

TRAFFICKING IN HUMAN BEINGS: IMPLICATIONS FOR THE OSCE

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Executive summary

Every year, millions of men, women, and children are trafficked worldwide into conditions amounting to slavery. Among these, many thousands are young women and girls lured, abducted, or sold into forced prostitution and other forms of sexual servitude. In 1997, an estimated 175,000 women and girls were trafficked from OSCE countries in Central and Eastern Europe and the Newly Independent States, primarily to other OSCE countries. In addition, OSCE countries in Western Europe and North America continue to be major trafficking destinations for trafficked people from developing countries in Asia, Africa, and Latin America.

In the OSCE region, trafficking is most often discussed in terms of "trafficking in women", "trafficking in women and children", or "trafficking for purposes of sexual exploitation". While trafficking indisputably has a disproportionate impact on women and girls and frequently entails trafficking for commercial sex purposes, trafficking is a much wider phenomenon, both globally and within the OSCE region. In the OSCE region, the trade in people includes, for example, trafficking in migrants for sweatshop, domestic, or agricultural labour, forced or fictitious "mail-order" marriages, as well as buying and selling young women for brothels and strip clubs.

Despite divergent definitions, there is growing agreement that the problem of "trafficking in human beings" involves movement of people for the purpose of placing them in forced labour or other forms of involuntary servitude. Thus, for purposes of this background paper, "trafficking in human beings" is defined to include trafficking for sexual as well as non-sexual purposes, and all actions along

the trafficking chain, from the initial recruitment (or abduction) of the trafficked person to the end purpose or result - the exploitation of the victim's person or labour.

Trafficking in human beings, particularly of women and children, has been loudly denounced by the international community as an egregious and profound human rights abuse, a form of "modern-day slavery", and a particular form of violence against women. Despite increased attention on the political level, however, few States have taken adequate measures to protect individuals from such practices, to prosecute traffickers, or to provide effective remedies for victims. Current legal frameworks, policies and strategies have proven inadequate to deal effectively with this complex transnational problem, and co-ordination, at both the national and international level, has been the exception rather than the rule.

By all accounts, trafficking is a complicated and multifaceted problem that requires a co-ordinated, interdisciplinary, and international response. It has roots in socio-economic and gender inequalities; it involves migration and law enforcement problems; it is increasingly perpetuated by organized criminal groups; it raises numerous human rights and gender issues; and has broad implications for stability, democratization and rule of law. At the 1998 OSCE Human Dimension Implementation Meeting and the Side Meeting on Gender Issues, both State delegations and non-governmental organizations identified trafficking as a key women's human rights issue requiring intensified action by the OSCE and the participating States.

This background paper is intended as a first step in addressing the issue of trafficking within the OSCE framework. To this end, the report provides a working definition of trafficking in human beings, a general overview of the problem, a summary of the relevant OSCE commitments and international standards relating to trafficking, and a discussion of the status of implementation of anti-trafficking measures in the OSCE region. The report summarizes current international efforts to combat trafficking and considers, on a preliminary basis, areas in which the OSCE may be uniquely well-placed to address aspects of the trafficking problem, without duplicating the work of others. Among other things, the report recommends that the OSCE integrate anti-trafficking measures into existing human rights, civil society, and institution-building activities, provide training to OSCE field mission members, and undertake a leading role in combating trafficking in South Eastern Europe as part of the OSCE mandate under the Stability Pact.

Finally, since primary responsibility for combating trafficking rests with the participating States, the report indicates a number of areas where the participating States could take concrete actions on a national and international level to prevent and suppress trafficking, and to protect the human rights of trafficked persons.

1. Introduction

Every year, millions of men, women, and children are trafficked worldwide into conditions amounting to slavery. Among these, many thousands are young women and girls lured, abducted, or sold into forced prostitution and other forms of sexual servitude. The OSCE region has long included many of the major countries of destination and transit for human trafficking. It now also constitutes the fastest growing source region for trafficked people. In 1997, an estimated 175,000 women and girls were trafficked from Central and Eastern Europe and the Newly Independent States alone.¹

Despite increasing efforts to combat it, trafficking in human beings continues to flourish and expand in the OSCE region.

Current legislation, policies and strategies have proven inadequate to prevent or suppress trafficking, or to protect the human rights of trafficked persons. Moreover, in many OSCE countries, police, government, and immigration officials ignore, facilitate and even profit from the trade.

Perhaps the most significant limitation in current law and policy is the failure of national governments to treat trafficking - in practice - as a serious human rights issue. In the vast majority of destination countries, trafficking is approached primarily as an illegal migration or prostitution problem. Consequently, most law enforcement strategies target the people who are trafficked, not the criminal networks that traffic them. Assuming the State intervenes at all, it is the victims who are arrested and deported while the traffickers continue to operate with near-impunity. Few victims - in the destination country or upon return to their country of origin - receive any assistance, protection, or legal remedy against their traffickers.

In the OSCE region, trafficking in human beings - and particularly trafficking in women and children - has received an increasing amount of political and media attention in the last several years. In part, this reflects the lobbying efforts of NGOs who have helped elevate this issue to a priority level on the international human rights agenda. Government concern in the OSCE region has also increased, particularly in response to the dramatic escalation in trafficking from Central and Eastern Europe and the Newly Independent States. At the 1998 Human Dimension Implementation Meeting and the Side Meeting on Gender Issues, both State delegations and non-governmental organizations identified trafficking as a key women's human rights issue requiring intensified action by the OSCE and the participating States.

Many individuals, governments, institutions, and organizations are involved in the fight against trafficking at the local, national and international level. The OSCE has no desire to duplicate these efforts. Nevertheless, it is evident that the OSCE, through its institutions and the participating States, can and should play a greater

role in addressing this significant problem.

This background paper is intended as a first step in addressing the issue of trafficking within the OSCE framework. Its purpose is to provide general background information about the problem and to begin exploring the role of the OSCE. To this end, the paper will:

- Provide a very general overview of the problem and the status of implementation of anti-trafficking measures in the OSCE region;²
- Consider areas in which the OSCE could support and facilitate efforts to combat trafficking; and
- Provide some preliminary recommendations for the OSCE institutions and the participating States.

As a second step, the OSCE Office of Democratic Institutions and Human Rights (ODIHR) intends to follow-up this background paper with a proposed Action Plan and concrete suggestions for OSCE projects and initiatives relating to trafficking.

The ODIHR is in the process of collecting information about other efforts being conducted in the field, and will take this more fully into account in developing its proposed Action Plan.

2. Trafficking in the OSCE region

2.1 Defining the Problem

There is little agreement in the international community as to how "trafficking" should be defined. Historically, trafficking has been defined in terms of the trade in women and children for prostitution or other "immoral purposes". The term "trafficking" is also frequently used interchangeably with "smuggling" - the facilitated movement of illegal migrants across international borders for economic gain. "Trafficking" has not been defined in OSCE documents, and, to date, has never been precisely defined in international law.³

Despite many divergent definitions, there is growing agreement that the problem of "trafficking in human beings" involves two key elements: recruitment/transport and forced labour or slavery-like practices (actual or attempted). It is this link between the transport of migrants and the purpose of the transport that differentiates "trafficking" from "smuggling", and places trafficking among the practices

considered "modern forms of slavery." Moreover, most experts agree that trafficking should be defined as involving deception or coercion of some kind.⁴

In the OSCE region, trafficking is most often discussed in terms of "trafficking in women", "trafficking in women and children", or "trafficking for purposes of sexual exploitation". While trafficking indisputably has a disproportionate impact on women and girls and frequently entails trafficking for commercial sex purposes, trafficking is a much wider phenomenon, both globally and within the OSCE region. Trade in people may include, for example, trafficking in migrants for sweatshop, domestic, or agricultural labour, brokering forced or fictitious marriages, as well as buying and selling young women for brothels and strip clubs.

In order to provide a common framework for discussing the problem of trafficking, "trafficking in human beings" is defined for purposes of this background paper as:

- All acts involved in the recruitment, abduction, transport (within or across borders), sale, transfer, harbouring, or receipt of persons,
- by the threat or use of force, deception, coercion (including abuse of authority), or debt bondage,
- for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude, forced or bonded labour, or in slavery-like conditions,
- in a community other than the one in which the person lived at the time of the original deception, coercion or debt bondage.⁵

As defined, "trafficking in human beings" would include trafficking for sexual as well as non-sexual purposes,⁶ and all actions along the chain, from the initial recruitment (or abduction) of the trafficked person to the end purpose or result - the exploitation of the victim's person or labour.

Although issues such as illegal migrant smuggling and working conditions of migrant workers are closely related to trafficking and are also significant problems within the OSCE region, they will not be addressed specifically within the scope of this report.

2.2 Trafficking in Women and Girls for the Sex Industry⁷

To a greater or lesser degree, almost all OSCE participating States are affected by trafficking in human beings, particularly trafficking for the sex industry. Despite the lack of concrete statistical data, experts in the field agree that it is a growing (and evolving) phenomenon, increasingly perpetuated by organized crime.⁸

2.2.1 Patterns and Practices

By several accounts, hundreds of thousands of women and girls are trafficked to and from OSCE countries every year to work as virtual slaves in the sex industry.

Although trafficking differs somewhat in each country or region where it occurs, certain common patterns have emerged.

Traffickers tend to target young women and girls in countries or regions where socio-economic conditions are difficult and opportunities for women are extremely limited. Recruitment practices vary, but invariably involve some form of coercion or deception. In a typical situation, the young woman responds to an advertisement or is recruited informally by an agent (often an acquaintance) offering a good job in another country or region.⁹ Typically the jobs offered are for nurses, hair stylists, au pairs, domestic workers, waitresses, models or dancers. Recruiters may approach the young woman's family, or recruit them at mixers or matchmaking parties organized by marriage agencies. In some countries, women and girls have been abducted outright or lured across borders by "friends" for nightlife or tourist excursions. In others, young women and girls are literally sold to procurers by relatives, "boyfriends," or state institutions such as orphanages. Some women travel overseas for arranged or brokered marriages, only to be forced into prostitution by their "husbands" when they arrive.

It is also important to note that many young women who are trafficked know that they will be working in the sex industry, but are deceived about the nature or conditions of their work. Some agree to work in "milder" forms of sex work, such as "peep shows" or clubs, but later are forced into prostitution. Others agree to work abroad as prostitutes or escorts, expecting to earn money quickly and then return home after a short period of time. Instead they are sold on the marketplace to a pimp or brothel and then trapped in abusive situations by intimidation and debt bondage.¹⁰

In the case of international trafficking, traffickers use various mechanisms to transport women and girls across borders, sometimes with the co-operation of immigration authorities. Many women (particularly from Central and Eastern Europe) are able to enter destination countries legally on student, tourist, or temporary work visas, and then overstay their visas. Others enter as "mail-order brides." In some countries, such as Canada and Switzerland, women may obtain work visas as dancers, entertainers, or artists, thus enabling legal entry. When tourist visas or work permits are not available, traffickers can easily obtain false or altered travel documents from associates or local authorities. In Russia, for example, traffickers can reportedly obtain an altered passport for an underage girl for about \$800.¹¹ The International Organization for Migration (IOM) reports that traffickers may also transport women without documentation, usually by smuggling the women across land borders in cars and trucks.

Once in the control of the traffickers, the trafficked women and girls are either forced into prostitution or trapped in exploitative conditions through debt

bondage.¹² In many cases, the young women are beaten, raped, threatened, confined and/or deprived of food until they agree to the trafficker's demands. In other situations, the coercion is more subtle. In almost all cases, the trafficker takes the woman's travel documents, controls her movement, and uses debt bondage to coerce and control her. If she escapes, she faces retribution against herself or her family for defaulting on her debt, and arrest and deportation from the local authorities. Unfamiliarity with the language, lack of money and proper documentation, mistrust of police or other authorities, lack of information, irregular or illegal immigration status, fear, shame, and isolation further reinforce the victim's dependence on the traffickers.

The "working conditions" of trafficked women in the sex industry are often brutal. Many are forced to have sex with as many as 15-20 clients per day. They may acquire HIV or other sexually-transmitted diseases and suffer from medical problems associated with multiple rape or physical abuse. Traffickers often use drugs and drug addiction to control the women and ensure their continued compliance. Intimidation and violence is commonplace, and often extreme, particularly in cases with "mafia" or organized crime connections. NGOs and law enforcement officers have reported cases in which young women committed suicide or were killed by their traffickers, sometimes as a warning to other trafficking victims.

