

Chapter 8

International Legislative Initiatives to Combat Human Trafficking

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Introduction

Human trafficking has become the third biggest criminal business worldwide, after drug trafficking and trafficking of weapons. It has become one of the most lucrative criminal enterprises, which has its own long established criminal industry connected with related activities such as money laundering, drug trafficking, document forgery, smuggling etc.¹

Changes that took place during the period from 1989 through 1991 in Eastern Europe at the social, political, and economic levels, led to the decline of the welfare state, and transitioning economies suffered from inflation and massive unemployment. The vast majority of the population in these countries was struggling to find a way to exit poverty.² Richer Western European Countries and Greece were among the first European Countries to experience a significant wave of immigration. This immigration flow immediately increased the number of people seeking hope in Europe, increasing the immigration pressure on EU countries, already a favorable destination for immigrants coming from poor countries of Africa and Asia.³ What is particularly important is the fact that almost every country, especially in the western world, is affected by trafficking, whether as a country of origin, transit, or destination for victims.⁴

¹ <http://www.unicef.de/download/trafficking-see.pdf>

² US State Department, *Trafficking in Persons Report (2007)*.

³ United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns (Vienna, 2006)*.

⁴ International Organization for Migration, *Counter-Trafficking Database, 78 Countries, 1999–2006*, available at <http://www.iom.int/jahia/jsp/index.jsp> (full citation is needed).

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Additionally, the establishment of the European Union, initially with the Maastricht Treaty of 1992 and later on with the Treaties of Amsterdam in 1996 and Nice in 2001, resulted in the abolition of border and customs controls within the EU area, thus rendering the free movement of people and goods⁵ much easier. However, this new reality in border controls facilitated the development of different forms of illegal activity across the EU area. Additionally, the Schengen Treaty,⁶ which was signed by almost all EU Member States⁷ and became an EU *acquis* created new challenges in the area of internal security. With the Schengen Agreement and its Supplemental Application Agreement⁸ an area of free movement of persons and goods was created by removing all intra-state control checks at EU States common borders.

Within this rapidly transformed international social and political environment, new forms of crime have emerged. Criminal networks, in Western Europe and elsewhere, including in developing countries, are particularly active in the trafficking of human beings; such trafficking includes labor exploitation and sexual exploitation of people coming from poor countries.⁹ The vast majority of trafficking victims are persons who are by definition vulnerable physically, socially, and economically, namely the minors¹⁰ and young women. As a result of these socio-economic changes around the world, trafficking in human beings has been transformed into a modern form of slavery and an epidemic with 27 million slaves around the world.¹¹

⁵ See title I of EC Convention. <http://europa.eu.int/eur-lex>.

⁶ The Schengen Agreement was signed in 1985 in the village of Schengen, on the borders of Luxembourg, France, and Germany. The main purpose of the Schengen Agreement is the abolition of physical borders among European countries (Schengen zone members).

⁷ The Schengen Agreement applies to most European countries. The Schengen Agreement covers a population of over 400 million and a total area of 4,268,633 square kilometers (1,648,128 square miles).

⁸ Both were ratified by Greece with Law 2514/1997 (Government Gazette A' 140/27-6-1997).

⁹ It is estimated that, in 1991, in Greece alone, there were almost 7000 prostitutes, of whom almost 5,500 were Greek and the rest were immigrants. However, in 1996 the total number was estimated in almost 10,400, of whom almost 4,300 were Greeks and the rest were immigrants; see Aggelos Tsigris, *Trafficking and sexual exploitation of woman (or women? Check the title again)*. The results of a research. Publications Ant. N. Sakkoula, Athens-Komotini 1997, p.35.

¹⁰ According to the official report of UNICEF for the living conditions of children around the world, in 2006, it is estimated that 1.200.000 children happens to be victims of trafficking, see related info at <http://www.unicef.gr>

¹¹ <http://www.unodc.org/unodc/en/human-trafficking-fund.html>. The United States State Department has carried out some of the most extensive research into the efforts of governments to combat severe forms of trafficking in persons. In their view, trafficking in persons is a global market:

Victims constitute the supply, and abusive employers or sexual exploiters represent the demand. The supply of victims is encouraged by many factors including poverty, the attraction of a perceived higher standard of living elsewhere, weak social and economic structures, a lack of employment opportunities, organized crime, violence against women and children, discrimination against women, government corruption, political instability, armed conflict, and cultural traditions such as traditional slavery. . . On the demand side, factors driving trafficking in persons include the sex industry, and the growing demand for exploitable labor. Sex tourism and child pornography have become worldwide industries, facilitated by technologies such as the Internet, which vastly expand choices available to consumers and permit instant and nearly undetectable transactions (United States State Department 2004a: 19–20).

