

COMMENTARY

to the OSCE Action Plan to Combat Trafficking in Human Beings

PC.DEC/557

**the 2005 Addendum Addressing Special Needs of Child Victims
of Trafficking for Protection and Assistance**

PC.DEC/557/Rev.1

**and the 2013 Addendum to the OSCE Action Plan to Combat
Trafficking in Human Beings: One Decade Later**

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Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later (PC.DEC/1107/Corr.1¹)*
(Vienna, December 2015)

The Organization for Security and Co-operation in Europe (OSCE) is a pan-European security body whose 57 participating States span the geographical area from Vancouver to Vladivostok. Recognized as a regional arrangement under Chapter VIII of the United Nations Charter, the OSCE is a primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in its area. Its approach to security is unique in being both comprehensive and co-operative: comprehensive in that it deals with three dimensions of security – the human, the politico-military and the economic/environmental. It therefore addresses a wide range of security-related concerns, including human rights, arms control, confidence- and security-building measures, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities.

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First and foremost, I wish to express my gratitude to the delegations of all OSCE participating States for having taken a strong stand against trafficking in human beings. Their dedication to fighting modern-day slavery has been demonstrated by their having developed and adopted advanced political commitments. The delegations, be it in their national capacity or in the role of the OSCE Chairmanship-in-Office, have contributed substantially to the worldwide movement to eradicate human trafficking, thus raising the political profile of our Organization as a pioneer in this noble mission.

The OSCE Action Plan to Combat Trafficking in Human Beings, together with its subsequent 2005 and 2013 Addendums, has gained international recognition. These documents have strengthened co-operation and co-ordination at all levels and continue to serve the OSCE participating States as strategic long-term guidelines in the prevention of human trafficking, the protection of trafficked persons, and the prosecution of offenders.

My Office was established to provide technical assistance to the participating States in implementing the anti-trafficking commitments and recommendations laid out in this Action Plan. In this regard, my sincere gratitude goes to OSCE Secretary General Lamberto Zannier, the OSCE Secretariat structures, the OSCE Office for Democratic Institutions and Human Rights and the OSCE field operations for their continued support and contributions to the work of my Office in carrying out this task. As a part of this technical assistance, this Commentary to the OSCE Action Plan and its Addendums is designed to clarify the most challenging issues addressed by the OSCE anti-trafficking commitments and recommendations, and to continue to help in the Action Plan's implementation by all stakeholders.

My warmest thanks go to each and every colleague of my Office. They all worked tirelessly to support the participating States and the 2013 Ukrainian Chairmanship in elaborating the 2013 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later. This Addendum updated the recommendations in the Action Plan significantly and enriched this strategic document by drawing on the decade of experience that had been gained by the OSCE, other International Organizations – partners of the Alliance against Trafficking in Persons, and the participating States themselves in countering human trafficking in the OSCE region.

I would like to express my gratitude to the former Senior Adviser of my Office, Dr. Vera Gracheva, who now as an independent consultant drafted this Commentary. From 2000 to 2004 Dr. Gracheva, in her capacity as a Russian diplomat and human rights expert, contributed personally to the elaboration of the Action Plan and the Ministerial Council Decisions of 2000–2004. In 2004–2013, as a staff member of my Office, she provided significant support to the delegations in further developing the OSCE anti-trafficking commitments and, in particular, the recommendations of the 2013 Addendum. In the preparation of this Commentary she co-operated closely with Aimée Comrie, now also a former Adviser of the Office, as well as Georgina Vaz Cabral, Mariyana Radeva Berket and Alexei Trepykhalin. Many thanks go to Radu Cucos for overseeing the design and printing. I also extend my thanks to my Deputy, Ruth Freedom Pojman, who supported this initiative strongly and oversaw the drafting process, and to Cynthia Peck Kubaczek who edited the draft with the best of her knowledge and experience.



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Special Representative and Co-ordinator for Combating
Trafficking in Human Beings

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	5
LIST OF ACRONYMS	8
EXECUTIVE SUMMARY	10
INTRODUCTION	17
CHAPTER 1. THB AS A GLOBAL PHENOMENON AND ITS CONTEMPORARY CONTEXT	19
CHAPTER 2. THE OSCE'S COMPREHENSIVE, HUMAN RIGHTS BASED APPROACH TO COMBATING TRAFFICKING IN HUMAN BEINGS	22
CHAPTER 3. A REVIEW OF THE OSCE ANTI-TRAFFICKING COMMITMENTS 2000–2013	24
CHAPTER 4. COMMENTS TO THE OSCE ACTION PLAN TO COMBAT TRAFFICKING IN HUMAN BEINGS, ITS 2005 AND 2013 ADDENDUMS AS A UNIFIED SET OF RECOMMENDATIONS ON ACTIONS TO BE TAKEN AT THE NATIONAL LEVEL	34
4.1 Structure of the Action Plan and its 2005 and 2013 Addendums	35
4.2 Purpose of the Action Plan and its Addendums	36
4.3 Comprehensive, Human Rights Based Approach	37
4.4 Updating Chapter III: Investigation, Law Enforcement and Prosecution	37
4.4.1 Criminalization of THB	38
4.4.2 Liability of legal persons	39
4.4.3 Effective and proportionate penalties	40
4.4.4 Confiscation of criminal proceeds; the link between confiscation and compensation for victims	40
4.4.5 Extradition of criminals	41
4.4.6 Combating corruption	41
4.4.7 Application of non-punishment principle	42
4.4.8 Law enforcement response	44
4.4.9 Financial investigations of THB-related criminal assets	44
4.4.10 Advanced methods of investigation	45
4.4.11 Highest standards of conduct and accountability for Mission members	46
4.4.12 Law enforcement co-operation and information exchange	47
4.4.13 Assistance and protection of witnesses and victims in the criminal justice system	48
4.4.14 Training	49
4.4.15 Border measures	50
4.4.16 Security and control of documents, their legitimacy and validity	51
4.5 Updating Chapter IV. Prevention of Trafficking in Human Beings	51
4.5.1 Data collection and research	53
4.5.2 Identification of most vulnerable groups	54
4.5.3 Analysis of the root causes, including the demand factor	56
4.5.4 Border measures	60
4.5.5 Economic and social policies aimed at addressing root causes of THB	61
4.5.6 Gender equality	65
4.5.7 Awareness-raising	66
4.5.8 Legislative measures	68

4.6	Updating Chapter V. Protection and Assistance	69
4.6.1	Data collection and research	70
4.6.2	Legislative measures	72
4.6.3	National Referral Mechanisms	75
4.6.4	Shelters	77
4.6.5	Compensation	79
4.6.6	Provision of documents	81
4.6.7	Provision of social assistance	82
4.6.8	Repatriation, rehabilitation and reintegration	83
4.6.9	Provision of a reflection delay and temporary or permanent residence permits	86
4.6.10	Ensuring the right to apply for asylum	87
4.6.11	Protection of children	89
4.7	Updating Chapter VI: Follow-up and Coordination Mechanisms	89
4.8	2013 Addendum: The New Chapter on Partnerships	93
	CHAPTER 5. OVERVIEW OF THE OSCE’S ROLE IN PROVIDING ASSISTANCE TO THE PARTICIPATING STATES IN THE IMPLEMENTATION OF THE ACTION PLAN AND ITS 2005 AND 2013 ADDENDUMS	98
5.1	Assistance	98
5.2	Internal co-ordination	103
5.3	External co-operation	103
	CONCLUDING REMARKS	105
	ANNEX 1. LIST OF OSCE ANTI-TRAFFICKING AND RELATED COMMITMENTS AND RECOMMENDATIONS	107
	ANNEX 2. LIST OF SELECTED UNIVERSAL AND REGIONAL INSTRUMENTS; “SOFT LAW” RECOMMENDATIONS AND GUIDELINES; MODEL LAWS	108
	Selected Universal Human Rights Instruments (in chronological order):	108
	Regional Instruments	108
	Commonwealth of Independent States (CIS)	108
	Council of Europe	109
	Parliamentary Assembly of the Council of Europe (PACE) Recommendations	109
	OSCE Parliamentary Assembly (OSCE PA) Resolutions	109
	European Union	110
	Organization of American States	111
	Soft Law	111
	Model Laws	111
	LIST OF REFERENCES	112

LIST OF ACRONYMS

ABA (CEELI)	American Bar Association (Central European and Eurasian Law Initiative)
ACTA	Anti-Corruption Anti-Trafficking Action (NGO)
AECT	Alliance Expert Co ordination Team
AP	Action Plan
CBSS	Council of Baltic Sea States
CEDAW	Committee on the Elimination of Discrimination against Women
CEI	Central European Initiative
CIS	Commonwealth of Independent States
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CSCE	Conference on Security and Co-operation in Europe
CSTO	Collective Security Treaty Organization
EC	European Commission
ECOSOC	United Nations Economic and Social Council
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (NGO)
EU	European Union
Eurojust	European Union Judicial Co-operation Unit
Europol	European Police Office
Eurostat	European Statistical System
FATF	Financial Action Task Force (on Money Laundering)
FRA	European Union Agency for Fundamental Rights
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GAATW	Global Alliance Against Traffic in Women
GRETA	Group of Experts on Action against Trafficking in Human Beings (of the Council of Europe)
HDIM	Human Dimension Implementation Meeting
ICAT	Inter-Agency Coordination Group against Trafficking in Persons
ICCPR	International Covenant on Civil and Political Rights
ICMEC	International Centre for Missing and Exploited Children
ICMPD	International Centre for Migration Policy Development
ICT	Information and Communication Technologies
IDP	Internally displaced person
ILO	International Labour Organization
Interpol	International Criminal Police Organization
IOM	International Organization for Migration
JIT	joint investigation team
MC	Ministerial Council (OSCE)
NC	National Co-ordinator
NCM	National Co-ordination Mechanism
NGO	non-governmental organization
NR	National Rapporteur
NREM	National Rapporteur or equivalent mechanism
NRM	National Referral Mechanism
OCEEA	Office of the Co ordinator of the OSCE Economic and Environmental Activities
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of High Commissioner for Human Rights (United Nations) Organization for Security and Co-operation in Europe

PC	Permanent Council
PPIS - OSCE	Press and Public Information Section
SECI	Southeast European Cooperative Initiative
SELEC	SEE – South Eastern Europe
SMEs	Southeast European Law Enforcement Center
SPAI	small and medium enterprises
SPMU	Stability Pact Anti-Corruption Initiative
SPOC	OSCE Strategic Police Matters Unit
SPTF	Stability Pact Initiative against Organized Crime
SR/CTHB	Stability Pact Task Force
THB	OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
TIP	trafficking in human beings
TNTD	trafficking in persons
TRM	OSCE Transnational Threats Department
UN	Transnational Referral Mechanisms
UNTOC	United Nations
UN.GIFT	United Nations Convention against Transnational Organized Crime
UNDP	United Nations Global Initiative to Fight Human Trafficking
UNESCO	United Nations Development Programme
UNHCHR	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Human Rights
UNICEF	United Nations High Commissioner for Refugees
UNICRI	United Nations Children's Fund
UNIFEM	United Nations Interregional Crime and Justice Research Institute
UNMIK	United Nations Development Fund for Women
UNODC	United Nations Interim Administration Mission in Kosovo
USAID	United Nations Office on Drugs and Crime
WHO	United States Agency for International Development
	World Health Organization

EXECUTIVE SUMMARY

Although the international community vigorously addressed trafficking in human beings during the 20th century, it significantly increased its efforts to eradicate modern-day slavery at the outset of the Millennium. The adoption of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as UNTOC)¹ together with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UNTOC,² became a benchmark in this global fight. For the first time the United Nations Member States were provided with an internationally agreed definition of human trafficking, including it being recognized as a serious crime. The Protocol also declared that “effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.”³

The OSCE – as an integral part of the international community, embracing not only its 57 participating States in the whole of Europe, North America and Central Asia, but also Australia and parts of East Asia and South-East Asia through OSCE’s Asian Partners for Co-operation, and the Mediterranean region through the OSCE’s Mediterranean Partners for Co-operation – became a strong proponent of a comprehensive, human rights based approach to combating trafficking in human beings. None of these continents, regions or nations was exempt from human trafficking and all agreed to take action against this scourge. Well equipped to incorporate anti-human trafficking into the fabrics of the OSCE’s three dimensions of common and comprehensive security, our Organization committed itself to joining forces with partner organizations to enhance co-operation and coordination, provide assistance to the participating States, and contribute to the elaboration of powerful instruments that could be used at the national level to prosecute and prevent the crime of human trafficking and protect the rights of trafficked persons.

The OSCE political anti-trafficking commitments⁴ taken from 2000 to 2013 by consensus at the annual meetings of the OSCE Ministerial Council and agreed upon by the participating States constitute a comprehensive political framework for action against modern-day slavery. These decisions, whether of a general nature or specifically targeting particular forms

of exploitation, reflect the political will of the participating States to address human trafficking as efficiently as possible and to co-operate with all stakeholders in order to attain the best possible results. The review of these commitments below (Chapter 3) serves as a reminder of the OSCE’s “agreed language”, which reflects the level to which the participating States have committed themselves to take action in the fight against human trafficking. In every case this agreed-upon language is the outcome of long and comprehensive negotiations between the participating States and their respective agencies. Thus, the OSCE’s consensus decisions are highly relevant for professionals involved in anti-trafficking, including lawmakers and law enforcement officials, investigators, prosecutors and judges, social workers, migration officials, customs and border officials, the media, officials dealing with children’s rights, medical personnel, labour inspectors and people working at NGOs (both service providers and human rights defenders). It is crucial for all such persons involved to be aware of the commitments made by the OSCE participating States, and to apply its recommendations as a part of their everyday anti-trafficking work.

At the same time, the participating States, being members of international and regional organizations, are bound by their respective international legal obligations, first of all deriving from the UNTOC and the UN Trafficking Protocol, as well as from relevant regional legal obligations under the Council of Europe Convention on Action against Trafficking in Human Beings⁵ (mandatory for the States that have ratified the Convention) and, for the EU Member States, under the EU anti-trafficking Directives⁶ that are mandatory for them. The framework of available instruments is expanded by multilateral agreements signed under the aegis of the Commonwealth of Independent States (CIS)⁷, the CIS Programmes of Co-operation in Combating Trafficking in Human Beings and CIS Model legislation. Though the latter is not mandatory for the CIS Member States, it reflects major legal trends that should guide CIS lawmakers in adjusting their national legislation to the modern challenges of THB.

The overall framework of international instruments addressing human trafficking also includes the International Labour Organization (ILO) Conventions on forced labour,⁸ other UN treaties on related issues (such as the Convention on the Rights of the Child⁹ and the Optional Protocol on the Sale of Chil-

1 United Nations Convention against Transnational Organized Crime, 2000.

2 United Nations, United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime (2000).

3 Ibid.

4 The list of the OSCE MC Decisions on combating THB and related issues is found below in Annex 1 of this Commentary (p.107).

5 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (2005).

6 The list of the European Union Directives is included in Annex 2, List of International Instruments (p.108).

7 For example, the Commonwealth of Independent States Agreement on Co-operation in Combating Trafficking in Human Beings, Human Organs and Tissues (2005).

8 The International Labour Organization selected Conventions are included in Annex 2, List of International Instruments (p.108).

9 United Nations, United Nations Convention on the Rights of the Child (1989).

dren, Child Prostitution and Child Pornography¹⁰), and “soft law” recommendations and guidelines, either directly on human trafficking or on issues linked to it, that have been adopted by various UN agencies.¹¹

The wide variety of these instruments may pose certain difficulties for practitioners navigating between treaties, conventions, covenants and other agreements. Nevertheless, they are all coherent and, by addressing particular aspects of human trafficking under the respective mandates of major international organizations, these instruments enhance one another. If properly applied, they make it possible to tackle a great number of the challenges posed by human trafficking. The OSCE anti-trafficking commitments are well placed within this framework of international and regional instruments. Furthermore, the OSCE is unique in its ability to address all forms and aspects of human trafficking comprehensively by engaging relevant OSCE structures and institutions, including its field operations, and by providing assistance upon request to its participating States in implementing their commitments and applying internationally agreed-upon treaties or recommended guidelines.

To facilitate the implementation process, the OSCE’s partner organizations, the UNODC and the Council of Europe, have provided their Member States with commentaries to the UNTOC (and Protocols thereto)¹² and the CoE Convention on Action against Trafficking in Human Beings (hereinafter referred to as CoE Trafficking Convention),¹³ respectively. Thus these organizations have rendered much needed technical assistance to those responsible for implementing these treaties.

In its turn, the OSCE is now providing its participating States with a Commentary to its Action Plan, including its Addendums, to ensure that the participating States have at hand a detailed explanation of the reasoning behind each provision in these strategic toolkits, thus supporting the implementation of the OSCE’s anti-trafficking commitments. The Commentary makes it possible to see the Action Plan and the OSCE anti-trafficking commitments in conjunction with international and regional legal obligations and helps practitioners to orient themselves properly in the OSCE political framework, supported by the legal framework of our partner organizations.

The Commentary starts with a short Introduction providing the context of and reasoning behind its composition. As technical assistance from the Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings (hereinafter referred to as OSR/CTHB) to the OSCE par-

ticipating States, in line with its mandate, the Commentary’s structure strictly follows that of the Action Plan and includes remarks on the additional chapter on Partnerships introduced in the 2013 Addendum. As elaborated in the Introduction, the Commentary directly references the recommendations of the Action Plan, including its Addendums, the relevant OSCE political commitments, and the legal anti-trafficking obligations that have been adopted by the OSCE participating States (or the vast majority of them) at the level of the United Nations or that of regional international organizations. This approach helps to draw a comprehensive picture of the anti-trafficking instruments available to OSCE participating States.

The OSCE Action Plan to Combat Trafficking in Human Beings, together with its 2005 and especially 2013 Addendums, remains a strategic, long-term toolkit. It comprises advanced and comprehensive recommendations in the areas of prosecution, prevention, protection, coordination and partnerships. Taking into account the highly complex nature of human trafficking, these recommendations have been designed to help the participating States in their efforts to eradicate modern-day slavery. The Commentary provides a detailed and practical explanation of all recommended actions of the Action Plan and its 2005 and 2013 Addendums, summarizing them thematically, with particular attention given to the 2013 Addendum, which accumulates a decade’s worth of experience in anti-trafficking actions at all levels – national, regional and international – and contains practical and up-to-date recommendations for the most challenging issues in anti-trafficking action.

Taking into account the importance of measures to combat and prevent child trafficking, and acknowledging the attention the delegations of the participating States have paid to this special issue, the Introduction explains that comments on recommendations relevant to children in the Action Plan and its Addendums are found throughout the thematic chapters, where they are highlighted. This approach was chosen by the drafters after a thorough examination of the interdependence between general anti-trafficking measures in all of the “three Ps” – prosecution, prevention and protection – and the special nature of measures designed to meet the needs of child victims of trafficking.

Chapter 1, “**THB as a Global Phenomenon and its Contemporary Context**”, presents an overview of human trafficking today and emphasizes that THB, over the course of the last two to three decades, has evolved into a serious transnational threat that remains a gross violation of all basic human rights and fundamental freedoms. Furthermore, THB has become a systemic component of the globalized labour market and economy. This alarming conclusion is based on numerous reports by the OSCE, the United Nations Office on Drugs and Crime (UNODC), the International Labour Organization (ILO), Interpol, Europol, the United Nations Office of the High Commissioner for Human Rights (OHCHR), and other major players deeply concerned about the 2012 ILO estimates of up to 20.9 million persons in forced labour situations worldwide and

10 United Nations, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (2000).

11 For example, the United Nations Office of High Commissioner for Human Rights *Principles and Guidelines on Human Rights and Human Trafficking* (2002).

12 United Nations, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocol Thereto* (2004).

13 Council of Europe, *Explanatory Report to the CoE Convention on Action against Trafficking in Human Beings* (2005).

illegal profits estimated at up to 150 billion US dollars annually. These numbers are in sharp contrast to the absurdly low figures for THB-related prosecutions.

Chapter 1 examines the many types of exploitation that exist, some also in mixed forms. To mention only the more widespread, these include THB for sexual and labour exploitation, child trafficking for whatever form of exploitation, THB for exploitation in forced and organized begging or in criminality, THB for organ removal, and even exploitation for terrorist purposes. Not all forms of human trafficking being mentioned in the OSCE anti-trafficking commitments, the Commentary names a few other emerging forms to alert the participating States of potential threats and to encourage them to take a closer look at all criminal cases, since a trafficking component can be found in many. The chapter also mentions the integral links between various forms of organized crime and the potential engagement of traffickers in document fraud, smuggling of migrants, kidnapping, corruption, money laundering, drug trafficking and many other offences.

This chapter also draws attention to the large range of vulnerable groups which should significantly increase the scope of targeted actions – not limiting it, as was often earlier the case, to young women and children. There are no more gender or age limitations in THB. In labour exploitation, while domestic servitude has traditionally enslaved women, exploitation at construction sites affects mainly men. And exploitation of trafficked persons in organized begging concerns all ages and both sexes. Certainly, trafficking for sexual exploitation affects mostly women and girls, but ILO figures show that victims of forced sexual exploitation comprise only 22 per cent of the total number of trafficked persons worldwide. In contrast, 68 per cent are victims of forced labour or labour exploitation, in areas as diverse as agriculture, construction, fishing, food processing, hospitality, restaurants and services, manufacturing, as well as the largely hidden sector of domestic service.¹⁴ Such statistics should be taken into account to better identify victims and create gender-sensitive measures to assist and protect them as trafficked persons.

Chapter 1, in the context of the evolution of THB since the early 1990s, stresses that shifts have occurred also in the traditional geographical divisions between the participating States, whereby particular countries were primarily countries of origin or transit, and others, of destination. This is no longer the case. The vast majority of OSCE participating States are now challenged by all three dimensions (origin, transit and destination), as well as by internal trafficking. Adequate and multifaceted measures must therefore be taken to disrupt human trafficking to, from and through countries, as well as within their borders.

In Chapter 2, “**The OSCE’s Comprehensive, Human Rights Based Approach to Combating Trafficking in Human Beings**”, a description is provided of the cornerstone of anti-trafficking policy: placing the rights and interests of the victims at the centre of all anti-trafficking actions, be they prosecution, prevention or protection. This approach is based not only on the obligation of States to ensure the protection of human rights for all persons living within their territory. It also takes into account the severe trauma possibly experienced by trafficked persons as well as their psychological condition, including fear of retaliation from traffickers, and the sophisticated methods used by traffickers to make victims obedient and more afraid of contacting law enforcement officers than of remaining under the control of criminals. A human rights based approach to the victim during all stages of communication between a trafficked person (as well as a presumed trafficked person) and state officials is a major precondition for effective investigation and prosecution, as well as for the identification, rehabilitation and reintegration of victims.

This approach is integrated into the fabric of all relevant OSCE MC Decisions on CTHB, and especially, the OSCE Action Plan to Combat Trafficking in Human Beings and its 2005 and 2013 Addendums. It forms the basis of all anti-trafficking projects and programmes undertaken by the OSCE structures and institutions, especially the Office of the Special Representative and Coordinator for Combating THB (OSR/CTHB), the Office for Democratic Institutions and Human Rights (ODIHR), the Strategic Police Matters Unit of the Transnational Threats Department (TNTD/SPMU), the Office of Coordinator of OSCE Economic and Environmental Activities (OCEEA), the Office of the Senior Gender Adviser, and the OSCE field operations. The cohesion between the human rights based approach and a comprehensive approach to CTHB (based on the OSCE Concept of Comprehensive Security and its three dimensions) is paramount. No anti-trafficking action, whether prosecution, prevention or protection, can be sustainable and successful without the full restoration of the human rights of trafficked persons.

To ensure the sustainability of this approach, in Chapter 3 the Commentary provides a **Review of the OSCE’s Anti-Trafficking Commitments 2000–2013**, as mentioned above. This is not a historical excursus. The OSCE Ministerial Council (MC) Decisions reflect the common political will of the participating States to combat human trafficking in the OSCE region; they are as valid today as they were when taken. The phenomenon of modern-day slavery is too complex and challenging to expect that once a decision is made, the problem is solved. The implementation of anti-trafficking policies as well as better awareness of the scope of THB has motivated the participating States to enhance their commitments and make them more target-oriented.

New horizons of knowledge have been opened by the rich experience that has been gained by the participating States and their NGOs, and through the advanced expertise of major in-

¹⁴ International Labour Organization, ILO Estimate of Forced Labour. Results and Methodology (2012).

ternational organizations as well as the OSR/CTHB's innovative research and reports. This has necessitated the updating of the OSCE's anti-trafficking political framework. Chapter 3 follows this process of decision-making – from the first anti-trafficking MC Decisions, broad in their scope and addressing all areas requiring anti-trafficking action (the “three Ps”), up to the more specific focusing on particular challenging issues. These include, *inter alia*, child trafficking, sexual exploitation of children and their exploitation on the Internet, violence against women, THB for labour exploitation, and the need to enhance criminal justice responses to exclude any chance for the impunity of offenders. The OSCE Ministerial Council Declarations of 2002 and 2011 also played an important role by reaffirming the participating States' adherence to their commitments and full support for the OSCE's comprehensive, human rights based approach to CTHB.

It is worth highlighting two MC Decisions taken in 2003 and 2006, which endorsed the OSCE Action Plan and introduced the mandate of the SR/CTHB, respectively, thereby raising the public and political profile of combating THB. The 2013 MC Decision endorsing the 2013 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later then contributed significantly to the compendium of the OSCE commitments and recommendations. By updating the OSCE Action Plan to Combat Trafficking in Human Beings, the Addendum provided an adequate response to the evolution of human trafficking and increased the capacity of the OSCE participating States in countering this scourge.

Chapter 4, **“Comments to the OSCE Action Plan to Combat Trafficking in Human Beings, its 2005 and 2013 Addendums as a Unified Set of Recommendations of Actions to be Taken at the National Level”**, should be considered the major body of the Commentary.

This chapter starts with outlining the structure of the Action Plan (AP) and its 2005 and 2013 Addendums, reiterating the purpose of these instruments as well as their full adherence to a comprehensive, human rights based approach.

The Commentary provides a detailed rationale for updating the AP Chapter III (“Investigation, Law Enforcement and Prosecution”), AP Chapter IV (“Prevention of Trafficking in Human Beings”), AP Chapter V (“Protection and Assistance”) and AP Chapter VI (“Follow-up and Coordination Mechanisms”), and includes comments on the new chapter agreed upon by the participating States in the 2013 Addendum (“Partnerships”).

Referring to the AP Chapter on **“Investigation, Law Enforcement and Prosecution”**, the Commentary highlights major issues that must be dealt with at the national level to improve the coherence of national legislation with the OSCE political commitments as well as with other international (and regional) legal obligations, drawing specific attention to those that require more effort. Among other things, the Commentary explains the reasoning behind the criminalization of all forms of

human trafficking, the necessity of ensuring the accountability of legal persons, and the importance of measures to confiscate criminal proceeds to use as an additional source of compensation for the harm suffered by trafficked persons.

Among the relevant factors for effectively prosecuting trafficking cases, the Commentary points out the significance of applying advanced methods of investigation and making financial investigations of THB-related criminal assets a routine part of every trafficking case. This requires good co-operation between the relevant law enforcement agencies.

The Commentary pays particular attention to the application of the non-punishment principle and, in the context of investigation and prosecution, to assistance for and protection of witnesses and victims in the criminal justice system, which are at the core of the human rights based approach. It demonstrates the evolution of the OSCE position on this crucial issue, and explains the importance of ensuring proper training for multiple stakeholders, not only law enforcement officials.

With regard to the recommendations on **“Prevention of Trafficking in Human Beings”**, the Commentary emphasizes that prevention cuts across all three dimensions of the OSCE's work– the politico-military, the economic and environmental, and the human. It underlines that prevention requires an environment in which human rights are respected, access to justice is ensured, and better economic opportunities are developed, including decent work.

The OSCE strongly advocates integrating anti-trafficking measures in all relevant policy areas, including anti-corruption, child protection, gender equality, labour, and migration. Efforts to promote zero tolerance to human trafficking have a strong preventative component. They include ensuring equal opportunities for all and that workplaces and supply chains, including those of public procurement contractors, are free of discrimination and exploitation so that goods or services are not produced by trafficked persons.

The Commentary stresses that addressing the root causes of trafficking involves the provision of legitimate and viable economic opportunities, improving possibilities for safe and regular labour migration, the prevention of abusive recruitment practices, the promotion of zero tolerance of corrupt officials, and the prevention of those who are most vulnerable from taking desperate and risky decisions. Also providing decent opportunities for former victims may prevent them from being re-trafficked, or from joining the criminal world as traffickers themselves. In particular, efforts must be taken to guarantee the best interests of children. Prevention of THB, following the human rights based approach, should remain in the focus of officials who deal with people at risk, such as displaced persons, asylum seekers, refugees, migrants, and persons in detention centres, as the risk of THB for such persons is high, while the probability of their identification as presumed or actual victims is low.

Conceptually, prevention should be given a high priority – “an ounce of prevention is worth a pound of cure”, as the title of the 2009 *Alliance* Conference expressed it. As a broad issue it is closely related with the other two “Ps” (protection and prosecution). It is sometimes hard to differentiate between prevention as such and the preventative effect of adequate prosecution or the impact of adequate protection for victims in the process of their rehabilitation in terms of prevention of re-trafficking.

The Commentary, while addressing the Action Plan’s recommendations on “**Protection and Assistance**”, draws from the much broader legal and political basis elaborated and reflected in the 2013 Addendum to the Action Plan. Recently adopted international and regional anti-trafficking instruments, the advanced OSCE political commitments of 2004–2011, “soft law” guidelines and other documents serve as a new background for the updated recommendations on actions to be taken in the areas of research and data collection and of legislation, in the establishment of National Referral Mechanisms, and in the modification of shelters to meet the needs of various categories of trafficked persons (women, men or children). Also included are a wide variety of rehabilitation measures to help victims overcome the negative effects of exploitation and trauma.

The Commentary, reiterating the particular importance of access to compensation, underlines that this issue was not specifically highlighted in the 2003 version of the Action Plan, but was recognized as a crucial component of protection in various OSCE MC anti-trafficking Decisions at a later stage. It was in the **2013 Addendum to the Action Plan** that the participating States, for the first time, included a separate provision on compensation under the title “Access to justice and appropriate remedies”. The Addendum recommends facilitating access for victims of trafficking, on an individual basis, to relevant legal counselling and legal assistance in order to enable them, in accordance with national laws, to use the opportunities of obtaining appropriate remedies, including compensation for material and moral damage suffered. It also recommends establishing a State compensation fund, or another relevant mechanism in accordance with national law, for victims of THB, regardless of their legal status or nationality, and facilitating their access thereto. The Commentary in this regard refers to the pioneering 2008 OSCE/ODIHR study “Compensation for Trafficked and Exploited Persons in the OSCE Region”.

Several other factors for improving victim protection are emphasized in the Commentary. Of these, it is worth mentioning here the prompt and timely identification of trafficked persons and the provision of immediate and unconditional assistance, irrespective of a trafficked person’s readiness to co-operate in the judicial process. Identification initializes a series of actions that ideally result in a victim’s rehabilitation, the restoration of his or her rights, and the successful prosecution of the trafficker. In this regard the Commentary explains the benefits of the reflection delay, the provision of temporary or permanent residence permits for trafficked persons, as well as their right to apply for asylum.

All of the comments regarding the recommendations in the Action Plan and its Addendums related to **child trafficking**, including its prosecution and prevention as well as the protection of child THB victims (the “three Ps”), are integrated in the text and highlighted accordingly. The starting point for addressing all of these issues derives from the international human rights law and international anti-trafficking instruments, as well as soft law guidelines, which are exceptional in requiring that actions must be taken, at all times, in the best interests of the child.

The Action Plan concludes with a chapter dedicated to “**Follow-up and Co-ordination Mechanisms**”. The Commentary outlines the significance of national coordination to be accomplished by interagency anti-trafficking Commissions or task forces. Their fundamental purpose is to organize the collective efforts of a country to produce the most effective and significant anti-trafficking results. This requires that such mechanisms, as far as they can, synthesize and integrate different missions, competencies, responsibilities, authorities, expertise, and perspectives into a unified and coherent operational vision and approach. Taking into account the role of the civil society organizations in the identification of trafficked persons and in providing them with protection and assistance, the Commentary highlights the recommendation to engage relevant NGOs in the work of such interagency Commissions.

