and promoting cooperation between these countries and the EU.

Where relevant, the Commission should ensure that human trafficking and the policy framework and strategies for its prevention and mitigation are assessed in the Poverty Reduction Strategy Papers, Country and Regional Strategy Papers and Indicative Programmes and their reviews.

The Community should – notably through the EU development policy, which focuses on the primary objective of poverty reduction, and the achievement of the Millennium Development Goals - continue funding measures addressing factors that make persons vulnerable to trafficking, e.g. poverty, lack of access basic and higher education, gender inequality, denial to the right of nationality, discrimination and the lack of access to services and of equal opportunity.

Cooperation at regional and global level

Cooperation has to be further strengthened at the global level, in particular, through advocating and assisting third-countries in the swift ratification and implementation of the UN Trafficking Protocol, and by supporting the work of the UN Special Rapporteur on trafficking in persons, especially in women and children

The Commission will continue to cooperate with the Council of Europe and with the OSCE, especially within the *Alliance against Trafficking in Persons*, initiated by OSCE Special Representative on Combating Trafficking in Human Beings.

EU institutions and Member States should:

- Continue to cooperate with relevant international organisations e.g. UN, OSCE and Council of Europe; the Union shall in particular make full use of Council of Europe expertise where action is required within its competence.
- Aim at appropriate coordination and cooperation mechanisms based on relevant international instruments;
- Continue to promote regional initiatives that could complement and inspire EU wide cooperation, e.g. the Nordic Baltic Task Force against Trafficking in Human Beings, the Southeast European Co-operative Initiative, the pan-European Budapest Process, the “5+5 dialogue” between the Western Mediterranean countries and the Mediterranean Transit Migration Dialogue.

Full text:

OSCE Ministerial Council Decision No. 8/07: Combating Trafficking in Human Beings for Labour Exploitation (2007)*

Adopted by the OSCE Ministerial Council on 30 November 2007, in Madrid, Spain

The Ministerial Council,

Reaffirming our determination to combat all forms of trafficking in human beings, as well as reaffirming the commitments that the participating States have undertaken in the field of combating trafficking in human beings and the resolve to implement them,

Recalling the tasking of the Brussels Ministerial Council Decision No. 14 to consider ways to further strengthen efforts to combat trafficking in human beings, including for labour exploitation (MC.DEC/14/06),

Reaffirming furthermore the OSCE Action Plan to Combat Trafficking in Human Beings, which provides participating States with a comprehensive toolkit for combating all forms of trafficking in human beings by protecting victims, preventing trafficking in human beings and prosecuting those who facilitate or commit the crime,

Reiterating the support of the participating States for the ratification and implementation of the United Nations Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,

Seriously concerned that trafficking in human beings remains widespread in the OSCE region and beyond, despite national and international efforts to prevent it and to bring to justice those responsible,

Recognizing the need to strengthen further the framework of OSCE commitments to address the challenges of trafficking for labour exploitation,

Recognizing the vulnerability of children to trafficking for labour exploitation and the special needs of child victims,

Emphasizing that policies and practices to address trafficking for labour exploitation, which arises within the formal and informal economy, should be comprehensive and therefore include enforcement of labour laws,

Underlining that measures to address trafficking for labour exploitation should be formulated with and encourage greater participation of labour actors, including workers and employers organizations, labour administrators and inspectors,

Reaffirming the OSCE commitments concerning travel document security,

Recognizing that persons with irregular immigration status are likely to be more vulnerable to trafficking for labour exploitation,

* MC(15) Journal No. 2, Agenda item 8 [http://www.osce.org/documents/mcs/2007/12/28630_en.pdf]

Reaffirming the need to ensure respect for human rights and in this context recalling the core international human rights instruments of the United Nations, including, as they may apply to those particularly vulnerable to trafficking for labour exploitation,

Recognizing the challenges of identification of and assistance to victims, including their uncertainty regarding their eventual residential status, and that might arise out of the use of intimidation and the exploitation of victim's fears by traffickers, and recognizing the need for complaints procedures that encourage victims to come forward,

Calls on participating States to:

1. Ensure that victims of trafficking for labour exploitation have access to justice;
2. In conformity with domestic law and international obligations, provide a reflection delay and grant temporary or permanent residence permits to victims of trafficking, allow for the provision of work permits to victims during their stay, and raise awareness of such opportunities;
3. Ensure the provision of assistance to victims of trafficking for labour exploitation, and in particular access to shelter, healthcare, legal assistance and social assistance taking into consideration the recommendations in Part V of the OSCE Action Plan to Combat Trafficking in Human Beings and its Addendum Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, and raise awareness about the availability of such services;
4. Provide increased efforts and more effective procedures to identify victims of trafficking and, in this respect, provide training and resources necessary for this task to their labour inspectors and, where appropriate, step up inspections in sectors vulnerable to labour exploitation;
5. Support and promote partnerships between civil society, including NGOs, and State agencies with a labour protection mandate to monitor working conditions, to provide, among others, assistance to victims and prevent trafficking for labour exploitation and violation of labour laws, including through targeted awareness-raising programmes or voluntary codes of conduct;
6. Consider allowing, in accordance with national law, for alternate representation for victims of trafficking for labour exploitation in proceedings where the victim is unable to do so;
7. Consider elaborating or strengthening their legislation that offers victims of trafficking for labour exploitation the possibility of obtaining compensation for damage suffered, including, where appropriate, restitution of wages owed to them;
8. Increase multi-agency co-operation and interaction on labour trafficking issues among their labour and immigration officials, law enforcement, judicial officials and social services providers, including through the establishment or strengthening, as appropriate, of national referral mechanisms as recommended in the OSCE Action Plan to Combat Trafficking in Human Beings;
9. Ensure that civil society organizations, which legally provide assistance to victims of trafficking for labour exploitation, are not penalized or criminalized for providing such assistance;

10. Provide, in accordance with the basic principles of their legal system, for the possibility, where appropriate, of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so;
11. Ensure effective complaint procedures where individuals can report in a confidential manner circumstances that might be indicative of a situation of trafficking for labour exploitation, such as exploitative working and living conditions;
12. Develop indicators taking into account, as appropriate, those developed by the ILO Committee of Experts to ensure consistency and transparency in the identification of victims of trafficking for labour exploitation and in the detection of situations of trafficking for labour exploitation;
13. Consider further expert discussion of how to distinguish cases of trafficking for labour exploitation from other situations of irregular employment;
14. Ensure effective and proportionate sanctions against those who facilitate trafficking for labour exploitation, including exploitative employers;
15. Ensure effective sanctions when employers or recruitment agencies create situations of debt bondage;
16. Develop programmes to curb the fraudulent recruitment used by some employment agencies that can make persons more vulnerable to being trafficked;
17. Consider ensuring that contractors who knowingly use subcontractors involved in trafficking for labour exploitation can be held accountable for that crime;
18. Consider providing training for judges, prosecutors, police officers and labour inspectors concerning trafficking for labour exploitation, from the perspectives of both prosecution and victim protection, and in this respect, ensure, where necessary, adequate resources are provided;
19. Target awareness-raising campaigns in countries of origin, transit and destination, directed in particular at groups vulnerable to trafficking for labour exploitation;
20. Intensify efforts to prevent child labour, by considering signing and ratifying the ILO Convention on the Worst Forms of Child Labour, 1999, if they have not already done so, and if they are already parties to it, by implementing its provisions;
21. Increase co-operation at an international level by sharing information and best practices on combating trafficking for labour exploitation, and examining ways to strengthen collaboration concerning law enforcement as well as victim protection and reintegration assistance in situations of repatriation;
22. Improve data collection and analysis of the nexus between trafficking for labour exploitation and migration and share such information with other OSCE participating States.

Full text:

OSCE Ministerial Council Decision No. 14/06: Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach (2006)*

Adopted by the OSCE Ministerial Council on 5 December 2006, in Brussels, Belgium

The Ministerial Council,

Seriously concerned that all forms of trafficking in human beings remain widespread in the OSCE region and beyond, in spite of intensified national and international efforts to counter the phenomenon,

Considering that trafficking in human beings is a grave and heinous crime that violates human dignity and undermines the enjoyment of human rights and fundamental freedoms, and that feeds organized criminal networks,

Recognizing that law enforcement, prosecution of perpetrators, protection, rehabilitation, integration and reintegration of victims as appropriate, including their effective access to justice, as well as prevention, including by measures directed at the demand side, are important to effectively combat trafficking in human beings,

Underscoring that the complexity of trafficking in human beings requires a multidimensional and multi-actor response that should be co-ordinated at the national, regional and international levels,

Reiterating the support of the participating States for the ratification and implementation of the United Nations Convention against Transnational Organized Crime (Palermo Convention), and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Reaffirming the significance of the OSCE Action Plan to Combat Trafficking in Human Beings, including its Addendum Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance endorsed by the Ministerial Council in Ljubljana in 2005, and its implementation by participating States,

Taking note of the outcome of the November 2006 Conference on Human Trafficking for Labour Exploitation/Forced and Bonded Labour, Prosecution of Offenders, Justice for Victims,

Recalling the International Covenant on Economic, Social and Cultural Rights, in particular articles 6 and 7 on the right to work and to the enjoyment of just and favourable conditions of work,

1. Calls on the participating States to continue engaging at a senior political level with the Special Representative on Combating Trafficking in Human Beings to enhance the implementation of the OSCE anti-trafficking commitments;

2. Urges the participating States to promote a comprehensive approach to combating all forms of trafficking in human beings through national, regional and international arrangements, co-

* MC(14) Journal No. 2, Agenda item 8 [http://www.osce.org/documents/mcs/2006/12/22551_en.pdf]

operation and co-ordination between law enforcement personnel, labour inspectorates, social protection units, medical institutions, immigration and border service officials, civil society organizations, victim support services, and the business community and any other relevant actors, also including a gender-sensitive approach. To this end, the participating States are recommended to establish National Referral Mechanisms (NRMs), as well as to appoint national co-ordinators;

3. Urges the participating States, with the support of the OSCE structures and institutions if requested, to improve research and the system of data collection and analysis, with due regard to the confidentiality of data, and where possible to disaggregate statistics by sex, age, and other relevant factors as appropriate, in order to better assess the character and scope of the problem and develop effective and well-targeted policies on trafficking in human beings. To this end, participating States are recommended to consider appointing National Rapporteurs or similar independent monitoring mechanisms;

4. Urges the participating States, in co-operation with international organizations and NGOs when appropriate, to seek to diminish the risk for repatriated victims to be re-trafficked, particularly by addressing factors that make persons more vulnerable to trafficking in human beings such as poverty, discrimination, lack of access to education and economic opportunities, sexual abuse, and domestic violence and by conducting risk assessments to ensure that return of victims is done with due regard for their safety;

5. Underlines the importance of providing effective access to justice for victims of trafficking in human beings, including in the areas of counselling and information about their legal rights in a language that they can understand, as well as in providing the possibility to obtain compensation for damage suffered and calls on the participating States to implement their obligations under the relevant provisions of the UN Convention against Transnational Organized Crime (Palermo Convention) and its supplementing Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children;

6. Encourages the participating States to combat trafficking in human beings for labour exploitation in a more proactive manner, including by:

(a) Ensuring that their national criminal legislation trafficking in human beings for labour exploitation complies with the requirements of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the UN Convention against Transnational Organized Crime. To this end the participating States are encouraged to ensure that such crimes can be appropriately identified and prosecuted;

(b) Ensuring that minimum labour standards are reflected in their labour laws, and that their labour laws are enforced, in order to reduce the potential of trafficking in human beings for labour exploitation;

(c) Conducting training programmes for relevant officials, as well as other persons likely to come into contact with presumed trafficking victims, such as health workers, social workers, labour inspectors, and others, in order to improve their ability to identify trafficking victims and refer them to assistance and protection services;

(d) Ensuring that information campaigns to raise awareness of trafficking do not contribute to further stigmatizing vulnerable groups which may lead to greater vulnerability to human rights abuses;

(e) Promoting outreach strategies, including in co-operation with relevant NGOs, to provide information on trafficking in human beings for labour exploitation to migrant

communities and to persons working in low wage labour and particularly vulnerable sectors such as agriculture, construction, garment or restaurant industries, or as domestic servants, in order to improve victims' access to assistance and justice and encourage persons with information on possible trafficking situations to refer victims to such assistance and to report to appropriate authorities for investigation when there are reasonable grounds to believe that a crime has occurred;

(f) Developing and using advanced investigative methodology, in particular to allow cases of trafficking to be identified and prosecuted without relying only on victim testimony;

(g) Sharing current operational best practices in police investigations of trafficking in human beings for labour exploitation, and ensuring that police working on trafficking in human beings have regular contact with their counterparts in other agencies responsible for investigating labour conditions as appropriate and have a multi-disciplinary approach to identifying and protecting the rights of victims of trafficking for labour exploitation;

7. Tasks the Permanent Council to consider ways to further strengthen efforts to combat trafficking in human beings, including for labour exploitation, taking into consideration the relevant OSCE commitments, the Action Plan on Combating Trafficking in Human Beings and the outcome of the November 2006 Conference on Human Trafficking for Labour Exploitation/Forced and Bonded Labour, Prosecution of Offenders, Justice for Victims.

Full text:

OSCE Ministerial Council Decision No. 13/05: Combating Trafficking in Human Beings (2005)*

Adopted by the OSCE Ministerial Council on 6 December 2005, in Ljubljana, Slovenia

The Ministerial Council,

Reaffirming Ministerial Council Decisions Nos. 2/03 and 13/04, as well as other OSCE commitments to combat trafficking in human beings in all its forms and for all purposes, by adhering to which, the participating States have clearly demonstrated a political will to eliminate this contemporary form of enslavement that violates human dignity and undermines the enjoyment of human rights and fundamental freedoms,

Recalling the international obligations taken by those OSCE participating States which have signed and ratified the United Nations Convention against Transnational Organized Crime and its Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, as well as other relevant international treaties to which they are parties,

Noting the Council of Europe Convention on Action against Trafficking in Human Beings as the first regional treaty in this field which is mainly focused on the protection of victims of trafficking, as well as on the prevention of this horrendous crime and the prosecution of its perpetrators,

Welcoming progress achieved by participating States in the implementation of the OSCE Action Plan to Combat Trafficking in Human Beings as a comprehensive tool-kit for assisting both authorities and civil society to prevent such trafficking, prosecute perpetrators of the crime and protect its victims,

Drawing attention to the need to enhance the above-mentioned measures, develop strong anti-trafficking networks which would function multilaterally, regionally and bilaterally, and effectively implement the commitments taken, with full support and assistance provided to the participating States, upon their request, by the OSCE structures, institutions and field operations,

Reiterating the unique role of the OSCE as a catalyst in joint efforts by international organizations aimed at combating trafficking in human beings of all forms, and commending the initiatives taken by the OSCE Special Representative on Combating Trafficking in Human Beings under the auspices of the “Alliance against Trafficking in Persons”,

* MC(13) Journal No. 2, Agenda item 8 [http://www.osce.org/documents/mcs/2005/12/17365_en.pdf]

Decides:

1. To endorse the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, adopted by Permanent Council Decision No. 685 on 7 July 2005, thus effectively responding to the needs of the most vulnerable and unprotected victims of trafficking inhuman beings;
2. To continue to pay closer attention to the escalating threat of human trafficking, and to pursue a multidimensional and victim-centred approach to issues related to combating trafficking in human beings as an aspect of organized crime, criminality and corruption, within the OSCE concept of comprehensive security;
3. To task the OSCE anti-trafficking mechanism to report to the Permanent Council in June each year, starting in June 2006, on progress achieved in work on trafficking issues in the OSCE. These reports will also contain contributions from other OSCE structures, institutions and field operations on developments related to trafficking in human beings throughout the OSCE region and will include an analysis of achievements in the light of the objectives set out in the 2003 OSCE Action Plan to Combat Trafficking in Human Beings.