Human Trafficking vs. Migrant Smuggling

As we have already mentioned, each year hundreds of thousands of migrants are moved illegally by highly organized international smuggling and trafficking groups, often in dangerous or inhumane conditions. However, to cope with the pernicious problem of human trafficking, one should distinguish between this problem and the one of migrant smuggling.¹²

To begin with, one could define human smuggling as a business transaction between two willing parties involving movement across borders, usually by illegal means. It occurs with the consent of a person(s), and the transaction usually ends upon arrival at the country of destination. On the other hand, human trafficking starts when one party deprives another party of the freedom of choice by using threats, force, coercion, deception or fraud for the purpose of exploitation. That being said, human trafficking is a direct violation of basic human rights which can occur both across and within borders.¹³ Needless to say, the definition one would adopt would have a direct impact on anti-trafficking policies, as well as on the support of particular agendas.

A decisive factor in conceptualizing human trafficking is that its victims are commodities in a multibillion dollar global industry. Subsequently, criminal organizations are choosing to traffic human beings because, unlike other commodities, people can be used repeatedly and because trafficking requires little in terms of capital investment.

Different Forms of Human Trafficking

Human trafficking has assumed alarming dimensions over the last couple of decades, mainly because of the above-mentioned international, political, and social changes. Human trafficking is favored by organized crime¹⁴ due to its high profitability. Interestingly enough, individual criminals as well as criminal networks around the

¹² “Human Trafficking and Migrant Smuggling: New Perspectives on an Old Problem.” Policy Brief, Harvard University, May 14, 2007, pp. 34 ff.

¹³ Galma Jahic James O. Finckenauer, Representations and misrepresentations of human trafficking, Trends in Organized Crime, Volume 8, Number 3, 2005, pp. 24–40.

¹⁴ See Nikolaos Livos, Organized crime, Concept and procedural methods to tackle, Speech to the Organized Crime in terms of criminal law, Proceedings of the Seventh Hellenic Conference, Athens 2000, Greek Association of Penal Law, p. 17, and pp. 33–34 and Lambros D. Karabelas, The legislative and case-law dealing with organized crime: organized crime from the perspective of criminal law, Proceedings of the Seventh Hellenic Conference, Athens 2000, Greek Association of Penal Law, p. 157.

world that were previously involved in the illegal trade of arms and drugs¹⁵ have become active in human trafficking by exploiting modern means, such as the Internet,¹⁶ in order to facilitate trafficking and the subsequent exploitation of human beings.

We could briefly summarize the specific types of human trafficking in the following categories:

- a. Trafficking of immigrants with economic exploitation being the main reason for their transport. The perpetrators exploit the future-immigrants' need to overcome transportation difficulties—posed by distance and prevention measures taken by host countries—thus undertaking or facilitating their transfer. However, immigrants are usually asked to pay huge sums of money in exchange for their transport to their desirable destination country. On the other hand, illegal immigration as a phenomenon that usually affects various aspects of the host country's socio-economic status quo, poses an additional threat to the public order of the host country itself. That is, uncontrolled entry into the host country of people who may be involved in criminal activities in their country of origin could create an atmosphere of fear related to what is often referred to as “imported crime.”¹⁷
- b. The exploitation of immigrants while they are job hunting. Human trafficking criminal networks, after the smuggling of immigrants is completed, often continue to exploit them while they are looking for a job, providing them with the so-called protection or mediation. That is, human traffickers often take advantage of immigrants' ignorance of the host country's language, the local customs and habits, the legislation and so on and so forth and often demand an additional amount of money to offer their assistance so that immigrants could overcome these obstacles.
- c. The exploitation of the work of immigrants. In this case, the perpetrators employ and exploit immigrants' labor themselves by offering lower salaries, keeping them

¹⁵See data published by the Ministry of Citizen Protection, on the website: <http://www.ydt.gr/main/Section.jsp?SectionID=10101>. According to an article in Kathimerini on 8/12/2006 under the title: “32 billion dollar profits of the networks,” the profits of slavery are estimated at more than 32 billion dollars annually. Article available at http://news.kathimerini.gr/4dcgi/_w_articles_world_2_08/12/2006_208161

¹⁶According to an article published in Kathimerini on 24/12/2006 under the heading “booming cybercrime” 2006 was the first year in which incidents of movement (trafficking) of minors from country to country were recorded. Websites catering to the needs of pedophiles were numbering several thousand subscribers. Moreover, according to the report, prostitution through Internet websites was a new booming trend and fees for trafficking famous models across Europe for sexual exploitation could be as high as € 4,500 per trafficked person. Two women of Czech origin were arrested at a central Athens hotel, and during their interrogation they confessed that they had earned a total of \$ 60,000 in 3 weeks. The head of the criminal network was residing permanently in the Czech Republic and was coordinating the whole network company using his personal computer.