The Commentary describes the significant role of a National Rapporteur or equivalent national monitoring and reporting mechanisms as a means to obtain the most realistic and evidence-based data on THB at the national level, to assess the scope of trafficking, the effectiveness of the anti-trafficking measures taken by the State, and, drawing from this data collection and analysis, to produce recommendations for the government and the parliament. The Commentary provides a variety of national examples and recommends a certain independence of such national mechanisms, which matters for a critical assessment of the activities of governmental agencies engaged in combating THB.

Coordination is also crucial for successfully addressing **child trafficking**. The Commentary highlights the 2005 Addendum’s recommendation to develop, where necessary, national coordination and referral mechanisms. These should specifically address protection and assistance measures focussing on the special needs of child victims of trafficking. It is particularly important that child victims be referred expeditiously to appropriate services.

This chapter of the Commentary concludes with remarks on the new section in the **2013 Addendum on Partnerships**. As described there, co-operation can be based either on generally shared values and strategic goals, or on more focused and target-oriented tasks. For example, particular agencies to address a specific form of exploitation can be operational at the national, regional or international level. As pointed out in the Commentary, the Addendum strengthened the logical inter-

relationship between various formats of co-operation and also recommended enlarging multi-disciplinary partnerships within the framework of National Referral Mechanisms (NRMs). Partnership is based on dialogue and cooperation between public authorities, NGOs, trade unions and other institutions engaged in anti-discrimination programmes and protection of the rights of women, children, members of ethnic, national and religious minorities, and migrants. Partnerships lead to the better identification of trafficked persons and advance the protection of potential, presumed and actual victims. Mentioning these three categories of victims is very important and innovative and contributes to the protection of their rights. The inclusion of potential and presumed victims among those who deserve protection should help prevent their victimization and ensure assistance to the actual victims.

The Commentary pays particular attention to the importance of working more closely with the private sector and highlights the 2013 Addendum's recommendation to encourage the private sector, including the banking sector, credit card companies, ICT companies and Internet service providers, to contribute to the prevention of all forms of THB and possibly disrupt trafficking networks by providing, for example, THB-related information to the relevant authorities. Close co-operation between various national agencies and the private sector is recommended as an effective instrument for preventing THB in supply chains and in addressing THB-related money laundering –the final stage of “legalizing” criminal assets.

The Commentary draws attention to a new recommendation introduced in the **2013 Addendum** of international co-operation between various NRMs or other relevant national structures aimed at an enhanced comprehensive and coordinated approach to prevent and combat THB and to protect and assist victims of trafficking in cross border cases through appropriate national and international mechanisms. This form of co-operation, known as transnational referral mechanisms (TRM), is already being applied in the European Union as a co-operative agreement for cross-border comprehensive assistance and/or transfer of identified or potential trafficked persons.

Chapter 5 presents an **“Overview of the OSCE's Role in Providing Assistance to the Participating States in the Implementation of the Action Plan and its 2005 and 2013 Addendums”**. This chapter describes the capacity of the Organization and its own adherence to accomplish the tasks agreed upon by the participating States and entrusted to the relevant OSCE structures and institutions. Such tasks are obligatory for OSCE personnel, whether at the OSCE Secretariat, the ODIHR or in the field operations. Each structure has its mandate to provide technical assistance to the participating States in the implementation of the OSCE MC Decisions and in transmitting the Action Plan recommendations at the national level upon the request from a state concerned. The mandate of the Special Representative and its Office can be described as: a) assistance; b) internal co-ordination; and c) external co-operation.

Technical assistance is the cornerstone of the SR/CTHB's mandate. Such assistance may include legal expertise for drafting anti-trafficking laws, capacity building through training for NGOs or state agencies, or communication with the media to raise awareness. The mandate envisages assistance also in particular cases that require special attention to be paid by the SR/CTHB and that are to be solved with due diligence, through direct contacts and in an appropriate manner with the participating State concerned.

Another part of the mandate is related to ensuring internal co-ordination. Taking into account that the Action Plan's tasks engage quite a number of the OSCE structures and institutions, it is crucial that all of them pursue the human rights based approach and avoid unnecessary duplication through proper coordination. Otherwise messages coming from differing perspectives might cause counterproductive effects and lead to serious budgetary problems. The Commentary provides examples of activities conducted by the OSR/CTHB, as the OSCE's major focal point, in close co-operation and coordination with the ODIHR, TNTD/SPMU, OCEEA and the field operations. These include projects, events, publications, joint training, exchange of work plans and regular meetings of all anti-trafficking focal points from the field operations under the auspices of the OSR/CTHB.

With regard to external coordination, the Commentary refers to the Action Plan's provisions that task OSCE institutions and bodies with extensive and regular exchange of information, data collection and research results with relevant international organizations. The SR/CTHB has accomplished a great deal in line with this task by having initiated the new innovative partnership, the *Alliance against Trafficking in Persons*. In the decade since its inception, the *Alliance* has gained wide recognition and proven its strength and sustainability. The Commentary points to this accomplishment and underlines its recognition by the participating States, who tasked the SR/CTHB to seek further co-operation and synergies with relevant international actors, including regional organizations, intergovernmental agencies and NGOs, and to continue to convene, chair and organize joint initiatives of the *Alliance against Trafficking in Persons*. Indeed, the OSCE took a pioneering step in creating this partnership based on shared democratic values, including the human rights and victim-centred approach.

The Commentary reiterates that trafficking is a phenomenon that indeed needs the coordinated response of all stakeholders, and a failure in the implementation of recommendations (or even a breach of commitment) in one place may have an immediate or long term negative impact in other places or countries and regions.

In the Concluding Remarks, the Commentary outlines the most challenging obstacles to the implementation of the Action Plan and its Addendums, such as underestimating the threat of human trafficking as a part of organized crime, underestimating the significance of the human rights based ap-

proach and the scope of THB at the national level, or the fear of publically acknowledging the scope of the problem for socio-cultural reasons, because it is “politically incorrect”, or because there are other prevailing priorities.

Another complicated issue that hampers the implementation of the recommendations of the Action Plan and the OSCE commitments, especially in times of economic and financial crisis, is the lack (or reduction) of State funding for anti-trafficking programmes. Among other things, this often blocks steps to establish State compensation funds for trafficking victims. Also restrictive migration policies, mistakenly considered by some as a tool to prevent human trafficking, have the opposite effect. Such policies help traffickers to increase their profits. People migrate illegally, leaving them highly vulnerable to being trafficked, not because they intentionally ignore migration and labour regulations, but because their search for better labour opportunities becomes their only viable perspective, a question of survival for themselves and their families.

The concluding remarks (and the Commentary as a whole) clearly demonstrate how the participating States can benefit from fully implementing the Action Plan and the OSCE MC Decisions on anti-trafficking. By referring to international and regional treaties, quoting research by prominent experts and providing examples of advanced guidelines produced by major partner organizations, the Commentary shows how far the international community has advanced toward eradicating human trafficking and how valuable it is to share knowledge and experience with each other. The Commentary encourages the participating States to translate, as soon as possible, this comprehensive treasure of words, expertise, and good intentions into deeds.

INTRODUCTION

The OSCE, with its relevant structures and institutions, especially the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings and the Office for Democratic Institutions and Human Rights (hereinafter ODIHR), is well known in the international arena for its unique position and high potential for providing assistance to the OSCE participating States to address the challenges of modern-day slavery. Under an agreed mandate¹⁵, the Special Representative (hereinafter SR/CTHB) works with the governments of the 57 participating States as well as the Partners for Co-operation, supporting them to develop and implement appropriate measures for combating THB, and assisting them to fulfil their anti-trafficking commitments through capacity building and promotion of good practices.

The OSCE Action Plan to Combat Trafficking in Human Beings¹⁶, its 2005 Addendum Addressing the Special Needs of Child Victims of Trafficking for Assistance and Protection¹⁷ and, especially, the 2013 Addendum¹⁸ to the Action Plan adopted one decade later serve this ambitious goal: they provide a comprehensive set of recommendations to be taken at the national level. Together with the relevant Ministerial Council Decisions directed against human trafficking, they constitute the OSCE's anti-trafficking framework for action.

The OSCE is not alone in the international arena in combating human trafficking. The Organization works in close co-operation with major international organizations and prominent NGOs, mutually strengthening global efforts to eradicate this heinous crime, which entails gross violations of human rights and fundamental freedoms, by coordinating anti-trafficking endeavours and ensuring the coherence of the OSCE's political commitments to international legal obligations.

Trafficking in human beings is an extremely complicated phenomenon. Addressing it effectively requires a deep knowledge of existing tools, high professionalism to tackle it in all its forms and manifestations, and close co-operation among all involved agencies. Prosecution of this crime, its prevention, as well as identification of trafficked persons and protection and restoration of their rights could significantly improve if the

OSCE Action Plan, and, at a higher level, the OSCE Ministerial Council Decisions on combating THB, constituting its political commitments, were better known and better implemented on the ground. The same can be said about the need for a better awareness among practitioners of the legal anti-trafficking obligations taken under the United Nations as well as at the regional level.

This is why the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (hereinafter OSR/CTHB) initiated the creation of a Commentary to the OSCE Action Plan and its 2005 and 2013 Addendums to provide better technical assistance to the participating States in implementing their commitments. As stated by the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (SR/CTHB) Ambassador Madina Jarbussynova in July 2015, "the Commentary ... will show the comprehensive nature of the recommendations and their coherence with the international and regional legal obligations. It will also provide examples of good practices developed and implemented to address the most challenging and underestimated forms of human trafficking. In addition, the Commentary will show the role of multiple stakeholders in the prevention of THB, prosecution and protection. It will demonstrate the significance of better co-operation at all levels to achieve the common goal of ending modern-day slavery."¹⁹ The Commentary directly conjoins the recommendations of the Action Plan, including its Addendums, with the relevant political commitments of the OSCE, and moreover, links them with the majority of the legal anti-trafficking obligations adopted at the level of the United Nations or regional international organizations by the OSCE participating States (or the vast majority of them).

The Commentary has been designed to render technical assistance to various practitioners, including law enforcement officials, prosecutors, judges, social workers, migration and customs officers, border officers, labour inspectors, law makers, teachers, medical staff, journalists, NGOs and other service-providers, human rights activists and especially those responsible for the protection of children's rights. Taking into account the relevance of awareness raising and the need to promote zero-tolerance towards human trafficking and exploitation, it will be also useful for the general public.

Following the structure of the Action Plan (chapters on Prosecution, Prevention, Protection, Follow-up and Coordination Mechanisms, together with the additional chapter on Partnerships included in the 2013 Addendum), the Commentary contains a detailed and practical explanation of recommend-

15 OSCE Ministerial Council, Decision No.2/03 Combating Trafficking in Human Beings, MC.DEC/2/03, 2 December 2003, Decision No.3/06 Combating Trafficking in Human Beings, MC.DEC/3/06, 21 June 2006.

16 OSCE, Permanent Council Decision No.557 OSCE Action Plan to Combat Trafficking in Human Beings, 24 July 2003. Available at: <http://www.osce.org/odihr/23866?download=true> accessed 12 September 2015.

17 OSCE Permanent Council, Decision No.685 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Assistance and Protection, 7 July 2005. Available at: <http://www.osce.org/pc/15932?download=true> accessed 12 September 2015.

18 OSCE Permanent Council, Decision No.1107/Corr.1' Annex, Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later PC.DEC/1107/Corr.1', 6 December 2013. Available at: <http://www.osce.org/addendum?download=true> accessed 12 September 2015.

19 Speech delivered by Ambassador Madina Jarbussynova at the OSCE-CoE Conference in July 2015. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs_10th_anniv/Speeches/OSCE_Conf.pdf accessed 12 September 2015.

ed actions of the Action Plan and its 2005 and 2013 Addendums in their entirety, summarized so they can be considered thematically.

The Commentary starts with a description of THB as a global phenomenon and its contemporary context. This is followed by a depiction of the OSCE's comprehensive approach to combating THB, which is distinguished by a powerful human rights component prioritizing the defence and restoration of human rights of trafficked persons, also at the stages of prosecution and prevention. This is followed by a review of the OSCE commitments taken from 2000 to 2013.

The major body of the Commentary contains detailed explanations of the provisions in the OSCE Action Plan and the subsequent 2005 and 2013 Addendums, integrating several examples of good practices in transforming the above-mentioned recommendations and commitments into reality. Due to space limitations it was not possible to provide all available examples; by no means do those that are included represent an assessment of the efforts taken at the national level in the countries concerned. The Commentary also provides an overview of the OSCE's role in rendering assistance to participating States, upon their request, in the implementation of these commitments and recommendations. It concludes with a few remarks addressed to all stakeholders engaged in the fight against human trafficking. Taking into account that particular attention must be paid to child trafficking, comments on the relevant recommendations of the Action Plan and its Addendums are highlighted within the thematic chapters.

CHAPTER 1.

THB AS A GLOBAL PHENOMENON AND ITS CONTEMPORARY CONTEXT

Over the course of the last two to three decades, trafficking in human beings (THB), a gross violation of the entirety of human rights and fundamental freedoms as they are proclaimed in the Universal Declaration of Human Rights²⁰ and featured in other international treaties²¹, has evolved into a serious transnational threat. The failure of any State Party to protect human rights on its territory means a failure to comply with its positive obligations, leaving that State responsible for the suffering of trafficked persons and for the violations of their rights and freedoms.²²

Human trafficking, although endemic to all societies, has turned into a truly transnational crime having been fuelled by the demand for cheap labour and the lucrative illicit proceeds it generates from victims' exploitation. The 2014 ILO estimate of criminal profits from forced labour and human trafficking amounts to nearly 150 billion U.S. dollars annually.²³ THB affects the lives of millions of women, men and children across the OSCE region and beyond. It undermines healthy economies, the rule of law and democratic values, and has a detrimental effect on States' application of due diligence. It poses a threat to the national security of participating States through the activities of criminal networks. These are engaged also in corruption, money laundering, document fraud and forgery, kidnapping, pornography, drug cultivation and drug trafficking, migrant smuggling, vehicle theft, trafficking in arms, and many other forms of organized crime. As stated in the OSCE Report "Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime", "men and women as well as children of both genders have been trafficked for terrorist acts and boys and girls have been trafficked as child soldiers. Traffickers have been linked to physical violence, extortion for protection money, money lending to repay debts and money

laundering. Additionally, trafficking organizations have been known to force their victims into perpetrating crimes. These include stealing, begging, pick-pocketing and drug trafficking. Victims have also been coerced into drug trafficking."²⁴

In 2012 the ILO estimated that there were 20.9 million people in a forced labour situations globally,²⁵ including victims of THB.²⁶ This clearly manifests the scope of the scourge. Additionally, the Protocol to the Forced Labour Convention (1930) adopted by the General Conference of the ILO in July 2014, recognized "that the context and forms of forced or compulsory labour have changed and trafficking in persons for the purposes of forced or compulsory labour, which may involve sexual exploitation, is the subject of growing international concern and requires urgent action for its effective elimination."²⁷ According to the 2014 Protocol (Art. 1, point 3.3), "the definition of forced or compulsory labour contained in the Convention is reaffirmed, and therefore the measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour."²⁸

The patterns of human trafficking have changed significantly over the course of time. This demonstrates the ability of criminals to adapt to anti-trafficking measures taken at the national level, to meet the demand for cheap labour by unscrupulous employers in the global economic crisis, to adjust to the requirements of the black market and shadow economies, to develop new forms of exploitation, to infiltrate new economic sectors, and to practice new methods of recruitment. The following is just a short and open-ended list of human drama and suffering amounting to torture: THB for sexual exploitation, one of the most cynical and cruel forms of modern-day slavery; THB for labour exploitation, which has become prevalent in many countries and various economic sectors; child trafficking, which is steadily increasing²⁹; THB for exploitation in forced and organized begging; THB for exploitation in criminality; THB for organ removal; THB for "mixed" forms of exploita-

20 Including the rights to life, liberty and security, to be free and equal in dignity and rights, freedom from discrimination, freedom from slavery and servitude, the right not to be subjected to torture, degrading, inhuman or cruel treatment or punishment, the rights to equal protection of the law, to an effective remedy, to freedom of movement, to equal pay for equal work, to rest and leisure, to a standard of living adequate for health and wellbeing. United Nations, United Nations Universal Declaration of Human Rights (1948). Available at: http://www.ohchr.org/en/udhr/documents/udhr_Translations/eng.pdf accessed 4 February 2015.

21 Including the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the European Union Charter of Fundamental Rights (2000), the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995).

22 For more details, see the case law of the European Court of Human Rights (ECHR), including notably the Siliadin and Rantsev cases. This has established the general framework in which to place the protection of the rights of trafficking victims. Council of Europe, European Court of Human Rights, Case of Rantsev v. Cyprus and Russia. Judgment. 10 May 2010. Available at: http://www.echr.coe.int/Documents/FS_Forced_labour_ENG.pdf accessed 12 October 2015.

23 International Labour Organization, Profits and Poverty. The Economics of Forced Labour (2014). Available at: www.ilo.org/global/topics/forced-labour/publications/profits-of-forced-labour-2014/lang-en/index.htm accessed 20 July 2014.

24 OSCE/UN.GIFT, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010), p. 27. Available at: <http://www.osce.org/files/documents/c/f/69028.pdf> accessed 12 September 2015.

25 International Labour Organization, *Estimate of Forced Labour. Results and Methodology* (2012), p.13.

26 The ILO expands the narrow approach to THB and includes human trafficking as a form of forced labour, thus broadening the scope of victims and perpetrators. For more details, see: Anne T. Gallagher, *The International Law on Human Trafficking*. Cambridge (2010), pp.49–51.

27 International Labour Organization, Protocol to the Forced Labour Convention (1930) adopted by the General Conference of the ILO in July 2014. Available at: http://www.ilo.org/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:P029 accessed 28 January 2015.

28 Ibid.

29 United Nations, *Global Report on Trafficking in Persons*, New York (2014), p.5.

tion and internal trafficking in all of these forms; and THB for exploitation for terrorist purposes. The former UN Special Rapporteur on Trafficking in Persons Joy Ngozi Ezeilo, while reporting in April 2014 on THB-related forms of exploitation³⁰, also mentioned THB through illegal adoption for the purpose of exploitation, THB for participation in illegal contingents in armed conflict, and trafficking in women and girls for sham marriage (which also has the purpose of further exploitation). Some of these emerging forms are not mentioned in the OSCE anti-trafficking commitments, but it is worth referring to them here to provide a more comprehensive picture of THB-related crime today.

In the same spirit, the Working Group on Trafficking in Persons, created within the framework of the Conference of the Parties to the UN Convention against Transnational Crime, in November 2013 expressed concern that multiple (and additional) exploitative purposes were not specifically mentioned in the 2000 Trafficking in Persons Protocol, but have arisen in certain national, regional and transnational contexts. These were: “sexual exploitation on-line³¹, exploitation in private households³², exploitation in the public and private care sectors, exploitation for witchcraft practices, exploitation of forced criminality and in forced begging³³, and very particular forms of child exploitation, including in the areas mentioned above, as well as others such as, the use of children as camel jockeys.”³⁴ The UN Member States also pointed to THB-related cases of exploitation in the form of debt bondage, serfdom, unlawful biometrical experimentation, recruitment of “mules” to cultivate, transport and sell drugs, boys’ exploitation in football clubs, forced giving up of offspring, and the sale of babies/infants.³⁵

For the most part, these forms of exploitation, whether in legal or illegal sectors/activities, fall under the broad term of labour exploitation. According to the definition in the Forced Labour Convention No.29 (1930), forced or compulsory labour means “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not

offered himself voluntarily.”³⁶ In this context, the ILO indicators of forced labour (recognized as such even if there are only two indicators out of six) must be taken into account in identifying a forced labour situation (physical or sexual violence [threat of and/or actual harm]; restriction of movement; bonded labour; withholding of wages; retention of passports and identity documents; and threat of denunciation to the authorities).³⁷

The perception of vulnerable groups, formerly limited to women and children, has changed as well. There are no age limitations (elderly people of both sexes can be trafficked and exploited, as for example in organized begging), and no restrictions on the level of education, gender or profession. Traffickers take advantage of any misfortune, be it a natural disaster or a conflict situation, a person’s dissatisfaction with the quality of life or temporary difficult personal circumstances, physical/mental disabilities or social exclusion. The gender dimension of trafficking has reached a certain parity – according to the 2012 ILO Report³⁸, men and boys constitute approximately 45 per cent of trafficked victims (the 2014 UN Global Report confirms that men and boys constitute 30 per cent of all detected victims,³⁹ while when segregated into forms of exploitation, male victims, including boys, form 83 per cent in forced labour, while female victims, including girls, form 14 per cent; sexual exploitation affects 8 per cent of male victims and 79 per cent of females⁴⁰).

The former familiar geographical “optics” have become blurred: we can no longer define countries as solely origin, transit or destination. The vast majority of the OSCE participating States are actually a combination of these, and in addition also face the problem of internal trafficking for all forms of exploitation. The latter amounts to 34 per cent of all trafficking flows.⁴¹

Tragically THB has become a systemic component of a globalized labour market and economies, imposing a heavy responsibility on both States and the private sector. According to the ILO 2012 Report, 90 per cent of victims world-wide are exploited in the private economy, either by individuals or

30 United Nations, Office of the United Nations High Commissioner for Human Rights, First Decade of the Mandate of the Special Rapporteur on Trafficking in Persons, especially Women and Children (2014). Available at: http://www.ohchr.org/Documents/Issues/Trafficking/FirsDecadeSRon_%20trafficking.pdf accessed 5 March 2015.

31 This issue was vigorously addressed by the OSCE in its Ministerial Council Decision “On Combating Sexual Exploitation of Children on the Internet”, MC.DEC/9/07, 30 November 2007.

32 This form of exploitation was also addressed by the OSCE in the 2013 Addendum to the Action Plan.

33 Child begging was specifically addressed in the OSCE’s 2013 Addendum to the Action Plan.

34 United Nations, Working Group on Trafficking in Persons, Forms of Exploitation not Specifically Mentioned in the Protocol (2013), UN/CTOC/COP/WG.4/2013/4, p.3. Available at: https://www.unodc.org/documents/treaties/organized_crime/2013_CTOC_COP_WG4/CTOC_COP_WG.4_2013_4_E.pdf accessed 5 December 2014.

35 Notes from the discussion of the agenda item 4 at the November 2013 WG Meeting mentioned above and distributed by the UNODC Secretariat.

36 “Exceptions are provided for work required by compulsory military service, normal civic obligations, as a consequence of a conviction in a court of law (provided that the work or service in question is carried out under the supervision and control of a public authority and that the person carrying it out is not hired to or placed at the disposal of private individuals, companies or associations), in cases of emergency, and for minor communal services performed by the members of a community in the direct interest of the community. The convention also requires that the illegal extraction of forced or compulsory labour be punishable as a penal offence, and that ratifying states ensure that the relevant penalties imposed by law are adequate and strictly enforced.” Quoted from International Labour Organization, International Labour Standards on Forced Labour (2015). Available at: <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm> accessed 5 December 2014.

37 International Labour Organization, ILO Six Indicators of Forced Labour (2005). Available at: http://forcedlabour.org/?page_id=86 accessed 5 December 2014.

38 ILO Estimate of Forced Labour. Results and Methodology. ILO, Geneva (2012).

39 2014 Global Report on Trafficking in Persons, UN, New York (2014), p.29.

40 Ibid., p.36.

41 United Nations, Global Report on Trafficking in Persons (2014), p.38. Available at: https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf accessed 5 September 2015.

enterprises. Of these, 22 per cent are victims of forced sexual exploitation, and 68 per cent are victims of forced labour exploitation in various economic activities, including agriculture, construction, fishing, food processing, hospitality, restaurants and services, manufacturing, as well as the largely hidden sector of domestic work. These economic sectors are particularly affected by trafficking in human beings. Unscrupulous employers benefit from unpaid work on a large scale, generating huge profits from their illegal activities, which they reinvest in legal businesses, real estate or luxurious lifestyles. Their criminal gains simultaneously mean losses for States and societies, and illegal profits often feed corruption. The remaining 10 per cent are persons exploited in State-imposed forms of forced labour that breach ILO standards, or in work imposed by state militaries, or by rebel armed forces.⁴² The ILO estimates of forced labour in State-related sectors of labour (including military) may be related to the cases of severe violations of labour standards and human rights, not to the areas of activity as such.

Today's globalized economy is characterized by complex supply chains of goods and services, with both materials and labour sourced from all around the world. It is difficult for buyers and consumers to be sure that the goods or services they purchase were not produced by trafficked labour. It is also difficult for large or multi-national companies to verify their own supply chains when there are multiple tiers of subcontractors. It is possible that a parent company is not aware of whether its sub-contractors down the supply chain tier use forced, child or trafficked labour. Additional challenges are worksites and recruitment that are poorly regulated and inspected, behaviour and practices conducive to corruption, lack of understanding of labour and human rights standards, as well as insufficient enforcement.

The global financial crisis, as underlined in 2012 by the former OSCE SR/CTHB Dr. Giammarinaro, "compounded this complex problem, by creating a perfect market for traffickers. Widespread unemployment, a lack of viable economic opportunities, and a loss in remittances from labour migrants, have left countless numbers of workers without a job or sustainable livelihood. At the same time, a growing demand for ever cheaper labour was combined with the normalization of corrupt practices and an increasing tolerance of the exploitation of economically vulnerable people in dangerous and degrading work throughout the OSCE region."⁴³ This demand, combined with conflict situations in Eastern Europe and in the Mediterranean, has contributed to unprecedented migration flows, adding to the vulnerability of the affected populations and providing new opportunities for criminal networks.

The migration and refugee situation, affecting since 2014 a number of the OSCE participating states, is another risk factor that may lead to an increase of labour exploitation in supply chains. Migrants and asylum seekers are especially vulnerable to human trafficking, in particular those held in debt bondage to cover the cost of their often perilous journeys or are forced to work illegally to be able to continue to their final destination. Of the 20.9 million people worldwide estimated by the ILO to be currently in a forced labour situation, 9.1 million have migrated, either internally or internationally.

42 International Labour Organization, ILO Estimate of Forced Labour. Results and Methodology. Geneva (2012).

43 Dr. Maria Grazia Giammarinaro, OSCE SR/CTHB 2010-2014. Keynote Speech at the Concluding Meeting of the 20th OSCE Economic and Environmental Forum, Prague, 12–14 September 2012. Since 2014 Dr. Giammarinaro has held the post of UN Special Rapporteur on Trafficking in Persons, especially Women and Children.

CHAPTER 2.

THE OSCE'S COMPREHENSIVE, HUMAN RIGHTS BASED APPROACH TO COMBATING TRAFFICKING IN HUMAN BEINGS

Since 1999, the OSCE has been at the forefront in the fight against human trafficking. In November 1999, at the OSCE Istanbul Summit, the participating States decided to “undertake measures to eliminate all forms of discrimination against women, and to end violence against women and children as well as sexual exploitation and all forms of trafficking in human beings.”⁴⁴ In order to prevent such crimes, the participating States decided to, “among other means, promote the adoption or strengthening of legislation to hold accountable persons responsible for these acts and strengthen the protection of victims.”⁴⁵ Earlier, the issue of human trafficking was addressed by participating States in the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE in October 1991, in the context of combating discrimination against women. The participating States confirmed that they would “seek to eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women including by ensuring adequate legal prohibition against such acts and other appropriate measures;... develop educational policies, consistent with their constitutional systems, to support the participation of women in all areas of study and work, including non-traditional areas, and encourage and promote a greater understanding of issues relating to equality between men and women.”⁴⁶

The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) contributed significantly to the elaboration of a human rights based and victim-centred approach by developing and promoting the concept of National Referral Mechanisms⁴⁷ (frameworks for co-operation and co-ordination between State and non-State actors in identifying, referring and assisting victims of trafficking),⁴⁸ and by advocating compensation to be provided to victims of trafficking for the harm they had suffered,⁴⁹ as well as ensuring their safe and vol-

untary return.⁵⁰ The correct functioning of NRMs is a prerequisite for guaranteeing the protection of victims’ rights, from the moment of their identification as presumed victims until their successful reintegration in society (for comments on the recommendation to establish NRMs, see p.75–77).

In practice, the human rights based approach has proven effective. This approach places the rights of trafficked persons at the centre of all actions undertaken by State agencies involved in investigation, prosecution, prevention and protection. It draws not only on the obligation of States to ensure the protection of human rights for all who live within their territory, but also takes into account the severe trauma possibly experienced by trafficked persons as well as their psychological condition, including fear of retaliation from traffickers. Traffickers use sophisticated methods to make victims obedient, such as making them more afraid of contacting law enforcement officers than of remaining under traffickers’ control. These fears are based on real or fictional stories told by criminals to their victims, such as descriptions of degrading treatment after being identified by the police, especially if a victim has been exploited in commercial prostitution after or, even “worse”, before being trafficked. Victims are afraid of further stigmatization, suspect alleged (and often actual) complicity of officials in THB-related crimes, and assume that officials have a high potential for corruption. Trafficked persons are convinced by traffickers that if they seek protection from the State, they will most probably be detained, arrested, prosecuted and charged with offences they may have committed, though under duress. Many victims are concerned about possible deportation, which often means the loss of any (even illusory) chance to earn money and, too often, re-trafficking or prosecution – now in the country of origin. Such fears hamper the co-operation between law enforcement agencies and victims, at least until a victim feels safe enough to rely on State protection. The human rights based approach to the victim at all stages of communication between a trafficked person and State officials is the major precondition for effective investigation and prosecution, as well as victims’ rehabilitation and reintegration.

The OSCE participating States agreed, in a number of Ministerial Council Decisions taken by consensus in the period from 2000 to 2013, to integrate and apply a human rights based ap-

44 OSCE, Charter for European Security, Istanbul, November 1999. Available at: <http://www.osce.org/mc/39569?download=true> accessed 1 December 2014.

45 *Ibid.*

46 <http://www.osce.org/odihr/elections/14310?download=true> accessed 1 December 2014.

47 OSCE/ODIHR, National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook (2004). Available at: <http://www.osce.org/odihr/13967?download=true> accessed 5 September 2015.

48 The NRM concept has been engraved in the 2010 UN Global Plan of Action to Combat Trafficking in Persons (A/RES/64/293, para.28) and in the 2012 EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 (COM(2012) 286, 2.1(1)).

49 OSCE/ODIHR, Compensation for Trafficked and Exploited Persons in the OSCE Region. (2008). Available at: <http://www.osce.org/odihr/32023?download=true> accessed 5 September 2015.

50 OSCE/ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons. (2014). Available at: <http://www.osce.org/odihr/124268?download=true> accessed 5 September 2015.

proach in comprehensive anti-trafficking policies⁵¹ and to place the rights and interests of the victims at the centre of all anti-trafficking actions. For example, the common understanding of THB as “an abhorrent human rights abuse” is manifested in the Vienna MC Decision of 2000, which states: “The Ministerial Council ... commits to take necessary measures, including by adopting and implementing legislation, to criminalize trafficking in human beings, including appropriate penalties, with a view to ensuring effective law enforcement response and prosecution. Such legislation should take into account a human rights approach to the problem of trafficking, and include provision for the protection of the human rights of victims, ensuring that victims of trafficking do not face prosecution solely because they have been trafficked.”⁵²

The same view is explicitly repeated in the Porto MC Declaration on Trafficking in Human Beings: “We declare that trafficking in human beings and other modern forms of slavery constitute an abhorrent violation of the dignity and rights of human beings...”⁵³ The participating States confirmed: “We will strive to render assistance and protection to the victims of trafficking, especially women and children, and to this end, when appropriate, to establish effective and inclusive national referral mechanisms, ensuring that victims of trafficking do not face prosecution solely because they have been trafficked. The dignity and human rights of victims must be respected at all times.”⁵⁴

As part of all relevant OSCE MC Decisions on CTHB, and especially the OSCE Action Plan to Combat Trafficking in Human Beings with its 2005 and 2013 Addendums, the human rights approach has been a cornerstone for all anti-trafficking projects and programmes implemented by the ODIHR, the OSR/CTHB, TNTD/SPMU, OCEEA and the OSCE’s field operations. It has been the basis for the OSCE structures and institutions in realising their task to provide assistance to participating States in the implementation of their anti-trafficking commitments. The cohesion between the human rights based approach and the comprehensive approach to CTHB (based on the OSCE Concept of Comprehensive Security and its three dimensions) is integral. No anti-trafficking actions, whether in the area of prosecution, prevention, or protection, can be sustainable and successful without the full restoration of the human rights of trafficked persons. As stated in the Helsinki MC

Decision “Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach”, the Ministerial Council “calls on the participating States to continue their efforts to ensure that victims of human trafficking are treated in a manner that respects the full enjoyment of human rights without threat of intimidation or harassment...”⁵⁵

51 In this particular context, the term “comprehensive” means that the fight against THB should tackle the crime and prosecute the offenders, take preventive measures by addressing the social and economic causes of human trafficking (including demand), ensure the protection of the victims’ rights, and promote co-operation at all levels. Each “set” of actions, including investigation and prosecution, should, as a starting point, ensure the protection and restoration of the rights of trafficked persons.