Some women who are trafficked work in relatively better conditions and may even have some freedom of movement. Nevertheless, most are subject to violence or the threat of violence, are not free to leave their "employment," and receive little, if any, of their earnings.

2.2.2 General Trends

The full scale of trafficking in the OSCE region is unknown. Reliable statistics are impossible to obtain due to the underground and illegal nature of the trade, lack of data collection and research, and the wide variety of definitions of "trafficking" used by different sources. In addition, few trafficking victims are willing or able to report their experience to police. As a result, NGO estimates are consistently much higher than those from official sources.

Despite the lack of specific data, most sources seem to agree on the following basic trends:

- The OSCE countries of Western Europe and North America have long been and continue to be destinations for trafficked women and girls from various developing countries in Latin America, Asia, and Africa, including Columbia, Brazil, the Dominican Republic, Nigeria, Morocco, China, Thailand, Vietnam, and the Philippines.
- The major destination countries for trafficked women in the OSCE region include the Netherlands, Belgium, Germany, Austria, Switzerland, Italy,

Spain, Greece, Turkey, the United Kingdom, Canada, and the United States. Other destinations include, without limitation: Bosnia-Herzegovina, Cyprus, Sweden, Denmark, Finland, and Norway.

- Since the early 1990s, an increasing percentage of trafficked women and girls are from other OSCE participating States in Central and Eastern Europe (CEE) and the Newly Independent States (NIS). Women from CEE are particularly vulnerable to traffickers because of their proximity to Western Europe and ability to enter legally as tourists, often without the need to apply for a visa.
- According to IOM, the main countries of origin in the OSCE region are the Russian Federation, Ukraine, Poland, and the Baltic States. Other major source countries include Albania, the Czech Republic, Hungary, Belarus, Slovakia, Romania, Bulgaria, the countries of former Yugoslavia, Moldova, and Georgia. NGOs also report a growing number of cases of trafficking from Armenia, Azerbaijan, and Central Asia.
- CEE and the NIS now constitute the fastest growing source for trafficked women and girls for the sex industry. A US Government source has conservatively estimated that more than 175,000 women and girls are trafficked from CEE and the NIS each year. In 1995, IOM estimated the number at 500,000 annually to Western Europe alone.
- In many Western European countries (such as the Netherlands and Germany), women from CEE and the NIS now constitute the majority of women trafficked into the sex industry.
- Most Western European countries, as well as Turkey, Israel, the United Arab Emirates, Thailand, and Japan, are destinations for trafficked women and girls from CEE and the NIS. North America is also a growing destination point.
- OSCE participating States that were once primarily source countries now find themselves increasingly countries of transit and destination as well. CEE countries such as Poland, the Czech Republic, Slovakia, Lithuania, Latvia, and Estonia, as well as some countries of former Yugoslavia are now destinations (as well as transit points) for women from less prosperous Eastern European countries including the Russian Federation, Belarus, Ukraine, Romania, and Bulgaria.
- Most women and girls trafficked for the sex industry are trafficked to large cities, vacation and tourist areas, and areas near military bases in Europe. Trafficking rings also operate along major truck routes, such as Warsaw-Berlin and Budapest-Vienna. Many trafficked women are regularly moved between cities and destination countries to satisfy client demand for new prostitutes and to evade detection by police.

- Most CEE and some South East European countries are transit countries for trafficked women from the NIS and from developing countries heading for Western Europe. Albania and the Baltic States, for example, have long-established alien smuggling routes to Western Europe. There is also growing "one-day" or "week-end" trafficking along border areas such as Czech Republic/Austria and Poland/Germany. In these cases, women and children are periodically transported over the border by traffickers for sex work and then returned to the origin or transit country.
- Many western countries are also countries of transit. Once inside the European Union (EU), for example, the free movement permitted by the Schengen Agreement allows the traffickers to transport people relatively freely to other EU destinations. Canada is both a destination and a transit country to the United States.
- Most trafficked women from CEE and the NIS are under the age of 25, and many are aged 12 to 18.¹³ It is widely believed that women and girls trafficked from CEE and the NIS tend to be younger than women trafficked to the West from developing countries. Trafficked women from developing countries are also more likely to be married and to have children.

2.2.3 Emerging Areas

The Balkans

Albania has long been identified as a source and transit country for trafficking in women and children. In addition, many NGOs and international organizations report a significant increase in trafficking both into and out of other Balkan States. Political, social, and economic dislocation, combined in some countries with a large international presence, has created conditions ripe for criminals to exploit. The Office of the UN High Commissioner for Human Rights (OHCHR) reports that Bosnia-Herzegovina has become a significant destination for trafficked women and girls from Ukraine and other Eastern European and NIS countries. Cities such as Belgrade have emerged as transit and lesser destination points for trafficking. Women and girls from rural areas throughout the Balkans have increasingly become targets for traffickers. In 1999, credible sources reported that young women and girls had been lured or abducted from refugee camps in Albania during the crisis in Kosovo, and then sold into prostitution in Italy and the United Kingdom. Other Kosovar women were forced into prostitution by traffickers while trying to migrate to the West during the war. Reports from Italy, Germany, Belgium, and the UK suggest that women and girls from rural areas in Albania are also being trafficked in increasing numbers.

At the June 1999 OSCE Supplementary Human Dimension Meeting on Gender Issues, several participants and OSCE mission members identified trafficking as a post-conflict issue requiring greater attention by the OSCE. In particular they expressed concern about the high level of trafficking in Bosnia-Herzegovina, and

the potential for a similar situation emerging in Kosovo. In addition, several participants expressed concern about the potential vulnerability of Kosovar women and girls to trafficking in the post-conflict period, particularly those who had been victims of rape.

Central Asia

While considerable attention has been given to trafficking from CEE, the Russian Federation and Ukraine, the situation in Central Asia has not been studied. Official data is scarce or non-existent; however, media reports and anecdotal evidence from governmental officials and NGOs suggest that trafficking in women and girls may be a serious and growing problem in the region. The Kyrgyz Committee for Human Rights has reported that over one thousand young women and girls from Kyrgyzstan have been trafficked into prostitution to the United Arab Emirates alone. Turkey, Germany, Bosnia-Herzegovina, and Japan have also been identified as trafficking destinations for Central Asian women. In May 1999, participants in the OSCE Women in Politics workshop in Almaty identified trafficking (along with inequality and the situation of rural women) as issues of critical importance to women in Kazakhstan. As in the Russian Federation and Ukraine, the existence of several crucial "push factors" in Central Asia - high levels of poverty, 80 per cent female unemployment, organized criminal groups, open borders, and weak institutions as well as high levels of prostitution in certain urban areas - suggest that Central Asia may be, or may be at risk of becoming, an increasing source region for traffickers.

2.3. Other Forms of Trafficking in the OSCE Region

The commercial sex industry is one of the principal, but by no means only, sectors into which human beings are trafficked within the OSCE region. Prosecutors in Belgium report incidences of Chinese workers being trafficked by sophisticated criminal networks, stripped of their documents, and forced to work without pay in restaurants and other businesses through debt bondage and other forms of coercion. A recent media report from Germany concerned Romanian children who were reportedly "sold," or otherwise brought across the border by traffickers to beg or steal. Similar reports from Italy involved Albanian children imported to Italy and forced to work as beggars. In a high-profile case in the United States, more than 70 female Thai workers were held in virtual slavery in a garment industry "sweatshop." Lured with the promise of high paying jobs and arriving on tourist visas, the women were kept under guard day and night, and forced to work 16 hours a day for almost no wages. NGOs in the Russian Federation report that large numbers of men are being trafficked into slave labour overseas by employment companies offering them decent jobs. Recent reports suggest that large numbers of Chinese men, women, and children smuggled illegally into Canada by organized criminal groups may be forced to work in prostitution or other forced labour until they have paid off substantial debts to the smuggling rings. A growing number of trafficking cases in the OSCE region involve domestic workers.¹⁴

Other forms of "slavery-like practices", not traditionally encompassed under "forced labour", may also exist to varying degrees in the OSCE region. These include trafficking for domestic servitude and various non-commercial forms of sexual slavery, such as forced or false marriage, forced pregnancy, and sham adoptions.¹⁵ While there is limited information available to assess the prevalence of these practices in the OSCE participating States, a significant number of individual cases have come to light. In Austria, for example, an NGO reported several instances in which Asian women were sold by their families as "wives" to Austrian men. Another case involved pimps forcing trafficked women to marry them in order to circumvent visa restrictions.¹⁶ "Mail-order bride" arrangements may also result in slavery-like practices or be used to mask trafficking operations.¹⁷

NGOs and institutions working to combat trafficking increasingly emphasize the commonalities between persons trafficked for the sex trade and those trafficked for other purposes.¹⁸ Like victims of sex trafficking, people trafficked into sweatshops and other forms of forced labour or servitude suffer severe human rights and labour abuses, including deprivation of liberty, appropriation of income, illegal working conditions, and various forms of psychological, physical, and sexual abuse. They are trafficked using similar methods and channels, sometimes by the same criminal networks engaged in forced prostitution.¹⁹ Like victims of sex trafficking, few victims can escape their traffickers or negotiate the conditions of their "employment" or "marriage." If discovered by authorities, they face arrest and immediate deportation. Few receive any assistance or restitution, or have any legal recourse against their traffickers. As in sexual trafficking, it appears that the majority of victims are female.

At present, few OSCE participating States identify these practices as "trafficking." Although several States have laws prohibiting labour abuses, servitude and forced labour, only a few, such as Belgium and Ukraine, have used broad enough language in their anti-trafficking legislation to encompass trafficking for purposes unrelated to the sex trade. The United States also uses a broader definition in its administration policy, and proposed legislation would also define trafficking in this broader sense.²⁰

3. Implications for the OSCE

Trafficking in human beings is a complex and multidimensional problem with broad implications for the OSCE.

3.1 The Human Dimension

Trafficking in human beings, particularly of women and children, has been loudly denounced by the international community as an egregious and profound human rights abuse, a form of "modern-day slavery", and a particular form of violence against women.²¹ Despite this, most States have not integrated human rights concerns or strategies into their laws or policies relating to trafficking. The "human rights approach" to trafficking defines trafficking first and foremost as a violation of individual human rights, and only secondarily as a violation of state interests. It emphasizes the rights and needs of the trafficked person, and the obligation of state authorities to provide assistance and legal remedies to victims.²² Advocates stress the need to integrate a "human rights analysis" into anti-trafficking legislation, strategies, and initiatives, which have historically focused solely on controlling illegal migration, prostitution, and organized crime.²³

They also note the links between human rights and effective prevention and prosecution of trafficking. Largely due to the work of NGOs, the human rights perspective is increasingly being incorporated into international political norms, political statements, and, to a lesser degree, national policy.²⁴ The right to liberty, the right to dignity and security of person, the right not to be held in slavery or involuntary servitude, the right to be free from cruel and inhumane treatment, various economic and social rights, and specific rights of the child are among the human rights affected by the practice of trafficking. As governments are responsible for ensuring human rights on their territories, they have an obligation to protect individuals from such practices, prosecute violations, and provide effective remedies for victims.

Trafficking in women and girls also raises numerous issues relating to women's rights and the position of women in society. The overwhelming majority of the persons trafficked into sweatshops and brothels are women and girls. As such, the causes and consequences of trafficking have gender implications, and many aspects of the problem require a gender-specific approach. In developing and evaluating various anti-trafficking approaches, it is important to take gender issues into account. For example, prevention strategies must recognize the profound link between trafficking and women's unequal status in society.²⁵ Likewise, legislative, immigration, and law enforcement strategies should be reviewed with an eye toward eliminating discrimination and gender bias (particularly with respect to migrant women and sex workers). In almost all OSCE countries, for example, law enforcement policies focus on the women who are trafficked rather than the men who usually operate and profit from their exploitation.