¹⁷Lambros Sofoulakis The “illegal migration” on the continent during the last 5 years, and especially its relationship to other forms of “cross border” crime Poiniki Dikaiosini Journal 1 / 2005, p. 84 ff.

without insurance or forcing them to work under inhumane and unsafe conditions.¹⁸ Members of these trafficking networks, using force, fraud, or coercion, manage to recruit, harbor, transport, obtain, or employ a person for labor or services in involuntary servitude, peonage, debt bondage or slavery. Victims can be found in domestic situations as nannies or maids, sweatshop factories, janitorial jobs, construction sites, farm work, restaurants, or even panhandling.¹⁹

- d. The trafficking of women for sexual exploitation. The perpetrators take advantage of the demand for sexual services in host countries and the labor supply of young women from poor countries. Sex trafficking usually takes place in a variety of public and private locations such as massage parlors, spas, strip clubs, and other fronts for prostitution.²⁰ Victims may start off dancing or stripping in clubs and are often coerced into more exploitative situations of prostitution and even pornography. Most of these women live in conditions of substantive slavery, literally incarcerated in houses, suffering food deprivation and subjected to systematic physical and psychological violence.
- e. Trafficking in human beings in order to facilitate trade in human organs. The global demand for human organs has set the stage for an exploding and poorly understood global business in human organs. The perpetrators take advantage of the increased global demand for human organs used for transplantation in violation of the relevant domestic and international laws and treaties. Victims of human trafficking, often living under inhumane conditions, identify themselves as members of socially excluded groups, and are prone to becoming victims of trafficking in human organs.²¹
- f. The trafficking of children for sexual exploitation. In this case, the perpetrators take advantage of the demand expressed by adults for sexual services by children
- g. Black market adoption is another form of human trafficking which emerged over the last decade fostered by the increasing demand from childless couples²² combined with the growing number of foreign orphans available, as a result of wars, failed states and devastating socio-economic changes.

The above mentioned categorization makes it clear that the crime of trafficking itself is directly related to the exploitation, either financial or sexual, of human beings. The absence of the element of exploitation leads to other types of crime.²³

¹⁸ Patrick Besler, *Forced Labour and Human Trafficking: Estimating the Profits*, working paper (Geneva, International Labour Office, 2005). Retrieved from <http://digitalcommons.ilr.cornell.edu/forcedlabor/17> at February 17th 2012.

¹⁹ Article on newspaper Kathimerini on 25.10.2006, under the title “Criminal networks, human trafficking and panhandling.” Available at news.kathimerini.gr

²⁰ Lara Fergus, *Trafficking in women for sexual exploitation*, Published by the Australian Institute of Family Studies (online) <http://www.aifs.gov.au/acssa/pubs/briefing/b5.html>. Accessed on February 11, 2012.

²¹ Costas Kosmatis, The “vulnerable” or “socially excluded” groups as victims of the commodification of human organs, *Poiniki Dikaiosini Journal* 3 / 2005, p. 348 ff.

²² For a more formal treatment of supply and demand functions in this market, see Gillian Hewitson, “The Market for Surrogate Mother Contracts,” *The Economic Record*, 73 no. 222 (September 1997) p. 212–224.

²³ A. Sykiotou, The concept of victim in trafficking, *Poinika Chronika Journal* 2006, vol. 1, p. 684–693.

International Legislative Instruments

The UN

There is a wide consensus that the role of transnational organized crime in the trafficking of people is growing.²⁴ As smuggling and trafficking-related activities take place in numerous countries, governments cannot successfully combat these offences in isolation. In addition, many countries lack specific provisions to deal adequately with these issues. For this reason, the international community has begun a concerted effort to thwart international criminal networks.

The first legislative efforts to address the international phenomenon of slavery had been undertaken by the League of Nations at the relevant convention on slavery.²⁵ (According to this Convention, the signatory states undertake the obligation, derived from Article 2, to prevent and suppress the trafficking of slaves (as defined in Article 1 paragraph 2 of the Convention thereof) and achieve the complete elimination of slavery (as defined in Article 1 paragraph 1 of this convention).²⁶

This ratification was considered necessary given that, in the meantime, the UN replaced the League of Nations. As a result, the legal instruments developed by the League of Nations with this Convention, were now under the auspices of the successor organization, the United Nations. The inhuman institution of slavery, which affects human freedom and the dignity of human nature alike, was eventually prohibited by a series of legislative texts adopted by the UN. Thus, article 4 of the Universal Declaration of Human Rights prohibits slavery, in whole or in part, and the conduct of the slave trade. Furthermore, with the Multilateral International Geneva Convention of 07.09.1956, which was also adopted under the UN auspices.²⁷ States sought to efficiently address the problem of slavery, after having attempted to abolish other aspects of slavery and slave trade.

