

2000: A year of significant achievements in the fight against trafficking in human beings

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Trafficking in human beings is a worldwide phenomenon that in many cases takes life and liberty from the living, reaps considerable profits in the face of dire poverty and ignores barriers where borders exist. Within the OSCE region, this is particularly true in the case of South Eastern Europe, a region that is receiving increased attention and assistance in this regard. It is estimated that in 2000 more than 1,000 victims² of trafficking were assisted in South Eastern Europe by a growing but still insufficiently co-ordinated network of governmental, non-governmental and intergovernmental institutions.

While a co-ordinated response to trafficking has only been developing very slowly, the international community significantly increased its efforts to address this problem in 2000. One important achievement was that a number of politically important documents were adopted, some of which are of a legally binding character. These documents outline the need to take more co-ordinated action in the fields of prevention, protection of trafficking victims and prosecution of perpetrators. Trafficking in human beings as a multifaceted problem touches on issues of human rights, inequality, discrimination, the rule of law, crime control, law enforcement, corruption, economic deprivation and migration affecting all states being either countries of origin, transit or destination. It is clearly an international problem that calls for a concerted response and multidisciplinary approaches.

Countries in transition face tremendous political, social and economic challenges. High unemployment rates, gender inequality and scarce prospects for the future have a proportionately greater effect on women who then become easy targets for traffickers. The need for survival and the desire to improve one's standard of living leads people to migrate for work. This all too often ends in the trafficking of human beings when people are dependent on others to facilitate their attainment of documents, to arrange their travel and to assist them in finding work abroad. Once in the hands of traffickers, human beings are treated as merchandise without any rights or dignity. Due to the hidden nature of this problem, the scale of the 'trafficking business' can not be measured in figures and official data can only show us the tip of the iceberg.

Trafficking in human beings is frequently viewed only as a problem of illegal migration or prostitution. As a result, the victims of trafficking are often treated as criminals, while the traffickers most often go unpunished. Traffickers

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² According to the International Organization for Migration.

frequently take away travel documents from their victims, in order to limit their freedom of movement. Subsequently, victims who enter a country legally may find themselves without documentation and, eventually, illegally in the country of destination. A lack of awareness or appropriate training results in authorities often tending to treat trafficked persons as undocumented migrants and to confront them with detention and/or punishment, as well as deportation.

In this respect, it must be noted that migrants (including internally displaced persons and refugees) are particularly vulnerable to become victims of discrimination and other human rights violations, even more so because their social and cultural structures have changed. States may apply international human rights standards for their citizens, but are often negligent when asked to ensure the same rights for migrants. Therefore, non-governmental organizations (NGOs) often play a crucial role in filling these gaps and providing services for victims where the state does not fulfil its obligations.

Defining trafficking in human beings

An awareness of this complex human rights violation grew slowly and its evolution process is reflected in numerous national, regional and international instruments. Due to the variety of definitions and the resulting different approaches and policies, many actors called for a standardized definition. Authorities frequently pursue restrictive immigration policies by mixing smuggling in persons, trafficking in persons and prostitution. This causes them to focus primarily on combating organised crime and neglecting the protection of individual human rights.

Finally, a large number of States actively participated in the negotiations³ on the elaboration of a comprehensive tool to combat trafficking in human beings. Non-governmental and intergovernmental organisations were granted observer status and in this capacity managed to have a significant influence on the approach taken within the documents. In December 2000, an international definition of trafficking in human beings was introduced by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime:

‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person, for the purpose of exploitation. Exploitation shall include, at a minimum, ‘the exploitation of the prostitution of others or

³ Between January 1999 and October 2000, the text of the ‘U.N. Convention against Transnational Organized Crime’ and of the Protocols was negotiated by an Ad Hoc Committee that was established by U.N. General Assembly resolutions. All meetings took place in Vienna. Sessions usually drew about 100-120 national delegations and numerous other observers representing non-governmental and intergovernmental organisations.

other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.

Many people still tend to conflate trafficking in human beings with smuggling. Smuggling occurs when a person knowingly consents to crossing national borders illegally and a smuggler is only responsible for facilitating their transport. Trafficking in human beings does not necessarily involve crossing internationally recognized borders. It may also occur within a State, especially in one in which there are immense economic disparities between one region and another. This may be the case between urban and rural communities within a State for example.

