

TRANSNATIONAL COOPERATION AGAINST HUMAN TRAFFICKING

By
Cristinel Buzatu

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Supervisors: Andrea Matolcsi
David Caughlin

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Executive summary

This thesis focuses on how the United Nations, European Union and the Council of Europe are involved in the fight against human trafficking. It follows their main activities and legal documents at different stages of the anti-trafficking effort. A first stage being: defining and criminalizing human trafficking; followed by police cooperation, victim assistance and prevention efforts.

This research shows how international cooperation is needed in the fight against human trafficking and how these bodies play an essential role in this respect. It shows that they have managed to secure some achievements, namely providing an internationally recognized definition of human trafficking, and also a framework for police cooperation and victim assistance. However these achievements are clouded by various drawbacks in the way they have been developed and in the way states make use of them. Also these bodies have not been active enough in preventing human trafficking and this research shows that they need to get more involved because national initiatives alone are less effective.

The overall conclusion being that international cooperation is needed in the fight against human trafficking and has been shown to be effective. It allows for experience to be shared, for best-practice stories to be disseminated and it can create a space of legal certainty. But it needs to be developed further and to be carried out in a more coordinated way, as to be effective in the fight against an increasingly international trafficking in human beings.

Introduction

Human trafficking is one of the fastest growing criminal activities in the world and one of the most profitable ones as well.¹ It is mostly women that fall victims of this crime and they are mostly trafficked for the purpose of sexual exploitation.² Also this type of criminal activity has developed strong international ramifications generating the need for an international response.³ It is this international response to the trafficking of women for the purpose of sexual exploitation that is the focus of this thesis.

I will limit my observation to the European space because it reflects the division between destination, transit and origin countries.⁴ It also is an interesting area to look at because it allows for comparison to be made between the framework of a number of transnational bodies, of which I will focus on the United Nations, the European Union and the Council of Europe. Their main texts on the matter which shall be analyzed for the purpose of this thesis are:

- Protocol to Prevent, Suppress and Punish Trafficking in Person to the Convention against Transnational Organized Crime
- Council framework decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA)
- Council Directive 2004/81/EC of 29 April 2004, on the residence permit issues to third-country nationals who are victims of trafficking in human being or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities
- Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005

¹ Marta Iñiguez de Heredia *People Trafficking: Conceptual issues with the United Nations Trafficking Protocol 2000*, in Hum Rights Rev (2008) 9:299–316m p. 4

² *Ibid.*, p. 22

³ Fenton Bresler: *Interpol*, Great Britain, Mandarin Paperbacks, 1992, p. 333

⁴ United Nations Office on Drugs and Crime (UNODC) *Trafficking in Persons: Global Patterns* April 2006, page 90, available at: <http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf> [last visited on the 3rd of November 2010]

The aim of this thesis is to look at how these three bodies act and interact in the fight against human trafficking in order to make sense of how the international response to human trafficking appears in Europe and consequently evaluate it. It will be shown that despite some achievement within this area there are still serious flaws that hinder the effectiveness of international as well as national efforts against human trafficking.

I will do this by looking at various stages of the fight against human trafficking and comparing and contrasting what is being done at the international level by the three bodies.

I will firstly look at the scale of human trafficking and give an overview of the main actors involved in the fight against it. At this point besides introducing the main bodies which shall be compared in the rest of the thesis, I will show that there is a need for more reliable data but that existing data clearly shows that human trafficking is a contemporary problem and that in fact it is a growing problem.

Next I will explore the definition of human trafficking as a major achievement in international cooperation against this crime. I will firstly develop on the Palermo Protocol definition, with its positive and negative aspect, because it is the first agreed-upon definition⁵. I will further develop on an underlying debate that was carried out around this definition, namely whether to consider prostitutes as victims of human trafficking or not. With this I want to show how difficult it is to agree on a definition at this level because of the number of different perspectives that must be taken into account and I also think this debate is telling of the fact that compromises had to be made when agreeing on this definition and also it shows that prostitution and human trafficking are very much connected.

⁵ Marta Iñiguez de Heredia *People Trafficking: Conceptual issues with the United Nations Trafficking Protocol 2000*, in *Human Rights Review* (2008) 9:299–316m p. 2

Next I will focus on the issue of police cooperation. I will look at Europol as an example of an institution that is focused on police cooperation within Europe. I will first describe how Europol was set up. This is important because it introduces the reader to the process in which police cooperation emerges in an intergovernmental setting and it will also try to place it within the larger functioning of the European Union. Then I will move to explaining what Europol's main attributions are, in order to better explain how it functions. I will then elaborate on how it collaborates with other transnational bodies that have similar attribution. This will give further insight into how transnational cooperation is being played out in respect to human trafficking within Europe. This will be followed by an assessment of Europol's activity

Looking outside the scope of Europol I will then elaborate on the U.N. peacekeeping forces' experience when stationed in Bosnia and Herzegovina. Although not an example of police cooperation this is still similar in that it shows an example of transnational cooperation carried out in order to provide security and deter criminal activity. It also widens the scope of this thesis and it adds to its value in that it provides an excellent opportunity to look at how transnational efforts against crime can go wrong and actually sustain and encourage criminal activity.

Having done this I would next like to consider another aspect of human trafficking that is also being addressed at the transnational level, namely assisting victims of human trafficking. In discussing this I will touch upon a number of issues, starting with non-punishment of victims of human trafficking, decriminalization of prostitution, and will also talk about residence permits, treatment during criminal proceedings and reintegration efforts. All of them reflect particular concerns regarding victims of human trafficking. Some of these concerns relate to the need to

encourage victims to reach out to authorities and to having them recognized as victims and not criminals or tools of criminal proceedings.

I will then look at prevention efforts. Human trafficking is possible because of a number of circumstances that allow it to happen and flourish. Of these I would look at the feminization of poverty, objectification of women and at the demand of sexual services. The first two points will be seen in a wider context of inequalities between men and women. I will look at the feminization of poverty in order to see how these inequalities are being played out and preserved and then I will look at the objectification of women to see how these inequalities are perpetuated. My point is that there is a circle of inequality between men and women which has a powerful influence on human trafficking and in order to prevent human trafficking this cycle of inequality should be broken.

I will then develop on how to fight human trafficking by addressing one of its driving causes namely the demand. In this respect I will look at programs aimed at seeking the help of the buyer in identifying victims of human trafficking and raising awareness among them on this issue. I will then focus on the Swedish approach, which is to punish the buyer of sexual services.

Chapter 1: Overview of trafficking and actors involved in the fight against it

In this chapter I will look at the scale of human trafficking and give an overview of the main actors involved in the fight against human trafficking.

I think it is important to first look at the numbers of victims of human trafficking. Although these numbers are not very accurate due to an increased difficulty in measuring the scale of this type of criminal activity they do show that human trafficking is a contemporary problem and that in fact it is a growing problem. Moreover, despite the fact that human suffering cannot be quantified, I these numbers stem for the need to act and draw an alarm signal to the fact that there is still much more to be done in the fight against human trafficking.

In the next section I will develop on some of the main actors that are involved in the fight against human trafficking at the international level. I will talk about the United Nations (U.N.), the European Union (E.U.) and the Council of Europe (CoE). I have chosen these actors due to the fact that they are all transnational-bodies active in the European space, and they have all been active to various degrees in the fight against human trafficking. As it will be shown in the following chapters they often times interact and cooperate but also overlap.

I will refer to the workings of these bodies and their various structures and texts in rest of the thesis and this is why I think it is important to present them and describe their various undertaking with respect to human trafficking.

A: The scale of human trafficking

1: Hindrances to assessing the scale of Trafficking

In terms of the scale of human trafficking it is generally known that it is difficult to assess. This difficulty stems from a number of reasons, of which I will further develop on how human trafficking is at times misidentified, on the lack of appropriate victim-identification training, on differences in data collection, relaxation of border controls and on the reluctance of victims to seek out the help of authorities.

One first obstacle to assessing human trafficking would be the fact that trafficking in human beings is at times misidentified as other forms of criminal activity, for example as prostitution, (in jurisdictions where prostitution is illegal, as is the case of Romania⁶) illegal immigration and labor disputes.⁷ This meaning that in some instances prosecutors and other authorities register human trafficking as other crimes and therefore many cases that are actually cases of human trafficking are not acknowledged as such.

As for why this happens, one explanation lies is the fact that authorities and service providers often times lack -because of lack of training- adequate victim identification capabilities, which means that many victims go unidentified, in turn meaning that they are then not reflected in the statistics on the scale of trafficking.⁸ In this respect the United Nations Office

⁶ Law no. 15/1968 on Romanian Criminal Code, as further amended, published in the Official Gazette no. 79-79 bis, of 21st of June 1968, Art. 328

⁷ *Trafficking in Human Beings in the European Union: A Europol perspective*, released by Europol on June 2009, p. 2, available on the Europol website: http://www.europol.europa.eu/publications/Serious_Crime_Overviews/Trafficking%20in%20Human%20Beings%20June%202009.pdf [last visited on 8th of March 2010]

⁸ Anne Gallagher and Paul Holmes, *Developing an Effective Criminal Justice Response to Human Trafficking Lessons From the Front Line*, in *International Criminal Justice Review* Volume 18, Number 3, 2008, p. 326

on Drugs and Crime has developed a manual designed to train police in identifying victims of human trafficking which could be a useful tool in this regard.⁹

Among other obstacles to evaluating the scale of human trafficking it has also been said that there are considerable differences in the way states collect their data, and in the absence of “any standardized guidelines for data collection” the current approach “allows for significant intelligence gaps”.¹⁰ Consequently it would be a welcomed initiative to develop such guidelines that would allow for a uniform data collection system which may improve the quality of available information on human trafficking.

Moreover it has become increasingly difficult for law enforcement agencies to intercept traffickers and identify victims because of the relaxation of border controls or the removal of such controls.¹¹ This is increasingly relevant with the eastern enlargement of the European Union which allowed traffickers that come from traditionally “exporting” countries such as Romania and Bulgaria to benefit from weaker border controls.¹² In this respect it is also relevant to note that from mid-December 2010 “citizens of Albania and Bosnia and Herzegovina possessing biometric passports will be able to travel to and throughout the Schengen area without a visa” this way joining “the former Yugoslav Republic of Macedonia (FYROM), Montenegro and Serbia who already joined the visa free regime on 19 December 2009”¹³ This is relevant because these countries are seen as some of the main countries of origin for victims of human

⁹ United Nations Office on Drugs and Crime, Regional Office for South Asia, *Manual for training police on anti-human trafficking*, New Delhi, 2008, available at : http://www.unodc.org/pdf/india/training_manual_police1.pdf [last visited on the 23rd of October 2010]

¹⁰ *Trafficking in Human Beings in the European Union: A Europol perspective*, released by Europol on June 2009, p. 2, available on the Europol website: http://www.europol.europa.eu/publications/Serious_Crime_Overviews/Trafficking%20in%20Human%20Beings%20June%202009.pdf [last visited on 8th of March 2010]

¹¹ *Ibid*

¹² Jo Goodey : *Human trafficking: Sketchy data and policy responses* in *Criminology and Criminal Justice*, Sage Publications, London, 2008, p. 427

¹³ As posted on the Council of the European Union website, at : http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/117555.pdf [last visited on the 10th of March 2010]

trafficking.¹⁴ One possible solution to overcome this impediment could be to develop on police cooperation mechanisms which I will discuss more in the third chapter.

Also, victims of trafficking for sexual exploitation are often reluctant to seek out the help of authorities or, if questioned by them, to admit that they are a victim, because of various reasons, including fear of reprisals and violence from the traffickers/pimps against them and/or their families as well as the fact that in some cases they find themselves feeling very vulnerable because of “living in the criminal underworld, faced with violence, no passport or money of their own.”¹⁵ This particular obstacle ties into a wider context of assistances afforded for victims of human trafficking which shall be discussed at length in the fourth chapter.

2: Estimates of the scale of trafficking for the purpose of sexual exploitation

Despite the difficulties in establishing the numbers of victims, there have been efforts on the international arena to estimate the scale of human trafficking for sexual exploitation.

One such example would be UNODC’s global trafficking survey which shows that in the countries that responded to it 79% of all identified trafficking victims were women (66% women and 13% girls), and that 79% of trafficking occurred for purposes of sexual exploitation.¹⁶

Also, a report released by the International Labor Organization which sees this crime in a larger context of forced labor points at a minimum of 1.390.000 victims worldwide.¹⁷ The same

¹⁴ Organization for Security and Cooperation in Europe, OSCE website: http://www.osce.org/documents/odihr/1999/09/1503_en.html#p221 [last visited on the 10th of March 2010]

¹⁵ Ursula Smartt *Human Trafficking: Simply a European Problem?*, in the European Journal of Crime, Criminal Law and Criminal Justice, Vol. 11/ 2, 164–177, Netherlands, 2003, p. 172

¹⁶ United Nations Office on Drugs and Crime, *Global report on trafficking in person, Human trafficking, a crime that shames us all*, 2009, available at: http://www.unodc.org/documents/Global_Report_on_TIP.pdf, [last visited on the 23rd of November 2010] p. 11

¹⁷ Global report under the Follow-up to the International Labor Organization (ILO) Declaration on Fundamental Principles and rights at work, released by the ILO, Geneva, 2005, p. 19, as found on the ILO website: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf, [last visited on the 8th of March 2010]

report shows that it is mostly women and girls that are being trafficked for the purpose of sexual exploitation and that they account for 98% of all victims.¹⁸

Other sources suggest that worldwide there are around 700 000 to 1 million women and children being trafficked and that this form of slavery has shown constant growth, being “the fastest growing form of crime throughout the world”.¹⁹ In 2008 it was also estimated that human trafficking “is likely to become the second major profitable criminal activity behind drug trafficking in the next 15 years”.²⁰ This increasing trend has also been signaled in Europe where reports show that trafficking has been booming since the 1990s.²¹

¹⁸ Global report under the Follow-up to the International Labor Organization (ILO) Declaration on Fundamental Principles and rights at work , released by the ILO, Geneva, 2005, as found on the ILO website: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf, [last visited on the 8th of March 2010]., p. 22

¹⁹ Deborah G. Wilson, William F. Walsh & Sherilyn Kleuber : *Trafficking in Human Beings: Training and Services among US Law Enforcement Agencies*, Police Practice and Research, Vol. 7, No. 2, 2006, p. 149

²⁰ Marta Iñíguez de Heredia *People Trafficking: Conceptual issues with the United Nations Trafficking Protocol 2000*, in Human Rights Review (2008) 9:299–316m p. 4

²¹ Cornelius Friesendorf: *Pathologies of Security Governance: Efforts Against Human Trafficking in Europe*, Sage Publications, Munich, 2007, p. 379

The patterns of trafficking in Europe are different depending on the region. There is a division between Western European countries and Central and South Eastern European countries, the former being mainly destination countries while the latter origin countries.²² This division is not specific to Europe but can be seen worldwide, as presented in the bellow map.