Full text:

OSCE Ministerial Council Decision No. 13/04: The Special Needs for Child Victims of Trafficking for Protection and Assistance (2004)*

Adopted by the OSCE Ministerial Council on 7 December 2004, in Sofia, Bulgaria

The Ministerial Council,

Reaffirming the strong commitments of participating States in the field of combating trafficking in human beings, in particular the 2000 Vienna Ministerial Council Decision No. 1, the 2002 Porto Ministerial Declaration on Trafficking in Human Beings and the 2003 Maastricht Ministerial Decision No. 2/03 which endorses the OSCE Action Plan to Combat Trafficking in Human Beings, and establishes, under the aegis of the Permanent Council, an OSCE mechanism to provide assistance to participating States to combat trafficking in human beings, consisting of a Special Representative appointed by the Chairman-in Office, and a special unit in the Secretariat,

Recalling the 1990 Conference on the Human Dimension of the CSCE in Copenhagen, which *inter alia* declared that: “The participating States decide to accord particular attention to the recognition of the rights of the child, his civil rights and his individual freedoms, his economic, social and cultural rights, and his right to special protection against all forms of violence and exploitation”,

Recalling the principles of protection and respect for human rights as reflected in the 1989 United Nations Convention on the Rights of the Child, and its related 2000 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, as well as the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption,

Mindful of the primary responsibility of participating States in combating trafficking based on an integrated and co-ordinated approach which includes prevention of trafficking, protection of victims and prosecution of traffickers and their accomplices,

Reaffirming that the general principles of, *inter alia*, the best interests of the child, non-discrimination, participation and survival and development provide the framework for all actions concerning children,

Dedicated to further strengthening the efforts by the OSCE to combat trafficking in human beings, and to continue an active implementation of the Action Plan to Combat Trafficking in Human Beings, as well as to continue the Organization’s support to the participating States, on their request, in carrying out their respective national activities in this field,

Taking into account in particular the recommendations in the OSCE Action Plan to Combat Trafficking in Human Beings that the OSCE shall give special attention to the issue of trafficking in children, and also recognizing the vulnerability of unaccompanied and separated children,

* MC(12) Journal No. 2, Agenda item 8 [http://www.osce.org/documents/mcs/2004/12/3916_en.pdf]

Mindful that participating States are committed to protect children from all forms of violence, including sexual exploitation of children, and stressing the importance of respecting their special needs for protection and assistance, and the opportunity for the child to be heard,

Stressing that measures to combat trafficking in children should have a gender perspective and be non-discriminatory,

Underlining that the best interests of the child shall be the primary consideration in decisions taken with regard to trafficked children, including through ensuring representation, as appropriate, for child victims,

Aware of the need for an effective child assistance and protection framework as well as awareness-raising to counter the demand that fosters all forms of exploitation of persons, especially women and children, and which makes children more vulnerable to being trafficked,

1. Decides to enhance OSCE efforts aimed at preventing children from being trafficked, protecting and assisting child victims of trafficking, and prosecuting those who traffic in children, taking into account the OSCE Action Plan to Combat Trafficking in Human Beings;
2. Encourages participating States to strengthen relevant governmental structures for children. Also encourages participating States to intensify actions, as appropriate, in line with the relevant recommendations for participating States in the OSCE Action Plan on Combating Trafficking in Human Beings to counter factors which contribute to making children particularly vulnerable to trafficking in human beings including: discrimination, based, *inter alia*, on race, sex, religion or belief, national or social origin, birth or other status; exploitation, as defined in the OSCE Action Plan on Combating Trafficking in Human Beings; poverty; lack of education and displacement;
3. Agrees to strengthen countering demand, including combating child sex tourism. In this context, also invites the participating States to consider, *inter alia*, elaboration of legal measures aimed at prosecution of their citizens for the sexual exploitation of children, including if such exploitation has taken place in another country;
4. Task the Permanent Council through the Informal Working Group on Gender Equality and anti-Trafficking, with support provided, *inter alia*, by the Special Representative on Combating Trafficking in Human Beings, and other relevant OSCE structures to elaborate an addendum to the OSCE Action Plan to Combat Trafficking in Human Beings, contributing to its implementation, on addressing the special needs of child victims of trafficking for protection and assistance, including a summary of best practices, by 31 July for further appropriate action;
5. Invites the Informal Working Group to start this work based on commitments made by participating States under existing international conventions to which they are Parties, in order to address appropriately the need to provide special protection measures for children, taking into account the best interests and welfare of the child.

Full text:

OSCE Permanent Council Decision No. 557: OSCE Action Plan to Combat Trafficking in Human Beings (2003)*

Adopted by the OSCE Permanent Council on 24 July 2003, in Vienna, Austria

The Permanent Council,

Taking into account the universal condemnation of the crime of trafficking in human beings, as well as the numerous related international and regional instruments, such as the 2000 United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air,

Reiterating that trafficking in human beings (THB) and other contemporary forms of slavery constitute an abhorrent violation of the dignity and rights of human beings,

Reaffirming Vienna Ministerial Decision No. 1 of 2000, Bucharest Ministerial Decision No. 6 of 2001, the Porto Ministerial Declaration of 2002, and existing commitments undertaken by participating States, as well as the OSCE's role in combating trafficking in human beings as agreed by participating States,

Concerned that despite all efforts, the last decade has seen a tremendous increase both in incidents of trafficking in human beings and in the number of victims, while prosecution of perpetrators remains unsatisfactory and organized criminal groups have recourse to ever more sophisticated techniques, increasing financial resources and growing networks, and benefit from corruption or lack of awareness of this crime and of its heinous nature among some relevant officials, the media and the public at large,

Further concerned that root causes of trafficking in human beings, occurring both in countries of origin and destination, remain insufficiently tackled, in particular causes such as poverty, weak social and economic structures, lack of employment opportunities and equal opportunities in general, violence against women and children, discrimination based on sex, race and ethnicity, corruption, unresolved conflicts, post-conflict situations, illegal migration and the demand for sexual exploitation and inexpensive, socially unprotected and often illegal labour,

Acknowledging that while the primary responsibility for combating and preventing trafficking in human beings rests with participating States, the link of this phenomenon to transnational organized crime requires co-operation at the international and regional level, involving the private sector and NGOs,

Convinced that the OSCE, with its well-developed institutional capacity and proven track record, is uniquely placed to effectively assist participating States in the implementation of their commitments, and can, through the Platform for Co-operative Security, effectively co-operate and co-ordinate with relevant international actors such as the Stability Pact Task Force, the United Nations Office on Drugs and Crime, the United Nations High Commissioner for Refugees, the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the International Labour Organization, as well as the International Organization for Migration, the International Centre for Migration Policy

* PC Journal No. 462, Agenda item 6 [http://www.osce.org/documents/pc/2003/07/724_en.pdf]

Development, the European Union, the Council of Europe, the Council of Baltic Sea States, the Southeast European Co-operative Initiative, Interpol and Europol,

Adopts the OSCE Action Plan to Combat Trafficking in Human Beings, annexed to this Decision, in order both to incorporate best practices and an advanced approach into its anti-trafficking policies, and to facilitate co-operation among participating States, and tasks all OSCE bodies with enhancing participation in anti-trafficking efforts of the international community.

Annex

OSCE ACTION PLAN TO COMBAT TRAFFICKING IN HUMAN BEINGS

I. Objectives and purposes of the Action Plan

1. The Action Plan intends to provide participating States with a comprehensive toolkit to help them implement their commitments to combating THB. It aims to provide participating States with a follow-up mechanism, which will also promote co-ordination between individual participating States, both within the OSCE structures and with other international organizations. The Action Plan adopts a multidimensional approach to combating trafficking in human beings. It addresses the problem comprehensively, covering protection of victims, the prevention of THB and the prosecution of those who facilitate or commit the crime. It provides recommendations as to how participating States and relevant OSCE institutions, bodies and field operations may best deal with political, economic, legal, law enforcement, educational and other aspects of the problem.
2. The Action Plan is further intended to assist participating States in employing these tools by drawing upon existing regional experience gained through the implementation of such concrete initiatives and measures as those undertaken by the Stability Pact Task Force on Trafficking in Human Beings in South Eastern Europe.
3. A comprehensive approach to trafficking in human beings requires a focus on bringing to justice those responsible for this crime, and on carrying out effective measures to prevent it, while maintaining a humanitarian and compassionate approach in rendering assistance to its victims.

II. Definition of trafficking in human beings

The Action Plan is based on the following definition contained in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime:

“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”.

The OSCE Ministerial Council in its Decision No. 6 (2001) called on participating States to sign and ratify the United Nations Convention against Transnational Organized Crime, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

III. Investigation, law enforcement and prosecution

Commitments of participating States related to investigation, law enforcement and prosecution have been undertaken in the Ministerial Declaration on Trafficking in Human Beings adopted in Porto in 2002, the Bucharest Plan of Action for Combating Terrorism of 2001, the Ministerial Decision No. 6 adopted in Bucharest in 2001, and the Ministerial Decision on Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings adopted in Vienna in 2000. In these documents the participating States also agreed on the role of the OSCE in this field.

Recommended action at the national level

1. Criminalization

1.1 Adopting such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

1.2 Adopting such legislative and other measures as may be necessary to establish as criminal offences:

- Attempting to commit this criminal offence;
- Participating as an accomplice in this criminal offence;
- Organizing or directing other persons to commit this criminal offence.

1.3 Adopting such measures as may be necessary to establish the liability of legal persons for trafficking offences in addition to the liability of natural persons. Subject to the legal principles of the participating State, the liability of legal persons may be criminal, civil and/or administrative.

1.4 Making legislative provisions for effective and proportionate criminal penalties, including imprisonment, that take into account the serious nature of this crime. Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, such as in the case of offences involving trafficking in children or offences committed by or involving the complicity of State officials.

1.5 Considering legislative provisions for confiscation of the instruments and proceeds of trafficking and related offences, specifying, where not inconsistent with national legislation, that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Giving consideration to the establishment of a compensation fund for victims of trafficking and the use of the confiscated assets to help finance such a fund.

1.6 Ensuring that trafficking, its constitutive acts and related offences constitute extraditable offences under national law and extradition treaties.

1.7 Adopting such legislative and other measures to establish as criminal offences acts of active or passive corruption of public officials, as referred to in Articles 8 and 9 of the United Nations Convention against Transnational Organized Crime.

1.8 Ensuring that victims of trafficking are not subject to criminal proceedings solely as a direct result of them having been trafficked.

2. Law enforcement response

2.1 Fully implementing anti-trafficking and related measures set out in legislation.

2.2 Establishing special anti-trafficking units - comprising both women and men - with advanced training in investigating offences involving sexual assault or involving children, in order to promote competence, professionalism and integrity.

2.3 Building capacity in the anti-corruption field.

2.4 Developing community-policing programmes: raising levels of trust between the police and the public in order, inter alia, to contribute to the acquisition of information relating to trafficking and to increase the willingness of victims to report offences.

2.5 Enhancing co-operation between law enforcement investigating bodies in order to establish the possibly criminal, trafficking-related origins of suspicious assets.

2.6 Providing not only the resources and training for developing intelligence-led policing for the management and analysis of crime and criminal information, but also the other advanced skills and equipment necessary for law enforcement bodies to carry out their anti-trafficking tasks.

2.7 Encouraging investigators and prosecutors to carry out investigations and prosecutions without relying solely and exclusively on witness testimony. Exploring alternative investigative strategies to preclude the need for victims to be required to testify in court.

2.8 Taking practicable measures to ensure that OSCE mission members who are behaving in breach of the OSCE Code of Conduct for Mission Members and other regulations face prescribed sanctions, including, as appropriate, disciplinary and criminal proceedings.

2.9 Targeting corruption of local law enforcement as a matter of priority, and ensuring that appropriate disciplinary and criminal proceedings are undertaken against law enforcement authorities found to be engaged in corrupt practices related to trafficking in human beings.

3. Law enforcement co-operation and information exchange between participating States

3.1 Co-operating closely with one another and consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action in combating the offences covered by this Action Plan. Promoting similar co-operation and co-ordination between law enforcement agencies within States.

3.2 Adopting, in particular, effective measures

- To enhance and where necessary to establish channels of communication between participating States;
- To co-operate on inquiries regarding offences covered by this Action Plan;
- To provide, when appropriate, items or evidence necessary for analytical or investigative purposes;

- To facilitate effective co-ordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the participating States concerned, the posting of liaison officers;
- To exchange information on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or forged documents or other means of concealing their activities;
- To co-ordinate administrative and other measures considered appropriate for the early identification of the offences covered by this Action Plan.

3.3 Concluding agreements on bilateral and multilateral law enforcement co-operation to facilitate exchange of information.

3.4 Undertaking efforts to develop common standards for the collection of statistical data.

4. Assistance and protection of witnesses and victims in the criminal justice system

4.1 Taking appropriate measures within participating States' means, including legislative ones, to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Action Plan and, as appropriate, for their relatives and other persons close to them.

4.2 Sensitizing law enforcement authorities and officials to their responsibility for ensuring the safety and immediate well-being of victims of THB.

4.3 Ensuring data protection and the victim's right to privacy, also in the course of data collection and analysis.

4.4 Facilitating the victim's participation as a witness in the investigation and court hearings or other criminal proceedings by providing him/her with the possibility of relocation as a form of witness protection.

4.5 Providing legal counselling for victims when they are in the process of deciding whether or not to testify in court.

4.6 Permitting NGOs to support victims in court hearings, if it is not inconsistent with national legislation.

5. Training

5.1 Providing or improving training for border officials, law enforcement officials, judges, prosecutors, immigration and other relevant officials in all aspects of trafficking in persons.

5.2 Giving, in such training programs, consideration to human rights and child and gender-sensitive issues, and encouraging co-operation with non-governmental organizations, other relevant organizations and other elements of civil society.

6. Border measures

6.1 Considering taking measures that permit, in accordance with its domestic law, the denial of entry, the revocation of visas or possibly the temporary detention of persons implicated in committing offences as defined by the legislation in force.

6.2 Considering strengthening co-operation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

7. Security and control of documents

7.1 Taking such measures as may be necessary, within available means, to ensure that travel or identity documents issued by or on behalf of participating States are of such quality that they cannot easily be misused, readily falsified or unlawfully altered, replicated or issued.

8. Legitimacy and validity of documents

8.1 At the request of another participating State and in accordance with its domestic law, verifying within a reasonable time the legitimacy and validity of travel or identity documents issued or purporting to have been issued in its name, where there are reasonable grounds to suspect their usage for trafficking in persons.

Action for OSCE Institutions and Bodies

9. Legislative review and reform

9.1 The ODIHR, and where appropriate the field operations, will continue to promote and support legislative review and reform efforts in compliance with international standards.

9.2 The OSCE will further develop co-operation with other relevant partners and organizations.

10. Law enforcement response

10.1 The OSCE Strategic Police Matters Unit will further promote the concept of community policing.

10.2 The Strategic Police Matters Unit and the Office of the OSCE Co-ordinator of Economic and Environmental Activities (OCEEA) will facilitate the exchange of information between participating States on best practices to be used by relevant investigating units to check the possibly criminal and trafficking-related origin of suspicious assets.

10.3 The OCEEA will further work together with the United Nations Office on Drugs and Crime Global Programme against Money Laundering and use its good offices to promote the organization of workshops on tackling money-laundering in interested participating States.

10.4 As part of its assistance in the development of National Referral Mechanisms the ODIHR will continue to promote and encourage co-operation between law enforcement and civil society.

11. Disciplinary response

11.1 The Office of Internal Oversight is requested to maintain data on investigations into offences related to trafficking in human beings by mission members and all subsequent related actions taken thereon. The Secretary General is requested to report regularly to the Permanent Council on measures taken to implement regulations in cases of breaches of the Code of Conduct while respecting the privacy of alleged perpetrators.