Various issues and approaches to trafficking also have implications for rule of law. Trafficking in human beings is a multinational crime problem of ever-growing proportions, increasingly perpetrated by organized and sophisticated criminal enterprises. These criminal activities and the official corruption linked to trafficking undermine democratic institutions and challenge the principle of rule of

law. Weak institutions and inadequate legislation limit the capacity of governments to suppress criminal activity and to prosecute offenders. Efforts to prosecute trafficking raise numerous legal issues relating to both legislation and law enforcement. These include, among other things: procedural and evidentiary issues, rights of victims to pursue criminal and civil actions, availability of specific law enforcement techniques (such as undercover techniques and wire-tapping) in trafficking cases, procedural protections in court proceedings, extra-territorial jurisdiction and extradition, victim and witness protection, seizure of assets or criminal proceeds, restitution and compensation for victims, and the role of NGO representatives in court proceedings. On the legislative level, governments must ensure that national and local laws are adequate to prevent trafficking, prosecute traffickers and protect trafficking victims. Moreover, police, prosecutors, judges and other officials may need training to recognize and more fully understand this complex phenomenon.

Trafficking has long been identified as a migration issue, particularly within the OSCE. Like migrant smuggling, trafficking involves facilitated, and often illegal, migration.²⁶ Both practices may involve similar routes and mechanisms, and both are generally organized by criminal groups. Moreover, immigration and consular officials may aid and abet illegal passage across borders. Approaches to prevention and suppression of trafficking necessarily raise important migration and freedom of movement issues, from control of borders to the consequences of immigration law and policies on law enforcement and protection of victims. In the context of preventing trafficking, the need to balance border control with freedom of movement - and to do so in a non-discriminatory way - was one of the issues raised, for example, at the 1998 OSCE Human Dimension Implementation Meeting.²⁷ Another important issue to consider is the extent to which existing immigration laws and policies contribute to trafficking and its related abuses. Because of strict migration regimes in Western Europe and North America, for example, people seeking work or a better life increasingly turn to criminal networks and employment or marriage brokers to provide access to the West. Once in abusive situations, lack of papers and fear of arrest or deportation often prevent trafficked people from leaving or seeking help.²⁸

Civil society also plays a central role in the effort to combat trafficking. NGOs, for example, have played a vital role in raising awareness, lobbying national governments, and providing much-needed assistance to individual victims. Media portrayals of prostitution and trafficking have both helped and hindered anti-trafficking efforts. In countries where legislation and institutions are weak, or where police and other authorities are complicit in the practice of trafficking, NGOs may be the only institution taking effective steps to prevent trafficking or to protect its victims. Programmes to build capacity and support emerging local NGOs in their efforts to combat trafficking and other forms of violence against women are thus among the most needed in many parts of the OSCE region. Teachers, health workers, social workers, lawyers, and journalists can also play an important role in raising awareness among target groups, lobbying governments,

and identifying and assisting victims. Finally, long-term sustainability requires that OSCE efforts to combat trafficking are conducted with the participation and co-operation of NGOs and other members of civil society.

3.2 The Economic Dimension

Economic and social inequalities that exist between and within countries are perhaps the most important single cause of trafficking. Moreover, given their unequal status and lack of opportunity in their home countries, it is no coincidence that the vast majority of trafficked persons are female. High rates of poverty, unemployment or underemployment, low pay, discriminatory labour practices, violence, patriarchal social structures, and lack of social supports for single mothers all push women to migrate (and thereby increase their vulnerability to traffickers).

Developing countries outside the OSCE area still account for the majority of trafficked persons in the OSCE region, although the fastest growing segment is from Eastern and Central Europe and the countries of the former Soviet Union. Many experts have noted the link between trafficking and the dislocations associated with economic transition, particularly increases in female poverty and unemployment.²⁹ While detailed economic analysis is beyond the scope of this paper, it is evident that any long-term strategy to combat trafficking necessarily requires initiatives to address the economic and social conditions at its root. As discussed at the 1999 OSCE Supplementary Human Dimension Meeting on Gender Issues, this includes specific strategies aimed at improving the economic and social position of women and girls.³⁰

3.3 The Security Dimension

Perhaps the central issue affecting security and democratization in transitional democracies is that of organized crime and corruption. Numerous experts have acknowledged the growing link between human trafficking and organized crime. Even in instances where criminal groups are not directly responsible for trafficking people overseas, they often provide security or protection for the operations. The involvement of "mafia" dramatically increases the risks and challenges for those seeking to combat trafficking, as well as the cost to society of allowing the practice to continue.

Another important issue in the security dimension relates to the emergence of trafficking in post-conflict areas. As noted above, political, social, and economic dislocation combined with a large international presence has created conditions in Bosnia-Herzegovina in which trafficking has flourished. Kosovo presents similar risks and challenges. In an effort to prevent a "repeat of Bosnia", several participating States and NGOs have called on the OSCE to address trafficking in Kosovo as part of its broader role under the Stability Pact.

4. OSCE Commitments and International Standards

4.1 The Moscow Document

Paragraph 40.7 of the Moscow Document, adopted by the participating States in 1991, states that:

"The participating States will... seek to eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women including by ensuring adequate legal prohibitions against such acts and other appropriate measures."

Other commitments contained in the Moscow document are also relevant. Among other things, participating States agree to comply with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to effectively implement the obligations in other international instruments to which they are parties, and to take steps to implement the UN Nairobi Forward-looking Strategies for the Advancement of Women (40.2-40.3). Participating States are also obligated by the Moscow commitments to protect and promote the human rights and fundamental freedoms of men and women fully and without discrimination with regard to sex (40.1), to promote effective measures to achieve *de facto* as well as *de jure* equality of opportunity between men and women (40.4), and to encourage measures to ensure full economic opportunity for women, including non-discrimination in employment, and equal access to education and training, among others (40.6).

Paragraph 40.7 of the Moscow Document is the only OSCE commitment that specifically addresses trafficking in human beings, and, in fact, refers only to "traffic in women". Nevertheless, other OSCE commitments obligating States to respect and promote fundamental human rights, as well as those affirming the Universal Declaration of Human Rights and other international declarations and instruments to which the States are parties, oblige participating States to take broader action.

4.2 Other International Standards

States have a duty under international law to prevent violations of human rights, to investigate violations, to take appropriate action against the violators, and to afford remedies and reparation to those who have been injured as a consequence of such

violations.³¹ Slavery and slavery-like practices, forced labour, forced prostitution, forced marriage, exploitation of prostitution, debt bondage and servitude are widely recognized as practices which violate individual human rights and are prohibited under international law.³² Relevant instruments include: the Slavery Convention (1926), the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), the Forced Labour Convention (1930), the Abolition of Forced Labour Convention (1957), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child, and the International Covenant on Civil and Political Rights (1966).

Numerous international instruments and non-binding declarations and standards have provisions related to trafficking. For example, Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) expressly obligates State parties to "take all measures, including legislation, to suppress the traffic in women and exploitation of prostitution of women". Similarly, the Convention on the Rights of the Child (CRC) obligates State Parties to protect children from economic exploitation and all forms of sexual exploitation and abuse. The Slavery Convention obligates State Parties to bring about "the complete abolition of slavery in all its forms," whether by private or public actors.³³ Similarly, the ILO conventions hold States accountable for forced labour practices, including the activities of private individuals.³⁴ Other rights and norms contained in CEDAW, CRC, and such documents as the International Covenant on Economic, Cultural and Social Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment; the Convention on the Protection of all Migrant Workers and Members of their Families; the Declaration on the Elimination of Violence against Women; and the Beijing Declaration and Platform for Action are also relevant.

A number of early international conventions specifically aimed at eradicating sexual trafficking, although these are generally criticized as outdated. These include: the International Agreement for the Suppression of White Slave Traffic (1904), as amended by the Protocol of 1948; the International Convention for the Suppression of the White Slave Traffic (1910), as amended by the Protocol of International Convention for the Suppression of Traffic in Women and Children (1921) and the Protocol of 1947; and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). Among other things, the 1949 Trafficking Convention obligates State Parties "to punish any person who ... [p]rocures, entices or leads away, for purposes of prostitution, another person..." as well as any person "who keeps, manages, or finances a brothel". It also calls on Parties to "adopt or maintain such measures as required ... to check the traffic in persons ... for purposes of prostitution", to provide assistance to trafficked persons by, e.g., "mak[ing] suitable provisions for temporary care and maintenance [of trafficked persons]", assisting with repatriation, etc. Those OSCE participating States that have ratified one or more of the trafficking conventions are bound by the provisions of these agreements. A

number of other international and regional agreements relating to crime prevention, illegal migration, illegality on the high seas, economic development, health, etc., may also contain provisions relating directly or indirectly to trafficking and trafficked persons.

United Nations member States have begun to develop a new instrument on trafficking of persons under the auspices of the United Nations Convention against Transnational Crime - currently referred to as the draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children ("Trafficking Protocol"). A related protocol on illegal trafficking and transporting of migrants is also being developed. There is currently no European Convention on trafficking in human beings. However, a working group of the Council of Europe has developed a series of in-depth legal recommendations for its member States, which will likely be issued later in 1999.

In the 1997 Hague Declaration, EU governments specifically committed themselves to a wide range of measures designed to prevent and suppress the trafficking of women. Included among these measures were several significant commitments to provide support, protection, and legal redress to victims of trafficking.

5. Status of Implementation (General Observations)

The ODIHR is in the early stages of collecting independent data about the implementation of anti-trafficking measures in the OSCE region. However, a number of general observations may be made based on a preliminary review of the literature and discussions with selected experts in the field.³⁵

5.1 Destination Countries

With a few notable exceptions, the commitment to combat trafficking in the OSCE region seems more verbal than real. Since 1995, several European bodies have condemned the practice of trafficking and adopted well-considered guidelines and recommendations for combating it. To date, however, few States have fully implemented these recommendations.

There is currently no unified approach to combating trafficking among the OSCE destination countries. Laws and policies (as well as the level of co-ordination and implementation) vary considerably between the major destination countries, even within the EU. In some participating States, such as Germany, laws and policies are

further decentralized, and vary even within the country itself. With respect to both law enforcement and victim protection, co-operation between the States is very limited and generally occurs only on an ad hoc basis.³⁶

Co-ordination is also lacking on a national level. A few countries, such as the United States, have established interagency bodies to recommend legal and policy changes and to co-ordinate action between the agencies responsible for law enforcement, immigration, labour, social services, and foreign affairs.³⁷ Other countries, such as Belgium and Italy, also have a centralized authority responsible for co-ordinating trafficking issues, and in addition, have achieved significant co-operation with the NGO community.³⁸ For the most part, however, it appears that few OSCE destination countries have established a national point person, agency, or task force to co-ordinate anti-trafficking strategies nationally or internationally.

The participating States also lack an adequate legal framework to combat trafficking in human beings. With respect to criminal legislation, for example, few States have specific anti-trafficking laws. Most rely instead on a variety of existing criminal statutes, usually associated with prostitution.³⁹ While opinions differ as to whether it is necessary (or even beneficial) to have a specific "anti-trafficking" provision in the criminal code,⁴⁰ few States have taken adequate steps to address the limitations or gaps in existing law. A persistent problem, for example, is the narrow reach and low penalties associated with "prostitution" crimes. A typical "incitement to prostitute" or "procuring" statute, for example, will not reach many of the actors involved in trafficking and does not carry penalties reflecting the serious and often brutal nature of trafficking crimes.

Even if a State has a "slavery", "servitude", or "forced prostitution" statute, it may be too narrowly defined or interpreted to apply in many trafficking situations. For example, the law may require actual force or restraint. Not only is force difficult to prove, if the coercion takes a different form - i.e. threats against the victim's family or threats to turn the person over to police - prosecutors may not be able to use the law against the trafficker. Moreover, the law may also not be broad enough to reach the other individuals in the criminal network who aided and abetted or conspired to commit the crime of trafficking.