The most recent and comprehensive effort to address the crime of trafficking, as it appears today, took place with the Protocol of the UN “for prevention, combating and punishing of trafficking in persons especially women and children,” signed on 12/12/2000 in Palermo,²⁸ including the UN Convention against Transnational

²⁴http://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf

²⁵ The convention was adopted on 25.09.1926, ratified by Greece with Law 4473/1930 (Gov. 62/26-2-1930 A).

²⁶ The Convention was amended by the Protocol of 12.07.1953, signed in New York and was ratified by Greece with Law 2965/1954 (194/23-8-1954).

²⁷ The convention was ratified by Greece with Law 1145/1972—Government Gazette 105/30-6-1972.

²⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime—Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000. Available at <http://www2.ohchr.org/english/law/protocoltraffic.htm>

Organized Crime. The Protocol is only applied to crimes with a transnational character, which are committed by a criminal network. Article 3 of the Protocol, which is particularly interesting when it comes to definitional issues, provides a clear and coherent definition of trafficking in human beings.

Human trafficking is defined²⁹ as “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”³⁰

International Labour Organization

The General Assembly of the International Labour Organisation signed the International Labour Convention No. 29 on 06.28.1930 (which was ratified by Greece with Law 2079/1952, Government Gazette A 108/13-6-1952). According to the Convention, each Contracting State was bound to the immediate abolition of forced labor for the benefit of employers, companies or private legal persons (Articles 4 and 5 of the Convention). Moreover, contracting states undertook the obligation to work for the gradual abolition of forced labor within the shortest possible time (Article 1). In Article 2 of the Convention, the concept of forced labor is defined and extensive and detailed arrangements for the transitional period following the gradual abolition of forced labor in favor of the State are provided.

One of the forms of human trafficking discussed earlier, namely child labor exploitation was partially addressed by International Labour Convention No. 182 of 06.17.1999,³¹ (According to this Convention, each Contracting State is obliged to prohibit and eliminate the worst forms of child labor (Article 1 of the Convention), namely forbid employing people under the age of 18 (Article 2 of the Convention)). A definition of forms of labor exploitation is included in Article 3 of the Convention: namely, slavery, serfdom, forced recruitment of children, jobs that endanger workers’ health, safety or moral integrity of children or the use of children in illegal activities, as well as their sexual exploitation.

²⁹Article 3 of the Protocol. Available at <http://www2.ohchr.org/english/law/protocoltraffic.htm>

³⁰ See related translation of Athanasia P. Sikiotou at her book: *Trafficking in the Balkans, Victim, Offender and repressive strategies*, Publications Ant. N. Sakkoulas, Athens-Komotini, 2003, p. 124

³¹ Ratified by Greece by Law 2079/1952, Government Gazette 119/15-6-2001)

The Council of Europe

The European Convention on Human Rights and Fundamental Freedoms (ECHR), (ratified by Greece with Law 53/1974, Government Gazette 256/20-9-1974) prohibits any kind of detention in conditions of slavery or servitude and any forced or compulsory labor (Article 4). The specific interest of the Council of Europe to combat the modern criminal human trafficking was expressed in a series of recommendations, such as R (2000) 11 related to the action against trafficking for sexual exploitation,³² R (2001) 16 related to the protection of children from sexual exploitation,³³ R (2002) 1545 related to the campaign against trafficking in women,³⁴ R (2003) 1610 related to immigration concerning the trafficking of women and prostitution,³⁵ (2003) R 1611 on trafficking in organs in Europe³⁶ and culminated with the adoption of the Convention of Action against Trafficking in Human Beings, signed in Warsaw on 05.16.2005.³⁷ The Convention's objective is to establish a close cooperation among Member States of the Council of Europe in order to prevent and combat the phenomenon, while the convergence of national legislations would also be desirable. The Convention sets out in Article 4, the same definition of trafficking as that of Article 3 of Palermo Protocol and completes the regulation by including the UN Convention against Transnational Organized Crime. However, it has extensive references to the victim of human trafficking, which is the natural person who suffers the acts of trafficking, as these are defined in the same article (see Article 4 of the Convention).