12. Training

12.1 The ODIHR and the OSCE Strategic Police Matters Unit will continue to develop training materials targeted at law enforcement authorities on trafficking and sex crimes investigation, consult with the International Law Enforcement Academy (ILEA) in Budapest regarding possibilities for incorporating this training into ILEA programs, identify law enforcement trainers to conduct training, and facilitate funding training sessions for law enforcement authorities in OSCE participating States.

12.2 While international partners such as the International Centre for Migration Policy Development and the International Organization for Migration provide basic police training on how to respond to allegations of trafficking, and others such as the United Nations Development Programme provide advanced training, additional training needs to be provided on dealing with particular aspects of sexual crime, e.g. sexual abuse of children. The OSCE Strategic Police Matters Unit will provide such training in co-operation with the United Nations Children's Fund and other relevant organizations.

13. Security and control of documents

13.1 The relevant OSCE bodies, in particular the Anti-Terrorism Unit, will continue to facilitate workshops focusing on detecting documents used for illegal purposes in relation to trafficking in human beings, detecting false travel documents being used for entry of trafficked persons, and improving non-technical means of detection, such as interview techniques. In addition, workshops will focus on means of protecting freedom of movement of persons across the border, within the restrictions that are consistent with relevant OSCE commitments.

IV. Prevention of trafficking in human beings

Commitments of participating States related to prevention have been undertaken in the Ministerial Declaration on Trafficking in Human Beings adopted in Porto in 2002, the OSCE Permanent Council Decision No. 426 of 2001, the Ministerial Decision on Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings adopted in Vienna in 2000, the OSCE Action Plan for Gender Issues approved by the Permanent Council in 2000, the Charter for European Security adopted in Istanbul in 1999, the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE adopted in Moscow in 1991, the Final Act of the Conference on Security and Co-operation in Europe adopted in Helsinki in 1975. In the above-mentioned documents the participating States also agreed on the role of the OSCE in this field.

Recommended action at the national level

1. Data collection and research

1.1 Collecting separate data related to women, men and children victims of trafficking, and improving research into and analysis of subjects such as the character and scale of THB and the trafficking and exploitation mechanisms deployed by the organized criminal groups, in order to develop effective and well-targeted prevention measures on trafficking in human beings. Promoting more research and exchange of information on trafficking in children.

1.2 Identifying the most vulnerable segments of the population and developing specially designed awareness-raising campaigns for them.

1.3 Conducting more far-reaching analysis of the root causes of THB, its demand and supply factors, its networks and its economic consequences, and its link with illegal migration.

2. Border measures

2.1 Without prejudice to international commitments in relation to the free movement of people, strengthening, to the extent possible, border controls as may be necessary to prevent and detect THB.

2.2 Adopting legislative or other appropriate measures to prevent, as far as possible, means of transport operated by commercial carriers from being used in committing offences, as defined by the provisions against trafficking.

2.3 Where appropriate, and without prejudice to applicable international conventions, obliging commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of valid travel documents. In accordance with domestic law, taking the necessary measures to provide for sanctions in case of violation.

3. Economic and social policies aimed at addressing root causes of THB

3.1 In countries of origin:

- Considering as priority goals: the fostering of social-economic and political stability, and the reduction both of migration caused by deep poverty and of supply factors of trafficking. Policies followed in pursuit of these goals should also promote both economic development and social inclusion;
- Improving children's access to educational and vocational opportunities and increasing the level of school attendance, in particular by girls and minority groups;
- Enhancing job opportunities for women by facilitating business opportunities for small and medium-sized enterprises (SMEs). Organizing SMEs training courses, and targeting them particularly at high-risk groups.

3.2 In countries of destination:

- Implementing measures to reduce "the invisibility of exploitation". A multi-agency programme of monitoring, administrative controls and intelligence gathering on the labour markets, and, where applicable, on the sex industry, will contribute greatly to this objective;
- Considering the liberalization by governments of their labour markets with a view to increasing employment opportunities for workers with a wide range of skills levels;
- Addressing the problem of unprotected, informal and often illegal labour, with a view to seeking a balance between the demand for inexpensive labour and the possibilities of regular migration;
- Tackling underground economic activities which undermine economies and enhance trafficking.

3.3 Whether in countries of origin or countries of destination:

- Taking measures to raise levels of social protection and to create employment opportunities for all;

- Taking appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of gender equality, the right to equal pay for equal work and the right to equality in employment opportunities;
- Addressing all forms of discrimination against minorities;
- Developing programmes that offer livelihood options and include basic education, literacy, communication and other skills, and reduce barriers to entrepreneurship;
- Encouraging gender sensitization and education on equal and respectful relationships between the sexes, thus preventing violence against women;
- Ensuring that policies are in place which allow women equal access to and control over economic and financial resources;
- Promoting flexible financing and access to credit, including micro-credit with low interest;
- Promoting good governance and transparency in economic transactions;
- Adopting or strengthening legislative, educational, social, cultural or other measures, and, where applicable, penal legislation, including through bilateral and multilateral co-operation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and that leads to trafficking.

4. Awareness-raising

4.1 Undertaking, in co-operation with civil society and NGOs, information campaigns to generate public awareness about trafficking in its various forms, including the methods employed by traffickers and the risks to victims.

4.2 Increasing awareness about trafficking among immigration authorities and consular and diplomatic personnel so that they use this knowledge in their daily contacts with potential victims.

4.3 Encouraging national embassies to disseminate information on relevant national legislation such as family law, labour law and immigration law as is of interest to potential migrants, including through NGOs.

4.4 Increasing awareness of other relevant target groups, including policy makers, law enforcement officers, and other relevant professionals such as medical, social services and employment officials, and in the private sector, to THB, to enhance their readiness to address it adequately and to strengthen their institutional capacity to counter it.

4.5 Encouraging the consular and visa sections of the diplomatic missions to use printed and other materials in their work with at-risk individuals.

4.6 Raising awareness of the media. The perception of the problem of trafficking in human beings brought forward by the media should include a clear explanation of the phenomenon and a realistic portrayal of the victims. To maximize public knowledge and awareness, anti-trafficking campaigns should be conducted with media professionals.

4.7 Targeting awareness-raising campaigns also at the most vulnerable groups, including persons belonging to national minorities, children, migrants and internally displaced persons (IDPs).

4.8 Extending awareness-raising campaigns to smaller towns and villages whose populations may be at particular risk.

4.9 Working in schools and universities as well as directly with families to reach young people and to raise their awareness about trafficking.

4.10 Addressing, also through the media, the need to reduce the demand for the activities of persons trafficked for sexual exploitation, forced labour, slavery or other practices similar to slavery and, in this connection, promoting zero tolerance towards all forms of trafficking.

4.11 Establishing well-publicized telephone “hotlines” in the countries of origin transit and destination, which should serve three purposes: to act as an independent source of advice and guidance to potential victims who may be considering job opportunities or other offers to go abroad, to act as a first point of contact providing access to a referral mechanism for victims of THB, and, furthermore, to facilitate the anonymous reporting of cases or suspected cases of THB.

5. Legislative measures

5.1 Adopting or reviewing laws, administrative controls and procedures relating to the licensing and operation of sectors of business that, according to intelligence, may be involved in trafficking, such as employment, tourist, au pair, adoption or mail-order bride agencies, as well as hotels and escort services.

5.2 Ensuring that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including their freedom of movement.

Action for OSCE Institutions and Bodies

6. Data collection and research

6.1 Enhancing data collection and research on trafficking in persons, particularly on trafficking in children, by building on past research and engaging in exchanges with the United Nations Children’s Fund and other relevant actors.

6.2 Tasking ODIHR’s Contact Point on Roma and Sinti with continuing to gather data regarding trafficking in human beings, especially children, and its effects on Roma and Sinti communities.

7. Addressing root causes of THB

7.1 The OCEEA will support the promotion and the development of national public information resource centres to allow individuals to check the legitimacy of businesses, particularly those advocating employment abroad, while avoiding overlap with existing Chambers of Commerce facilities or other business registration offices. The OCEEA can function as an intermediary, collecting examples of best practices on easily accessible legitimacy checks and distributing them to interested participating States and/or OSCE field operations.

7.2 The OCEEA will continue to promote SMEs training and to target it in particular at high-risk groups, including by assisting in the development of legislation to reduce barriers to the establishment of SMEs.

7.3 The OCEEA should develop programmes to tackle economic factors that increase the vulnerability of women and minorities to trafficking, including discrimination in the workplace and lack of access to credit.

8. Awareness-raising

8.1 The ODIHR and, where appropriate, field operations will continue to contribute to research efforts as well as promoting and carrying out awareness-raising initiatives in co-operation with relevant partners throughout the OSCE region.

8.2 The Press and Public Information Section will help to raise media awareness of OSCE activities in the field of trafficking. The ODIHR will enhance training activities with regard to the responsibility of the media for dealing with the topic of trafficking in a sensitive manner and without reinforcing negative stereotypes. Training will stress the complexity of the trafficking phenomenon and the need for a comprehensive response.

8.3 In order to ensure that staff of OSCE field operations do not engage in or in any way knowingly facilitate trafficking in human beings, and to fulfil the norms contained in part 4 of the OSCE Code of Conduct which is an integral part of the Staff Regulations, the Secretary General will draft comprehensive staff instructions for review by the Permanent Council no later than 15 November 2003.

8.4 The OSCE Training Co-ordinator, the Senior Adviser on Gender Issues and the Senior Security Co-ordinator will continue to use the induction course to develop and implement staff training on gender issues, trafficking in human beings and on relevant regulations and guidelines, in co-operation with the ODIHR, and to organize special workshops in the field. Heads of field operations will ensure that attendance at such training courses will be compulsory for all staff.

8.5 The OCEEA will help to mobilize and strengthen the private sector's efforts to combat trafficking in human beings by raising awareness, and by identifying and disseminating best practices, such as self-regulation, policy guidelines and codes of conduct.

V. Protection and assistance

The OSCE commitments related to protection and assistance to the victims of trafficking in human beings have been undertaken in the Ministerial Declaration on Trafficking in Human Beings adopted in Porto in 2002, the Ministerial Decision No. 6 adopted in Bucharest in 2001, the Ministerial Decision No. 1 adopted in Vienna in 2000, the Charter for European Security adopted in Istanbul in 1999.

Recommended action at the national level

1. Data collection and research

1.1 Collecting data through the exchange and analysis of best practices and other information regarding effective protection of and assistance to victims of trafficking in the OSCE participating States.

2. Legislative measures

2.1 Considering the need for adopting legislation which will provide the legal basis for rendering assistance and protection to victims of THB, especially during pre-trial investigations and in court proceedings.

2.2 Ratifying, or acceding to, and fully implementing the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

3. National Referral Mechanisms (NRM)*

3.1 Establishing National Referral Mechanisms by creating a co-operative framework within which participating States fulfil their obligations to protect and promote the human rights of the victims of THB in co-ordination and strategic partnership with civil society and other actors working in this field.

3.2 Providing guidance to facilitate the accurate identification and appropriate treatment of the victims of THB, in ways which respect the views and dignity of the persons concerned.

3.3 Combining the efforts of law-enforcement bodies, including specially established anti-trafficking units and police at local level, officials of migration and border services, social protection units, medical institutions, as well as NGOs and other civil society institutions as the most relevant actors to be involved in NRM activities.

3.4 Establishing appropriate mechanisms to harmonize victim assistance with investigative and prosecutorial efforts.

3.5 Drawing special attention to the need for enhanced co-operation between the police and NGOs in identifying, informing and protecting victims of THB.

3.6 Linking the activities of NRMs with those of inter-ministerial bodies, national co-ordinators, NGOs and other relevant national institutions to form a cross-sectoral and multidisciplinary team capable of developing and monitoring the implementation of anti-trafficking policies.

4. Shelters

4.1 Establishing shelters, run by governmental bodies, NGOs, or other institutions of civil society to meet the needs of trafficked persons; these shelters are to provide safety, access to independent advice and counselling in a language known by the victim, first-hand medical assistance, and an opportunity for reflection delay after the experienced trauma. Shelters may be established on the basis of already existing facilities such as crisis centres for women.

4.2 Providing access to shelters for all victims of trafficking, regardless of their readiness to co-operate with authorities in investigations.

4.3 Giving special attention to ensuring security for personnel of such shelters, confidentiality of information obtained, and safety and privacy for victims of THB.

4.4 Using shelters to provide the kind of training opportunities for victims of THB which will facilitate their future reintegration, employment and independence, as well as improving their competitive capabilities after the experienced trauma.

* The ODIHR's Handbook on Guidelines and Principles to Design and Implement National Referral Mechanisms may serve as a useful source of advice and information regarding the role of NRMs in rendering assistance and protection to victims of THB.

5. Provision of documents

5.1 Ensuring provision of documents, if necessary, as a first step to clarifying the victim's identity and status in countries of destination, thus making it possible to proceed with options of assistance in appropriate cases, such as repatriation, preferably voluntary, provision of a temporary or permanent residence permit, and/or legalization of employment.

5.2 Enhancing co-operation amongst law enforcement bodies in the countries of origin, transit and destination, and responsible officials of all institutions involved in the restoration of rights of victims of THB, including the personnel of embassies and consulates of participating States in order to facilitate the speedy verification of personal data and the avoidance of undue or unreasonable delay.

5.3 Informing identified victims of THB of their right to access to diplomatic and consular representatives of their country of nationality.

6. Provision of social assistance

6.1 Developing social assistance and integration programmes, including legal counselling in a language known by the victim, medical and psychological assistance and access to health care, to be made available either in shelters or other relevant institutions.

6.2 Considering, where not inconsistent with national legislation, legal measures to allow confiscated assets to be used to supplement government funding for programmes that address the needs of victims of THB and to compensate the victims in accordance with the gravity of the crime committed against them.

7. Repatriation, rehabilitation and reintegration

7.1 Assisting the victims of THB in - preferably - voluntary repatriation to the country of origin with due regard for their safety and that of their families, and without undue or unreasonable delay.

7.2 Ensuring due process in all return and removal proceedings, taking into account a humanitarian and compassionate approach.

7.3 Considering contributing to the rehabilitation and social reintegration of victims of THB by providing them with social and economic benefits.

7.4 Raising media awareness of the need to safeguard privacy by avoiding public disclosure of the identity of victims of THB, or publication of confidential information inimical to victims' security or to the cause of justice in criminal proceedings.

8. Provision of a reflection delay and temporary or permanent residence permits

8.1 Considering the introduction of a reflection delay to give the victim due time to decide whether or not to act as a witness.

8.2 Considering on a case-by-case basis, if appropriate, the provision of temporary or permanent residence permits, taking into account such factors as potential dangers to victims' safety.

8.3 Considering, if appropriate, the provision of work permits to victims during their stay in the receiving country.

9. Ensuring the right to apply for asylum

9.1 Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including victims of THB, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through effective application of the principle of *non-refoulement*.

10. Protection of children

10.1 Ensuring that the special needs of children and the best interests of the child are fully taken into account when deciding upon appropriate housing, education and care. In appropriate cases, if there is no direct threat to the safety of the child, providing the children with access to the state educational system.

10.2 Deciding on the repatriation of a child victim of THB only after having taken account of all the circumstances of the specific case and if there is a family or special institution in the country of origin to ensure the child's safety, protection, rehabilitation and reintegration.

10.3 Considering the provisions outlined in the United Nations High Commissioner for Refugees Guidelines for the Protection of Unaccompanied Minors when elaborating policies targeted at this risk group, and in particular for those who are not in possession of identification documents.

10.4 Using bilateral and/or regional agreements on fundamental principles of good reception of unaccompanied children in order to combine efforts targeted at the protection of children.

