



Organization for Security and Co-operation in Europe

**Office of the Special Representative and Co-ordinator
for Combating Trafficking in Human Beings**

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“A Decade of the Trafficking in Persons Report”

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Honourable Chairperson/s,
Distinguished members of the Commission,

I am delighted and honoured to testify today before the Helsinki Commission of the United States Congress in my capacity as the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

This session is mostly dedicated to the U.S. *Trafficking in Persons Report*, issued a few weeks ago by the State Department's Office To Monitor and Combat Trafficking in Persons, led by Ambassador Luis CdeBaca. First of all, I would like to underline that in the daily work of my Office, the *Trafficking in Persons Report* constitutes an extremely valuable source of up-to-date information. We welcome the inclusion of the United States of America as a country of assessment. For the first time the Report gives us an overview of what is going on in one of the largest destination countries, and one of the most active in the global fight against trafficking.

Since 2000, the OSCE has adopted important political commitments on an almost yearly basis to continually strengthen our efforts to combat trafficking in human beings. In 2003, the position of Special Representative and Co-ordinator for Combating Trafficking in Human Beings was established as a high-level mechanism to promote the implementation of OSCE commitments in the 56 participating States.

The mandate of the Special Representative is to work with the governments and representatives of the Parliaments and judiciary of the participating States; to catalyze the exchange of best practices; to provide technical assistance when requested, especially in the field of training and capacity building; and to report on anti-trafficking developments in the OSCE region.¹

Today, I would like to touch upon two issues: the state of play in the struggle against trafficking in human beings, and the challenges we still have to face. In my assessment of this state of play I will take into account four elements: governmental action; the protection of victims' rights; and the nature of trafficking in human beings both as organized crime, and as a transnational threat to security.

1. Assessment of the state of play

1.1. Governmental action.

It is undeniable that many efforts have been made by governments of the participating States throughout the OSCE region during the past decade, with the fundamental contribution of NGOs, as well as with the support of international organizations including the OSCE Office of the Special Representative and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) promoting a comprehensive, human rights based approach to combating trafficking in human beings.

¹ OSCE Ministerial Council, *Decision No. 3/06 Combating Trafficking in Human Beings*, MC.DEC/3/06 (21 June 2006).

In 2010, the international community is celebrating the 10th anniversary of the Palermo Protocol. In the OSCE context, this coincides not only with the 10th U.S. *Trafficking in Persons Report*, but also with the 10th anniversary of the first OSCE Ministerial Council Decision dedicated to combating trafficking in human beings.²

Over this important decade, there have been many visible and encouraging achievements. The key indicators of the level of political will include the ratification of international instruments, the adoption of national legislation, the establishment of national anti-trafficking mechanisms, and the allocation of adequate financial and human resources for their implementation.

Concerning the ratification of international instruments, the Palermo Protocol to the United Nations Convention against Transnational Organized Crime has been ratified since its adoption in 2000 by all but five OSCE participating States.³ At the regional level, the Council of Europe Convention on Action against Trafficking in Human Beings (2005), in force since 1 February 2008, has been ratified by 29 Council of Europe member States to date and has been signed by 14 others.⁴

Over the past ten years, 52 out of the 56 OSCE participating States have integrated anti-trafficking legislation into their national legal framework and only four countries remain without specific legal provisions on combating trafficking in human beings.

Another important indicator of the political will is the establishment of anti-trafficking machinery and the allocation of sufficient resources to make it function. A study published by the OSCE in late 2008 provides illustrative data about governments' assumption of responsibility to tackle human trafficking through the establishment of National Co-ordination Mechanisms, National Action Plans, and National Monitoring and Reporting Mechanisms.⁵

According to this OSCE study, 58.4 per cent of the responding OSCE participating States have set up anti-trafficking National Co-ordination Mechanisms or similar inter-ministerial bodies to co-ordinate activities among State agencies and NGOs. However only 30.8 per cent

² OSCE Ministerial Council, *Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings*, MC(8).DEC/1 (28 November 2000).

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000), <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en>, accessed 1 July 2010.

⁴ Council of Europe, *Convention on Action against Trafficking in Human Beings*, CETS No. 197 (16 May 2005), <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=&CL=ENG>>, accessed 1 July 2010. Furthermore the OSCE MC Decision No. 13/05 *Combating Trafficking in Human Beings* (MC.DEC/13/05, 6 December 2005, Ljubljana) calls on participating States to consider signing and ratifying where appropriate the Council of Europe Convention. All Council of Europe member States are OSCE participating States, and non-Council of Europe member States are also welcome to become party to the Convention.

⁵ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms* (Vienna, 13 November 2008). The study is based on data about 56 OSCE participating States and 11 Partners for Co-operation. Because 34.3 per cent of countries did not respond to the questionnaire, more participating States and Partners for Co-operation may have established anti-trafficking machinery than is reflected in these data.

of the countries indicated that there was a budget to support this work. It is also interesting to note that 61.5 per cent responded that they included civil society participation in the National Co-ordination Mechanism. The roles played by NGOs range from observational or advisory through to decision-making.⁶

Furthermore, National Action Plans have emerged as a useful tool in enabling States to set strategic priorities and outline concrete actions, and to allocate resources and set benchmarks to ensure visible results for their efforts. According to the survey, 53.7 per cent of the responding countries have a National Action Plan or an equivalent co-ordinated policy/programmatic response. However, most admitted that inadequate budgetary funding was one of the major challenges for the implementation of effective responses.⁷

It should be noted that 38.8 per cent of countries in the OSCE area have also established National Rapporteur or equivalent mechanisms for monitoring State anti-trafficking activities, the implementation of national legislation, and to develop evidence based policies. However, 61.5 per cent reported that no budget was allocated to the mechanism.⁸ These mechanisms are intended to build knowledge on the scope of the problem, reveal new patterns and trends, and identify policy gaps. Their functioning is clearly also challenged by the lack of funding and resources. Such transparent national reporting and monitoring mechanisms should be a critical voice in assessing government policy and its anti-trafficking actions.