In the EU

Following the Maastricht Treaty and the creation of the EU, the process of harmonizing norms is a new reality in the field of criminal law. This convergence occurred primarily in order to serve the immediate needs of building a common, if possible, criminal policy of the EU towards certain forms of crime. This need emerged as an outcome of the contemporary socio-political environment of Europe, because of the effective abolition of border and customs controls and the regime changes in Eastern Europe following the fall of the Berlin Wall and the collapse of the Soviet Union. So, the territory of the EU gradually became not only the first stop, but the main and desirable destination of thousands of immigrants from Eastern Europe. These people,

³²Full text available at http://www.coe.int/T/E/human_rights/trafficking/PDF_Rec%282000%2911_E.pdf

³³Full text available at http://www.coe.int/t/dg3/health/recommendations_en.asp

³⁴Full text available at http://www.coe.int/t/dg3/health/recommendations_en.asp

³⁵Full text available at http://www.coe.int/t/dg3/health/recommendations_en.asp

³⁶Full text available at http://www.coe.int/t/dg3/health/recommendations_en.asp

³⁷Full text available at <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

whose total number was added to the already large numbers of migrants from the developing countries (in Africa and Asia in particular) became part of the spread of human trafficking within the EU. Taking into account that human trafficking had all with the distinct characteristics of cross-border crime conducted by organized criminal networks, EU political bodies decided to adopt new rules applicable to all Member States in order to tackle the problem.

The general legal framework, which deals with forms of organized and cross-border crime at EU level, included the Joint Action 98/699/JHA on the identification, tracing, freezing, seizing, and confiscation of instrumentalities and proceeds of crime, the Joint Action 98/733/JHA on charges of involvement in criminal organization in EU Member States, the Joint Action 98/428/JHA establishing a European Judicial Network, the joint action 98/427 JHA on good practice in mutual legal assistance in criminal matters, which was also a series of specific legislative provisions related to the treatment against forms of trafficking. These legislative provisions also included:

- the Joint Action 96/700/JHA for a program of incentives and exchanges between those who are responsible for combating human trafficking and sexual exploitation of children, which would develop coordinated initiatives on combating human trafficking and sexual exploitation of children, child disappearances and the use of telecommunications for the purpose of trafficking, and sexual exploitation of children (Article 1),
- 7/154/JHA Joint Action on combating trafficking and sexual exploitation of children, which has already been repealed by Article 9 of No. 2002/629/JHA FD, and
- Joint Action 96/748/JHA on extending the mandate given to the Drugs Unit of Europol, with which the powers of Europol were expanded in relation to the exchange and analysis of data and information including crimes of trafficking, as long as two or more Member States are involved.³⁸ (proper citations for all these documents are needed)!

The convention for the establishment of Europol, which was ratified by Greece with Law 2605/1998 (Government Gazette A 88/22-4-1998), includes a definition of trafficking³⁹ that had been supplemented by Council Decision of 12/03/1998. This definition is broader than the corresponding definition in the Protocol of the UN, since there is no requirement of transport or facilitating entry of third country or committing an act of speculation⁴⁰ for committing the crime of trafficking.

³⁸ Full text of the Joint Actions available at <http://eur-lex.europa.eu/el/index.htm>

³⁹ “Human trafficking is the issue where the person find itself under the real and illegal sway of other persons who use violence, threats, misuse of a relationship of dependency or deceit, aiming in particular the exploitation of prostitution, other forms of sexual exploitation and violence of minors or trade of orphan children. These forms of exploitation also include the manufacturing, selling or any kind of distributing pornographic material, showing children.”

⁴⁰ See Athanasia P. Sikiotou, *Trafficking in the Balkans, Victim, Offender and repressive strategies*, Ant. Sakkoulas, Athens-Komotini 2003, pp. 133–134; see also Elizabeth Symeonidou-Kastanidou, *Organized Crime and Terrorism, Modern developments in European and Greek law*, Sakkoulas SA, Athens-Thessaloniki 2005, pp. 217–218.

The only condition is the mere inclusion of “illegal person in power of others” which seems to be the necessary element. According to this definition, the concept of trafficking includes cases of trafficking in babies as well, since the trafficking of abandoned children is mentioned in the definition without the prerequisite of labor or sexual exploitation.