10.5 Ratifying or acceding to, and fully implementing, the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography.

Action for OSCE Institutions and Bodies

11. National Referral Mechanism

11.1 Enhancing the activities of the OSCE, especially the ODIHR, in assisting participating States, upon their request, in establishing the NRM.

11.2 Tasking the OSCE Strategic Police Matters Unit, together with the ODIHR, with the further development of guidelines or a manual on the identification of suspected victims and of evidence of THB, in order to assist participating States, as appropriate.

12. Reintegration

12.1 The OCEEA will facilitate contacts between public and private actors with a view to encouraging the business community to offer job opportunities to victims of trafficking.

13. Protection of children

13.1 The OSCE as a whole shall give special attention to the issue of trafficking in children and to recognizing the vulnerability of unaccompanied children. Efforts should be made to develop co-operation with specialized international agencies, especially the United Nations Children's Fund and relevant international NGOs, on expert meetings, research and the development of guidelines promoting the best interest of the child.

14. Training

14.1 Tasking the OSCE Training Co-ordinator, the Senior Adviser on Gender Issues and the Senior Security Co-ordinator in co-operation with the ODIHR with developing information material on how to assist victims of trafficking, especially children, in response to requests either from individuals or governmental and non-governmental bodies, and with providing relevant training for OSCE mission members. The material might also be disseminated to military personnel, peacekeepers and other international staff in the field.

14.2 Tasking the ODIHR with the collection and dissemination of information on measures, training programmes and materials already in place in OSCE participating States.

15. Legislative measures

15.1 In co-ordination with the United Nations Office on Drugs and Crime, the Council of Europe and other relevant actors, the ODIHR will continue to assist participating States, upon their request, in bringing their national legislation into compliance with international norms and standards, particularly by promoting a humanitarian and compassionate approach to the victims of THB.

VI. Follow-up and co-ordinating mechanisms

Besides monitoring the implementation of the OSCE commitments by participating States through existing OSCE mechanisms, including the annual Human Dimension Implementation Meeting, Review Conferences and relevant human dimension events,

The Permanent Council recommends the following actions at the national level:

1. To consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements;
2. To consider establishing Anti-Trafficking Commissions (task forces) or similar bodies responsible for co-ordinating activities within a country among State agencies and NGOs, and for elaborating measures to prevent THB, to punish perpetrators of THB and to protect its victims;
3. To improve co-operation between State institutions and national NGOs active in rendering protection and assistance to the victims of THB, combating violence against women and children, promoting gender equality and raising awareness in human rights issues;

Furthermore, the Permanent Council:

4. Tasks the Chairmanship with conducting discussions on follow-up to this Action Plan, including augmenting current structures and examining the need for a new mechanism, with a view to enhancing the OSCE's efforts in fighting trafficking in human beings by raising its political profile and giving it a prominent role on the issue, as well as better coordinating work among the three dimensions of the OSCE;
5. Tasks the OSCE relevant structures with hosting and facilitating annual meetings in Vienna of national co-ordinators, representatives or experts on combating trafficking, to monitor the process of the implementation of the OSCE Action Plan. This will provide them with a chance to build networks, exchange information, and outline priorities for co-operation;

6. Urges the pursuit of close interaction between the OSCE Secretariat, its institutions and its field operations, to assist participating States, where appropriate, in implementing the current Action Plan;
7. Tasks the ODIHR with rendering necessary technical assistance to participating States, when appropriate, in developing National Anti-Trafficking Plans of Action, including legislative and other assistance measures aimed at effective prevention and combating trafficking and protection of victims;
8. Tasks OSCE institutions and bodies with engaging in more extensive regular exchange of information, data collection and research with relevant international organizations;
9. Tasks the ODIHR with the further development of its clearing-house function for the exchange of information, contacts, materials and good practices and with the enhancement of its project activities.

Full text:

OSCE Permanent Council Decision No. 685: Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance (2005)*

Adopted by the OSCE Permanent Council on 7 July 2005, in Vienna, Austria

The Permanent Council,

Reaffirming the strong OSCE commitments of participating States in the field of prevention and combating trafficking in human beings, as well as the OSCE Action Plan to Combat Trafficking in Human Beings,

Recalling Sofia Ministerial Council Decision No. 13/04 on the Special Needs for Child Victims of Trafficking for Protection and Assistance and its tasking to develop an addendum to the OSCE Action Plan to Combat Trafficking in Human Beings

Mindful of the need to identify and support the development of best practices in assisting child victims and to act at all times in the best interests of the child,

Conscious of the particular vulnerability of children in conflict and post-conflict situations and of their need for security and protection for the fulfilment and enjoyment of their rights,

Drawing upon existing regional experiences such as the UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking in South Eastern Europe, endorsed in the Statement on Commitments on Victim/Witness Protection and Trafficking in Children by the Fourth Regional Ministerial Forum of the Stability Pact Task Force on Combating Trafficking in Human Beings, Sofia 2003,

Supports the following based on principles of respect for human rights, gender perspective and the best interests of the child to be used by States in addressing the special needs for protection and assistance of trafficked children; and

Decides to attach the Addendum annexed to this Decision to the OSCE Action Plan to Combat Trafficking in Human Beings (See Permanent Council Decision No. 557/Rev.1.) as an integral part and to recommend the endorsement of this decision by the Ministerial Council.

Annex

ADDENDUM TO THE OSCE ACTION PLAN TO COMBAT TRAFFICKING IN HUMAN BEINGS: ADDRESSING THE SPECIAL NEEDS OF CHILD VICTIMS OF TRAFFICKING FOR PROTECTION AND ASSISTANCE

Recommended actions at the national level:

* PC Journal No. 562, Agenda item 8 [http://www.osce.org/documents/pc/2005/07/15591_en.pdf]

1. Ensuring that child trafficking, including internal trafficking, is criminalized in accordance with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000, in order to better address the need for protection and assistance of child victims of trafficking;
2. Establishing and/or strengthening effective policies and programmes to prevent trafficking in children, and reducing children's vulnerability by promoting a protective environment in general through strengthening relevant institutions and regulations, reducing poverty and preventing violence against children;
3. Developing, where necessary, national co-ordinating and referral mechanisms to specifically address protection and assistance measures which focus on the special needs of child victims of trafficking and ensure that child victims are referred expeditiously to appropriate services. Forming partnerships with civil society to develop a comprehensive approach to protect and assist child victims of trafficking;
4. Facilitating research and gathering data, including for the purpose of strengthening protection and assistance programmes, on the extent of all forms of child trafficking in their countries, and making the data publicly available. Strengthening co-operation and improving exchange of information among States with a view to preventing child trafficking and protecting and assisting child victims, including in conflict and post-conflict situations;
5. Facilitating special training for law enforcement and direct service personnel on proper and effective methods to identify child victims of trafficking. Any child presumed to be a victim of trafficking shall be referred without delay for appropriate assistance;
6. Following identification, providing child victims of trafficking, when necessary, with a guardian and/or legal representative at all stages of the assistance, (re)integration and/or return and to ensure protection of their human rights;
7. Developing child-friendly procedures related to criminal and civil proceedings, from initial questioning to the conclusion of the proceedings which are consistent with the rule of law;
8. Providing in appropriate cases presumed child trafficking victims who are not nationals or residents of the country in which they are identified with appropriate status entitling them to stay, at least temporarily, in the country and be eligible to receive immediate assistance which should include safe shelter, medical and psychological care, legal assistance, social services and education;
9. Processing every child trafficking case individually and making every effort to find a durable solution which will result in one of three options: (a) Return to and reintegration in the country of origin; (b) Local integration into the country in which they are identified; and (c) Relocation to a third country;
10. Making available special assistance and protection when it is in the best interest of the child to return him/her to the country of origin, providing returning children with appropriate care for the return process and supporting the monitoring, by the authorities in the country of origin of their well-being upon return;
11. Strengthening structures to promote social inclusion and (re)integration of child victims of trafficking in countries of origin and destination, taking into account the special needs of children;

12. Encouraging print and broadcast media to develop and promote a professional ethic related to the special treatment of child victims of trafficking in order to avoid the further exploitation and victimization of children, in particular by protecting the identity of children;

13. Addressing the use of the Internet in facilitating the trafficking of children for sexual exploitation and developing measures to combat it, including the exchange of images and other information in accordance with national law, in particular via the international database of child abuse images housed by Interpol with a view to identifying and protecting child victims as well as identifying their abusers.

Full text:

Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002)*

Adopted by the European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st Century, on 20 September 2002

The *Brussels Declaration* was adopted by the European Conference on Preventing and Combating Trafficking in Human Beings, organized by the International Organization for Migration in cooperation with the European Commission and the European Parliament. The conference brought together over 1000 government representatives from almost the entire Council of Europe, the United States, Canada, China as well as IOs, IGOs and NGOs. The *Declaration* sets out a comprehensive range of best practices, standards and recommendations on all aspects relating to human trafficking – crime prevention, victim rehabilitation, public awareness, etc. As a declaration, however, it does not give rise to obligations under international law.

BRUSSELS DECLARATION ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS

The European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st Century – brought together, on 18-20 September 2002, the EU Member States, Candidate Countries, neighbouring countries such as Russia, the Ukraine, the NIS, and the countries of the Stabilisation and Association process as well as US, Canada, China, regions, international organizations (IOs), inter-governmental organisations (IGOs), non governmental organizations (NGOs) and the institutions of the European Union. More than 1000 representatives of the above mentioned sectors participated.

Initiated by the European Commission under the STOP II Programme, which was set up to financially support actions to fight and prevent trafficking in human beings and the sexual exploitation of children, the Conference was organised by the International Organisation for Migration (IOM), in close co-operation with the European Parliament and the European Commission, and supported by a broad range of interested parties and participants, in particular those governments that hosted preparatory meetings.

The overarching objective of the Conference was to provide an opportunity to take stock of trends in human trafficking and a European policy to respond to a challenge that risks undermining our fundamental values and the full realisation of an area of freedom, security and justice.

The Conference was built on the vast experience gathered so far in the fight against trafficking in human beings, including legislative initiatives, numerous workshops, conferences and meetings on how to improve the inter-governmental and interinstitutional co-operation, projects, and policy implementation at European level and beyond. After some years of development of a comprehensive policy, the Conference provided yet another important milestone in the fight against human trafficking which invited actors to take the next crucial steps towards reinforcing efforts to implement best practices identified in a comprehensive and co-ordinated European approach.

* [http://www.coe.int/t/dg2/trafficking/campaign/Docs/OrOrg/Bruxdoc_en.pdf]

Trafficking in human beings is an abhorrent and worrying phenomenon involving coercive sexual exploitation, labour exploitation in conditions akin to slavery, exploitation in begging and juvenile delinquency as well as domestic servitude. These practices constitute serious violations of the victims' human rights as enshrined in international law and the EU Charter on Fundamental Rights. Trafficking in human beings has been identified as a criminal activity increasingly penetrated by transnational organised crime that generates substantial illicit proceeds, often laundered and fed into licit markets, with a too low risk of prosecution and confiscation.

The international community, including institutions at local, regional and governmental level, NGOs, IOs, IGOs, and the EU institutions are called upon to match up to the challenges posed by this international crime phenomenon with all its repellent aspects and to provide an unambiguous and comprehensive response, at national, European and international levels, working towards a comprehensive, multidisciplinary and effectively co-ordinated policy that involves actors from all fields concerned. Such an unambiguous response must be consistent with, and indeed put at the front, human rights standards such as the Principles and Guidelines elaborated by the UN High Commissioner for Human Rights, and must give particular attention to trafficking in children taking into account their best interest and the consistency with international instruments on children's rights.

The comprehensive European policy against human trafficking needs to address the entire trafficking chain, comprising countries of origin, transit and destination alike, targeting recruiters, people who transport the victims, exploiters, other intermediaries, clients, and beneficiaries. Also the development of a broader policy on migration management can offer a substantial contribution in reducing and preventing trafficking in human beings. Furthermore, root causes of trafficking, not least including unemployment, poverty, gender inequalities, including the status of girls, social and cultural attitudes, and the demand for sexual services, cheap labour and other forms of exploitation must continue to be at the forefront of the long-term efforts to fight human trafficking effectively. A global approach to trafficking must address all forms of exploitation, including sexual exploitation, labour exploitation, in particular child labour, and begging.

The Brussels Declaration, prepared in the spirit of contributions submitted in the reparations of the Conference and in the spirit of contributions made at the Conference, aims at further developing European and international co-operation, concrete measures, standards, best practices and mechanisms to prevent and combat trafficking in human beings.

The coalition of committed governments, international bodies and NGOs is called upon to take concrete measures and to intensify co-operation in the fields of prevention, victim protection and assistance, and police and judicial co-operation, in particular with a view to achieving a swift and sustainable reduction of trafficking in human beings.

Representatives from the countries, organisations and sectors mentioned above, underlined their intention to develop the work against trafficking in human beings on the basis of the draft recommendations, standards and best practices of the Annex to this Brussels Declaration on Preventing and Combating Trafficking in Human Beings.

ANNEX

RECOMMENDATIONS, STANDARDS & BEST PRACTICES

MECHANISMS FOR CO-OPERATION AND CO-ORDINATION

1. International co-ordination and exchange of information

- All international bodies, governments and other actors internationally active to fight and prevent trafficking in human beings, should intensify their co-operation and exchange of information with a view to achieving a better coordinated response, to avoid overlaps and duplications of work, and to maximise the impact of actions taken at international level. Governments should ensure that all IOs and IGOs that play a significant role in the fight against trafficking have adequate resources to fulfill their mandate. Imperative for improved co-operation is, furthermore, to put into practice international instruments in place and to further develop action plans that provide pragmatic and concrete solutions for cooperation that should be evaluated and followed-up.

- For the European Union, particular emphasis should be put on further efforts to continue the integration of Candidate Countries into the structures for cooperation against trafficking in human beings. The relation between the European Union and other countries such as non-EU Member States of the Council of Europe and other relevant countries should be given increased attention.

- In the field of law enforcement and judicial co-operation, direct contacts between competent authorities should be further promoted and take precedence over the use of complex procedures and structures.

2. European Experts Group and national structures

- The validity and performance of standards and best practices of the countertrafficking policy at the national and international levels should be subjected to review, consolidation and development. At European level, an Experts Group, comprising representatives from governments, IGOs, NGOs, international bodies, researchers, the private sector such as the transport sector, and other stakeholders should be set up by the European Commission.

- At national level, a systematic mechanism, such as the appointment of National Rapporteurs and/or regular multi-disciplinary group meetings, would support a regular evaluation, monitoring and further improvement in the implementation of national policies. Links between such mechanisms should be established at European level, in close co-operation with the EU institutions, EUROPOL, the European Judicial Network, EUROJUST, and CEPOL.

3. The European Forum on Prevention of Organised Crime

- In addition to the setting up of an European Experts Group on trafficking, the European Commission should intensify its efforts to enhance and deepen interinstitutional dialogue and co-operation under its European Forum on Prevention of Organised Crime, in particular with a view to continuing the identification of appropriate measures against trafficking in human beings and intensifying the dialogue between public and non-governmental actors on the basis of a consultation mechanism to be established. The objective would be to establish a European policy that comprises a continuous and transparent process of policy review, consolidation and further development of approaches and instruments in the fight against trafficking in human beings. For this purpose, a dedicated subgroup of the European Forum

on Prevention of Organised Crime should be set up. The European Forum on the Fight Against Trafficking in Human Beings should be convened without delay to continue its important work and to commence the follow-up to this Declaration.

4. Strengthening European networking on victim assistance

- All organisations involved in the provision of assistance to victims should further develop networking and exchanges with a view to ensure the promulgation and implementation of best practices, including accessibility of information on the availability of both governmental and non-governmental facilities and resources, 'safe house' accommodation and specialist support measures. Such networking of especially the NGO sector should also be used to facilitate the dialogue with the relevant European institutions. Intensified networking will also play a critical role in return programmes for victims of trafficking. In addition, the IO- IGO-NGO sector and others involved in the assistance to victims should make efforts to ensure the management and quality of the assistance to and protection of victims that is provided, for instance through the development of a self-assessment framework, to be further elaborated and supported under the European Forum on the Fight Against Trafficking in Human Beings.