The OSCE survey also recorded many achievements reported by countries through the establishment of such anti-trafficking structures, including: raising public awareness and understanding by policy makers and legislative reform; improving co-operation among stakeholders; being able to provide better statistical knowledge and understanding of trafficking in human beings on the basis of concrete evidence; ensuring increased training and educational activities; and while there is much more to do, the improved identification and protection of victims of trafficking.

At the regional level there are also examples of increasing co-operation which leads to the adoption of regional action plans, such as the 2005 EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings, or the CIS Program of Co-operation to Combat Trafficking in Human Beings (2007-2010). Another regional good practice is the development of Transnational Referral Mechanisms for the protection of trafficked persons, an effort which builds on the OSCE/ODIHR work on national referral mechanisms.⁹

Although numerous good practices exist in the OSCE participating States, a significant gap between regulation and actual implementation has been highlighted.

⁶ OSCE, Op. Cit., p. 28, 29, 34, 50, 51.

⁷ Ibid., p. 54, p. 68.

⁸ Ibid., pp. 74-79.

⁹ The International Centre for Migration Policy Development, through the support of USAID and the European Commission, has been supporting Transnational Referral Mechanisms in South-Eastern Europe and in the European Union to develop cross-border referral, assistance and support mechanisms, including all concerned state and non-state actors, to ensure comprehensive and effective assistance and protection for trafficked persons, in line with a human rights based approach.

In the EU over the last decade, according to the European Commission, there has been a process of approximation of legislation in both the criminal and victim support fields; and while National Co-ordination Mechanisms have been set up in most countries, reporting and monitoring mechanisms still need to be improved. Implementation is, however, lagging behind with low numbers of criminal proceedings, e.g., a total of 1,569 investigations recorded in 2006, with significant gaps in victim identification, granting of reflection period, assistance, protection, compensation, and police risk assessment before return.¹⁰

Certain shortcomings in implementation have been recognized at the regional level in the CIS as well. For example, according to the CIS officials, “significant efforts undertaken for the realization of the CIS Program should be considered as a starting point”.¹¹ Not all CIS member States, however, have adopted specific anti-trafficking laws and National Action Plans (trafficking in human beings was criminalized in every CIS country, though its definition is not always comprehensive and does not always comply with the Palermo Protocol). Some countries failed to identify an agency responsible for the implementation of the Trafficking Protocol, even though it was envisaged by the CIS Program of Co-operation. A few countries still do not have a National Co-ordinating Mechanism which would engage civil society in its activities. Although in 2008 the CIS Inter-Parliamentary Assembly adopted Recommendations on Unification and Harmonization of National Legislation of CIS member States in the field of Combating Trafficking in Human Beings, the Model legislation¹² and other measures elaborated and approved by the CIS member States are not fully translated into practice at the national level.

To conclude on the results of government action in the OSCE area, my general assessment is that political will to combat trafficking in human beings has been increasing over the last ten years. However, despite the progress, concrete actions are not always consistent with declarations, especially in terms of resources allocated, capacities developed and actual implementation.

1.2. The protection of victims' rights

¹⁰ Commission of the European Communities, *Commission Working Document, Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, COM(2008) 657 final (Brussels, 17 October 2008).

¹¹ “Improving International Co-operation in Combating Trafficking in Human Beings”, Report, IOM-CIS Executive Committee-Sida-EC International Conference, Moscow, 29-30 September 2009 (in Russian), p. 33.

¹² For example, the Model Law on “Providing Assistance to the Victims of Trafficking in Human Beings” recognizes the full responsibility of the state to protect the human rights and legitimate interests of the victim. It guarantees the protection, restoration of rights and interests of the victim, as well as minimal standards of assistance and protection; differentiates the volume of services for social adaptation and rehabilitation; prioritizes the protection of the rights and interests of children-victims of trafficking in human beings irrespective of their collaboration with the law enforcement; contains a non-punishment clause for the victims with regard to offences committed as a result of their status as a victim of trafficking, guarantees access to justice free of charge, confidentiality of personal data, partnership of State with NGOs, international organizations and other actors in providing assistance to the victim of trafficking. It has the definitions of the victim of trafficking, of its legal status irrespective of its nationality, procedural status, activities in the period prior to victimization, its consent, or readiness to co-operate with the law enforcement. The Law envisages the establishment of a State Fund for providing assistance to the victim of trafficking (Ibid.).

Trafficking in human beings is modern-day slavery. Trafficking is one of the most appalling violations of the fundamental rights, dignity and integrity of a person, and constitutes a serious crime against an individual. The appropriate protection of trafficked persons – including their identification, assistance, and access to justice – remains among the most pressing challenges to anti-trafficking policy and action.

Trafficked persons are moved into unfamiliar and isolated environments where they are sexually exploited or forced to work under threat or coercion, often to pay back an insurmountable debt in conditions that amount to slavery. Both national investigations on trafficking in human beings and NGO service providers confirm that trafficked persons are increasingly subjugated through subtle means of coercion, deception, and psychological control or abuse. Additionally, the power of threats of detention and deportation should not be underestimated as a means of control.