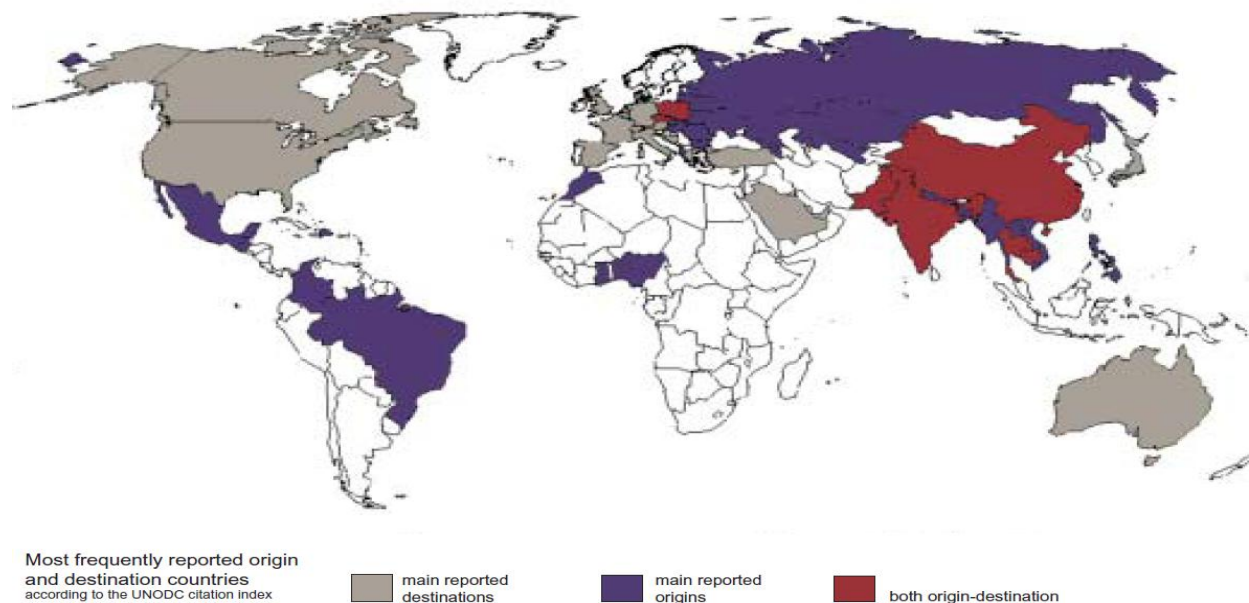


Figure 1: Transit, origin and destination countries for human trafficking²³

Even though the data is not considered completely accurate and verifiable, it does show that the problem exist and there has been an increase in reported incidents of human trafficking. It also stands for the need to intervene more effectively in fighting and preventing this crime.

²² United Nations Office on Drugs and Crime (UNODC) Trafficking in Persons: Global Patterns April 2006, page 90, available at: <http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf> [last visited on the 3rd of November 2010]

²³ *Ibid*, page 17,

B: Overview of main actors involved in the fight against trafficking.

1: The U.N.

The U.N. plays a very important role in fighting and preventing human trafficking. This role stems from the fact that it embodies 192 member states, and consequently decisions passed at this level have wide reaching effects.²⁴

It is here that one of the most influential texts on human trafficking was passed, the Palermo Protocol.²⁵ This document is important because it has a large number of states that signed it, namely a total of 140 countries.²⁶ Nonetheless the language of the text leaves great leverage to the states in implementing it. It uses phrases like “the State party shall consider” doing this or that (e.g.: articles 6.3, 7.1, 11.5). However it touches upon the main components of fighting human trafficking like criminalizing this activity (art 5) the protection of victims (title II) prevention and cooperation (title III).

Also, there are a number of bodies created at the U.N. level that have competences with regards to human trafficking. One such body is the United Nations Office on Drugs and Crime (UNODC) which “offers practical help to States, not only helping to draft laws and create comprehensive national anti-trafficking strategies but also assisting with resources to implement them; states receive specialized assistance including the development of local capacity and expertise, as well as practical tools to encourage cross-border cooperation in investigations and prosecutions.”²⁷

²⁴ U.N. website: <http://www.un.org/en/aboutun/index.shtml> [last visited on the 20th of February 2010]

²⁵ Protocol to Prevent, Suppress and Punish Trafficking in Person to the Convention against Transnational Organized Crime

²⁶ U.N. Global Initiative to Fight Human Trafficking website : <http://www.ungift.org/knowledgehub/en/about/index.html> [last visited on 23rd of November 2010]

²⁷ United Nations Office on Drugs and Crime website: http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menu#UNODC's_Response [last visited on the 3rd of November 2010]

More recently, on the 30th of July 2010 the General Assembly has adopted The United Nations Global Plan of Action to Combat Trafficking in Persons which “calls for integrating the fight against human trafficking into the United Nations' broader programs to boost development and strengthen security around the world.”²⁸ As a part of this action plan on the 4th of November 2010 The United Nations Voluntary Trust Fund for Victims of Trafficking in Persons was launched; which sets out to “provide humanitarian, legal and financial aid to victims of human trafficking with the aim of increasing the number of victims who are rescued and supported, and broadening the extent of assistance they receive.”²⁹

Competences with respect to the fight against human trafficking are also seen within the UN Refugee Agency (UNHCR) which is “mandated to help victims of trafficking as they relate to international asylum.”³⁰ Also at the UN level a Special Rapporteur on trafficking in persons, especially in women and children has been appointed “to focus on the human rights aspects of the victims of trafficking in persons”.³¹

The UN and its specialized bodies are very important to the fight against human trafficking in that it conveys a global perspective on the matter and it draws on this global experience. However in the European context it would be more relevant to look at the E.U. and the Council of Europe because of the fact that they reflect the European perspective on the matter and the local approach.

²⁸ UNDOC website: <http://www.unodc.org/unodc/en/frontpage/2010/September/un-launches-global-plan-of-action-against-human-trafficking.html> [last visited on the 5th of November 2010]

²⁹ *Ibid*

³⁰ UN Refugee Agency website: <http://www.unhcr.org/refworld/pdfid/43fd782d4.pdf> [last visited on the 23rd of November 2010]

³¹ United Nations' High Commissioner for Human Rights website: <http://www2.ohchr.org/english/issues/trafficking/index.htm> [last visited on the 23rd of November 2010]

2: The E.U.

At the E.U. level it is considered a fundamental right to be protected from becoming a victim of human trafficking.³² The E.U. has set as one of its goals to provide its citizens with a sense of safety, which can be contributed to by fighting human trafficking.³³ In this respect Member States have given power to the European Parliament and the Council to pass directives in order to “establish minimum rules concerning the definition of criminal offences and sanctions”.³⁴

In its efforts to fight and prevent human trafficking, the E.U. has produced a number of legal documents of which I would like to point out the Council Framework Decision of 19 July 2002 on combating trafficking in human beings which sets out to ensure that all member states criminalize human trafficking.³⁵ Another relevant document which shall be discussed throughout this thesis is Council Directive 2004/81/EC of 29 April 2004, on the residence permit issues to third-country nationals who are victims of trafficking in human being or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

In its efforts to fight human trafficking the E.U. has developed a set of bodies that have special competences in this matter. Among these bodies I would like to look at The Expert Group on Trafficking in Human beings, Europol and Eurojust. I will describe each one of these and give an overview of their competencies in this field.

³² Charter of Fundamental Rights of the European Union

³³ Consolidated version of The Treaty on the Functioning of the European Union published in the Official Journal of the European Union, 9.5.2008, art. 79 (1)

³⁴ *Id.* Art. 83 (1)

³⁵ Council Framework Decision of 19 July 2002 on combating trafficking in human beings 2002/629/JHA

2.1. The Experts Group on Trafficking in Human Beings

It was set up as a consultative group in 2003 and it is made up of “qualified individuals competent to consider matters relating to trafficking in human beings”³⁶ It is set up as a source of consultation for the European Commission to which it can provide opinions and reports “at the latter’s request or on its own initiative”.³⁷ It also acts as a liaison between Member States and the Commission as it sets out to assure cooperation between them in aspects concerning human trafficking.³⁸

It has a total of 21 members that come from different backgrounds, some come from national administrations, others from international organizations, there are also members from NGO’s as well as from academic backgrounds, and there is even one member from Europol.³⁹ The members of this group of experts do not get paid for their services.⁴⁰

2.2. Europol

The European Police Office, also known as Europol came as a response to the call for more police cooperation at the E.U. level so as to better address criminal activity and guarantee security.⁴¹

EU Member States agreed to establish it in 1992 and it was thought of as a Union-wide system of exchanging information relating to police cooperation between the Member States of the E.U.⁴² Nonetheless it took six years of “preparation, debate and delay” until it was finally

³⁶ Commission decision of 25 March 2003 setting up a consultative group, to be known as the “Expert Group on Trafficking in Human Beings”, 2003/2009/EC, art. 1

³⁷ *Id.* Art. 2

³⁸ Commission decision of 17 October 2007 setting up the Group of Experts on Trafficking in Human Beings 2007/675/EC art. 2 (2) b.

³⁹ *Id.* Art. 3

⁴⁰ *Id.* Art. 6(2)

⁴¹ *Ten years of Europol, 1999-2009*, anniversary publication released by the European Police Office, 2009, p.11

⁴² Treaty on European Union, Official Journal C 191, 29 July 1992, Art. K1 (9)

inaugurated in 1998.⁴³ In 2009 a decision of the Council replaced the prior convention on which Europol was established.⁴⁴

The stated objective of Europol is “to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organized crime, terrorism and other forms of serious crime affecting two or more Member States.”⁴⁵

This objective is incumbent on human trafficking, which falls under the notion of a serious crime along side with drug trafficking and environmental crimes, just to name out a few.⁴⁶

2.3. Eurojust

Eurojust was set up as a body of the E.U. in 2002 and its main objectives are to help “coordination of investigations and prosecutions in the Member State” between competent authorities of the M.S. and also stimulate it.⁴⁷ It has the same competence as Europol⁴⁸ and it carries out its main tasks through “one or more of its national members” or as a College.⁴⁹ These tasks stem from asking information from the national authorities to asking them to start an investigation; they also include creating a joint investigating team and try to improve cooperation between the competent authorities involved.⁵⁰

⁴³ John D. Occhipinti, *The Politics of EU Police Cooperation, Towards a European FBI?*, Lynne Reinner Publishers, London, 2003, p. 1

⁴⁴ Council Decision of 6 April 2009 establishing the European Police Office (Europol) (219/371/JHA), Published in the Official Journal of the European Union on the 15th of May 2009, Art. 1

⁴⁵ *Id.* Art. 3, By ‘competent authorities’ this text refers to “all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences”

⁴⁶ *Id.* Annex.

⁴⁷ Council decision of 28th of February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, (2002/187/JHA), art.1 and 3

⁴⁸ *Id.* Art. 4

⁴⁹ *Id.* Art. 5

⁵⁰ *Id.* Art. 6 and 7

Human trafficking constitutes almost 6% of the total caseload of Eurojust, most cases involved eastern European authorities like Romanian and Bulgarian.⁵¹

The following chart⁵² is useful to be able to get a view of the number of cases of human trafficking dealt with by the Eurojust and to see how this number has risen in the past few years.

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Figure 1: Trafficking in Human Beings Cases 2004-2008

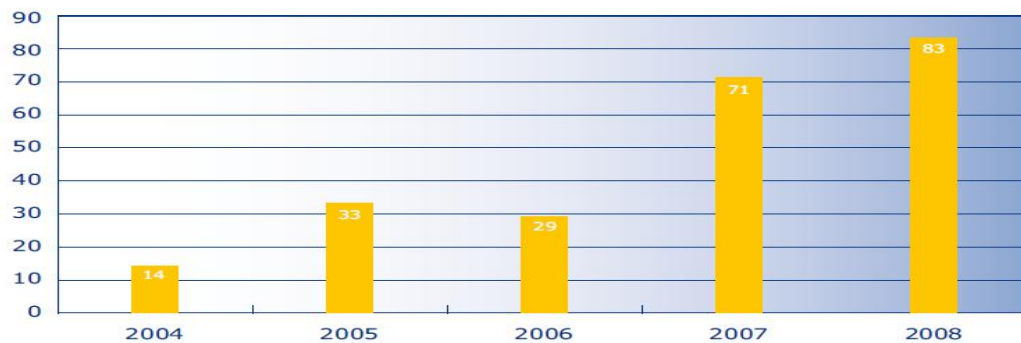


Figure 2: Eurojust's human trafficking cases

Despite the fact that the E.U. is so widely active in the fight against human trafficking within Europe it does have its limitation in the fact that it embodies the experience of only 27 European states, which are its members.⁵³ In order to get a more complete picture of what is going on in terms of transnational cooperation at the European level it would be relevant to look at the Council of Europe, because it conveys the position of almost all European countries with the exception of Belarus, namely a total of 47 Countries.⁵⁴

⁵¹ Eurojust's annual report from 2008, available at:

http://www.eurojust.europa.eu/press_releases/annual_reports/2008/Annual_Report_2008_EN.pdf [last visited on the 23rd of September 2010] page 25

⁵² *Ibid*, 26

⁵³ E.U. website: http://europa.eu/abc/european_countries/index_en.htm [last visited on the 28th of November 2010]

⁵⁴ CoE website: <http://www.coe.int/aboutcoe/index.asp?page=47pays1europe&l=en> [last visited on the 28th of November 2010]

3. The Council of Europe

The Council of Europe has 47 Member States, meaning almost all of the European States, and one of its stated goals is to protect human rights.⁵⁵ It is active in the fight against human trafficking, the main text reflecting its policy being the Council of Europe Convention on Action against Trafficking in Human Beings.⁵⁶

In order to secure the application of the convention the text provides for the creation of a monitoring system

“which has two pillars: on the one hand, the Group of Experts against trafficking in human beings (GRETA) [which] is a technical body, composed of independent and highly qualified experts in the area of Human Rights, assistance and protection to victims and the fight against trafficking in human beings, with the task of adopting a report and conclusions on each Party’s implementation of the Convention; on the other hand, there is a more political body, the Committee of the Parties, composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe, which may adopt recommendations, on the basis of the report and conclusions of GRETA, addressed to a Party concerning the measures to be taken to follow up GRETA’s conclusions”⁵⁷

The European Court of Human Rights, which is another Council of Europe institution, also plays an important role in the fight against human trafficking. It is an international Court that was set up in 1959 which receives individual or State applications claiming violations of the

⁵⁵ CoE website: <http://www.coe.int/aboutcoe/index.asp?page=47paysleurope&l=en> [last visited on the 28th of November 2010]

⁵⁶ Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005

⁵⁷ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 2005, available at: http://www.coe.int/t/dg2/trafficking/campaign/Source/PDF_Conv_197_Trafficking_E.pdf [last visited on the 2nd of November 2010], p. 76

rights set out in the European Convention of Human Rights; the Court renders judgments that are binding to the State parties.⁵⁸

With respect to the basic text it applies it can be said that “the European Convention on Human Rights is an international treaty under which the member States of the Council of Europe promise to secure fundamental civil and political rights, not only to their own citizens but also to everyone within their jurisdiction.”⁵⁹ A recent European Court of Human Rights judgment found “that trafficking in human beings, although not explicitly mentioned in the ECHR, fell within the scope of Article 4 (prohibition of slavery, servitude and forced labor).”⁶⁰ Moreover in this case the Court also “clarified the obligations of states in relation to trafficking – whether states of origin, transit or destination – as well as noting the importance of cross border coordination in fighting trafficking.”⁶¹ These obligations are to set up a series of safeguards against human trafficking “accordingly, in addition to criminal law measures to punish traffickers [...] member States should put in place adequate measures regulating businesses often used as a cover for human trafficking [and] a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking.”⁶² To this it added that member States have an obligation to conduct not only domestic investigations but also to “cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories”, with respect to the fight against human trafficking.⁶³

⁵⁸ ECHR website: http://www.echr.coe.int/NR/rdonlyres/DF074FE4-96C2-4384-BFF6-404AAF5BC585/0/Brochure_EN_Portes_ouvertes.pdf [last visited on the 2nd of November 2010]

⁵⁹ *Ibid*

⁶⁰ ECHR blog : <http://echrblog.blogspot.com/2010/01/landmark-judgment-on-human-trafficking.html>, [last visited on the 2nd of November 2010]

⁶¹ INTERIGHTS website: <http://www.interights.org/rantsev> [last visited on the 2nd of November 2010]

⁶² Case of Rantsev v. Cyprus and Russia, Application no. 25965/04, 2010, para. 284

⁶³ *Id*

Also, there are a number of legal texts related to human trafficking adopted by the Committee of Ministers⁶⁴ as well as by the Parliamentary Assembly⁶⁵ of the Council of Europe. “These texts propose, *inter alia*, a pan-European strategy encompassing definitions, general measures, a methodological and action framework, prevention, victim assistance and protection, criminal measures, judicial cooperation and arrangements for international cooperation and coordination.”⁶⁶

Conclusions

This chapter covered the scale of human trafficking and some of the main actors which are active in the fight against human trafficking within Europe.