Another weakness in existing trafficking laws is that they tend to be defined exclusively in terms of trafficking for prostitution or "sexual exploitation". As discussed above, these laws may not be adequate to address trafficking for other forms of forced labour and slavery-like practices known to exist in the OSCE region (including other types of sexual trafficking). Of the few countries that have a specific anti-trafficking statute, only Belgium treats trafficking primarily as a human rights issue (as opposed to a prostitution law) and applies the law to a wide range of exploitative situations.⁴¹ The United States has also taken steps to address gaps in its existing legislation and to ensure that adequate criminal laws and sanctions exist to prosecute serious labour abuses, slavery-like practices and trafficking in other sectors.⁴²

According to many law enforcement experts, legislation and policies in destination countries often do not provide adequate regulations for combating trafficking, particularly when it involves transnational criminal organizations.⁴³ For example, many countries do not have laws or policies permitting the use of specialized law enforcement techniques and tools (such as wire tapping, undercover techniques, and seizure/forfeiture laws) believed necessary to investigate complex crimes, dismantle organized crime structures, or cut criminal profit margins. Even when such techniques are legally available, few States apply them in trafficking cases.⁴⁴ At the national and international level, limited law enforcement capacity, lack of expertise at the judicial level, limited resources, and insufficient collaboration between law enforcement and other agencies result in inadequate or inefficient investigation, prosecution, and adjudication of trafficking cases. Many countries do not have a legal framework for co-operation between law enforcement and justice officials in other countries - particularly source countries. Moreover, States without extra-territoriality or extradition agreements may be powerless to prosecute all the perpetrators in the trafficking chain.

Even where reasonably good laws exist, trafficking in human beings remains a relatively low law enforcement priority in most destination countries. With some exceptions, most governments and law enforcement agencies view trafficking in human beings as a far less serious crime problem than trafficking in guns or drugs, and/or approach it primarily as an immigration problem. Few fully recognize the brutality of the crime or address the involvement of organized criminal groups. Unspoken biases, confusion, and disbelief over the issue contribute to the lack of political will. In many countries, for example, trafficking is widely mischaracterized as simply "foreign" prostitution or black-market labour rather than a form of slavery. The consent of the trafficked person is presumed, or the problem is dismissed as an abuse perpetrated by private individuals for which States have no responsibility under international human rights law.

When laws are enforced in destination countries, they are far more likely to be enforced against the trafficked persons than the perpetrators of trafficking crimes. In a typical brothel raid, for example, the police arrest, interrogate, detain and deport the women (for illegal prostitution or for working illegally) while the pimps and brothel owners go virtually unpunished.⁴⁵ If the traffickers are prosecuted, they generally receive light punishment for offences such as "living off immoral earnings" or "harbouring an illegal alien". They are regularly released on bail, and often receive only suspended sentences and/or small fines. Although most States have provisions in their criminal code for rape, assault, extortion, deceit, and unlawful confinement, as well as laws prohibiting labour exploitation and servitude, these laws are rarely used in trafficking cases.

One of the biggest obstacles to effective prosecution of trafficking cases and to protection of victims - identified by police and prosecutors as well as NGO representatives - is the fact that in most destination countries, trafficked persons

caught residing or working in the country illegally are immediately deported pursuant to the State's alien or immigration law. In most cases, the police or immigration authorities do not make any attempt to determine whether the persons are victims of trafficking or other slavery-like abuses, and therefore fail to alert interested parties (even in their own government), provide assistance or protection to the victims, or conduct any further investigation. In some countries, such as Germany, authorities are obligated to arrest and deport individuals within a short period even when the person has been identified as a potential victim or witness in a criminal case. (Although technically the prosecutors can bring the witness back to Germany if the case proceeds to trial, this rarely happens in practice.)⁴⁶

These strict immigration policies and procedures relating to deportation of illegal migrants or workers work at cross-purposes with efforts to prosecute trafficking crimes and to protect the human rights of victims. Among other things,

- the threat of immediate deportation prevents victims from seeking help from police or other authorities;
- victims who are arrested or otherwise escape their traffickers do not receive the assistance or protection they need and are entitled to under international human rights norms.⁴⁷ In fact, in most cases they are further victimized by the State's criminal and immigration policies;⁴⁸
- NGOs attempting to assist victims of trafficking are reluctant to co-operate with law enforcement; and
- effective law enforcement is severely undermined because victims are unwilling or unable to testify against their traffickers.⁴⁹

In two recent conferences, law enforcement officials stressed how difficult it is for them to prosecute trafficking cases under the current system in their countries. An obvious problem is the difficulty of convicting traffickers if the key witnesses are sent home. However, the impact can also be more subtle. Several police officers noted that when trafficked women are initially identified (usually through some kind of police or immigration raid), they are often traumatized, afraid, or distrustful, and therefore reluctant to co-operate with police. Moreover, if they know they will be immediately deported, they have little incentive to make a statement against their traffickers (and thereby increase their own vulnerability). Experts note, however, that if the trafficked person is given some time and support services (usually by NGOs), she is more likely to co-operate with law enforcement and to be an effective witness for the prosecution.

Only a few OSCE participating States (such as the Netherlands, Belgium and Italy) have specific legislation permitting a temporary stay for victims of trafficking.⁵⁰ (Other governments may informally "tolerate" trafficked persons for a limited time as long as they co-operate with law enforcement.) Moreover, only the Netherlands, Belgium, and Italy have institutionalized policies for providing assistance to

victims of trafficking. In each of these States, a trafficked person is given a temporary stay of deportation while she decides whether to participate as a witness in criminal proceedings. During this time she is provided with shelter, benefits, and services such as counselling and medical assistance, in close co-operation with NGOs. In Belgium and Italy, the woman may be permitted to study or work, thereby helping her to regain control of her life, earn some money, and develop skills. If the trafficked person agrees to co-operate with law enforcement and judicial authorities, the residence permit and services are extended for the length of the criminal proceedings. In Italy, the law is even more progressive. While co-operation with law enforcement is strongly encouraged, it is not necessary for the victim to report to the police in order to apply for the permit and assistance. Under Article 16, protection is available to a trafficked person if she:

- is a foreigner who has been abused or severely exploited;
- is endangered, either because of statements made to authorities or in the course of court proceedings, or by her attempt to escape the control of a criminal group.

If she meets these criteria, either law enforcement or an NGO may apply for the permit on her behalf, and she may receive assistance as long as she participates in an NGO-run reintegration programme.

As a result of these and related policies, Belgium, the Netherlands, and Italy all report significant increases in witness testimony and successful prosecution of traffickers. Certain limitations remain - for example, with some exceptions, few victims receive any restitution or civil remedy, and the protection ends when the victim is returned to her country.⁵¹ However, most destination countries have no legislative framework or procedural mechanisms at all to ensure the safety and fair treatment of trafficking victims. With few exceptions, trafficked persons are deported without receiving any special counselling or care, protection from reprisal or harm, compensation for damages, or any other legal remedy.

5.2 Origin Countries

With few exceptions, trafficking remains a relatively low priority among officials in the OSCE countries of origin. Many officials are not aware of the scope of the problem in their countries or do not fully understand the phenomenon. Some are concerned, but view trafficking as either a minor problem, or one too dangerous or complicated to address. Some are indifferent to,⁵² or are actively participating in and profiting from the trade.⁵³ Socio-economic conditions, attitudes about women and/or prostitutes, lack of information, resources, capacity, and political will all contribute to this problem.

Like destination and transit countries, very few OSCE countries of origin have enacted legislation that specifically addresses the problem of trafficking. While most States have laws prohibiting pimping or procuring, these laws are under-

enforced, carry low penalties, and are too narrowly drawn to reach many trafficking activities. In Latvia, for example, it appears that the only law used to prosecute traffickers is a law prohibiting pimping. According to a Latvian prosecutor, there were only four convictions for pimping in 1997, and the offenders generally received suspended sentences. Moreover, it appears that these persons were exploiting the prostitution of women in Latvia, and not necessarily involved in the "export" of Latvian women overseas.

In the last two years, a few OSCE participating States have taken important steps in the legislative area. For example, Ukraine, Poland, and Lithuania each enacted or amended laws criminalizing trafficking. Lithuania also has pending a criminal law directed at crimes involving "deprivation of liberty". In 1998, the Russian Federation ratified an amendment that criminalizes sexual trafficking of minors by crime groups. However, it is not yet clear whether these laws will be effective in implementation or the degree to which they will be enforced in practice.⁵⁴

Although some traffickers are prosecuted under pimping laws, prosecution of trafficking cases in most source countries is extremely rare. Generally the attitude is "out of sight, out of mind".⁵⁵ Since the women are taken outside the country, local police assume they have no jurisdiction and generally make little or no effort to investigate these crimes. In addition, few States investigate or prosecute the cases of "returned" trafficking victims. One reason is that - in the absence of any kind of witness protection - most women do not report their experience to police or agree to bring charges against their offenders. Moreover, many investigations are dropped for lack of evidence even when victims co-operate. In these cases, better police co-operation between the country of destination and the country of origin could make a significant difference.

In one of the few high-profile successes, Poland, in 1996-97, successfully prosecuted and convicted a Polish recruiter and two associates who had trafficked approximately 100 women to Turkey, Germany, Austria, France, Switzerland, and Spain. Good co-operation between law enforcement in the destination and transit countries enabled Polish police to investigate and prosecute the recruiter in Poland. Over 200 trafficking cases have since been investigated in Poland, but prosecutions and convictions are rare. According to a Polish police officer, criminal cases can take several years to get to court, and most offenders receive light sentences or are acquitted or released due to lack of evidence.

It appears that few OSCE countries of origin have adopted any anti-trafficking strategy relating to the companies operating on their territory which recruit and organize the transport of trafficked persons. Although it is well known that many advertisements and agencies are fronts for trafficking, for example, there is little regulation and few efforts to close down these operations. Criminal investigations of recruiters or recruiting agencies are very limited. According to several sources, these businesses are highly profitable, and therefore well organized and protected. Involvement by organized crime further inhibits an effective government

response.⁵⁶

State-sponsored prevention programmes are virtually non-existent in most countries of origin, and public awareness about trafficking remains frighteningly low.⁵⁷ Although some governments and government officials have co-operated with NGOs and various international organizations in prevention efforts, few States have been willing or able to devote public resources for this purpose. State education officials have also been slow to incorporate any trafficking awareness programmes into school curricula. Local and international organizations have taken some steps to fill this gap, but much greater efforts are needed.⁵⁸ Moreover, in several countries - particularly in Albania, the Russian Federation, and other NIS - NGOs are too frightened to engage in any overt awareness-raising measures because of the actual or perceived involvement of organized crime, police, and government officials in the trafficking trade. In these situations, international groups or "outsiders" may be in a better position to engage in pointed and aggressive awareness strategies.⁵⁹

What limited assistance there is for victims of trafficking in countries of origin is provided almost exclusively by NGOs. The level of assistance available varies depending on the country or region, but NGOs report that it is generally ad hoc and universally inadequate to meet existing need. Safe shelters for victims of domestic and sexual violence, as well as medical and psychological care for victims, are among the most urgent needs identified by NGOs assisting trafficked persons in origin countries. NGOs also report that even limited co-operation by police and government officials can be very helpful. For example, a Lithuanian NGO representative reported that officials often notified her NGO when a deported woman was arriving back in Lithuania, so that they could meet her at the airport or bus station. A Czech NGO reported that police regularly referred potential trafficking victims to them for shelter and other assistance while police investigated the criminal case.

Moreover, it does not appear that any OSCE participating States have programmes to protect trafficked persons from retribution by traffickers upon return to the country of origin. Since most trafficked persons escape or are deported before paying off their debt, many are in danger of being "re-trafficked." If the trafficked person has co-operated with police or other authorities, she is even more vulnerable. Since most traffickers have local contacts, many trafficking victims cannot return to their homes or families.⁶⁰ In areas where police and/or organized crime are involved, the risks to the trafficked person cannot be overemphasized. Several officials from source countries justifiably argue that they cannot afford to provide "witness protection programmes", as that term is commonly understood. However, few have considered what smaller measures might be taken, such as monitoring the victim's status, monitoring phone calls (for threats from traffickers), or providing safe shelter for victims with the assistance of NGOs.

In some source countries, trafficking victims are treated as criminals upon return.

NGOs in Poland and Ukraine have reported cases, for example, in which trafficked persons were interrogated, fined, and even jailed upon return for using false documents or leaving the country illegally.