52 OSCE Ministerial Council Decision No.1 Enhancing the OSCE’s Efforts to Combat Trafficking in Human Beings, MC(8).DEC/1, Vienna, 28 November 2000. Special comments on the provisions addressing the issue of non-punishment in the OSCE MC Decisions will be provided below (p.30), in reference to the relevant paragraphs in the Action Plan and the 2013 Addendum.

53 OSCE Ministerial Council Declaration on Trafficking in Human Beings, MC(10).JOUR/2, Porto, 2 December 2002.

54 Ibid.

55 OSCE Ministerial Council Decision No.5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach, MC.DEC/5/08, 5 December 2008.

CHAPTER 3.

A REVIEW OF THE OSCE ANTI-TRAFFICKING COMMITMENTS 2000–2013

The new Millennium was marked by the adoption of the UN Convention against Transnational Organized Crime (hereinafter UNTOC) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UNTOC (hereinafter UN Trafficking Protocol). As of 17 December 2014, the UNTOC and the UN Trafficking Protocol have been ratified by all 57 OSCE participating States⁵⁶, demonstrating that the first legally binding definition of trafficking in persons has gained broad support.

In 2005 the overall recognition at the regional level of the global scope and severity of human trafficking led to the adoption of the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter referred to as the CoE Trafficking Convention), which by 30 November 2015 has received 44 ratifications, and has been signed but not yet ratified by two more States. Belarus, a non-member of the CoE, acceded to the Convention in November 2013.⁵⁷ The coherence between the legally binding obligations of the UN and the CoE, on one hand, and the OSCE political anti-trafficking commitments, on the other, creates a strong synergy.⁵⁸ The many references to the relevant anti-trafficking documents of these and other international organizations, including the EU and the CIS, clearly manifest the mutually reinforcing impact of international treaties, model legislation and other legal and political acts guiding the participating States in their anti-trafficking actions at the national level.

Shortly after the adoption of the UNTOC and the UN Trafficking Protocol, in 2000 **the first OSCE Vienna Ministerial Council Decision on trafficking, “Enhancing the OSCE’s Efforts to Combat Trafficking in Human Beings”**, referred to these universal treaties by welcoming the definition of THB and calling upon all participating States “to sign and ratify the United Nations Trafficking Protocol as well as the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography.”⁵⁹ From the beginning (as is clear from the text of this Decision), the OSCE manifested a high political responsibility and readiness “to enhance its efforts to combat THB throughout the OSCE region” and “to contribute to national, regional and international anti-trafficking efforts in defence of human rights and

the fight against transnational organized crime.”⁶⁰ The Decision is remarkable in its recognition of the role of national parliaments in enacting laws to combat THB, its appeal for better co-ordination and co-operation between the OSCE and other international organizations, and its giving the clear task to the OSCE bodies “to develop and implement anti-trafficking programmes and to promote co-ordinated efforts in the areas of prevention, prosecution and protection, in co-operation with non-governmental organizations as well as international organizations and other relevant institutions.”⁶¹ Also recognized in the Decision is the valuable role that the OSCE field operations “play in the fight against trafficking, including by regular monitoring and reporting and assisting State authorities through, *inter alia*, promoting dialogue and acting as a bridge between governments and non-governmental organizations; and institutions, in resolving individual trafficking cases.”⁶²

The next relevant MC Decision, MC(9).DEC/6, taken in 2001 in Bucharest, sent an important political signal. It called for the full implementation of the Vienna 2000 commitments, encouraging the participating States, all of them affected by THB, to sign and ratify the UNTOC and the Trafficking Protocol and to co-operate and enhance information exchange for better investigation, law enforcement and crime prevention. The Decision also welcomed the successful completion of the Code of Conduct and Anti-trafficking Guidelines, thus reaffirming the obligations of the OSCE personnel to observe the highest standards of conduct. The Permanent Council Decision No. 426 taken earlier on this issue⁶³ requested that the Chairman-in-Office (CiO), the Secretary General and the ODIHR inform other international organizations about the position and the measures already taken by the OSCE, including the dissemination by the OSCE Secretariat of the Code of Conduct for OSCE personnel and the OSCE Anti-Trafficking Guidelines. It also encouraged international organizations to adopt similar instruments for their personnel if they had not yet done so, to implement them and investigate cases of wrongdoing, and to take appropriate measures where necessary (which then indeed took place, as for example, with the appearance soon thereafter of the NATO Zero Tolerance Policy). Later, in the 2002 Porto Ministerial Council Declaration on Trafficking in Human Beings, the participating States reiterated: “We will

56 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12-a&chapter=18&lang=en accessed 17 December 2014. Two Partners for Co-operation have not yet signed this Convention and Trafficking Protocol.

57 http://www.coe.int/t/dghl/monitoring/trafficking/Flags-sos_en.asp accessed 30 November 2015

58 Of the OSCE participating States, 47 are concurrently Member States of the CoE (28 of them, being EU Member States, also bound by EU legislation), and all 57 OSCE participating States are also engaged in the work of the United Nations.

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

60 *Ibid.*

61 *Ibid.*

62 *Ibid.*

63 OSCE Permanent Council Decision No.426 Trafficking in Human Beings, PC.DEC/426, 12 July 2001.

not tolerate international staff members being involved in any illegal activities, inciting this criminal trade or behaving in contravention of this Code of Conduct.”⁶⁴

In general, the strong support of the Bucharest Ministerial Council of the work of the ODIHR and the field operations in the area anti-trafficking, being completely in line with the Vienna MC Decision No.1, enabled them to develop anti-trafficking programmes and projects in their various host countries.⁶⁵

Another unprecedented political signal to enhance the fight against human trafficking was sent by the **Porto Ministerial Council Declaration on Trafficking in Human Beings**.⁶⁶ This Declaration is remarkable in its content, language and impact on the development of the OSCE political anti-trafficking framework.

The Declaration, reaffirming the undeniable recognition of THB as a serious threat to security in the OSCE region and beyond⁶⁷ and as an abhorrent violation of the dignity and rights of human beings, underlined the links between THB, trafficking in drugs and arms, and the smuggling of migrants. This is why the Declaration called not only for the ratification and full implementation of the UNTOC and the UN Trafficking Protocol, but also strongly encouraged States to consider concurrent ratification and full implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, also supplementing the above-mentioned Convention.

The Porto Declaration specifically addressed the root causes of trafficking and called on participating States to “reduce the economic and social inequalities and disadvantages, which also provoke illegal migration, and which may be exploited by organized criminal networks for their profit.”⁶⁸ Corruption, which facilitates the operation of such networks, was mentioned in this context in particular.

The Declaration also reaffirmed the need to tackle “the demand for the activities of persons trafficked for the purposes of sexual exploitation, forced labour, slavery or other practices similar to slavery” as “an integral factor in trafficking in human beings.”⁶⁹ The Ministerial Council urged countries of destination to take measures to effectively address such demand as a key element in their strategy for effectively preventing and combating traf-

ficking in human beings, and “to exercise zero tolerance towards sexual exploitation, slavery and all forms of exploitation, of forced labour, irrespective of its nature.”⁷⁰

Deep concern over the increase in **trafficking in minors**, expressed clearly for the first time in a THB-related OSCE document, clearly added value to the Porto Declaration. The participating States recognized the **special needs of children**, and, with due regard to the best interests of the child as a primary consideration in all actions concerning children, called for the elaboration of special measures to protect trafficked minors from further exploitation, mindful of their psychological and physical well-being. This appeal was later incorporated in the Sofia MC Decision in 2004, and developed into the 2005 Addendum to the OSCE Action Plan: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance. The participating States declared that they would “strive for adequate measure to prevent THB”, *inter alia*, through target-oriented awareness raising campaigns and education in countries of origin and transit, directed in particular towards youth and other vulnerable groups.

The Declaration focused specifically on the issues of prevention and protection of victims. These provisions use particularly strong and direct expressions, as for example, that “the dignity and human rights of victims must be respected at all times.” It contains various sets of comprehensive measures, such as effective and inclusive national referral mechanisms, non-punishment of victims of trafficking (“ensuring that victims of trafficking do not face prosecution solely because they have been trafficked”), appropriate repatriation processes with due regard to victims’ safety, and provisions for economic and social benefits to victims for their rehabilitation and reintegration into society. The participating States declared that they would “consider adopting legislative or other measures that permit victims of trafficking to remain in our territory, temporarily or permanently, in appropriate cases, and giving consideration to humanitarian and compassionate factors.”⁷¹

The issues of prosecution were tackled by the Declaration in the context of co-operation among the law enforcement of the participating States and international bodies, including Europol, Interpol and the Southeast European Co-operative Initiative (SECI)⁷², especially taking into account THB as a form of transnational organized crime and its links to trafficking in drugs and arms and to migrant smuggling.

The Declaration reiterated the urgent need for better co-operation and coordination at the national, regional and international levels.⁷³ It concluded by tasking the Permanent Coun-

64 OSCE Ministerial Council Declaration on Trafficking in Human Beings, MC(10).JOUR/2, 7 December 2002.

65 OSCE Ministerial Council Decision No.6, MC(9).DEC/6, 4 December 2001.

66 OSCE Ministerial Council Declaration on Trafficking in Human Beings, MC(10).JOUR/2, 7 December 2002.

67 This additional dimension of the scope of THB (“THB region and beyond”) pointed to the universal nature of the crime and the links between and among criminal networks all over the globe.

68 OSCE Ministerial Council Declaration on Trafficking in Human Beings, MC(10).JOUR/2, 7 December 2002.

69 Ibid.

70 Ibid.

71 OSCE Ministerial Council Declaration on Trafficking in Human Beings, MC(10).JOUR/2, 7 December 2002.

72 Now known as the Southeast European Law Enforcement Co-operation (SELEC).

73 In the national context of the participating States, this meant establishing interagency coordinating mechanisms and the appointment of national coordinators.

cil, through an informal Working Group on Gender Equality and Anti-Trafficking in Human Beings, to revise the Proposed OSCE Action Plan 2000 for Activities to Combat Trafficking in Human Beings⁷⁴ and to elaborate a new draft for further appropriate action by 25 July 2003. This task opened a new chapter in the OSCE's anti-trafficking policy.

The **OSCE Action Plan to Combat Trafficking in Human Beings**⁷⁵ is the foundation of OSCE's CTHB action. This strategic document has gained wide international recognition due to its advanced and detailed recommendations drawing on the entire compendium of relevant international treaties and best practices as developed by international organizations (including not only major global actors such as the UNODC, IOM, ILO, UNICEF and others, but also, to a large extent, the South Eastern Stability Pact Task Force on THB⁷⁶). The OSCE Action Plan has become the major OSCE anti-trafficking document referred to and applied at the national level, promoted by other international organizations and used by NGOs.

The OSCE Action Plan is based on the UN Trafficking Protocol definition and is structured along the lines of the "three Ps" (prosecution, prevention and protection). Equipping the participating States with recommended actions to take at the national level, it concludes with a chapter dedicated to follow-up and coordinating mechanisms as crucial tools to ensure the implementation of anti-trafficking commitments and recommendations. The format of "recommended actions" proved more acceptable to the participating States than the politically binding "commitments". Moreover, this particular format had a strong positive impact on the advanced content of the Action Plan, permitting the negotiations to reach a consensus on each recommendation.⁷⁷ As for the role of the OSCE structures and institutions, the participating States designed certain provisions of the Action Plan named "Action for OSCE Institutions and Bodies" to enable the Organization to render assistance more effectively, and they obliged the OSCE and its staff to take action and to be proactive in advocating anti-trafficking measures (detailed comments on the tasks given to the relevant OSCE structures are provided below in Chapter 5, p.98).

The endorsement of the Action Plan by the **Maastricht Ministerial Council Decision MC.DEC/2/03** contributed significantly to the authority of this comprehensive document,

thus raising its recommendations to a higher political level.⁷⁸ Equally important were the provisions of the Maastricht Decision in which the participating States agreed to set up an innovative anti-trafficking mechanism to "assist OSCE participating States in the implementation of commitments and full usage of recommendations proposed by the OSCE Action Plan to Combat Trafficking in Human Beings"⁷⁹ – to establish the post of an OSCE Special Representative supported by an Anti-Trafficking Unit at the OSCE Secretariat. This step, taken under the leadership of the OSCE Dutch Chairmanship, provided a path-breaking role for the OSCE in the global anti-trafficking community. The new mechanism improved coordination within the OSCE, contributed to better co-operation between the participating States, facilitated stronger coordination among international organizations and took a pioneering step in establishing the *Alliance against Trafficking in Persons* (July 2004), a stable partnership of major international organizations and NGOs. Initiated by the SR/CTHB and based on shared values, the *Alliance* has become a platform for high-level dialogue on the most challenging issues of modern-day slavery between the participating States, civil society, international partners and anti-trafficking experts.

The **MC.DEC/2/03** formulated the mandate of the Special Representative (SR).⁸⁰ Later, in 2006, this mandate was amended slightly in terms of its structure, with the two parts of the mechanism being merged under the OSCE Secretariat, albeit with no change to the content of the SR/CTHB's activities. The unique high-level post of the SR became politically instrumental in ensuring the co-ordination of the OSCE's efforts in combating THB across all of its three dimensions. The mandate envisages strengthening co-operation among the participating States and between the OSCE and other relevant organizations; raising the public and political profile of combating THB; and, operating in the whole OSCE area, assisting, as appropriate, the participating States in the spirit of co-operation, and following consultations with the States concerned, in aiming at the implementation of their commitments. The mandate gives the SR/CTHB the authority to provide and facilitate advice and technical assistance in the areas of legislation and of policy development, as necessary, with other OSCE structures. It also tasks the SR/CTHB with offering advice to senior level authorities in participating States and discussing with them the implementation of their commitments and the Action Plan. In specific cases it is permitted to call for special attention and seek direct contact, in an appropriate manner, with particular participating States. The SR/CTHB was authorised by the participating States to co-operate with national coordinators,

74 The Proposed OSCE Action Plan 2000 for Activities to Combat Trafficking in Human Beings, elaborated by the ODIHR, served as an internal document.

75 OSCE Ministerial Council Decision No.2/03 Annex, OSCE Action Plan to Combat Trafficking in Human Beings. MC.DEC/2/03, 2 December 2003.

76 This Task Force was active from 2000 to 2004.

77 The Action Plan was drafted by the Informal Working Group on Gender Equality and Anti-Trafficking (WG) co-chaired by the Permanent Representative of Belgium to the OSCE and a Senior Adviser of the Permanent Mission of the Russian Federation to the OSCE. With regard to the content, the WG also consulted the OSCE structures and institutions, as well as relevant international organizations and NGOs. The drafting process took six months and concluded with the adoption of the Action Plan by PC.DEC/557 on 24 July 2003.

78 This recognition of the validity of the Action Plan was reflected in the Vilnius Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/Corr.1, in which the participating States reaffirmed "their determination to implement OSCE commitments, including the Action Plan to Combat Trafficking in Human Beings."

79 OSCE Ministerial Council Decision No.2/03 "Combating Trafficking in Human Beings", MC.DEC/2/03, 2 December 2003.

80 OSCE Ministerial Council Decision No.3/06 "Combating Trafficking in Human Beings", MC.DEC/3/06, 21 June 2006.

national rapporteurs or other national mechanisms established by participating States and with NGOs, to assume responsibility within the OSCE to host and facilitate meetings for the exchange of information and experience between national coordinators, representatives designated by participating States, and/or experts on combating THB, and to co-operate closely with the ODIHR and other OSCE structures and institutions. The SR's mandate includes co-operation and seeking synergies with relevant international actors (*inter alia*, regional organizations, intergovernmental agencies and NGOs). Added to this by the subsequent **MC.DEC/3/06** is the task of convening, chairing and organizing joint initiatives of the *Alliance against Trafficking in Persons*⁸¹ (the *Alliance* partnership was not yet mentioned in the **MC.DEC/2/03** containing the original mandate).

Each and every OSCE MC Decision subsequently taken that has been dedicated to the fight against human trafficking has been motivated by the increasing awareness of the scope of the criminal phenomenon, by the rich experience gained by the participating States and their NGOs, by the advanced expertise of major international organizations and the partners of the *Alliance against Trafficking in Persons*, and by the OSR/CTHB's innovative research and reports opening new horizons of knowledge.

The initial MC Decisions were broad in their scope and addressed all areas requiring anti-trafficking action (the "three Ps"). From 2004 the Decisions became more specific and focused on particular challenging issues. For example, in 2004, the Sofia Ministerial Council adopted **MC.DEC/13/04** dedicated to the special needs of **child victims of trafficking**.⁸² This Decision, based on the recommendations of the OSCE Action Plan that the OSCE should give special attention to the issue of **trafficking in children**, recognized the vulnerability of unaccompanied and separated children. It was motivated by alarming data on sex tourism and other forms of sexual exploitation of trafficked children all over the OSCE region. The MC Decision tasked the Permanent Council, through the Informal Working Group on Gender Equality and anti-Trafficking, with support provided by the SR/CTHB and other relevant OSCE structures, to elaborate an addendum to the OSCE Action Plan to Combat Trafficking in Human Beings on this particular issue. Unsurprisingly, the Decision referred not only to the OSCE Action Plan, but also to various relevant major international treaties, including the 1989 UN Convention on the Rights of the Child and its 2000 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the

81 Alliance against Trafficking in Persons was established upon the SR/CTHB initiative in July 2004 on the basis of close consultations held by the SR/CTHB with the delegations of the OSCE participating States, major international organizations and NGOs. The purpose of the Alliance is to achieve better coordination among partners, to exchange best practices, to avoid unnecessary duplication of efforts, and to share the experience gained in the fight against human trafficking with the participating States and, thus, contribute to their capacity building.

82 OSCE Ministerial Council Decision No.13/04 "The Special Needs for Child Victims of Trafficking for Protection and Assistance", MC.DEC/13/04, 7 December 2004.

2000 UN Trafficking Protocol, as well as the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993, The Hague).

This task was accomplished in 2005, with the adoption of the **Addendum to the OSCE Action Plan to Combat THB: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance**⁸³ by the PC Decision No.685.⁸⁴ In addition to the above-mentioned treaties, the Addendum referred to the UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking in South Eastern Europe as one of the most important regional initiatives.

In December 2005 this **Addendum**, now an integral part of the Action Plan, was endorsed by the **MC Decision No.13/05 "Combating Trafficking in Human Beings"**⁸⁵, which extended the list of major references by noting the CoE Trafficking Convention (May 2005, Warsaw) as the first regional treaty in this field to focus primarily on the protection of the rights of trafficked persons.⁸⁶ It reiterated the unique role of the OSCE as a catalyst in the joint efforts of international organizations aimed at combating trafficking in human beings of all forms. In this context, the Ministerial Council commended the initiatives taken by the OSCE SR/CTHB under the auspices of the *Alliance against Trafficking in Persons*.⁸⁷ This Decision also laid the grounds for the SR/CTHB's Annual Reports, which were to be presented to the Permanent Council on developments related to trafficking in human beings throughout the OSCE region, including an analysis of achievements in light of the objectives set out in the 2003 OSCE Action Plan. These Reports have been available on the SR/CTHB website since 2006.⁸⁸

Also in 2005, the Ministerial Council in Ljubljana took a specific Decision which sent a strong message to participating States whose nationals were serving abroad, including peacekeepers. **The MC Decision "Ensuring the Highest Standards of Conduct and Accountability of Persons Serving on International Forces or Missions"**⁸⁹ was initiated in response to reports of misconduct by military and civilian personnel

83 Comments to the 2005 Addendum are found thematically in Chapter 4.

84 OSCE Permanent Council Decision No.685 "Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance", PC.DEC/685, 7 July 2005.

85 OSCE Ministerial Council Decision No.13/05, "Combating Trafficking in Human Beings", MC.DEC/13/05, 6 December 2005.

86 OSCE Ministerial Council Decision No.15/05 "Preventing and Combating Sexual Violence against Women", MC.DEC/15/05, 6 December 2005, was much more positive on this issue and called on participating States "to consider signing and ratifying ... where appropriate, the CoE Convention on Action against Trafficking in Human Beings."

87 This was the first mention of the *Alliance against Trafficking in Persons* in an OSCE Ministerial Council document.

88 For the entire Annual Reports, see: <http://www.osce.org/secretariat/109731>; <http://www.osce.org/cthb/98249?download=true>; <http://www.osce.org/secretariat/86294?download=true>; <http://www.osce.org/secretariat/74730?download=true>; <http://www.osce.org/cthb/40765?download=true>; <http://www.osce.org/cthb/36159?download=true>; <http://www.osce.org/cthb/29588?download=true>; and <http://www.osce.org/cthb/24335?download=true> accessed 9 December 2014.

89 Ministerial Council Decision No.16/05 "Ensuring the Highest Standards of Conduct and Accountability of Persons Serving on International Forces or Missions", MC.DEC/16/05, 6 December 2005.

serving on international peacekeeping forces and other international missions, contributing to the demand side of the trafficking cycle in the Balkans as well as some other regions. The Decision noted that the engagement in THB or sexual exploitation and abuse of local populations and refugees committed by persons serving on international missions had a detrimental effect on fulfilling mission mandates. The Ministerial Council called upon participating States to improve measures to prevent military and civilian personnel deployed abroad, as well as OSCE officials, from engaging in THB or exploiting victims of trafficking, and to enforce relevant standards of conduct in this regard. Any such case, as the MC Decision stated, should be properly investigated and appropriately punished. The Secretary General was instructed, drawing on the expertise of the OSCE SR/CTHB and the Anti-Trafficking Assistance Unit, to update the OSCE Code of Conduct and Staff Instruction No.11 to bring it in line with this decision. The SR/CTHB was given the task of sharing OSCE training material and other information that could assist in combating human trafficking with relevant international organizations.

A number of MC Decisions not directly dedicated to the fight against trafficking in human beings belong nevertheless to the OSCE anti-trafficking framework of political commitments. One such example is the **MC Decision No.15/05 “Preventing and Combating Violence against Women”**⁹⁰, which refers to THB in the context of OSCE commitments in the field of human rights, gender equality and non-discrimination. This Decision draws attention to the particular vulnerability of girls and women belonging to minority groups, indigenous women, refugee and internally displaced women, migrant women, women living in rural and remote communities, destitute women, women in institutions or in detention, women with disabilities, elderly women, women in situations of armed conflict and women who are otherwise discriminated against. The Decision is characterized by a strong human rights approach, with a particular focus on the protection of the victims of violence, the special need for assistance and protection of girls who have become victims of violence and abuse, as well as the empowerment of vulnerable groups by strengthening economic independence, non-discriminatory employment policies, equal access to education and training, equal remuneration for equal work and equal access to economic resources.

Equally important is the **MC Decision No.15/06 “Combating Sexual Exploitation of Children”**.⁹¹ Here, the participating States recognized that sexual exploitation of children is “a grave and large-scale problem throughout the OSCE region and beyond, with multiple, interlinked manifestation of all forms of sexual exploitation, including prostitution, child pornography, **trafficking in children** for sexual exploitation, sex

tourism and forced marriages of children.”⁹² This list of forms may be altered depending on the context: child trafficking already includes, *inter alia*, the purpose of sexual exploitation (in commercial prostitution and pornography), exploitation in sex tourism, and exploitation resulting from forced marriages (which may take the mixed form of exploitation in domestic servitude as well as sexual exploitation in the household).

The **Decision No.15/06** is remarkable for its mentioning the increase and spread of **sexual exploitation of children** through the use of new technologies such as the Internet. Later other OSCE documents have addressed the urgent need to focus on the technological aspects of THB-related recruitment, but the 2006 Decision referred to instruments already in use.⁹³ The participating States agreed to take a holistic approach to the issue and to address root causes and contributing factors, including demand, which fosters all forms of sexual exploitation of children. It was decided to create legal measures to prosecute criminals that impose effective, proportionate and dissuasive penalties, also if a crime has been committed in another country. To tackle the issue of demand (in child trafficking, similar to the demand of THB for sexual exploitation), the Decision called for co-operation with representatives of the travel, hospitality and media industries, as well as with NGOs. Other stakeholders in combating the sexual exploitation of children, according to the Decision, include persons working in the areas of justice, policing, tourism, transport, social work, health care, civil society, religious organizations and education. The **MC.DEC/15/06** referred to civil society initiatives that had been proven effective, such as the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism drawn up by ECPAT (a global network of NGOs united under the slogan “End Child Pornography and Trafficking of Children for Sexual Purposes”), in addition to the relevant major international treaties (the UN Convention on the Rights of the Child [CRC], the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, and the UN Trafficking Protocol).

In 2007 the participating States, paying particular attention to this issue, strengthened their commitments by adopting a special **MC Decision on “Combating Sexual Exploitation of Children on the Internet”**.⁹⁴ Although the MC Decision contained only one direct reference to the link between sexual exploitation of children on the Internet and child trafficking⁹⁵, the provisions of the decision have a strong anti-trafficking preventive component. For example, the decision called for collecting and storing information “...on persons convicted

90 OSCE Ministerial Council Decision No.15/05 “Preventing and Combating Violence against Women”, MC.DEC/15/05, 6 December 2005, MC.DEC/15/05.

91 OSCE Ministerial Council Decision No.15/06 “Combating Sexual Exploitation of Children”, 5 December 2006.

92 Ibid.

93 Such as the CoE Convention on Cybercrime, 2001. Available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm> accessed 2 October 2015.

94 OSCE Ministerial Council Decision No. 9/07 “Combating Sexual Exploitation of Children on the Internet”, MC.DEC/9/07, 30 November 2007.

95 The Decision called upon participating States “... to facilitate legal protection, assistance, appropriate medical care, rehabilitation and reintegration programmes for child victims of sexual exploitation and, where appropriate, to ensure the safe return of **children trafficked internationally.**”

of child sexual exploitation or abuse in order to facilitate the apprehension of perpetrators and monitoring of their probation, and to develop...instruments to enable the exchange of information internationally among law enforcement agencies pertaining to sex offenders' convictions and disqualifications." It also encouraged participating States "to establish a system that allows law enforcement to work with public broadcasting and quickly send out a public alert when a child is found missing...." The MC advocated specific national hotlines to report child abuse, including sexual exploitation of children on the Internet, and calls for increased data collection and research on sexual exploitation of children and child pornography on the Internet to better understand the scope and trends of the problem. Furthermore, the MC promoted better co-operation, "not only on a national basis but also on an international basis with internet service providers, credit-card companies, banks and other relevant corporations to prevent the use of the Internet for sexual exploitation of children and to impede payment methods in order to make the crime less profitable in order to address demand for child pornography on the Internet." This actually was encouragement for public-private partnerships to address the challenging issue of the demand that fosters child trafficking, which is accomplished in various ways and often through the Internet.

In 2006 and 2007, two anti-trafficking MC Decisions, also on a specific issue, reflected the increased concern about the global scope of THB for labour exploitation. The phenomenon of labour exploitation and forced labour, which had long been wrongly understood as mere "violations of the labour law" (non-payment of wages, discrimination at work, excessively long hours of work with inadequate compensation, etc.), appeared to be much more severe. It was spreading in numerous economic sectors and had deep root causes aggravated by the global financial crisis. Traditional means for combating THB (mainly for sexual exploitation) were insufficient to address this crime properly or to ensure victim protection. Special programmes for the rehabilitation and reintegration of persons trafficked for labour exploitation were non-existent and shelters were designed mainly just for victims of forced prostitution or sexual violence. But the main challenge was related to the failure of identifying victims of labour exploitation and qualifying disclosed cases as trafficking crimes.

Taking into account both general and specific features of this criminal phenomenon, the **2006 MC Decision No.14 "Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach"**⁹⁶ combined general measures applicable to countering all forms of THB (such as the establishment of National Referral Mechanisms, appointment of National Co-ordinators, appointment of National Rappor-

teurs or similar independent monitoring mechanisms; better co-operation and co-ordination between law enforcement personnel, labour inspectorates⁹⁷, social protection units, medical institutions, immigration and border service officials, civil society organizations, victim support services, the business community and any other relevant actors; and effective access to justice for victims), with specific measures that might improve the response to THB for labour exploitation.

These specific measures include: adopting regulation ensuring that, in legal terms and in line with the UN Trafficking Protocol, THB for labour exploitation can be appropriately identified and prosecuted; minimum labour standards reflected in labour laws that are properly enforced to reduce the potential of THB for labour exploitation: training programmes for relevant officials as well as health workers, social workers, labour inspectors, and others to improve their ability to identify trafficking victims and refer them to assistance and protection services; information campaigns to counter the stigmatization of trafficked persons; outreach strategies to provide information on THB for labour exploitation to migrant communities and persons working as low wage labourers (agriculture, construction, garment or restaurant industries) or as domestic servants. Also highly recommended are advanced investigative methodology and other measures (if permitted by national legislation, in order to reduce the burden on the testimony of victims) as well as cooperation between law enforcement and agencies monitoring labour conditions.

To strengthen the message of this initial Decision taken in 2006, the 2007 Ministerial Council again vigorously addressed this particular form of trafficking by adopting **MC Decision No.8 "Combating Trafficking in Human Beings for Labour Exploitation"**.⁹⁸ The latter became a follow-up to the **MC.DEC/14/06**, which specifically tasked the Permanent Council to consider ways for further strengthening efforts to combat THB, including for labour exploitation, with due accounting to the relevant OSCE commitments, the Action Plan, and the outcomes of the High-level *Alliance against Trafficking in Persons* Conference on Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Prosecution of Offenders, Justice for Victims (November 2006, Vienna). The continuity and coherence of these efforts reflect the wide recognition of the serious and threatening nature of the offence of trafficking for labour exploitation.

The **MC.DEC/8/07** addressed THB for labour exploitation in a more detailed manner, thus contributing still further to the framework of the OSCE anti-trafficking commitments. New elements appeared already in its preamble: for example, the **vulnerability of children** to trafficking for labour exploi-

96 OSCE Ministerial Council Decision No.14 "Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach", MC.DEC/14/06, 5 December 2006.

97 Labour inspectorates are of particular importance in cases of THB for labour exploitation and forced labour.

98 OSCE Ministerial Council Decision No.8 "Combating Trafficking in Human Beings for Labour Exploitation", MC.DEC/8/07, 30 November 2007.

tation; recognition of THB for labour exploitation within the formal and informal economy; encouragement to ensure the participation in the elaboration of anti-trafficking measures of workers' and employers' organizations as well as labour administrators and inspectors; recognition of the particular vulnerability of persons with irregular immigration status; the need to ensure respect for human rights and apply core international human rights instruments to those particularly vulnerable to THB for labour exploitation; the recognition of the challenges of identifying and assisting victims, who are often intimidated by traffickers with regard to their eventual residential status in countries of destination; and the need for procedures of complaint that encourage victims to come forward.

Such a substantive preamble shaped the main body of the decision and became a new and clear manifestation of the OSCE's human rights based approach to CTHB. The Ministerial Council unanimously called upon the participating States to ensure access to justice for the victims of trafficking for labour exploitation.⁹⁹ In this context, it was agreed to consider allowing, in accordance with national laws, for alternative representation for victims of THB for labour exploitation in proceedings where victims are unable to represent themselves. Among other protective measures, the Decision mentioned reflection delay periods; temporary or permanent residence permits as well as work permits to victims during their stay in countries of transit/destination; and access to shelters, healthcare, legal assistance and social assistance. Protective measures also importantly included the possibility of obtaining compensation for damage suffered, including the restitution of wages owed to victims of trafficking for labour exploitation.

Implementing such protective measures would be feasible if there were better means of identification. This, in turn, might be improved through special training for labour inspectors to recognize violations of labour laws as labour exploitation and forced labour, thus enabling assistance to exploited persons on the spot, especially in sectors prone to trafficking. Also the development and application of indicators of THB for labour exploitation would help in identifying victims.

The Decision recommended codes of conduct as sets of voluntary commitments in the private sector to prevent labour exploitation, parallel to the introduction of procedures to monitor working conditions.

General measures applicable to various forms of THB are equally important to combat THB for labour exploitation, including multiagency co-operation among labour and immigration officials, law enforcement judicial officials and social

service providers. In essence this means establishing National Referral Mechanisms as a crucial instrument to ensure the protection of all trafficked persons.