However, the most important distinction between the two terms is that trafficking, in contrast to smuggling, includes an element of force, deception or coercion, and is carried out for the purpose of placing a person — whether for pay or not — into involuntary servitude or an otherwise abusive situation. This distinction is also highlighted by the fact that the United Nations elaborated two different legal tools for addressing each of these crimes separately.

The United Nations

The United Nations opened a new international document, the ‘Convention against Transnational Organized Crime’ for signature in December 2000.⁴ Two additional legal instruments have been elaborated and opened for signature, the above-mentioned ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children’ and the Protocol against the ‘Smuggling of Migrants by Land, Sea and Air’. The main purpose of these documents is to reinforce international co-operation in the fight against transnational organized crime.

The Protocol dealing with trafficking in human beings states that it seeks to prevent and combat trafficking in persons, to protect and assist victims of trafficking, as well as to promote co-operation among States Parties.⁵ Unfortunately, contrary to this desired goal, it nevertheless remains vague with regard to State obligations to provide assistance and protection to trafficked persons.⁶ The different approaches and means of the negotiating parties led to this vagueness. On the one hand, countries of destination are reluctant to offer opportunities for temporary residence and other social benefits to trafficked persons. While, on the other hand, countries that are primarily seen as countries of origin argue for greater protection mechanisms and a clear legal status for

⁴ High level Signing Conference for the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, Palermo, Italy, 12-15 December 2000. As of 18 December 2000, 124 states have signed the Convention and 81 states have signed the Anti-Trafficking Protocol. States have to ratify the Convention before they can be a party to any of the Protocols. The Convention must be signed and ratified by 40 countries before it enters into force.

⁵ Article 2.

⁶ Articles 6-7.

trafficked persons in countries of destination.

Despite these weaknesses, there are important measures elaborated in the Protocol and as an additional legal tool to the Convention, it contains strong law enforcement provisions. As mentioned above, perhaps the most significant achievement of the Protocol is the first internationally agreed-upon definition for trafficking in human beings that will be the foundation for anti-trafficking policies and programmes on the national and international level in the future.⁷

The Council of Europe

The Council of Europe focuses its anti-trafficking work on issues relating to legislative reform and within this field concentrates its efforts on criminal law reform and strengthening prosecution. While the Council of Europe was engaged in anti-trafficking activities as early as 1996, its Steering Committee for Equality between Women and Men elaborated the most significant Council of Europe document addressing trafficking, namely ‘Recommendation No. R(2000)11 on action against trafficking in human beings for the purpose of sexual exploitation’⁸ that was adopted by the Committee of Ministers in the spring of 2000.⁹ This recommendation encourages Member States to take measures and set activities in the areas of prevention, protection and prosecution by reviewing their legislation and practice.

An international seminar entitled ‘Co-ordinated Action Against Trafficking in Human Beings in South Eastern Europe: Towards a Regional Action Plan’¹⁰ was organized and held in the summer of 2000 by the Council of Europe in close partnership with, inter alia, the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Governmental representatives and experts from all Stability Pact Member States participated in the seminar and used Recommendation No. R.(2000)11 as the basis to draft a regional action plan to combat trafficking in South Eastern Europe.¹¹ This was the first meeting of its kind in the region and gave participants the opportunity to exchange information and experiences, as well as demonstrating that a successful regional approach requires well-co-ordinated and long-term national actions in the fight against trafficking in human beings.

The materials and recommendations from the international seminar in Athens and the OSCE Supplementary Human Dimension Meeting¹² on

⁷ Article 3.

⁸ So far, the Council of Europe has restricted its policy to addressing trafficking in human beings for the purpose of sexual exploitation. It is important to note that future remedies to address trafficking should be based on the broad definition negotiated by the United Nations and should not focus solely on trafficking for ‘sexual exploitation’.

⁹ Adopted on 19 May 2000 at the 710th meeting of the Minister’s Deputies.

¹⁰ The seminar took place in Athens, 29 June – 1 July 2000.

¹¹ The final results were published as ‘Elements for a Regional Plan of Action’ EG/ATH (2000)3.

¹² The conference took place in Vienna, 19 June 2000.