5. European database of missing persons

- A feasibility study should be conducted on the establishment of a European database for missing persons, in conjunction with Interpol and Europol, which would include specifically recorded details of missing persons that are believed to be the victims of traffickers. Such a database would be of critical importance in the context of unaccompanied minors that become child trafficking victims.

6. Mobilising EU-instruments

- Instruments used in co-operation with government authorities or in supporting local NGOs and civil society should be further developed with all countries of origin, transit and destination. The TACIS and PHARE Programmes have retained attention to the problem of trafficking in human beings. The CARDS Programme for the Balkans includes the fight against trafficking as a strategic objective. All these programmes are also important in view of their broader aims that will contribute to the long-term efforts to address the root causes of trafficking in human beings.

- Jointly financed and implemented actions against trafficking in human beings, such as the joint EU/US information campaigns, should be further considered and implemented.

- Specifically in the field of justice and home affairs, the Framework Programme on Police and Judicial Co-operation in criminal matters (AGIS) should be fully utilised to augment the achievements under the STOP and STOP II Programmes and the implementation of a comprehensive European policy against trafficking in human beings.

- Trafficking in human beings should be included on the social agenda in Europe.

PREVENTION OF TRAFFICKING IN HUMAN BEINGS

7. Root Causes

- An essential aspect of a human rights based approach to trafficking in human beings is to put emphasis on gender perspectives. A European counter trafficking strategy should include the combating of gender-based violence and patriarchal structures that fosters a favourable environment for trafficking.

- Legislation and policies on equal opportunities must protect and strengthen the legal and social position of women and children and specifically address all forms of gender discrimination.

- Support programmes should be established aiming at the full participation and empowerment of women in their societies, in particular, in educational facilities and economic life, including support to female entrepreneurship.

- Support programmes should aim at the strengthening of efforts to tackle poverty and further marginalisation, particularly amongst the most vulnerable groups of the populations, including women and the girl child, in all countries of origin, transit and destination through measures designed to improve governance, material support, social protection and employment opportunities and sustainable economic developments.

- Without confusing the fight against trafficking in human beings with the fight against illegal immigration, programmes to prevent and combat trafficking should be inserted in a global concept of migration management, therefore, taking into account all different aspects that could intervene in the migration process. It is necessary to examine ways of increasing opportunities of legal, gainful and nonexploitative labour migration in order to reduce the usage of irregular means.

- It should be an essential and common goal for the fight against trafficking to address the reduction of the demand for sexual services and cheap labour. This includes education to equal and respectful relationships between sexes, and awareness campaigns especially targeting clients.

8. Research

- In order to develop efficient and targeted prevention measures on trafficking in human beings, there is a need for improved data, research, and analysis, including on the character and scale of trafficking and the trafficking and exploitation mechanisms deployed by the organised criminal groups. A methodology should be developed that takes into account the evolving character of this form of crime into consideration. Research on this phenomenon should be a priority at European level under the 6th Research Framework Programme.

- To facilitate research and analysis, strategic, de-personalised, qualitative and quantitative data and information on all the component and structures of trafficking should be made available and exchanged on a bilateral and multilateral basis.

- A crucial component in the comprehensive counter-trafficking response will be further research and analysis of the 'demand' side of the trafficking process and an examination of methods by which the demand of clients can be effectively reduced.

- Research should be developed that focuses specifically on the needs and vulnerability of children.

9. Training

- Specialised, joint training should be set up which targets police investigators, prosecutors, IO, IGO and NGO personnel, intended in particular at improving the conduct of counter-trafficking operations, the identification and rescue of trafficked victims and of their subsequent treatment by the police and criminal justice system. Moreover, the use and management of pro-active, intelligence led investigative tactics should be developed. Specific specialised training modules need to focus on child trafficking, addressing the complex and special vulnerabilities of child victims.

- General, multi-disciplinary and human rights based counter-trafficking training for judicial, law enforcement, medical, education, diplomatic, immigration, IO, IGO and NGO personnel and other concerned professional groups should be developed. This training should also focus on the immediate needs and treatment of victims and of how they should be treated by the criminal justice system. It should also promote a multidisciplinary approach by for instance specialized NGOs providing lectures at police academies.

- Specific training programmes aimed at front-line police and frontier personnel and the new recruits of both agencies should be developed that are designed to enable them to recognise the indicators of trafficking related crimes, the collection and dissemination of counter-trafficking intelligence, and to fully realise their potential to identify and rescue victims. As an integral part of increasing the ability of front line and recruit personnel to assist victims, this training should incorporate the principles of democratic policing, human rights and gender equality and should consist of elements like gender sensibility, intercultural qualification, anti-racist strategies and an overall human rights education.

- General training of international military and police peace-keepers and related civilian contractors on the subject of human trafficking and its impact on victims should be included in preparations of missions. This should include codes of conduct, identification and reporting on trafficking activity and non-involvement in any activity that adds to the exploitation of trafficked victims.

- Closer links should be developed with educators and Ministries of Education with a view to elaborating and including relevant and realistic teaching modules in school and college curricula and to informing pupils and students of human rights and gender issues. These subjects should be specifically linked to teaching young people about the modus operandi and dangers presented by trafficking crime, the opportunities for legal migration and foreign employment and of the grave risks involved in irregular migration.

10. Awareness raising

- Awareness raising and information campaigns should be an on-going process and not be limited to 'one-off' activities in various locations.

- Awareness raising campaigns should be aimed at relevant target groups, including potential victims, policy makers, law enforcement officers, diplomatic and consular personnel and other relevant public officials, such as medical, social services, and employment officials. They should include an overall aim towards the target groups to increase their readiness to address trafficking in human beings adequately, strengthen their institutional capacity to counter trafficking and promote the sustainability of the activities of the campaigns.

- The campaigns must be realistic and factual concerning the possibilities of legal migration and foreign employment opportunities and of the potential risks posed by the use of irregular migration methods. They should be of a multimedia format to include videos, printed material etc. To support this process, each potential State of destination should prepare briefing materials such as leaflets, brochures or videos, prepared in the language of the country concerned, addressing migration and employment opportunities within their territory. This material should be prominently displayed in the consular and visa sections of the State diplomatic missions and copies should also be enclosed in any postal visa applications.

- The perception of the problem of trafficking in human beings brought forward by media needs to include a clear explanation of the phenomenon and this explanation needs to be better developed. To maximise public knowledge and awareness of trafficking, targeted

awareness raising campaigns with media professionals should be conducted, including the preparation of updated briefing or background material on trafficking crime.

- Awareness raising campaigns aiming at the ‘demand’ side of the trafficking process should be developed as part of a comprehensive process of reducing trafficking effectively.

- Well-publicised telephone ‘hotlines’ should be established in the countries of origin, transit and destination. These ‘hotlines’ should serve two purposes: (i) they can act as an independent source of advice and guidance to potential victims who may be considering the merits of offers made by the traffickers, (ii) the ‘hotline’ can be used as a ‘first point of contact’ for trafficked victims who can then be referred to the full available range of support measures. The data protection must be guaranteed for the victims’ safety.

11. Administrative controls

- Regimes and practices should be implemented to regulate and monitor agencies that frequently appear within the modus operandi of the trafficking crime. Agencies such as bridal, employment, tourist, escort, au-pair or adoption entities should be monitored by State authorities so that those that act outside of the legal requirements and practices can be identified, and, where appropriate, be subjected to adequate sanctions. This activity should include co-ordination with the ministerial entities responsible for international police co-operation with a view to provide early identification of those agencies that may be engaged in malpractice or actively complicit in trafficking crime.

- The security and quality of identity and travel documents must be enhanced at every stage of the trafficking process. Personnel training and equipment to detect forged or altered documents must be strengthened. A closer co-operation and exchange of information should be developed among consulates and embassies in countries of origin, transit and destination.

- Within the countries of destination, it is essential to implement measures to reduce the ‘invisibility of exploitation’. A multi-agency programme of monitoring, administrative controls and intelligence gathering within the sex and labour markets will greatly contribute to this objective. Police, health, employment, other concerned public officials, and IO, IGO and NGO personnel should work together to impose high visibility monitoring of the sex and labour markets and to develop intelligence sources within them to provide early warning of trafficking indicators. Close liaison should be conducted with employers and workers organisations’ in order to develop early warning systems of the use of illegal labour.

- Given the increasing use of the Internet within the overall modus operandi of trafficking crime, monitoring of the medium must be seen as an integral part of the reduction of the ‘invisibility of exploitation’. Public-private partnerships with the Internet Service Providers must be further developed.

- In order to prevent trafficking for the purpose of labour exploitation, more effective measures aiming at curbing the illegal labour market and the promotion of better life and working conditions in countries of origin and destination are needed.

12. Specific recommendations to prevent the trafficking of children

- The special vulnerability and needs of child trafficked victims is recognised and enshrined in international and national law. This must also be clearly reflected in practice. To reduce the incidence of child trafficking, specific action should be implemented such as in the field of passport and visa regulations, including the possibility to require that all children over the age of five must be in possession of their own passport and the extension of submission times for visa applications in respect of children to allow for background enquiry in the origin and

destination countries. The inclusion of biometrics in issued travel documents will contribute to better identification of trafficked and missing children. Another important measure is to require carrier agents to retain the identity and travel documents of unaccompanied minors and those of children that are accompanied, but not by an immediate family member that can then be handed into the possession of the immigration authorities at the point of arrival. In addition, research and development of systems for registration of children could contribute to the prevention of trafficking in children once set up.

VICTIM PROTECTION AND ASSISTANCE

13. Immediate victim assistance

- Research and analysis must be developed to identify profiles of traffickers and trafficked victims, including the design of a matrix of key trafficking indicators for use by front-line police and border personnel to enable them to make the distinction between trafficked victims and irregular migrants.

- Victims of trafficking must be granted access to a full range of support measures that should include access to shelter accommodation, physical, sexual and psychological health care and support and independent health, legal and social counselling. The provision of such treatment must be on a consensual and fully informed basis.

- Victims should be counselled as to the benefits of sexual health checks, but should not be subjected to mandatory testing for HIV-AIDS or other forms sexually transmitted diseases.

- In providing such support measures, the specific and special needs of trafficked children must be addressed. As a minimum standard child victims must have access to the school system and vocational training taking into account these special needs.

- Access to and provision of shelter, protection and assistance to victims should be timely and adequately funded. In the context of trafficking, this very often means the proper funding of IO, IGO and NGO shelter functions. This would also contribute to ensure the independent status of these organisations, in particular NGOs.

- The exchanges between NGOs, social workers and others concerned with victim assistance from countries of origin, transit and destination should be developed. This would improve the understanding of the victim that would contribute to the recovery of the victim and eventually also to his or her re-integration. Those concerned with assistance to victims should also seek to involve collaborators from countries of origin in the work of their organisation.

- Trafficked victims must be recognised as victims of serious crime. Therefore they should not be re-victimised, further stigmatised, criminalised, prosecuted or held in detention centres for offences that may have been committed by the victim as part of the trafficking process.

- Where a trafficked victim is also entitled to seek asylum under the current provisions, the fact that the person is also trafficked victim should not interfere in any way with the right to seek asylum or other available forms of residence. And victims should be treated in accordance with the terms laid down in Article 14 of the UN Protocol on trafficking in persons.

- Protocols of minimum standards should be drawn up between law enforcement services and IOs and NGOs on the immediate treatment of trafficked victims. Without endangering the confidence a victim should have for an NGO, these standards would include at least:

- That law enforcement officers must recognise victims of trafficking as victims of serious crime that must not be re-victimised and must treat them in accordance with their human rights and in accordance with the UN Protocol on trafficking in persons.

- That the safety of the victims and their families is the paramount consideration.

- That the investigator has a clear duty to conduct a continuous process of risk assessment in respect of the safety and welfare of the victims and their families at every stage of the investigative and judicial process and beyond.

14. The victim as a witness

- Removal of victims of trafficking should be avoided in cases where it is necessary for their protection or where they can contribute to the investigation against the traffickers.

- There is a need to identify and develop protocols to regulate the conditions under which law enforcement services have access to victims in shelters or who are otherwise being supported by the IO-IGO-NGO sector. Such protocols should include best practices that clearly defines the roles and responsibilities of each side and address police visits to the shelters, the presence of an independent counsellor to represent the victim at all times, the provision of a verbal and written briefing as to the exact responsibilities and conditions under which a victim would be required to provide her deposition and testimony. Such protocols should also govern the exchange of intelligence between law enforcement and the IO-IGO-NGO sector and include as a minimum standard the prohibition of exchange of personalised data without the written permission of the victim. A common standard for the evaluation and dissemination of the intelligence material to be exchanged should also be agreed.

- Best practice should also be developed that allows for the presence of an independent counsellor at every stage of the investigative and criminal proceedings, facilities to provide the deposition in a video or audio format, legal protection of the confidentiality of his or her true identity and address, facilities to give her testimony via a video link or by other means that do not require the victim to be in the physical presence of her exploiter, and the full range of court support measures during the period of her testimony.

- On the basis of threat assessments of the risks involved for the victim witness, witness protection measures should include the provision of shelter or 'safe house' accommodation, including the victim's family, change of identity with supporting documentation, re-location, access to funding, provision of security advice and brief training, and the provision of personal security equipment.

- Access to short-term residence permits for those victims that agree to co-operate with the criminal justice system of the State concerned must be made available. The proposal for a Directive (COM (2002) 71) on this topic, which will be part of the Acquis once adopted, will form one of key components of a comprehensive European approach. The detailed explanation to a victim of exactly what would be required by the criminal justice system is a central part of a long enough reflection period before such a short-term residence permit is issued and should include the fact that account will taken of the victim's co-operation when that person applies for a residence permit on other grounds, once the special short-term permit has expired. The implementation of such a residence permit must be carefully monitored and evaluated to prevent the incidence of 'procedure shopping' whereby the capacity to accommodate and support genuine trafficked victims is eroded by the claims of fraudulent victims. A victim should be allowed the opportunity to appeal against administrative or judicial decisions taken in the context of short-term permits of stay. Furthermore, schemes on providing short-term residence permits for social protection or humanitarian reasons should

be evaluated and the feasibility of such a scheme forming part of a European policy be examined.

- Victims as witnesses and/or intelligence sources are of immense potential to the counter-trafficking response, but there are real risks involved in their deposition, testimony and/or the exchange of intelligence. Therefore, a process of continuous risk assessment should be developed with the IO, IGO or NGO providing the shelter or other form of assistance - at the point at which the victim decides to become a witness or an intelligence source.

- It will be necessary to revise current entry criteria to law enforcement witness protection measures as the majority of trafficked victims would not qualify for access as they are unable to provide essential and indispensable evidence against major 'actors' in cases involving serious crime – many trafficked victims can only testify against mid-level operatives. Alternative and improved forms of witness protection should also be identified and researched.

- The development of regional witness protection programmes in which a number of States could co-operate together in the provision of safe accommodation and protection for trafficked victim-witnesses should be researched and developed. This could provide for the voluntary re-location of a victim-witness to a neutral country before and after the criminal proceedings.

- In view of the increased level of risk that will exist after the provision of evidence by a victim, there should be no forced return unless the victim has expressed a desire to return or a thorough risk assessment has been conducted that concludes that it is safe to do so.

15. Victim re-integration

- The range of victim re-integration measures should be made available to trafficked persons irrespective of whether they are being returned to their home countries or being provided with longer term residency status in the country of destination.

- Where necessary, identified victims should be provided with proper identity documents.