The consequences of the abuses trafficked persons endure have a long term impact on their physical and psychological health, as well as on their social and economic well-being. Trafficked persons often contract very serious infections (e.g., tuberculosis, or HIV/AIDS or other sexually transmitted infections) and traumatic injuries, even mutilation, and they often suffer post traumatic stress disorder. Research on the health consequences of trafficking in human beings shows that trafficked persons share a very similar profile to victims of torture: the lack of control over their situation and the unpredictability of the events – often over a long period of time – progressively disable the individual’s instinctive ability to respond appropriately to situations.¹³

The lack of understanding regarding the health consequences of trafficking has a negative impact on case investigation and victim identification. This is especially true given the widespread culture of disbelief that trafficked persons frequently encounter, with authorities challenging their victimhood or treating them as suspects, detaining them and deporting them even in situations potentially deserving international protection.¹⁴

The rate of victim identification is extremely low compared to the estimated massive scale of trafficking, especially with regard to trafficking for labour exploitation.¹⁵ Trafficked persons are often either not identified at all as victims of crime or are misidentified as irregular migrants and expelled. This alarming situation appears to be confirmed by the recent efforts of the International Labour Organization to capture trafficking through national household surveys in three pilot countries; the study reveals that “around five per cent of the surveyed population of returned migrant workers has been trafficked for forced labour while working abroad” and returned without being identified as victims.¹⁶

¹³ Zimmermann, C., Hossain, M., et. al., *Stolen Smiles. The physical and psychological health consequences of trafficking in women*, The London School of Hygiene & Tropical Medicine (2006), <<http://www.lshtm.ac.uk/genderviolence>>, accessed 1 July 2010.

¹⁴ Pearce et al., *Breaking the wall of silence: Practitioners’ responses to trafficked children and young people*, National Society for the Prevention of Cruelty to Children (NSPCC) (2009).

¹⁵ The 2010 U.S. *Trafficking in Persons Report* estimates that the ratio of victims identified compared to the estimated victims is only 0.4 per cent.

¹⁶ The national household surveys were conducted in three countries (Moldova, Georgia and Armenia) in co-operation with the national bureaux of statistics, and were based on the DELPHI methodology. The outcomes of the survey will be published by the International Labour Organization. See B. Andrees, Speaking notes at the

Victim support programmes have been established in numerous OSCE participating States thanks to the tremendous work of NGOs. Yet these programmes usually reach out to limited numbers of victims, are predominantly geared towards victims of sex trafficking, and are of short-term duration. Social services and support schemes are limited and do not provide protection to victims of all forms of trafficking, e.g., people trafficked for agricultural, construction or other exploitative labour, and children or elderly people forced into begging or pick pocketing. There is still a lack of adequate and regular state funding for such social services, as well as the capacity to address all forms of trafficking.

Access to justice is hampered by a lack of professional legal counselling and representation to trafficked persons to claim their rights and access remedies. In particular, the right to compensation is a crucial element of an empowerment strategy; only a small minority of victims, however, actually receive compensation for damage suffered.¹⁷

Another critical protection issue is the question of safe and voluntary return of trafficked persons. In the vast majority of countries, trafficked persons must return to their country of origin after criminal proceedings, although they have acted as witnesses, and only occasionally are they granted a residence permit to stay on humanitarian grounds. This is a major obstacle that prevents victims from coming forward and reporting the crime. In terms of viable alternatives and chances for compensation, there is little on offer. Furthermore, trafficked persons may face a real risk of suffering serious harm if returned to their country of origin without appropriate risk assessment procedures.¹⁸ Several national reports indicate that the risk of re-trafficking may be as high as 30 per cent of identified victims.¹⁹

The limited scope of assistance frameworks, combined with the conditionality of such assistance on co-operation with the authorities or testimony in criminal proceedings, as well as the prevailing interests of immigration control, can lead many victims to lose hope and to believe that they have no viable option but to continue to submit to their exploiters.

1.3. Trafficking as transnational organized crime

Being an integral part of organized crime, trafficking in human beings – irrespective of tremendous efforts undertaken by the international community – has reached a massive scale and has become a serious transnational threat to security.

European Parliament, Seminar on Combating and Preventing Trafficking in Human Beings: The Way Forward, Brussels, 10 June 2010.

¹⁷ OSCE/ODIHR, *Compensation for Trafficked Persons in the OSCE Region* (2008).

¹⁸ When conducting risk assessments, the question is not simply whether there are organizations in the country of origin that could help the trafficked person, but whether there is a real risk of harm on return, including a risk of reprisal by traffickers; whether local authorities can protect the person from intimidation and violence; whether the person may be prosecuted for act(s) stemming directly from the trafficking process; and last but not least, whether local services have adequate capacity to support and sustain the social inclusion of the trafficked person, given also the serious and frequent stigmatization; see UNODC, *Model Law against Trafficking in Persons* (Vienna, 2009), pp. 78-79.

¹⁹ For example, the Dutch National Rapporteur reported that one third of the women identified as victims of trafficking have been victims on multiple occasions; see ODIHR, *Report of Expert Meeting on Human Rights Protection in the Return of Trafficked Persons to Countries of Origin* (June 2009), p. 6.

