

THE OSCE AND THE STRUGGLE
AGAINST HUMAN TRAFFICKING:
THE ARGUMENT FOR A COMPREHENSIVE,
MULTI-PRONGED APPROACH

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It is uncontested that every year tens or even hundreds of thousands of people, women, children and men are exploited, sold and forced into situations of exploitations from which there is almost no escape. Trafficking in human beings is one of the most globalized criminal businesses in the world today, one that almost no country is immune from. The people who fall victim to traffickers are abused as commodities by a transnational criminal industry--the profits of which have been found to be so high that some of the criminals are moving away from drug trafficking into this modern form of slave trade or profit even further by using the trafficked persons as "manpower" for other criminal purposes, such as trafficking or selling drugs and weapons.

Human trafficking is one of the most lucrative criminal enterprises in the world. Profits from this criminal industry are enormous, generating billions of dollars annually to criminals and organized crime groups. And the criminals are fully integrated into the global economy, buying and selling securities, speculating on foreign exchange rates and doing business on the stock exchange. The only difference is the origin of the money they invest. Globally, the full spectrum of criminal organizations and shady businesses are involved--from major criminal syndicates, to gangs, to smuggling rings, to loosely associated networks.

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Trafficking in human beings has developed its own industry and typically involves transporters, recruiters, document forgers, brothel owners, employment agencies, etc. The trafficking industry world-wide is also connected with other related criminal activities such as extortion, money laundering, bribery, drug use, etc. There are no ethnic barriers between the criminals. And, of course, the trafficking in persons industry could not exist and thrive to such an extent without corruption.

Human trafficking concerns by no means only countries of origin; much rather it affects us all equally--in East and West alike, in Europe, and in other parts of the world--as countries of origin, transit and, or destination--and very often as a mix of all three.

The OSCE (“Organization for Security and Co-operation in Europe”)--with its fifty-five participating States--is the largest regional organization encompassing all Western European countries, reaching out to transatlantic partners such as the U.S. and Canada, extending to the Commonwealth of Independent States, the Caucasus and Central Asian countries on to our Mediterranean and Asian partners for cooperation.

As the remit of the OSCE covers countries of origin, transit and destination of human trafficking, it is well placed to tackle the problem in its complexity, a problem which is mainly (though not exclusively) a transnational one, and to help disrupt the trafficking chain. The OSCE has also the capability to interact with the various players and stakeholders and to provide guidance on anti-trafficking management through its existing structures and institutions and through cooperation with other international and intergovernmental organizations and agencies.

Considering the cardinal importance of cooperation and coordination in a successful fight against trafficking in persons, the OSCE has launched the “Alliance against Trafficking in Persons” with a view to streamlining the approaches to all the dimensions of human trafficking--from trafficking for sexual exploitation, via trafficking for forced marriages, including trafficking in children, to trafficking into domestic servitude and other forms of trafficking for forced and bonded labor, and involving all the relevant actors from

the governments, the law enforcement, the judiciary, to the NGOs as the main service-providers for victims of trafficking.

While in Europe, mainly women and children have been trafficked for sexual exploitation and for the market of pornography. Many people in other parts of the world, but increasingly also in Europe, end up being exploited as domestic servants, as bonded or coerced workers in sweatshops, on construction sites, in agriculture, textile and garment factories, in the transportation industry and in restaurant chains, on plantations, and in mines.

Migrants in general--and irregular migrants in particular--are most vulnerable and may easily become victims of trafficking. Many of them work under very exploitative conditions: without health services, unaware of their rights, subject to physical and mental abuse, underpaid, or having wages withheld by recruiting agents.

Traffickers take advantage and exploit the lack of social and legal protection. The victims are subjected to force or coercion at some point: either when they are recruited, during transport, or on entry into and during work. In this context, particularly close scrutiny is called for because, although migrant workers often come to a foreign country with valid, government-issued work permits, they may nevertheless fall victim to traffickers. They may be bound to a single employer, to whom the workers' passports are handed over by the state authorities, and the moment the employment is terminated for whatever reason (underpayment, no payment, violence, bankruptcy or corruption of the employer, etc.) they will lose their legal status. This automatically deprives them of their right to stay in the country and to look for alternative employment. Henceforth, they may be forced to conform to illegal and abusive employment terms under threat of dismissal, followed by loss of legal status and possible arrest.