When looking at the scale of human trafficking it was firstly explained why it is problematic to assess this by looking at how human trafficking is at times misidentified, at the lack of appropriate victim-identification training, at differences in data collection, relaxation of border controls and at the reluctance of victims to seek out the help of authorities. I then proceeded to estimating the number of human trafficking victims by looking at various sources. Although these sources pointed at different numbers they all showed that it is mostly women that are victims of human trafficking and most commonly they are trafficked for the purpose for sexual exploitation. They also show that human trafficking is on the rise.

⁶⁴ These texts are: Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation; Recommendation Rec (2001) 16 of the Committee of Ministers to member states on the protection of children against sexual exploitation; and Recommendation Rec (2002) 5 of the Committee of Ministers to member states on the protection of women against violence

⁶⁵ These texts are: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member States; Recommendation 1450 (2000) on violence against women in Europe; Recommendation 1523 (2001) on domestic slavery; Recommendation 1526 (2001) on the campaign against trafficking in minors to put a stop to the east European route: the example of Moldova; Recommendation 1545 (2002) on the campaign against trafficking in women; Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution; and Recommendation 1663 (2004) on domestic slavery: servitude, au pairs and “mail-order brides

⁶⁶ Case of *Rantsev v. Cyprus and Russia*, ECHR, Application no. 25965/04

The next section of the chapter developed on what the U.N the E.U. and the CoE are doing in the fight against human trafficking. This part gave a view into the myriad of actors and approaches that are involved in this fight. This introduction is useful in understanding the rest of the thesis because these actors and their different bodies and texts are the ones that will be analyzed and compared in the following chapters.

Having done this I will further move on to see a first instance of transnational cooperation in the fight against human trafficking. This particular instances refers to defining human trafficking which, as it will be argued, is essential in fighting human trafficking.

Chapter 2: Defining human trafficking

In this chapter I will explore the definition of human trafficking. In the context of international cooperation providing a universally agreed-upon definition of human trafficking is a major achievement because it sets the basis for any future action. Having a common understanding of what the problem is facilitates the development of common strategies to address it. Otherwise it would be hard to imagine how international cooperation in the fight against human trafficking could be carried out if the different parties involved all have their own view of what exactly they are fighting against. Even the process of elaborating such a definition at the international level is a very important one because it creates an opportunity in which different understandings of human trafficking can be seen, compared and combined. It also allows for experience to be shared and it opens up the space for much needed discussion and debate on the matter.

As such in this chapter I will firstly develop on the Palermo Protocol definition of human trafficking because it is the first agreed-upon definition⁶⁷. In doing so, I will break down the definition into its various parts and then look at some positive and negative aspects of it. I will further develop on an underlying debate that was carried out around this definition, namely whether to consider prostitutes as victims of human trafficking or not. With this I want to show how difficult it is to agree on a definition at this level because of the number of different perspectives that must be taken into account and I also think this debate is telling of the fact that compromises had to be made when agreeing on this definition and also it shows that prostitution and human trafficking are very much connected. I also think it reveals different conflicting

⁶⁷ Marta Iñiguez de Heredia *People Trafficking: Conceptual issues with the United Nations Trafficking Protocol 2000*, in *Human Rights Review* (2008) 9:299–316m p. 2

approaches to human trafficking that found their way into the European context. As it will be seen later in this thesis, some countries have went on to legalize prostitution and as such legitimize this line of work while others would go the other way and either criminalize this activity or even criminalize the purchase of sexual services so as to inhibit prostitution and consequently human trafficking.

Having done this I will then move on to briefly look at the definitions agreed on at the E.U. level and the CoE level. Here it will be shown how much the U.N. definition influenced the subsequent ones, revealing an instances in which these three bodies considered each other's activity and benefited from each other's experience.

A: The Palermo Protocol definition

To start considering how to address trafficking of women for sexual exploitation one would first have to understand what it is, what exactly falls under this activity. In this sense it is of great help to look at the Palermo Protocol (term I'll use to refer to the Protocol to Prevent, Suppress and Punish Trafficking in Person to the Convention against Transnational Organized Crime) which defines human trafficking as follows:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

This definition can be broken down into three different components. A first one would refer to the actions by which it can be committed, these actions being "the recruitment,

transportation, transfer, harboring or receipt of persons.”⁶⁸ These actions cover a wider range of activities that can be performed along the line of human trafficking. It is very welcomed that this definition takes into account all the different “contributions” that can be made in committing this crime and criminalizes all of them, as such showing their importance. This also allows for human trafficking to be fought at different levels. It also suggests that one does not necessarily have to abduct a person and coerce that person into prostitution or other forms of commercial sexual exploitation to be a trafficker, one could just as well provide transportation services or harboring for someone else, and still be charged with this crime.

Another component of the definition refers to the means by which this crime could be committed. These means could be: “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”⁶⁹ It is very important that this definition recognizes that there exist different types of coercion, not just force.

With respect to the receiving and or giving of payment it was said that this “should not be just the means to commit the trafficking or to ‘achieve the consent of a person’, but also the act of trafficking itself” because, as one author argues, these are “defining characteristics of trafficking itself.”⁷⁰

The last component of the definition would be the one describing the purpose of the above mentioned activities, namely exploitation, which “shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or

⁶⁸ Protocol to Prevent, Suppress and Punish Trafficking in Person to the Convention against Transnational Organized Crime, art 3 (a)

⁶⁹ *Id*

⁷⁰ Marta Iñiguez de Heredia *People Trafficking: Conceptual issues with the United Nations Trafficking Protocol 2000*, in Human Rights Review (2008) 9:299–316m p. 309

services, slavery or practices similar to slavery, servitude or the removal of organs”.⁷¹ Out of these I will only be looking at human trafficking committed for the purpose of sexual exploitation.

Human trafficking is becoming increasingly transnational and this means that it is committed within different jurisdictions and legal systems.⁷² This is why it is important that these systems have a common understanding of what constitutes human trafficking. “Moreover many States condition law enforcement cooperation (i.e., extradition and mutual legal aid) on the dual criminality requirement— under which an offense must be recognized as criminal activity in both the prosecuting State and the State in which the offense occurred”.⁷³ This means that if human trafficking is not understood in the same way in different jurisdiction this could be an obstacle for cooperation between the agencies of the two jurisdictions.

This definition has been applauded for a number of reasons. One main positive aspect of the definition stems from the fact most states agreed on it as can be seen from the large number of countries that have signed to this protocol, namely a total of 140 countries.⁷⁴ Moreover this is the first internationally agreed-upon definition of trafficking.⁷⁵ This is a very important step in the fight against human trafficking, defining what human trafficking is, knowing what exactly constitutes this crime allows for the development of policies that can address it.

Another positive aspect of the definition has been said to be the fact that it is “open-ended, which empowers the Palermo Protocol to address other, yet-to-be-conceived, forms of

⁷¹ Protocol to Prevent, Suppress and Punish Trafficking in Person to the Convention against Transnational Organized Crime, art 3 (a)

⁷² Fenton Bresler: *Interpol*, Great Britain, Mandarin Paperbacks, 1992, p. 333

⁷³ Kalen Fredette, *Revisiting the un Protocol on Human Trafficking: striking balances for more effective legislation*, in Cardozo Journal Of International & Comparative Law, 2009, Vol. 17:101 p. 113

⁷⁴ According to the U.N. Global Initiative to Fight Human Trafficking website : <http://www.ungift.org/knowledgehub/en/about/index.html> [last visited on 23rd of November 2010]

⁷⁵ Marta Iñiguez de Heredia *People Trafficking: Conceptual issues with the United Nations Trafficking Protocol 2000*, in Human Rights Review (2008) 9:299–316m p. 2

trafficking” and also the fact that it is “gender and age neutral”.⁷⁶ This flexibility of the definition is welcomed because it is bound to give it endurance by the fact that it recognizes that social situations change and criminal behavior and its understanding change and the definitions allows for it to take into account these possible future changes.

Besides this there have also been several points of criticism regarding this definition. Some of this criticism says that the definition “contains too many elements, which complicates prosecution efforts” and that there is “ambiguity in some of the language”.⁷⁷

Another common point of criticism refers to the fact that art. 4 of the Palermo Protocol limits the scope of the protocol only to trafficking activities “that are done by an organized group and characterized as trans-national”.⁷⁸

This can be clearly seen if looking at the wording of art. 4 of the Palermo Protocol, which reads as follows:

Article 4

Scope of application

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

With respect to this point of criticism it can be said that this article clearly limits the scope of applicability of the protocol and in doing so it excludes trafficking that occurs within the borders of one country as well as trafficking activities perpetuated by anyone else except for organized criminal groups.

⁷⁶ Kalen Fredette, *Revisiting the un Protocol on Human Trafficking: striking balances for more effective legislation*, in Cardozo Journal Of International & Comparative Law, 2009, Vol. 17:101 p. 114

⁷⁷ Human Trafficking working group, Andreas Schoenhardt (coordinator), *Protocol to Prevent, suppress and punish trafficking in persons, especially women and children - commentary*, University of Queensland, 2009, available at: <http://www.law.uq.edu.au/documents/humantrafficking/legislation/UN-TiP-Protocol-2000-Commentary-Analysis.pdf> [last visited on the 1st of March 2009] p. 4

⁷⁸ Marta Iñiguez de Heredia *People Trafficking: Conceptual issues with the United Nations Trafficking Protocol 2000*, in Human Rights Review (2008) 9:299–316m p. 306

Further on I will develop on another point of criticism to this definition. This refers to the convention's stand on prostitution. I will give a more detailed description of this debate because I think it reveals two different approaches to human trafficking.

B: Human trafficking and prostitution

One of the main arguments against the Palermo Protocol brought up while negotiating it came from the Coalition Against Trafficking in Women (from now referred to as CATW) which was arguing that this definition should include prostitution based on the assumption that “a woman's consent to undertake sex work is meaningless” because there always is a level of coercion pushing women into this line of work..⁷⁹

Of course there was opposition to this; for example the Human Rights Caucus were arguing for a distinction to be made between coercion and consent and they were arguing that prostitution is a type of work and this protocol should not turn into an-anti-prostitution one.⁸⁰

A main aspect of this debate was the question of whether prostitutes actually consent to this line of work or not, and this is a complex issue. The arguments around this mainly refer to the age of the prostitutes, to socio/economic pressure and also past traumatizing experiences.

A first aspect of the consent dilemma is related to age. A report shown by the US Department of Justice shows that “the average age at which girls first become victims of prostitution is 12-14”⁸¹. At this age it is hard to speak of any consent as most countries would put the consent age for having sexual relationships higher, the average being 16.⁸² It must be

⁷⁹ Jo Doezeema, *Who gets to choose, Coercion, consent, and the UN Trafficking Protocol*, in “Gender, trafficking and Slavery” edited by Rachael Masika, Oxfam Publication, p. 21

⁸⁰ *Ibid*

⁸¹ As appears on the US Department of Justice website:
<http://www.justice.gov/criminal/ceos/prostitution.html>, [last visited on the 24th of January 2010]

⁸² A full account of consent ages worldwide, where this data was taken from can be found on this website:
<http://www.avert.org/age-of-consent.htm> [last visited on the 24th of January 2010]

mentioned that there are countries which have a lower consent age as is the example of Spain and South Korea where a person can consent to having sex at 13, but they are the exception.⁸³

What the legal consent age shows is when exactly it is considered, in a particular country, that a person is able to make the decision of having sex with someone. From this it can be drawn that in most countries a girl younger than 14 is not considered mature enough to decide whether to have sex or not and this would mean that she is definitely not mature enough to decide whether she wants to have sex in exchange for money or other payment. In support of this it is relevant to look at the United Nations Convention on the Rights of the Child which sees “every human being below the age of eighteen years, unless under the law applicable [...] majority is attained earlier”, as being a child.⁸⁴ And the Optional protocol to this convention prohibits child prostitution.⁸⁵ This would result in concluding that for most women, when they go into prostitution, according to the law there is no valid choice because they are too young to be considered as having chosen this.