It is true that some forms of trafficking can be carried out by individuals, for example trafficking for the purpose of domestic servitude, and in more limited terms trafficking for sexual exploitation. However, trafficking nowadays is mostly a business of organized crime. In 2009, Europol reported that trafficking for labour exploitation is increasing, principally in the sectors of construction, drug production, and forced begging.²⁰ It is also taking place in agriculture, fishing, food processing and the textile industry, as well as in households, and in restaurants and the hospitality sector more generally. Other forms of exploitation occur in a purely organized crime context, such as forced begging, pick pocketing, and the receiving and selling of stolen goods and drugs.

According to the International Labour Organization, there are a minimum of 2.45 million victims of trafficking globally, of which at least half a million are in the OSCE area.²¹ The total illicit profits produced in one year by trafficked persons are estimated to be about US \$32 billion, a profitable criminal business based on the exploitation of millions of people across the globe that have become mere commodities in the informal economy of forced labour.²²

Various law enforcement agencies and scholars have recently highlighted the character of organized crime networks which mostly run the trafficking process. Europol talks about “criminal hubs”, complex configurations which shape criminal markets in large parts of the EU. Internationally recognized scholars have recently carried out a business model analysis on trafficking, under the auspices of OSCE and UN.GIFT.²³ They highlighted that trafficking in human beings may involve different types of organized crime ranging from highly structured international trafficking networks to loosely connected clusters of people, together forming a very flexible and specialized trafficking network. Each node in a network consists of a specific function of the operation and is usually completed by specialists. Contacts between the nodes operate along the line of business relations.²⁴

There is general agreement that trafficking is predominantly run by these extremely flexible and sometimes specialized networks, which simultaneously carry out different types of crime. These loose networks are no less dangerous than the traditional hierarchical criminal groups. On the contrary, these new criminal clusters display a stronger capacity to adapt the *modus operandi* of each specialized cell to both the market and the institutional anti-trafficking response, and therefore their increasing criminal power should not be underestimated.

Furthermore, linkages between trafficking in human beings and other types of crimes are increasingly reported. UNODC estimates that some 20 other serious crimes are usually related to trafficking.²⁵ Two such notable crimes are corruption and money laundering.

²⁰ Europol, *OCTA 2009 EU Organised Crime Threat Assessment*.

²¹ ILO, *A Global Alliance against Forced Labour* (Geneva, 2005).

²² Ibid.

²³ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (and UN.GIFT), *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010).

²⁴ Institute for International Research on Criminal Policy, Ghent University, *Organised Crime Involvement in Trafficking in Persons and Smuggling of Migrants* (2010), p. 38.

²⁵ UNODC, *Toolkit to Combat Trafficking in Persons* (2008).

Corruption is a major driver of trafficking in human beings. According to a recent study on trafficking and security, state officials were found to be involved in trafficking in numerous investigated cases in a number of countries. In addition to breaking the law, such officials are at risk of being blackmailed, and persuaded to engage in other types of smuggling and trafficking, such as narcotics or arms.²⁶ Though there are relatively few reports or investigations into corruption offences relating to trafficking, with virtually no cases leading to convictions, it is obvious that opportunities for corruption are many, and one scholar has posited that “*countries that make the least effort to fight human trafficking also tend to be those with high levels of official corruption*”.²⁷

Money laundering is another serious challenge in the fight against trafficking in human beings, and one that my Office has addressed in partnership with UNODC and the OSCE Co-ordinator for Economic and Environmental Affairs. Investigative information shows a vast phenomenon of reinvestment of the proceeds of trafficking, especially in countries of origin.²⁸

Money laundering is generally considered one of the common denominators of organized crime and the necessary interface between licit and illicit markets. Through money laundering, the proceeds of any illegal activities including trafficking in human beings are conveyed to the legitimate economic sector for business investments. Analysis carried out on traditional organized crime shows that companies dominated by criminal groups constitute an illegal parallel economic channel. In time, however, such companies tend to infiltrate or disrupt legitimate businesses which are their competitors in order to achieve a monopoly position in certain areas such as public procurement. They therefore need to bribe public officials and sometimes use their economic power to acquire political influence. As a consequence of the significant amount of illicit proceeds originating from drug trafficking, trafficking in human beings and other criminal activities, illegal markets play a major role in the globalized economy.

From the point of view of economic and democratic development, the threat for security deriving from trafficking in human beings is mostly linked to what the UK Agency on Serious Organised Crime (SOCA) classifies as “structural harm” at the community/region level. The damage affects the commonly shared perception of the integrity of public and private institutions and systems, as a result of serious organized crime activity or the action of those using its commodities and services, e.g., local areas dominated by seemingly

²⁶ *The Role of Corruption in Trafficking in Persons*, Background Paper for the side-event “The Role of Corruption in Trafficking in Persons” at the Third Session of the Conference of State Parties to the UN Convention against Corruption (9-13 November 2009), Doha, 11 November 2009. See also: Leslie Holmes, “Human Rights and Corruption: Triple Victimization?”, in Cornelius Friesendorf (Ed), *Strategies Against Human Trafficking: the Role of the Security Sector* (2009).

²⁷ Sheldon X. Zhang and Samuel L. Pineda: ‘Corruption as a Causal Factor in Human Trafficking’, in ‘Organized Crime: Culture, Markets and Policies’ (Springer: New York, 2008); see also: ‘Trafficking in Human Beings and Corruption’, Report on the regional seminar, Portoroz, Slovenia, 19-22 June 2002, Council of Europe Programme against Corruption and Organized Crime in South-Eastern Europe (PACO); 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’, COM(2005) 514 final (Brussels, 18 October 2005).