Trafficking in Human Beings were taken into consideration during the creation of the Stability Pact Task Force on Trafficking in Human Beings. The Chair of the Anti-Trafficking Task Force¹³, as well as all other international agencies¹⁴ that are directly involved in the Anti-Trafficking Task Force attended both conferences and started to co-ordinate their efforts through a joint strategic approach. The Anti-Trafficking Task Force seeks to involve governmental and non-governmental representatives from South Eastern Europe in their activities that approach the fight against trafficking from a regional perspective.

In 2000, the ODIHR strengthened its profile in the fight against trafficking in human beings by supporting policies and projects that promote and support the — often neglected — human rights perspective.

Organization for Security and Co-Operation in Europe

In November 1999, the ODIHR presented its 'Proposed Action Plan 2000 for Activities to Combat Trafficking in Human Beings' at the OSCE Istanbul Summit. This action plan serves as a tool to raise awareness concerning the complexity of the problem of trafficking in human beings and to outline recommendations for anti-trafficking initiatives to be taken up by relevant OSCE institutions and bodies, as well as OSCE participating States. The proposals in the ODIHR's action plan serve as a checklist to measure the progress made by the OSCE in 2000 and beyond in the field of combating trafficking. While many recommendations from the action plan have been fulfilled, those that remain to be addressed highlight challenges that the OSCE must address during 2001. In particular, more needs to be done to train OSCE field personnel properly in order to enhance field activities with regards to gender and anti-trafficking issues, as well as to assist the alleged victims of trafficking more appropriately.

In reviewing the suggestions made in the ODIHR action plan for more attention to be given to the trafficking issue on the political level, it can be noted that substantial progress has been made in the approach that the OSCE takes in addressing trafficking on this level. Under the Austrian Chairmanship, anti-trafficking initiatives were given a high priority for the organization. For example, trafficking in human beings was selected as an issue for one of the OSCE's Supplementary Human Dimension Meetings in 2000. This resulted in a greater exchange of information, increased awareness and recommendations for future co-ordinated actions on the national and regional levels.

The OSCE Ministerial Council's 'Decision on Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings' adopted in November 2000 goes even further by both recognizing the need for a co-ordinated, multidisciplinary

¹³ The Anti-Trafficking Task Force is chaired by Dr. Helga Konrad of the ODIHR.

¹⁴ ODIHR, IOM (International Organization for Migration), UNICEF (United Nations Children's Fund), UNHCR (United Nations High Commissioner for Human Rights), ICMC (International Catholic Migration Committee), ICMPD (International Centre for Migration Policy Development), SECI (Southeastern European Co-operative Initiative) and COE (Council of Europe) assist the Anti-Trafficking Task Force as an Expert Co-ordination Team.

response to trafficking and by calling on OSCE institutions and bodies, as well as field missions, to address this need. In the Decision, the Ministerial Council welcomes the definition put forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and recognizes the primary responsibility of participating States to combat trafficking.

The Ministerial Decision also highlights the need for the development of training programmes within the OSCE. This is mentioned in the ODIHR action plan when it refers to the capacity-building role of the OSCE Secretariat, but enhanced training of OSCE field personnel still remains to be fully addressed. The Ministerial Council:

13. Calls on the OSCE Secretariat, in co-operation with the ODIHR, to intensify anti-trafficking training in its induction programmes for OSCE field personnel in order to enhance their capacity to monitor, report and respond to the problem of trafficking through regular OSCE activities; and to raise awareness within OSCE institutions and among OSCE personnel of the problems of trafficking; these training programmes should also be made available to participating States and other international organizations...'

Training for OSCE field personnel in issues of gender and trafficking in human beings must be enhanced and expanded in order to ensure a more appropriate response to alleged cases of trafficking in the field. Another aim of such training programmes would be to encourage the development of more projects that address gender inequality, discrimination and trafficking.

While the development of more in-depth anti-trafficking training programmes for OSCE field personnel remains a long-term objective, the OSCE Secretariat took an immediate step forward in November 2000 by revising the Code of Conduct for OSCE Mission Members to include the following section: 6.

Compliance with accepted human rights standard.

Mission Members must refrain from any conduct, which could be detrimental to the goals of the OSCE. This includes but is not limited to an affiliation with any person who is suspected of being involved in any activity that violates national or international law or accepted human rights standards, or an affiliation with any person who could reasonably be suspected of engaging in the trafficking in human beings.