It is also argued that women don't choose to be sex workers because they are actually pressured into it by socio-economical factors such as poverty, lack of other opportunities or because of drug addiction.⁸⁶ In part of the feminist literature these factors are seen as causes of prostitution and it is argued that the word “choice” is not even applicable in this case and it would be more appropriate to use the word “decision” because it conveys “the hard task women have when in a situation of few alternatives, where perhaps all of them are undesirable to a

⁸³ AVERT website: <http://www.avert.org/age-of-consent.htm> [last visited on the 24th of January 2010]

⁸⁴ Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, art. 1

⁸⁵ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002, art.1

⁸⁶ Shaeila Jeffreys: *The idea of prostitution*, Spinifex Press, Melbourne, 1997, p. 153-155

greater or lower extent”.⁸⁷ No matter the wording, this would suggest a cause-effect connection between poverty and prostitution and one might argue that poverty does not necessarily lead to prostitution; it might be one of many concurring factors but not a determinate cause. There are many women living in poverty that make a living from other types of work and who don’t resort to prostitution. To this argument I would say that yes, not all poor women choose prostitution to make a living but I would ask how much of a choice it is when someone is faced with a minimum wage job that barely pays for food and rent and the opportunity to make more money and afford a more comfortable lifestyle by having sex with strangers. It is a choice between two evils or, how one author puts it: “between cholera and the plague”.⁸⁸

It is also argued that there can be no real consent to go into prostitution for some women because some of them do it due to past traumatizing experiences, as one author observes:

Some studies suggest that the experience of rape and/or childhood sexual abuse can be a contributory factor in prostitution [...] and logic suggests that, when people have been brutally and unequivocally sexualized in the ways implied by sexual abuse and rape, they are likely to have a strong sense of themselves as nothing more than sexual beings for others, and so to view prostitution as one of the options, or the only option, available to them.⁸⁹

This would suggest that some prostitutes are actually victims that have experienced trauma and are therefore more vulnerable to entering prostitution, where they continue to experience further trauma, and as such they would need to be helped to stop this cycle.

The counter arguments to this are presented by the same author who notes that there are prostitutes that have not been sexually abused and there are women who have been sexually abused and did not go into prostitution; she also notes that one cannot attribute such a choice to a

⁸⁷ Shaeila Jeffreys, *The idea of prostitution*, Spinifex Press, Melbourne, 1997p. 155

⁸⁸ Liv Jessen: *Prostitution seen as violence against women*, in : “Sex Work, Mobility and Health in Europe” edited by Sophie Day and Helen Ward, Kegan Paul, London, 2004, p.208

⁸⁹ Julia O’Connell Davidson, *Prostitution, Power and Freedom*, Polity Press, Cambridge, 1998, p. 104

single factor.⁹⁰ I tend to agree with this later observation notwithstanding that some victims have gone through some deeply traumatizing experiences which have had a toll on their lives.

What these arguments show is that much too often prostitutes could be seen as victims and as such it is understandable why people wanted to include prostitution in the definition of human trafficking and consequently treat prostitutes as victims of human trafficking. However this did not find enough support and this is indicative of the fact that there are still highly diverging understandings of prostitution and human trafficking. However, a positive aspect of this debate is the fact that it allows for scholars to share information and experience which in the long run could lead to propagating functional models of combating human trafficking and replacing ineffective ones. The international arena should allow for more such debate and develop spaces where ideas and best practice examples can be disseminated.

C. Definition given by EU

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:

the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

- (a) use is made of coercion, force or threat, including abduction, or
 - (b) use is made of deceit or fraud, or
 - (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
 - (d) payments or benefits are given or received to achieve the consent of a person having control over another person
- for the purpose of exploitation of that person's labor or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or
- for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.⁹¹

⁹⁰ Julia O'Connell Davidson, *Prostitution, Power and Freedom*, Polity Press, Cambridge, 1998

⁹¹ Council framework decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA)

If one looks at the E.U. definition back to back with the one provided in the Palermo Protocol it is hard to notice any substantial difference. The decision's main difference is that it does not include removal of organs among the means of exploitation that fall under human trafficking.

It however add something new to criminalizing human trafficking, it recognizes that it can also be committed by legal persons, not only by physical persons.⁹² As such it urges the Member States to "take necessary measure to ensure that legal persons can be held liable" for actions which fall under the definition of human trafficking which are being carried out either for the benefit of that legal person or by someone who acts pursuant to the authority or power or representation he has been granted.⁹³

It also adds that victims of human trafficking can be exploited in pornography.⁹⁴ This does not appear in the Palermo Protocol but it is not excluded as well. It could be placed under other forms of exploitations mentioned in the definition provided by the Palermo Protocol.

D. Definition given by the Council of Europe

a "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

b The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

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⁹² Council framework decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA) art. 4

⁹³ *Id.*

⁹⁴ *Id.*, art. 1, d)

⁹⁵ Council of Europe Convention on Action against Trafficking in Human Beings Warsaw, 2005, art. 4

This definition is an exact replicate of the one that the Palermo Protocol uses. This is explained by the drafters by saying that “it is of fundamental importance to use a definition of trafficking in human beings on which there is international consensus.”⁹⁶ I agree with this justification as much as this leads to a faster process of passing legislation. However since the Palermo protocol definition was passed there have been a series of other studies and research on the matter which could have been reflected in this newer definition.

Nonetheless, it must be said that there is a change in the Council of Europe approach in that it does not limit the application only to transnational trafficking and acts perpetuated by organized crime. The wording of the Council of Europe in respect to the scope of application reads as follows: “The Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organized crime”.⁹⁷ As explained when analyzing the Palermo Protocol definition I think the approach taken by the Council of Europe is a better one because it recognizes the fact that human trafficking is not only transnational and also is not only committed by organized crime.

Conclusion

In this chapter the various definitions of human trafficking have been explored. At first the Palermo Protocol definition was presented, as being the one that subsequently influenced the following definitions. This definition was broken down into actions, means and purpose by which human trafficking can be carried out. The objective of this was to provide a clearer understanding of the definition. Then the definition was analyzed in terms of its positive and

⁹⁶ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 2005, available at: http://www.coe.int/t/dg2/trafficking/campaign/Source/PDF_Conv_197_Trafficking_E.pdf [last visited on the 2nd of November 2010], p.37

⁹⁷ Council of Europe Convention on Action against Trafficking in Human Beings Warsaw, 16.V.2005, art.2

negative aspects. With respect to its positive aspects it was said that it allows for legal obstacles such as the dual criminality requirement to be overcome, it is flexible, neutral in terms of gender and age and most importantly it depicts a common understanding of human trafficking. However this definition is criticized for limiting its scope to only transnational trafficking carried out by organized groups.

Then the debate whether prostitutes should all be seen as victims of human trafficking was presented. This was done so as to show how difficult it is to agree on a definition at this level because of the number of different perspectives that must be taken into account, to show that compromises had to be made when agreeing on this definition and also to illustrate that prostitution and human trafficking are very much connected. This was also meant to introduce the reader to the different approaches to prostitution, namely to recognize it as a legitimate profession or not to. This will be relevant especially in the fifth chapter when looking at different strategies that European states have employed in the fight against human trafficking by either legalizing prostitution or criminalizing it or even shift the focus from the prostitutes to the buyers of sexual services.

After this the definitions agreed upon at the E.U. and CoE level were presented. This has shown how influential the Palermo Protocol definition was and how these three organizations benefit from each other's experience.

Next I will focus on how exactly human trafficking is being fought against at the international level. One main aspect of this that I will develop in the following chapter is police cooperation.

Chapter 3: Police cooperation

As the title implies, this chapter will focus on the issue of police cooperation. This is an important aspect of the fight against human trafficking because of the fact that this particular type of criminal activity has developed strong international ramifications.⁹⁸ This suggests that traffickers are increasingly operating on a transnational scale. This could be encouraged by the loosening of border controls within the European Union and the Schengen space.⁹⁹ This would generate the possibility for criminals to move freely across borders. It is this criminal mobility that makes it more difficult for national police authorities to apprehend the criminals for a number of reasons.¹⁰⁰ One reason would be the fact that national police authorities are bound by the territory of their state; they do not have the same mobility as criminals do.¹⁰¹ What makes it even more difficult is the fact that many of these transnational criminal organizations, which almost entirely control trafficking in human beings, are particularly powerful in that they are well organized and benefit from substantial financial means.¹⁰²

To overcome these problems and to improve the fight against transnational crime, in general and human trafficking in particular, transnational police cooperation was developed. The idea of international police cooperation is not a new one, it was developed in the early years of the last century, by a group of police officers that were concerned with the fact that international crime was developing and that there was no serious protection against it because “police jurisdiction had strict limits, and national sovereignty was the rule among civilized nations”.¹⁰³

⁹⁸ Fenton Bresler: *Interpol*, Great Britain, Mandarin Paperbacks, 1992, p. 333

⁹⁹ *Ibid*

¹⁰⁰ *Ibid*. p.335

¹⁰¹ *Ibid*

¹⁰² *New Patterns of irregular migration in Europe*, Council of Europe Publishing, Strasbourg, 2003, p. 24

¹⁰³ Michael Fooner *Interpol, Issues in World Crime and International Criminal Justice*, Plenum Press, New York 1989, p. 31

In dealing with police cooperation this chapter will look at Europol as an example of an institution that is focused on police cooperation within Europe. I will first describe how Europol was set up. This is important because it introduces the reader to the process in which police cooperation emerges in an intergovernmental setting and it will also try to place it within the larger functioning of the European Union. Then I will move to explaining what Europol's main attributions are, in order to better explain how it functions. I will then elaborate on how it collaborates with other transnational bodies that have similar attribution. This is important because it gives further insight into how transnational cooperation is being played out in respect to human trafficking within Europe. This will be followed by an assessment of Europol's activity

Looking outside the scope of Europol I will then elaborate on the U.N. peacekeeping forces' experience when stationed in Bosnia and Herzegovina. Although not an example of police cooperation this is still similar in that it shows an example of transnational cooperation carried out in order to provide security and deter criminal activity. It also widens the scope of this thesis and it adds to its value in that it provides an excellent opportunity to look at how transnational efforts against crime can go wrong and actually sustain and encourage criminal activity.

Setting up Europol

At the European Union level police cooperation has emerged in the form of joint investigation teams. The treaty of Amsterdam (1997) incorporates general rules on how these teams would function, it sets out the basis on which customs and other specialized services of the

member states involved may participate in these teams and the European Convention on mutual legal assistance further elaborates on this.¹⁰⁴

Particularly relevant in the field of police cooperation within the European Union is the European Police Office, also known as Europol. This body came as a response to the call for more police cooperation at the European Union level so as to better address criminal activity and guarantee security.¹⁰⁵

The Member States agreed to establish it in 1992 and it was thought of as a Union-wide system of exchanging information relating to police cooperation between the Member States of the European Union.¹⁰⁶ At that time this was seen as an important shift from an intergovernmental model to one which has supranational characteristics “with the introduction of a new institution which is to some extent autonomous from the Members States in its composition and functioning”.¹⁰⁷

Nonetheless it took six years of “preparation, debate and delay” until it was finally inaugurated in 1998.¹⁰⁸ It has undergone several modifications since then and the most recent development is a 2009 decision of the Council which replaces the prior convention on which Europol was established.¹⁰⁹

The stated objective of Europol is “to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating

¹⁰⁴ Tom Schalken and Maarten Pronk: *On joint Investigation Teams, Europol and Supervision of Their Joint Actions*, in the European Journal of Crime, Criminal Law and Criminal Justice, Vol 10/1, Netherlands, 2002, p. 71

¹⁰⁵ *Ten years of Europol, 1999-2009*, anniversary publication released by the European Police Office, 2009, p.11

¹⁰⁶ Treaty on European Union, Official Journal C 191, 29 July 1992, Art. K1 (9)

¹⁰⁷ Malcom Anderson, *Policing the European Union*, Clarendon Press, Oxford, 1995, p. 97

¹⁰⁸ John D. Occhipinti, *The Politics of EU Police Cooperation, Towards a European FBI?*, Lynne Reinner Publishers, London, 2003, p. 1

¹⁰⁹ Council Decision of 6 April 2009 establishing the European Police Office (Europol) (219/371/JHA), Published in the Official Journal of the European Union on the 15th of May 2009, Art. 1

organized crime, terrorism and other forms of serious crime affecting two or more Member States.”¹¹⁰ By competent authorities this text refers to “all public bodies existing in the Member States which are responsible under national law for preventing and combating criminal offences”.¹¹¹

This objective also includes human trafficking which falls under the notion of a serious crime (alongside with drug trafficking, environmental crime, just to spell out a few).¹¹²

Europol's attributions

As for how this organization sets out to reach its stated goal it can be said that it mainly does this by providing information, trainings, analytical support to national authorities, preparing threat assessments as well as asking concerned authorities to initiated investigations.¹¹³

In more practical terms what Europol does is that it basically collects data¹¹⁴ from Member States regarding suspected offenders or potential offenders¹¹⁵ and provides such data to other interested Member States¹¹⁶. It does this by collaborating with a national unit from each MS from which it receives and to which it provides information.¹¹⁷

Regarding the above mentioned attribution it is argued, as pointed out in a Communication from the European Parliament and Council, that the information flow from

¹¹⁰ . Council Decision of 6 April 2009 establishing the European Police Office (Europol) (219/371/JHA), Published in the Official Journal of the European Union on the 15th of May 2009 Art. 3

¹¹¹ *Id.*

¹¹² *Id.* Annex.

¹¹³ *Id.* Art.5

¹¹⁴ *Id.* Art. 5

¹¹⁵ *Id.* Art. 31

¹¹⁶ *Id.* Art. 13

¹¹⁷ *Id.* Art 8 (1)

Member States to Europol is “small compared to the number of investigations”.¹¹⁸ This would suggest that this attribute of Europol is not fully utilized.

Another point which can be made is that the fact that Europol processes personal data (in 2006 it was 150.000 such data) raises concerns relating to human rights, in particular privacy.¹¹⁹

It has also been argued that the whole legislative framework governing “Europol in terms of privacy protection, judicial control, transparency and accountability leaves much to be desired”.¹²⁰

As for the challenges relating to the accountability of Europol they mostly look at determining to which body would it be accountable if such a body exists at all. It has been stressed that when it first emerged, Europol was not accountable to the European Parliament, Commission or the ECJ due to the fact that it was created under the third pillar.¹²¹ The Commission had no right of initiative, whatsoever, the Parliament lacked the significant law making process and the monitoring of the executive process which it had under the first pillar.¹²²

However, with the removal of the pillar system, this has changed. Under the Lisbon treaty, the Commission and the European Parliament gain powers in the field of Police and Judicial Cooperation in Criminal Matters.¹²³

It has also been suggested that the lack of accountability of Europol explains why it was not given more executive powers (as is the ability to carry out arrests).¹²⁴ If this is true I would

¹¹⁸ Communication from the Commission to the European Parliament and the Council, *Fighting trafficking in human beings- an integrated approach and proposals for an action plan*, Brussels, 2005, COM(2005) 514 final, p.5

¹¹⁹ Wolfgang Wagner: *Guarding the guards. The European Convention and the communitization of police co-operation*, in Journal of European Public Policy, 2006, p. 4

¹²⁰ Valsamis Mitsilegas: *The third wave of third pillar law: which direction for EUROPEAN UNION criminal justice?*, Queen Mary University of Law, School of Law, Legal Studies Research Paper no. 33/2009, p. 553

¹²¹ Wolfgang Wagner: *Guarding the guards. The European Convention and the communitization of police co-operation*, in Journal of European Public Policy, 2006, p. 1-15

¹²² Neil Walker *Justice and Home Affairs*, in The International and Comparative Law Quarterly, Vol. 47, No. 1, 1998, P. 235

¹²³ Wessel Geursen: *The Lisbon Treaty*, Europa Institute of Leiden University, The Netherlands, 2008, p. 26

suggest that this be changed because it is not the case now that Europol is not accountable and as such is should gain more powers. This change in the degree of accountability is visible if looking at the modifications brought by the 2009 directive. Now the European Parliament has “more binding and more extensive (but still limited) information rights”.¹²⁵ It can request representatives of Europol to come before it to discuss matters relating to Europol.¹²⁶ It also has enhanced budgetary powers with regards to Europol as expressed in the Preamble of the 2009 Directive.