The status and protection of the victims in the fight against human trafficking deserve particular attention. For victims to be able to free themselves from relationships of violence and life contexts in which they are permanently threatened by violence, they need comprehensive social and economic support, but also legal assistance. Effective empowerment starts with the granting of a strong legal

status. The legalization of the status of a trafficked person is a crucial element in any effective victim and witness protection strategy, and may help to assist a much greater number of trafficked persons, who would normally not dare to seek refuge for fear of deportation. A secure and safe legal status for victims is a prerequisite for support programs to reach them.

A central issue in this context is the right of a reflection period followed by a (temporary and/or permanent) residence for victims in the transit and destination countries. The granting of a residence permit would signal to victims that the state on whose territory they find themselves sides with them without reservations. And, in addition, it would break the so-called recycling of the victims of trafficking--since it is well known that up to fifty percent of those immediately repatriated are re-trafficked. After a reflection period--which would give the (potential) victims time to stabilize their situation, it would give them breathing space to recover physically, medically, and psychologically and would allow them to re-orientate themselves and to secure the means to support themselves--the authorities should grant a temporary residence permit for at least six months.

The temporary residence permit would also present an instrument to enhance the prosecution of traffickers and an instrument against organized crime as it offers trafficked persons time to decide on making a complaint to the police, on cooperating with the investigation authorities, and on testifying in proceedings. Therefore a temporary residence permit should be renewable, with the possibility that victims may be allowed to remain permanently.

Even if the victim decides not to testify against the traffickers, the authorities will still have vital information on traffickers' strategies, practice, and networks. Ideally, legal status of residence should be granted irrespective of a particular victim's ability or willingness to testify in criminal proceedings. The legal status of residence should also imply access of victims to the labor market as well as the right to state welfare benefits and to crime victim's compensation.

Furthermore, the status of victims of trafficking in criminal proceedings deserves particular attention. Frequently victims suffer from severe trauma. To expose them or force them too early to confront the traumatizing experience may cause additional traumatization. The victims must, therefore, have the right to refuse to testify, and if they agree to testify, they should be able to do so in a non-confrontational environment.

In any case, the process of testifying against the trafficker must not re-victimize a victim, but should be an empowering, positive experience through which the victim's rights are protected and promoted. Criminal prosecution must be reconciled with the protection of the human dignity of the victims. Therefore, a starting point is to make sure that victims really want to testify against traffickers and are not just submitting to police or other pressure. The victims have to be informed about the implications of testifying, before they make a statement.

Whether they are prepared to become witnesses will depend, to a great extent, on the capacity and willingness of states to protect and support victims of trafficking. In practice, however, many states do not even provide the most basic protection for victims who participate in proceedings. Many countries do not allow victim/witnesses to remain in the country during the proceedings, but summon them back without giving a thought to the financial burdens involved, nor to the safety of the witness and those close to them.

Effective victim/witness protection, of course, does not end at the conclusion of a trial. Research has indicated that in countries of origin, women and their families are more or less totally unprotected against threats or violence. Therefore, another right should be the right of family reunification. Family reunification frequently is the only way to ensure the security of the closest relatives of victims. A problem is the sole focus on testimonial evidence by victims acting as witnesses. Experience shows that prosecution that builds exclusively on testimonial evidence by victim/witnesses is least successful. Other forms of evidence are indispensable and must be fitted together like a mosaic.

From practice, we know that often the credibility of victims depends on the insight of investigators and prosecutors derived from other sources of information. On the other hand, there is the risk of victims being excluded from criminal proceedings. This serves to negate the serious injustice they have suffered at the hands of the perpetrators. State authorities should not obstruct victims of trafficking from participation, making criminal proceedings exclusively their own business. Victims should be given the possibility to present and describe the injustice they have suffered and to witness that the perpetrator is taken to account for his deeds.

Another objective in the fight against human trafficking is, of course, to disable trafficking networks. Traffickers must serve time in jail reflecting the severity of the crime. The leaders or “kingpins” of the trafficking organizations must be tracked down and apprehended--getting the leaders of the criminal enterprises will not be easy, but we cannot pretend that anything short of that will disable human trafficking and law enforcement must go after the network itself from the beginning in the countries of origin to the end-users in the countries of destination. They must seek to disrupt the chain of trafficking from beginning to end by targeting the perpetrators along the entire continuum.