The top legislative initiatives at the EU level to combat trafficking in human beings are the Framework Decision No. 2002/629/JHA of 19.7.2002 on combating trafficking in human beings,⁴¹ the Framework Decision No. 2004/68 / JHA 12/22/2003 to combat sexual exploitation of children and child pornography,⁴² and the Framework Decision 2002/946/JHA of 28 November 2002 on strengthening the legal framework to prevent the facilitation of unauthorized entry, transit, and residence.⁴³ These legislative initiatives, complement the respective legislation of the first pillar through Directive 2002/90/EC of 28 November 2002, in which is defined the facilitation of unauthorized entry, transit, and residence.⁴⁴

In 2002/629/JHA Framework Decision of 19.7.2002 on combating human trafficking, the definition of trafficking includes only labor and sexual exploitation (Article 1), omitting the protection of cases of trafficking in baby organ removal. It establishes a single threshold for protection of childhood, considering as a child in need of special protection, any person under 18 (Article 1, paragraph 4). This means, for example, that the use of fraudulent or coercive means for the termination of employment or sexual exploitation is not necessary in cases where the victim is a minor (Article 1 § 3). In Article 3, paragraph 2, there is a provision on aggravating circumstances, in the following cases:

- the life of the victim or the victim was particularly vulnerable (for example a minor), the circumstances caused particularly serious harm to the victim or
- the act was carried out by a criminal networks.

In Articles 4 and 5 Member States undertake the obligation to establish criminal liability for people responsible for crimes of trafficking and criminal sanctions against them as well.

For children in particular, namely persons below 18 years of age (Article 1 A 2004/68/JHA FD)⁴⁵ and for the crimes of sexual exploitation a comprehensive and satisfactory legal framework is suggested. The sexual exploitation includes forcing a child into prostitution or pornography, sexual activity with a child by force or by offering money or by other benefits or by abusing a position of power, under Article 2 of No. 2004/68/JHA Framework Decision of 22.12.2003,⁴⁶ while the Article 3,

⁴¹ L 203 of 1-8-2002, p. 1.

⁴² L 13 of 20-1-2004, p. 44.

⁴³ L 328 of 5-12-2002.

⁴⁴ L 328 of 5-12-2002.

⁴⁵ Full text available at <http://eur-lex.europa.eu/el/index.htm>

⁴⁶ Full text available at <http://eur-lex.europa.eu/el/index.htm>

refers to crimes of child pornography. Greek legislation has implemented these basic provisions in Articles, 348 A, 249, 350, 351 A of the Greek Penal Code.⁴⁷

In the first pillar of European Community and in accordance with Articles 61 and 63 paragraph 3 of Treaty of European Community (Title IV) Directive 2002/90/EC was adopted, which requires the application by the Member States of “appropriate sanctions” against those who intentionally assist a person or persons, who do not have the nationality of a Member State, to enter or transit the territory of a Member State in breach of the law of that State.

Following the decision of the ECJ 13/09/2005 Case C-176/2003⁴⁸ the “appropriate sanctions” may be penal in nature, in accordance with the relevant interpretation of the ECJ. (poorly written and confusing. It is better to eliminate) An additional element that leads to this conclusion is the obligation of Member States under Article 2 of Directive 2002/90/EC to take all necessary measures to implement the sanctions in Article 1 of Directive in case of inciting, abetting, and attempt. These “necessary measures,” can only be of penal nature since we are talking about incitement, complicity, and attempt.

Moreover, Article 1 of the Framework Decision 2002/946/JHA of the Council explicitly mentions the need for adoption of criminal sanctions against breaches of articles 1 and 2 of Directive 2002/90/EC by Member States, which indeed may apply to legal persons (Articles 3 and 4 of the Framework Decision). According to paragraph 2 of Article 1 of the Framework Decision 2002/946/JHA Member States can establish sub-sentences for those crimes, such as confiscation of the means of transport used to commit the crime, prohibiting the perpetrator from pursuing directly or through a third party the professional activity in which the offense was committed, and deportation.

⁴⁷Full text available at http://www.unodc.org/doc/enl/2010/Greece_Criminal_Code_Excerpts_Trafficking_in_Persons_R-2010-34.pdf

⁴⁸“*Framework Decision 2003/80 on the protection of the environment through criminal law, being based on Title VI of the Treaty on European Union, encroaches upon the powers which Article 175 EC confers on the Community, and, accordingly, the entire framework decision being indivisible, infringes Article 47 EU. Articles 1 to 7 of that framework decision, which entail partial harmonisation of the criminal laws of the Member States, in particular as regards the constituent elements of various criminal offences committed to the detriment of the environment, could have been properly adopted on the basis of Article 175 EC in so far as, on account of both their aim and their content, their principal objective is the protection of the environment, which constitutes one of the essential objectives of the Community. In this regard, while it is true that, as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community’s competence, this does not, however, prevent the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, from taking measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective. That competence of the Community legislature in relation to the implementation of environmental policy cannot be called into question by the fact that Articles 135 EC and 280(4) EC reserve to the Member States, in the spheres of customs cooperation and the protection of the Community’s financial interests respectively, the application of national criminal law and the administration of justice.*” Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0176:EN:NOT> on June 19th 2012.