Another attribution Europol has is to provide trainings to national police authorities.¹²⁷ It has been said that Europol is in a unique position to provide trainings, because it encompasses the experience of all its members with criminal activity and their knowledge about what works and what doesn't as shown by their practice. In doing so it assures that best practice stories are disseminated at the wider European Union level and experience is shared between the Member States.¹²⁸

On top of this Europol staff may participate in joint investigation teams. However they shall not “take part in the taking of any coercive measures”.¹²⁹ This means that they lack executive power, they cannot take part in arrests, they are also not allowed to “conduct wire tapping or house searches”¹³⁰. Even if this seems to limit the power of Europol staff to mostly

¹²⁴ Wolfgang Wagner: *Guarding the guards. The European Convention and the communitization of police co-operation*, in Journal of European Public Policy, 2006, p.14

¹²⁵ Valsamis Mitsilegas: *The third wave of third pillar law: which direction for EUROPEAN UNION criminal justice?*, Queen Mary University of Law, School of Law, Legal Studies Research Paper no. 33/2009, p. 550

¹²⁶ Council Decision of 6 April 2009 establishing the European Police Office (Europol) (219/371/JHA), Published in the Official Journal of the European Union on the 15th of May 2009, Art. 48

¹²⁷ *Id.* Art. 5. (4) (a)

¹²⁸ Nadia Gerspacher: *The Roles of International Police Cooperation Organizations Beyond Mandates, Toward Unintended Roles*, in the European Journal of Crime. Criminal law and Criminal Justice, (13:3, 2005) P. 428

¹²⁹ Council Decision of 6 April 2009 establishing the European Police Office (Europol) (219/371/JHA), Published in the Official Journal of the European Union on the 15th of May 2009 Art. 6

¹³⁰ Wolfgang Wagner: *Guarding the guards. The European Convention and the communitization of police co-operation*, in Journal of European Public Policy, 2006, p.3

assisting national bodies in practice it has been show that this is not so, as they tend to operate such teams.¹³¹ In practice Europol has also considerable influence in “setting up and launching these teams”.¹³² It must also be said that while participating in investigation teams Europol staff is subject to the law of the Member State where the operation is being carried out.¹³³

Relating to this attribution the Commission has stressed out that most investigations are actually “based more on spontaneous bi- or multilateral co-operation and the regular structures and mechanisms are merely seen as options”.¹³⁴ This would suggest that again this function of Europol is not usually utilized by the Member States. In this respect the Commission suggested that Members States change this practice and in turn ensure that “national law enforcement agencies regularly involve Europol in the exchange of information, in joint operations and joint investigative teams”¹³⁵.

Collaboration with other transnational bodies

In carrying out its functions Europol also collaborate with other bodies as for example Eurojust and Interpol.

In an agreement between Europol and Interpol it's been laid down that they shall cooperate, and this will be done through: “exchange of operational, strategic, and technical

¹³¹ Valsamis Mitsilegas: *The third wave of third pillar law: which direction for EUROPEAN UNION criminal justice?*, Queen Mary University of Law, School of Law, Legal Studies Research Paper no. 33/2009, p. 552

¹³² Wolfgang Wagner: *Guarding the guards. The European Convention and the communitization of police co-operation*, in Journal of European Public Policy, 2006, p. 74

¹³³ Council Decision of 6 April 2009 establishing the European Police Office (Europol) (219/371/JHA), Published in the Official Journal of the European Union on the 15th of May 2009, Art. 6 (6)

¹³⁴ Communication from the Commission to the European Parliament and the Council, *Fighting trafficking in human beings- an integrated approach and proposals for an action plan*, Brussels, 2005, COM(2005) 514 final, p.5

¹³⁵ *Id.*

information, the co-ordination of activities, including the development of common standards, action plans, training and scientific research and the secondment of liaison officers”¹³⁶

It was argued that this kind of cooperation, namely sharing of information with authorities of non-EU states and international organization gives rise to questions of effective control and value of the data. In regards to effective control concerns are raised whether an individual whose data is collected has an actual chance of finding out how that data is being used and by whom. As for the value of data it is pointed out that the fact that this data is going to be so widely available states might be reluctant to sharing really important and valuable information and try to keep it confidential.¹³⁷

Eurojust is another body with which Europol collaborates. Collaboration with this body is particularly interesting because they are both set up at the European Union level and have similar attributions. Eurojust was set up as a body of the European Union in 2002 and its main objectives were to help coordination between competent authorities of the M.S. and also stimulate it.¹³⁸ It has the same competence as the ones of Europol¹³⁹

It is because they have so similar attributions and jurisdiction that measures are to be taken so as to avoid overlap. To this aim an agreement between Europol and Eurojust was signed, the purpose of which is to “avoid duplication of work”.¹⁴⁰ In particular, this is to be achieved through the exchange of operational, strategic, and technical information, as well as the

¹³⁶ Agreement between Interpol and Europol, signed in 2001, art. 2, as found on Europol’s website: <http://www.europol.europa.eu/>, [last visited on 6th of April 2010]

¹³⁷ Florian Geyer: Taking stock: *Databases and Systems of Information Exchange in the Area of Freedom, Security and Justice*, in Challenge, Liberty & Security, Research paper no. 9, 2008, p.6,7

¹³⁸ Council decision of 28th of February 2002 setting up Eurojust with a view to reinforcing the fight against serious crim, (2002/187/JHA), art.1 and 3

¹³⁹ *Id.* Art. 4

¹⁴⁰ Agreement between Europol and Eurojust entered into force on the 1st of Jan. 2010 as found on Eurojust website: <http://www.eurojust.europa.eu/>, [last visited on the 4th of April 2010]

coordination of activities.¹⁴¹ The cooperation will take place with due regard to transparency, complementarity of tasks and coordination of efforts.”¹⁴²

Assessment of Europol

In carrying out its tasks Europol seems to be useful for the national authorities as they rely on its intelligence work and services “to carry out almost 10,000 cross-border investigations each year” which are said to have “led to the disruption of many criminal networks” some of which were engaged in human trafficking.¹⁴³

Nonetheless as appears in a report released by Europol in 2008 there are no clear indications that trafficking in human beings has decreased, even though more and more cases are being identified and investigated.¹⁴⁴ There are even suggestions that the allocation of competences to Europol has given the Member States a “false sense of security” because they feel that the problem is being dealt with by another body and as such requires their attention to a lesser degree.¹⁴⁵

Moreover there are indicators that even in the future it is unlikely that trafficking level will fall and there is data suggestion that some forms of trafficking, as forced labor, shall rise in the current financial situation.¹⁴⁶

¹⁴¹ Agreement between Europol and Eurojust entered into force on the 1st of Jan. 2010 as found on Eurojust website: <http://www.eurojust.europa.eu/>, [last visited on the 4th of April 2010]

¹⁴² *Id*

¹⁴³ Europol website: <http://www.europol.europa.eu/index.asp?page=introduction> , [last visited on 14th of February 2009]

¹⁴⁴ *Annual report 2008* released by the European Police Office, 2009, p. 18,19

¹⁴⁵ David Brown: *Defending the Fortress? Assessing The European Union's Response to Trafficking* , in European Security, Taylor and Francis Inc. 2004, p. 112

¹⁴⁶ *Trafficking in Human Beings in the European Union: A Europol perspective*, released by Europol on June 2009, p. 11, available on the Europol website: http://www.europol.europa.eu/publications/Serious_Crime_Overviews/Trafficking%20in%20Human%20Beings%20June%202009.pdf [last visited on 8th of March 2010]

Also, Europol's efforts seem to be hampered by the fact that some Member States do not cooperate, their criminal law is still not harmonized and the fact that not one single European language to be used could be agreed upon.¹⁴⁷

Study case on U.N. peacekeeping forces with respect to human trafficking.

Another aspect of transnational police cooperation could be seen in situations when international peacekeeping forces act within the boundaries of another state in order to create an environment of safety for the local population. This is different from police cooperation as described in this chapter but I think it is still relevant to describe, because it does share similarities in the sense that it holds the transnational aspect, with respect to its coordination body and composition, and it acts with the same purpose to prevent and correct criminal activity. To better understand this phenomenon I will draw on the experience of UN peacekeeping forces and develop on their stand on human trafficking as illustrated during the time they were stationed in Bosnia and Herzegovina.

The U.N. plays an important role in conflict stricken places where the risk of human trafficking is higher because local authorities are weekend by the conflict and at times can't cope with internal matters. The U.N. steps in on many level, it is very active with its peace keeping operations. For example the U.N. established even a civilian police force¹⁴⁸ which among other responsibilities would investigate allegations of human rights violations.¹⁴⁹

This would mean that the U.N. undertook to look at allegations of human trafficking in Bosnia and Herzegovina. This would suggest that women and children would have double

¹⁴⁷ Ursula Smartt *Human Trafficking: Simply a European Problem?*, in the European Journal of Crime, Criminal Law and Criminal Justice, Vol. 11/ 2, 164–177, Netherlands, 2003, p 10

¹⁴⁸ Resolution 1035 (1995) Adopted by the Security Council at its 3613th meeting, on 21 December 1995, art 2

¹⁴⁹ Annex 11: Agreement on International Police Task Force to the Dayton Peace Agreement, signed in Paris on December 14, 1995, art VI

protection from human trafficking, first from their state and second from international peace keeping operations. Using simple common sense one would tend to think that this is a great system, protection from 2 sources should be more effective than protection from own source but the experience in Bosnia and Herzegovina seems to suggest different.

On the 9th of October 2000 a scandal brought out as one of the police officers from the above described task force alleged that her fellow police officers as well as other U.N. officials were regular “customers” of sexual services provided in many cases by women who were being trafficked. The accusations went further to note that there were incidents in which the same policemen and officials were facilitating trafficking and some of them were traffickers themselves.¹⁵⁰ The police officer who brought this up was soon after fired for “allegedly fabricating her time sheets”.¹⁵¹

This would suggest that sending in police officers and troops with a noble mission is not by itself a sufficient measure to assure human rights protection. Sending in troops may result, as in the case of Bosnia, in elevating the demand for sexual services and this may result in increasing trafficking activities to meet this demand.¹⁵² One must be wary of the human element involved and should also take into account the potential for abuse that comes with granting power and should realize the need to set in place a good training system as well as efficient sanctions and measures for “policing” the police.

Since then the U.N has acknowledged the fact that peace keeping officer have been involved in cases of human trafficking and that they must take appropriate steps in order to avoid

¹⁵⁰ Victor Malarek, *The Natashas, The new global sex trade*, Viking Canada, , 2003, p.157-163

¹⁵¹ *Ibid*

¹⁵² Cornelius Friesendorf: *Pathologies of Security Governance: Efforts Against Human Trafficking in Europe*, Sage Publications, Munich, 2007, p. 382

such incidents in the future.¹⁵³ As such the Department for Peacekeeping Operations (DPKO) has released a policy paper outlining a threefold approach to the issues; looking at:

- raising awareness among its personnel and developing training programs addressing human trafficking
- putting in place mechanism aimed at a more effective monitoring of the UN personnel and work on enhancing their accountability through a clearer disciplinary proceeding, as well as improving communication with the community and civil society
- support national efforts against human trafficking.¹⁵⁴

Another positive reaction came from the Secretary General whose approach is to criminalize “any form of sexual relations in the context of peacekeeping operations regardless of consent [...] the rationale for this approach being that in obtaining sex or sexual favors from vulnerable victims, the peacekeepers abuse their position of power”¹⁵⁵ This meaning that even purchasing sexual services from prostitutes is criminalized, which is welcomed because it should help build on the public’s confidence and perception of peacekeeping forces.

Conclusion

This chapter dealt with police cooperation as one means in which transnational cooperation can be carried out in the fight against human trafficking. It drew extensively on the experience of Europol as an example of a framework within which police cooperation can function. It detailed on how Europol was set up and this showed that it was a lengthy process that

¹⁵³ *Human Trafficking And United Nations*, Department for Peacekeeping Operations Policy Paper, March 2004, available at: <http://www.un.org/womenwatch/news/documents/DPKOHumanTraffickingPolicy03-2004.pdf> [last visited on the 3rd of November 2010] p. 7

¹⁵⁴ *Ibid* p. 8-11

¹⁵⁵ Muna Ndulo, *The United Nations Responses To The Sexual Abuse And Exploitation Of Women And Girls By Peacekeepers During Peacekeeping Missions*, 2008 available at: http://www.boalt.org/bjil/docs/BJIL27.1_Ndulo.pdf [last visited on the 3rd of November 2010] p. 146

is still under way by the fact that Europol's structure and functioning has suffered some recent changes and is likely to still see some other changes in the future. This chapter also showed how States can be reluctant to give power to such structures and allow for them to gain terrain. It also showed that States are reluctant to make use of Europol's competences and experience. I see this reluctance as a main obstacle to more effective police cooperation. Another finding of this chapter is that Europol's activities and attributions are seen with other bodies as well and as such it is welcomed that cooperation with other similar bodies is in place so as to avoid that they overlap. This chapter also showed that the general effectiveness of police cooperation within the Europol framework is questionable despite the increasing number of investigations carried out, and that there are indicators that the numbers of human trafficking are going up and as such more efforts should be made to address this.

This chapter ended with a study case of U.N. peacekeeping operations in Bosnia and Herzegovina. This revealed who deploying personnel to provide security can go wrong. This case talked about an incident in which U.N. forces were caught encouraging and even facilitating human trafficking. This shows how there is need to hold these operations under strict scrutiny to assure that they fulfill their stated mission and don't cause more harm than good.

Having looked at such coordinated efforts to catch traffickers I will now move on to talk about how victims of human trafficking play into these efforts of transnational cooperation.

Chapter 4: Assisting victims

At this stage I would like to consider another aspect of human trafficking that is also being addressed at the transnational level, namely assisting victims of human trafficking. By victim I am only referring to the women who are being exploited by this criminal activity and not also by other groups which suffer from this crime (as for example their families).

In discussing about victim assistance I will touch upon a number of issues, starting with non-punishment of victims of human trafficking, decriminalization of prostitution, and will also talk about residence permits, treatment during criminal proceedings and reintegration efforts.