²⁸ OECD, *Financial Action Task Force, Money Laundering & Terrorist Financing Typologies 2004-2005* (2005), <<http://www.fatf-gafi.org/dataoecd/16/8/35003256.pdf>>, accessed 1 July 2010. Trafficking was chosen as a subject for the joint Financial Action Task Force (FATF) and the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) typologies exercise, due to the importance of such trafficking as a potential source of proceeds.

‘untouchable’ criminal elements, or local political or business leaders corrupted by, or under the malign influence of serious organized crime. The first step to tackle the problem is to acknowledge that similar situations are not an exception in many local or regional areas of the OSCE participating States.²⁹

In this framework, trafficking in human beings is becoming an inexhaustible source of profits which are constantly reinvested in all kinds of other criminal activities, including drug trafficking and trafficking in weapons. Connections between trafficking in human beings and terrorism have occasionally been reported.³⁰ Whereas drugs can be bought and sold, people, in addition to being bought and sold, are exploited for years without any wages, or with wages which do not go beyond subsistence. This is the new profitable and renewable business for criminal networks. Our challenge is to prevent it, combat it, and ultimately to eradicate it.

1.4. Trafficking in human beings as a transnational threat for security

The OSCE considers trafficking in human beings as one of the most serious transnational threats for security. Trafficking interferes with various dimensions of security. Above all, trafficking in human beings violates the fundamental rights and dignity of people who fall victim to such a crime, and it is therefore a threat to an individual’s security, which involves freedom from violence.

The existence of criminal networks recruiting people to go abroad with the false promise of gainful employment, and then exploiting these migrants in slavery-like conditions, is a major source of insecurity for millions of migrant workers seeking better opportunities. Health security is also at stake, and not only for the individual trafficked person but also for the wider public. In most of the cases of trafficking for sexual exploitation, women and girls are affected by sexually transmitted infections, including HIV/AIDS.³¹ Health security is also threatened in the majority of cases of labour exploitation, in which inhuman and degrading conditions lead to infection, serious disease, and even death. In cases of trafficking in human organs too, health security is affected in the cruellest way.

²⁹ Serious Organised Crime Agency (SOCA) United Kingdom, *The United Kingdom Threat Assessment of Organised Crime 2009/10*, Annex 1: Harm Framework for Organised Crime, p. 69.

³⁰ Colleen M. Traugher, *Terror Crime Nexus? Terrorism and Arms, Drugs, Human Trafficking in Georgia*, PFP Consortium for Defence Academies and Security Studies Institutes (Spring 2007), pp. 47-63, <<http://www.pfpconsortium.org/terror-crime-nexus-terrorism-and-arms-drugs-human-trafficking-in-georgia>>, accessed 1 July 2010; see also: <http://humantrafficking.change.org/blog/view/human_trafficking_is_al-qaedas_new_business_model>, accessed 1 July 2010; see also: Christopher Deliso, *The Coming Balkan Caliphate: the Threat of Radical Islam to Europe and the West* (1974 and 2007), <http://books.google.com/books?id=xew3_R0LePAC&pg=PA146&lpg=PA146&dq=bulgarian+madrid+trafficked+for+terrorism&source=bl&ots=B3znh871oS&sig=KnRW4GkvsqhL4XcLLSL4ipjMIG8&hl=en&ei=8zIVTKO0J5OoOL310PYL&sa=X&oi=book_result&ct=result&resnum=10&ved=0CDUQ6AEwCQ#v=onepage&q&f=false>, accessed 1 July 2010.

³¹ Cathy Zimmermann, *The health risks and consequences of trafficking in women and adolescents* (2003), <<http://www.lshtm.ac.uk/hpu/docs/traffickingfinal.pdf>>, accessed 1 July 2010.

Trafficking in human beings poses a threat to the security of States. The massive scale of trafficking and its nature of organized crime endanger democracy, stability and economic development, undermining the rule of law, including through criminal networks' intrusion into the state legislative and executive structures. It is sufficient to think about the huge number of migrant workers who are trafficked for the purpose of labour exploitation in agriculture or construction. Not only are the rights, dignity and integrity of these workers seriously violated, but the employers gain huge profits from their illegal business and tax evasion as they benefit from unpaid work on a large scale. The normal rules of market competition do not apply, or are disrupted.

Trafficking in human beings thrives in situations of conflict. Organized crime, including trafficking in human beings, capitalizes on conflict as the rule of law is undermined. Those least protected are the ones who suffer the most from war and protracted conflicts, irrespective of how and why the conflicts developed. The involvement of children in trafficking as a consequence of conflicts has been constantly reported. It is estimated by the UN that 300,000 children (both boys and girls), some of them as young as 8 years old, have been trafficked as child soldiers serving in over 30 armed conflicts all over the world for government or armed rebel forces.³² Violence against women is rampant during times of conflict, including rape as a systematic weapon of war which is now recognized as a war crime. Trafficking for both sexual and labour exploitation undermines security and international peacekeeping efforts, and while the vast majority of international military personnel conduct themselves honourably, a number of cases of trafficking in human beings have occurred in connection with their deployment.

My assessment of the state of play of anti-trafficking action in the OSCE area is that, despite the significant commitments and action taken, trafficking in human beings is still not considered a strategic issue; nor does trafficking in human beings raise the same level of concern as other human rights issues such as torture, or other transnational threats such as drug trafficking.