Mission members shall be aware that the use of the services of a person suspected of being a victim of trafficking contributes both to the profit of traffickers and the harm to victims. Mission members shall adopt an exemplary standard of personal behaviour to ensure the OSCE is contributing to combating trafficking in human beings, and is not exacerbating the problem.'

This provision may serve as a model for other international organizations. By recognizing that field personnel may come into contact with traffickers and their victims, it further raises the question of what other measures field personnel should take in order to monitor cases and to assist victims. This has in fact been the case when the ODIHR and OSCE field missions have become directly involved in individual interventions to assist alleged victims of trafficking. Possible steps

of intervention include: co-operating with national authorities, monitoring the situation, assuring that a victim has appropriate legal representation and access to justice, securing safe shelter and counselling for the victim, as well as co-ordinating with the country of origin and other international organisations on voluntary repatriation efforts.

In addition to working for a more appropriate response to trafficking cases in the field, the political will to prevent trafficking, to protect its victims and to prosecute traffickers was expressed in other bodies of the OSCE. In commenting on good governance, the Bucharest Declaration of the OSCE Parliamentary Assembly (PA) of July 2000 includes two articles that specifically address trafficking in human beings: 106. Urgently appeals to participating States to adopt and implement laws that criminalize trafficking in human beings while ensuring that victims of trafficking do not face undue prosecution as a result of having been trafficked; 107. Urges participating States to combat trafficking in women by eliminating those obstacles to equal economic opportunity for women which increase women's need to migrate for employment and, thereby, increase their susceptibility to human trafficking, through the adoption of anti-discrimination laws which enable women to seek effective legal redress if they suffer discrimination in employment on the basis of gender.

It is significant that the OSCE PA Declaration recognizes that ensuring equal economic opportunity and condemning gender inequality are necessary preventive efforts to alleviate the pressures that make women particularly vulnerable to traffickers. Legislative reform in this field should be taken into consideration by States when formulating a national action plan to combat trafficking.

As a reflection of the strong political support noted above, several OSCE participating States¹⁵ have seconded personnel to work on this issue and have made significant voluntary contributions that allow the OSCE/ODIHR to increase its anti-trafficking activities in the field. Most recently, the United Kingdom pledged 200,000 pounds to an Anti-Trafficking Project Fund that will be managed by the ODIHR. This fund is open to other voluntary contributions and is intended to help ensure that funding is available on a more regular basis for priority anti-trafficking initiatives carried out by the ODIHR and OSCE field missions. The ODIHR action plan encourages OSCE field missions to develop special anti-trafficking activities and projects, appropriate to the size and mandate of the mission. The Anti-Trafficking Unit of the ODIHR regularly communicates with focal points in OSCE field missions in order to exchange

¹⁵ The post of Adviser on Trafficking Issues was first seconded to the ODIHR in 1999 by the USA and this secondment is being continued through 2001. Austria is currently supporting two secondments to the ODIHR's Anti-Trafficking Unit — the Chair of the Stability Pact Task Force on Trafficking in Human Beings who is based in Vienna and the Officer on Trafficking Issues based at the ODIHR in Warsaw. Finally, at the beginning of 2001, the Czech Republic seconded a Senior Adviser on Trafficking Issues to the ODIHR who is base in Vienna and assist the Chair of the Task Force.

information, to develop programming ideas and to promote networking with other actors in the field.

ODIHR anti-trafficking projects aim to raise awareness, to provide technical assistance to governments, to build the capacity of NGOs and to promote greater co-ordination of anti-trafficking efforts between governments, NGOs and international organizations. In 2000, the ODIHR facilitated NGO-government round tables on trafficking in Moldova, Montenegro, Romania and the Russian Federation. These round tables are the first step in the development of a comprehensive strategic national action plan to combat trafficking.

As suggested in the ODIHR action plan, the above-mentioned initiatives must be co-ordinated with other relevant actors in the field including national governments, non-governmental organizations and other international organizations. In 2000, the ODIHR and OSCE field missions carried out joint projects to combat trafficking in human beings in the Balkans, in Ukraine and Central Asia in co-operation with the International Organization for Migration (IOM). Another example of successful collaboration is a project in Albania where the office of the UN High Commissioner for Human Rights in Bosnia provided an expert who collaborated with the ODIHR staff and the OSCE Presence in Albania to develop a new police training component on 'policing the human rights of women.'