Here, the non-punishment clause, already included in the 2000 **Vienna Ministerial Council Decision, the 2002 Porto Declaration on Trafficking in Human Beings, and the 2003 Action Plan to Combat Trafficking in Human Beings**, appeared in a new clear formulation.¹⁰⁰ The earlier wording, "ensuring that victims of trafficking do not face prosecution solely because they have been trafficked", was revised and agreed as follows: "provide, in accordance with the basic principles of their legal system, for the possibility, where appropriate, of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."¹⁰¹ This amendment, although weakened by certain reservations such as "where appropriate" and "in accordance with national legislation" (which are often unavoidable for the sake of consensus), nonetheless contained the crucial message: such victims are compelled to commit offences, being under the control of criminals and having no agency to oppose them; under the constant threat of violence, punishment or other forms of intimidation, they are not in a position to object. Since they have been forced to commit offences, they should not be prosecuted, but rather rescued from the exploitative situation, protected and assisted. These provisions were further developed in the **2013 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later**, which recommended (2.6) "taking adequate measures to ensure that, where appropriate, identified victims of THB are not penalized for their involvement in unlawful activities to the extent that they have been compelled to do so."¹⁰²

In addition, the **MC.DEC/8/07** addressed the need to ensure that NGOs, which legally provide assistance to the victims of THB for labour exploitation, are not penalized or criminalized for this assistance. The inclusion of this provision means that this problem indeed existed and had to be solved within the victim-centred approach.

The Decision was quite clear about prosecution of perpetrators of THB for labour exploitation, stating that sanctions against those who facilitate THB for labour exploitation should be effective and proportionate; they should be applied in cases when employers or recruitment agencies create a situation of debt bondage; fraudulent recruitment should be curbed; and contractors who knowingly use subcontractors involved in THB for labour exploitation should be held accountable for that crime.

99 Access to justice remains a challenge, especially for labour migrants without a legal status who are particularly vulnerable to THB and forced labour. Failure to identify persons who have been trafficked for labour exploitation among labour migrants (with or without legal status) is a strong obstacle; this often leads rather to the prosecution and punishment of such persons than to any form of protection, and results in impunity for the real offenders.

100 More details on the "non-punishment clause" are provided in Chapter 4 of this Commentary from p.42.

101 OSCE Ministerial Council Decision No.8/07 "Combating Trafficking in Human Beings for Labour Exploitation", MC.DEC/8/07, 30 November 2007.

102 For the evolution of the approach to the non-punishment clause, see comments to the relevant provisions of the Action Plan and the 2013 Addendum in Chapter 4 of this Commentary from p.42.

In 2008 the OSCE addressed another important challenge in the elimination of human trafficking: the need for successful prosecution of the crime to help overcome the impunity of traffickers and create a strong preventive impact. The 2008 statistics of THB-related prosecutions showed a huge gap between the estimates of the number of trafficked victims around the globe and the number of criminal cases that reached courts. According to the 2009 US TIP Report¹⁰³, in 2008 there were 5,212 trafficking cases prosecuted (of which 312 were related to THB for labour exploitation) and 2,983 convictions (104 for labour exploitation). This is in piercing contrast to the 2005 ILO estimated minimum of 12.3 million adults and children in forced labour, bonded labour and commercial sexual servitude at any given time.¹⁰⁴ The 2008 OSCE High-level Conference on Successful Prosecution of Human Trafficking: Challenges and Good Practices, which took place in Helsinki upon the initiative of the Finnish Chairmanship, demonstrated the same disparity. There was the need for a new set of commitments aiming to improve this situation in the OSCE region. By 2013 the ILO estimated that the global number of persons in forced labour situations had increased to 20.9 million.¹⁰⁵

The **Ministerial Council Decision No.5/08 “Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach”**¹⁰⁶ proposed a number of measures that could make a real change. The Decision reiterated that “providing victims of human trafficking with adequate protection and assistance and enhancing victim identification are among the prerequisites for an effective criminal justice response...to human trafficking.”¹⁰⁷ Thus, the participating States reaffirmed the human rights based approach to all stages of the anti-trafficking response, including prosecution, and full respect for the human rights of the victims. The Decision called on the participating States “to continue their efforts to ensure that victims of human trafficking are treated in a manner that respects the full enjoyment of human rights without threat of intimidation or harassment and to recognize victims’ need to have adequate time to recover from trauma.”¹⁰⁸ Furthermore, the participating States were encouraged “to take measures in accordance with the conditions under their respective laws so that victims of human trafficking have the

possibility of obtaining fair and appropriate compensation for damage they have suffered, and to claim damages during criminal and/or civil proceedings as appropriate.”¹⁰⁹

Another sign of the human rights approach is reflected in the provision encouraging the participating States to ensure that NGOs engaged in protecting the rights of the victims are also able to provide assistance and support to victims during criminal proceedings. It is clear that this requires better co-operation between NGOs and other stakeholders (such as law enforcement agencies, social services and others) for victim identification (as agreed in the relevant provisions of the **MC.DEC/5/08, with the traditional reservations “as appropriate” and “where provided for by their respective laws”**¹¹⁰).

This Decision contained one more provision aimed at the protection of victims’ rights. It called on the participating States “to ensure that, when authorities have reasonable grounds to believe that a person is a victim of human trafficking, that person will not be deported until the identification process has been adequately completed, and that person has been given appropriate assistance, including, if required under domestic law, an appropriate recovery and reflection period during which deportation shall not be enforced.”¹¹¹ This is crucially important for the protection of the rights of trafficked persons and for successful prosecution, two issues that are by no means contradictory. There are good reasons why the **MC.DEC/5/08**, dedicated to the criminal justice responses, clearly encouraged participating States to secure access for victims to accommodation, psychological and medical treatment, and legal counselling, as basic requirements to be provided without delay. It also described special measures of protection and **assistance for child victims of trafficking throughout criminal proceedings, whereby the best interests of the child is to be pursued**. In accordance with the principle of non-discrimination and participation, such children must have the opportunity to be heard.¹¹²

As for provisions specifically related to the criminal process, the **MC.DEC/5/08** encouraged the participating States to criminalize all forms of THB, urged that investigations into or prosecution of THB not be dependent upon reports or accusations of victims, and encouraged ensuring that perpetrators do not enjoy impunity. Specialized training in THB for law enforcement personnel, the judiciary and officials in national prosecution services was strongly recommended. The Decision

103 U.S. Department of State, *Trafficking in Persons Report* (2009). Available at: <http://www.state.gov/j/tip/rls/tiprpt/2009/123129.htm> accessed 12 December 2014.

104 International Labour Organization, *Global Alliance against Forced Labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (2005). Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf accessed 12 December 2014.

105 International Labour Organization, *Global Estimate of Forced Labour* (2012). Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_181953.pdf accessed 12 December 2014.

106 OSCE Ministerial Council Decision No.5/08 “Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach”, MC.DEC/5/08, 5 December 2008.

107 Ibid.

108 Ibid.

109 Ibid.

110 The reservation “where provided by national law”, often used in MC Decisions, is quite exemplary: although it may seem rather odd to urge countries to use their own obligatory regulations (which should be used by all means), actual practice may differ from the ideal situation. In other words, the OSCE political commitments strengthen national legislation by calling upon its full implementation.

111 OSCE Ministerial Council Decision No.5/08 “Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach”, MC.DEC/5/08, 5 December 2008.

112 Ibid.

committed each participating State to “take into account policies and consequences regarding trafficking in human beings when instructing its military and civilian personnel to be deployed abroad.”¹¹³ The **MC.DEC/5/08** also included provisions that may contribute to the success of prosecutions: the use of liaison officers or joint investigation teams (such as increased co-operation between law enforcement and prosecution agencies with Interpol and Europol, as well as the law enforcement agencies of other participating States); financial investigations and investigations of THB-related money laundering; and the freezing or confiscation of the assets of traffickers.

In 2011, the **Vilnius Ministerial Declaration on Combating All Forms of Human Trafficking**¹¹⁴, after the failure in 2009 in Athens to reach a consensus on the draft of a MC decision on THB prevention, and after the 2010 Astana Summit (which did not envisage the adoption of any decisions as such), drew a certain line under a decade of OSCE anti-trafficking commitments. It was the right moment to reaffirm full adherence to the commitments of the first decade of OSCE CTHB action and “declare ... strong and unwavering determination to combat human trafficking in all its forms.”¹¹⁵ In addition to fundamental anti-trafficking tenets (such as the statement in the Universal Declaration of Human Rights that “no one shall be held in slavery or servitude” and the Vilnius Declaration statement that THB “is a grave and heinous crime that violates human dignity and undermines human rights and fundamental freedoms”), there were a few new elements. For example, for the first time an OSCE MC document mentions the UN Global Plan of Action to Combat Trafficking in Persons (GA 64/293), adopted by the UN General Assembly in 2010 in conjunction with the UNTOC and the UN Trafficking Protocol¹¹⁶.

In the 2011 Declaration, the participating States expressed the still grave concern that “trafficking remains a serious problem, the number of victims of human trafficking ...identified and assisted remains relatively low and few traffickers have been brought to justice.” Certain forms of THB, such as THB for the removal of organs, for the purpose of sexual exploitation, as well as for the purpose of labour exploitation, including domestic servitude, were specifically mentioned as challenging. At the same time the Declaration commended the OSCE’s efforts to address THB for labour exploitation, including domestic servitude, as well as child trafficking and trafficking in persons for the removal of organs. These forms of THB indeed call for special attention and a proactive approach.

The Vilnius **Declaration**, in line with the MC.DEC/5/08, made a connection between improvements in criminal justice responses (including commitments to explore investigative techniques such as financial investigations and to improve law enforcement and judicial collaboration to identify both traffickers and potential victims) and ensuring that victims be treated in a manner that respects their human rights and be provided access to justice, legal assistance, effective remedies and other services as applicable.

The non-punishment provision was strengthened further in the Declaration (in comparison to the wording of the earlier OSCE MC Decisions): it was recognized by the participating States that “adequate measures should be taken to ensure that, where appropriate, identified victims of human trafficking are not penalized for their involvement in unlawful activities to the extent that they have been compelled to do so.”¹¹⁷ The former reservation of the MC.DEC/8/07 (“Provide, in accordance with the basic principles of their legal system, for the possibility...”) was dropped completely, with the new text now referring to “identified victims”.

The demand fostering all forms of trafficking was featured in the new context of “the goods and services that result from trafficking in persons”. This important addition broadened the engagement of society at large in the fight against modern-day slavery by raising the awareness of customers who have habitually ignored the correlation between unrealistically low prices for products or services and their origin.

This is particularly relevant for exploitation happening along the complex supply chains of today’s globalized economy, where abuse of human and labour rights easily happens without the knowledge or consent of the main company or its first tier subcontractors. The **Declaration** broadened the approach to **child trafficking** by addressing the entire child protection system with that aim of preventing the crime and assisting not only actual victims, but also those at risk of being trafficked. Also other awareness-raising campaigns were recommended, focussing on persons at risk of being trafficked and addressing social, economic, cultural, political and other factors that contribute to the vulnerability of certain groups being trafficked. The same approach was applied to the prevention of THB for labour exploitation through ensuring that labour rights are respected. The participating States recommend improving “labour practices and promot[ing] the effective enforcement of internationally recognized labour rights, by means such as labour inspections, monitoring of private employment agencies, and the development of other programmes to support workers in exercising their labour rights.”¹¹⁸ They encouraged each other to work with the business sector to apply principles of due diligence and transparency in assessing and addressing

113 Ibid. This particular commitment is in line with the Ministerial Council Decision No.16/05 “Ensuring the Highest Standards of Conduct and Accountability of Persons Serving on International Forces or Missions”, MC.DEC/16/05, 6 December 2005.

114 OSCE Ministerial Council, Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/Corr.1, 7 December 2011.

115 Ibid.

116 Ibid.

117 Ibid.

118 OSCE Ministerial Council, Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/Corr.1, 7 December 2011.

risks of exploitation throughout supply chains, and ensuring that workers have access to mechanisms for the redress and remedy of abusive practices. For the first time, this OSCE Ministerial Council Document referred to the newly adopted UN Guiding Principles on Business and Human Rights, which is extremely relevant in this particular context, highlighting such standards as “zero-tolerance” policies in government procurement of goods and services.

Once again, as in the first OSCE anti-trafficking Ministerial Council Decision taken in 2000 in Vienna, the OSCE was recognized as a “highly valuable platform for dialogue”. The participating States reaffirmed their “determination to implement OSCE commitments, including the Action Plan to Combat Trafficking in Human Beings, to use relevant structures of the OSCE to the full, and to strengthen the OSCE’s partnership with other international and regional organizations, as well as with civil society.”¹¹⁹

In **2013**, the OSCE made a significant step forward by updating the 2003 Action Plan to Combat Trafficking in Human Beings. Mutual understanding among the participating States on the necessity of this endeavour, their fruitful consultations, the engagement and dedication of the Office of the SR/CTHB and other relevant structures and institutions, and the facilitating role of the Chairmanship-in-Office led to the successful adoption of the 2013 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later¹²⁰ by the Permanent Council, a step that by coincidence commemorated the first ten years of the Action Plan. The **MC Decision No. 7/13**¹²¹ unanimously endorsed the 2013 Addendum, a document which contributed significantly to the compendium of the OSCE commitments and recommendations. By updating the OSCE Action Plan to Combat Trafficking in Human Beings, the Addendum provided an adequate response to the evolution of human trafficking and increased the capacity of the OSCE participating States in countering this scourge.

¹¹⁹ Ibid.

¹²⁰ OSCE, Permanent Council Decision No.1107/Corr.1¹ Annex Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later. PC.DEC/1107/Corr.1¹ Annex, 6 December 2013.

¹²¹ OSCE, Ministerial Council Decision No.7/13 Combating Trafficking in Human Beings, MC.DEC/7/13, 6 December 2013.

CHAPTER 4.

COMMENTS TO THE OSCE ACTION PLAN TO COMBAT TRAFFICKING IN HUMAN BEINGS, ITS 2005 AND 2013 ADDENDUMS AS A UNIFIED SET OF RECOMMENDATIONS ON ACTIONS TO BE TAKEN AT THE NATIONAL LEVEL

The 2003 OSCE Action Plan to Combat Trafficking in Human Beings is based on the UN definition of trafficking in persons agreed in the 2000 Trafficking Protocol, on the OSCE anti-trafficking commitments taken from 2000 to 2002, as well as earlier OSCE Decisions and Documents addressing the three dimensions of security, namely: the 2001 Bucharest Plan of Action for Combating Terrorism; the 1999 Charter for European Security adopted in Istanbul, the 1992 CSCE Helsinki Document – the Challenges of Change; the 1991 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE; and the 1975 Final Act of the Conference on Security and Co-operation in Europe – the so called Helsinki Final Act. The latter, while not directly addressing the issue of THB, contained provisions on economic and social aspects of migrant labour, as well as references to the Universal Declaration on Human Rights¹²² and other international instruments. Indeed, by 2003 there were quite a number of international treaties directly or indirectly related to combating THB, such as the UN Convention on the Rights of the Child (1989), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1967), the UN anti-slavery Conventions, the ILO Conventions addressing forced labour, the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the EU Directives and a set of treaties dedicated to trafficking in women.¹²³

The evolution of human trafficking after 2003, including new alarming data on the increase of **child trafficking** and the appearance of new forms of THB-related exploitation, required a more adequate response. This is why the participating States, following the commitments taken under the MC.DEC/13/04, engaged in 2005 in elaborating an Addendum to the Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance. This Addendum was adopted by the Permanent Council Decision No.685 in July 2005 and endorsed by the MC.DEC.13/05 in Ljubljana, whereby it became an integral part of the Action Plan.

122 United Nations, The Universal Declaration of Human Rights (1948), in Art. 4: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." The full text is available at: <http://www.un.org/Overview/rights> accessed 5 September 2015.

123 Anti-trafficking conventions adopted under the UN prior to the UNTOC generally took on a narrower approach focusing only on the sexual exploitation of trafficked persons.

By 2013, the rich experience gained by the participating States, their civil society organizations and the international community, as well as, in particular, the work of the *Alliance against Trafficking in Persons*, which had been informing the participating States about the most challenging aspects of current forms of human trafficking, necessitated the elaboration of new recommendations to update the Action Plan and thus to improve the anti-trafficking response. Taking into account how THB had evolved, as well as good practices that had proven their effectiveness in combating THB, the participating States engaged in the updating of the Action Plan with a new **2013 Addendum** addressing the new forms of exploitation that had emerged in the OSCE region. The participating States had at their disposal a number of Occasional Papers¹²⁴ – studies undertaken from 2004 to 2013 by the OSCE Office of the SR/CTHB on both general and particular issues of human trafficking. Based on a comprehensive analysis of the situation in the OSCE region, these served as a valuable source of expert knowledge and a detailed justification of various recommendations.¹²⁵

The OSR/CTHB studies, as well as publications by other international organizations and partners of the *Alliance*, were particularly useful for filling various gaps, such as recommendations on how to provide assistance to victims of THB for organ removal¹²⁶ or for exploitation in forced begging¹²⁷ (especially children); how to address THB for labour exploitation in domestic servitude, *inter alia*, in diplomatic households; or

124 Occasional Papers are available at <http://www.osce.org/resources?activities=111> accessed 18 December 2014.

125 For example, see the OSR/CTHB publications "Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking", available at <http://www.osce.org/secretariat/101002?download=true> accessed 18 December 2014; "Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings", available at <http://www.osce.org/secretariat/103393?download=true> accessed 18 December 2014; "How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers", available at <http://www.osce.org/handbook/domesticservitude?download=true> accessed 18 December 2014; "Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment", available at <http://www.osce.org/secretariat/103085?download=true> accessed 18 December 2014; and other publications.

126 The OSR/CTHB report "Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings" contains more detailed recommendations. Available at: www.osce.org/cthb/103393 accessed 15 February 2015.

127 For more detailed recommendations, see the Council of Baltic Sea States Report "Trafficking in Children: A criminal act calling for a child protection response", (2011). Available at: http://www.childcentre.info/public/Programme_Child_Trafficking_conference.pdf accessed 17 September 2014.

how to ensure that victims of trafficking are not prosecuted for offences they were compelled to commit. Furthermore, from 2004 to 2011 the participating States had created an extensive OSCE framework of political anti-trafficking commitments agreed upon in Ministerial Council Decisions.¹²⁸ These were not reflected in the 2003 Action Plan and thus still needed to be translated into practice at the national level.

However the Action Plan was the only reference well known to the relevant national stakeholders; national practitioners were much less familiar with the anti-trafficking Decisions adopted at a later stage. The majority of international organizations active in combating THB (the UN agencies, the EU, the CIS and others¹²⁹), in their resolutions, other directive documents and model laws, also referred only to the Action Plan as the OSCE contribution to global countering of trafficking, seemingly unfamiliar with the OSCE commitments adopted at the Ministerial level. The huge potential of the commitments addressing specific THB features or forms of exploitation was being underused.

This deficiency was compensated by the 2013 Addendum. It assembled major political anti-trafficking commitments taken from 2004 to 2011 and transformed them into concrete and detailed recommendations. The adoption of the 2013 Addendum by the PC Decision **PC.DEC/1107/Corr.1**¹ and its endorsement by the Ministerial Council Decision **MC.DEC/7/13** coincided with the tenth anniversary of the Action Plan, augmenting the strategic value of this fundamental OSCE anti-trafficking benchmark.¹³⁰

4.1 Structure of the Action Plan and its 2005 and 2013 Addendums

The 2013 Addendum follows the structure of the 2003 OSCE Action Plan and its sequence of chapters; in addition, it complements the Action Plan with a new chapter on Partnerships. A similar structure (chapters on prosecution, prevention, protection and partnerships, albeit in different sequences) is taken by the 2005 CoE Convention on Action against Trafficking in Human Beings¹³¹, and the 2010 UN Global Plan of Action to Combat Trafficking in Persons¹³².

The 2005 Addendum to the Action Plan, according to the Permanent Council Decision PC.DEC/685, constitutes its integral part. This Addendum contains thirteen paragraphs of “Recommended actions at the national level”. It does not have separate chapters dividing the recommendations into prosecution, prevention and protection, but nonetheless reflects these three issues accordingly.

The 2005 and 2013 Addendums do not contain the definition of trafficking since it is already included in the Action Plan. The OSCE Action Plan, as well as the CoE Trafficking Convention, uses the UN definition word by word:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹³³

Until today, this definition presents the agreed minimum parameters of the crime (act, means and purpose). The definition of exploitation (“Exploitation shall include, at a minimum...”) can be interpreted within a broader approach (exploitation of a trafficked person for a particular purpose), even without mentioning all the specific forms of exploitation now known. According to the ILO Convention No. 29, “the term forced or compulsory labour¹³⁴ shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”¹³⁵ Criminals use various means to punish their victims, such as limiting their freedom of movement, threatening them, using physical violence, etc. Also more subtle threats are used, such as threats to harm a victim’s family, threats to denounce an illegal worker to the authorities, or withholding wages to compel a worker to stay in hopes of eventually being paid.¹³⁶

The definition of trafficking nevertheless remains a subject of expert discussions due to the complexity of its interpretation by law enforcement agencies and the judiciary. Questions that

128 See Chapter 3, Review of the OSCE Commitments, from p.24, and Annex 1, p.107.

129 For example, see: United Nations, Commentary to the UNOHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2010). Available at: http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf accessed 13 October 2015.

130 OSCE Permanent Council Decision “Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later”, PC.DEC/1107/Corr.1 Annex, and OSCE Ministerial Council Decision No.7/13 Combating Trafficking in Human Beings, .MC.DEC/7/13, 6 December 2013.

131 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (2005), Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#TopOfPage accessed 18 December 2014.

132 United Nations, United Nations Global Plan of Action against Trafficking in Persons, UN General Assembly Resolution A/64/L.64, 30 July 2010. Available at: <http://www.un.org/ga/president/64/letters/trafficking290710.pdf> accessed 18 December 2014.

133 United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Art. 3.

134 An explanation of the correlation between forced labour and labour exploitation is provided on p. 20 of the Commentary.

135 International Labour Organization, Forced Labour Convention No.29 (1930). Available at: http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C029 accessed 18 December 2014

136 International Labour Organization, Business and Forced Labour. ILO Helpdesk on International Labour Standards. Available at: http://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_FL_EN/lang--en/index.htm accessed 19 December 2014.

are still being discussed include, for example, the concept of consent, the abuse of a position of vulnerability, the expression “the giving or receiving payments to achieve the consent of a person having control of another person” (as a means of trafficking), the overlapping of trafficking and smuggling of migrants, qualifying differences¹³⁷ between trafficking for labour exploitation, a situation of labour exploitation or forced labour without the preceding trafficking phase. Many other issues are open to interpretation. More clarification on these difficult questions can be found in the Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocols Thereto¹³⁸, and the monograph by Anne T. Gallagher, *The International Law on Human Trafficking*¹³⁹.

4.2 Purpose of the Action Plan and its Addendums

While the Action Plan “intends to provide participating States with a comprehensive toolkit to help them implement their commitments to combating THB” and “with a follow-up mechanism, which will also promote co-ordination between individual participating States, both within the OSCE structures and with other international organizations”¹⁴⁰, the 2005 and 2013 Addendums help to address current and emerging THB trends and patterns, as well as the most pressing challenges related to the prosecution of the crime, its prevention, and the protection of trafficked persons. The 2005 Addendum was designed to meet the challenge of an increasing trend in child trafficking and provides participating States with specific recommendations to address this issue. The 2013 Addendum presents a comprehensive response to concerns expressed by the participating States in numerous MC Decisions (specifically, MC.DOC/1/11, MC.DEC/5/08, MC.DEC/8/07, MC.DEC/14/06) taken after the adoption of the Action Plan as well as its 2005 Addendum.

It is also in conformity with the latest reports of the international community (ILO, UNODC, UNICEF, CoE, CIS, etc.) showing that trafficking in human beings continues at alarming levels, but that in contrast the number of victims (those identified and assisted) is extremely low and very few traffickers have been brought to justice. The Addendum is also a response to less visible forms of trafficking, such as THB for domestic servitude, *inter alia*, in diplomatic households, THB for exploitation in begging, THB for exploitation in forced criminality

and THB for the removal of organs.¹⁴¹ These require specific attention from law enforcement and other relevant state agencies, as well as from civil society organizations. Combating THB for labour exploitation (as a prevalent trend), including in the supply chains of both private companies and public entities, demands no less action than THB for sexual exploitation. However, for this form of THB there is a lack of special mechanisms for ensuring victim protection; improved actions and co-operation are needed by and between State agencies, civil society and the private sector. The recommendations of the Addendum provide concrete assistance to the participating States to meet these challenges.

In terms of the geographical scope of best practices explored, the Action Plan intended to assist participating States “by drawing upon existing regional experience gained through the implementation of such concrete initiatives and measures as those undertaken by the Stability Pact Task Force on Trafficking in Human Beings in South Eastern Europe.” Indeed, the SPTF on THB in SEE, chaired by Dr. Helga Konrad (the first OSCE SR/CTHB, 2004–2006), provided pioneering experience in this area and demonstrated the effectiveness of regional co-operation and national coordination, including the establishment of national referral mechanisms and other measures. Since 2003, other regions and sub-regions have developed effective instruments of cooperation (for example, the Council of Baltic Sea States Working Group on Children at Risk, which focuses on the sexual exploitation of children and child trafficking; three CIS Programmes of Cooperation in Combating THB [2008–2010, 2011–2013 and 2014–2018]; the EU anti-trafficking Directives¹⁴²; and the creation of the post of the EU Anti-trafficking Coordinator). At the UN level, the post of the UN Special Rapporteur on Trafficking in Persons, especially Women and Children, was established in 2004, followed by other UN initiatives such as the UN Global Initiative to Fight Human Trafficking (UN.GIFT) and the UN Global Plan of Actions to Combat Trafficking in Persons. The 2013 Addendum goes much further than the Action Plan by collecting all these practices as well as taking into account reports, recommendations and good practices from the entire OSCE region. This is an example of the particular benefits of “soft law” in contrast to legally binding treaties: soft law offers the opportunity to go beyond what has been formally agreed as existing legal principles, “to go further by using accepted international legal standards to develop more specific and detailed guidance for States in areas such as legislation, criminal justice responses, victim

137 Qualifying a case leads to adequate punishment; a mistake in this matter often results in impunity for the perpetrator.

138 United Nations, Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocols Thereto (2004).

139 Anne T. Gallagher, *The International Law on Human Trafficking*, Cambridge, 2010, pp.25–53.
140 Ibid.

141 The potential threat of THB for the removal of tissues and cells requires more research. Until 2014 the participating States had not reported any identified or prosecuted cases. Trafficking in tissues and cells (illegal as such) may not include the phase of exploitation of a human being, and its relevance to THB must be investigated in each case. For more details see: Working Group on Trafficking in Persons/UNODC Background Paper “Trafficking in Persons for the purpose of the removal of organs”, CTOC/COP/WG.4/2011/2, as well as Joint CoE-United Nations Study “Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Removal of Organs” (2009).

142 European Union, Together against Trafficking in Human Beings. EU Legislation (2015). Available at: https://ec.europa.eu/anti-trafficking/legislation-and-case-law/eu-legislation/into/EU%20Legislation_en accessed 5 September 2015.

detention and victim protection and support.”¹⁴³ In this context it is worth repeating that international legal obligations provide the agreed minimum of actions to take; the participating States are free to go further and do more than is mandatory.

4.3 Comprehensive, Human Rights Based Approach

The Action Plan adopted a multidimensional approach to address the problem of THB. It covers the protection of victims, the prevention of THB and the prosecution of those who facilitate or commit the crime, and also deals “with political, economic, legal, law enforcement, educational and other aspects of the problem.” This comprehensive approach requires “a focus on bringing to justice those responsible for this crime, and on carrying out effective measures to prevent it, while maintaining a humanitarian and compassionate approach in rendering assistance to its victims.” In other words, the human rights component was integrated into all aspects of the recommended anti-trafficking actions.

To stress the importance of this particular component, it was fully described as the human rights based approach (the primacy of human rights), precisely formulated in the UNOHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (HR/PUB/02/3)¹⁴⁴ and presented by the UN High Commissioner for Human Rights Ms. Mary Robinson (1997–2002) in July 2002 to the UN Economic and Social Council. It is at the core of the seventeen Principles of this document and consists of three points: 1. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims; 2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons; and 3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.¹⁴⁵

In a condensed form, this was formulated by the next UN High Commissioner for Human Rights, Ms. Navanethem Pillay (2008–2014), in her Foreword to the Commentary to this outstanding document: “A human rights approach to trafficking means that all those involved in anti-trafficking efforts should integrate human rights into their analysis of the problem and into their responses. This approach requires us to consider, at each and every stage, the impact that a law, policy, practice or

measure may have on persons who have been trafficked and persons who are vulnerable to being trafficked. It means rejecting responses that compromise rights and freedoms.”¹⁴⁶

The 2013 Addendum reaffirms this clear message by urging that “victims are treated in a manner that respects their human rights and fundamental freedoms and that they are provided with access to justice, to legal assistance and to effective remedies and other services....”¹⁴⁷ The Addendum adheres to the human rights based approach,¹⁴⁸ mainstreamed through the Addendum’s chapters on prosecution, prevention and protection.

4.4 Updating Chapter III: Investigation, Law Enforcement and Prosecution

The Action Plan drew on the relevant OSCE anti-trafficking commitments as well as other commitments to address the issues of investigation, law enforcement and prosecution. These commitments were reflected in the Ministerial Declaration on Trafficking in Human Beings (Porto, 2002), the Plan of Action for Combating Terrorism (Bucharest, 2001), MC Decision No. 6 (Bucharest, 2001) and MC Decision on Enhancing the OSCE’s Efforts to Combat Trafficking in Human Beings (Vienna, 2000), as well as the Charter for European Security (as for example, in the provisions on corruption).

The 2013 Addendum¹⁴⁹ increased the basis for these recommendations significantly by referring to the commitments taken in MC.DEC/13/04 on the Special Needs of Child Victims of Trafficking for Protection and Assistance (Sofia, 2004); the recommendations in the 2005 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance (PC.DEC/685); MC.DEC/15/05 “Preventing and Combating Violence against Women”; MC.DEC/16/05 “Ensuring the Highest Standards of Conduct and Accountability of Persons Serving on International Forces and Missions”; MC.DEC/14/06 “Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach”; MC.DEC/15/06 “Combating Sexual Exploitation of Children”; MC.DEC/8/07 “Combating Trafficking in Human Beings for Labour Exploitation”; MC.DEC/5/08 “Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach”; and MC.DOC/1/11/Corr.1¹ “Ministerial Declaration on Combating All Forms of Human Trafficking”.¹⁵⁰

143 United Nations, Commentary to UN Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (2004), p.26.

144 United Nations, Office of the High Commissioner for Human Rights, Commentary to Recommended Principles and Guidelines on Human Rights and Human Trafficking (2010, Annex). Available at: http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf accessed 18 December 2014.

145 Ibid.

146 Ibid.

147 OSCE, Permanent Council Decision No.1107 Corr.1¹ Annex “Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later”, PC.DEC/1107/Corr.1¹ Annex, 6 December 2013.

148 Ibid.

149 Chapter III of the Action Plan corresponds to Chapter II of the Addendum (due to it omitting Chapter II “Definition” of the Action Plan).

150 All of the MC Decisions mentioned here were also taken into account in the chapters of the Addendum related to Prevention (Chapter III) and Protection (Chapter IV).

The provisions of the 2013 Addendum (Chapter II) were additionally supported by various other sources, including the relevant Articles of the CoE Trafficking Convention¹⁵¹; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA¹⁵²; the UN Global Plan of Action to Combat Trafficking in Persons¹⁵³; the ILO Private Employment Agencies Convention, 1997 (No.181)¹⁵⁴; the ILO Convention concerning Migration for Employment, 1949 (No.97)¹⁵⁵; as well as the UN Trafficking Protocol in conjunction with the UNTOC¹⁵⁶.

Chapter III of the Action Plan, “Investigation, Law Enforcement and Prosecution”, recommended a set of actions that should be taken at the national level. It was based on the Vienna Ministerial Council Decision of 2000, which declared that combating THB is “the primary responsibility of participating States” and their integrated and co-ordinated approach “includes prevention of trafficking, protection of victims and prosecution of traffickers and their accomplices.” The implementation of these actions is also required by the UN Trafficking Protocol.

4.4.1 Criminalization of THB

Among the first basic steps to take, the Action Plan recommended criminalizing human trafficking through the adoption of such legislative and other measures as may be necessary to establish the conduct set forth in Article 3 of the UN Trafficking Protocol as a criminal offence. Additionally, the Action Plan, in its provision III.1.1 and III.1.2 and in line with the UN Trafficking Protocol, recommended legislative and other measures to establish the following acts as criminal offences: attempts to commit THB; participation as an accomplice in THB; and organization or directing other persons to commit THB.