Origin countries have also been lax in assisting their nationals while in the countries of destination. Most embassies and consulates, for example, appear ill-prepared and ill-equipped to assist trafficked persons if help is requested. According to a Lithuanian NGO, the embassy failed to help a young woman who escaped her traffickers in transit because she was not considered a "victim of crime" under their assistance policy. In some cases, co-operation is lacking even when requested by the destination governments. An Italian prosecutor, for example, complained about the difficulty of getting new documents for trafficked individuals or information about victims or arrested perpetrators from officials in Albania. She noted that Italy would provide legal aid to trafficked women if they met certain criteria, but that Albanian officials rarely provided the information needed to confirm eligibility. In contrast, a German prosecutor reported that he was able to provide witness protection for a trafficked person in Germany because of a statement provided by a judge in her country of origin.

Finally, most source countries also do not have any national strategy or co-ordinating agency responsible for addressing trafficking or related issues. Ukraine has recently taken steps to create a national co-ordinating body under the rubric of the Office of the Ombudsperson, and plans to develop a strategy in this context. In addition, Lithuania reports that it is developing a programme to combat illicit trafficking as part of a broader organized crime prevention and control strategy. A few countries have designated a police officer or unit to deal with trafficking, but these are usually not co-ordinated with other judicial, social, or immigration agencies. Many countries do not appear to have any strategy at all.

5.3 Transit Countries

Many OSCE participating States fall into the category of "transit" countries, although they may also be countries of origin and/or destination. The issues facing transit countries with respect to trafficking are very similar to those of destination and origin countries. For example, most transit countries face challenges related to border control and interdiction. Some could benefit from better border guard training and more sophisticated border technology, but these are not solutions in and of themselves.

Like destination countries, most transit countries view trafficking only as a migration problem. While it can be very difficult to identify a trafficked person while in transit, effectively combating trafficking requires that transit countries play a role in investigating and enforcing laws against traffickers, and in protecting trafficked persons.

As in origin and destination countries, public awareness about trafficking is

generally low in transit countries, and there is a need to train police, immigration, and other officials likely to come in contact with situations involving trafficking and potential victims of trafficking. Few transit countries have developed co-ordinated strategies and procedures for responding when trafficked persons (or potentially trafficked persons) are identified in transit situations, other than to detain and/or deport them. Few have developed systems or resources to provide assistance to trafficked persons, or protocols for alerting authorities and/or NGOs to the potential trafficking situation before returning the trafficked person (or her trafficker) across the border or to the country or origin. One possible exception is the Czech Republic, where specialized police have reportedly co-operated with local NGOs to assist trafficked women from other countries discovered in the Czech Republic while in transit to western destinations.

Finally, most transit countries have not done enough to investigate and prosecute suspected traffickers and trafficking rings. As in destination and origin countries, cross-border communication and co-operation is limited, and most transit countries do not have the legal framework or capacity to prosecute the transnational offence of trafficking, and not just its component parts.

6. International Efforts to Combat Trafficking

6.1 Current Initiatives by the OSCE/ODIHR

The issue of trafficking in persons, and particularly in women, has been raised at various times in the OSCE context since the early 1990s, when the OSCE participating States included a commitment to combat trafficking in the Moscow Document (1991). In 1996, the OSCE Parliamentary Assembly expressed grave concern about the practice of trafficking within and beyond OSCE borders, recognizing its link to economic transition and the problem of organized crime (Stockholm Declaration, 1996). NGOs and several participating States identified trafficking and violence against women as key issues affecting women at the 1997 OSCE Human Dimension Seminar and the 1998 Human Dimension Implementation Meeting. Human trafficking was also identified as one of the new risks and challenges to security by the OSCE Ministerial Council in 1998.

Despite this attention, the OSCE has only recently begun to address the problem of trafficking in practical terms. In 1999, the ODIHR supported three anti-trafficking projects, two of which will continue into next year. These included:

- funding for an international seminar of experts in May 1999 organized

jointly by the Polish NGO La Strada and the Friedrich Ebert Foundation;

- funding for a series of training seminars by La Strada in six border regions of Poland, Autumn 1999-Spring 2000;
- a joint project with IOM and the Office of the Ombudswoman to provide technical assistance to support a National Co-ordinating Committee Against Trafficking in the Human Person in Ukraine. The project includes research, training, continuation of the IOM information campaign, legislative review, victim assistance, and facilitating joint action and bilateral contacts between Ukraine and various destination countries.

The ODIHR has also agreed to jointly fund a preliminary study regarding trafficking in Kyrgyzstan and has proposed to conduct a human rights training for Ukrainian border guards that would include a component on trafficking.

In April 1999, with funding from the United States, the ODIHR appointed an Adviser on Trafficking Issues to help define ways for the OSCE to assist in combating trafficking without duplicating the efforts of others, and to assist the OSCE in developing an Action Plan for OSCE initiatives in 2000.

Other OSCE institutions have also begun to address the problem of trafficking in limited ways. In July 1999, the Parliamentary Assembly adopted a resolution at its Annual Meeting condemning the practice of trafficking, particularly sexual trafficking of women and girls. A few OSCE field missions have also dealt with the issue of trafficking, although primarily on an ad hoc and case-by-case basis. In Albania and Bosnia-Herzegovina, field officers have begun reporting trafficking cases and mission members have started to co-ordinate efforts with other international organizations. However, it appears that most missions are not yet addressing trafficking in their reporting or programmes, and there have been no sustained or systematic programmes against trafficking.

6.2 Other International Organizations and Institutions⁶¹

Over the last several years, many international organizations and other bodies have been working directly or indirectly on programmes or initiatives to combat trafficking - primarily of women into prostitution. These include:

The United Nations: As part of the work of the UN Commission on Crime Prevention and Criminal Justice, an Ad Hoc Working Group is in the process of developing an optional protocol on trafficking in human beings to the Convention Against Organized Transnational Crime. In addition, both the Special Rapporteur on Violence Against Women and the Office of the High Commissioner for Human Rights are working to integrate human rights concerns into international, regional, and national anti-trafficking initiatives, and have modest programmes to monitor and analyse legal and policy developments. The OHCHR Sarajevo office has recently undertaken a number of small-scale preventive and assistance initiatives

throughout the territory of former Yugoslavia, and has played a central role in coordinating with other international and local organizations around this issue. In addition, the UN Office for Drug Control and Crime Prevention has recently begun work on a proposed "Global Programme Against Trafficking in Human Beings" which will focus on the role of organized crime groups in smuggling and trafficking, and on the development of criminal justice-related responses. Specialized agencies such as UNICEF, UNHCR, and UNDP have also begun to address trafficking in relation to their education, relief, and development work.

The European Commission: Since 1996, the European Commission (EC) has taken a number of initiatives at the European level or in association with third countries and organizations relating to trafficking "for the purposes of sexual exploitation". These include the STOP programme (research, training, and exchange programmes relating to trafficking and sexual exploitation of children), and the DAPHNE initiative (supporting NGO activities relating to violence against women). Both programmes have been used to support projects relating to trafficking in women and girls. Outside the EU, the PHARE and TACIS Democracy Programmes helped finance the NGO network La Strada in Poland, the Czech Republic, Bulgaria, and Ukraine. The EC has also addressed trafficking on a political level, for example, in the non-binding Hague Ministerial Declaration (Declaration on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation, April 1997) and various joint actions. The Amsterdam Treaty is also relevant in that it requires EU States to co-operate in criminal and migration matters.

The Council of Europe: The Council of Europe is addressing trafficking directly or indirectly through a number of Committees and programmes. Among these is the on-going work of the Multisectoral Group of Specialists chaired by a representative of the Steering Committee for Equality between Women and Men (CDEG). Since 1997, this group has engaged in various initiatives relating to trafficking "for the purpose of sexual exploitation", including the preparation of forthcoming recommendations to the Council of Ministers and member States. In 1998, the CDEG held a seminar devoted to the role of NGOs in the fight against trafficking, and a workshop on the image of women in the media as it relates to trafficking. The Council of Europe has also organized and/or proposed a number of seminars under the ADACS programme relating to trafficking, illegal immigration, law enforcement, organized crime, and corruption, including a recent training programme on trafficking in Albania with the OHCHR. The Council of Europe continues to address related issues such as criminal law procedures, organized crime and corruption, and the sexual exploitation of children under the rubric of the European Committee on Crime Problems (CDPC), the European Committee on Legal Co-operation (CDCJ), and the Steering Committee on Social Policy (CDPS). These activities are primarily legal in nature.

The International Organization for Migration: The IOM has been active in conducting research on migration trends, including trafficking in women from

Central and Eastern Europe. In 1998, the IOM conducted a large-scale information campaign in Ukraine, and has reportedly conducted some additional awareness-raising efforts in the Czech Republic, Hungary, and Bulgaria. On a limited basis, the IOM has facilitated the return of individual victims of trafficking from various destination countries. They have also recently begun a pilot programme in Bosnia-Herzegovina to provide return assistance to trafficked women. The ODIHR is currently co-operating with the IOM on two joint projects relating to trafficking in Ukraine and Kyrgyzstan.

Interpol: The International Police Organization has held several conferences on trafficking and is attempting to help co-ordinate transnational law enforcement efforts against trafficking in women and children. Interpol continues to be a valuable resource for law enforcement agencies, but is significantly underutilized. A new initiative by Interpol involves developing a "resource book" of anti-trafficking organizations and contacts throughout the world.

6.3 Non-governmental Organizations

International, regional, and local NGOs have been at the forefront of efforts to raise awareness about trafficking and push governments toward greater accountability. The Human Rights Caucus, for example, has played an important role in monitoring the development of the UN draft Protocol on Trafficking, and in lobbying for inclusion of protections for victims and integration of other human rights norms. NGOs such as Human Rights Watch, Global Survival Network (GSN), Foundation for Trafficking in Women (STV), Global Alliance Against Traffic in Women (GATW), the Human Rights Law Group, and La Strada are among those active on an international level. Groups such as the Open Society Institute (OSI) and Network of East-West Women (NEEW) have contributed to anti-trafficking efforts more generally by facilitating and supporting emerging NGOs and NGO networks in CEE and the NIS.

At the local and regional level, NGOs have played a crucial role in raising awareness and assisting victims of trafficking and other vulnerable groups.⁶² In many countries of the OSCE, local NGOs are the only groups carrying out programmes to warn women and girls and their families about the dangers of trafficking, and the only ones providing direct assistance to victims of trafficking. In many cases, these are not NGOs with special expertise in trafficking, but domestic violence or rape crisis shelters, STD clinics, local women's rights groups, counselling centres, and women's professional organizations. None have sufficient resources or capacity to help all those in need of assistance and most have very limited access to government officials.

7. The Role of the OSCE and Preliminary Recommendations for Action

Despite the wide range of actions being taken on trafficking, most experts agree that there is still much to be done. Some of the "gaps" are best filled by the participating States or by other organizations with specific expertise. Among these, for example, would be economic development strategies in countries of origin or large-scale initiatives relating to organized crime. As a preliminary matter, however, there appear to be several areas where the OSCE could play a useful role, without duplicating the efforts of others. These include:

- Supporting efforts to raise awareness of at-risk groups, police, and governmental officials, particularly in countries of origin;
- Promoting greater protection and assistance to victims of trafficking;
- Supporting and building the capacity of emerging NGOs;
- Facilitating co-operation and joint strategies between participating States;
- Encouraging and facilitating interagency co-ordination and government co-ordination with NGOs;
- Incorporating trafficking into rule of law and migration projects, and promoting a human rights framework for analysing trafficking issues and approaches within this context;
- Raising awareness about trafficking within OSCE institutions and among OSCE personnel;
- Supporting local anti-trafficking efforts through OSCE field offices;
- Promoting a broad and inclusive approach to trafficking in the OSCE region.

As previously noted, the OSCE is in the process of developing an Action Plan for 2000, which will include proposals for concrete projects and initiatives to address trafficking. In the meantime, however, there are a number of areas where the OSCE could begin:

- The OSCE should take steps to raise awareness about trafficking among its own staff members, particularly in the OSCE field missions. Human Rights officers, in particular, should be trained to identify, monitor, and report on the incidence of violence against women, including trafficking in women and girls. Training could be provided on a regional basis in conjunction with other organizations or as part of a broader training on gender issues and women's human rights. The OSCE could also provide special expertise

to mission members as needed, through the ODIHR Adviser on Trafficking Issues or an expert consultant hired for specific projects.