In paragraph 3 of Article 1 of the Framework Decision 2002/946/JHA a distinct form of crime is introduced and applied in cases when crimes defined in article 1 paragraph 1 and 2 Directive 2002/90/EC, are committed for financial gain, or as part of the function of a criminal organization as defined by the Joint Action 98/733/JHA.⁴⁹ In case such a crime is committed, the maximum term of imprisonment cannot be less than 8 years or, where it is necessary for the consistency in the national system of penalties (Article 1 paragraph 4 of the Framework Decision 2002/946/JHA of), the maximum term cannot be less than 6 years.

Initiatives in the Balkans Area

In the aftermath of four Yugoslav wars, ongoing efforts at reconstruction in Southeastern Europe have devoted relatively limited attention to dimensions of human security that enhance protections for the region's most vulnerable populations in their daily lives. It is in this context that Southeastern Europe, and especially the Western Balkan region, has emerged as a nexus point in human trafficking.⁵⁰

To address the emerging problem of human trafficking, various initiatives took place in the Balkans area, originating both from State entities as well as from NGOs or private actors. Such an initiative was the one undertaken by the NGO CARE. The project, called "Combating Human Trafficking Initiative in B&H, Croatia, Serbia and Montenegro" (2006–2008)⁵¹ was a regional, multicountry initiative to build the capacity of key NGOs and anti-trafficking networks to support the implementation of the national anti-trafficking strategies, particularly the components that focus on prevention, education, and awareness. The project supported the development of networks of NGOs in four countries in Southeastern Europe.⁵² The project aimed to strengthen the capacity of civil society organizations, specifically grassroots women's rights advocacy organizations, in regionally and nationally coordinated actions to prevent human trafficking and gender-based violence (GBV).⁵³

⁴⁹ L 351 of 29-12-1998, p. 1.

⁵⁰ Richard Friman, Simon Reich, Human Trafficking, Human Security, and the Balkans. University of Pittsburgh Press, 2007, p. 45ff.

⁵¹ <http://www.carenwb.org/index.php?sadrzaj=1&task=viewsubcat&skid=8&catid=3> Accessed on February 23 2012

⁵² <http://www.carenwb.org/index.php?sadrzaj=1&task=viewsubcat&skid=8&catid=3> Accessed on February 23rd 2012

⁵³ Other NGO initiatives include La Strada Foundation, International Catholic Migration Committee (ICMC), Transnational AIDS/STD Prevention Among Migrant Prostitutes in Europe (TAMPEP), Save the Children, International Research and Exchanges Board (IREX), and many other Local nongovernmental organizations.

As far as regional law-enforcement initiatives are concerned, during its existence, Southeast European Cooperative Initiative (SECI)⁵⁴ supported specialized Task Forces combating trafficking in human beings and drugs, commercial fraud, and stolen cars. The SECI Illegal Human Beings Trafficking Task Force was established in May 2000 on the initiative of the Romanian Government and comprises the Regional Task Force and the Regional Coordinator. The regional structure was supported by the local structures. National Task Forces in all SECI countries are headed by National Coordinators (not yet appointed in some of the countries). The Task Force operated through liaison officers, from all participating countries, working out of the SECI Centre in Bucharest. The liaison officers were in permanent contact with their national authorities through their respective designated National Focal Points, which communicate directly with the National Coordinators and the National Trafficking in Human Beings Squads.⁵⁵ In September 2002, SECI organized one of the largest regional anti-trafficking actions, called Operation Mirage, which resulted in over 20.000 police raids in bars, hotels, nightclubs, and border points in Bosnia-Herzegovina and Kosovo; 293 traffickers were identified, several of whom were tried in Bosnia-Herzegovina, in Serbia, and in Kosovo.⁵⁶

Additionally, there are a number of international agencies working on the issue of human trafficking in the Balkan region. The most active include the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe (CoE), the International Organisation for Migration (IOM), The UN High Commissioner for Human Rights (UNHCHR), United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the UN High Commissioner for Refugees (UNHCR), International Labour Organisation (ILO), International Centre for Migration Policy Development (ICMPD), and the International Migration Policy Programme (IMP). Overall, these organizations are engaged in a number of activities to combat trafficking in human beings, including in the fields of law enforcement, public awareness, research, training and support for NGOs. However, an analysis of the role of these organizations is beyond the scope of this paper.

⁵⁴ SECI, the Regional Centre for Combating Organised Crime was established as a result of the Agreement of Cooperation to Prevent and Combat Trans-border Crime, an agreement on cooperation between the law-enforcement agencies, signed by the SEE countries. In October 2000, Romania and SECI signed the Headquarters Agreement between the SECI Centre and Romania, which entered into force in April 2001 and the SECI Centre became operational in November 2000. <http://www.secicenter.org/> Accessed on February 25th, 2012. In October 2011, and after the entering into force of the Convention of the South East European Law Enforcement Center (SELEC), SECI was replaced by SELEC.