- In order to support the re-integration process and reduce the risk of re-trafficking, re-integration programmes should be aimed at empowering the victims by developing their capacity to attain economic independence through the provision of entrepreneurial support or vocational training or job opportunities.

- Networking between IOs, IGOs, NGOs, and others involved in the provision of assistance to victims in countries of origin, transit and destination should be intensified and further developed with a view to facilitate the re-integration of victims. The re-integration of victims would also benefit from an increased level of attention from the consulates and embassies in the countries of origin and destination.

POLICE AND JUDICIAL COOPERATION

16. Legislative recommendations

- Trafficking in human beings is inadmissible and must not be facilitated by any legislative shortcomings or flaws. The law must ensure the protection of victims and witnesses, the prohibition of illicit work, the prohibition of the exploitation of the prostitution of others and monitoring and regulation of residence on national territory so that such trafficking can be combated effectively. From the viewpoint of both definition and the sentences to be handed down, it is necessary to strengthen and facilitate the fight against trafficking in human beings

at the European level and beyond. Almost two years after the first signatures, the ratification and implementation, including the monitoring of implementation, of the United Nations Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, must be an immediate priority for the achievement of a converged legislative platform and a basis for intensified cooperation. It must also be ensured that other relevant international instruments and conventions, such as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Convention on the Elimination of All Forms of Discrimination against Women, are ratified and properly implemented.

- A regime of adequate penalties should be introduced into national legislation for specific trafficking crimes and related offences, including offences in relation to living of the earnings of prostitution. When the offence involves children, the offence should be considered as an aggravated offence constituting a basis for more severe penalties.

- In order to identify, sequester and confiscate the criminal assets and proceeds of traffickers, legislative provisions should be further developed with a view to facilitate the confidential pro-active and parallel investigation of the financial affairs of suspected traffickers. These provisions should include a legal duty on financial institutions to disclose suspect money laundering transactions to law enforcement agencies and should impose a strict legal duty on financial institution not to disclose the existence of police enquiries into a suspect's financial affairs.

- With the aim to speed up exchange of information in criminal investigations and mutual legal assistance, direct contacts between competent law enforcement services and judicial authorities should form an integral part of the development of legal instruments and agreements on law enforcement and judicial co-operation. The co-operation and exchange of information on procedures and channels for law enforcement and judicial co-operation between Central Authorities and other competent authorities should be intensified. Within the EU, the Convention on Mutual Legal Assistance and its 2001 Protocol should be ratified and implemented, a process that should be supplemented with the elaboration of practical arrangements to ensure the fullest possible use of the instruments.

- Specific criminal offences of engaging in any form of witness intimidation or other forms of perverting or interfering with the course of justice in respect of trafficking cases should be developed where they do not already exist. National legislation should also provide the possibility for the victim witness to give evidence in a place other than that in which the person being prosecuted is situated through the use of audiovisual methods or other facilities within a court. Specific attention should be given to the particularly vulnerable position of children in judicial proceedings.

- National legislation must ensure the victims right to seek and secure compensation for the injuries and harm they have suffered.

- The implementation of the provisions of the EU Framework Decision on combating trafficking in human beings and the standing of victims in criminal proceedings, both of which are part of the *acquis*, should be thoroughly evaluated. Identified gaps and lacunae in the implementation should be followed up by legislative initiatives with clearer legal obligations for implementation.

17. Specialisation and exchange measures

- It is imperative for the development of a European response to trafficking, and indeed the threat from organised crime, to pay increased attention to the potential of the practitioners.

European and international structures and instruments should be used to their full potential and full support should be ensured to the practical day-to day co-operation among investigating magistrates, prosecutors and law enforcement officers in their efforts to dismantle the international criminal networks involved.

- Specialised, joint investigative teams of investigators and prosecutors should be set up within each State to improve the professionalism of trafficking investigations and service to victims and to improve the rate of conviction of traffickers (see also point 9 on training). These teams should develop expertise in the conduct and management of both reactive, victim led and pro-active, intelligence led investigations and prosecutions together with expertise in the management of parallel financial investigations, assets seizure and money laundering

- The existing police and magistrates liaison networks should be strengthened and include trafficking crime as an integral part of their work. As an interim measure, where there are deficits in the liaison network, particularly in the countries of origin, a programme of 'liaison officer sharing' could be agreed between participating States.

- A European Centre of Excellence of investigative and prosecutorial experts who would be made available to be sent to any requesting country act seeking expert operational assistance as short-term, 'on-site' advisers in complex trafficking cases should be developed.

- Bilateral and multilateral exchange of operational trafficking investigators on a longer-term basis should be encouraged as a response to on-going trafficking problems between one or more States, or regionally, where the modus operandii of the crime would justify such exchanges.

18. Investigative methods

- Pro-active, intelligence led investigative techniques that are designed to identify, investigate and successfully prosecute traffickers without reliance on the testimony of the victims should be developed and refined. These include, for instance, targeted multi-agency intelligence gathering and analysis, co-ordinated and parallel pro-active financial investigation that seeks to identify and follow the money trail in order to disclose compelling evidence of criminal activity, and the use of a range of human and technical intrusive and non-intrusive surveillance techniques.

- With a view to reinforce international co-operation, the model of joint investigative teams should be further explored and developed. In addition, the feasibility of a European budget line at the disposal of the Member States' competent authorities should be looked into with a view to overcome identified obstacles in operational law enforcement and judicial co-operation.

- Investigators and prosecutors must be made aware and trained in the potential and use of DNA evidence and the opportunities that it provides in the investigation of trafficking cases and the sexual and physical abuse that accompanies it.

- Law enforcement services should acquire appropriate technologies and continue the development of their investigative and prosecutorial expertise and abilities, in order to pursue criminals who use computer technology within the modus operandi to perpetrate trafficking in human beings and related offences. Research and further examination of effective law enforcement techniques should be promoted in this field.

19. Corruption

- Effective legislative and regulatory measures to combat corruption, the establishment of standards of good governance, the promotion of legitimate commercial and financial conduct, and the development of mechanisms to curb corrupt practices, must be developed. Ratification and implementation of international conventions and standards as developed by OECD and the Council of Europe should be promoted.
- States should co-operate towards the successful conclusion of the United Nations Convention against Corruption.

MIDDLE EAST AND AFRICA

Selected provisions:

Convention Governing the Specific Aspects of Refugee Problems in Africa

Adopted 10 September 1969

*Entered into force 20 June 1974**

This regional refugee law instrument complements the *1951 Convention*. It reiterates the refugee definition of the *1951 Convention* and extends this definition to people who are forced to move for reasons including widespread human rights abuses, armed conflict and generalized violence.

Article I - Definition of the term “Refugee”

1. For the purposes of this Convention, the term “refugee” shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.

2. The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

3. In the case of a person who has several nationalities, the term “a country of which he is a national” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

...

6. For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee.

Article II - Asylum

1. Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

2. The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.

3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such

* 1001 UNTS 45 [http://www.africa-union.org/root/au/Documents/Treaties/Text/Refugee_Convention.pdf].

other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.

5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph.

6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article VIII - Cooperation with the Office of the United Nations High Commissioner for Refugees

1. Member States shall co-operate with the Office of the United Nations High Commissioner for Refugees.

2. The present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees.

Selected provisions:

African Charter on Human and Peoples' Rights (1981) **["Banjul Charter"]***

Adopted by the Eighteenth Assembly of Heads of State and Government of the Organization of African Unity (OAU – now the African Union), in Nairobi, Kenya on 27 June 1981

Entered into force on 21 October 1986 – 53 State Parties as of December 2008

The *African Charter* is the continent's leading human rights document, with universal ratification amongst the member-states of the African Union (AU). The *Charter* does not explicitly prohibit trafficking in persons. Nonetheless, most trafficking-related activities would be precluded by the scope of Article 5, which does prohibit the 'slave trade' (a term which is included in the broader scope of trafficking).

...

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

...

Article 5 – (Respect of Human Dignity and Freedom from Torture)

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

...

Article 12 – (Freedom of Movement and Right to Asylum)

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. 2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. 3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions. 4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. 5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

...

* OAU Doc. CAB/LEG/67/3 rev. 5, 1520 U.N.T.S. 217, 21 I.L.M. 58 (1982) [http://www.achpr.org/english/_info/charter_en.html]

Selected provisions:

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)*

Adopted by the 2nd Ordinary Session of the Assembly of the African Union, Maputo, Mozambique, on 11 July 2003

Entered into force on 25 November 2005 – 25 State Parties as of December 2008.

The *Protocol* supplements the broader *African Charter on Human and Peoples' Rights*, the latter being the leading human rights document for the continent. Unlike the universal ratification of the *African Charter*, however, the *Protocol* has only been ratified by a limited number of AU's 53 member-states. Article 4.2(g) explicitly requires State Parties to take "appropriate and effective measures" to prevent trafficking in women and protect those most at risk.

...

Article 4 – [The Rights to Life, Integrity and Security of the Person]

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.

2. States Parties shall take appropriate and effective measures to:

...

g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;

...

Article 11 – [Protection of Women in Armed Conflicts]

...

3. States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

...

Article 25 – [Remedies]

States Parties shall undertake to:

a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;

b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

...

* 1 Afr. Hum. Rts. L.J. 40 [<http://www.achpr.org/english/women/protocolwomen.pdf>]

Selected provisions:

African Charter on the Rights and Welfare of the Child (1990)*

Adopted by the Assembly of Heads of State and Government of the Organization of African Unity (OAU – now the African Union) in Addis Ababa, Ethiopia, in July 1990

Entered into force on 29 November 1999 – 44 State Parties as of December 2008

The *Charter* complements the broader *African Charter on Human and Peoples' Rights*, providing a specialized regime to protect the rights and needs of children in Africa. Many of its provisions reflect, or copy verbatim, provisions in the *Convention on the Rights of the Child*. The articles most relevant to this compilation are Articles 27 to 29, which concern the prevention of the sexual exploitation, abduction and trafficking of children. Article 23 also provides specific protections for child refugees. Part II of the *Charter* commissions the African Committee of Experts on the Rights and Welfare of the Child with promoting and monitoring compliance with its provisions.

...

Article 1: Obligation of States Parties

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.
2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.
3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 2: Definition of a Child

For the purposes of this Charter, a child means every human being below the age of 18 years.

...

Article 15: Child Labour

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:

* OAU Doc. CAB/LEG/24.9/49 (1990) [http://www.achpr.org/english/_info/child_en.html]

- (a) provide through legislation, minimum wages for admission to every employment;
- (b) provide for appropriate regulation of hours and conditions of employment;
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
- (d) promote the dissemination of information on the hazards of child labour to all sectors of the community.

Article 16: Protection Against Child Abuse and Torture

1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.
2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

...

Article 23: Refugee Children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.
2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.
3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.
4. The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

...

Article 27: Sexual Exploitation

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:
 - (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
 - (b) the use of children in prostitution or other sexual practices;
 - (c) the use of children in pornographic activities, performances and materials.

Article 28: Drug Abuse

States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Article 29: Sale, Trafficking and Abduction

States Parties to the present Charter shall take appropriate measures to prevent:

- (a) the abduction, the sale of, or traffick in children for any purpose or in any form, by any person including parents or legal guardians of the child;
- (b) the use of children in all forms of begging.

...

Full text:

Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (2006)*

Adopted by the European Union and African States on 22-23 November 2006, at Tripoli, Libya

The *Ouagadougou Action Plan to Combat Trafficking in Human Beings* is part of a on-going process of cooperation between the European Union and African states on the issue of migration. The *Action Plan* was released at the same time as the broader *Joint Africa-EU Declaration on Migration and Development*. Its provisions cover the full spectrum of anti-trafficking measures, committing states to activities ranging from awareness-raising to cooperation in the arrest and prosecution of perpetrators. As an Action Plan, however, the document does not give rise to binding legal obligations.

The European Union and African States:

Reaffirming their commitments to, among others, the following relevant International and Regional legal instruments:

- The Universal Declaration of Human Rights (1948);
- UN Convention on the Elimination of all Forms of Discrimination against Women (1979);
- The Beijing Declaration and Platform of Action (1995);
- The UN convention on the Rights of the Child (1989);
- The UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000);
- The Declaration of the World Summit for Children (1990);
- ILO Convention on worst form of child labour (1999);
- A World Fit for Children- UN General Assembly Special Session on Children (2002)

Having due regard to:

- The Constitutive Act of the African Union (2002);
- The African Charter on Human and Peoples Rights (1981) and its Protocol relating to the Rights of Women (2002)
- The African Charter on the Rights and Welfare of the Child (1990);
- The African Common Position on Children (Declaration and Plan of Action 2001);
- The African Common Position on Migration and Development (2006);
- The Treaty on the European Union (1992)

* [http://ec.europa.eu/justice_home/doc_centre/immigration/docs/OUAGADOUGOU.pdf]

- The European Convention on Human Rights (1950)
- The Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002)
- The EU Council Framework Decision on combating trafficking in human beings (2002);
- The EU Plan of best practices, standards and procedures for combating and preventing trafficking in human beings (2005);
- The EU Strategy for Africa (2005);

Recognising that women and children occupy unique and privileged positions in the society and are entitled to all rights and require legal protection in conditions of freedom, dignity and security;

Concerned that the situation of women and children remain critical, in particular in Africa, due to the socio-economic situation and harmful cultural traditional practices;

Also deeply Concerned about the increasing phenomenon of sex tourism and other sexual exploitation and abuse of women and children;

Conscious that effective actions to prevent and combat trafficking in human beings, especially in women and children, require a comprehensive regional and international approach involving countries of origin, transit, and destination, that includes measures to prevent such trafficking, punish traffickers and to protect the victims of trafficking, including of their human rights;

Convinced that reinforcing the UN Convention against Transnational Organised Crime with a joint international Framework for Action between Europe and Africa for the prevention, suppression and punishment of trafficking in human beings, particularly women and children, would be useful in preventing and combating the crime;

Determined to deal, through effective cooperation, with aspects of the problem of trafficking in human beings, especially women and children;

Have resolved therefore to adopt the following Action Plan:

General Principles

- Trafficking in human beings, within and between states, is a scourge which states are determined to address.
- Measures to prevent and combat trafficking in human beings should be based on respect for human rights including protection of victims, and should not adversely affect the rights of victims of trafficking. Special attention should be given to the United Nations Protocol to Prevent, Suppress and Punish trafficking in persons, especially women and children. The best interest of the child, including as recognised in existing international conventions, shall be considered paramount at all times.
- The empowerment of women and girls through national policies is an important part of combating trafficking. A gender perspective should be applied when adopting and implementing measures to prevent and combat trafficking in human beings.

- Poverty and vulnerability, an unbalanced distribution of wealth, unemployment, armed conflicts, poor law enforcement system, degraded environment, poor governance, societies under stress as well as non-inclusive societies, corruption, lack of education and human rights violations including discrimination, increased demand for sex trade and sex tourism are among the root causes of trafficking in human beings and must be addressed.

I. Prevention and Awareness Raising

States should:

- Ensure education and training, including life-skills, awareness raising and counselling, as key preventive measures to combat trafficking in human beings.
- Endeavour to provide viable employment or other livelihood opportunities for youth in general and in particular for young women at risk, especially in regions prone to trafficking.
- Promote the empowerment of girls and women in their national policies.
- Adopt specific measures to promote the rights of the child and protect children from trafficking.
- Raise awareness about trafficking in human beings through engagement of the mass media and information campaigns.
- Promote training of those in key positions, in particular the police authorities in African countries, and capacity building to combat trafficking in human beings.
- Take measures to improve the registration of births and the provision of identity documents.
- Take measures to improve the economic and living conditions of families and extended families.
- Mobilise support of families, NGO:s, local communities, other members of civil society and businesses to combat trafficking in human beings and promote best practices.
- Establish rehabilitation centres to assist victims of human trafficking, especially women and children and ensure their safety, protection and facilitate their recovery and social reintegration.
- Take measures to reduce the demand for services involving the exploitation of victims of trafficking in human beings.
- Take measures to eliminate harmful customs and traditional practices and to counter cultural stereotypes, which can lead to trafficking in human beings.
- Commission further research and information, including on the extent, forms and root causes of trafficking.
- Collect and exchange information on the means and methods used by the traffickers.