- As part of its gender mainstreaming, the OSCE should incorporate anti-trafficking measures into its ongoing human rights and institution-building programmes. For example, a review of criminal laws and procedures could include an assessment of whether the country has adequate laws to punish traffickers and protect the victims of trafficking, and proposed reforms could take these issues into account. In all cases, trafficking issues and strategies should be analysed and implemented within a human rights framework consistent with international human rights law. Information and guidelines for this purpose should be developed and provided to appropriate OSCE staff.
- OSCE staff (including field missions and the ODIHR Monitoring Unit) should increase the attention paid to women's human rights in their monitoring and reporting activities. With respect to trafficking, this would include trafficking cases or suspected trafficking activities, government responses, as well as underlying socio-economic and legal issues, such as discrimination in employment. If necessary, OSCE staff should expand its range of information sources so that the situation and needs of women are more fully integrated into internal and external reports.
- OSCE field missions should co-operate with the ODIHR and local NGOs to develop projects to empower women and girls. OSCE field officers should work closely with local NGOs providing assistance to victims to develop protocols for handling trafficking cases when they come to OSCE attention.
- The OSCE should take advantage of its unique regional scope and consensus-oriented approach in addressing the problem of trafficking within the OSCE framework. In particular, the OSCE should explore ways it might facilitate co-ordination and co-operation with respect to anti-trafficking strategies among the participating States. As a first step, delegations might meet to consider ways in which the foreign ministries and consular officials of countries of origin and known destination countries could co-operate more fully on this issue, for example by setting up better communication mechanisms or exchanging information on resources to help individual victims. The OSCE could also provide a forum for bilateral or regional meetings or working groups to discuss specific needs and challenges, share approaches and best practices, and promote co-operation and joint actions between origin and destination countries.
- The OSCE should raise the issue of trafficking at a political level, particularly when there is evidence of official complicity at high levels of government. In the context of the Human Dimension Implementation Meetings, the OSCE should press States for greater accountability with respect to the Moscow commitments (relating to trafficking, violence

against women, and equality of opportunity for women).

- In its activities and on the political level, the OSCE should promote a human rights approach to trafficking that focuses on the needs and rights of victims and the obligations of the participating States.
- The OSCE should promote a broader approach to trafficking in the OSCE region which includes initiatives to combat all forms of forced labour and slavery-like practices. The OSCE should seek to address and draw greater attention to trafficking in persons for purposes other than prostitution and should encourage the participating States to promote a broad and inclusive definition of trafficking in any regional or international legal framework.
- While civil and political rights draw most of the attention of the OSCE, many of the human rights violations suffered by women and girls - including trafficking - are tied to economic, social, and cultural disadvantages. At both the political and programming level, the OSCE should focus more energy on combating inequality and the root causes of violence against women.

In addition to these general measures, the OSCE is uniquely well-positioned to play a leading role in addressing the problem of trafficking in particular regional areas. These include:

South Eastern Europe

The OSCE intends to place a high priority on the promotion and protection of women's rights in Kosovo and South Eastern Europe as part of its regional strategy under the Stability Pact. As part of this effort, trafficking in women could be specifically addressed through a wide range of OSCE field activities, including civil society assistance (support for women's NGOs), police training (particularly in Kosovo), anti-corruption and anti-crime initiatives, human rights monitoring, judicial reform, and legislative assistance. The root causes of trafficking could also be addressed through programmes designed to empower women politically and economically.

Given its strong field presence, the OSCE could play a leading role in developing and implementing a coherent regional programme to address the rights and needs of women, including the problem of trafficking. To this end, it would be helpful to designate a mission member in each of the Balkan field missions to help mainstream women's rights activities and to co-ordinate with the ODIHR and other international organizations. In order to maximize results and avoid duplication, the OSCE should work closely with local NGOs, the OHCHR, the Council of Europe, UNICEF, and others to develop a co-ordinated, multidimensional approach. The ODIHR Adviser on Trafficking Issues should continue to work closely with her counterparts in these other organizations and with OSCE mission members to explore opportunities for co-operation and joint action.

As a first step, OSCE mission members in the Balkans should receive basic training on the phenomenon of trafficking in conjunction with broader human rights or gender training. Mission members working on human rights, police training, and rule of law issues should receive additional training to enable them to recognize, report, and respond more effectively to trafficking in their field area. Training should be conducted with the participation of local NGOs, wherever possible, and co-ordinated, as appropriate, with training conducted by other international organizations.

Training for OSCE staff should also include a discussion of the ways in which the international presence in South Eastern Europe and elsewhere may actually contribute to the problem of trafficking by increasing demand for sex workers. In this context, and in response to concerns raised at the 1999 Supplementary Human Dimension Meeting on Gender Issues, the OSCE should consider whether a code of conduct or other guidelines for personnel would be appropriate, particularly in post-conflict areas, and particularly with respect to minors. At minimum, OSCE personnel should be trained to recognize trafficking and forced prostitution and receive guidance on how to report such situations should they become aware of them.

Finally, the OSCE should explore further what role it might play in combating corruption and organized crime in the Balkans region. Many international organizations and participating States have programmes related to organized crime (including the Council of Europe, the UN, the Southeast European Cooperative Initiative, etc.), however, there does not appear to be an integrated or co-ordinated strategy. The OSCE should consider whether joint initiatives aimed at controlling trafficking could be undertaken regionally. Suspected collaboration of local police or officials in trafficking could be monitored by missions, and organized crime and anti-corruption strategies included in the OSCE police training for Kosovo.

Central Asia

While information on the scope or extent of the phenomenon is still very limited, several sources indicate that trafficking may be increasing in several of the Central Asian countries. Without overemphasizing this issue, the OSCE can take steps to begin addressing trafficking _ and the root causes of trafficking _ within the context of its broader mandate. In particular, the OSCE should consider further ways to support NGOs working on such issues as domestic violence and women's equality. Training and other support should be provided to NGOs providing direct services to trafficking victims or other at-risk groups. The OSCE should also specifically address trafficking issues when it becomes involved in CEDAW training or reviews.

Ukraine

As part of its joint project with the IOM and the National Ombudsperson of Ukraine, the ODIHR should try to promote better bilateral co-operation on trafficking problems between Ukraine and the participating States constituting the main destination countries for Ukrainian women and girls. The ODIHR should also work closely with the OSCE Project Co-ordination Office in Ukraine to ensure that it has adequate substantive information and other resources to support the joint project. As the project is implemented, the OSCE should explore other ways to support the Ukrainian effort to combat trafficking, particularly through local NGOs.

Other Recommendations

- A number of positive actions relating to trafficking in women have been taken or proposed in the last few months by individual State delegations and, within the OSCE framework, the Parliamentary Assembly, the Conflict Prevention Centre, the Secretariat, and the ODIHR. In order to maximize the effectiveness of these initiatives and avoid inconsistent or duplicative efforts, the OSCE should take steps to improve coordination *within the OSCE itself* with respect to its anti-trafficking strategy. As a first step, the CPC should co-ordinate with the ODIHR Adviser on Trafficking Issues to develop a training strategy for mission members.
- Implementation of the above measures, as well as activities proposed in the 2000 Action Plan, will depend on the availability of resources for a Trafficking Advisor, mission personnel, and programmes and projects. The participating States and OSCE institutions should provide adequate funding to support ongoing measures to address trafficking within the OSCE framework.

8. The Role of Participating States and Preliminary Recommendations for Action

Individually and collectively, the participating States of the OSCE bear primary responsibility for implementation of measures to combat trafficking. While international institutions and NGOs have an important role to play, only governments have the authority and means to significantly limit the scope of trafficking. Real progress will require changes in national legislation and policies, increased enforcement of laws against traffickers, measures to end official corruption and collusion, long and short term prevention strategies, "fair treatment" of, and assistance to trafficked persons, and greater co-ordination and co-operation at the national, regional, and international level. Participating States should

intensify their efforts to address this problem and treat trafficking in human beings as an issue requiring national and international priority.

Within the framework of the OSCE, participating States also have a responsibility to each other to comply with their human dimension commitments and to assist each other in achieving compliance. The participating States should engage in a frank and ongoing dialogue about their progress in implementing anti-trafficking strategies and the challenges they face in doing so. Dialogue, co-operation, and joint action between countries of origin and known destination countries are particularly needed, and could be accomplished bilaterally or under the auspices of the OSCE.

In particular, the participating States should:

- Take steps to develop a national strategy to combat trafficking, including measures to prevent trafficking, prosecute offenders, and protect the rights of trafficked persons. States should draw on the experience and expertise of NGOs, the ODIHR, and other participating States in developing effective anti-trafficking measures;
- Institute a co-ordinating mechanism on a national level to ensure effective co-ordination between different government authorities (and between government and NGOs) and to allow for a multi-disciplinary approach. Take steps to ensure that information, strategies and procedures reach the authorities at the local level who are most likely to come in contact with trafficking situations and victims of trafficking;
- Establish social policies and programmes to prevent trafficking in human beings, including economic and legal measures in origin countries aimed specifically at improving the economic and social conditions of women and girls;
- Undertake, in co-operation with civil society and NGOs, information campaigns to generate public awareness about trafficking in its different forms, including the methods employed by traffickers and the risks to victims;
- In conjunction with NGOs in countries of both origin and destination, support the development of information "hotlines" and other information resources for at-risk groups, trafficked persons and their families;
- Increase awareness about trafficking among police, judicial, immigration, and consular/embassy authorities, including the human rights aspects of trafficking and the obligation of State authorities to assist and protect trafficking victims. Train police and immigration authorities to identify trafficking situations and likely victims of trafficking (in the sex industry or

elsewhere);

- Develop co-ordinated strategies and procedures for responding when trafficked persons (or potentially trafficked persons) are identified at any point in the trafficking chain. Increase collaboration between immigration and law enforcement authorities to ensure that States do not lose potential witnesses (including through deportation). Involve NGOs in identifying possible victims of trafficking and allow them reasonable access to detention centres;
- Adopt policies and protocols to treat trafficked persons as victims of crime and potential witnesses, rather than as criminals;
- Establish a mechanism to alert and involve NGOs or social agencies at an early stage to provide assistance and protection to trafficked persons. Special procedures should be developed for minors consistent with the Convention on the Rights of the Child and other applicable law;
- Consider developing specialized police and prosecutor units for dealing with suspected trafficking cases. Special training and techniques for identifying and questioning potential victims, investigating and prosecuting criminal networks, and confiscating criminal proceeds should be developed and utilized;
- Adopt such legislative measures as may be necessary to establish trafficking as a criminal offence. Ensure that the scope of legislation is sufficient to reach all forms of trafficking and attempted trafficking (including trafficking for non-sexual purposes) and all actors involved in the trafficking chain. Enact "conspiracy" or "aiding and abetting" legislation, if necessary, to reach trafficking accomplices;
- Enact and enforce legislation aimed at regulating the activities of employment and marriage brokers, including those advertising over the internet. Take steps to prosecute recruiters using these services as fronts for trafficking operations;
- Enact and enforce anti-corruption measures, including by linking investigations and prosecution of trafficking cases with investigation of possible bribery/corruption;
- Aggressively prosecute traffickers under all applicable laws, including rape, assault, extortion, deception, unlawful confinement, worker exploitation, peonage (debt bondage), smuggling, immigration fraud, slavery and servitude. Enact and apply measures to increase the costs of engaging in trafficking, including closure of business establishments and seizure and confiscation of criminal proceeds and/or property used in the commission of the crime;

- Ensure that criminal sanctions available for trafficking offences are commensurate with the gravity of the crimes;
- Provide a temporary residence permit or stay of deportation (in destination or transit countries) to all victims of trafficking to enable victims to receive appropriate care and legal assistance. Permits should be extended if the trafficked person cooperates with law enforcement or if she would be endangered by returning home;
- Enact or strengthen laws or policies to protect trafficked persons, consistent with international human rights standards. Such measures should include shelter, physical protection, appropriate medical and legal assistance, procedural protections in criminal proceedings, access to legal redress and compensation, and return and reintegration assistance. States should cooperate closely with NGOs and with each other to provide this assistance;
- Consider additional measures to provide for the physical, psychological and social recovery of victims of trafficking crimes in both destination countries and in countries of origin. Consider in particular, programmes to empower trafficked persons in the process of repatriation, including skills training and work during the period of temporary residence in the country of destination and/or upon return home;
- Provide resources to NGOs and social agencies providing services to trafficked persons. Take steps to identify and develop alternative sources of assistance where specialized trafficking NGOs or public funds are not available;
- If necessary, eliminate legal or administrative barriers that would prohibit public assistance to trafficked persons or deny them access to civil or administrative remedies by virtue of their immigration or other status;
- Take steps to ensure the safety of trafficked persons and prevent reprisals against the victim and her family;
- Consider increasing opportunities for persons to migrate legally for work and/or training in destination countries, particularly women and girls.