2. The challenges

Consequently, I am convinced that in my capacity as the OSCE Special Representative I have to promote a different perception of trafficking in human beings, which has often been treated as a marginal phenomenon, involving the profiles of only certain victims, or limited to sexual exploitation. It is time to ensure that trafficking in all of its forms is acknowledged for what it is: modern-day slavery, on a massive scale, mostly a business of organized crime and a serious threat for national and international security. Instruments that we have built over the past ten years – such as legislation, anti-trafficking policies and national machineries – should now work on a much larger scale.

In this light, we need to increase our efforts to combat trafficking for labour exploitation as a growing crime involving millions of migrant workers, and including a high percentage of children. My Office is committed to doing its part. After two successful high-level conferences on human trafficking for labour exploitation, in 2009, my Office convened a Technical Seminar on trafficking in human beings for labour exploitation in the agricultural

³² Alexis Aronowitz, *Human Trafficking, Human Misery: the Global Trade in Human Beings* (2009), p. 103.

sector, addressing trafficking in this specific area for the first time. In the near future we will further explore trafficking for exploitation in the construction sector. In June 2010, I organized a High-Level *Alliance against Trafficking in Persons* Conference “Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude”, at which Ambassador CdeBaca was a welcome keynote speaker.

Domestic servitude in particular has not been adequately addressed so far across the OSCE area. The Conference highlighted that the vulnerability of the workers, mainly women and girls, derives from the fact that domestic work is usually under-regulated, under-protected and undervalued. The efforts of the International Labour Organization towards a Convention on Decent Work for Domestic Workers present an important step in the right direction in guaranteeing workers’ rights and preventing domestic servitude. I am also delighted that domestic servitude was specifically addressed in the 2010 *Trafficking in Persons Report*.

Domestic servitude must be detected and prosecuted. Adequate punishments are critical, including the possibility for victims to achieve compensation, and for the prosecution to reach not only the final exploiter but the whole supply chain of recruitment and placement companies.

The OSCE is part of the diplomatic community, and we are ready to take action to prevent domestic servitude in diplomatic households, for example by advocating to set up specific procedures and guarantees so that domestic workers who work for members of the diplomatic corps are fully informed about their rights, available support, and importantly, remain in possession of their travel and identity documents.

My Office has also recently commissioned research examining the array of policies that address the demand for exploitative labour and commercial sex. These include the implementation and enforcement of codes of conduct in the private sector to hold companies accountable for exploitative conduct throughout their supply chains, and to reduce the demand for the services of people or goods produced by people who have been trafficked; and an overview of codes of conduct, and zero tolerance policies of international and military organizations in the OSCE participating States.

In addition to stepping up efforts to address trafficking for labour exploitation, I would like to touch upon four crucial areas where substantial improvement is needed: the effectiveness of national machineries; the criminal justice response; the protection of victims’ rights; and prevention.

2.1. The effectiveness of national machineries

Through the numerous OSCE Ministerial Decisions, it is evident that all participating States agree that trafficking in human beings is a terrible scourge and that the fight against trafficking in human beings should continue to be a priority for the OSCE. It must be stressed again, however, that trafficking in human beings is still not considered a strategic issue at the high policy level. I would like to highlight a few of the major challenges we still face in order to translate our commitments into concrete action to demonstrate real political will.

The effectiveness of the anti-trafficking machinery depends on its actual implementation, and in particular on the human and financial resources dedicated to the functioning of these

structures. In practice, for example, there are still few National Co-ordinators who are engaged on a full-time basis with an official job description, and 66.7 per cent of National Co-ordinators reported that they lack an appropriate budget. They also lack the necessary dedicated staff.

In terms of accountability, another challenge is the lack of acknowledgement of the involvement of public officials in trafficking in human beings in some participating States. Few actions have been taken, and even fewer prosecutions have been undertaken where allegations of corruption have arisen. I am interested in exploring how to counter corrupt practices which facilitate and feed upon this crime.

There remain serious gaps and challenges in the adoption of comprehensive anti-trafficking laws and National Action Plans too, as well as the admission that some countries are now countries of origin, transit and destination, or experience internal trafficking. National anti-trafficking mechanisms reflect the country's approach and legislative framework on trafficking in human beings. Some National Action Plans fail to tackle all forms of exploitation, several of which do not include trafficking in human beings for labour exploitation, internal trafficking, child trafficking, or trafficking in men. Trafficking in human beings for labour exploitation as well as all other forms of trafficking should be clearly identified and tackled.

Furthermore, we still lack reliable data and empirical evidence to understand the problem and respond adequately at the local, national, regional and international levels, perhaps because most countries do not have a National Rapporteur or equivalent mechanism, which can monitor and report on the phenomenon and the impact of legislation, policies and initiatives. The dearth of systematic data gathering and evidence based research can have a profound impact at national level, undermining the effectiveness of measures and the investment of funds and human resources provided to tackle trafficking in human beings.

2.2. The Criminal Justice Response

I am aware that law enforcement and criminal justice response remains largely inadequate, while NGOs and civil society are stretched to the limit in trying to support trafficked persons, often without long-term funding from governments. Reported criminal proceedings for trafficking in human beings are modest. The criminal justice response is therefore incomparable with the scale of the crime. Moreover, only the final exploiters are targeted, mainly in the field of sexual exploitation while the level of penalties remains low compared to the gravity of the crime, with no seizure or confiscation of the proceeds of crime carried out in the vast majority of cases. As a consequence, trafficking in human beings is still a low-risk crime compared to other types of organized crime.

In order to raise the profile and quality of law enforcement and criminal justice response, more sophisticated investigation techniques should be used on a regular basis. This will enable law enforcement to detect and disrupt the entire transnational criminal networks rather than arresting only individual criminals – typically the final exploiters – or the smaller fish.