⁵⁵ Southern European Cooperative Initiative, SECI information materials, Bucharest, 2001. Retrieved from <http://www.secicenter.org/>

⁵⁶ Richard Friman, Simon Reich, Human Trafficking, Human Security, and the Balkans. University of Pittsburgh Press, 2007.

Conclusion

It is clear that combating human trafficking involves various aspects relating to victim protection, law enforcement, and prevention as well. Legislative efforts are just one of the factors that play a role in dealing with the problem itself.

However, the analysis of this approach highlights the need for a new definition of trafficking, both nationally and internationally. This definition will look at trafficking, as a phenomenon, from a sociological and criminological perspective. Apart from any legislative initiative or law amendment, substantial success in combating the phenomenon of trafficking can only be achieved by a comprehensive socio-political and ideological reconstruction that will focus on human beings themselves.

Which institution or international organization could spearhead the effort to curtail the human trafficking problem in Europe? Undoubtedly, the European Union must recognize that human trafficking is a serious human rights issue and should hold member states and prospective member states accountable for prevention initiatives in accordance with the Charter of Fundamental Rights.⁵⁷ The EU should insist that the prospective Western Balkan states improve their records on prosecution and punishment. This improvement should not only include legislative efforts but structural reforms as well; for example, closer and more effective cooperation between law-enforcement agencies. A good start towards this direction could be the strengthening of SECI.

Similarly, in a more proactive approach, the EU should support local initiatives to address the root causes of trafficking such as domestic violence and low economic opportunities, especially during times of economic turmoil and insecurity that could fuel the root causes of human trafficking.

That being said, before attempting to implement any proposed solutions, legislative amendments or other reforms one should never forget that the causes of trafficking are complex. While there are numerous contributing factors, including mass unemployment in many countries of origin, inequality, discrimination, and gender-based violence in our societies, the patriarchal structures in the countries of origin as well as destination; the demand side including the promotion of sex tourism in many countries of the world, and the attitudes of many of men, the primary root cause is poverty, most particularly among women.

Having said that, significant progress towards solving the problem of such exploitation can only be achieved if we commit ourselves towards changes and actions that aim to address the root causes of the problem. This would entail, cooperative actions at the international level combined with transnational initiatives to reduce unemployment and poverty and by strengthening, the role of women and the protective framework for minorities. In other words, we have no alternative but to

⁵⁷Kate DeBusschere, *Chasing Human Traffickers in the Balkans: the EU Must Ask for More*. *Zahraničná politika* 4/2007. Retrieved from <http://www.zahranicnapolitika.sk/index.php?id=475>

engage with the root causes, no matter how complex, difficult and forbidding they may be. Anti-trafficking initiatives must offer sustainable options for escaping the cycle of poverty, abuse, and exploitation.

Last but not least, concerning the law-enforcement cooperation in the field of anti-trafficking of human beings, the following points should be borne in mind: firstly, coordinating the efforts of law-enforcement agencies has not been and is not an easy task.⁵⁸ Additionally, effective law enforcement at the international level is essential in combating trafficking of human beings, both at the level of prevention (through intelligence exchange) as well as that of suppression (through arrests, raids, and other operational tools). International partners, such as Interpol, Europol, and the World Customs Organization, as well as regional partners such as Europol and the SECI should actively participate in conferences, meetings, and specialized workshops, in order to advance the implementation of local, regional, and international legislation on human trafficking, as well as to build trust and share best practices.

It is widely accepted that cross-border cooperation between national and international law-enforcement agencies is necessary for an effective criminal justice response to trafficking.⁵⁹ Among others, such an approach could include carrying out joint anti-trafficking special campaigns or exercises aiming to increase communication, improve mutual trust, and establish mechanisms for frequent meetings among law-enforcement agencies. After all, what we have learned from various forms of crime (including forms of transnational crime such as human trafficking) is that ongoing police cooperation is vital: before, during, and after every unlawful activity.

To sum up, what is required in the fight against human trafficking is more and better disaggregated information, appropriate legislation, adequate law-enforcement response, (including close cooperation), the protection of victims of human trafficking, improved coordination among countries of origin, transit, and destination — and, last but not least, political will.

⁵⁸ <http://www.fas.org/irp/crs/RL30252.pdf>. Accessed on February 24, 2012.

⁵⁹ Anne T. Gallagher and Paul Holmes. “Law Enforcement Cooperation in Anti-trafficking Cases” *Crossing Borders: Promoting Regional Law Enforcement Cooperation*. Australian National University, Canberra. Apr. 2009. p. 34ff.