The 2005 Addendum to the Action Plan put additional focus on the urgent necessity to ensure “that **child trafficking**, including internal trafficking, is criminalized in accordance with the UN Protocol ... in order to better address the need for pro-

tection and assistance of child victims of trafficking.”¹⁵⁷ Particularly important was the reference to internal child trafficking, which is rarely recognized as THB. The failure to address child trafficking within individual countries as a serious crime leads to the impunity of traffickers, or inadequate, weak or symbolic penalties, and accordingly, inadequate and insufficient (if any) measures for the rehabilitation of the child concerned. In comparison to the Action Plan, Article 19 of the CoE Trafficking Convention contains a more detailed requirement: “Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.”

It is of particular importance to have all forms of trafficking and THB-related exploitation included in the definition of THB in national legislation, especially because of the initial focus of the participating States (as well as UN Member States, as reflected in instruments prior to the 2000 UNTOC and its Trafficking Protocol) on THB for sexual exploitation and, accordingly, on THB in women and girls. Assessments regarding the scope of economic sectors prone to trafficking and exploitative labour as well as regarding the gender dimension of trafficking have changed significantly since then. The current situation in terms of statistics is presented in the 2012 Report “ILO Estimate of Forced Labour: Results and Methodology”¹⁵⁸

The UNODC 2014 Global Report on Trafficking in Persons, based on a different methodology and using official statistics provided by Member States, also presented figures that did not limit anti-trafficking measures to THB for sexual exploitation. According to this Report¹⁵⁹, of detected victims 49 per cent were adult women and 33 per cent were children (a 5 per cent increase in comparison to the 2007–2010 period). Besides sexual exploitation, other forms of exploitation were noted. The Report stated that trafficking for forced labour, including, for example, manufacturing, cleaning, construction, catering, restaurants, domestic work and textile production, had increased steadily in recent years. Some 40 per cent of victims detected between 2010 and 2012 were trafficked for forced labour. Trafficking for exploitation that is neither sexual nor forced labour was also on the rise. Some of these forms, such as trafficking in children for armed combat, petty crime or forced begging, can pose significant problems in some places, although such forms are still relatively limited from a global point of view. The UNODC clearly underlines the complexity of collecting data in the

151 Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings (2005), <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm> accessed 5 November 2015.

152 European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> accessed 10 October 2015.

153 United Nations, United Nations Global Plan of Action to Combat Trafficking in Persons (2010). Available at http://www.unodc.org/documents/human-trafficking/United_Nations_Global_Plan_of_Action_to_Combat_Trafficking_in_Persons.pdf accessed 10 October 2015.

154 International Labour Organization, Private Employment Agencies Convention No.181 (1997). Available at http://www.ciett.org/fileadmin/templates/ciett/docs/Text_ILO_Convention_181.pdf accessed 5 November 2015.

155 International Labour Organization, Convention concerning Migration for Employment No.97 (1949). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:P12100_INSTRUMENT_ID:312242 accessed 5 November 2015.

156 United Nations, United Nations Convention against Transnational Organized Crime (2000). Available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> accessed 10 October 2015.

157 OSCE, Permanent Council Decision No. 685 Annex “Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance”, PC.DEC/685 Annex 7 July 2005. Available at: <http://www.osce.org/pc/15932?download=true> accessed 25 December 2014.

158 ILO Estimate of Forced Labour: Results and Methodology. ILO, Geneva, 2012, p.13.

159 United Nations, Global Report on Trafficking in Persons (2014). Available at: http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf accessed 20 December 2014.

Report. “It should be kept in mind that official data reported to UNODC by national authorities represent only what has been detected. It is clear that the reported numbers are only the tip of the iceberg”¹⁶⁰, wrote Ambassador Yury Fedotov, Executive Director of the UNODC, in the Introduction to the Report.

Deeply concerned by these developments and having recognized that THB is becoming a serious transnational threat, the participating States agreed to strengthen the recommendations of the Action Plan and update the provisions related to actions in the field of legislation. The 2013 Addendum clearly recommends “taking necessary measures for the criminalization of all forms of trafficking, and for the full implementation of relevant national legislation.”¹⁶¹

4.4.2 Liability of legal persons

Another recommended legislative measure is the liability of legal persons. However the implementation of provision III.1.3 of the Action Plan on “the adoption of such measures as may be necessary to establish the liability of legal persons for trafficking offences in addition to the liability of natural persons” was challenged in those participating States that did not have a comparable provision in their national legal systems.

In this regard, the Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocol Thereto, describing the Mandatory requirements of the Convention, points to Art. 10, para. 2 of the Convention, citing specifically: “With respect to legal persons, the offences and liability can be criminal, civil or administrative.”¹⁶² The Convention, in addressing the liability of legal persons¹⁶³, states the following:

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and forth offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.¹⁶⁴

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.¹⁶⁵

The mandatory requirements of the UNTOC (and its Trafficking Protocol, which should be read in conjunction with the Convention) are weakened by the reference to the consistency of these measures with national legal principles. This is why the recommendation of the OSCE Action Plan drawing the attention of the participating States to this challenging provision is of particular importance.

On the same issue, the **CoE Trafficking Convention** is stronger and more solid. In Art. 22 on Corporate Liability, the Convention requires that:

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a. power of representation of the legal person;
- b. an authority to take decisions on behalf of the legal person;
- c. an authority to exercise control within the legal person.

¹⁶⁰ Ibid.

¹⁶¹ OSCE, Permanent Council Decision No.1107 “Addendum to the Action Plan to Combat Trafficking in Human Beings: One Decade Later”, PC.DEC/1107 Corr.1¹ Annex 6 December 2013. Available at: <http://www.osce.org/addendum?download=true> accessed 25 December 2014.

¹⁶² United Nations, Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocol Thereto (2004), p.26. Available at: https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf accessed 21 December 2014

¹⁶³ United Nations, United Nations Convention against Transnational Organized Crime and the Protocols Thereto (2004). Available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf> accessed 21 December 2014.

¹⁶⁴ For example, the Code of Administrative Offences (Administrative Code) of the Russian Federation contains Art. 6.19., which states: “Creation of conditions for child trafficking and/or exploitation of children by a legal person ... by providing facilities, transport or other material means, by creating conditions for child trafficking and exploitation of children, by providing services facilitating child trafficking and exploitation of children, or by funding child trafficking and exploitation of children is punished by an administrative fine up to 1-5 million Rubles or administrative prohibition of activities up to 90 days.” In the context of international obligations, and taking into account the harm caused by child trafficking and the exploitation of children, the relevance of considering such offences as administrative may need reconsideration (author’s comment, V.G.). Offences against children are considered by the CoE Trafficking Convention as “aggravating circumstance”. The Russian Federation Administrative Code is available at: <http://www.zakonrf.info/koap/6.19/> accessed 21 December 2014.

¹⁶⁵ United Nations, United Nations Convention against Transnational Organized Crime and the Protocols Thereto. Art. 10, para. 2, p.11. Available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf> accessed 21 December 2014.

Furthermore, the Convention states that:

2. Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

In point 3, the CoE Convention refers to the legal principles of the Party permitting that, subject to these legal principles, “the liability of a legal person may be criminal, civil or administrative”, whereupon it repeats the UNTOC provision:

4. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.¹⁶⁶

The EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings, in its Art. 6, clearly demands that “Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions.”¹⁶⁷

The **UN Global Plan of Action to Combat Trafficking in Persons** also does not avoid addressing this issue, recommending in Art. 44 that the UN Member States “ensure the liability of all categories of perpetrators of trafficking in persons, including the liability of legal persons and entities, as appropriate, in line with relevant international instruments.”¹⁶⁸

4.4.3 Effective and proportionate penalties

The Action Plan contains more recommendations in the field of legislation, calling for **(III.1.4)** “making legislative provisions for effective and proportionate criminal penalties, including imprisonment, that take into account the serious nature of this crime. Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, such as in the case of offences involving trafficking in children or offences committed by or involving the complicity of State officials.”

Indeed, this recommendation needs reinforcement. Convictions and the proportionality of penalties have remained a challenge in the OSCE region. The annual statistics compiled

by the US TIP Report (since 2002) are alarming: the gap between the estimates of trafficked persons, the number of victims who have been identified, and the number of THB-related prosecutions and convictions is huge. A decade after the Action Plan’s adoption, the number of convictions in the OSCE region and beyond is still extremely low, as reflected in the 2014 UNODC Global Report on Trafficking in Persons: “Between 2010 and 2012, some 40 per cent of countries reported less than 10 convictions per year. Some 15 per cent of the 128 countries covered in this report did not record a single conviction. The previous Global Report similarly found that 16 per cent of countries recorded no convictions between 2007 and 2010.”¹⁶⁹

Considering the gravity of the crime, it is difficult to justify verdicts that pose insignificant fines or are probationary. It is also necessary to take into account the strong preventive impact of adequate sentences. Since impunity perpetuates the trafficking cycle, all possible measures should be taken to change trafficking from a “low risk–high profit” business into a “high risk–low profit” crime. Court decisions on the accountability of State officials engaged in THB or acting in complicity with criminals are still a rare exception.

4.4.4 Confiscation of criminal proceeds; the link between confiscation and compensation for victims

Provision III.1.5 of the Action Plan recommends “considering legislative provisions for confiscation of the instruments and proceeds of trafficking and related offences, specifying, where not inconsistent with national legislation, that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking.” It also proposes “giving consideration to the establishment of a compensation fund for victims of trafficking and the use of the confiscated assets to help finance such a fund.” The implementation of this recommendation met certain difficulties in a few participating States due to national legal requirements demanding that confiscated proceeds of trafficking (as of any other serious crime) be forwarded directly to the State budget. Still, this measure could contribute significantly to State compensation funds (after being established) and help ensure victims’ access to remedies, their rehabilitation and the restoration of their basic rights. For example, Art. 6 of the **UN Trafficking Protocol**, together with the **UNTOC**, demands that “each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”¹⁷⁰ Art. 15 (Compensation and Legal Redress) of the CoE Trafficking Convention is even more protective of victims. It states that “each Party shall provide, in its internal

166 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (2005). Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm> accessed 21 December 2014.

167 European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011]. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=EN> accessed 23 December 2014.

168 United Nations, United Nations Global Plan of Action to Combat Trafficking in Persons (2010), A/RES/64/293.

169 United Nations, Global Report on Trafficking in Persons (2014). Available at: http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf accessed 10 October 2015.

170 United Nations, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000), Art. 6, p.6. Available at: <file:///C:/TOCebook-e.pdf> accessed 21 December 2014.

law, for the right of victims to compensation from the perpetrators"; and continues: "each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23 of the Convention."¹⁷¹

In the **2013 Addendum to the Action Plan**, the participating States agreed to the recommendation on "enhancing the capacities, where necessary, for tracing, freezing and confiscating the instrumentalities and proceeds of THB, in accordance with national law; and considering, where applicable, using confiscated proceeds to fund antitrafficking initiatives and victim support, including the possibility of obtaining compensation."¹⁷² This wording follows that of the recommendation to conduct financial investigations to combat THB-related money laundering.¹⁷³ Significant benefits can be gained by States in implementing this recommendation, especially if the financial means for a State compensation fund for trafficking victims are limited due to economic reasons. As for victims, obtaining compensation of this type would provide them justice and enable their restored trust in the State, a State that failed to prevent the crime but managed to protect their rights and dignity upon their identification as victims.

4.4.5 Extradition of criminals

The issue of extradition of criminals in cases of transnational trafficking is addressed by provision III.1.6 of the **Action Plan** ("ensuring that trafficking, its constitutive acts and related offences constitute extraditable offences under national law and extradition treaties"), coinciding fully with the UN Trafficking Protocol. This requirement appeared crucial especially for combating child trafficking and the sexual exploitation of children committed under so-called sex tourism. Taking particularly into account the high proportion of transnational trafficking, extradition is still relevant today.¹⁷⁴ The 2014 UNODC Global Report on Trafficking in Persons stated that "victims of 152 different citizenships have been identified in 124 countries across the world. At least 510 trafficking flows have been detected." According to the Report, most trafficked persons were foreigners in the country where they were identified as victims. Such victims – more than six in ten of all trafficked persons –

have been trafficked across at least one national border. That said, there are also many trafficking cases that involve limited geographic movement, taking place within a sub-region (and often between neighbouring countries). Internal trafficking has also widely been detected; indeed, for one in three cases of THB, the exploitation has taken place within the victim's country of citizenship. In the countries of destination, foreign offenders constitute 58 per cent, nationals 42 per cent. In countries of origin the situation is quite different: the number of foreigners among offenders is merely 5 per cent, in contrast to 95 per cent nationals.¹⁷⁵

4.4.6 Combating corruption

The **Action Plan** also addresses the issue of THB-related corruption. In provision III.1.7, it recommends "adopting such legislative and other measures to establish as criminal offences acts of active or passive corruption of public officials, as referred to in Articles 8 and 9 of the United Nations Convention against Transnational Organized Crime."

Further anti-corruption provisions in part 2 are connected to law enforcement response. Recommendation III.2.3 ("Building capacity in the anti-corruption field") is extremely relevant – little has yet been done on disclosing or investigating cases of active or passive corruption of officials¹⁷⁶ or the impact such corruption has on the effectiveness of anti-trafficking responses.¹⁷⁷ Trafficking and corruption are closely linked criminal activities, and still, "the correlation between the two phenomena, and the actual impact of corruption on trafficking in persons, are generally neglected in the development and implementation of anti-human trafficking policies and measures. This lack of attention may substantially undermine initiatives to combat trafficking in persons and prevent the customization of responses as needed. Only after recognizing the existence and the effects of corruption in the context of human trafficking, can the challenges posed by it be met."¹⁷⁸ This recommendation is linked to law enforcement response, since law enforcement officials are often the first target of traffickers attempting to prevent investigation or limit it to the end of the trafficking chain. This does not mean that other officials (customs officers, visa officers or embassy staff, border control, immigration services, local officials, intelligence and security services, armed

171 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (2005), Art. 23 "Sanctions and measures". Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm> accessed 21 December 2014.

172 OSCE, Permanent Council Decision No. 1107 "Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later" PC.DEC/1107 Corr.1' Annex 6 December 2013. Available at: <http://www.osce.org/addendum?download=true> accessed 25 December 2014.

173 For more details, see: OSCE, Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings (2014). Available at: <http://www.osce.org/secretariat/121125?download> accessed 5 September 2015.

174 The latter may refer to cases of persons who have been trafficked internally by criminals who are nationals of a third country and are members of a multinational criminal group.

175 United Nations, Global Report on Trafficking in Persons (2014). Available at: http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf accessed 11 November 2015.

176 The World Bank's working definition of corruption is "the abuse of public power for private benefit". Transparency International takes a broader approach and understands corruption as "the abuse of entrusted power for private gain" (<http://www.transparency.org/what-is-corruption/> accessed 11 November 2015).

177 For more details, see: United Nations, UNODC, "The Role of Corruption in Trafficking in Persons" (2011). Available at https://www.unodc.org/documents/human-trafficking/2011/Issue_Paper_-_The_Role_of_Corruption_in_Trafficking_in_Persons.pdf accessed 22 December 2014. See also: "Trafficking in Human Beings and Corruption", Council of Europe, 2005. Available at: <http://lastradainternational.org/lsidocs/297%20Trafficking%20and%20Corruption%20%28PACO%29.pdf> accessed 22 December 2014.

178 United Nations, UNODC, The Role of Corruption in Trafficking in Persons (2011). Available at: https://www.unodc.org/documents/human-trafficking/2011/Issue_Paper_-_The_Role_of_Corruption_in_Trafficking_in_Persons.pdf accessed 22 December 2014.

forces [national or international], the private sector [travel agencies, airlines, the transportation sector, financial institutions, banks] and persons, groups or parties with “influence”¹⁷⁹ are not targeted at various stages of the trafficking cycle. Corrupt relations may also involve parliamentarians and government officials, investigators, criminal police, prosecutors and judges.¹⁸⁰

This corresponds to the **Action Plan’s** recommendation 2.9: “Targeting corruption of local law enforcement as a matter of priority, and ensuring that appropriate disciplinary and criminal proceedings are undertaken against law enforcement authorities found to be engaged in corrupt practices related to trafficking in human beings.” According to the UNODC report “The Role of Corruption in Trafficking in Persons”, “victims trafficked into sexual exploitation have repeatedly reported that police would visit the premises on a regular basis, but would not talk to the women and inspect their situation, but have a coffee with the owner. Similar anecdotal cases were reported across Europe. In a few cases in Central and South-Eastern Europe, victims have identified police officers as their customers.”¹⁸¹ Corruption is sadly also quite common in the area of labour migration, especially where migrants are vulnerable too often due to not having legal status.

In this context, the recommendation of the **2013 Addendum** to develop, where necessary, and promote “full implementation of national legislation criminalizing corruption related to THB, including by public officials” and take “measures, in this respect, where appropriate, to increase the transparency of investigation and prosecution of all THB-related cases” is absolutely relevant and in line with the universal approach.

The **UNTOC**, as well as other relevant international and regional instruments, offers rigorous steps to combat corruption. The UNTOC Articles 8 and 9 contain the relevant provisions “Criminalization of Corruption” and “Measures against Corruption”. Also the CoE adopted two Conventions in this regard in 1999: the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption.¹⁸² They are both helpful for integrating good governance, including anti-corruption, due diligence and transparency measures into the anti-trafficking response.

4.4.7 Application of non-punishment principle

The **Action Plan**, in its provision III.1.8, recommends ensuring “that victims of trafficking are not subject to criminal proceedings solely as a direct result of them having been trafficked.” This extremely effective human rights based approach, as mentioned above, has been reflected in the OSCE MC Decisions (as described in Chapter 2, The OSCE’s Comprehensive, Human Rights Based Approach to Combating Trafficking in Human Beings from p.22, and in Chapter 3, A Review of the OSCE Anti-Trafficking Commitments 2000-2013, from p.24).

Many international documents (those of the UN, CoE, EU and others) refer to this approach as a “non-punishment clause” or “non-punishment provision”. This, of course, has nothing in common with “impunity” and is aimed at providing justice to victims of crime who may have been involved in unlawful activities, forced and exploited in this form by criminals. Such offences often include violations of migration or labour regulations, or participation in activities that are prohibited by law or considered administrative offences. The most difficult cases are related to the exploitation of trafficked persons, including children, in cultivating, transporting and selling drugs, pick-pocketing or selling stolen items. When caught by the police, such trafficked persons are usually detained, prosecuted and punished, while the real criminals continue to enjoy impunity and easily find new victims to continue their criminal business. In other words, trafficked persons, if not recognized as such and not taken out of the exploitative situation and properly assisted, are re-traumatized and deprived of access to justice – this time by the State.

The recommendation in the **Action Plan** was an advanced version of the wording in the **Vienna Ministerial Council Decision MC(8).DEC/1** and in the **Porto Ministerial Declaration MC(10).JOUR/2** (“ensuring that victims of trafficking do not face prosecution solely because they have been trafficked”).

Later, the OSCE strengthened the language of this non-punishment provision to make it clear that trafficking victims are to be released from liability for offences they committed under duress and were therefore unable to resist. Such duress includes orders, threats or the risk of severe punishment by criminals. In the **MC.DEC/8/07**, the Ministerial Council called on the participating States to “provide, in accordance with the basic principles of their legal system, for the possibility, where appropriate, of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.” This new wording closely resembles Art. 26 of the **CoE Trafficking Convention** (Non-punishment provision): “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility

179 Project PACO Networking, Trafficking in Human Beings and Corruption (2002). Available at: <http://lastradainternational.org/lsidocs/297%20Trafficking%20and%20Corruption%20%28PACO%29.pdf> accessed 22 December 2014.

180 Ibid.

181 United Nations, UNODC, The Role of Corruption in Trafficking in Persons (2011). Available at: http://www.unodc.org/documents/human-trafficking/2011/Issue_Paper_.pdf accessed 22 December 2014.

182 Council of Europe, Criminal Law Convention on Corruption (1999), available at: <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=173&CM=8&DF=2/19/2009&CL=ENG> and Civil Law Convention on Corruption (1999), available at: <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=174&CM=8&DF=2/19/2009&CL=ENG> accessed 21 December 2014.

of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”¹⁸³

The OSCE participating States reaffirmed this approach in the **Vilnius Ministerial Declaration on Combating All Forms of Human Trafficking MC.DOC/1/11/Corr.1**,¹ stating: “We recognize that adequate measures should be taken to ensure that, where appropriate, identified victims of human trafficking are not penalized for their involvement in unlawful activities to the extent that they have been compelled to do so.”¹⁸⁴ This was a significant step forward.

The inclusion of the same text in the **2013 Addendum**, though questioned during the consultation stages due to the misunderstanding and misinterpretation mentioned above of the term “non-punishment” as “impunity”, was agreed upon and gained the consensus of the 57 delegations. **The 2013 Addendum** placed this provision under the chapter dedicated to the protection of trafficked persons, though it is important to take into account that there are two sides of the non-punishment clause in the process of its application: prosecution, as it appears in the Action Plan, and protection, as in the 2013 Addendum.

The application of the non-punishment clause remains problematic, even in those participating States that do have provisions of this sort in their national legislation (for more details, see “Policy and Legislation Recommendations towards the Effective Implementation of the Non-Punishment Provision with regard to Victims of Trafficking. OSR/CTHB, 2013”¹⁸⁵ and GRETA Reports¹⁸⁶). Positive examples of a detailed legal approach can be found also in model legislation, as for example, the **CIS Model Law** on Protection of the Victims of THB (adopted in 2008 by the CIS Inter-parliamentary Assembly), which recognizes that exploitation may occur in the illegal sphere. In Art. 3, the CIS Model Law provides the following definition of exploitation: “Exploitation means using a human being or his/her labour for extracting material or other profit by other persons through abusing his/her vulnerable position and/or coercing him or her to work, to provide services or commit other action, irrespective of payment, including the exploitation of prostitution of other persons, other forms of sexual exploitation, exploitation of begging by other persons, forced labour or services, slavery or practices similar to slavery, servitude, removal of organs and tissues, as well as illegal use of another person for the reproductive purposes or in biomedical research, or in

armed contingents and armed conflicts, in other criminal or illegal activities.”¹⁸⁷ In Art. 5 (State Policy regarding Assistance to the Victims of THB), the CIS Model Law includes, *inter alia*, “relief of criminal liability (non-punishment) for the victims of THB for acts that pose a threat to the society and committed while having been trafficked; non-discrimination of the victims of THB, fair and humane treatment; ensuring free of charge access to the victims of THB to justice.”¹⁸⁸ In Art. 7 (Legal status of the victims of THB) the Model Law once again confirms that “the victim of THB is not liable for administrative or criminal offences while having been trafficked.” And further on: “In case a person charged for having committed administrative or criminal offences while having been trafficked, is recognized as a victim of trafficking, this status is sufficient to relieve this person of the administrative or criminal responsibility by a court decision in accordance with national legislation.”¹⁸⁹ Moreover, Art. 11 (Specificities of status of the victims of THB in the criminal procedure) requires States to “fully take into account the justified interests and protect the rights of the victims of THB”, and make sure that “the State legislation regulating the criminal procedure envisages special guarantees for such persons, including:...relief of administrative and criminal liability for socially dangerous acts committed while being a victim of trafficking.”¹⁹⁰

The **EU Directive 2011/36/EU** is completely in line with this approach (Art. 14): “Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.”¹⁹¹

183 Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art. 26. Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm> accessed 21 December 2014.

184 OSCE, Ministerial Declaration on Combating All Forms of Human Trafficking MC.DOC/1/11/Corr.1, point.10, 7 December 2011.

185 OSCE, OSRF/CTHB, Policy and Legislation Recommendations towards the Effective Implementation of the Non-Punishment Provision with regard to Victims of Trafficking (2013). Available at: <http://www.osce.org/secretariat/101002?download=true> accessed 5 September 2015.

186 GRETA's Country Evaluation Reports. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Publications/Evaluations_en.asp accessed 5 September 2015.

187 Commonwealth of Independent States, CIS Model Law on Protection of the Victims of Trafficking in Human Beings (in Russian.) (2008). Available at: http://base.spinform.ru/show_doc.fwx?rgn=25999 accessed 21 December 2014.

188 *Ibid.*

189 *Ibid.*

190 *Ibid.*

191 European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011]. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=EN> accessed 23 December 2014.

More detailed justification on this particularly important and challenging issue is provided in the above mentioned OSR/CTHB publication “Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking”.¹⁹²

4.4.8 Law enforcement response

Recommendations regarding the law enforcement response provided by the Action Plan are practical and seemingly obvious (as, for example, the recommendation III.2.1 “Fully implementing anti-trafficking and related measures set out in legislation”). Still they have to be taken into account and implemented to increase the efficiency of law enforcement activities. One might question why, for example, it is necessary to establish “special anti-trafficking units – comprising both women and men – with advanced training in investigating offences involving sexual assault or involving children, in order to promote competence, professionalism and integrity” (point III.2.2). This is highly recommended due to the complex nature of human trafficking, its harsh features when compared to other crimes (above all, the major component of human rights violations and the deep traumas experienced by victims), the need to ensure humane and compassionate treatment of victims, and the necessity of placing the restoration of their rights and dignity at the centre of all law enforcement activities. There is currently a need to expand the specialized training of law enforcement agents so that they can properly identify and address all forms of trafficking, including THB for labour exploitation, exploitation in forced begging and forced criminality, THB for organ removal, THB for exploitation in domestic servitude, as well as all other possible manifestations of THB. Countries that have established special anti-trafficking units have benefitted from this division of labour, achieving better results in the investigation and prosecution of THB-related cases.

To assist in the implementation of the Action Plan’s recommendation III.2.4 (“developing community-policing programmes: raising levels of trust between the police and the public in order, *inter alia*, to contribute to the acquisition of information relating to trafficking and to increase the willingness of victims to report offences”), the OSCE TNTD/SPMU provided the participating States with the guidance manual “Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach”.¹⁹³ The core message of this recommendation is expressed by the word “trust”. It is the lack of trust that so often hampers the identification of victims. Unfortunately, victims often have good reasons to refrain from contacts with law enforcement officials – true (and false) stories about “corrupt” policemen who would either return victims to

their exploiters, or detain and prosecute them as offenders, or deport or imprison them, dissuade victims from reporting the crime they are experiencing. They have few expectations that the police will take them out of their exploitative situation and provide immediate safety. This lack of trust also has a strong impact on the decision of a rescued victim to co-operate with the police in the investigation of their case. Needless to say, the failure to identify a victim of trafficking leads to other failures in terms of access to justice, restoration of human rights, rehabilitation, and remedies for the harm suffered. Community policing approaches to victim identification provide a solid platform for the broader involvement of various public institutions, civil society groups and community representatives in the identification of trafficked persons.

4.4.9 Financial investigations of THB-related criminal assets

The Action Plan’s recommendation III.2.5 (“Enhancing co-operation between law enforcement investigating bodies in order to establish the possibly criminal, trafficking-related origins of suspicious assets”) opened a new page in countering human trafficking by addressing THB-related money laundering. This recommendation targets both the identification of possible THB cases as a predicate crime and the prosecution of money laundering, thus undermining the “core value” of criminals and the ultimate purpose of trafficking and exploitation – illegal financial gain.

The approach to this aspect of THB was further developed by the OSCE (in co-operation with the UNODC and the CoE) through a series of workshops that led to the recent OSCE publication “Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings”.¹⁹⁴ This brochure contains practical and advanced recommendations for major stakeholders, including: agencies responsible for national legal and operational frameworks; financial intelligence units; law enforcement and prosecution agencies; financial institutions; the business sector; national anti-trafficking structures; and international and regional organizations. The OSCE’s work in this field was supported by the Financial Action Task Force (FATF) Report “Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants”¹⁹⁵ and the description of so-called “red flag indicators” that should be used by both anti-trafficking and financial investigators. It was also enriched by joint discussions held on this issue by the OSCE, FATF, UNODC and other international organizations in 2011.¹⁹⁶

192 OSCE, OSR/CTHB, “Policy and Legislation Recommendations towards the Effective Implementation of the Non-Punishment Provision with regard to Victims of Trafficking” (2013). Available at: <http://www.osce.org/secretariat/101002?download=true> accessed 21 December 2014.

193 OSCE, “Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach” (2011). Available at: <http://www.osce.org/secretariat/78849?download=true> accessed 22 December 2014.

194 OSCE, Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings (2014). Available at: <http://www.osce.org/secretariat/121125?download=true> accessed 22 December 2014.

195 Financial Action Task Force, Report “Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants” (July 2011). Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Trafficking%20in%20Human%20Beings%20and%20Smuggling%20of%20Migrants.pdf> accessed 22 December 2014.

196 Background materials for and the presentations at the Expert Seminar “Leveraging Anti-Money Laundering Regimes to Combat Human Trafficking” are available at: <http://www.osce.org/secretariat/107665> accessed 15 February 2015.

Taking into account the significance of linking financial investigations and THB-related investigations in order to dismantle trafficking networks and eliminate the “safe space of criminal profits”, the participating States agreed, in point 2.1 of the **2013 Addendum**, to recommend “promoting the use of financial investigations linked with THB-related offences; enhancing the capacity of antimoneylaundering authorities and other relevant structures to identify financial activities linked to THB; enhancing the capacities, where necessary, for tracing, freezing and confiscating the instrumentalities and proceeds of THB, in accordance with national law; and considering, where applicable, using confiscated proceeds to fund antitrafficking initiatives and victim support, including the possibility of obtaining compensation.”¹⁹⁷

4.4.10 Advanced methods of investigation

The complexity of trafficking requires more than just training for law enforcement officers, combating this crime requires deep knowledge and the application of advanced methods. This is the reason behind recommendation III.2.6 of the **Action Plan** (“Providing not only the resources and training for developing intelligence-led policing for the management and analysis of crime and criminal information, but also the other advanced skills and equipment necessary for law enforcement bodies to carry out their anti-trafficking tasks”). Assistance for implementing this recommendation can be found in the OSCE Resource Police Training Guide: Trafficking in Human Beings,¹⁹⁸ which points to the substantial complexities in investigating trafficking cases and prioritizes victim-centred investigations (in other words, investigations in which the human rights of the victim are respected at all times, at every stage of the proceedings). This Guide describes the necessity for risk assessments to be conducted at all stages of an investigation, the value of investigative planning, the various choices of investigative forms (intelligence, re-active investigation, proactive investigation) and considerations concerning investigations that are disrupted. It also describes special investigative techniques (surveillance, covert human intelligence sources, test purchases, controlled deliveries, and telephone interception and the use of communications data). The last can be helpful in cases in which a victim is unwilling or unable to provide evidence. In addition, the Guide explains evolving and innovative techniques that can be used without relying on a victim’s testimony. These are “in-between” methods (such as the use of under-cover officers and infiltrators), although the effectiveness of such methods may be limited due to the simple fact that the victim is still under the traffickers’ control. This is why law enforcement officials in some participating States advocate

these new and innovative techniques to be used for prosecuting, for example, cybercrime cases¹⁹⁹ that may, in the end, have a trafficking component.

This last point is partly covered in recommendation III.2.7 (“Encouraging investigators and prosecutors to carry out investigations and prosecutions without relying solely and exclusively on witness testimony. Exploring alternative investigative strategies to preclude the need for victims to be required to testify in court”). It is necessary to add that victims may be unable to testify in court due to various valid reasons, such as serious psychological trauma, fear that traffickers pose a real danger to them or their families if they testify against the offenders, or the desire to completely forget what happened to them and, hence, a victim having difficulties to remember any details about their recruitment or exploitation. Often trafficked persons leave the country of exploitation before a trial even commences, especially if they are able to move freely. The consequences of trafficking for victims’ physical and mental health are often similar to those experienced by victims of torture.²⁰⁰ The OSR/CTHB study “Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-treatment” provides a clinical review of the effects of trafficking on victims and of the various symptoms that manifest the serious harm that can be done to their health such as, for example, dissociation: “A person who is severely traumatized may become ‘absent’ and ‘dissociated’ from their physical and psychological presence in the room for example during a clinical session, discussion or interview. This may arise in particularly stressful situations such being interviewed by the authorities, or giving evidence in court. While dissociated, a person’s mind is elsewhere.... They maybe involuntarily ‘re-living’ a traumatic experience (i.e. having a ‘flashback’ and therefore re-experiencing sensory components of the trauma); or shutting their mind down defensively to protect themselves from the distress of traumatic memories.”²⁰¹ Certainly in such cases, especially if the victim is a child, the provision of testimony may not be helpful to reconstruct the details of a THB incident.