As trafficking in human beings is a profit driven crime, it is imperative to find, freeze and forfeit the proceeds of crime. This requires the use of financial investigation on a routine basis as well as on a large scale. As opposed to cases related to drug trafficking, so far this

investigative tool is under-utilized or almost never applied in cases of trafficking in human beings. The use of financial investigation is particularly important to trace the proceeds of crime in the country in which such proceeds are usually reinvested and laundered, most notably in countries of origin. This requires decisive improvements in law enforcement and judicial co-operation, especially between the country in which exploitation takes place and the country where profits are reinvested.

Law enforcement and judicial experience show that the contribution of the victim is absolutely essential for successful prosecution. The protection of the victim, and of his or her rights, must be ensured before, during and after criminal proceedings, not only to comply with clear obligations under international human rights standards, but also to promote successful investigation and prosecution.

It is important to note, however, that the collection of other evidence not dependent on a victim's testimony should be adequately valued. Intelligence resources should also be used to improve our knowledge regarding major activities of organized crime, new markets, innovation in money laundering, and measures undertaken by criminal networks to counteract the criminal justice response.

As a judge, I would like to address one particular challenge for fellow prosecutors and judges. Trafficking cases, especially for labour exploitation, are rarely qualified as such. Prosecutors and Courts often apply related offences such as the withholding of wages or harbouring of aliens. This is due to a number of factors, but I would like to particularly highlight one issue, namely the interpretation of the notion of abuse of a position of vulnerability. This is currently a crucial problem, as the evolving *modus operandi* of traffickers is the use of subtle means of coercion rather than extreme violence.

According to national cases and several reports issued by national monitoring mechanisms, a number of Courts have started to acknowledge that a position of vulnerability consists of a combination of circumstances which create a multiple dependency on the trafficker, such as illegal or irregular status, a poor economic situation, social isolation and an inability to speak or understand the language. Some Courts, however, require active behaviour by the perpetrator to prove that he or she intentionally abused a vulnerable person. As the Dutch National Rapporteur recently underlined, it is precisely in cases of subtle coercion that the abuse is often concealed, and the perpetrator consciously takes advantage of the victim's vulnerability. A real challenge for law enforcement, prosecutors and judges, in cultural and legal terms, is to understand that a person, although she or he has not been locked up in an apartment or in a workplace, could nevertheless be coerced to stay in an exploitative situation because she or he has no real and acceptable alternative. In this respect, my Office will continue to contribute to awareness raising, capacity building and training.

2.3. The protection of victims' rights

A significant challenge relates to increasing identification of victims and ensuring that the protection of victims' rights be at the centre of the anti-trafficking response. Additionally, conflicting interests such as immigration control must not override human rights concerns. Such an approach is detrimental not only to the identification of trafficked persons – who remain largely invisible – but to prosecuting the traffickers.

The OSCE has long advocated for a multidisciplinary and human rights based approach to victim identification embedded in the OSCE/ODIHR concept of National Referral Mechanisms. While a core principle of the National Referral Mechanisms is institutional co-operation between state and civil society organizations, in the majority of OSCE countries, NGOs are not granted an official role in the identification of trafficked persons, while the state law enforcement structures are the sole authority determining the status of victims. This may result in the non recognition of trafficking victims who have no useful information for prosecution or who committed immigration offences directly as a result of being trafficked.

In order to improve victim identification and protection, it is necessary to broaden the multidisciplinary approach and create partnerships to secure the proactive involvement of labour inspectors, trade unions and migrants rights organizations in the identification of and provision of assistance to persons trafficked for labour exploitation.

The allocation of dedicated resources and systematic capacity building not only contribute to improving assistance to and protection of trafficked persons, enhance victim identification and the detection of trafficking crimes, but also lead to a more effective criminal justice response and result in bringing more perpetrators to justice. What is absolutely necessary is that the threshold of identification be lowered to allow many more cases to become visible. In this regard the recent proposal by the European Commission for an EU Directive on trafficking in human beings is particularly positive as it establishes that as soon as there is an indication that a person might have been trafficked, she or he should be provided with assistance and support irrespective of her or his willingness to act as a witness.³³ This approach to victim identification together with knowledge, skills and commitments – especially among those on the frontline – can make the difference in identification and referral of trafficked persons, and can help cast light upon the massive scale of trafficking for labour exploitation.

For this reason, I strongly advocate for unconditional assistance to any presumed victim of trafficking. In other words, a victim must be treated as such as soon as there is the slightest indication that she or he might have been subject to trafficking. As a consequence, she or he should receive immediate assistance and support; arrest, detention or removal of the trafficked person must be avoided.

This approach has recently been confirmed by the European Court of Human Rights. In the case of *Siliadin vs. France* of 2005, the Court held that States have positive obligations to adopt criminal law provisions which penalize modern-day slavery. In 2010, in the case of *Rantsev vs. Cyprus and Russia*, the Court went much further. The obligation upon the States extends to the duty to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Furthermore, States may be required to take operational measures of protection where the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that the person concerned might have been trafficked, or was at real and immediate risk of being trafficked. In other words, the Court establishes an obligation to protect effectively not only victims but also presumed and potential victims.

This approach is vital in the case of children so that any indication of trafficking triggers all the protection obligations envisaged in international standards with a view to securing the

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best interest of the child and a durable solution for his or her future. In practice, this requires the strong commitment of States to establish dedicated policies and resources to guarantee a protective environment and best interest determination for every child on the territory of their State.