In addition:

- EU member States should take immediate steps to implement the Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children ("1997 Joint Action") and the European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation ("Hague Declaration"). To the extent appropriate, the recommendations outlined in the Hague Declaration should be applied to all forms of trafficking in

human beings.

- Member States of the Council of Europe should take due consideration of the forthcoming recommendations to the Council of Ministers and the member States relating to trafficking, and support the regional harmonization of laws and policies relating to trafficking in human beings. While States should support measures aimed specifically at combating trafficking in women and forced prostitution, legislation and policies should be drafted broadly enough to encompass all forms of human trafficking.
- Participating States should support the inclusion of human rights protections in the draft UN Trafficking Protocol, and ensure that new regional or international standards do not contradict or undermine existing human rights standards.
- Participating States should integrate broader anti-trafficking language into future OSCE documents in order to provide a framework for addressing this complex and changing phenomenon in its various forms.
- Participating States should co-operate more fully with other participating States, NGOs and international organizations, in order to enhance anti-trafficking efforts region-wide.

Notes

1 Bureau of Intelligence and Research, United States Department of State, "Global Trafficking in Women and Children: Assessing the Magnitude", March 1998.

2 A detailed or country-specific analysis of trafficking trends or approaches is beyond the scope of this background paper. For further information, please consult the resources listed in the Annex.

3 Informal Note by the United Nations High Commissioner for Human Rights, presented to the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, 1 June 1999, A/AC.254/16 ("Informal Note").

4 See, e.g., Human Rights Caucus, Recommendations and Commentary on the Draft Protocol to Prevent, Suppress, and Punish Trafficking in Persons (A/AC.254/4/Add.3/Rev.2), July 1999, p. 4; Testimony of Steven R. Galster, Director, Global Survival Network, before the Commission on Security and Co-operation in Europe (CSCE), 28 June 1999; Commission of the European Communities, Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation, COM(96) 567, November 1996, p. 4. According to this view, for example, an adult woman who agrees to migrate for sex work and retains her freedom of movement and substantial control over her earnings would not generally be considered a "trafficked person". Note, however, that the definition of trafficking in women used by the International Organization for Migration (IOM) does not require deception or coercion, but includes "any illicit transporting of migrant women and/or trade in them for economic or other

personal gain". In addition, some NGOs argue that "trafficking" should not be defined in terms of coercion or lack of consent, particularly in the context of the sex industry. Their basic argument is that sex work is inherently exploitative and therefore the consent or control of the woman over her situation is irrelevant.

5 This definition is based roughly on the definition used or recommended by the UN Special Rapporteur on Violence Against Women, the Human Rights Caucus, and the President's Inter-Agency Council on Women (United States). It is used in this report to provide a framework for discussing the problem of trafficking and is not necessarily recommended as a legal definition.

6 In connection with the UN draft Protocol to Prevent, Suppress, and Punish Trafficking in Women and Children ("Trafficking Protocol"), the UN High Commissioner for Human Rights, the Special Rapporteur on Violence Against Women, and the International Labour Organization have recommended using the gender-neutral term "trafficking in persons" and a broad and inclusive definition of trafficking that would include all forms of forced and/or bonded labour and servitude. They have also recommended against using the term "trafficking for purposes of sexual exploitation" as it relates to adults, in part because the term "exploitation" is subject to many divergent interpretations. See, e.g., Informal Note, *supra* at footnote 1; Position paper on the draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, submitted by the Special Rapporteur on Violence against Women, A/AC.254/CRP.13 ("Special Rapporteur Position Paper"). See also Human Rights Caucus, Human Rights Standards for the Treatment of Trafficked Persons ("Human Rights Standards"), January 1999.

7 A small percentage of young men and boys are also trafficked each year in the OSCE region for use in the sex industry. The CIA estimates this percentage as approximately two per cent. The term "girl" is used to refer to a female person under the age of 18.

8 Criminal groups of all levels of sophistication are involved in trafficking of human beings. These range from small, informal networks to well-organized international trafficking rings. In some cases, the same criminal organizations engaged in trafficking women appear to be involved in other illicit activities, including drug and automobile smuggling, with the profits all interrelated. See, e.g., United States Department of State, Bureau of Intelligence and Research (INR), "International Trafficking in Women from Central Europe and the NIS", November 1997, pp. 4-5. According to the United Nations Centre for International Crime Prevention (CICP), increasing networks among organized crime groups provide for "economies of scale and full control of the smuggling-trafficking sequence; from smuggling to the control of sex markets." For a discussion of the "mafiya" connection to trafficking in Russia, see, e.g., Global Survival Network (GSN), "Crime & Servitude: An Expose of the Traffic in Women for Prostitution from the Newly Independent States" ("Crime & Servitude"), October 1997, pp. 33-40.

9 As one analyst has noted: "In societies with a tradition of fixing deals informally, this form of recruitment does not necessarily arouse suspicion..." Moreover, in many of the origin countries, especially in rural areas, the young women and their families may not be accustomed to questioning the legitimacy of advertisements or agencies. This is particularly true in countries where advertisements for legitimate "female" jobs commonly list "young" and "attractive" as qualifications. Traffickers may also go to great lengths to give the appearance of legitimacy, including by using bogus written contracts. See United States Department of State, Bureau of Intelligence and Research (INR), "International Trafficking in Women from Central Europe and the NIS," November 1997, p. 4. See also GSN, "Crime & Servitude," *supra* note 8.

10 See, e.g., European Commission, Communication from the Commission to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation (1996), COM (96)567: "Trafficking for the purpose of sexual exploitation covers women who have suffered intimidation and/or violence through the trafficking. Initial consent may not be relevant, as some enter the trafficking chain knowing they will work as prostitutes, but who are then deprived of their basic human rights, in conditions which are akin to slavery."

11 GSN, "Crime & Servitude," *supra* note 8, p. 9.

12 Debt bondage typically works as follows: The trafficked person incurs a "debt" to her traffickers, with or without her consent. This may include the cost of travel documents, bribes, transport, "recruitment" or agency fees, and in some cases, the victim's "selling price." The woman is told, usually under threat of violence, that she cannot leave or return home until she pays off the debt. However, after each of the traffickers along the chain take his or her "cut" of the woman's earnings, she is left with little or no money to put toward the debt. The debt compounds as the trafficker adds on interest, living expenses, and arbitrary "fines" for misbehaviour, or sells the debt (along with the victim) to another trafficker at a large profit. As a result, the woman becomes trapped in a never-ending cycle in which it becomes virtually impossible, in most cases, to ever pay the debt. The irony of debt bondage is that, although the victim rarely earns any significant earnings from her labour, the hope of paying off the debt and escaping her bondage may resign the victim to staying in the exploitative situation. In truth, she is more likely to be arrested in a police or immigration raid, deported with little or no money in her pocket, and still owing a debt to traffickers for which she is likely to be "re-trafficked".

13 NGOs working with trafficking victims in the Netherlands, Germany, and Poland report that a significant percentage of their clients are between 15 and 21 years old. Karo, an NGO project working along the German-Czech border, recently reported to IOM that the majority of those it works with are girls and young women between the age of 12 and 18 years. Polish and Slovak police estimated to Interpol that about one in six of the women trafficked to and from their countries are underage.

14 In Vienna and Washington numerous cases have recently been reported in the media and to NGOs in which foreign women were "imported" by their diplomat employers under special privileges and then trapped in slave-like situations. Domestic workers are also frequently recruited through international employment agencies and then exploited or abused by unscrupulous employers who have lied to them about the nature or conditions of their work. See, e.g., IOM, *Migration in Central and Eastern Europe, 1999 Review*, p.75; Quaker Council for European Affairs, "Free and Equal in Dignity and Rights? The Trafficking of Women to Europe," August 1992. Although not technically "trafficking", as defined in this paper, there are also numerous accounts in the OSCE region involving employers heavily exploiting illegal migrants already in the country - sometimes in conditions verging on slavery. A recent example came from France, where a couple was prosecuted after using an illegal migrant from Africa as a housekeeper for five years in slave-like conditions without pay.

15 See, e.g., Position Paper on the draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, submitted by the Special Rapporteur on Violence Against Women.

16 In some OSCE participating States, laws encourage fictitious marriage by permitting foreign-born wives to work as prostitutes. See, e.g., GSN, "Crime & Servitude", p. 30.

17 Brokered marriages arranged by overseas marriage brokers are flourishing in the OSCE region. Although some brokered marriages are genuine, most "mail-order brides" from Asia, Latin America, and now CEE and the NIS, are, to varying degrees, exploited and/or abused by their "husbands". See, e.g., IOM, *Migration in Central and Eastern Europe*, pp. 74-75; GSN, "Crime & Servitude", pp. 29-32. False marriages and adoptions are also used as fronts to traffic women and children into commercial sex work.

18 See, e.g., Special Rapporteur on violence against women, Position Paper, *supra* note 5; Narcisa Escaler, Deputy Director General, IOM, Statement to the Commission on the Status of Women, 42nd Session, 2 March 1998; Testimony of Steven R. Galster, Director of Global Survival Network, before the CSCE, 28 June 1999.

19 See, e.g., Testimony of Steven R. Galster, *supra* note 18.

20 See, e.g., proposed Senate bill S. 600, section 4. In the United States, sweatshop and other forced labour cases involving migrants have been increasingly identified and prosecuted as trafficking cases. According to the Department of Justice, the majority of trafficking cases in the United States involve forms of labour exploitation other than forced prostitution.

21 The UN Special Rapporteur on violence against women has found violence to include the phenomenon of trafficking as it affects women and girl-children. This position reflects the position taken by the General Assembly in Article 2 of its Declaration on the Elimination of Violence against Women. See also the Beijing Declaration of the 4th UN World Conference on Women, Platform for Action (discussing trafficking as a form of violence against women); Address by Mary Robinson, UN High Commissioner for Human Rights, Consultation on Trafficking and the Sex Industry, 21 June 1999 (describing trafficking and related practices as violations "of the basic human rights to which all persons are entitled"); Council of Europe Parliamentary Assembly Recommendation 1325 (1997) (describing trafficking as a phenomenon bordering on slavery).

22 See, e.g., Human Rights Caucus, Human Rights Standards for the Treatment of Trafficked Persons (January 1999).

23 See, e.g., Address by Mary Robinson, UN High Commissioner for Human Rights, Consultation on Trafficking and the Sex Industry, 21 June 1999.

24 See, e.g., The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (April 1997) ("Hague Declaration"); Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member States. OSCE participating States such as Belgium, the Netherlands, and Italy have integrated a number of human rights considerations into their national laws and policies, including, to varying degrees, assistance and protections for trafficked persons.

25 See, e.g., Human Rights Caucus, Human Rights Standards for the Treatment of Trafficked Persons (January 1999), p. 5; Declaration on the Elimination of Violence against Women, General Assembly, A/RES/48/104 (2/23/94).

26 Although trafficking in the OSCE region most commonly involves movement across international borders, it is important to note that trafficking and its related abuses may also occur within States - usually from rural areas to urban centres.

27 See also, Informal Note, *supra*note 3, p. 6, in which the High Commissioner draws attention to the fact that national anti-trafficking measures may discriminate against women and other groups in a manner that infringes on their right to leave their country or to migrate legally.

28 See, e.g., GSN, "Crime and Servitude", p. 47.

29 Several studies show that women have been disproportionately disadvantaged by the economic and social transformation in the former communist countries. As a rule, women have experienced higher levels of unemployment (as much as 80 per cent in some countries and regions), marginalization in low wage sectors, and discrimination in recruitment, employment, promotion, dismissal, and earnings.

30 In addition to job creation, many experts recommend credit and training programmes to promote women's self-employment. Greater legal protection against employment discrimination is also needed. Among other things, OSCE participating States should introduce specific anti-discrimination legislation and effective mechanisms to enforce laws and policies in practice.