Non-punishment provision

If a victim of trafficking thinks she might be further victimized at the hands of state officials for “her part” in this activity, this will inhibit her from coming forth with her story to police authorities. This is why she must be given assurance that she will not be punished. The Council of Europe Convention against trafficking in Human Being has such a provision in art. 26, which reads as follow:

“Each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”

Although this is a positive step in assuring the protection of victims it does have its shortcomings. Especially problematic is the last bit of the sentence that limits non-punishment to activities that the victim was compelled to do. This is problematic because, as already argued in this paper, and observed by other authors, when talking about sex workers there is always a level

of compulsion and it is questionable if women actually choose to go into this line of work.¹⁵⁶ I would also add again that putting this condition of proving that one was compelled into this activity could act as a deterrent for women to reach out to the police, because they would also face the scenario in which state authorities would not be convinced of their being compelled and would prosecute them accordingly. Also problematic is that it doesn't obligate states to do this, but only to 'provide for the possibility' of doing so. Again here the issue of not sufficiently strong language arises.

In order to deal with the issue of compulsion it has been suggested that the non-punishment clause be framed as "allowing for non-prosecution and non-imposing penalties on victims of trafficking as a direct consequence of being trafficked".¹⁵⁷ I support this latter approach because it focuses the investigation on the traffickers and it complies with the obligation to protect victims of trafficking. This approach appears in a proposal for a new framework decision on combating trafficking in human beings.¹⁵⁸

Decriminalizing prostitution

Besides having a non-punishment provision I would go even further and argue that decriminalizing prostitution altogether would be a further step aimed at protecting victims of human trafficking and a means by which further victimization can be avoided. By decriminalizing prostitution I do not refer to legalizing it because such an approach has been

¹⁵⁶ Jo Doezeema, *Who gets to choose, Coercion, consent, and the UN Trafficking Protocol*, in "Gender, trafficking and Slavery" edited by Rachael Masika, Oxfam Publication, p. 21

¹⁵⁷ Opinion No. 2/2009 of the Experts Group on Trafficking in Human Beings of the European Commission, available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/wai/doc_crime_human_trafficking_en.htm [last visited on 9th of March 2010]

¹⁵⁸ Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA {SEC(2009) 358} {SEC(2009) 359} /* COM/2009/0136 final - CNS 2009/0050 *, art 6

shown to fail in reducing crime surrounding prostitution or in improving conditions for women; as shown by the experience of countries that legalized prostitution.¹⁵⁹

What I am arguing for is merely to not turn prostitution into a criminal activity and sanction it as such. In doing so I will further develop on why criminalizing prostitution is not an effective strategy.

Romania is an example of a country that criminalized prostitution, in this country prostitutes face imprisonment for up to 3 years.¹⁶⁰ As for what effects this has had reports show that beyond moving prostitution underground it moved it across borders; this can be seen if looking at a report released in 2009 by the European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers, TAMPEP, in which Romania appears on the first place in terms of countries of origin for prostitutes throughout Europe.¹⁶¹ The report also confirms that most of these women migrate because prostitution is punished in their home country.¹⁶² What the report does not talk about is in what proportion prostitutes migrate on their own decision and to what extent they are taken abroad, this would also be interesting to know. But still the report does show that the experience of this country with criminalizing prostitution reveals this measure's ineffectiveness.

Also, it can even be argued that criminalizing prostitution, to some extent, encourages this practice if you think that prostitution is lead by a need to earn money and most commonly prostitutes get fined; this results in the fact that they need to earn even more money to pay off the

¹⁵⁹ Janice Raymond, *The Swedish Approach to Trafficking, Prostitution and the Sex Industry*, 2010, available at : http://www.wunrn.com/news/2010/07_10/07_26_10/072610_sweden.htm [last visited on the 28th of November 2010]

¹⁶⁰ Law no. 15/1968 on Romanian Criminal Code further amended, published in the Official Gazette no. 79-79 bis of 21st of June 1968, Art. 328

¹⁶¹ Available at : <http://tampep.eu/documents/TAMPEP%202009%20European%20Mapping%20Report.pdf>, [last visited on 27th of January 2010, page 20]

¹⁶² *Ibid*, page 25

finances and as such they are even more pressured into resorting to prostitution.¹⁶³ Moreover it could be said that criminalizing prostitution increases the problem because women who would normally work independently are pushed into seeking security with pimps from possible arrests and abuse from the police and this would consequently encourage organized crime which could lead to an increase in human trafficking.¹⁶⁴

Another problem with criminalizing prostitution is the fact that if a woman is being convicted with this crime she will get a criminal record and this will add to the stigma she is already bearing because of prostitution.¹⁶⁵ Moreover, it has been argued that “the presence of police results in women changing their work routine, namely reducing screening strategies and accepting an increasing number of strangers because regulars are dissuaded from visiting the area”.¹⁶⁶ To these problems I would add the fact that if prostitutes risk facing criminal charges they are discouraged from reaching out to the police in case they are victims of a crime, which is a frequent occurrence,¹⁶⁷ this making them vulnerable and putting their safety at risk.

Nonetheless, as already discussed, in some jurisdictions prostitution is criminalized, even though this does not seem to be an effective measure. While going through the arguments for criminalizing it, apart from the obvious religious and moral arguments I came across another one which might also play an important role but is hardly discussed. This would be the fact that having prostitution criminalized brings benefits; one such benefit is creating jobs and funds.¹⁶⁸ “Lobbying local politicians and councilors for safer streets receive publicity and funding from

¹⁶³ Catherine Benson and Roger Matthews, *Police and prostitution, vice squads in Britain*, in “Sex for sale”, edited by Ronald Weitzer, Routledge, New York, 2000, p.245

¹⁶⁴ Ann D Jordan, *Human rights or wrongs? The struggle for a rights-based response to trafficking in human beings*, in “Gender, trafficking and Slavery” edited by Rachael Masika, Oxfam Publication, p.31

¹⁶⁵ Teela Sanders, *Sex work, a risky business*, William Publishing, U.K. 2005, p. 98

¹⁶⁶ *Ibid.*

¹⁶⁷ Neil McKeganey and Marina Barnard, *Prostitutes on the streets, Prostitutes and their clients*, Open University Press, Philadelphia, 1996, p. 70

¹⁶⁸ Teela Sanders, *Sex work, a risky business*, William Publishing, U.K. 2005, p.100

local and national crime-prevention sources”¹⁶⁹. Moreover there are policemen who would confirm that “their jobs have been created as a result of persistent complaints from residents”.¹⁷⁰ This argument is however not well supported and although it could be tempting to sympathize with, it does not seem to reveal a convincing argument for criminalizing prostitution. It does however show that there could be a great variety of considerations, some of which less obvious, to be taken into account when deciding to criminalize human trafficking.

Residence permit

Another deterrent for victims to come forth with their stories would be the risk of deportation. This is highly relevant when dealing with the large number of victims coming from outside Europe, mostly from east-Asia, Latin America and Africa.¹⁷¹

Within the E.U. framework, a victim that is a third country national in the E.U. is given a reflection period for a period determined by Member States to allow them to recover and escape from the influence of the perpetrators, during which they should receive psychological, medical and material assistance.¹⁷² This is a welcomed approach because it takes into account the fact that the victim has went through a traumatizing experience but a reflection period time should be decided on at the E.U. level to as to create a sense of legal certainty within this community space. In this respect maybe the example set by the Council of Europe should be followed, where a reflection period of minimum 30 days has been established.¹⁷³ However this does not

¹⁶⁹ Teela Sanders, *Sex work, a risky business*, William Publishing, U.K. 2005, p.100

¹⁷⁰ *Ibid*

¹⁷¹ John Salt, *Trafficking and Human Smuggling, A European Perspective*, Blackwell Publishers, Oxford, 2000, p. 46

¹⁷² Council Directive 2004/81/EC of 29 April 2004, on the residence permit issues to third-country nationals who are victims of trafficking in human being or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, art. 6,7

¹⁷³ Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005, art. 13 (1)

necessarily create the space of certainty and predictability as among the states that ratified the respective convention there are variations, with some states setting the reflection period to be 6 month, like in the case of Norway, while some have chosen to allow for the bare minimum, namely 30 days, as is the case of Latvia.¹⁷⁴

The reflection period is important because, among other things, it has been shown by the experience of Belgium and Netherlands to increase the likelihood of victims reporting the traffickers.¹⁷⁵ This is explained by the fact that “if victims are given some time for reflection, and provided with appropriate care and support they can recover to some degree and gain the strength and courage needed for this.”¹⁷⁶

However this reflection period does not create any entitlement to residence.¹⁷⁷ States are generally reluctant to give victims a right of residence, as it was seen when discussing the Palermo Protocol, when a number of states “voiced fears over a serious backlash; that is, making the Protocol an inadvertent means of illegal migration and equipping it with incentives to engage in trafficking”.¹⁷⁸

In the E.U. in order to get a residence permit, which would be valid for minimum 6 month with the possibility of renewal, the victim must show intention to cooperate with the

¹⁷⁴ Nordic Baltic network, *Assistance to women victims of trafficking for sexual exploitation in the Nordic and Baltic countries. A comparison of legislation*, June 2008, available at: http://www.nordicbaltic-assistwomen.net/IMG/pdf/Final_Chart_Comparison_legislation.pdf [last visited on the 25th of November 2010]

¹⁷⁵ Elaine Pearson, *Half-hearted protection: what does victim protection really mean for victims of trafficking in Europe?* in “Gender, trafficking and Slavery” edited by Rachael Masika, Oxfam Publication, p. 57

¹⁷⁶ *Ibid*

¹⁷⁷ Council Directive 2004/81/EC of 29 April 2004, on the residence permit issues to third-country nationals who are victims of trafficking in human being or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, Art 6.3.

¹⁷⁸ Kalen Fredette, *Revisiting the UN Protocol on Human Trafficking: Striking balances for more effective legislation*, in Yeshiva University Cardozo Journal of International and Comparative Law, Vol. 17:101, 2009, p. 131

police authorities and that she has ceased all relations with those suspected of being the traffickers.¹⁷⁹

The fact that issuing a residence permit is dependent on participating in criminal proceedings is problematic. This approach treats the victim as an instrument of the prosecution and fails to take into account the personal situation of the victim.¹⁸⁰

A better approach is taken by the Council of Europe which holds that “competent authorities can give a residence permit if considered necessary due to the personal situation of the victim.”¹⁸¹ However even this approach gives too much discretionary power to the state and creates uncertainty because it is framed in too vague terms.

Treatment during criminal procedures

Criminal proceedings are one of the first encounters of the victim of human trafficking with state authorities after being released from her traffickers. It is a very important stage because of the outcome it might have on prosecuting the perpetrators. In this respect special diligence must be taken so as to ensure that the criminals are being charged and the victim can get relief, can regain confidence in state authorities and start a new life. As such states should take steps as to guarantee that the victims are receiving “legal assistance in a language that they understand “. ¹⁸² They should also be provided safety, medical and psychological assistance.¹⁸³

¹⁷⁹ Council Directive 2004/81/EC of 29 April 2004, on the residence permit issues to third-country nationals who are victims of trafficking in human being or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, Art. 8

¹⁸⁰ Opinion No. 4/2009 of the Experts Group on Trafficking in Human Beings of the European Commission, available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/wai/doc_crime_human_trafficking_en.htm [last visited on 9th of March 2010]

¹⁸¹ Council of Europe Convention Against Trafficking in Human Beings, Warsaw, 2005, art 14

¹⁸² Opinion No. 1/2008 of the Experts Group on Trafficking in Human Beings of the European Commission, available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/wai/doc_crime_human_trafficking_en.htm [last visited on 9th of March 2010]

Also they should be given unconditional assistance, regardless of whether they are “able or willing to give evidence as a witness”.¹⁸⁴ Treating victims like tool of an investigation can lead to them not-cooperating .E.U. Member States have different approaches in this regard. Countries like Belgium, Germany and the Netherlands, offer trafficking victims a “stay of residence for the duration of the criminal proceedings against the trafficker, as well as protection and social assistance, on the understanding that they will co-operate with the authorities”; while Italy offers levels of protection that are not dependent on the victim’s co-operation in the prosecution process.¹⁸⁵ I again argue for a uniform treatment of victim and one that takes into account their rights and their victim status

Reintegrating victims

This is a very important issue because victims of human trafficking that are taken outside their country upon return face discrimination and exclusion; moreover, the fact that these victims have assisted the authorities, or are suspected to have done so exposes them to further risk.¹⁸⁶ Among the reported incidents that arose when victims got back home I would mention that there have been instances in which “trafficked women returning to Nigeria from Italy have been held in detention facilities, forced to undergo medical examinations, including tests for HIV/AIDS,

¹⁸³ Protocol to Prevent, Suppress and Punish Trafficking in Person to the Convention against Transnational Organized Crime, United Nations, 2000, art 6.3

¹⁸⁴ Opinion No. 1/2008 of the Experts Group on Trafficking in Human Beings of the European Commission, available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/wai/doc_crime_human_trafficking_en.htm [last visited on 9th of March 2010]

¹⁸⁵ Jo Goodey *Migration, Crime and Victimhood: Responses to Sex Trafficking in the EU*, in Punishment Society 2003; 5; 415, available at <http://pun.sagepub.com/cgi/content/abstract/5/4/415> [last accessed on 19th of April 2010], p. 429

¹⁸⁶ Opinion No. 4/2009 of the Experts Group on Trafficking in Human Beings of the European Commission, available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/wai/doc_crime_human_trafficking_en.htm [last visited on 9th of March 2010], para. 20

and had their faces and names exposed to the media”.¹⁸⁷ Another report coming out of Ukraine describes the case of corrupt police officers who were “extorting money from returned women by threatening to tell their families that they were engaged in prostitution”.¹⁸⁸ These are just a few examples of attitudes towards victims that are returning home.

In this respect countries need to have a comprehensive strategy to reintegrate these victims. This is important in the wider sense as there are demands for reintegration strategy for all migrants, be they workers, students or victims of trafficking.¹⁸⁹

However, currently authorities tend to treat trafficked persons “mostly as criminals rather than as victims, because of their irregular residence and employment status, or because they work in prostitution.”¹⁹⁰ This attitude reflects a wider opinion of these victims. The fact that they are treated like criminals hampers even more their reintegration and adds to the difficulties they are already facing.

What these victims need is a comprehensive strategy addressing the needs they have. They need to be able to get legal redress for both financial losses (and material damages/harms suffered by the victim) and for non-material damages.¹⁹¹

The basic E.U. document is silent in this respect as opposed to the Council of Europe document which provides for the need to compensate the victim and for various kinds of

¹⁸⁷ Elaine Pearson: *Half-hearted protection: what does victim protection really mean for victims of trafficking in Europe?* in “Gender, trafficking and Slavery” edited by Rachael Masika, Oxfam Publication, p.58

¹⁸⁸ *Ibid*, p. 58

¹⁸⁹ Irina Culic *Eluding Exit and Entry Controls: Romanian and Moldovan Immigrants in the European Union*, in East European Politics and Societies 2008; 22; 145, available at <http://eep.sagepub.com/cgi/content/abstract/22/1/145> [last visited on 22 of April] p. 165

¹⁹⁰ Jo Goodey *Migration, Crime and Victimhood: Responses to Sex Trafficking in the EU*, in Punishment Society 2003; 5; 415, available at <http://pun.sagepub.com/cgi/content/abstract/5/4/415> [last accessed on 19th of April 2010], p. 429

¹⁹¹ Opinion No. 1/2008 of the Experts Group on Trafficking in Human Beings of the European Commission, available at http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/wai/doc_crime_human_trafficking_en.htm [last visited on 9th of March 2010]

protection, including relocation, assistance in getting a job, reintegration into the education system and identity change.¹⁹²

However it seems that there is a serious lack of funding which is needed to “provide trafficked persons with the security, psychological and medical help, economic support, skills training, and job counseling needed to avoid retrafficking”.¹⁹³ To this I will add that in the current financial circumstances, with many countries dealing with the financial crisis, lack of funding would be expected to be an even more pressing issue.