As recommended in the **2005 Addendum to the Action Plan**, specific methods of investigation are needed “to address the use of the Internet in facilitating the trafficking of children for sexual exploitation and developing measures to combat it, including the exchange of images and other information in accordance with national law, in particular via the international database of child abuse images housed by Interpol with a view to identifying and protecting child victims as well as identifying their abusers.”²⁰²

197 OSCE, Permanent Council Decision No.1107 Corr.1¹ Annex “Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later”, PC.DEC/1107 Corr.1¹ Annex 6 December 2013. Available at: <http://www.osce.org/addendum?download=true> accessed 25 December 2014.

198 OSCE, OSCE Resource Police Training Guide: Trafficking in Human Beings (2013). Available at: <http://www.osce.org/secretariat/109935?download=true> accessed 22 December 2014.

199 Ibid.

200 For more details, see: OSCE, OSR/CTHB, “Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-treatment.” (2013). Available at: <http://www.osce.org/secretariat/103085?download=true> accessed 22 December 2014.

201 Ibid.

202 OSCE, Permanent Council Decision No.685 Annex “Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance”, PC.DEC/685 Annex 7 July 2005. Available at: <http://www.osce.org/pc/15932?download=true> accessed 25 December 2014.

Advanced methods of investigation and the need to raise the efficiency of investigations within a human rights based approach, as mentioned in Chapter 3, were developed further in the subsequent anti-trafficking MC Decisions. For example, in the **MC.DEC/5/08** the Ministerial Council “Urges the participating States ... to ensure that investigation into or prosecution of human trafficking shall not be dependent upon a report or accusation by a victim.” The Decision calls “for increased co-operation by national law enforcement and prosecution agencies with relevant international bodies, including Interpol and Europol, and with the law enforcement agencies of other participating States, for example, through the use of liaison officers or joint investigative teams, where doing so would enhance the efficiency and effectiveness of criminal justice responses.” The good practices of joint investigation teams and the use of liaison officers²⁰³ has proven its validity within the EU (with regard to THB), and in the CIS and the Collective Security Treaty Organization (although here, mainly with regard to combating illegal migration, with THB a “complementing” phenomenon). Sometimes implementing this recommendation needs the revision of existing legislation to permit the establishment of such joint teams. Too often the investigation of THB cases is hampered by the lack of communication and co-operation between CTHB investigative teams and those investigating financial crimes. Ways to eliminate this problem were raised by the FATE, in co-operation with the OSCE, in the 2011 FATF Report Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants.²⁰⁴

In the 2011 **Vilnius Ministerial Declaration on Combating All Forms of Human Trafficking**, the OSCE participating States recognized “the need to enhance the criminal justice responses to human trafficking, including the prosecution of traffickers and their accomplices, while ensuring that victims are treated in a manner that respects their human rights and that they are provided with access to justice, to legal assistance, and to effective remedies and other services as applicable” and stated that they “will explore investigative techniques such as financial investigations, improve information sharing relating to organized crime groups, and promote cross-border law-enforcement and judicial collaboration to identify effectively both traffickers and potential victims of human trafficking.”

This is just one example of how the Action Plan recommendations have evolved into OSCE political commitments. All of the measures recommended above are indeed effective in dis-

rupting the cycle of human trafficking. Proper identification of the victims (both actual and presumed), as well as of offenders remains the core of any criminal process that leads to justice.

4.4.11 Highest standards of conduct and accountability for Mission members

Recommendation III.2.8 (“Taking practicable measures to ensure that OSCE mission members who are behaving in breach of the OSCE Code of Conduct for Mission Members and other regulations face prescribed sanctions, including, as appropriate, disciplinary and criminal proceedings”) was addressed to seconding States or States whose nationals form OSCE contracted personnel and are accountable for any violations (in this case, THB-related) or for not complying with the highest standards of conduct. To develop and strengthen this approach further, the OSCE Ministerial Council Decision No.16/05 “Ensuring the Highest Standards of Conduct and Accountability of Persons Serving on International Missions or Forces” committed the participating States to “seek to ensure that their national laws, regulations, and other relevant documents can be enforced with respect to their nationals who are serving on peacekeeping forces or other international missions, with a view to ensuring the highest standards of conduct and accountability.” The Ministerial Council called on participating States to take appropriate action necessary to prevent sexual exploitation and abuse, including cases of forced labour, by military or civilian personnel deployed by them. The MC Decision committed the participating States to enforce relevant standards of conduct and to ensure that any such cases are properly investigated and appropriately punished. The responsibility of the States themselves was accompanied by the task given by the MC to the Secretary General to report annually to the Permanent Council on the implementation of this decision in regard to the Code of Conduct for OSCE Officials and Staff Instruction 11, in accordance with provision III.11.1 of the OSCE Action Plan to Combat Trafficking in Human Beings.

The OSCE has included these issues in its General Orientation Programme for all OSCE personnel, has taken the responsibility to update its financial administrative instructions by introducing specific statements about avoiding suppliers where there are indications of human trafficking and to promote staff awareness of the rights of domestic workers, and has updated the OSCE Code of Conduct for all staff.

In 2014, the OSCE adopted the Staff Circular No. 05/2014 on the requirements for employing private domestic staff. Its purpose is to summarize and clarify the requirements for the employment of private domestic staff by OSCE staff as per the information provided by the Austrian Federal Ministry for European and International Affairs and Integration.

The OSCE is also in the process of updating its own internal procurement regulations, namely the Financial Administrative Instruction 6 on Procurement and Contracting.

203 Persons who liaise between two organizations to communicate and coordinate their activities by serving as official go-betweens for senior officials of both organizations. For more details, see: International Standardization Council, Roles and Responsibilities for Liaison Officer (2012). Available at: https://downloads.cloudsecurityalliance.org/standards/ISC_Liaison_Office_Role_Responsibilities.pdf accessed 5 September 2015.

204 Financial Action Task Force, Report “Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants” (2011). Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/trafficking%20in%20human%20beings%20and%20smuggling%20of%20migrants.pdf> accessed 15 February 2015.

The OSCE general conditions of contracts (both goods and services) from March 2011 already includes a paragraph on CTHB: “Neither the Contractor nor its personnel shall, directly or indirectly, engage in any practice inconsistent with international human rights laws and standards that prevent, *inter alia*, child labour, sexual exploitation and trafficking in human beings.”²⁰⁵

4.4.12 Law enforcement co-operation and information exchange

The recommendations in part 3 of the chapter on Investigation, Law Enforcement and Prosecution are dedicated to co-operation and information exchange, aspects that are crucial for improving the effectiveness of law enforcement action in combating THB. Co-operation is indeed a cornerstone for law enforcement, be it in transnational trafficking cases or internal ones. It unites the efforts and mutually reinforces the capacities of the law enforcement structures in countries of origin, transit and destination, as well as those within the same country. Measures for ensuring co-operation include: effective channels of communication between participating States; better co-operation on inquiries regarding THB-related offences; providing, when appropriate, items or evidence necessary for analytical or investigative purposes; effective co-ordination between competent authorities, agencies and services and the promotion of the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the participating States concerned, the posting of police liaison officers; exchange of information on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or forged documents or other means of concealing their activities; and the co-ordination of administrative and other measures considered appropriate for the early identification of offences.

Enhanced co-operation is addressed in the Action Plan provisions III.3.3 (agreements on bilateral and multilateral co-operation) and III.3.4 (developing common standards for data collection). Since 2003, a few organizations have developed good practices that help in the exchange of THB-related data in real time. Europol, for example, regularly supports high-level human trafficking investigations, offering on-the-spot operational assistance through the Europol mobile office, and providing access to criminal databases and analytical tools. This has resulted in disrupting the activities of many criminal networks involved in THB and led to the arrest of thousands of dangerous criminals, the recovery of millions of Euros in criminal proceeds, and the liberation of hundreds of victims, including children trafficked for sexual exploitation. The agency uses its unique information capabilities and the expertise of its staff to identify and track the most dangerous criminal and terrorist networks in Europe. Law enforcement authorities in the EU

rely on this intelligence work and the services of Europol’s operational coordination centre and secure information network to carry out over 13,500 cross-border investigations each year. Europol also acts as a major centre of expertise in key fields of law enforcement activity and as a European centre for strategic intelligence on organized crime. Europol officers have no direct powers of arrest, but support EU law enforcement colleagues by gathering, analysing and disseminating information and coordinating operations. Europol experts and analysts take part in Joint Investigation Teams (JITs), which help solve criminal cases in EU countries. Europol personnel come from different kinds of law enforcement agencies, including regular police, border police, and customs and security services. This multi-agency approach helps to close information gaps and minimize the space in which criminals can operate.²⁰⁶ The same approach is pursued by Eurojust and its Trafficking and Related Crimes Team. In 2012, this team initiated a joint strategic project aimed at improving judicial co-operation in THB cases.

Another example of good practice comes from the CIS area. To enhance co-operation in the fight against human trafficking, the CIS participating States tasked the CIS Coordinating Council of Prosecutors General as a body responsible for implementing the CIS Programme of Cooperation in Combating Trafficking in Human Beings. The Council has the status of an inter-State agency. It has been authorized with coordinating actions to protect the rights of nationals of the CIS participating States and for combating organized crime, to facilitate the harmonization and unification of relevant national legislation, and to develop the legal framework of the CIS.²⁰⁷ The Council holds annual meetings of Prosecutors General to report on the efforts of national structures in the realization of the CIS anti-trafficking programme and assess the progress achieved, to exchange experience with other international organizations, including the OSCE, UNODC, IOM, CSTO and others. The CIS International Training Centre for Migration and Combating THB (Minsk, Belarus) provides a good platform for networking and capacity building of law enforcement officials.

A significant role in promoting law enforcement co-operation is played by international organizations. The IOM, for example, is well known for providing assistance in the CIS area in elaborating national databases on THB; the OSCE field operations and the OSCE/ODIHR for promoting, *inter alia*, National Referral Mechanisms and conducting training for law enforcement and other officials; and the UNODC for enhancing the criminal justice response and the implementation of the UN Trafficking Protocol. Jointly these organizations are also involved in improving regional cooperation and co-ordination (for example, by means of annual conferences on criminal justice in Central Asia).

205 OSCE, General Conditions of Contract (Goods) and General Conditions of Contract (Services) (2011). Available at: <http://www.osce.org/procurement/15> accessed 18 November 2015.

206 <https://www.europol.europa.eu/content/page/about-europol-17> accessed 23 December 2014.

207 <http://www.e-cis.info/page.php?id=13816> accessed 23 December 2014.

4.4.13 Assistance and protection of witnesses and victims in the criminal justice system

The efficiency of law enforcement in the investigation and prosecution of trafficking cases would not be feasible without the assistance and protection of witnesses and victims in the criminal justice system. This is why the Action Plan provides detailed recommendations on these crucial aspects in part 4, focusing on (III.4.1) “appropriate measures within participating States’ means, including legislative ones, to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony ...and, as appropriate, for their relatives and other persons close to them.” The Action Plan strongly recommends (III.4.2) “sensitizing law enforcement authorities and officials to their responsibility for ensuring the safety and immediate well-being of victims of THB”, (III.4.3) “ensuring data protection and the victim’s right to privacy, also in the course of data collection and analysis”, (III.4.4) “facilitating the victim’s participation as a witness in the investigation and court hearings or other criminal proceedings by providing him/her with the possibility of relocation as a form of witness protection” and (III.4.5) “providing legal counselling for victims when they are in the process of deciding whether or not to testify in court.” Given that victims may suffer from deep psychological or other traumas, or have little (if any) knowledge of their rights, the Action Plan recommends (III.4.6) “permitting NGOs to support victims in court hearings, if it is not inconsistent with national legislation.”

The 2005 Addendum to the Action Plan particularly recommends “(6) following identification, providing **child victims of trafficking**, when necessary, with a guardian and/or legal representative at all stages of the assistance, (re-)integration and/or return and to ensure protection of their human rights; (7) developing child-friendly procedures related to criminal and civil proceedings, from initial questioning to the conclusion of the proceedings which are consistent with the rule of law”; and “(9) processing every child trafficking case individually and making every effort to find a durable solution which will result in one of three options: (a) Return to and reintegration in the country of origin; (b) Local integration into the country in which they are identified; and (c) Relocation to a third country.”²⁰⁸

Regarding victim and witness protection, the **EU Directive 2011/36/EU**, in its turn, provides still stronger wording: “Member States must ensure that assistance and support are provided to victims before, during and after criminal proceedings in order to enable them to exercise the rights conferred upon them by the standing of victims in criminal proceedings. In particular, this support may consist of the provision of ac-

commodation, medical treatment including psychological assistance, as well as information, and interpretation and translation services, if necessary. As particularly vulnerable victims, children must receive additional measures such as physical and psycho-social assistance, access to education, and, where appropriate, the option to appoint a guardian or a representative.” In addition: “During the investigation and criminal proceedings, victims must receive appropriate protection including access to legal counselling and representation, free of charge if necessary, and access to a witness protection programme, where appropriate. Any further trauma to the victim should be avoided, for example by sparing him/her any contact with the accused. Children must benefit from specific measures, particularly concerning the conditions of their hearings. Specifically, they will be interviewed without delay, in adapted premises, and by professionals trained for that purpose.”²⁰⁹

The latter requirement is explained in detail in the **UNICEF Guidelines on the Protection of Child Victims of Trafficking** (in a chapter on criminal proceedings). “Victims and witnesses of trafficking require special protection, assistance and support in order to prevent additional hardship as a result of their participation in the criminal justice process and in order to ensure that their best interests and dignity are respected.”²¹⁰ These Guidelines underline that “in terms of giving evidence at trial, countries need to ensure victim witnesses are able to give evidence safely, and make efforts to reduce the secondary trauma that victims often face in a courtroom. Law enforcement authorities, prosecutors, judges and magistrates should apply child-friendly practices including interview rooms designed for children, interdisciplinary services for child victims integrated under one roof, modified court environments that take child witnesses into consideration, use of recesses during a child’s testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, and on-call systems to ensure the child goes to court only when necessary. States shall consider, if necessary, amending their code of penal procedure to take account of the specific needs of a child victim and to allow for, *inter alia*, videotaping of the child’s testimony and presentation of the videotaped testimony in court as an official piece of evidence.” These recommendations are based on the CoE Trafficking Convention, Convention on the Rights of the Child, UNOHCHR Guidelines on Human Rights and Human Trafficking, and Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Resolution 2005/20 of 22 July 2005).²¹¹

208 OSCE, Permanent Council Decision No.685 Annex “Addendum to the Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking”, PC.DEC/685 Annex 7 July 2005. Available at: <http://www.osce.org/pc/15932?download=true> accessed 25 December 2014.

209 http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/jl0058_en.htm accessed 24 December 2014.

210 United Nations, UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006). Available at: http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf accessed 24 December 2014.

211 United Nations, UNODC/UNICEF, “Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime” (2009). Available at: http://www.un.org/en/peaceandjustice/docs/guidelines_on_justice_in_matters_involving_child_victims_and.pdf accessed 24 December 2014.

It is of particular importance that **the 2013 Addendum to the OSCE Action Plan** connects the criminal justice response directly to the protection of the human rights of victims. In provision 1.2, the Addendum recommends “enhancing the criminal justice responses to human trafficking, including the prosecution of traffickers and their accomplices, while ensuring that victims are treated in a manner that respects their human rights and fundamental freedoms and that they are provided with access to justice, to legal assistance and to effective remedies and other services as applicable.”²¹² This is a clear manifestation of a human rights based approach applicable in the prosecution of trafficking cases (which is also important for the application of the non-punishment clause if offences have been committed by victims under duress).

In general, good practices at the national level, where legislation provides for these protective measures, lead to a significant increase of successful prosecutions. In contrast, the absence of mechanisms to protect victims and witnesses often leads to the failure of prosecution due to the well-grounded fear of witnesses and victims to testify in court. They and their families remain in danger, threatened by criminals and their accomplices. This may be the case even if legislation on witness protection is in place but mechanisms are lacking, or they are not designed to protect victims and witnesses of trafficking, a crime that has special features.

4.4.14 Training

Training is of particular importance for law enforcement officials. The ability of traffickers to adjust their illegal activities to new legal measures taken by a particular State – choosing new areas and forms of exploitation, developing new recruitment methods, opening new channels of transportation, or shifting from severe and cruel treatment of victims (which leaves visible signs) to subtle and much more sophisticated psychological pressure, thus keeping the victims under full control – requires the regular updating of the professional skills of law enforcement officials. This is why part 5 of the Action Plan’s chapter on investigation is dedicated to training, and recommends **(III.5.1)** “providing or improving training for border officials, law enforcement officials, judges, prosecutors, immigration and other relevant officials in all aspects of trafficking in persons.” Point **(III.5.2)** underlines that such training programmes should take into account human rights and child- and gender-sensitive issues, and encourage co-operation with non-governmental organizations, other relevant organizations, and other civil society actors.

The OSCE MC Decisions reiterate the significance of training to ensure adequate response and to contribute to the capacity building of all relevant officials. For example, the Ministerial

Council, in its **Decision No 9/07** “Combating Sexual Exploitation of Children on the Internet”, urges participating States “to further enhance specialized training for law enforcement, teachers and health professionals, as appropriate, on combating child pornography on the Internet, including by taking advantage of existing programmes such as that offered by the International Centre for Missing and Exploited Children (IC-MEC), and tasks the relevant OSCE executive structures to facilitate contacts in this regard.”²¹³ The **MC Decision No. 8/07** “Combating Trafficking in Human Beings for Labour Exploitation” encourages the participating States to “consider providing training for judges, prosecutors, police officers and labour inspectors concerning trafficking for labour exploitation, from the perspectives of both prosecution and victim protection, and in this respect, ensure, where necessary, adequate resources are provided.”²¹⁴

In the Helsinki **MC.DEC/5/08** “Enhancing the Criminal Justice Response to Trafficking in Human Beings through a Comprehensive Approach”, the participating States are encouraged “to ensure that training on combating trafficking in human beings is included in the curricula for law enforcement personnel and that specialized anti-trafficking training is provided for relevant officials in national prosecution services and the judiciary.”²¹⁵

The **2005 Addendum to the Action Plan** highlights the necessity of facilitating “special training for law enforcement and direct service personnel on proper and effective methods to identify child victims of trafficking. Any child presumed to be a victim of trafficking shall be referred without delay for appropriate assistance.”²¹⁶

The **2013 Addendum to the OSCE Action Plan**, drawing on the relevant OSCE Decisions listing various categories of officials as target audiences for training, recommends “promoting regular training courses, as appropriate, in accordance with national legal systems, for officials mentioned in Chapter III, paragraph 5.1 of the Action Plan... on all recent trends and aspects of THB, including methods used by traffickers to abuse legal process and methods to coerce their victims, the use of the Internet and other information and communication tech-

212 OSCE, Permanent Council Decision No.1107 Corr.1¹ Annex “Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later”, PC.DEC/1107 Corr.1¹ Annex 6 December 2013. Available at: <http://www.osce.org/addendum?download=true> accessed 26 December 2014.

213 OSCE, Ministerial Council Decision No.9/07 “Combating Sexual Exploitation of Children on the Internet”, MC.DEC/9/07, 30 November 2007. Available at: <http://www.osce.org/mc/29476?download=true> accessed 25 December 2014.

214 OSCE, Ministerial Council Decision No.8/07 “Combating Trafficking in Human Beings for Labour Exploitation”, MC.DEC/8/07, 30 November 2007. Available at: <http://www.osce.org/mc/29464?download=true> accessed 25 December 2014.

215 OSCE, Ministerial Council Decision No. 5/08 “Enhancing the Criminal Justice Response to Trafficking in Human Beings through a Comprehensive Approach”, MC.DEC/5/08, 5 December 2008. Available at: <http://www.osce.org/mc/35482?download=true> accessed 25 December 2014.

216 OSCE, Permanent Council Decision No.685 Annex “Addendum to the Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance”, PC.DEC/685 Annex 7 July 2005. Available at: <http://www.osce.org/pc/15932?download=true> accessed 25 December 2014.

nologies (ICTs) for committing THB related crimes, as well as training on the use of financial investigation techniques linked with THB related cases, and exchange of best practices.”²¹⁷

The OSCE has been providing assistance to the participating States and partner organizations, including FRONTEX, either by conducting specialized training on combating THB in all its forms, or developing training modules for particular audiences (such as peacekeepers or border officials). Good and regular co-operation has been established between the OSCE and the CIS International Training Centre for Migration and Combating Trafficking in Human Beings. Also, the OSCE has published two manuals for law enforcement officials: “OSCE Resource Police Training Guide: Trafficking in Human Beings” (2013)²¹⁸ and “Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach” (2011)²¹⁹.

4.4.15 Border measures

Border measures²²⁰ (part 6, Chapter III of the **Action Plan**) belong to the sphere of law enforcement responsibilities. This is both in terms of identifying traffickers (taking “measures that permit, in accordance with its domestic law, the denial of entry, the revocation of visas or possibly the temporary detention of persons implicated in committing offences as defined by the legislation in force” [III.6.1]) and in terms of preventing border crossing by victims of trafficking. The latter is extremely difficult due to the fact that potential victims do not yet see themselves as victims and thus, their behaviour often bears no features of a traumatized person. Today the travel documents of trafficked persons are usually valid, and border guards may have no reason to stop potential victims at borders or conduct interviews with them to search for a lack of clarity regarding their destination or purpose of travel.

Nonetheless, border officials have a unique opportunity to provide such persons important preventive information, to raise awareness of the risks of trafficking, and to advise on steps to take in case of a worrying situation.

Strengthening co-operation between border control agencies by, *inter alia*, establishing and maintaining direct channels of communication (**III.6.2**), as recommended in the Action Plan,

can be crucial for identifying and preventing trafficking, especially if information is provided by intelligent sources in advance about a possible incident of transnational THB.

The Legislative Guides for the Implementation of the UN-TOC and the Protocols Thereto clarifies, regarding Art. 11 of the Trafficking Protocol, that “the requirement to strengthen basic border controls does not necessarily involve cooperation with other States, and such cooperation or coordination of border controls as may be needed will not generally require legislation.”²²¹ At the same time, “the strengthening of co-operation between agencies and the establishment of direct channels of communication may require some legislation to establish that the agencies concerned have the authority to cooperate and to allow the sharing of information that might otherwise be protected by confidentiality laws. Many of the issues raised by cooperation between border control agencies will be similar to those raised by cooperation between law enforcement agencies, and article 27 of the Organized Crime Convention, paragraphs 500–511 of the legislative guide for the implementation of the Convention and domestic legislation used to implement it might therefore be considered.”²²²

The **CoE Trafficking Convention** contains more detailed provisions regarding border measures (Art. 7). Especially important is point 1 obliging State Parties to strengthen border controls as may be necessary to prevent and detect trafficking in human beings, “without prejudice to international commitments in relation to the free movement of persons.”²²³ The reference to freedom of movement is fully coherent with the human rights-based approach to combating THB at all stages, and reminds State Parties that freedom of movement cannot be sacrificed; any restrictions thereto cannot be justified by “preventive purposes”.

Other provisions of Art. 7 of the **Convention** commit Parties to “adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention” (2). To translate this into practice, the **Convention** explains (point 3) that “...such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.”²²⁴ State Parties are committed (4) to “take the necessary measures, in accordance with [their] internal law, to provide for sanctions in cases

217 OSCE, Permanent Council Decision No.1107 Corr.1¹ Annex “Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later”, PC.DEC/1107 Corr.1¹ Annex 6 December 2013. Available at: <http://www.osce.org/addendum?download=true> accessed 26 December 2014.

218 OSCE, “OSCE Resource Police Training Guide: Trafficking in Human Beings” (2013). Available at: <http://www.osce.org/secretariat/109935?download=true> accessed 25 December 2014.

219 OSCE, “Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach” (2011). Available at: <http://www.osce.org/secretariat/78849?download=true> accessed 25 December 2014.

220 Irrelevant for cases of trafficking within the Schengen area (in the case of trafficked persons who are nationals of Schengen states and are being transported to their destination without crossing borders with non-Schengen countries).

221 United Nations, “Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto” (2004). Available at: https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf accessed 25 December 2014.

222 *Ibid.*

223 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (2005). Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm> accessed 25 December 2014.

224 *Ibid.*

of violation of the obligation set forth in paragraph 3 of this article.”²²⁵ The other points in Article 7 are similar to the respective provisions of the **Action Plan**.

4.4.16 Security and control of documents, their legitimacy and validity

In parts 7 and 8 (Chapter III), respectively, **the Action Plan** addresses rather technical but nevertheless important issues concerning security, control of documents, and the legitimacy and validity of documents. The **Action Plan** recommends “taking such measures as may be necessary, ... to ensure that travel or identity documents issued by or on behalf of participating States are of such quality that they cannot easily be misused, readily falsified or unlawfully altered, replicated or issued” (**III.7.1**). Naturally linked to this recommendation is the next one (**III.8.1**): “at the request of another participating State and in accordance with its domestic law, verifying within a reasonable time the legitimacy and validity of travel or identity documents issued or purporting to have been issued in its name, where there are reasonable grounds to suspect their usage for trafficking in persons.” It is clear that high quality travel documents decrease the opportunities for traffickers. In the same context, Art. 20 of the **CoE Trafficking Convention** provides further details: “Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings: (a) forging a travel or identity document; (b) procuring or providing such a document; (c) retaining, removing, concealing, damaging or destroying a travel or identity document of another person.”²²⁶

Unfortunately even if a trafficked person’s travel documents are valid, this validity does not protect them from having his/her documents being taken away upon arrival by traffickers, nor does it prevent subsequent exploitation. And complicating the identification of trafficking cases are those in which labourers, despite the fact that their employers have not confiscated their documents, cannot leave freely due to salaries being retained, psychological pressure, threats or intimidation.

4.5 Updating Chapter IV: Prevention of Trafficking in Human Beings

The **Action Plan** based its recommendations on Prevention on the commitments that had been formulated in the Ministerial Declaration on Trafficking in Human Beings (Porto, 2002); the OSCE Permanent Council Decision No. 426 of 2001; the Ministerial Decision on Enhancing the OSCE’s Efforts to Combat Trafficking in Human Beings (Vienna, 2000); the guidelines of the 2000 OSCE Action Plan for Gender Issues (PC.DEC/353, 1 June 2000); the Charter for European Security (Istanbul, 1999);

the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow, 1991); and the Final Act of the Conference on Security and Co-operation in Europe (Helsinki, 1975). In these documents, the participating States had also agreed on the role to be played by the OSCE structures and institutions in developing anti-trafficking programmes and projects, in conducting training for various categories of officials, in awareness raising and capacity building, and in other forms of technical assistance to be provided to the participating States.

The **2013 Addendum** added to the significance of the Action Plan by integrating the OSCE anti-trafficking commitments of 2004–2011, including: the 2004 OSCE Action Plan for the Promotion of Gender Equality²²⁷; MC.DEC/13/04 “The Special Needs for Child Victims of Trafficking for Protection and Assistance”; the 2005 Addendum to the Action Plan to Combat Trafficking in Human Beings²²⁸; MC.DEC/16/05 “Ensuring the Highest Standards of Conduct and Accountability of Persons Serving on International Forces and Missions”²²⁹; MC.DEC/14/06 “Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach”²³⁰; MC.DEC/8/07 “Combating Trafficking in Human Beings for Labour Exploitation”²³¹; MC.DEC/9/07 “Combating Sexual Exploitation of Children on the Internet”²³²; MC.DEC/5/08 “Enhancing Criminal Justice Responses to Trafficking in Human Beings Through a Comprehensive Approach”²³³; and MC.DOC/1/11/Corr.1 Ministerial Declaration on Combating All Forms of Human Trafficking²³⁴.

225 Ibid.

226 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (2005). Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm> accessed 28 December 2014.

227 OSCE, Ministerial Council Decision No.14/04 Annex “OSCE Action Plan for the Promotion of Gender Equality”, MC.DEC/14/04, 7 December 2004. Available at: <http://www.osce.org/mc/23295?download=true> accessed 5 January 2014.

228 OSCE, Permanent Council Decision No.685 Annex “Addendum to the Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance”, PC.DEC.685, 7 July 2005. Available at: http://www.kcic.pl/en/doc/OSCE_decision_No__685.pdf assessed 5 January 2015.

229 OSCE, Ministerial Council Decision No.16/05 “Ensuring the Highest Standards of Conduct and Accountability of Persons Serving on International Forces and Missions”, MC.DEC/16/05, 6 December 2005. Available at: <http://www.osce.org/mc/17358?download=true> accessed 7 January 2015.

230 OSCE, Ministerial Council Decision No.14/06 “Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach”, MC.DEC/14/06, 5 December 2006. Available at: <http://www.osce.org/mc/23048?download=true> accessed 7 January 2015.

231 OSCE, Ministerial Council Decision No.8/07 “Combating Trafficking in Human Beings for Labour Exploitation”, MC.DEC/8/07, 30 November 2007. Available at: <http://www.osce.org/mc/29464?download=true> accessed 7 January 2015.

232 OSCE, Ministerial Council Decision 9/07 “Combating Sexual Exploitation of Children on the Internet”, MC.DEC/9/07, 30 November. Available at: <http://www.osce.org/mc/29476?download=true> accessed 7 January 2015.

233 OSCE, Ministerial Council Decision No.5/08 “Enhancing Criminal Justice Responses to Trafficking in Human Beings Through a Comprehensive Approach”, MC.DEC/5/08, 5 December 2008. Available at: <http://www.osce.org/mc/35482?download=true> accessed 7 January 2015.

234 OSCE, Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/Corr.1, 7 December 2011. Available at: <http://www.osce.org/mc/88839?download=true> accessed 7 January 2015.

The recommendations of the **2013 Addendum** also took into account relevant provisions of universal treaties, such as the ILO Convention concerning Migration for Employment, 1949 (No. 97)²³⁵; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990²³⁶; and the ILO Convention concerning Decent Work for Domestic Workers, 2011 (No. 189)²³⁷. As well, it took into consideration so-called “soft law”, such as the UN Global Plan of Action to Combat Trafficking in Persons, 2010²³⁸; the UNOHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002²³⁹; and the UN Guiding Principles on Business and Human Rights, 2011²⁴⁰ (endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011). The updated recommendations of the 2013 Addendum are also coherent with the spirit of the obligations under the CoE Trafficking Convention²⁴¹; the EU Directive 2011/36/EU²⁴²; and the EU Directive 2004/81/EC on residence permits issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration²⁴³. The final document presents measures designed to prevent re-trafficking, which too often occurs due to the lack of adequate rehabilitation, stigmatization of former victims, problems of reintegration, lack of viable alternatives and failures in economically empowering trafficked persons.

The CIS Conventions, the CIS Model legislation on combating THB and on providing protection to the victims of trafficking, as well as CIS Model Law on Private Recruitment Agencies,²⁴⁴ were also taken into account so that the recommendations of

the Addendum would better match regional requirements of the CIS participating States. The CIS treaties include, for example, the CIS Convention on the Legal Status of Migrant Workers and their Family Members, 2008²⁴⁵; the CIS Agreement on Co-operation in the Issues of the Repatriation of Minors to the Countries of their Permanent Residence²⁴⁶; the CIS Agreement on Cooperation in the Field of Labour Migration and Social Protection of Migrant Workers, 1994²⁴⁷; the CIS Agreement on Co-operation in Combating Trafficking in Human Beings, Organs and Cells, 2005²⁴⁸; and a few others, such as the CIS Programme of Cooperation on the same issue for 2014–2018 (adopted in October 2013). Later, the CIS participating States adopted the Programme of Cooperation in Combating Illegal Migration for 2015–2019²⁴⁹ and the CIS Concept of Cooperation in Combating Trafficking in Human Beings (2014)²⁵⁰, a document that reflects the priorities of the CIS countries combating THB.

Conceptually, prevention should be given highest priority – “an ounce of prevention is worth a pound of cure”, as the title of the 2009 *Alliance* Conference expressed it. Prevention cuts across all three dimensions of the OSCE’s work. It is directly affiliated to the first dimension, as, for example, combating THB as a transnational threat and enhancing co-operation between participating States’ law enforcement structures to prevent the spread of various forms of THB-related organized crime, including document fraud, money laundering, organization of illegal migration, drug trafficking, etc. Also conflict prevention simultaneously tackles THB, since it is a potential consequence or side effect of conflict situations and displacement. As for the second dimension, THB prevention means the creation of better economic opportunities for employment as well as the enhancement of good governance and a non-corrupt environment. And, finally, prevention is fully integrated in the fabric of the third dimension aiming to ensure that human rights are respected and access to justice is guaranteed. Prevention of THB, following the human rights based approach, should remain in the focus of officials who deal with people at risk, such as smuggled migrants, including asylum seekers, be they

235 International Labour Organization, Convention concerning Migration for Employment, No 97 (1949). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312242 accessed 5 January 2015.

236 United Nations, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990). Available at: <http://www2.ohchr.org/english/bodies/cmw/cmw.htm> accessed 5 January 2015.