II. Victim Protection and Assistance

States should:

- Base their policies, programmes and other measures for victim protection and assistance on international human rights instruments, including those relating to the rights of the child and of women, forced labour, child labour and trafficking in human beings.
- Identify victims of trafficking so as to provide them with appropriate assistance and protection, taking fully into account their special vulnerabilities, rights and needs.
- Find the most appropriate measures to ensure protection and assistance to victims of trafficking, especially for children and their families, taking into account, in particular, the rural and urban divide.
- Adopt appropriate measures for the protection of victims of trafficking and provide them with information on their legal and other rights in the country of destination as well as the country of origin in case of repatriation.
- Encourage victims of trafficking to testify in the investigation and prosecution of cases of trafficking in human beings, by giving due consideration to the safety and security of victims and witnesses at all stages of legal proceedings, in particular with regard to children.
- Adopt specific measures to avoid criminalisation of victims of trafficking, as well as stigmatisation and the risk of re-victimisation.
- Endeavour to provide victims of trafficking with short- and long-term, appropriate, psychological medical and social assistance in order to promote their full recovery.
- Consider adopting legislative or other appropriate measures that permit victims of trafficking to remain in their territory, temporarily or permanently, and give appropriate consideration to humanitarian and compassionate factors.
- Take special measures to address the plight of children-headed households, especially girls.
- Promote an HIV/AIDS sensitive approach and protect the dignity and human rights of victims of HIV/AIDS, taking the special needs of children into account.

III. Legislative Framework, Policy Development and Law Enforcement

Legislative Framework

States should:

- Sign, ratify and fully implement the UN Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention, as well as other relevant regional and international legal instruments
- Adopt and review, as appropriate, legislation, policies and programmes to implement the

above mentioned Convention and Protocol and other relevant regional and international legal instruments.

- Take measures to combat criminal organisations involved in trafficking in human beings.
- Ensure the effective prosecution of those suspected of involvement in trafficking in human beings, and deterrent penalties for those found guilty of trafficking.
- Introduce, where it does not exist, a comprehensive legislative and institutional framework that cover all aspects of trafficking in human beings in line with the UN Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
- Amend or adopt national legislation in accordance with regional and international legal instruments so that the crime of trafficking is precisely defined in national law and ensure that all practices covered by the definition of trafficking are also criminalised.
- Consider legislation to provide for administrative, civil or criminal liability of legal persons or their representatives for trafficking offences in addition to the liability of natural persons.
- Make legislative provisions for confiscation of instruments and proceeds of trafficking and related offences.
- Consider legal measures which would provide victims of trafficking the possibility of obtaining compensation for damage suffered.
- Adopt legal provisions to severely punish traffickers/offenders and for the protection of victims of trafficking.
- Adopt policies for the protection and support of victims of trafficking and protection from harm by traffickers, criminal networks and pimps.
- Ensure that their laws and administrative practices provide information to victims about the status of relevant criminal and other legal proceedings, and that the status of these proceedings are considered prior to any repatriation of the victim.
- Encourage victims of trafficking to testify in the investigation and prosecution of cases of trafficking in persons by giving due consideration to the safety and security of victims and witnesses at all stages of legal proceedings, in particular with regard to children.
- Adopt legislation to prevent recruitment and use of children in armed conflicts, demobilise all combatants aged below eighteen; and develop programmes for their rehabilitation and social reintegration.

Policy Development

States should:

- Initiate or expand efforts to gather and analyse data on trafficking in human beings, including on the means and methods used, on the situation, magnitude, nature, and economics of trafficking in human beings, particularly of women and children. Systematic research and effective methodologies for such data collection and exchange of information should be advanced.

- Consider developing a National Action Plan which, in a comprehensive manner, outlines all necessary measures to combat trafficking in human beings.
- Consider establishing a multi-disciplinary National Task Force on trafficking in human beings, to formulate and implement National Action Plans. The National Task Force should bring together relevant ministries and agencies to formulate policy and take action against trafficking, and in this regard involve Inter-Governmental Organisations, Non-Governmental Organisations, and other representatives of civil society, as appropriate.
- The National Task Forces could also monitor and report through their respective governments to the appropriate regional and international bodies on the progress of the implementation of the National Action Plans.
- Include trafficking in human beings in the poverty reduction strategies at national level and allocate the necessary budget for combating this crime.

Law Enforcement

States should:

- Consider creating special units, within existing law enforcement structures, with a specific mandate to develop and effectively target operational activities to combat trafficking in human beings, as well as establishing special national focal points.
- Consider establishing direct channels of communication between their competent authorities, agencies and services, including special units and focal points. They should further, where appropriate, establish joint border patrols trained in the prevention of trafficking in human beings and strengthen existing ones.
- Consider the establishment of joint investigation units and enact laws for the extradition of the traffickers /offenders.
- Provide and strengthen training for law enforcement personnel, customs and immigration officials, prosecutors and judges, and other relevant officials, on the prevention of trafficking in human beings. The training should focus on the methods used in preventing such trafficking, prosecuting the traffickers, and protecting the rights of victims, including protecting the victims from the traffickers. This training should encourage co-operation with non-governmental organisations and other elements of civil society.

IV. Co-operation and co-ordination

States should:

- Enhance multi-disciplinary co-ordination and co-operation at the national and regional level with a view to ensure an integrated approach to victims of trafficking, taking into account the specific needs of adult and children victims.
- Enhance and exchange documentation of experiences and lessons learned regarding recovery, repatriation and reintegration, in order to develop and provide appropriate short- and long-term assistance to the victims of trafficking.

- Enhance bilateral and multilateral co-operation between European and African countries, countries of origin, countries of transit and countries of destination, regarding identification, assistance, protection, repatriation and reintegration of victims.
- Develop and facilitate co-operation between governments, inter-governmental, international and non-governmental organisations and relevant actors of civil society in order to strengthen the overall capacity to assist the victims, including by educational measures and/or work opportunities for the empowerment of victims.
- Consider the creation of focal points at national and regional levels to collect, analyse and distribute information on trafficking in human beings, and to co-ordinate efforts to prevent trafficking.
- Encourage co-operation at bilateral, regional and sub-regional levels on all aspects of trafficking in human beings, including prevention, investigation, prosecution and protection of and assistance to victims, fully reflecting the important role of inter-governmental organisations, NGO:s and other members of civil society.
- Encourage development of Regional Action Plans to combat trafficking, taking into account the need for international, regional and bilateral co-operation, in addressing the transnational dimensions of trafficking in human beings. Regional and sub-regional organisations may consider establishing a specialised unit for the co-ordination of the efforts to combat trafficking in human beings.
- Develop collaborative efforts between governments, international, inter-governmental and non-governmental organisations to mobilise resources to combat trafficking in human beings.
- Establish a mechanism at regional levels, in collaboration with governments, international, inter-governmental and non-governmental organisations and the civil society to follow- up on implementation of the Action Plan.

Selected provisions:

Arab Charter of Human Rights (Revised) (1994)*

Adopted by the League of Arab States on 15 September 1994

Entered into force on 15 March 2008 – Seven State Parties as of December 2008

The *Arab Charter* is an instrument of the League of Arab States and is the leading human rights document for the Middle East and North Africa – although only 7 of the League’s 22 member-states have ratified it. Article 10(2) explicitly prohibits trafficking in persons but only for the purposes of prostitution or sexual exploitation only. Nonetheless, the overall prohibition on slavery, forced labour, sexual exploitation and the exploitation of children in Article 10 could be construed to prohibit trafficking for those purposes as well. As well, Article 9 expressly prohibits trafficking in human organs.

Note: The authors of this compilation acknowledge that certain provisions of the Arab Charter of Human Rights have been criticized by some States and by the Office of the High Commissioner for Human Rights, especially Article 2(3). The inclusion of the Charter in this compilation should not be construed as an endorsement of, or a comment on, any of its provisions by the UNHCR..

...

Article 8 [Freedom from torture or cruel, degrading, humiliating or inhuman treatment]:

1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.
2. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.

Article 9 [Freedom from medical or scientific experimentation]:

No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State party. Trafficking in human organs is prohibited in all circumstances.

Article 10 [Freedom from slavery, servitude and trafficking]:

1. All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances.
2. Forced labor, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited.

...

* 18 Hum. Rts. L.J. 151 (1997) [http://www.ilo.org/public/english/employment/skills/hrdr/instr/arab_1.htm]

Article 23 [Remedies]:

Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

...

Article 27 [Mobility]:

1. No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country.

2. No one may be exiled from his country or prohibited from returning thereto.

Article 28 [Asylum and non-refoulement]:

Everyone has the right to seek political asylum in another country in order to escape persecution. This right may not be invoked by persons facing prosecution for an offence under ordinary law. Political refugees may not be extradited.

...

Full text:

Arab Declaration on International Migration (2006)*

Activating the Role of Migration in National Development and Arab Regional Integration

Adopted by representatives and experts of Arab States, meeting at the General Secretariat of the League of Arab States on 17-18 July 2006

The *Arab Declaration on International Migration* is the first inter-governmental document in the Arab world that directly addresses the issue of refugees in general (as opposed to Palestinian refugees in particular). In particular, Article 11 urges states to accede to international conventions relating to refugees to and “recognize the fundamental difference between migrants and refugees who have specific distinctive rights and needs.” The document also identifies victims of trafficking as a discrete group entitled to specialized treatment and protection. Article 7 calls on states “to combat and eliminate all forms of human trading and trafficking of immigrants and to protect victims of trading, particularly women and children vulnerable to forced labor... or sexual or commercial exploitation and to take measures necessary for protection against criminal networks.” As a declaration, however, this document is not a treaty or other form of binding law, but is more akin to a statement of principles.

We, the representatives and experts of Arab States, meeting at the General Secretariat of the League of Arab States on July 17 – 18, 2006, for deliberation and guidance to the adoption of this draft declaration, recalling and reconfirming commitment to the resolutions approved by Arab leaders and Arab specialized organizations concerned with migration issues, including

- the Agreement on Arab Economic Unity issued by the Arab Economic Council, June 1957;
- the Arab Economic Council Resolution No. 77 (March 1965) on the Freedom of Movement, Residence and Labor, as stipulated in the Agreement on Arab Economic Unity;
- the Arab Economic Council Resolution No. 784 (1978) on the Freedom of Movement of Technical Manpower among Arab States;
- the Declaration of Principles on the Movement of Arab Manpower among Arab States;
- both Arab Agreements issued by the Arab Labor Organization Nos. 1 (1966) and 4 (1975) on the Movement of Arab Manpower; the Arab Agreement No. 14 (1981) on the Arab Worker’s Right to Social Insurance when Moving for Employment in an Arab Country; and
- the Arab Agreements Nos. 3 (1971) on the Minimum Level of Social Insurance, 8 (1977) relating to Trade Union Freedoms and Rights, 9 (1977) on Vocational Guidance and Training and 15 (1983) on Wage Determination and Protection;
- the 2004 Arab Charter on Human Rights, the 2001 Cairo Declaration on Childhood, the 1994 Arab Declaration on Family Rights and the 1993 Arab Charter on Child Rights;
- the Declaration of Principles on Facilitating the Movement of Arab Manpower (February 2005);

* [http://www.arableagueonline.org/lasimages/picture_gallery/finalenglish.pdf]

And referring to the relevant applicable international conventions, particularly:

- conventions issued by the International Labor Organization, particularly Convention No. 97 of 1949; Convention No. 143 of 1975 as well as the recommendations issued by the same Organization, particularly Nos. 86 on Migration for Employment and 151 on Migrant Workers and The United Nations Secretary-General Report of May 2006 on International Migration;
 - international legal instruments, particularly International Convention on the Protection of the Rights of all Migrant Workers and their Family Members, which came into force in July 2003;
 - the conventions and recommendations relating to human rights in general and relevant to migrant workers' rights, particularly the 1948 Universal Declaration on Human Rights, the 1965 International Convention on the Elimination of all Forms of Racial Discrimination, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1966 International Covenant on Civil and Political Rights, the 1979 Convention on the Elimination of all Forms of Discrimination against Woman, the 1984 International Convention Against Torture and other Forms of Cruel, Inhuman and Degrading Treatment or Punishment, the 1989 International Convention of Child Rights, the Protocol on the Prevention, Suppression and Punishment for the Trafficking of Persons, particularly Women and Children (Trafficking Protocol), the 2000 Protocol against the Trafficking of Immigrants by Land, Sea and Air (Trafficking Protocol), and both Protocols attached to the Convention on the Elimination of Transnational Organized Crime;
 - Resolutions by conferences and international declarations, particularly those by the Conference on Population and Development (Cairo, 1994), mainly Chapter X on International Migration, the Conferences on Women and their Action Plans (Beijing, 1995) and the World Summit on Social Development (Copenhagen, 1995);
- **Confirming** the statement in The United Nations Declaration on the Millennium Development Goals (MDGs) regarding requesting to heads of states and governments to take measures to ensure respect and protection of the immigrants, migrant workers and their family members' human rights,
- **Considering** that addressing migration issues and their implications requires a holistic approach linking immigration to development, partnership and cooperation dimensions to tackle the structural causes of intense migration, including poverty, discrimination and disparities in rates of welfare, economic growth and political and social stability among nations,
- **Recognizing** that labor migration has developmental benefits for both States of origin and States of destination, that it in the same time poses several challenges and that continuing dialogue and effective partnership among both States of origin and States of destination provide the best means to augment benefits and address weaknesses,
- **Acknowledging** the growing magnitude of the migrant trafficking criminal networks and their gravity on migrants and the security among nations,
- **Considering** that the growing volume of females among migrants requires the integration of the gender dimension into all international policies and procedures concerned with international migration,
- **Stressing** the positive effects, on both States of origin and States of destination, of migration by persons of all nationalities, whether moving to, among or out of the Arab region countries; stressing also the importance of facilitating the movement of labor among Arab countries in

accordance with their respective needs, in order to serve regional integration and to enhance their competitiveness,

- **Valuing** the efforts by Arab States in enhancing their own policies on international migration and in strengthening data and information collection and migration management institutions and in encouraging dialogue, consultation and data and information sharing among States of origin, States of destination and States of transit for labor,

- **Valuing** the significant efforts by the United Nations, its specialized agencies as well as international organizations concerned with migration, referring in this respect the high-level dialogue on international immigration and development to be conducted in the course of the 61st General Assembly Session, confirming the Secretary-General's report issued in this respect in May 2006, with the object of identifying appropriate ways and means to maximize the developmental benefits and minimize the negative impact of migration,

- **Recognizing** the negative impact of the migration of rare competencies on development efforts and the achievement of MDGs in the developing countries, particularly the impact of migration by workers in vital sectors such as health, education and research and development,

- **Admitting** that family reunion and guarantee of the rights of migrant would facilitate interaction and integration of migrants with States of destination and raise their productivity and contribution to development,

- **Recognizing** that lack of data curtails the possibility of developing thorough and effective policies managing and augmenting benefits of migration,

- **Appreciating** the positive contribution of Arab migrations, in different countries within and outside the Arab region, in pushing forward economic development and in deepening constructive civilization and cultural interaction between Arab peoples and societies of migration,

- **Appreciating** the efforts and initiatives by the General Secretariat and the Secretary-General of the League of Arab States in achieving communication and interaction with Arab communities and migrants of Arab origin in countries of migration, through organizing conferences and symposia for building bridges between Arab communities and Arab migrants on the one hand and their communities and institutions so as to yield mutual benefit on different economic, cultural and human levels and promote awareness of various joint issues and interests,

- **Welcoming** in particular the role of civil society and non-governmental organizations in furthering interest in migration-related questions and the related protection of migrants' human rights and enhancing their social, cultural and health conditions:

- 1- **Reconfirm** the several positive contributions of labor migration to development in both States of origin and States of destination and call for further recognition by the media on both the Arab and international levels of the positive role of migrant in such a way as to improve the image of migrant, curb racism and xenophobia and reinforce interaction and integration of migrants with communities of destination.