Yet one should not underestimate the fact that once identified, trafficked persons should be empowered to restart their lives, to develop skills to support themselves, to access justice and in particular to claim compensation. Social inclusion support programmes are however labour intensive, complex and expensive, and demand a sustained commitment by governments, partnerships between countries, and agencies to secure co-operation and long-term funding for NGOs delivering direct support services.

It is also important to mention the often controversial and complex question of return policies. Given the current residence regimes concerning victims of trafficking, most trafficked persons return to their country of origin after the end of criminal proceedings. There is a need to develop programmes and mechanisms in co-operation with NGOs in countries of origin and destination to systematically conduct individual risk assessments aimed at ensuring that the return is safe, and that victims are given access to justice, and international protection if needed. In the case of children, the focus should be on securing the best interest of the child and a durable solution for his or her future on the basis of an individual risk assessment with the child's participation, and with the provision of independent legal advice to the child.

2.4. Prevention

The High-Level *Alliance against Trafficking in Persons Conference Prevention of Modern Slavery: "An Ounce of Prevention is Worth a Pound of Cure"* – organized by my Office in 2009 – was opened with a welcoming video address by U.S. State Secretary Hillary Rodham Clinton. We are equally proud that this address was followed by the UN Special Rapporteurs,³⁴ making a unified appeal to the OSCE participating States to engage our societies, media professionals and private sector in nation-wide prevention campaigns; to educate youth and the wider population; to take into account the negative impact of the global financial crisis on unemployment in our societies and on labour migration flows, spreading of discrimination and intolerance towards migrant workers, increased vulnerabilities of women and children; and to step up our common fight against corruption and other crimes related to trafficking.

The prevention of trafficking is an especially cross-dimensional issue for the OSCE. Trafficking is a transnational threat to security that requires co-operation between participating States. OSCE commitments call for zero tolerance to trafficking for exploitation in all its forms, and prevention through addressing discrimination, gender mainstreaming, educational opportunities, and the consideration of the best interests of children and youth. Prevention also entails creating better economic opportunities for employment, legal and safe migration, ensuring good governance, rule of law and fighting corruption. Conflict prevention

³⁴ Ms. Joy Ngozi Ezeilo, UN Special Rapporteur on Trafficking in Persons, especially Women and Children; Ms. Najat M'jid Maalla, UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography; and Ms. Gulnara Shahinian, UN Special Rapporteur on Contemporary Forms of Slavery, its Causes and Consequences.

can lessen the potential incidence of trafficking in human beings, as trafficking thrives on the chaos created by conflict and population displacement.

To better prevent this complex crime, we must continue to deepen our knowledge on all aspects of trafficking, in all of its forms. To provide an evidence based policy response, governments need to support targeted research on addressing the root causes of trafficking, including importantly, the ‘crime side of trafficking’.³⁵ Assessments of the effectiveness of national structures, plans, and the impact of anti-trafficking programmes are vital to the improvement of prevention efforts.

An essential aspect of prevention is awareness raising. Trafficking is modern-day slavery and it is a widespread phenomenon. Awareness raising should therefore aim to build something similar to an anti-slavery abolitionist movement. Intellectuals, opinion leaders, parliamentarians, arts practitioners and cultural innovators, educators and students, the media, business leaders and the private sector, and the general public should all be engaged so that all possible actors become committed to the abolition of slavery.

We need to develop various approaches to “real story telling”; despite lengthy discussion and high rhetoric, the reality is that few people know what trafficking really is. But once you tell a story – a real story of a real person in a real situation – then you engage and enable that audience, through e.g., cultural programming such as theatre and film, to understand that trafficking is about ordinary people who, in seeking out a better life for themselves and their families, have fallen into a nightmare which destroys their hope, and very often affects their lives forever.

3. Conclusions

In conclusion, the challenges we face are related to the magnitude of trafficking in human beings as modern-day slavery, and a component of illegal markets generated by organized crime. This situation requires a proactive approach, aimed at detecting emerging threats for security at the global and regional level.

In her inspiring book which will be soon published, a prominent criminologist concludes that trafficking in human beings undermines the principles of a democratic society, the rule of law, and respect for individual rights, international security, state control of borders, and the integrity and success of peacekeeping operations.³⁶ Despite this, trafficking has not aroused the consistent and sustained global concern in the international arena that it deserves and urgently calls for.

Our common commitment should be to acknowledge that slavery still exists, and consequently to free the slaves. This means empowering trafficked persons and supporting them in their aspiration to take their lives and their destinies into their own hands.

³⁵ Such as: OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (and UN.GIFT), *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010): this publication will ensure a deeper understanding of how trafficking enterprises work – their members, roles, *modus operandi* and the markets in which they exploit their victims – and will allow governments to take measures to prevent and successfully intervene in trafficking operations.

³⁶ Louise Shelley, *Human Trafficking: A Global Perspective* (31 August 2010).

The fight against human trafficking is at the heart of the OSCE. Any nation serious about ending trafficking in human beings has the responsibility to implement the national policies and the wider commitments that we have all taken – whether the OSCE Action Plan or the Palermo Protocol – to address the challenges posed by trafficking across the entire OSCE area. I am grateful to the OSCE Chairmanship for placing trafficking in human beings, and particularly child trafficking, high on the agenda this year. I am convinced that there is a further opportunity to place trafficking in human beings on an even higher strategic level within OSCE commitments.

Finally, I would like to thank you, the U.S. Helsinki Commission, for your kind invitation to testify before you today, for holding this important hearing, and for your dedication to this challenging issue.