237 International Labour Organization, Convention concerning Decent Work for Domestic Workers, No. 189 (2011). Available at: http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100_instrument_id:2551460:0 accessed 5 January 2015.

238 United Nations, United Nations Global Plan of Action to Combat Trafficking in Persons (2010). Available at: http://www.unodc.org/documents/human-trafficking/United_Nations_Global_Plan_of_Action_to_Combat_Trafficking_in_Persons.pdf accessed 5 January 2015.

239 United Nations, UN Office of High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002). Available at: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf> accessed 7 January 2015.

240 United Nations, United Nations Guiding Principles on Business and Human Rights (2011). Available at: <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR> accessed 7 January 2015.

241 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (2005). Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm> accessed 7 January 2015.

242 European Union, EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> accessed 15 January 2015.

243 European Union, Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration who cooperate with competent authorities (2004). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004L0081> accessed 8 January 2015.

244 International Alliance Labour Migration, Model Law on Private Recruitment Agencies (in Russian). Available at: <http://www.ialm.ru/pages/id428.html> accessed 7 January 2015.

245 Commonwealth of Independent States, CIS Convention on the Legal Status of Migrant Workers and their Family Members (2008). Available at: <http://www.e-cis.info/page.php?id=20831> accessed 7 January 2015.

246 Commonwealth of Independent States, CIS Agreement on Co-operation in the Issues of the Repatriation of Minors to the Countries of their Permanent Residence (2005). Available at: <http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=1316> accessed 7 January 2015.

247 Commonwealth of Independent States, CIS Agreement on Co-operation in the Field of Labour Migration and Social Protection of Migrant Workers (1994). Available at: <http://www.ialm.ru/pages/id127.html> accessed 7 January 2015.

248 Commonwealth of Independent States, CIS Agreement on Co-operation in Combating Trafficking in Human Beings, Organs and Cells (2005). Available at: <http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=1901> accessed 7 January 2015.

249 Commonwealth of Independent States, CIS Program of Cooperation in Combating Illegal Migration for 2015–2019. Available at <http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=4992> accessed 8 January 2015.

250 Commonwealth of Independent States, CIS Concept of Cooperation in Combating Trafficking in Human Beings (2014). Available at <http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=4993> accessed 8 January 2015

on boats or in detention centres, to prevent their enslavement and/or re-trafficking. Here the probability of identifying trafficked persons or persons vulnerable to THB is extremely high.

The OSCE strongly advocates integrating measures for combating and preventing THB into all relevant policy areas, including anti-corruption, child protection, gender equality, labour and migration. Efforts to promote zero tolerance to human trafficking have a strong preventive component if addressed comprehensively. This includes ensuring that workplaces and supply chains, including those of public procurement contractors, are free of discrimination and exploitation so that goods or services are not produced by trafficked persons. OSCE policies envisage providing equal opportunity for all – whether women or men, persons belonging to minorities, or disadvantaged populations. In particular, efforts must be taken to support the best interests of children. By addressing the root causes of trafficking, countries can work to provide legitimate and viable economic opportunities, to improve the possibility for safe and regular labour migration, to prevent abusive recruitment practices, to promote zero tolerance towards corrupt officials, and to prevent those who are most vulnerable from taking desperate and risky decisions that may lead to enslavement. Providing decent alternatives for former victims (or those who are still under the control of perpetrators) may prevent them from joining the criminal world in another role, namely, as perpetrators or traffickers themselves. Such roles are often imposed on them as a price for “escaping” from the humiliation and torture they have suffered as victims.

Indeed, prevention is a broad issue, closely related to the other two “P’s” (protection and prosecution). It is sometimes hard to differentiate between prevention as such and the preventative effect of sufficient prosecution and penalties, or the impact of adequate protection for victims when being rehabilitated to prevent their being re-trafficked.

Some of the recommendations specified in the **Action Plan** should be viewed in the broad sense of the term prevention, while others focus on preventive measures in the strict sense.²⁵¹

4.5.1 Data collection and research

Part 1 of the chapter on prevention of the **Action Plan** (Data collection and research) concerns general measures that can have a long term impact. The recommendations here are related to the extremely lucrative nature of the crime. They are justified by the obvious need to develop evidence-based policies and programmes that correspond to modern trends in trafficking and meet the requirements of the victims. For example, the recommendation (**IV.1.1**) to collect separate data related to women, men and children victims of trafficking (not overlook-

ing that child trafficking deserves more research and exchange of information) may have a positive impact on the adequacy of protective measures and hence the prevention of re-trafficking. The recommendation to improve research into and the analysis of topics such as the character and scale of THB may be useful to prevent it in particular sectors prone to exploitation. Research on and analysis of exploitation mechanisms deployed by organized criminal groups are needed to develop effective and well-targeted prevention measures that address all focus groups and all forms of trafficking.

The **2005 Addendum** provides a more concentrated recommendation on “facilitating research and gathering data, including for the purpose of strengthening protection and assistance programmes, on the extent of all forms of **child trafficking** in their countries, and making the data publicly available.” It also highlights the need to strengthen “co-operation and improve exchange of information among States with a view to preventing child trafficking and protecting and assisting child victims, including in conflict and post-conflict situations.”²⁵²

In 2006 the Ministerial Council in Brussels, in its **Decision MC.DEC/14/06**, urged “the participating States ... to improve research and the system of data collection and analysis, with due regard to the confidentiality of data, and where possible to disaggregate statistics by sex, age, and other relevant factors as appropriate, in order to better assess the character and scope of the problem and develop effective and well-targeted policies on trafficking in human beings.”²⁵³ To this end, participating States were recommended to consider appointing National Rapporteurs or similar independent monitoring mechanisms.²⁵⁴

The recommendation concerning data collection was promoted (and realized) more actively by international organizations than it was accomplished at the national level (with a few exceptions, such as the US Annual TIP Report²⁵⁵, the Annual Report provided by the Dutch National Rapporteur²⁵⁶ or reports in some other participating States). Separate or segregated data can now be found in the UNODC Global Reports on Trafficking in Persons²⁵⁷ and the GRETA Country Reports, which re-

251 A similar combination of general measures for long term effects and specific measures to help prevent the act of trafficking on the spot (such as border or document validity controls) can be found in the CoE Trafficking Convention. For more details, see: Council of Europe, Explanatory Report to the CoE Convention on Action against Trafficking in Human Beings (2013), pp.58–64.

252 OSCE, Permanent Council Decision No.685 Annex “Addendum to the Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance”, point 4, PC.DEC/685 Annex 7 July 2005.

253 OSCE, Ministerial Council Decision No. 14/06 “Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation”, through a Comprehensive and Proactive Approach”, MC.DEC/14/06, 5 December 2006.

254 Comments on recommendations related to national coordinating and monitoring structures are provided from p.89.

255 For example, the latest 2014 State Department Trafficking in Persons Report is available at: http://www.state.gov/tip/rls/tiprpt/2014/?utm_source=NEW+RESOURCE:+Trafficking+in+Persons+R accessed 8 January 2015.

256 Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, Annual Reports, available at: <http://www.dutchrappporteur.nl/reports/ninth/index.aspx> accessed 8 January 2015.

257 United Nations, Global Report on Trafficking in Persons (2014), available at: https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf accessed 8 January 2015.

flect the implementation of the CoE Trafficking Convention by the State Parties to the Convention and assess the THB situation in each country concerned.²⁵⁸

For example, the 2014 **UNODC Global Report** provides the following segregated data: 49 per cent of detected victims are adult women and 33 per cent of detected victims are children. The latter indicates a 5 per cent increase by 2012 when compared to the data of the 2007–2010 period. Globally, children now comprise nearly one third of all detected trafficking victims. Of every three victims who are minors, two are girls and one is a boy.²⁵⁹ The **ILO, in its 2012 Report “Global Estimates of Forced Labour: Results and Methodology”**, indicates that women and girls represent the greater share of total forced labour, namely 55 per cent, as compared to 45 per cent men and boys. Adults are more affected than children: 74 per cent of victims fall in the age group of 18 years and above, whereas children aged 17 years and below represent 26 per cent of all forced labour victims.²⁶⁰ The Report also provides estimates of percentages based on forms of exploitation, age groups of the victims of each form of exploitation, results by region (number of exploited persons per 1,000 inhabitants per region), and results regarding migration of victims (cross-border, or internal, or none) as well as the same categories for traffickers. The slight difference between the figures provided by the UNODC and the ILO derives from different methods of calculation. The UNODC data comes officially from member States and reflects the number of identified victims, whereas the ILO relies on a double sampling of “reported cases” of forced labour, from which a global estimate of reported and non-reported cases can then be extrapolated.²⁶¹ A good example of regional data collection and statistics on human trafficking is featured by Eurostat in its “Trafficking in Human Beings” reports, the latest covering 2010–2012 and including data from all EU Member states.²⁶²

There is an overall concern, including in the Eurostat report, about “the continued lack of reliable national estimates based on specialized data collection instruments”²⁶³, which “prevents the use of the most usual means to derive global estimates which is to aggregate national estimates into regional and

then global figures.” According to the ILO, thirteen pilot surveys on forced labour have been successfully implemented in more than ten countries, of which four were national in scope, but this is still an insufficient basis on which to derive a global estimate. From the perspective of individual States, it would be even more important to use modern methods and develop data collection from all possible sources, including not only law enforcement sources, but national NGOs, the media, human rights institutions, etc., and to use this as a starting point for elaborating adequate preventive and protection policies.

4.5.2 Identification of most vulnerable groups

To ensure effective prevention, participating States are recommended (in provision **IV.1.2**) to identify the most vulnerable segments of the population and develop specially designed awareness-raising campaigns for them. The earlier perception of vulnerable segments was rather narrow due to limiting the view of trafficking to only forced prostitution; it included young women, single mothers with low incomes, and girls, especially those living in child care institutions. Modern data on the manifold forms of exploitation deriving from THB has rendered this view outdated. Categories of the most vulnerable to trafficking are also numerous, and include, in addition to those already mentioned, *inter alia*, migrants, with or (especially) without legal status²⁶⁴, and members of their families, as well as nationals who are unemployed, poor, young, in debt, orphans, disabled, persons belonging to national minorities, Roma, elderly people (especially those living alone), children from dysfunctional families, addicts to drugs and alcohol, homeless, and many others.²⁶⁵ In this regard it is highly recommended to consider the Joint Statement of the *Alliance against Trafficking in Persons on Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to Enhance Prevention of Child Trafficking*²⁶⁶ issued in October 2010. This Statement also refers to the Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016²⁶⁷, approved by the Hague Global Child Labour Conference in May 2010; the Action Plan on Unaccompanied Minors²⁶⁸ adopted by the European Commission (June 2010); and the conclusions on unaccompanied minors²⁶⁹ adopted by the

258 Council of Europe, Country Profiles and Country Reports by GRETA, available through: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Publications/Evaluations_en.asp accessed 8 January 2015 accessed 8 January 2015. All reports contain official information on the current situation in the area of THB in the countries concerned, including available statistics.

259 United Nations, Global Report on Trafficking in Persons (2014). Available at: https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf accessed 10 January 2015.

260 ILO Global Estimates of Forced Labour: Results and Methodology. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf accessed 11 January 2015.

261 For the detailed description of the method used, please, refer to: ILO Global Estimates of Forced Labour: Results and Methodology, pp.21–42. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf accessed 11 January 2015.

262 European Union, Eurostat, Statistical Working Papers, Trafficking in Human Beings (2015). Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf accessed 7 September 2015.

263 Ibid.

264 It must be taken into account that many migrants enter a foreign country on a legal basis and only after a period of time lose their legal status due to various reasons.

265 It is not advisable to use restricted lists of vulnerable categories in national or regional regulations. An open-ended definition of vulnerable groups helps prevent THB more effectively.

266 Joint Statement of the *Alliance against Trafficking in Persons on Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to Enhance Prevention of Child Trafficking (2010)*. Available at: <http://www.osce.org/home/72015> accessed 10 October 2015.

267 International Labour Organization, Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016. Available at: <http://www.ilo.org/ipeinfo/product/viewProduct.do?productId=13453> accessed 11 January 2015.

268 European Union, Action Plan on Unaccompanied Minors (2010). Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:en:PDF> accessed 11 January 2015.

269 Council of the European Union, Council conclusions on unaccompanied minors (2010). Available at: http://www.consilium.europa.eu/press/press-10-161_en.htm?locale=en accessed 11 January 2015.

Council of the European Union. The latter two both emphasize that children should be treated as such, regardless of their migratory status, nationality or background.

The *Alliance Statement* underlines that **child trafficking** affects vulnerable groups of children, including migrant children, undocumented children, and separated, unaccompanied or asylum-seeking children. Other vulnerable groups are children suffering from abuse or neglect, those deprived of parental care, such as those abandoned and/or left behind by migrating parents, and/or children of trafficked parents. States have the duty to prevent the abuse of, violence against and trafficking of children, to protect their rights and to meet their needs for special protection and assistance in a coherent and integrated way across their various laws and policies (including asylum, migration and anti-trafficking policies).²⁷⁰

The **2013 Addendum** goes still further and recommends (in provision III.1.2) “promoting targeted awareness-raising and public education in order to ensure respect for the human rights and fundamental freedoms of persons vulnerable to THB. Special attention should be put on children in child institutions/orphanages, children in alternative care, runaway youth, unaccompanied and separated children, children with disabilities, children belonging to national minorities, children without any citizenship, children without birth registration, child asylumseekers, refugees and IDPs, and children left behind by migrating parents.”

Certainly, combating and preventing **child trafficking** requires the engagement and co-operation of various state and non-state (private) partners acting in sectors prone to trafficking (for example, travel, hospitality and tourism). This is why the **2013 Addendum** recommends, for example, in point 1.11 “developing and implementing policies and actions, including law enforcement cooperation between participating States, to prevent the tourism industry from being used for all forms of trafficking in human beings, in particular for sexual exploitation of children.” So-called “sex tourism”, travelling abroad to receive the sex services of minors, is common in cases where the offender’s country of origin has adopted strong legislative measures against the sexual exploitation of children. NGOs have been particularly active in protecting children from sexual exploitation and abuse. For example, ECPAT International started as a campaign against child prostitution in Asian tourism, which is closely tied to the issue of child sex tourism as well as, respectively, to the supply and demand side of the same phenomenon. Since the early 1990s, ECPAT International and many member groups of the ECPAT network around the world have worked with the tourism and travel industry to raise awareness and to take practical measures against children

being sexually abused. Partnerships have been established with the hotel industry, tour operators and other members of the tourism sector for the prevention of child sex tourism. Technical support is provided by ECPAT to assist the tourism industry, as well as governmental and international agencies.²⁷¹ The **2013 Addendum** also recommends, in point 2.1 (Capacity Building), “encouraging the development and introduction of training programmes on THB-related issues for...personnel of the tourism and hospitality industry.” This aims at awareness raising as well as better identification of possible cases of trafficking.

The **2013 Addendum**, for the first time, pointed to the particular vulnerability of domestic workers, including in diplomatic households, and included a recommendation (1.10) on “promoting measures to prevent THB for domestic servitude, *inter alia*, in diplomatic households, to protect domestic workers and inform them of their rights as employees and how to report abuses; ensuring that the victims of THB receive relevant assistance regardless of the employer’s status; recognizing the responsibility of the participating States, that their own diplomatic personnel respect local laws, in particular with regard to the employment of domestic workers.” This form of THB-related exploitation, one of the most hidden due the inability of the trafficked person to leave the residence of their employer, has been addressed by the OSR/CTHB in its Occasional Paper “Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude”²⁷², and in the Handbook for Protocol Officers “How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers”²⁷³. This pioneering work of the OSR/CTHB has been accompanied by a series of workshops covering the OSCE region to raise the awareness of Protocol Offices’ personnel, who may, according to their responsibilities, contact foreign domestic workers, and to present good practices showing how Protocol Departments can effectively contribute to the prevention of domestic servitude in diplomatic households.

Certainly, the estimates of the scope of human trafficking for domestic servitude are unknown due to the extremely lucrative nature of this type of exploitation. The ILO global figures available regarding **children** show the following picture: 17.2 million children are employed in paid or unpaid domestic work in the home of a third party or employer; of these; 11.5 million are in child labour situations, of which 3.7 million are occupied in hazardous work conditions (21.4 per cent of all child domestic workers); and 5.7 million, mostly adolescents, perform permissible work but need to be protected from abuse and provided

270 Joint Statement of the *Alliance against Trafficking in Persons on Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to enhance Prevention of Child Trafficking* (2010). Available at <http://www.osce.org/home/72015> accessed 11 January 2015.

271 ECPAT International, *Combating Child Sex Tourism*. Available at: http://resources.ecpat.net/EI/Programmes_CST.asp accessed 22 January 2015.

272 OSCE, OSR/CTHB, “Unprotected Work, Invisible Exploitation. Trafficking for the Purpose of Domestic Servitude” (2010). Available at: <http://www.osce.org/secretariat/75804?download=true> accessed 21 January 2015.

273 OSCE, OSR/CTHB, “How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers. Handbook for Protocol Officers” (2014). Available at: <http://www.osce.org/handbook/domesticservitude?download=true> accessed 21 January 2015.

decent work. In addition, undetermined numbers of children are in domestic work as result of forced labour and trafficking.²⁷⁴ Children aged 17 years and below, according to the 2012 ILO Global Estimates of Forced Labour Report, represent 26 per cent of all forced labour victims (or 5.5 million children). While the specific number of children in forced labour and trafficking for domestic work remains unknown, evidence points to the existence of significant numbers of children in debt bondage, victims of trafficking and in servitude situations. In addition, also according to the ILO, 67.1 per cent of all child domestic workers are girls; 65.1 per cent of all child domestic workers are below the age of 14: 7.4 million are aged 5 to 11, and 3.8 million are aged 12 to 14; and finally, child domestic work touches all regions of the world.²⁷⁵ These estimates are sufficient for taking the problem of THB for domestic servitude seriously and addressing it comprehensively, even if there are countries that do not yet have reliable statistics at the national level on identified cases. Awareness of effective targeted measures will help all countries to be ready to prevent human trafficking for domestic servitude.

Taking into account the broad variety of vulnerable groups, specialized NGOs, in partnership with relevant authorities, can contribute significantly in implementing recommendations on awareness raising. The outreach work of NGOs is a good channel for raising awareness and improving the prevention of trafficking within vulnerable groups. Many NGOs have been deeply involved in such activities. In this context extremely relevant is the provision (e) from the **MC.DEC/14/06**, in which the Ministerial Council in Brussels encouraged the participating States to promote “outreach strategies, including in cooperation with relevant NGOs, to provide information on trafficking in human beings for labour exploitation to migrant communities and to persons working in low wage labour and particularly vulnerable sectors such as agriculture, construction, garment or restaurant industries, or as domestic servants, in order to improve victims’ access to assistance and justice and encourage persons with information on possible trafficking situations to refer victims to such assistance and to report to appropriate authorities for investigation when there are reasonable grounds to believe that a crime has occurred.”²⁷⁶

4.5.3 Analysis of the root causes, including the demand factor

Many international organizations have undertaken efforts to develop, as recommended by the **Action Plan** (provision IV.1.3), a “more far-reaching analysis of the root causes of THB, its demand and supply factors, its networks and its economic consequences, and its link with illegal migration.” For example, the OSCE, under the UN.GIFT project, published the

2010 research report “Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime”.²⁷⁷ The ICAT (Inter-Agency Coordination Group against Trafficking in Persons), in 2014, published the paper “Preventing Trafficking in Persons by Addressing Demand”²⁷⁸, which concentrates specifically on the demand that contributes to trafficking for labour exploitation in the context of the production of goods and/or services. The same issue is addressed in a broader context by the ILO in the report “The Cost of Coercion” (2009).²⁷⁹ The UNODC, in its Toolkit to Prevent Trafficking in Persons, in Chapter 9, defines the concept of demand²⁸⁰, clarifying that it usually “refers to the desire for a particular commodity, labour or services, but in the context of human trafficking, the demand is for labour that is exploitative or services which breach the human rights of the person delivering those services.” The Toolkit, quoting also the OSCE Action Plan, provides a set of measures to eliminate (or at least reduce) the demand for cheap and unprotected labour.

The demand that fosters THB has been addressed in many treaties and research papers, as quoted in the UNODC Toolkit, including the UN Trafficking Protocol, the UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, the Brussels Declaration on Preventing and Combating Trafficking in Human Beings, and in the *Alliance against Trafficking in Persons* Statement on Demand of 2006²⁸¹.

The **OSCE commitments** in this regard are also self-explanatory. In 2002, the participating States recognized “that, in countries of destination, demand for the activities of persons trafficked for the purposes of sexual exploitation, forced labour, slavery or other practices similar to slavery is an integral factor in trafficking in human beings.” They urged “countries of destination to take measures to effectively address such a demand as a key element in their strategies for effectively preventing and combating trafficking in human beings.”²⁸² In 2004 the participating States agreed “to strengthen countering demand, including combating child sex tourism.” In this particular context, the Ministerial Council in Sofia invited the participating States “to consider, *inter alia*, elaboration of legal measures aimed at prosecution of their citizens for the sexual exploita-

274 International Labour Organization, Child Labour and Domestic Work. Available at: <http://www.ilo.org/pec/areas/Childdomesticlabour/lang-en/index.htm> accessed 22 January 2015.

275 *Ibid.*

276 OSCE, Ministerial Council Decision No. 14/06 “Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation,, through a Comprehensive and Proactive Approach”, MC.DEC/14/06, 5 December 2006.

277 OSCE/UN.GIFT, “Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime” (2010). Available at: <http://www.osce.org/secretariat/69028?download=true> accessed 11 January 2015.

278 Interagency Coordination Group against Trafficking in Persons, “Preventing Trafficking in Persons by Addressing Demand” (2014). Available at: http://www.ungift.org/doc/knowledge-hub/events/ICAT_Demand_paper_-_FINAL.pdf accessed 11 January 2015.

279 International Labour Organization, “The Cost of Coercion. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work” (2009). Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relcont/documents/meetingdocument/wcms_106230.pdf accessed 11 November 2015.

280 United Nations, UNODC, “Toolkit to Prevent Trafficking in Persons”. Available at: http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_9-12.pdf accessed 11 January 2015.

281 OSCE, *Alliance against Trafficking in Persons Statement on the Demand* (2006). Available at: <http://www.osce.org/odihr/22245?download=true> accessed 11 January 2015.

282 OSCE, Ministerial Declaration on Trafficking in Human Beings, MC(10).JOUR/2, 7 December 2002.

tion of children, including if such exploitation has taken place in another country.”²⁸³ Such legal measures can be considered a tool to counter demand.

In 2006, the Ministerial Council in Brussels, in its Decision **MC.DEC/15/06**, urged the participating States “to adopt a holistic approach towards the problem of sexual exploitation of children, addressing root and contributing factors, including the demand that fosters forms of sexual exploitation of children, and to develop comprehensive and proactive strategies and measures aimed at preventing and combating the sexual exploitation of children.”²⁸⁴ In the **Vilnius Ministerial Declaration** on Combating All Forms of Human Trafficking, the participating States confirmed that they “will increase and support prevention efforts by focusing on the demand that fosters all forms of trafficking and the goods and services that result from trafficking in persons.”²⁸⁵

The participating States indirectly connect the exploitative production of goods and services with the purpose of trafficking, indicating that demand is generated by both employers (who wish to earn more by saving on labour costs, outsourcing labour, hiring inexpensive or cheap labourers, or even using illegal means) and consumers (who wish to spend less and thus buy cheap goods produced by trafficked persons). Although they may be unaware of this link in the case of purchased goods, in the case of services, consumers often come into a direct contact with victims of trafficking. One example is the situation of domestic servitude, whereby consumers themselves are engaged in the trafficking. Another service-related situation is that of consumers of sexual services, who benefit from the lower prices of trafficked persons. In the case of governments procuring goods and services, if they simply follow the “cheapest supplier” principle and neglect other factors, they might unknowingly become complicit in the exploitation of forced labour. This is why the **CoE Trafficking Convention**, in Art. 19, requires that “each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.”²⁸⁶ Situations of this type can take many forms (as for example, customers coming into direct contact with trafficked persons at restaurants, hotels, laundry shops, recruitment agencies, etc., but failing to recognize the exploitative situation and continuing using these services). Even in cases of THB for organ

removal, recipients may be completely unaware of the origin of the transplant and the engagement of medical personnel and clinics in the crime.

In a broader context, as stated by the former UN Special Rapporteur on Trafficking in Persons Joy Ngozi Ezeilo in her 2013 annual report to the Human Rights Council in Geneva, “demand for sexual exploitation, for cheap labour and domestic workers, for organ removal and sale, for illicit adoption and forced marriages, for criminal activities or begging, or for the exploitation for armed groups, all constitute substantial contributing factors to human trafficking.”²⁸⁷

Practical measures to discourage demand, as formulated by the **CoE Trafficking Convention**, should be taken or strengthened in legislative, administrative, educational, social, cultural and other areas, and should include research on best practices, methods and strategies. Also recommended is raising awareness of the responsibility and important role of media and civil society in identifying demand as one of the root causes of trafficking in human beings; target information campaigns involving, as appropriate, *inter alia*, public authorities and policy makers; and preventive measures, including educational programmes for boys and girls during their schooling that stress the unacceptable nature of discrimination based on sex and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.²⁸⁸ Such education programmes are especially relevant for addressing the demand fostering THB for sexual exploitation, irrespective of differences in national legal regulations.

The **Action Plan** (also in point IV.3.3) again addresses demand by recommending countries of origin and destination to adopt or strengthen “legislative, educational, social, cultural or other measures, and, where applicable, penal legislation, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and that leads to trafficking.” Such measures may be effective if taken in all these areas in a coordinated manner. Furthermore, measures to be taken “to discourage the demand” (Art. 9.5, Palermo Protocol), as it was underlined in the above-mentioned **Alliance against Trafficking in Persons Statement** of 2006, “must reflect the breadth and seriousness of all purposes for which people are trafficked. In the OSCE region, alongside trafficking into the sex industry, there is ample evidence of trafficking into construction work, agriculture and food processing, domestic and care work, hotels and hospitality and for the purposes of begging, the exploitation of petty crime and benefit fraud. Worst and hazardous forms of child labour also continue to thrive. Trafficking thus arises in sectors that are legal and regulated

283 OSCE, Ministerial Council Decision No. 13/04 “The Special Needs for Child Victims of Trafficking for Protection and Assistance”, MC.DEC/13/04, 7 December 2004.

284 OSCE, Ministerial Council Decision No.15/06 “Combating Sexual Exploitation of Children”, MC.DEC/15/06, 5 December 2006.

285 OSCE, Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/ Corr.1’, 7 December 2011.

286 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (2005), Art.19.

287 United Nations, 2013 Annual Report by the UN Special Rapporteur on Trafficking in Persons, especially Women and Children (press-release). Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/Demandfostershumantrafficking.aspx> accessed 12 January 2015.

288 Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings, Art.6.

or informal and unregulated and for activities that may be illegal.²⁸⁹ Hence, attention must be paid to labour protection in those sectors or activities in which forced labour or services are likely to occur. The list of such sectors should be kept open-ended. In this context, the recommendation (point 2.1) of the **2013 Addendum** is relevant in terms of capacity building and training: “Encouraging the development and introduction of training programmes on THB-related issues for...social workers, labour inspectors and other government service providers.” It is within their capacity to identify the risks of trafficking and prevent them at an early stage.

As for concrete measures, the members of the *Alliance Expert Coordination Team* (AECT)²⁹⁰ proposed influencing the demand for services or products of trafficked persons within the economies and societies of the participating States by, for example, criminalizing clients (those who knowingly use the services of trafficked persons), establishing better control over recruitment agencies, and supporting consumer advocacy, such as fair trade campaigns. The AECT set a list of measures that included, *inter alia*, tackling the problem of unprotected, informal and often illegal labour, which leads to violations of the rights of migrant workers and fosters trafficking and exploitation; supporting the organization/unionization of migrant workers/trafficked persons to enable them to better protect their rights; ensuring that informal and unregulated work activities are brought within the protection of labour laws so that all workers enjoy the same labour rights; encouraging the creation of ethical employer associations that adhere to codes of conduct which ensure the protection of the rights of its workers; developing public awareness campaigns on products and services that may likely be or are produced by exploitative or forced labour; developing guidance to assist consumers in identifying goods or services that have not been produced through exploitation; as well as a few other suggestions.²⁹¹ An additional measure might be the development of model guidelines to be used by governments on ethical sourcing and prevention of trafficking in supply chains.

In 2010, the **Working Group on Trafficking in Persons of the Conference of the Parties to the UN Convention against Transnational Organized Crime** (TIP Working Group) reviewed some of the measures that might be taken to discourage demand, adopting the following recommendation: “States parties should adopt and strengthen practices aimed at discouraging demand for exploitative services, including considering measures to regulate, register and license private recruitment agencies; raising the awareness of employers to ensure their

supply chains are free of trafficking in persons; enforcing labour standards through labour inspections and other relevant means; enforcing labour regulations; increasing the protection of the rights of migrant workers; and/or adopting measures to discourage the use of the services of victims of trafficking.”²⁹² This position partly reflects the broader approach found in the **Action Plan** and its recommendation (**IV.5.1**) on “adopting or reviewing laws, administrative controls and procedures relating to the licensing and operation of sectors of business that, according to intelligence, may be involved in trafficking, such as employment, tourist, au pair, adoption or mail-order bride agencies, as well as hotels and escort services.” Proper licensing is a strong instrument for keeping sectors prone to trafficking within the rule of law; it leaves less space for possible violations and helps to turn human trafficking into a high risk–low profit business.

In 2014 the abovementioned **ICAT publication** on demand for labour exploitation divided possible measures dealing with demand into the following six groups: “1. Criminal justice responses, which serve to reduce demand that fosters trafficking for labour exploitation by raising the costs of using such labour; 2. Measures and mechanisms to improve labour conditions in sectors vulnerable to the use of victims trafficked for labour exploitation, through strengthening and enforcing labour standards and regulations; 3. Action against exploitation associated with the migration process, including through better regulation of recruitment agencies and better protection of migrant and refugee workers; 4. Private sector initiatives to address exploitative labour practices within supply chains; 5. Consumer-based action against products made from trafficked labour; and 6. Addressing the root causes and contributing factors, including social norms that enable exploitative practices to flourish.”²⁹³

The demand for other goods or services, for example, for organ transplantation, must be dealt with in cooperation with the medical community, especially transplantologists and other specialists engaged in the process, with patients (through better awareness), through legislation prohibiting any commercial activities in this field, and law enforcement measures. This is why the **2013 Addendum** recommends (1.12) “promoting policies to raise awareness on THB, including for the purpose of organ removal, through developing partnerships with health care and medical professionals, with associations in the medical profession, with transplant organizations and with relevant NGOs, where necessary, and other relevant mechanisms; and as appropriate, developing in this regard partnership with transplant organizations, promoting legal organ donation methods/channels.” Furthermore, taking into account that THB for organ removal is a highly lucrative and a relatively new form of

289 *Alliance against Trafficking in Persons*, Alliance Expert Coordination Team Statement on Demand, HDIM.NGO/41/06, 3 October 2006. Available at: <http://www.osce.org/odihr/22245?download=true> accessed 18 January 2015.

290 The Statement was signed by the OSCE/ODIHR, UNHCHR, UNDP, UNICEF, UNIFEM, ILO, IOM, International Federation of Red Cross and Red Crescent Societies, ICMPD, Europol, Interpol, Dutch National Rapporteur, Nexus Institute, ACTA, Anti-Slavery International, ECPAT, La Strada International, International Federation of Terre des Hommes, Save the Children, Amnesty International.

291 *Ibid.*

292 ICAT, *Preventing Trafficking in Persons by Addressing the Demand* (2014). Available at: http://www.ungift.org/doc/knowledgehub/events/ICAT_Demand_paper_-_FINAL.pdf accessed 18 January 2015.

293 *Ibid.*, p.9.

trafficking, the **2013 Addendum** recommends, in terms of capacity building (point 2.1), “encouraging the development and introduction of training programmes on THB-related issues for medical professionals and social welfare services, aimed at assisting victims of trafficking, including victims of THB for the removal of organs as well as on the ethical principles related to organ transplantation, trafficking victim identification and trauma suffered by victims of trafficking.”

The demand for sexual services, as already mentioned above, must be addressed through gender-sensitive education, promotion of ethical norms and the prohibition of the use of services of trafficked persons by clients (this issue has been commented on p. 57 of this chapter, with reference to the **CoE Trafficking Convention**). **Child trafficking** for the purpose of sexual exploitation should be tackled in cooperation with travel agencies (“child sex tourism”), hotels, and many other counterparts. **The 2013 Addendum** in this regard recommends (1.11) “developing and implementing policies and actions, including law enforcement cooperation between participating States, to prevent the tourism industry from being used for all forms of trafficking in human beings, in particular for sexual exploitation of children.” In other words, each form of exploitation resulting from THB and, accordingly, the demand for it may involve different stakeholders, different specific measures and, as a follow-up, different targeted analyses and research to assess the effectiveness of steps taken.