- 2- **Call on** Member-States and specialized bodies in Arab labor-exporting and labor-receiving States to strengthen policies geared to maximize benefits from migration in the interest of development, to promote welfare and curb poverty, to improve family conditions, to enhance Arab regional cooperation and integration and to curb negative implications of migration, all within a framework of continuing dialogue and effective partnership.

- 3- **Confirm** the need for States to adopt workable policies and measures to facilitate remittances by migrants and increase their returns, by taking actions to curb transfer transmission costs and increase speed of transmission under safe conditions in both States of origin and States of destination and for transfer-receiving States to activate their contribution to development projects to curb poverty and improve local community conditions.
- 4- **Urge** Arab States for further coordination and consultation through institutional processes in line with the practice in other regions, sharing information and providing necessary training and rehabilitation, with the object of facilitating the movement of labor among Arab countries to meet the needs of both States of origin and States of destination, coordinating among various bodies, standardizing policies and programmes and drafting comprehensive and clear-cut national policies.
- 5- **Call on** Arab States to adopt necessary procedures and measures to benefit from national competencies through enhancing scientific research and its institutions and motivating competencies and innovators in such a way as to ensure their stability and curb brain drain. This can be also made through establishing and reinforcing relationship networks with migrant competencies and their institutions and engaging them in development efforts and in transferring and resettling knowledge. We stress the need for concerted efforts between both States of origin and States of destination for competencies to find means necessary to ensure the stability of competencies needed by developing countries, particularly those working in vital sectors such as health, education and research and development and to offset existing shortage.
- 6- **Urge** all labor-receiving States to enhance human rights and fundamental freedoms of all immigrants, to protect migrants' rights against illegitimate actions or acts of violence, particularly those of racial discrimination and crimes committed by individuals and groups motivated by racism or xenophobia.
- 7- **Urge** relevant States to upgrade and enhance national laws and legislation and re-adjust them as far as possible to international covenants and conventions, to adopt necessary and effective procedures and measures and to further coordination to combat and eliminate all forms of human trading and trafficking of immigrants and to protect victims of trading, particularly women and children vulnerable to forced labor (corvee) or sexual or commercial exploitation and to take measures necessary for protection against criminal networks.
- 8- **Call on** relevant States and organizations to enhance cooperation, coordination and information sharing in order to curb illegal migration and enhance dialogue and partnership for facilitating legal, safe and organized movement of persons among States.
- 9- **Call on** the international community to work closely for putting an end to Israeli occupation based on just peace, preventing its continuing attacks against the Palestinian people, confronting Palestinian forced emigration and guaranteeing the rights of Palestinian émigrés/refugees.
- 10- **Call on** Arab States, all institutions and forces of peace both within Arab countries and on the international arena to intensify and mobilize their efforts to settle disputes by peaceful means, so as to ensure the stability of the peoples of the region and to curb streams of forced migration.

- 11- **Call upon** the concerned governments to accede to the international conventions related to refugees, and to set up national legislations that ensure the rights and duties of refugees and asylum countries, and recognize the fundamental difference between migrants and refugees who have specific distinctive rights and needs, with the possibility for these countries to gain from their potential in the development construction when granted enough opportunity, taking into consideration the non application of any measures that may prevent the refugees from enjoying international protection when curbing the irregular movements.
- 12- **Urge all States of origin and States of destination to mainstream the** dimensions of gender and protection of women, girls and migrant families into the migration-related policies and reinforce coordination among States in this connection, to facilitate migrants' family reunion, in order to reinforce migrant's contribution to development and to enhance the protection of female migrants against all forms of violence, discrimination, trading and exploitation.
- 13- **Call on** all States to promote awareness of the health dimensions, sexually transmitted diseases and HIV/AIDS and to guarantee health and social services for all migrants.
- 14- **Call States** to reinforce research efforts to collect and analyze data, to establish and ensure the continuing updating of databases on various dimensions of migration, ensuring transparency and easy access; thus enabling the development of thorough and effective policies, tight management of migration and its increased benefits, calling United Nations specialized agencies and related international organizations to help establish such databases.
- 15- **Invite** States to continue, reinforce and deepen the Arab-European Dialogue so as to boost safe legal migration, to enhance and expand benefits of migration as well as its developmental returns in both exporting and receiving States, to curb negative media coverage on migration, to rectify the image of Arab migrant, to recognize the constructive roles of migration and migrants and to intensify cooperation and partnership to address the negative implications of migration in the Mediterranean and to effectively counter migrant trafficking networks.
- 16- **Invite** Arab States, international organizations concerned and donor organizations to support the "Arab Migration Observatory" programme at the League of Arab States Demographic Policy and Migration Department, in such a way as to reinforce research and study efforts, to ensure the availability of precise and up-to-date data on various dimensions of migration, to enhance dialogue and consultation opportunities and training and rehabilitation activities on the regional level and to ensure wide-scale dissemination of data and information on various dimensions of international migration.
- 17- **Invite** Arab governments to adopt national development policies and to intensify meaningful programmes and projects, foremost of which are political, democratic, economic and social reform programmes to curb poverty and unemployment and to consequently alleviate migration pressure and counter illegal migration.
- 18- **Look forward** to reinforcing efforts by the League of Arab States geared to unify visions and policies on the Arab arena and to standardize legislation and laws concerned with international migration, with the object of supporting and activating the role of migration in the Arab economic integration and in the rise of an "Arab Labor Market"; thus enhancing the economic competitiveness of Member-States, taking into consideration their discrepancies and bilateral and international obligations.

**PART III: REFERENCES TO
ADDITIONAL RESOURCES
RELATED TO HUMAN
TRAFFICKING**

1. Reports on the scope and profile of human trafficking

Reports of the U.N. Secretary-General related to human trafficking:

In-depth study on all forms of violence against women, Report of the U.N. Secretary-General (U.N. Document A/61/122/Add.1) July 2006
[<http://www.un.org/Docs/journal/asp/ws.asp?m=A/61/122/Add.1>].

Trafficking in Women and Girls, Report of the U.N. Secretary-General (U.N. Document A/59/185) July 2004
[<http://www.un.org/Docs/journal/asp/ws.asp?m=A/59/185>].

Trafficking in Women and Girls, Report of the U.N. Secretary-General (U.N. Document A/57/170) October 2002
[<http://www.un.org/Docs/journal/asp/ws.asp?m=A/57/170>].

Trafficking in Women and Girls, Report of the U.N. Secretary-General (U.N. Document A/55/322) August 2000
[<http://www.un.org/Docs/journal/asp/ws.asp?m=A/55/322>].

Reports of the U.N. Special Rapporteur on Trafficking in Persons, Especially Women and Children

Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Office of the United Nations High Commissioner for Human Rights (U.N. Document A/HRC/4/23), 24 January 2007
[http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/4/23].

Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Office of the United Nations High Commissioner for Human Rights (U.N. Document E/CN.4/2006/62), 20 February 2006
[http://ap.ohchr.org/documents/dpage_e.aspx?si=E/CN.4/2006/62]

Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Office of the United Nations High Commissioner for Human Rights (U.N. Document E/CN.4/2005/71), 22 December 2004
[http://ap.ohchr.org/documents/dpage_e.aspx?si=E/CN.4/2005/71].

Other Reports:

Trafficking in Persons Report 2008, U.S. State Department (Washington D.C.) 2008
[<http://www.state.gov/documents/organization/105501.pdf>].

*Annual Reports available from 2001 onwards

Trafficking in Persons: Global Patterns, United Nations Office on Drugs and Crime (Vienna) April 2006
[<http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf>].

Falling Short of the Mark: An International Study on the Treatment of Human Trafficking Victims, Future Group (Ottawa) March 2006
[<http://www.thefuturegroup.org/TFGhumantraffickingvictimsstudy.pdf>]

Trafficking In Human Beings, Especially Women And Children, In Africa, UNICEF (2003)
[<http://www.unicef.org/protection/files/insight8e.pdf>].

Trafficking in women and girls: Report of the Expert Group Meeting, United Nations Division for the Advancement of Women (DAW) / United Nations Office on Drugs and Crime (UNODC), November 2002
[<http://www.un.org/womenwatch/daw/egm/trafficking2002/reports/Finalreport.PDF>]

Traffickers Make Money through Humanitarian Crises, Trafficking in Migrants. No. 19, IOM, 1999.

Abuse without End: Burmese Refugee Women and Children at Risk of Trafficking, Women's Commission for Refugee Women and Children, January 2006
[http://www.womenscommission.org/pdf/mm_traff.pdf]

Caught in the Crossfire: Displaced Colombians at Risk of Trafficking, Women's Commission for Refugee Women and Children, March 2006
[http://www.womenscommission.org/pdf/co_traff1.pdf]

The Struggle between Migration Control and Victim Protection: The UK Approach to Human Trafficking, Women's Commission for Refugee Women and Children, June 2005
[http://www.womenscommission.org/pdf/UK_Trafficking.pdf]

Trafficking in Persons: An analysis of Afghanistan, IOM, 2003
[http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/Afghan_trafficking.pdf]

Armed Conflicts and Human Trafficking in Tajikistan, NGO MODAR, 2004.

Colombia's War on Children, Watchlist on Children and Armed Conflict, February 2004
[http://www.womenscommission.org/pdf/co_wl.pdf]

Agrarian Conflict, Internal Displacement and Trafficking of Mexican Women: The Case Of Chiapas State, A.K. Acharya, Universidad Nacional Autónoma de México (UNAM), April 2004
[<http://paa2004.princeton.edu/download.asp?submissionId=40481>]

The Trafficking of Women and Children in the Southern Africa Region, IOM, 2003.

Combating the Trafficking in Children and Their Exploitation, Prostitution and Other Intolerable Forms of Child Labor in Mekong Basin Countries, Institute for Population and Social Research, Mahidol University, 2000.

2. UNHCR documents relevant to human trafficking

UNHCR Handbooks:

UNHCR Handbook for the Protection of Women and Girls, UNHCR (Geneva) January 2008, Chapter 5.3.2.

[<http://www.unhcr.org/refworld/docid/47cfc2962.html>]

UNHCR Handbook for the Protection of Internally Displaced Persons, UNHCR (Geneva) December 2007, p.218-223.

[<http://www.unhcr.org/refworld/docid/4790cbc02.html>]

New Issues in Refugee Research

International protection for trafficked persons and those who fear being trafficked, Working Paper No. 149 by Kaori Saito, UNHCR (Geneva) December 2007

[<http://www.unhcr.org/research/RESEARCH/476652742.pdf>].

The trafficking and smuggling of refugees: the end game in European asylum policy?, Working Paper No. 39 by John Morrison and Beth Crosland, UNHCR (Geneva) April 2001

[<http://www.unhcr.org/research/RESEARCH/3af66c9b4.pdf>].

The trafficking of women for sexual exploitation: a gender-based and well-founded fear of persecution?, Working Paper No. 80 by Jenna Shearer Demir, UNHCR (Geneva) March 2003

[<http://www.unhcr.org/research/RESEARCH/3e71f84c4.pdf>].

Other UNHCR documents:

Combating Human Trafficking: Overview of UNHCR Anti-Trafficking Activities in Europe, UNHCR (Geneva) December 2005

[<http://www.unhcr.org/refworld/docid/43fd782d4.html>].

Mobility and protection risks: a study of Ban Mai Nai Soi refugee camp, Bangkok, UNHCR Thailand, 2006

Women Asylum Seekers and Trafficking, UNHCR Prague, 2001

3. Resources related to child trafficking

UNHCR Guidelines on Determining the Best Interests of the Child, UNHCR (Geneva) May 2008

[<http://www.unhcr.org/refworld/docid/48480c342.html>]

Child Friendly Standards and Guidelines on the Recovery and Integration of Trafficked Children, International Labour Organization (Bangkok) 2006

[<http://www.ilo.org/public/english/region/asro/bangkok/library/download/pub06-04.pdf>]

Rehabilitation of Victims of Child Trafficking: A Multidisciplinary Approach, International Labour Organization (Bangkok) / Center for the Protection of Children's Rights Foundation (CPCR) 2006

[<http://www.ilo.org/public/english/region/asro/bangkok/library/download/pub06-05.pdf>]

Inter-Agency Guiding Principles on Unaccompanied and Separated Children, ICRC/Rescue Committee International/Save the Children UK/ UNICEF/UNHCR/World Vision International, January 2004

[<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/p1101?opendocument>]

4. Resources for law-and policy-makers

Toolkit to Combat Trafficking in Persons, United Nations Office on Drugs and Crime (Vienna) 2006

[<http://www.unodc.org/documents/human-trafficking/HT-toolkit-en.pdf>]

Handbook for Parliamentarians: Combating Child Trafficking, Inter-Parliamentary Union (Geneva) / UNICEF (New York) 2005

[http://www.ipu.org/PDF/publications/childtrafic_en.pdf]

Human Trafficking and United Nations Peacekeeping: DPKO Policy Paper, United Nations Department of Peacekeeping Operations (New York) 2004

[<http://www.un.org/womenwatch/news/documents/DPKOHumanTraffickingPolicy03-2004.pdf>]

5. Websites*

UN and specialized agencies

International Labour Organization: Forced Labour:

[http://www.ilo.org/global/Themes/Forced_Labour/lang--en/index.htm].

* Please note that UNHCR is not responsible for the content of external websites.

UNHCR: Refugee Protection and International Migration:
[<http://www.unhcr.org/migration>]

UNHCR: UNHCR and Human Trafficking:
[<http://www.unhcr.org/trafficking>]

UNHCR's Refworld: External Links – Trafficking in persons:
[<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=links&skip=0&reftopic=TRAFFICKING>]

UNHCR's Refworld: Special Feature on Migration:
[<http://www.unhcr.org/refworld/migration.html>]

UNICEF: Child Trafficking:
[http://www.unicef.org/protection/index_exploitation.html]

UNICEF: Child Trafficking Research Hub:
[<http://www.childtrafficking.org/>]

United Nations Division for the Advancement of Women: Reports and resolutions on violence against women - Trafficking in women and girls:
[<http://www.un.org/womenwatch/daw/vaw/reports.htm#Trafficking>]

United Nations Global Initiative to Fight Human Trafficking (UN.GIFT):
[<http://www.ungift.org>]

United Nations Office on Drugs and Crime: Human Trafficking:
[<http://www.unodc.org/unodc/en/human-trafficking/index.html>].

United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP)
[<http://www.no-trafficking.org>]

United Nations Population Fund: Trafficking in Human Misery:
[<http://www.unfpa.org/gender/violence1.htm>]

United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children:
[<http://www2.ohchr.org/english/issues/trafficking/>]

Other intergovernmental organizations:

European Union: EU action against trafficking in human beings and the sexual exploitation of children:
[http://ec.europa.eu/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm]

International Organization for Migration: Counter-Trafficking:
[<http://www.iom.int/jahia/page748.html>]

INTERPOL: Trafficking in Human Beings:
[<http://www.interpol.int/Public/THB/default.asp>]

Organization for Security and Cooperation in Europe: Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings:
[<http://www.osce.org/cthb>]

Non-governmental organizations:

Coalition Against Trafficking in Women:
[<http://www.catwinternational.org/index.php>]

humantrafficking.org: a webservice for combating human trafficking:
[<http://www.humantrafficking.org>]

Human Rights Watch – Campaign Against the Trafficking of Women and Girls:
[<http://www.hrw.org/about/projects/traffcamp/intro.html>]