This includes investigating and going after the financial assets of the network, the lifeblood of organized criminal enterprises. This is a crucial, alternative source of evidence. The financial records of the organized human trafficking enterprises and the locations where they are kept have to be the targets of law enforcement. And this is generally not behind the bar. So, the exclusive focus on raiding bars cannot be the answer to the problem and will not disrupt trafficking networks.

It is evident that no single country, nor institution or agency alone will be able to diminish the problem of human trafficking. On the contrary: coordination on all aspects in the combat against human trafficking and absolute cooperation on everything is indispensable, if we wish to be successful. Therefore, the OSCE encourages States to develop national and transnational strategies to prevent trafficking in persons, to prosecute traffickers and their accomplices and to protect and reintegrate victims by improving their capacities to act on

their own and in cooperation with each other. This includes the appointment of national coordinators in each country; the establishment of multi-disciplinary national working groups, teams, and committees; the adoption of comprehensive national plans of action with timeframes, clear division of labor and responsibilities and adequate budgeting; and the integration of meaningful approaches to human trafficking into a multi-year strategy focusing on national, regional, and international cooperation.

The work in combating human trafficking must be based on a comprehensive approach to this multifaceted problem, involving all the main areas of concern within this complex puzzle of human trafficking: from raising awareness of the risks, via a standard setting for victim assistance and protection including for children, and for the return and reintegration of victims, to preventive measures.

While there are signs of progress in the fight against human trafficking, especially when it comes to institutional mechanisms that did not exist several years ago, there is little evidence that we have succeeded in curbing this crime. Consequently, we must reflect on these facts and use them to evaluate our strategies and efforts and improve upon them.

Why is it so difficult to crack down on human trafficking? What are the problems? I should like to use this opportunity to draw attention to some of the problematic and weak points in the approaches taken to human trafficking. If we use the unveiling of the U.N. Protocol against Trafficking in Persons as the starting point for the modern era of confronting human trafficking, trafficking has now received concerted international attention for at least four years. This was when broad enactment of new anti-trafficking laws started, the funding for anti-trafficking projects and programs began to flow, and more governments, organizations, and individuals dedicated increasing attention to this problem.

One has come to realize that effective action against human trafficking is going to require comprehensive and integrated approaches. It is now realized that interventions must address root causes, we must understand, demand, as well as supply factors, raise awareness of the risks of human trafficking, develop adequate assis-

tance and protection measures for the victims, monitor recruitment and transporting systems, and also monitor conditions in the destination countries.

But, we have also come to realize that--in order to be successful in our joint endeavor to diminish, or even better, to eradicate human trafficking--the key challenge for countries around the world is to craft and implement sounder and more effective responses that produce meaningful results. We also know that a more sophisticated understanding of human trafficking is needed to improve the operational effectiveness of the implementation of appropriate anti-trafficking laws, policies, and practices utilized in the fight against trafficking in human beings around the world. Against this background it appears to be high time to challenge the assumptions on which we have based our fight so far.

Many destination countries in Europe and beyond generally put the emphasis on preventing irregular immigration and on combating asylum abuse. Concentration on border controls, deterrence and immediate repatriation of migrants, and very often also of victims of trafficking, is frequently the beginning of a vicious circle. Studies confirm that up to fifty percent of those immediately deported are re-introduced into the criminal cycle of human trafficking. Although such measures are obviously short-sighted, it is stubbornly held that they are effective means serving the interests of state security.

So the first lesson we have to learn is that human trafficking must not be seen primarily or exclusively from the perspective of national security. We must be aware of the fact that state policies that primarily focus on measures of self-protection, as opposed to a more comprehensive approach to the issue, are counterproductive and therefore, part of the problem. And we have to learn that immigration responses to the problem of human trafficking are almost always inadequate. It is from the fact that these people are considered as illegal immigrants (and often as illegal workers) that criminals and criminal organizations draw their profits.

Another problem impeding effective dealing with human trafficking is caused by the fact that "people-smuggling" is constantly

confused with human trafficking and the two are used interchangeably. Smuggling of people--although often undertaken in dangerous or degrading conditions which may even lead to the death of people--ends in general with the arrival of the people smuggled at their destination. Whereas human trafficking involves the ongoing exploitation of victims in order to generate illicit profits for the criminals. Trafficking in human beings is distinctly different from human smuggling and as such requires specialized measures for its investigation, prosecution, and prevention. One of the major problems is that victims of trafficking are often not being identified as such. Many of them continue to be deported as illegal immigrants or are categorized as perpetrators of criminal offences, fined for administrative offences, or taken into custody. So what is urgently called for is the development of specialized measures for the proper identification of victims of trafficking and consequently, of trafficking cases.

