

## An analysis of the definitions of trafficking offered by UN and the European regional organizations (EU, CoE and OSCE)

Each year, thousands of people are trafficked to and within Europe. Although the phenomenon has its roots in slavery and the slave trade, it has increasingly been recognized as having a close connection with transnational organized crime in the modern world. Due to sophisticated techniques employed by groups involved in organized crime, the breakdown of States and many other reasons, the number of people trafficked is increasing at a rapid rate.

Trafficking in human beings is becoming increasingly a lucrative business for criminals: it is the third source of illegal income after weapons and drug trafficking

At the international level, the first treaty specifically related to the subject matter came into existence in 1904, when a group of European States adopted the International Agreement for the Suppression of the White Slave Traffic (24 U.K.T.S. 1, 1904). Several other treaties were adopted in the first half of the 20<sup>th</sup> century.<sup>1</sup> Although these instruments did not provide the definitions of trafficking, some elements related to the act may be understood. Analysis of these instruments reveals that trafficking was understood to take place mainly for prostitution and sexual exploitation of women and children.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, defines trafficking as, "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of deception, or 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." Trafficking has a varied typology; it may include domestic servitude, prostitution, pornography, forced labor, debt bondage, illegal adoption, forced marriages, boy jockeys, and begging

The UN Convention against Transnational Organised Crime (UNGA, 2000), was adopted in December 2000. One of the two Protocols attached to it specifically deals with trafficking of human beings and provides a definition for the first time under international law.

In Europe, States have also utilized regional instruments to suppress the act of trafficking. Some instruments, such as the European Convention on Extradition (E.T.S No. 24, 1950), and the Protocols thereto (E.T.S No. 86, 1975 and No. 98, 1978), and the Europol Convention are directed specifically towards co-operation in criminal matters. Other treaties contain provisions relating to the matter, although it is not the only objective. The Treaty of Amsterdam is among them. These instruments have served as the basis for co-operation in such areas as extradition, judicial and police co-operation and information sharing.

Although co-operation in criminal matters is still strongly supported in Europe, there has been a significant shift in the way in which trafficking is approached whereby the human rights of those trafficked are becoming important. This may be seen in the recent definitions of trafficking offered by the CoE, the OSCE and the EU. Each organisation has different mandates, and some elements of the definitions vary. However, the definitions all recognise the human rights implications of trafficking. For instance, in the Recommendation R (2000)11 adopted by the Committee of Ministers of the CoE, trafficking was defined as:

*the procurement by one or more natural or legal persons and/or the organisation of the exploitation and/or transport or migration – legal or illegal – of persons, even with their consent, for the purpose of their sexual exploitation, inter alia, by means of coercion, in particular violence or threats, deceit, abuse of authority or of a position of vulnerability (CoE 2000).*

Although the definition does not specifically speak of human rights, trafficking is seen as a human rights issue by the CoE. In the Recommendation, the Committee of Ministers states clearly that trafficking constitutes 'a violation of human rights' and 'an offence to the dignity and the integrity of the human being' (Ibid.). To be specific the Recommendation classifies subsequent sexual exploitation as a form of slavery (Ibid.). It should also be noted that in the view of the CoE women and girls are the primary target of trafficking (Ibid.). This focus on women and girls reflects the earlier attempts of the international community to suppress trafficking in women and girls, as can be seen in the treaties mentioned above. Finally, the Recommendation also lists the European Convention on Human Rights and its Protocols as well as to the European Social Charter and its Additional Protocol (Ibid.). This suggests that these

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<sup>1</sup> They are the 1910 International Convention for the Suppression of the White Slave Traffic (20 U.K.T.S. 269), the 1921 International Convention for the Suppression of the Traffic in Women and Children (9 L.N.T.S. 415), the 1933 International Convention for the Suppression of the Traffic in Women of Full Age (150 L.N.T.S. 431) and the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (96. U.N.T.S. 271).

instruments are relevant in considering issues surrounding trafficking. This emphasis on human rights is hardly surprising, as the CoE has a clear mandate for promotion and protection of human rights.