With respect to victim protection it is also suggested that there is a serious lack of networking among the “anti-trafficking, stakeholders” who “have often proven unable or unwilling to properly coordinate their work”.¹⁹⁴ I see this as a major problem because I see proper cooperation to be an essential tool in the fight against human trafficking. I think cooperation is important in order to allow for experience to be shared, in order to avoid the projects are duplicated or to asses if there are certain areas of the fight against human trafficking which are not dealt with. Another positive contribution that can be taken out of cooperation could be the proper allocation of funds, meaning that by sharing information the various stakeholder could asses how many resources are spent and on what, this allowing them to see if there are any deficiencies in this, which they could eventually correct.

Conclusion

This chapter has dealt with how victims of human trafficking are being assisted within Europe. It first talked about the need to have non-punishment provisions for victims of human

¹⁹² Council Directive 2004/81/EC of 29 April 2004, on the residence permit issues to third-country nationals who are victims of trafficking in human being or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, art. 16, 28

¹⁹³ Cornelius Friesendorf: *Pathologies of Security Governance: Efforts Against Human Trafficking in Europe*, Sage Publications, Munich, 2007, p. 393

¹⁹⁴ *Ibid*, p. 393

trafficking that does not distinguish between victims that have been compelled into trafficking or not. This is important because it encourages the victims to resort to the help of authorities. Also it has been argued that prostitution should be decriminalized as to avoid further victimization of prostitutes.

Then the chapter looked at the need to have a uniform reflection period all over the European space that would allow the victim to recover from her traumatizing experience. I also argued for the need to allow for the opportunity to receive a residence permit unconditional of the victim's assistance in the criminal proceedings against her traffickers. Here I drew on how states should avoid using victims of human trafficking as tools of criminal proceedings. Then the chapter looked at the need to effectively integrate these victims in society.

This chapter brought the victim of human trafficking into the focus of anti-trafficking initiatives and reflected on some of her needs. Further I will look at another aspect of the fight against human trafficking which is the prevention stage.

Chapter 5 Preventing human trafficking

Prevention might well be the most important thing to do about human trafficking. However in order to achieve this one must tackle the problem from a wide range of perspective and from the core of the problem.

Human trafficking is possible because of a number of circumstances that allow it to happen and flourish. Of these I would look at the feminization of poverty, objectification of women and at the demand of sexual services. The first two points can be seen in a wider context of inequalities between men and women. I will look at the feminization of poverty in order to see how these inequalities are being played out and preserved and then I will look at the objectification of women to see how these inequalities are perpetuated. My point would be that there is a circle of inequality between men and women which has a powerful influence on human trafficking and in order to prevent human trafficking this cycle of inequality should be broken.

I will then develop on how to fight human trafficking by addressing one of its driving causes namely the demand. Thinking in terms of any global market demand is the driving forces for supply; it is demand that generates supply. This means that because there are men wanting to pay for sexual services there will be women who will provide them willingly or not, because there is a huge profit to be made. In this respect I will look at programs aimed at seeking the help of the buyer in identifying victims of human trafficking and raising awareness among them on this issue. I will then focus on the Swedish approach, which is to punish the buyer of sexual services.

I this chapter I will only look at the U.N. and CoE documents due to the fact that the two relevant E.U. documents do not talk about prevention. However these issues are addressed in a number of other documents which I'll try to incorporate in this chapter, where relevant.

Feminization of poverty

Poverty among women is often described in a more general context in which women are being discriminated against on in a number of terms, in respect to salaries, to citizenship rights, inheritance rights, as well as in respect to "certain religious and customary practices".¹⁹⁵ Women are widely seen as on a unequal standing in respect to men.¹⁹⁶ It is this inequality between men and women and poverty among women that are seen by bodies such as the European Union to be leading causes of human trafficking.¹⁹⁷

Studies show that allover the world women are poorer than men.¹⁹⁸ Even women that do have a job are poorer than men because they are generally paid less they also are over-represented "in part-time work, lower-paid jobs, jobs with shorter tenure".¹⁹⁹ Also, women are the ones who bear

¹⁹⁵ Janie Chuang, *Beyond a snapshot: Preventing human trafficking in the global economy*, Indiana Journal of Global Legal Studies, Volume 13, Issue 1, 2006, p 142

¹⁹⁶ CBC News, Interview with Victor Malarek, (journalist and authors), on his book : *The Johns, Sex for Sale and the Men Who Buy It*, 4th of May 2009, available at : http://womensrights.change.org/blog/view/victor_malarek_blames_men_for_proliferation_of_sex_trade [last visited on the 24th of November 2010]

¹⁹⁷ Communication from the Commission to the European Parliament and the Council, *Fighting trafficking in human beings- an integrated approach and proposals for an action plan*, Brussels, 2005, COM(2005) 514 final.p.8, 11

¹⁹⁸ Oxfam International and European Women's Lobby, *Women's poverty and social exclusion in the European Union at a time of recession. An Invisible Crisis?* March 2010, available at : http://www.oxfam.org.uk/resources/policy/economic_crisis/downloads/rr_gec_an_invisible_crisis_240310.pdf [last visited on the 25th of November 2010], p.8

¹⁹⁹ European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities Unit D.1, *Employment in Europe 2009*, available at : <http://www.europaforum.public.lu/pictures/photos/photos-aktuelles/2009/11/comm-rapport-emploi/report.pdf> [last visited on the 25th of November 2010] p. 39

the majority of tasks correspondent to the care economy, which “refers to unpaid production and services in the private sphere of the family, neighborhood or local community.”²⁰⁰

This issues is even more visible in Southeastern Europe where “unemployment, poverty, discriminatory practices, a lack of access to education and medical services, and domestic violence [...] have been caused or aggravated by war, reckless privatization, and structural adjustment programs that have exacerbated the ‘feminization of poverty’”.²⁰¹ But at the same time it is present all throughout Europe where “many women remain in a position of relative economic insecurity and dependence, suffering disproportionately from poverty relative to men.”²⁰²

It is the feminization of poverty that is seen a “push factor” for women into human trafficking and consequently, economic empowerment of women is seen as a key element in reducing women’s vulnerability to trafficking.²⁰³ To achieve this there are a set of measures believed to work, as for example “incorporating affirmative action policies to ensure that women are represented at all levels of employment and decision making and enacting appropriate employment legislation promoting equal opportunities and remuneration”.²⁰⁴

²⁰⁰ European Council: *Gender Budgeting- Final report of the Group of specialists*, 2005, available at: <http://www.coe-chairmanship.mk/Upload/Document/Final%20report%20of%20the%20Group%20of%20specialistson%20gender%20budgeting.pdf> [last visited on the 25th of November 2010] p. 11

²⁰¹ Cornelius Friesendorf: *Pathologies of Security Governance: Efforts Against Human Trafficking in Europe*, Sage Publications, Munich, 2007, p. 394

²⁰² Oxfam International and European Women’s Lobby, *Women’s poverty and social exclusion in the European Union at a time of recession. An Invisible Crisis?* March 2010, available at : http://www.oxfam.org.uk/resources/policy/economic_crisis/downloads/rr_gec_an_invisible_crisis_240310.pdf [last visited on the 25th of November 2010], p. 9

²⁰³ *Report of the Expert Group on Strategies for Combating the Trafficking of Women and Children, Best practices*, Commonwealth Secretariat, London, 2003, p 22

²⁰⁴ *Id*

The Palermo Protocol is the first international document to “recognize the prominence of poverty as a contributing cause” to human trafficking.²⁰⁵ It does so in article 9.2 which reads as follows:

States Parties shall endeavor to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

By raising the need to undertake economic initiatives in the fight against human trafficking it validates the fact that the economical aspect is to be taken into account. However it has been pointed out that the language of this paragraph is too soft, in that it does not create a clear obligation for the state to undertake such initiatives.²⁰⁶ I would agree with this and argue for stronger language to be adopted in this regard.

The Council of Europe has taken to stronger language in this regard by stating that state parties to the convention “shall establish [...] economic initiatives and training programmes”.²⁰⁷ The document also requires the states to use gender mainstreaming²⁰⁸ in the “development, implementation and assessment” of the respective initiatives.²⁰⁹ I think this is a positive approach because the situation of women should be taken into account when developing policies for the entire community and not only for themselves, because the problems they face should be seen in the wider context of society and treated as such.

²⁰⁵ Kalen Fredette, *Revisiting the UN Protocol on Human Trafficking: Striking balances for more effective legislation*, in Yeshiva University Cardozo Journal of International and Comparative Law, Vol. 17:101, 2009, p. 128

²⁰⁶ *Ibid*

²⁰⁷ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 2005, art. 5.2

²⁰⁸ According to *European Council: Gender Budgeting- Final report of the Group of specialists*, 2005, p. 7, gender mainstreaming is : “...the (re)organization, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and all stages, by the actors normally involved in policy making”

²⁰⁹ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 2005, art. 5.3

As already argued the feminization of poverty should be seen in a wider scope of inequality between men and women and in respect to women's position in society. There are many concurring factors that fuel into this inequality and lower women status in society. I will further develop on the objectification of women through means of pornographic material in order to illustrate one of the means by which women's status in society is being threatened.

Objectification of women

Although pornography is not considered by the four basic texts I've analyzed for the purpose of this thesis, except for it appearing as form by which victims of human trafficking can be exploited²¹⁰ I think it is relevant to analyze it in order to look at the objectification of women in popular culture. As such I would like to draw on the widespread availability of pornography as a means by which stereotypes that are harmful to women are being perpetuated and the effects this has on human trafficking.

One author defines pornography as being:

..a practice of cultural sadism as well as means of diffusing it into the mainstream of accepted behavior and therefore into private lives of individuals. It is the principal medium through which cultural sadism becomes part of the sexual practices of individuals.²¹¹

This definition sees pornography as a means through which "sadist" practices make their way into the mainstream, into the life of the majority. She later explains what she means by these practices, she points as such acts as raping a woman, beating her, engage in anal sex with her.²¹² I won't comment about whether or not these acts are sadist but I would agree that this medium is

²¹⁰ , Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 2005art. 1, d)

²¹¹ Kathleen Barry, Female sexual slavery, New York University Press, New York, 1979, p 206

²¹² *Ibid*

a potential forum that perpetuates degrading treatment towards women. I say towards women and not towards both genders because, even though both sexes are objectified there are clear distinctions in that it is most commonly the men who determine how the sexual act is going to develop and it is men who act “while women are acted upon”.²¹³ This difference is also seen in the language of porn movies, as literature observes “man fucks woman; subject verb object”.²¹⁴

With the development of internet, pornography has become widely available and statistics show that “70% of men between the ages of 18-24 visit porn sites in a typical month”²¹⁵ This suggests that there is a very large audience for these movies. This audience consumes whatever images and implied message these videos carry with them.

As for how exactly pornography influences its viewers, it is hard to say, studies are inconclusive and often enough contradicting each other.²¹⁶ However there is a great amount of literature which argues that watching pornography does make the viewer behave in a more aggressive manner towards women.²¹⁷ It is also claimed that pornography “has been found to desensitize societies to violence against women, inspiring rapes and contributing to the sexual subordination of women to men.”²¹⁸ Moreover, prolonged exposure to pornography material is believed to increase “significant leniency toward rapists when judging rape cases, reduce concern for those victimized” and lead consumers to trivialize sexual abuse.²¹⁹ Also pornography is said to communicate that “all women at all times want sex from all men, women like all the

²¹³ Robert Jense, *Getting off, Pornography and the end of masculinity*, South End Press, Cambridge, 2007, p. 65

²¹⁴ *Ibid*

²¹⁵ <http://www.sync-blog.com/sync/2010/06/internet-porn-stats-should-parents-be-concerned.html>, [last visited October 12th 2010]

²¹⁶ Brian McNair, *Mediated sex, Pornography and Postmodern Culture*, Arnold, London, 1996, p. 61

²¹⁷ *Ibid*, p. 62-67

²¹⁸ Max Waltman, *Rethinking Democracy Legal Challenges to Pornography and Sex Inequality in Canada and the United States*, in *Political Research Quarterly*, vol. 63 no. 1, 2010, p.218 available at : <http://prq.sagepub.com/content/63/1/218> [last visited on the 25th of November 2010]

²¹⁹ *Ibid*, p.220

sexual acts that men perform or demand, and any woman who does not at first realize this can be easily turned with a little force.”²²⁰

Another negative aspect of pornography is observed by authors like John Malarek who argue strongly that consumers of pornographic material often enough are not satisfied with just this but they move further, they go out to look for a body to “rent” in order to perform the acts they have just seen; he argues that pornographic material fuels a desire for degrading sexual acts that are then carried out with women in exchange for money.²²¹

The way this ties up in the trafficking of human being debate is in the way it influences the demand for trafficked victims. As observed it increases demand for the purchase of sexual services and it perpetuates a culture which dehumanizes women and which is more sensible to the rapist. It is such a culture that allows for the consumption of sexual services and even promotes it and it is such a culture that delegitimizes the status of a victim and draws in more victims.

Having looked at how men are being influenced by the portrayal of women in pornographic material and how this influences the demand for paid sexual services and consequently for human trafficking I would like to now look at what can be done to manage this demand. As such, I will further look at policies addressing the demand of paid sexual services as a means to prevent human trafficking.

²²⁰ Robert Jense, *Getting off, Pornography and the end of masculinity*, South End Press, Cambridge, 2007, p 56,57

²²¹ CBC News, Interview with Victor Malarek, (journalist and authors), on his book : *The Johns, Sex for Sale and the Men Who Buy It*, 4th of May 2009, available at : http://womensrights.change.org/blog/view/victor_malarek_blames_men_for_proliferation_of_sex_trade [last visited on the 24th of November 2010]

C. Coping with demand

It is widely believed that men “need” to have sex and this would mean that if they are not able to convince women to have sex with them as often as they “need” to, they are left with no other choice but to go out there are “purchase” sexual services”.²²²

However, authors like Victor Malarek question this “suffering” and even ask if it can’t be dimmed down by masturbating or other practices that do not involve the exploitation of another person.²²³

Irrespective of whether this “suffering” is real or not it is obvious that demand for sexual services exists and where there is demand supply is soon to follow. As seen before, in the supply of sexual services providers there are numerous stories of abuses and too often of human trafficking. This is why I think it is very important to address the demand as one of the root causes for human trafficking, because if there would be no demand there would also be no such activity of providing sexual services

Demand is being addressed by the Palermo Protocol on Human Trafficking in art 9 (5):

States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.²²⁴

What is interesting about this reference to demand is the fact that “this approach is based upon the understanding that men’s prostitution behavior is socially constructed”.²²⁵ As such this

²²² Victor Malarek, *The Natashas, The new global sex trade*, Viking Canada, 2003, p. 75-78

²²³ CBC News, Interview with Victor Malarek, (journalist and authors), on his book : *The Johns, Sex for Sale and the Men Who Buy It*, 4th of May 2009, available at : http://womensrights.change.org/blog/view/victor_malarek_blames_men_for_proliferation_of_sex_trade [last visited on the 24th of November 2010]

²²⁴ Protocol to Prevent, Suppress and Punish Trafficking in Person to the Convention against Transnational Organized Crime, art 9 (5)

²²⁵ Sheila Jeffreys, *The industrial Vagina, The political economy of the global sex trade*, Rutledge, New York, 2009, p 170

behavior can be corrected through educational programs that are to grow sensibility among potential buyers of sexual services.