31 See, e.g., Human Rights Caucus, Human Rights Standards for the Treatment of Trafficked

Persons (January 1999), p.4.

32 See, e.g., Address by Mary Robinson, United Nations High Commissioner for Human Rights, Consultation on Trafficking and the Sex Industry (June 1999).

33 Trafficking and debt bondage have both been recognized as "slavery-like practices". See, e.g., UN Working Group on Contemporary Forms of Slavery, UN Doc. E/CN.4/Sub.2/AC.2/1991/1/Add.1; 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Article 1).

34 The ILO conventions define forced labour as "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". Convention 29, Articles 2(1), 4(1).

35 This section is based on information from various sources, including discussions with experts from several non-governmental organizations and participating States. Some country-specific information was also obtained through the contributions of participants at seminars sponsored by La Strada, Poland, the US Department of Justice (Child Exploitation and Obscenity Section), and the Frankfurter Institut für Frauenforschung e.V. Several research institutions are currently engaged in comparative legal studies to research and analyse the implementation of specific laws and policies in various OSCE participating States relating to trafficking, including the Boltzmann Institute for Human Rights, and the Frankfurter Institut für Frauenforschung e.V. Regrettably, the final results of these studies were not yet available in time to incorporate into this background report.

36 Very good co-operation has been reported between Polish and German police as well as between Austrian and Czech police on trafficking cases. In general, however, this co-operation tends to rely on personal relationships that have developed between members of police units in particular regions. Institutionalized or national co-operation is generally lacking.

37 Significant steps have been taken in the United States to address trafficking on a national and international level, in part due to the work of the Inter-Agency Council and its related task forces on trafficking and worker exploitation. Among these are increased prosecution of trafficking cases, new legislation, and numerous projects to incorporate trafficking issues into national and international training and development programmes. Despite these efforts, experts admit that significant work remains to be done. In particular, experts admit that awareness and concern about trafficking at the national level has not reached the state and local police, prosecutors, judges, and immigration authorities who are most likely to come in contact with trafficking situations. In addition, the US has no programme in place to assist victims of trafficking - indeed several US laws prohibit the use of any public funds for illegal aliens. While NGOs have stepped in to provide assistance in certain cases, current resources and capacity to deal with trafficking victims in the US are extremely limited.

38 Certain German *Bundesländer*, such as Lower Saxony, have also implemented co-ordinated anti-trafficking strategies that have worked well on the local level. However, there appears to be no unified national approach.

39 See, e.g., Interpol, Minutes/Working Documents, International Conference on Trafficking in Women (October 1998).

40 Several prosecutors have noted, for example, the difficulty of proving the purpose behind the trafficking (in transit situations) or the presence of deception, coercion, or lack of consent. As one US prosecutor explained, "the more elements we have to prove, the more likely it is that the [trafficker] will get off."

41 The Belgian law punishes any person who "contributes, in any way, directly or through an intermediary, to allowing the entry or residence of a foreigner [in Belgium], and in so doing: 1)

makes use vis-à-vis the foreigner, directly or indirectly, of deception, violence, threats or any other form of constraint; or 2) takes advantage of the particularly vulnerable position which the foreigner is in because of his or her illegal or precarious administrative situation, pregnancy, illness, or physical or mental infirmity or defect..." A similar provision was added to the penal code on exploiting the vice or prostitution of others. Higher penalties are available if the offence is committed as part of an organized ring or is a repeat or habitual offence.

42 The United States Interagency Working Group on Worker Exploitation has recently proposed new legislation and sentencing guidelines relating to situations not adequately covered by existing federal law. Among the proposals developed by the task force is legislation that would make it a crime to recruit or transport any person, knowing or having reason to know that the person will be subjected to unlawfully exploitative labour conditions. It would also punish those who directly or indirectly profit from the fruits of involuntary servitude or debt bondage. Proposed sentencing guidelines would increase penalties for trafficking offences, including peonage and involuntary servitude.

43 See, e.g., UN Office for Drug Control and Crime Prevention, "Global Programme against Trafficking in Human Beings", February 1999, pp. 3-4.

44 With respect to confiscation of assets or other actions against the property of traffickers, only a few countries seem to apply existing laws in trafficking cases. In Italy, prosecutors regularly confiscate the valuables of traffickers and use them to compensate victims. Belgium reports that it can legally obtain injunctions to close properties used for trafficking and confiscate valuables, but that such measures are rarely applied. A US prosecutor has noted the value of seizure/forfeiture laws in providing an incentive for law enforcement to undertake lengthy and complicated international investigations, particularly if part of the proceeds or assets go to law enforcement programmes.

45 Testimony of Dr. Laura Lederer before CSCE Commission, 28 June 1999. In a study of laws aimed at protecting women and children from sexual exploitation, Dr. Lederer found that "prostitution laws, which are aimed at women and children, are enforced, while the procurement laws, aimed at the traffickers are almost never invoked". Enforcement of laws against traffickers appears to be more aggressive and effective, however, in countries with specialized police and prosecutor units with special expertise in trafficking.

46 Even in countries with laws permitting foreign witnesses to return to the country to testify in court proceedings, in practice, this rarely happens. Once a victim is deported, States generally make no attempt to monitor her situation or whereabouts, and the potential witness disappears. Other policies also hinder return for court proceedings. For example, one German prosecutor related an incident in which his witness was refused entry at the border by immigration officials even though she had been subpoenaed by the State to testify. She returned to her country and the case against the trafficker was dismissed.

47 In most cases, deportation is applied indiscriminately without regard to the trauma the trafficked person has endured or the danger she faces upon return. As discussed in Section 5.2, few countries of origin are able to provide the trafficked person with any medical, psychological, or legal services, or protect her from reprisals or "re-trafficking" by the crime groups linked to the traffickers in her home country.

48 In many cases, victims of trafficking - particularly minors - want to return to their home countries. However, deportation as illegal immigrants can have significant and long-lasting implications for trafficked people. In some countries, for example, deportees are prosecuted and jailed upon return for prostitution or for leaving their country illegally. For others, deportation as "undesirables" effectively precludes them from travel or legal migration for many years after the trafficking ordeal has ended. In some cases, the trafficked persons or their families are required to pay back their repatriation costs, further adding to their dependence and debt.

49 A recent media report from the United Kingdom illustrates this point: In that case, police raided a massage parlour (having organized crime ties) following a media expose. According to the report, the authorities knew or had reason to know that the eight Thai women working in the massage parlour had been trafficked and were being forced to prostitute against their will. After the raid, however, the women were immediately deported and therefore not available to give evidence against the traffickers. This scenario has been repeated countless times in destination countries throughout the OSCE region.

50 In the United States, federal legislation is now pending that would provide a temporary residence permit and assistance to trafficked persons who co-operate with law enforcement. At present, however, the vast majority of trafficked persons are detained and deported, as in other OSCE States, often without having been identified as such. Special "S" visas have been provided to witnesses in a few high-profile trafficking cases, but experts note that the number of visas available for this purpose is extremely limited. See also, discussion at supra note 37.

51 In Italy and the United States, trafficked persons have been able to receive legal remedies and extend their temporary stay in some cases. In Italy, suits for civil damages are integrated into criminal proceedings, and damages - often substantial - have been awarded to victims from the value of property confiscated from traffickers during police investigations. A new proposed law would establish a fund from confiscated valuables of traffickers to support shelters and programmes for trafficking victims. (Other countries, such as Germany, allow confiscation of assets, but profits flow to the government, not to victims.) In the United States, prosecutors were successful in obtaining a substantial restitution award for victims of trafficking in a criminal case involving forced prostitution of several young Mexican women and girls. NGOs have also obtained civil remedies for trafficked workers in a few high-profile cases. In both Italy and the US, the longer-term immigration status of the trafficked persons is uncertain. However, eligible victims can apply for amnesty, and legislation has been proposed that would permit victims to extend their stays or convert to permanent residency status in some cases.

52 Crimes of violence against women, in general, are seldom enforced in many countries of origin. The lack of attention paid to trafficking may be only part of this broader problem.

53 Police and official corruption is an important contributing factor in many countries of origin, and occurs with impunity. See, e.g., Transnational Crime & Corruption Center at American University (TraCCC), *Organized Crime Watch-NIS*, Vol. 1, No. 3 (March/April 1999); Global Survival Network, "Crime and Servitude", pp. 41-44.

54 An initial review of the new trafficking legislation reveals some potential limitations. For example, the Polish law does not define trafficking and therefore may be too vague to be enforceable. The stricter penalties for trafficking a person for prostitution abroad also applies only to persons trafficked out of Poland. The Lithuanian law is limited to trafficking for sexual exploitation.

55 See, e.g., Center for the Study of Transnational Crime & Corruption at American University, *Organized Crime Watch - Russia*, Vol. 1, No. 2 (February 1999), p. 5.

56 See, e.g., Global Survival Network, "Crime and Servitude", pp. 33-39.

57 People in many regions still widely believe that there is a high demand for local girls to work abroad as nurses, nannies and models, and are unaware of the suspect nature of advertised jobs. See, e.g., Dr. Juliette Engel, MiraMed Institute, Preliminary Report on Unifem Project in Russia (1998), p. 3.

58 Two particularly successful awareness-raising efforts were information campaigns carried out in 1998 by the NGO La Strada in Poland (funded by the EC PHARE programme) and the IOM in

Ukraine (funded by the United States). Other awareness-raising efforts, such as the MiraMed Institute project in six *oblasts* in the Russian Federation, have also had a positive impact. In addition, NGOs such as La Strada Bulgaria have published and distributed effective information pamphlets explaining the risks of migrating for work abroad, advising on practical steps women can take to protect themselves, and providing contact information for embassies and NGOs in countries of destination.

59 See, e.g., Dr. Juliette Engel, MiraMed Institute, Preliminary Report on Unifem Project in Russia (1998).

60 Many women and girls are also unable to return home after being trafficked because their families or communities reject them (or in some cases because families or acquaintances were complicit in the trafficking). In most origin countries, there is no place for these women to go for shelter or other assistance, and they may return to prostitution for lack of any viable alternative.

61 The ODIHR has not yet researched the efforts of individual States, although it is aware that several participating States have undertaken and/or financially supported various initiatives to address trafficking at an international level. These include, for example, bilateral co-operation programmes involving the United States and Italy, Israel, and Ukraine; a 1998 US-EU joint public information campaign in Ukraine and Poland (implemented by IOM and La Strada); an NGO networking project in the Baltics, funded in part by the Swedish Foreign Ministry, and ongoing USAID projects in South East Asia and Ukraine.

62 In particular, specialized NGOs such as La Strada (Poland, Czech Republic, Bulgaria, and Ukraine), Phoenix (Germany), STV (Netherlands), and Payoke (Belgium) have been invaluable in leading the fight against trafficking in their respective countries.

Annex

Selected resources on trafficking

UN Special Rapporteur on violence against women, "Report on the mission of the Special Rapporteur to Poland on the issue of trafficking and forced prostitution of women", (24 May to 1 June 1996) (E/CN.4/1997/47/Add.1).

Global Survival Network, "Crime & Servitude: An Expose of the Traffic in Women for Prostitution from the Newly Independent States", October 1997.

International Organization for Migration, "Trafficking and Prostitution: The Growing Exploitation of Migrant Women from Central and Eastern Europe," May 1995.

Global Alliance Against Traffic in Women, Foundation Against Trafficking in Women, & International Human Rights Law Group, "Human Rights Standards for the Treatment of Trafficked Persons", January 1999.

Israel Women's Network, "Trafficking of Women to Israel and Forced Prostitution", November 1997.

Interpol, Minutes/ Working Documents, International Conference on Trafficking in Women, October 1998.

International Organization for Migration, "Migration in Central and Eastern Europe, 1999 Review".

Human Rights Watch, Women's Rights Division, "World Report 1999, Women's Human Rights".

Stephanie Farrior, "The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to Its Potential," 10 *Harvard Human Rights Journal* 213 (1997).

Frankfurter Institut für Frauenforschung e.V., "Prosecution and victim protection in cases of trafficking in persons", (comparative study in progress).

Ludwig Boltzmann Institut für Menschenrechte, "Combating Trafficking in Women and Forced Prostitution From Selected CEEC Countries to EU Member States", (comparative study in progress).