Furthermore, the ODIHR is actively engaged in advocating for relevant legislative reform. Within the framework of the Stability Pact Anti-Trafficking Task Force, the ODIHR is implementing a project on legislative review that will outline relevant areas of law for legislative reform efforts in the areas of prevention, protection and prosecution. The outcome will be a catalogue of guidelines that will — complementary to other initiatives — support governments in identifying needs and setting priorities for their national anti-trafficking policies and activities in legislative review and reform.

Stability Pact Task Force on Trafficking in Human Beings

At the second Anti-Trafficking Task Force Meeting in December 2000, the team of Co-ordinators introduced a framework for a model national action plan to combat trafficking in human beings. This model national action plan was shared with national governments in order to obtain the necessary feedback. The Anti-Trafficking Task Force will use this tool to assist national governments in identifying needs and setting priorities.

Governments in the Balkan region expressed their political will to further the activities of the Anti-Trafficking Task Force by signing the 'South Eastern European Anti-Trafficking Ministerial Declaration' on 13 December 2000 in Palermo.¹⁶ The declaration calls for the nomination of national coordinators who will promote dialogue among various governmental agencies and assure co-

¹⁶ Representatives of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Federal Republic of Yugoslavia, the former Yugoslav Republic of Macedonia, Moldova, Romania, Slovenia, Turkey, Montenegro and Kosovo signed the Anti-Trafficking Declaration.

operation with regional and international anti-trafficking initiatives. All actors in the region are highly motivated and consider anti-trafficking work to have top priority and they have thereby taken the first steps to accomplish these goals.

Recently, the international agencies involved in the Task Force presented the Proposed Anti-Trafficking Action Plan for South Eastern Europe 2001 — a comprehensive package of project proposals with a strong emphasis on the protection of victims. This proposed action plan advocates and supports the establishment and improvement of shelters and referral systems in the Balkan region. Furthermore, it encourages governmental, non-governmental and intergovernmental actors to actively participate in joint anti-trafficking initiatives.

Conclusions

Even though 2000 saw the conception of several important anti-trafficking documents and mechanisms, the international community and individual States still have a long way to go in order to bring these measures to fruition.

International co-operation in the fight against trafficking in human beings reached a new level. The international community acknowledged that a complex problem such as trafficking needs a multidisciplinary and concerted response. Thus far, the Stability Pact Task Force on Trafficking in Human Beings serves as a good example for ‘best practice’, because it brings together the expertise of different international organizations, experts and national actors. Together, they seek to co-ordinate resources and activities in the Balkan region in order to tackle different aspects of the phenomenon more effectively.

Still, international efforts to combat trafficking in human beings will mean little as long as its root causes remain inadequately addressed. The cycle of trafficking and re-trafficking will not be broken until economic and social conditions in countries of origin are improved. People who try to escape from poor living standards and become victims of trafficking are unlikely to stay in their home country upon return, if the economic situation has not changed. Countries of destination must design and support sustainable economic policies that can prevent trafficking by increasing economic opportunities for women generally and encouraging rural development in particular.

The common conflation of trafficking and smuggling in human beings allows Western governments to justify strengthening their restrictive migration policies under the banner of combating trafficking. The foremost interest of governments is still to control their borders and to combat organized crime, with little consideration of the status of the victims. Victim and witness protection programmes are seen as useful prosecution tools, rather than as an obligation of the State. Therefore, victims seeking assistance and redress usually only turn to NGOs, and do not assist the State in the prosecution of traffickers, because their safety and needs have not been taken into consideration by the State. This also feeds the cycle of trafficking since perpetrators are not successfully prosecuted and victims are not provided with the social infrastructure which would allow

them to rebuild their lives.

The ODIHR, in co-operation with other international and national partners seeks to address such gaps in the response to trafficking. Proposed legislative reform efforts and technical assistance programmes may slowly change the treatment that trafficked persons receive. However, it is also important to monitor the implementation of legislation and assistance programmes in order to adapt them as necessary and to enhance ongoing training programmes for law enforcement, social workers, judges and prosecutors.

In the end, only committed political will on the part of all governments, as well as international and national organizations will guarantee a human rights approach.