However European countries have developed a wide range of approaches to dealing with demand that go further than these “educational, social or cultural measures”. I will further develop on some of these approaches.

Educating the buyer

An interesting approach to dealing with demand appears in Netherlands where there was a project which aimed at having buyers of sexual services involved in the fight against human trafficking.²²⁶ They were advised to report if they suspected that a sex worker was a victim of trafficking and in doing so they were advised to look for signs such as bruises, reluctance and fearfulness.²²⁷ Against this it was said that these signs can be seen in other sex workers as well.²²⁸ A very interesting reaction against this came from the Coalition Against Trafficking in Women reacted by saying: “what better way to dignify the male demand for the sex of prostitution than to enlist these men in the service of identifying victims, the very victims they help create!”²²⁹ I do agree with the fact that this policy does give men the opportunity to somehow present themselves as the liberators of sexual slaves while they actually are the enslaver. However one must not lose sight that policies against human trafficking should be focused more on helping the victims than shaming the oppressors. Even these two might not always be compatible when a choice has to be made between one of them I think the choice should be to save the victims. Moreover buyers of sexual services hold great potential for the fight against human trafficking, because it is them who get to “interact” with the victims and get

²²⁶ Sheila Jeffreys, *The industrial Vagina, The political economy of the global sex trade*, Rutledge, New York, 2009, p 171

²²⁷ *Ibid*

²²⁸ *Ibid*

²²⁹ *Ibid*

more information on where these victims may be and other relevant information that is most times harder to get for the police.

Also by having them involved in the fight against human trafficking you get them exposed to this fight and familiar with the cause which might actually lead to them refusing to further sustain the exploitation on women by consuming sexual services. Nonetheless this might be a too optimistic because for example a study done in London on buyers of sexual services shows that “they were not deterred from using women by the possibility that they might have been trafficked”.²³⁰ However, I would still believe that raising awareness does have its benefits and working on projects aimed at shaping a different cultural approach to the exploitation of women should be promoted. But one must bear in mind that awareness raising campaigns’ effectiveness is seen as being at least questionable and there are instances in which they have even been counter-productive.²³¹ One such example was seen in Albania where campaigns geared towards shocking the viewer resulted in families not allowing their daughters to go outside of the house; but apart from such cases more commonly it is said that these campaigns are uncoordinated, on an ad-hoc basis and not properly documented and shared.²³²

Criminalizing the purchase of sexual services

Another approach to deter demand would be to criminalize the buyer of sexual services. This is the approach taken by Sweden where as soon as 1999 a law that criminalizes the purchase of sexual service entered into force.²³³ This law is gender neutral and provides for a punishment

²³⁰ Sheila Jeffreys, *The industrial Vagina, The political economy of the global sex trade*, Rutledge, New York, 2009, p. 157

²³¹ Cornelius Friesendorf: *Pathologies of Security Governance: Efforts Against Human Trafficking in Europe*, Sage Publications, Munich, 2007, p. 394

²³² *Ibid*

²³³ Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings* in *Violence Against Women*, 2004; available at : <http://vaw.sagepub.com/cgi/content/abstract/10/10/1187> p.6

that varies from a fine to six months imprisonment for the purchase of sexual services and it also clarifies on the fact that compensation can be financial but also of other nature such as drugs and alcohol.²³⁴ The penalty applies “those who pay for sexual relations and those who take advantage of casual sexual relations paid for by another person” as well as those attempting to buy sexual services but it does not apply to those who sell sexual services.²³⁵

With respect to the extraterritorial application of this law to Swedish nationals it must be said that although “there are no national or territorial limits on its applicability [...] but, the competence to pass judgment on offences committed outside Sweden is normally conditional on dual criminality” and “the majority of countries do not have a ban on the purchase of sexual services equivalent to that in force in Sweden”²³⁶ This being a serious obstacle to applying this law to Swedish “customers” engaged in what is known as “sexual tourism”. Despite this there are examples of this law being applied extraterritorially with respect to members of Swedish peace-keeping forces acting in conflict zones.²³⁷

Extraterritorial application of the this kind of law is an important issue, as seen in the experience of Norway, which in 2008 also passed a law criminalizing the purchase of sexual

²³⁴ According to a statement from the Swedish Government and the Minister of Justice, available at: <http://www.mona-hungary.hu/kepek/upload/2010-03/Statement%20by%20Swedish%20Government.pdf>, [last visited on the 14th of November 2010]

²³⁵ Speech given by Mr. Lars Back, Baltic Fem, Sweden at the conference “Legal and institutional conditions for combating prostitution and trafficking for the purpose of sexual exploitation – Hungarian and international experiences” – In Budapest at the 9th of March 2010, available at: <http://www.mona-hungary.hu/kepek/upload/2010-03/Speech%20by%20Mr%20Lars%20Back,%20Baltic%20Fem,%20Sweden.pdf> [last visited on the 14th of November 2010]

²³⁶ *Ban on purchase of sexual services, an evaluation 1999-2008*, Report of Inquiry on the evaluation of prohibition on purchase of sexual services Stockholm 2010, available at : <http://www.regeringen.se/content/1/c6/14/91/42/ed1c91ad.pdf> [last visited on 9th of November 2010], p. 43

²³⁷ Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings* in *Violence Against Women*, 2004; available at : <http://vaw.sagepub.com/cgi/content/abstract/10/10/1187>, [last visited on the 14th of November 2010] p. 15

services, 80% of buyers purchased sexual services while abroad.²³⁸ Also studies show that there is an overall “increase in client mobility from Western Europe to Bulgaria and Romania, particularly during the tourist season.”²³⁹ This stands to show that’s such policies must not be made into a nutshell but should be developed within a wider international context. If not these policies become less effective as they somewhat “encourage” men from these countries to travel in order to satisfy their demand for paid sexual services and this could cause a set of problems of itself.

As for the effects of this policy on the scale of trafficking, figures show that “there are clear indications that the Law has had direct and positive effects in limiting the trafficking in women for prostitution to Sweden”; as for example in Sweden the number of victims is estimated to be around 400 to 600 per year which is smaller than the number coming from neighboring countries, between 5,500 to 7,800 in Denmark and 10,000 to 15,000 in Finland.²⁴⁰

However, there are those saying that what this measure actually did was that it lead to the decrease of street prostitution and it increased the hidden prostitution.²⁴¹ This could be seen as an achievement in itself if one agrees with the Canadian prostitution reference which says that visible prostitution, in that case street prostitution, is believed to result in: “traffic congestion”, “general street disorder”, “violence”, “pimping” and it could also result in luring young women

²³⁸ According to statistics presented by: Reform Resource Centre for Men, available at: http://www.mona-hungary.hu/kepek/upload/2010-03/Elise%20Skarsaune_Reform_Norway.pdf [last visited on the 14th of November 2010], p.7

²³⁹ European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers, *Sex work in Europe A mapping of the prostitution scene in 25 European countries*, TAMPEP International Foundation, Netherlands, 2009, p 25

²⁴⁰ Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings in Violence Against Women*, 2004; available at : <http://vaw.sagepub.com/cgi/content/abstract/10/10/1187> p. 14

²⁴¹ Yvonne Svanström: *Criminalizing the John- a Swedish gender model?* in “The politics of Prostitution, edited by Joyce Outshoorn, Cambridge University Press, Cambridge 2004, p 244

into prostitution.²⁴² This would suggest, among other things, that prostitution should be hidden so as to protect the “decent” eye of a “normal” citizen. Even though this might have some esthetic contributions to the problem it is not an adequate solution because it results into moving the problem from the public eye and from the protection of the law creating even more problems.

But studies conducted by the Swedish authorities claim that there are no indicators that this had shifted prostitution “indoors” or online and moved it out from the public eye, and that it did have an effect in at least preventing the increase of prostitution that occurred in the other Nordic countries, which are seen as a point of reference.²⁴³

This model is generally seen as being successful and has been influencing other countries, such as Norway and Iceland which have passed similar legislation.²⁴⁴ The influence of this policy is also seen in countries where prostitutions is legal, for example in Germany a law is being drafted to punish “the clients of victim of human trafficking”; also “the Dutch are now proposing an amendment that would penalize the buyers who purchase unlicensed persons in prostitution”.²⁴⁵ This shows that other countries have become aware of the need to shift attention from the providers of sexual services, which too often are victims of human trafficking, to the buyers of such services.

Conclusion

This chapter has looked at what is being done in Europe in terms of preventive efforts. In this particular field it appears that there is less cooperation at the transnational level and efforts

²⁴² Canadian prostitution reference [1990] 1 S.C.R. 1123

²⁴³ *Ban on purchase of sexual services, an evaluation 1999-2008*, Report of Inquiry on the evaluation of prohibition on purchase of sexual services Stockholm 2010, available at : <http://www.regeringen.se/content/1/c6/14/91/42/ed1c91ad.pdf> [last visited on 9th of November 2010], p.33-36

²⁴⁴ Janice Raymond, *The Swedish Approach to Trafficking, Prostitution and the Sex Industry*, 2010, available at : http://www.wunrn.com/news/2010/07_10/07_26_10/072610_sweden.htm [last visited on the 28th of November 2010]

²⁴⁵ *Ibid*

are done more on a national basis. But still it seems that experience of some states as for example that of Sweden has been shared and replicated by other states but maybe more should be done at the international level in respect to prevention efforts. As was shown, national initiatives as that of Sweden are limited in their effectiveness in that they are not replicated by other states. In the Swedish context the fact that buyers of sexual services are being punished is made less effective by the fact that these men can travel, and do travel, in other European countries where they purchase these services. As such these approaches should be sustained by other countries in the form of international cooperation.

Another point this chapter has made was that women are in a position of inequality in respect to men. This is seen in a number of ways including in what is called the feminization of poverty. It was argued that women are unequal economically from men and that should be addressed as a means to empower women and take form their vulnerability to fall victims of human trafficking.

The cycle of inequality is however a deeper one is being fed by a number of factors such as the objectification of women. To understand this process of objectification I looked at pornography. It was seen that pornography creates and sustains a culture in which women are dehumanized and in which demand for paid sexual services is being fueled and men are becoming immune to or even approving of such acts as sexual abuse. It was said that it is this kind of culture that sustains and encourages human trafficking.

Conclusions

This thesis set out to see how the United Nations, the European Union and the Council of Europe act and interact in the fight against human trafficking in order to make sense of how the international response to human trafficking appears in Europe, and consequently evaluate it.

After showing that that it is mostly women that are victims of human trafficking who are most commonly trafficked for the purpose for sexual exploitation, that human trafficking is on the rise and after exploring explaining how these three different bodies are involved in the fight against human trafficking, this thesis went to look at the definition of human trafficking.

At first the Palermo Protocol definition was presented, as being the one that subsequently influenced the following definitions. This definition was broken down into actions, means and purpose by which human trafficking can be carried out; in order to provide a clearer understanding of it. Then it was found that this definition allows for legal obstacles such as the dual criminality requirement to be overcome, it is flexible, neutral in terms of gender and age and most importantly it depicts a common understanding of human trafficking. It also found that the definition limits itself only to transnational human trafficking carried out by organized crime. This is seen as a major draw-back which was overcome with the CoE definition.

Another aspect covered was police cooperation, as a means in which transnational cooperation can be carried out in the fight against human trafficking. This chapter showed how States can be reluctant to give power to such structures as Europol and allow for them to gain terrain. It also showed that States are reluctant to make use of Europol's competences and experience. I see this reluctance as a main obstacle to more effective police cooperation. Another finding is that Europol's activities and attributions are seen with other bodies as well and as such

it is welcomed that cooperation with other similar bodies is in place so as to avoid that they overlap. This chapter also showed that the general effectiveness of police cooperation within the Europol framework is questionable.

This part ended with a study case of U.N. peacekeeping operations in Bosnia and Herzegovina. This revealed who deploying personnel to provide security can go wrong. This case talked about an incident in which U.N. forces were caught encouraging and even facilitating human trafficking. This shows how there is need to hold these operations under strict scrutiny to assure that they fulfill their stated mission and don't cause more harm than good.

Having looked at such coordinated efforts to catch traffickers I then move on to talk about how victims of human trafficking play into these efforts of transnational cooperation. In doing so I described how victims of human trafficking are being assisted within Europe. Here I found that there is a lack of uniformity in this respect, that victims are mostly treated as tools of criminal investigations and that there are deficiencies in the way they are reintegrated in society

This part brought the victim of human trafficking into the focus of anti-trafficking initiatives and reflected on some of her needs. Further I looked at another aspect of the fight against human trafficking which is the prevention stage. In this particular field it appears that there is less cooperation at the transnational level and efforts are done more on a national basis. But still it seems that experience of some states as for example that of Sweden has been shared and replicated by other states but maybe more should be done at the international level in respect to prevention efforts. As was shown, national initiatives as that of Sweden are limited in their effectiveness in that they are not replicated by other states. In the Swedish context the fact that buyers of sexual services are being punished is made less effective by the fact that these men can

travel, and do travel, in other European countries where they purchase these services. As such these approaches should be sustained by other countries in the form of international cooperation.

Another point which has made was that women are in a position of inequality in respect to men. This is seen in a number of ways including in what is called the feminization of poverty. It was argued that women are unequal economically from men and that should be addressed as a means to empower women and take form their vulnerability to fall victims of human trafficking. It was also found that pornography creates and sustains a culture in which women are dehumanized and in which demand for paid sexual services is being fueled and men are becoming immune to, or even approving of, such acts as sexual abuse. It was said that it is this kind of culture that sustains and encourages human trafficking.

This research shows how international cooperation against human trafficking appears in Europe. There has been much progress in this respect from agreeing on a definition to human trafficking to establishing the framework to police cooperation. However there is still much to be done. As such it would be interesting to see how the influence of more progressive states such as Sweden is going to be reflected in future cooperation efforts. Already the Swedish model has influenced several European countries but there are still great differences in the way the various countries approach human trafficking.

Then it would be interesting to see how these new developments would find their way into the global context by means of the U.N. structures.

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