In most of the destination countries, even when victims are allowed to stay temporarily--an anti-trafficking measure long recognized as an integral part of an effective fight against human trafficking with strong preventive impact--support for them depends on whether they are willing to cooperate with law enforcement authorities and even more so whether they are considered useful to the prosecution. This shows that very often State interests take precedence over the right of victims to protection of their physical and mental integrity. The reluctance to grant an extended stay to victims of trafficking is also influenced by the assumption that the offer of an extended stay would attract more migrants and might be abused.

The tendency to view human trafficking, primarily or exclusively, as a national security issue, has detrimental implications for the rights and needs of trafficking victims. It tends to detract attention from a victim-centered approach and to concentrate exclusively on a law enforcement strategy, which in itself is frequently not tailored to fight trafficking in persons, but to fight criminal activities in general. This is not appropriate--not even from a law enforcement perspective--since the prosecution depends to a certain extent on the victim's cooperation in establishing a case.

On the other hand, the legal tools that are available for law enforcement in the fight against organized crime, such as wiretap-

ping, tracking the financial assets of the criminal enterprise, addressing the crime from beginning to end, long-term undercover investigations and/or surveillance, etc., and which are generally used by law enforcement against organized crime, have almost never been utilized in human trafficking cases, so far.

So, the lesson we have to learn is that fighting human trafficking must not be seen only as a fight against organized crime. It is first and foremost a violation of human rights. It follows that trafficking in human beings is both a law enforcement issue and a human rights concern, and that there is no “either or.” Both issues must be tackled together, if we wish to be successful.

There is a role for everyone in a concerted approach to this problem. But the ultimate responsibility for responding appropriately and effectively lies with each individual government. Governments and governmental authorities must accept their responsibility and accountability, if progress in the fight against human trafficking is to be made.

Trafficking in persons is a very complex problem, and cannot be captured in a single “snapshot”. It is better characterized as a series of actions unfolding like a “movie.” This means that it does not happen within a given moment in time and then it is over, nor does it happen in one place. It is not perpetrated only in the country of destination, where the victim or the criminal is discovered. It is much rather a chain--or series--of criminal offences and of human rights violations, starting in the country of origin and extending over time and across countries of transit into countries of destination. Even internal trafficking involves a series of crimes and human rights violations that extend over time. And the different links/parts of this chain require different responses.

With all that has been said, it is evident that in search of an easy answer, repeated attempts have been made to reduce a highly complex and multi-dimensional problem to a simplistic, often one-dimensional issue. All those who work on this problem in practice have come to realize the breathtaking intricacy of this puzzle. Therefore, efforts to reduce this multitude of dimensions to a single aspect cannot lead to sustainable solutions. There are those who see traf-

ficking in persons solely as a problem of illegal migration, or solely as a labor market issue, or solely as a demand-driven problem, or solely as a problem of organized crime. This is a tunnel vision that is not designed to lead to a desirable outcome. A truly comprehensive and multi-pronged approach is called for, if we wish to be successful in combating this scourge--bringing together those who work in poverty reduction, education, human rights protection, as well as those who address issues of corruption, organized crime, immigration, and legal reform.

Last but not least, stronger emphasis must be put on prevention, by addressing root causes of trafficking, such as violence against women, discrimination, poverty, unemployment and social exclusion. Governments, including those in destination countries, would be well advised not to simply control migration and prostitution, but to adopt different, long-term policies and strategies in dealing with unemployment, labor migration, and to develop options other than returning victims of trafficking, such as joint programs of re-integration and more socially balanced economic programs.

And finally, we must find the means to make people internalize the reality of modern manifestations of slavery; we must make them "see" the problem and understand it. So, what we need to do, first and foremost, is to deliver the message that human trafficking is about the plight and suffering of human beings and not simply about criminal transactions in soulless goods. A change in the working assumptions and an improvement in the effectiveness of all programs and measures will largely depend on making policy-makers, donors, and others, understand the problem as a whole. In the last analysis, this is what will ensure that we take the right approach, that we make the right choices, and that we find the right path to effectively combat this crime.