The definition used by the OSCE also reveals that trafficking is seen as a human rights issue by this organisation. In the Final Report of the Supplementary Human Dimension Meeting on Human Trafficking, which was held in June 2000, the OSCE gave the following working definition<sup>2</sup> of trafficking:

*All acts involved in the recruitment, abduction, transport (within or across borders), sale, transfer, harbouring, or receipt of persons, by the threat or use of force, deception, coercion (including abuse of authority), or debt bondage, for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude, forced or bonded labour, or in slavery-like conditions, in a community other than the one in which the person lived at the time of the original deception, coercion or debt bondage (OSCE 2000b)*

Finally, human rights implications are also evident in the definition of trafficking offered by the EU. In January 2001, the European Commission of the EU sent communications on the subject matter to the European Council and the European Parliament. In the first Proposal for a Framework Decision<sup>3</sup> on combating trafficking in human beings, the European Commission identified two types of trafficking: trafficking for labour exploitation and sexual exploitation.

- Article 1 of the Proposed Framework Decision on trafficking for labour exploitation gave the following definition:

*Each Member State shall take the necessary measures to ensure that the recruitment, transportation or transfer of a person, including harbouring and subsequent reception and the exchange of control over him or her is punishable, where the fundamental rights of that person have been and continue to be suppressed for the purpose of exploiting him or her in the production of goods or provision of services in infringement of labour standards governing working conditions, salaries and health and safety (EU, 2001b).*

- Article 2 on trafficking for sexual exploitation stipulated that:

*Each Member States shall take the necessary measures to ensure that the recruitment, transportation or transfer of a person, including harbouring and subsequent reception and the exchange of control over him or her is punishable, where the purpose is to exploit him or her in prostitution or in pornographic performances or in production of pornographic materials (Ibid.).*

The Proposal added the following as necessary elements of trafficking for labour and sexual exploitation:

- (a) use is made of coercion, force or threats, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is a misuse of authority, influence or pressure, or
- (d) there is another form of abuse (Ibid.).

Although some elements of trafficking (e.g. coercion and subsequent exploitation) in the EU definition are similar to those of the CoE and the OSCE, there is one difference. Unlike the definitions of the CoE and the OSCE, the EU definition makes an explicit reference to the rights of those trafficked. This echoes the Charter of Fundamental Rights adopted by the EU in December 2000 (EU, 2000a, pp. 1-22) and the explanatory note accompanying this Proposal clearly links the rights under the definition to the Charter. It is worth noting that a prohibition on trafficking is explicitly included under Article 5(3). The Charter itself is not legally binding. Nevertheless, since it is one of the few instruments concerned with rights of individuals to include trafficking,<sup>4</sup> its adoption represents a significant step forward for the protection of the human rights of those trafficked.

It should also be noted that the EU definition lists labour exploitation as a separate category, in addition to sexual exploitation. This can be explained partly by the main objectives of the EU. Economic integration and development within Europe were the driving forces for the creation of such organisations as the European Coal and Steel Community, the European Atomic Energy Community, the European Economic Community and the EU (Craig and de Burca, 1998, pp. 7-48). Although the EU's mandate has been expanding to deal with such issues as justice and home affairs, common foreign and security policy and human rights, economic integration and development among Member States remain the central agenda for the EU. Since the protection of the labour force is fundamental in this regard, the EU might have created an additional provision for labour exploitation.

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<sup>2</sup> It should be pointed out that the definition does not have a significant legal effect, as it is not written in a form of a legal instrument. It is rather used as the guidelines for understanding the phenomenon.

<sup>3</sup> According to Article 34(2)(b) of the Treaty of Amsterdam, a framework decision (for the purpose of approximation of laws and regulations of the Member States), if adopted, is binding upon the Member States as to the result to be achieved, but the national authorities have the choice and methods to achieve it. See *supra*, note 1.

<sup>4</sup> Article 6 of the Convention on the Elimination of All Forms Discrimination against Women also urges Member States to take measures for suppression of traffic in women. 1249 U.N.T.S. 13.