The **2013 Addendum** contains several provisions (1.5-1.9)²⁹⁴ directly related to the factor of demand. First of all, the Addendum recommends “strengthening efforts to address the root causes of all forms of trafficking in human beings, in line with relevant OSCE commitments”, thus paying tribute to the Ministerial Council Decisions cited above. Furthermore, the **Addendum** proposes “considering incorporating, or, as applicable, implementing, “zerotolerance” policies or other similar standards in government procurement of goods and services” to ensure that the authorities are not engaged in or complicit in any manner in the procurement of goods and services produced by trafficked persons. This recommendation is a further development of the recommendation in the Action Plan of promoting good governance and transparency in economic transactions.

Zero tolerance towards all forms of trafficking is also emphasized by the **Action Plan**, which recommends (in point IV.4.10) “addressing, also through the media, the need to reduce the demand for the activities of persons trafficked for sexual exploitation, forced labour, slavery or other practices similar to slavery and, in this connection, promoting zero tolerance towards all forms of trafficking.” Indeed, the media is capable of becoming a crucial social partner in the creation of

a “zero tolerance” climate in society. At the present time, the media often turns a blind eye to the wide spread exploitation that occurs, including forced and child labour. General society remains especially ignorant to the exploitation of migrants under the pretext that “their situation in their countries of origin might be even worse.” The role of the media in changing this erroneous attitude cannot be overestimated. At the same time, the media, can theoretically play the completely opposite role and provoke hostility and stigmatization towards those who have been trafficked and exploited. This is why the **2013 Addendum**, in terms of capacity building and training (point 2.1) recommends “encouraging the development and introduction of training programmes on THB-related issues for ... media professionals, including through modules on the use of non-discriminatory language and countering stereotypes and understanding the impact news reports have on victims of THB while covering THB issues.”

In this context, it is worth mentioning the recommendation (12) of the **2005 Addendum to the Action Plan Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance** on “encouraging print and broadcast media to develop and promote a professional ethic related to the special treatment of child victims of trafficking in order to avoid the further exploitation and victimization of children, in particular by protecting the identity of children.” The implementation of this recommendation is absolutely necessary for the physical safety of trafficked children and for preventing their re-trafficking. The issues of ethical reporting are well developed in the **UNICEF Principles of Ethical Reporting on Children** mentioned in this Commentary on p. 67.²⁹⁵

According to the ILO, 90 per cent of forced labour cases occur in the private sector.²⁹⁶ In this context it is crucial to engage the business community in combating and preventing THB in all its forms (to clarify: the ILO recognizes cases of sexual exploitation as a form of forced labour). This is why the **Addendum** recommends “encouraging the private sector, trade unions and relevant civil society institutions, to promote codes of conduct to ensure the protection of the human rights and fundamental freedoms of workers throughout the supply chaining order to prevent the exploitative situations that foster trafficking in human beings.”²⁹⁷

The recommendation to encourage “accessible complaint mechanisms and relevant information for workers to enable them to notify the authorities on abusive practices that foster trafficking in human beings, and taking measures to prevent

294 OSCE, Permanent Council Decision No.1107 Corr.1¹ Annex “Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later”, PC.DEC/1107/Corr.1¹ 6 December 2013.

295 United Nations, UNICEF Ethical Guidelines. Principles of Ethical Reporting on Children. Available at: http://www.unicef.org/ceecis/media_1482.html accessed 12 January 2015.

296 International Labour Organization, ILO Global Estimates of Forced Labour: Results and Methodology (2012).

297 For more details, see the OSR/CTHB study “Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector” (2014). Available at: <http://www.osce.org/secretariat/126305?download=true> accessed 12 January 2015.

such abuses” (relating to both the prevention of THB and the protection of trafficked persons) has been put into practice by several corporations and trade unions.²⁹⁸

With regard to the factor of demand, a special role is played by recruitment and placement agencies, which often abuse the rights of workers in the recruitment process. This is why the Addendum recommends “promoting clear criteria, in compliance with the national law, for the official registration of recruitment and placement agencies, and monitoring the activities of such agencies in an effort to prevent all forms of THB and exploring the possibility of removing the recruitment fees charged to employees.” Ideally, recruitment fees should be paid by employers for the work done for them by recruitment agencies. The ILO Convention Concerning Private Employment Agencies²⁹⁹ (entered into force in 2000), in Art. 7, requires that: “1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. 2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies. 3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefore. ”Still, national legislation in many participating States either does not regulate this issue or permits workers to be charged fees, although some recruitment agencies declare that they are doing it “in a transparent manner.”³⁰⁰

4.5.4 Border measures

The recommendations of part 2 of the **Action Plan** (Border measures) coincide with the language, scope and spirit of the relevant international instruments addressing THB and border management (Art. 11 of the UN Trafficking Protocol and Art. 7 of the CoE Trafficking Convention). To summarize, the basic instruments (UN, CoE and OSCE Action Plan – points IV.2.1-2.3) recommend the same set of measures:

- ▶ Without prejudice to international commitments in relation to the free movement of people, to strengthen border controls ... to prevent and detect THB;
- ▶ To prevent means of transport operated by commercial carriers from being used in committing offences;

- ▶ Obliging commercial carriers to ascertain that all passengers are in possession of valid travel documents and to provide for sanction in case of violation;
- ▶ Measures permitting the denial of entry, the revocation of visas or temporary detention of persons implicated in committing offences as defined by the legislation in force;
- ▶ Strengthening of co-operation among border control agencies, establishing direct channels of communication;
- ▶ Measures to ensure that travel documents are of such quality that they cannot easily be misused, readily falsified or unlawfully altered, replicated or issued.

It should be noted that these anti-trafficking measures are limited to transnational cases, though even as such, trafficking cases are difficult to identify at borders because would-be victims often do not demonstrate any unusual behaviour. They may be as yet unaware of the deception and the intention to exploit them at the destination, may have valid travel documents (not yet taken away from them), or valid tourist or student visas, etc. Children may be travelling with their parents (who plan to leave them at their destination) or have an authorized person accompanying them.

Certainly, cases causing concern also occur at borders, as for example: the same person accompanying various groups of children on subsequent occasions; obvious document fraud; signs of anxiety by a person uncertain of their details of travelling; etc. But traffickers easily adjust their *modus operandi* to strengthened border controls and similar measures at cross-border points.

A higher potential for preventing and combating THB at international borders is reflected in the recommendations of the **2013 Addendum** that discuss the OSCE Parliamentary Assembly Resolution on Trafficking Victim Watchfulness: Planes, Trains, Buses, and Hotels³⁰¹ and the projects implemented by the NGO Airline Ambassadors International providing training to airline personnel on identifying and possible measures for preventing THB³⁰². The **Addendum**, in part 2 (Capacity Building and Training), recommends “encouraging the development and introduction of training programmes on THB-related issues for ...personnel employed by various commercial carriers, in particular airline attendants and staff working on other means of transportation by land and sea, aimed at the identification of trafficked persons, as well as the introduction of measures designed to prevent THB, including coordination

298 Ibid.

299 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312326:NO accessed 29 January 2015. As of 29 January 2015, the Convention has been ratified by 18 OSCE participating States.

300 As an example of good practices, see: Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the Conditions of Entry and Stay of Third-country Nationals for the Purpose of Employment as Seasonal Workers, Art. 19. Available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L_.2014.094.01.0375.01.ENG accessed 8 September 2015.

301 OSCE, OSCE PA Resolution on Trafficking Victim Watchfulness: Planes, Trains, Buses, and Hotels, Istanbul Declaration and Resolutions, 29 June-3 July 2013. Available at: <http://www.oscepa.org/publications/declarations/2013-istanbul-declaration/1826-istanbul-declaration-eng/file> accessed 14 January 2015.

302 This project was presented at the Kyiv OSCE Chairmanship-in-Office Conference in June 2013. For more details, see: <http://airlineamb.org/our-programs/human-trafficking-awareness/> accessed 14 January 2015.

between commercial carriers and the State law enforcement agencies or through other appropriate mechanisms.” This recommendation is also useful for detecting and preventing internal trafficking, which is an increasing trend, especially after countries have introduced stricter border controls.

It is important to underline that all provisions on THB-related border measures have one and the same limitation: “without prejudice to international commitments in relation to the free movement of people”. Any restrictions on the freedom of movement under the pretext of preventing trafficking must be excluded – they cannot be justified whatever the pretext. Such restrictions violate one of the fundamental freedoms of human beings, that of freedom of movement. If looking for a job abroad has become a survival strategy, such measures push the person-in-need into a criminal trap, making them even more profitable for traffickers.

4.5.5 Economic and social policies aimed at addressing root causes of THB

The recommendations in Part 3 of the **Action Plan** related to economic and social policies aimed at addressing the root causes of THB were formulated separately for countries of origin and countries of destination, although a few recommendations concerned both. Today, over a decade after the Action Plan’s adoption, it is important to underline that the schematic division into countries of origin and destination has become outdated for the vast majority of the OSCE participating States. Most are affected today by both transnational and internal trafficking. Even the most prosperous countries, which are able to attract potential victims from countries with very low levels of living standards, have their own disadvantaged populations that are vulnerable to internal trafficking or labour exploitation. The 2012 **ILO Report Global Estimates of Forced Labour: Results and Methodology** shows the following: 44 per cent of victims have moved either internally or internationally, but the majority – 56 per cent – are subjected to forced labour at their place of origin or residence. Cross-border movement is strongly associated with forced sexual exploitation. In contrast, the majority of forced labourers in economic activities, and almost all of those in state-imposed forced labour, have not moved away from their home areas. These figures, according to the ILO, indicate that movement may be an important vulnerability factor for certain groups of workers, but not for others.³⁰³

However, the body of the recommendations (**IV.3.1**) focussing on places of origin remains absolutely relevant still today, and in many cases even more than before due to the global economic and financial crisis. The “priority goals” (the fostering of social-economic and political stability, and the reduction both of migration caused by deep poverty and of trafficking supply and demand factors) have not been accomplished in the OSCE region. The seemingly obvious recommendation of

“policies followed in pursuit of these goals should also promote both economic development and social inclusion” reflects the needs of countries challenged by gross unemployment (estimated in the EU in 2014 as 12.7 per cent, forecasted as rising to 12.8 per cent by 2018, and ranging for the countries in question from 5 to 25.7 per cent, with a particular effect on youth)³⁰⁴, by emigration to other countries and migration from poorer, remote areas to towns and cities, and by the social exclusion of labour migrants. The last has a strong connection to interethnic tension and intolerance, which lead to hostilities and other manifestations of hatred. Issues of economic development and social inclusion, if not properly addressed, easily become matters of national security and the rule of law.

Another recommendation is related to “**improving children’s access to educational and vocational opportunities** and increasing the level of school attendance, in particular by girls and minority groups.” This is especially relevant for children migrating with and (especially) without parents, and for children from Roma, Sinti and Traveller communities. In 2013, the ODIHR, in its Status Report on the Implementation of the **OSCE Action Plan on Improving the Situation of Roma and Sinti** in the OSCE Area, stated: “From a policy perspective, education for Roma has, compared to other areas, received greater attention from international organizations and national governments. This indicates *visible progress* in making education a priority area for many states in improving the situation of Roma and Sinti. At the same time, some key challenges remain. These relate, in particular, to the segregation of Roma children into ‘special’ education and residential segregation, resulting in all-Roma schools. Some participating States continued with a policy of promoting inclusive education in the face of conditions of residential segregation that support *de facto* segregation in education ... while others have attempted to desegregate education through the adoption of regulations ... or made desegregation in education a main principle of their Roma framework strategy...”³⁰⁵ NGO reports are much more critical on this issue. For example, the European Roma Policy Coalition, in 2012, analysed the situation and concluded that “Roma children across Europe continue to be denied equal access to quality education, and continue to face racial discrimination and segregation. In terms of access and achievement the gap between Roma children and their peers is simply unacceptable. The failure to remedy this is not just an abuse of human rights, but in policy terms a calamity that will cost Europe dearly in the future.”³⁰⁶ In other words, “there is no shortage of precise policy recommendations backed by authoritative re-

303 International Labour Organization, ILO Global Estimates of Forced Labour: Results and Methodology (2012), pp.16-17.

304 European Union, Global youth unemployment rate from 2009 to 2014 with a forecast up to 2019. Available at: <http://www.statista.com/statistics/269636/global-youth-unemployment-rate/> accessed 16 January 2015. Also at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics accessed 16 January 2015.

305 OSCE/ODIHR, 2013 Status Report on the Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (2013). Available at: <http://www.osce.org/odihr/107406?download=true> accessed 16 January 2015.

306 Central European University, “Roma Education at a Glance 2012: Europe’s Failure Is Europe’s Shame” (2012). Available at: <http://romapolicy.eu/roma-education-at-a-glance-2012-europes-failure-is-europes-shame/> accessed 16 January 2015.

search. By now, it is clear what needs to be done; it is also clear that what is lacking is political will to deliver equity in education for Roma right across Europe.³⁰⁷ The OSCE Parliamentary Assembly, in its 2012 Resolution on Protecting Vulnerable Populations from Human Trafficking, referred to “the research by the European Roma Rights Centre showing that the Romani population, particularly women and children, is grossly over-represented among both sex and labour trafficking victims in the OSCE region.”³⁰⁸

According to UNICEF³⁰⁹ and various national reports on school attendance of children from these communities, school drop-outs remains a challenge; this occurs due to financial reasons, early marriages (for girls), frequent relocation of families, or other family priorities. In this regard The NGO “Race Equality and Diversity Service (Traveller Education Team)”³¹⁰ has provided a list of practical recommendations³¹¹:

- ▶ to treat each family individually and try to get to grips with why that child is not attending. Be sensitive to the possible reasons why a child may be genuinely unable to achieve full attendance; emphasize the effect that attendance levels have upon a child’s education;
- ▶ investigate the use of reward schemes or attendance charts with the pupil; ensure that families have frequent positive feedback regarding their child’s education;
- ▶ speak directly to parents as regularly as possible;
- ▶ act rapidly if a child does not attend. A phone call on the first day of absence shows that the school cares about the child as well as that non-attendance is an issue;
- ▶ parents need to be aware of the school’s expectations regarding attendance on entry. Schools need to ascertain whether regular travel is likely to be a feature of the child’s education and how the family may be supported in this;
- ▶ set meaningful targets regarding attendance for Gypsy/Roma and Traveller children. Make the children aware of their targets and how they can achieve them;

▶ encourage children who travel to keep in touch with the school perhaps by postcards or email. Re-entry for any child is easier if they feel that they have been kept in the loop regarding class work and social events in school. One local school with a large number of Traveller children marks their journeys each season on a map for all children to see.

The majority of these recommendations may be valuable for children belonging to other ethnic minorities as well.

With regard to prevention, the **2005 Addendum** to the Action Plan, Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, points to the necessity of (2) “establishing and/or strengthening effective policies and programmes to prevent trafficking in children, and reducing children’s vulnerability by promoting a protective environment in general through strengthening relevant institutions and regulations, reducing poverty and preventing violence against children.” This approach to a protective environment is also reflected in the **2010 Alliance against Trafficking in Persons Joint Statement on Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to Enhance Prevention of Child Trafficking**.³¹² This document emphasizes that “in many countries comprehensive child protection systems are not yet in place or are ineffective due to an overall lack of care/services for children corresponding to their age, gender, ethnicity and maturity. Therefore child protection systems should be enhanced to strengthen the protective environment around each child.”³¹³

The 2013 Addendum also addressed the need to protect all **vulnerable children** (with no discrimination) from the risk of being trafficked, and recommends (1.3) “ensuring that all child victims of THB are provided with access to justice and remedies, including the possibility of obtaining compensation, ensuring the protection of children’s rights, promoting access to education and health care for vulnerable children, and developing and implementing the appropriate programmes and measures taking into consideration the best interest of the child.” These recommendations (especially access to justice and remedies, including compensation) can be viewed in terms of adequate protection; however if they are carried through, they also prevent children from being re-trafficked.³¹⁴ A study done in 2010 by the International Organization for Migration (IOM) shows that of a sample of 79 re-trafficking cases, 84 per cent involved children or young adults under the age of 25. Further-

307 Ibid.

308 OSCE Parliamentary Assembly, Resolution on Protecting Vulnerable Populations from Human Trafficking, (2012). Available at <http://www.oscepa.org/meetings/annual-sessions/2012-monaco-annual-session/2012-monaco-final-declaration/1693-25> accessed 17 January 2015.

309 United Nations, UNICEF, Roma School Participation, Non-Attendance and Discrimination in Romania (2011). available at: http://www.unicef.org/romania/Roma_school.pdf accessed 16 January 2015. Also: Martha de Jonge, School Attendance among Roma Girls in the Netherlands, available at: http://www.pharos.nl/documents/doc/presentation_roma_trimbos.pdf accessed 16 January 2015.

310 According to information from the Gloucestershire County Council, the NGO mentioned above has been closed and the Council disclaims any liability for the content of the READS website. The disclaimer is published on: <http://www.irespect.net/CIRCLE/TES/index.htm> (under Providers), accessed 7 November 2015.

311 Race Equality and Diversity Service (Traveller Education Team) recommendations. Available at: <http://www.irespect.net/CIRCLE/TES/index.htm> accessed 16 January 2015.

312 *Alliance against Trafficking in Persons, Alliance Expert Coordination Team Joint Statement on Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to Enhance Prevention of Child Trafficking*, RC.GAL/12/10 8 October 2010. Available at: <http://www.osce.org/home/72015?download=true> accessed 18 January 2015.

313 Ibid.

314 For more details see the UNICEF Assessment Report “Action to Prevent Child Trafficking in South Eastern Europe”, UNICEF, 2006, Chapter “Understanding the Causes of Child Trafficking as a Precondition for Prevention”. Available at: http://www.unicef.org/ceecis/Aessment_report21-48.pdf accessed 9 September 2015.

more, persons trafficked as minors become at risk of being re-trafficked as adults: in 18 per cent of these cases, the minor was re-trafficked after having reached the age of 18.³¹⁵

Nonetheless, the implementation of these recommendations remains problematic. It is above all necessary to arrange proper representation for a child, to ensure due risk assessment in communicating with the child's family, and to follow the best interests of the child in all measures taken by State authorities. For example, in the 2012 **EU Strategy**, in addressing child trafficking, it was stressed with concern that there was still "no uniform definition of a guardian and/or representative across the Member States and their roles, qualifications and understanding of competences vary from one Member State to another."³¹⁶ To solve this problem, in 2014 the European Commission, together with the European Union Agency for Fundamental Rights (FRA) developed a best practice model on the role of guardians and/or representatives of child victims of trafficking.³¹⁷ An example of good practice in this area was recently presented by ECPAT UK, which had worked closely with the Law Centre of Northern Ireland and the Commissioner for Children and Young People to ensure an amendment to the bill on legal guardianship. This Bill introduced legal guardianship for trafficked and separated children, marking a major campaign success for ECPAT UK.³¹⁸ The **UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe** gives another example of well-considered suggestions on the responsibilities of guardians.³¹⁹

The recommendation of the **Action Plan** on "enhancing job opportunities for women by facilitating business opportunities for small and medium-sized enterprises (SMEs)", and furthermore, "organizing SMEs training courses, and targeting them particularly at high-risk groups" has been actively adopted, also with the support of OSCE field operations, in some participating States.

For the effective implementation of this recommendation, the individual needs of those who may be trapped into THB because of poverty, low skills or unemployment must be taken into account. Support for such persons should certainly not be limited to sewing or hair-dressing courses; it is necessary

to offer a broad range of professional education to enable the persons concerned to be competitive in the labour market. For example, in Ukraine an OSCE project implementation course aiming at empowerment through social entrepreneurship has provided more options for women. This project supported civil society organizations in launching social businesses, a step that should become a source of revenues for their anti-trafficking activities. At the same time, these start-ups provide temporary jobs for actual or potential victims of exploitation as an important step to obtain qualifications and the experience needed to improve their position on the labour market.³²⁰

The recommendations of the **Action Plan** for countries or places of destination (**IV.3.2**) address the need to reduce "the invisibility of exploitation", *inter alia*, by means of "a multi-agency programme of monitoring, administrative controls and intelligence gathering on the labour markets, and, where applicable, on the sex industry." Here there are actually three different components: monitoring accomplished by a national monitoring and reporting mechanism (ideally a National Rapporteur or a similar institution); administrative controls in terms of labour conditions and observance of labour rights, especially in economic sectors prone to trafficking; and intelligence gathering, which can be helpful for disclosing violations even as early in the process as recruitment. Undertaken in coordination between agencies, such a monitoring programme would present a much better picture for authorities of the real scope of THB at the national level. Moreover, this real picture could be presented at parliamentary hearings and to the media and, hence, become available to the public-at-large. Human trafficking indicators³²¹ should also be made clear in order to make the phenomenon visible and not gender-stereotyped. Otherwise manifestations of trafficking, even if completely visible, are often simply ignored by both the relevant authorities and society, as for example child trafficking for exploitation in forced and organized begging.

The recommendations of the **Action Plan** related to "the liberalization by governments of their labour markets and with a view to increasing employment opportunities for workers with a wide range of skills levels" and "addressing the problem of unprotected, informal and often illegal labour, with a view to seeking a balance between the demand for inexpensive labour and the possibilities of regular migration" are interlinked. In general, liberalization policies include partial or full privatization of government institutions and assets, greater labour market flexibility, lower tax rates for businesses, less restriction on both domestic and foreign capital, open markets, etc.

315 International Organization for Migration, *The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database* (2010). Available at: http://publications.iom.int/bookstore/free/causes_of_retrafficking.pdf accessed 17 January 2015. Also quoted in: European Union, *EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, Brussels, 19.6.2012 COM(2012) 286 final. Available at: http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf accessed 17 January 2015.

316 Ibid.

317 European Union, Fundamental Rights Agency – European Commission, *Guardianship for Children Deprived of Parental care. A Handbook to Reinforce Guardianship Systems to Cater for the Special Needs of Child Victims of Trafficking* (2014). Available at: http://fra.europa.eu/sites/default/files/fra-2014-guardianship-children_en_0.pdf accessed 20 October 2015.

318 ECPAT-UK, *Northern Ireland pioneers legal guardianship for trafficked children*. Available at: <http://www.ecpat.org.uk/> accessed 22 January 2015.

319 United Nations, *UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, 2006*, Chapter 5 "Appointment of a Guardian", pp.51–54. Available at: http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf accessed 27 January 2015.

320 OSCE Promotes Social Entrepreneurship as Tool to Prevent Human Trafficking in Ukraine (2014). Available at: <http://www.osce.org/ukraine/124507> accessed 17 January 2015.

See also: OSCE, Project Coordinator in Ukraine, *Analytical Report: Research on Conditions for Economic Empowerment of Women in Ukraine as a Contributing Factor to Gender Equality* (2012). Available at: <http://www.osce.org/ukraine/100199?download=true> accessed 17 January 2015.

321 Operational indicators of THB (the so-called Delphi indicators of THB) are available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf accessed 17 January 2015.

Liberalization, in short, is “the removal of controls” in order to encourage economic development. However, especially in the situation of wide-spread youth unemployment and other manifestations of economic and financial crisis, it should be taken into account that “the removal of controls” by the government must be accompanied by well-developed mechanisms of corporate social responsibility of the private sector and strong self-regulation (such as codes of conduct) to prevent forced and child labour, discrimination and other violations of human rights, as well as THB in supply chains.

The demand for “unprotected, informal and often illegal labour” is commonly fulfilled by irregular migration. It is migrants who have been smuggled, trafficked, or have lost their legal status in the country/place of destination who are most vulnerable to labour exploitation, often amounting to forced and bonded labour. Such persons may be employed in legal private enterprises, work in private households, or even in black market economy sectors, but in all cases their situation is often appalling due to many forms of discrimination (in being paid for their work, housing, medical assistance or access to justice) and the constant threat of persecution. The initial recommendation to seek “a balance between the demand for inexpensive labour and the possibilities of regular migration” is rarely observed. Rather the opposite is commonly the case: authorities rarely consider increasing options for regular migration, introducing rather restrictive migration policies and severe treatment of illegal migrants, of whom many may have been trafficked.³²² “Until recently”, Anne Gallagher wrote in 2010, “the connection between trafficking and migration for work was rarely made.... A result of the disconnection between trafficking and migration for work is that the rights of trafficked persons as workers – migrant or otherwise – have rarely been articulated or pursued.”³²³

In this context, the recommendation to “tackle underground economic activities which undermine economies and enhance trafficking” (and work hand in hand with corruption) means the prevention of entire chains of violations in the area of labour rights, human rights and economic offences (such as tax evasion and money laundering, a THB-related crime). Any violations of the human rights or labour rights of workers cannot be justified by their lacking legal status, especially when involved in underground or semi-legal economic activities, an issue so often brought forth by migration officials. In this regard, it is advisable to consider the 2003 ruling of the **Inter-American Court of Human Rights on the Legal Status and Human Rights of Undocumented Migrants**, referred to by Anne Gallagher: “In applying the principles of equality and non-discrimination, the Court held that States may treat documented migrants differently to undocumented migrants, and citizens differently to noncitizens, but only to the extent that

such differential treatment is ‘reasonable, objective, proportionate and does not harm the human rights.’ While permissible distinctions may be made, for example between migrants and nationals regarding ownership of some political rights and in relation to employment rights, ‘the migratory status of a person can never be a justification for depriving him of the enjoyment and exercise of his human rights, including those related to employment.’³²⁴ The Court decided that “States and individuals in a State need not offer employment to undocumented migrants. However, ‘if undocumented workers are engaged, they immediately become possessors of the labour rights corresponding to workers and may not be discriminated against because of their irregular situation.’”³²⁵

General recommendations (**IV.3.3**) of the **Action Plan** to all participating States “to raise levels of social protection and to create employment opportunities for all”, “to eliminate discrimination against women in the field of employment in order to ensure, on a basis of gender equality, the right to equal pay for equal work and the right to equality in employment opportunities”, and to address “all forms of discrimination against minorities” emphasize discrimination as a root cause of human trafficking. Irrespective of multiple and long-standing international obligations to prohibit discrimination of any kind, the real situation is entirely different, especially in times of crisis. Tendencies to revise policies of multi-cultural coexistence, to create barriers for persons belonging to ethnic and other minorities or to migrants on the labour market, and to create obstacles for children migrating with parents to attend primary or secondary schools on equal footing with other students are undermining the principle of equality for all in many parts of the OSCE region. The European (and not only European) experience clearly shows that discrimination, especially discrimination based on ethnicity, religious beliefs, gender or other aspects, often leads to mass social turmoil and easily becomes an issue of national security. In the **Action Plan** it is only addressed in the context of THB prevention, but discrimination has much broader implications for the participating States. It affects the rule of law, basic principles of democracy and human development. Both politically and in social terms, it is a matter of crucial importance.

³²² The reasons are well described by Anne T. Gallagher in: *The International Law on Human Trafficking*, Cambridge (2010), pp.165–166.
³²³ Ibid.

³²⁴ Efforts to regulate these issues are reflected, for example, in the EU Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF> accessed 8 September 2015.

³²⁵ This ruling of the Inter-American Court of Human Rights is cited from: Anne T. Gallagher, *The International Law on Human Trafficking*, Cambridge (2010), pp.176–177.

4.5.6 Gender equality ³²⁶

Several recommendations on prevention in the **Action Plan** are related to gender equality. These include: “Developing programmes that offer livelihood options and include basic education, literacy, communication and other skills, and reduce barriers to entrepreneurship; encouraging gender sensitization and education on equal and respectful relationships between the sexes, thus preventing violence against women; ensuring that policies are in place which allow women equal access to and control over economic and financial resources; promoting flexible financing and access to credit, including micro-credit with low interest.” These issues have been discussed above in another context, namely that on recommendations for countries/places of origin, but if one takes into account the vulnerability of disadvantaged persons, especially women, even in countries with a very high level of living, these issues become relevant for all participating States. In other words, prevention must be aimed at filling the individual needs of a large variety of potential victims and be gender-sensitive.

The **2013 Addendum** builds on the recommendation to eradicate discrimination in point (1.1): “Taking further measures to eliminate discrimination against women in the field of employment and to ensure equal opportunity for men and women for economic participation and equal access to social protection, thereby decreasing their vulnerability to THB.” This recommendation is in line with the **MC Decision on Promoting Equal Opportunity for Women in the Economic Sphere**³²⁷, adopted in 2011 in Vilnius. This Decision formally recognizes that women’s equal participation in the economic sphere contributes significantly towards economic recovery, sustainable growth and the creation of cohesive societies, and thus is essential to the security and stability of the OSCE region. The Decision addresses the economic empowerment of women at a strategic and policy level, in support of the OSCE’s comprehensive security approach. It also affirms the recommendations made in the 2004 OSCE **Action Plan for the Promotion of Gender Equality**, which calls on participating States to support numerous specific measures for promoting women’s participation in the economic sphere.³²⁸

It is crucial to promote and ensure gender equality in the context of human trafficking, also taking into account the General Recommendation No. 19 on violence against women issued by the CEDAW (Committee on the Elimination of Discrimination against Women) in 1992.³²⁹ As highlighted by Gallagher, “General Recommendation No. 19 brings the issue of violence against women within CEDAW³³⁰ by stipulating that the definition of discrimination contained in Art. 1 includes ‘gender-based violence’, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.”³³¹ Such violence may take the form of “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”³³² And indeed, as underlined by General Recommendation No. 19, “trafficking is a form of violence against women incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity, putting women at special risk of violence and abuse.”³³³ The document rightfully points to the root causes of trafficking: poverty and unemployment that “may force many women, including young girls, into prostitution.” It emphasizes that prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. General Recommendation No.19 underlines that prostitutes need equal protection under laws against rape and other forms of violence. There is a concern that in addition to established forms of trafficking, “there are new forms of sexual and/or gendered exploitation, such as sex tourism, the recruitment of domestic labor from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals.”³³⁴ There are other examples as well, such as cases of young women from EU countries being forced to marry non-EU nationals in order to legalize the men’s status in the EU.

Certainly, there are many other gender dimensions of trafficking that should guide the participating States in their anti-trafficking actions, as for example, providing assistance to victims who have been severely traumatized or have serious health consequences (ruined reproductive health, sexually transmitted diseases, psychological traumas because of rape, sexual abuse, violence, etc.). At the same time, it is also necessary to ensure that equally adequate assistance is provided to male victims of trafficking. Shelters must have sufficient capacity for accommodating them and also meet their special needs for assistance and rehabilitation.

³²⁶ Gender Equality, according to UN WOMEN, “refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women’s issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centered development.” For further details, see United Nations, UN Women, Gender Mainstreaming: Strategy for Promoting Gender Equality, (2001). Available at: <http://www.un.org/womenwatch/osagi/conceptsand-definitions.htm> accessed 27 January 2015. See also: Important Concepts Underlying Gender Mainstreaming. Available at: <http://www.un.org/womenwatch/osagi/pdf/factsheet2.pdf> accessed 10 October 2015.

³²⁷ OSCE, Ministerial Council Decision No.10/11 on Promoting Equal Opportunity for Women in the Economic Sphere, MC.DEC/10/11, 7 December 2011.

³²⁸ For more details, see: OSCE, Guide on Gender-Sensitive Labour Migration Policies (2009). Available at: <http://www.osce.org/secretariat/37228?download=true> accessed 8 September 2015.

³²⁹ United Nations, UN Committee on the Elimination of Discrimination against Women, “General Recommendation No. 19: Violence against Women”, UN Doc. A/47/38, Jan. 29, 1992 (CEDAW General Recommendation No. 19).

³³⁰ United Nations, Convention on the Elimination of All Forms of Discrimination against Women (1979).

³³¹ Anne T. Gallagher, *The International Law of Human Trafficking*. Cambridge (2010), p.191–193.

³³² Ibid.

³³³ Ibid.

³³⁴ Ibid., p.193; also see, for example, the EU FRA report “Addressing Forced Marriage in the EU: Legal Provisions and Promising Practices (2014)”. Available at: http://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf accessed 4 November 2015.

4.5.7 Awareness-raising

Part 4 of the **Action Plan**'s chapter on Prevention is dedicated to awareness-raising. Measures taken in this area cannot be limited in time and scope, but should be cyclical, routine and on-going due to various reasons: the natural turnover of staff at relevant public institutions, including police forces and social and migration services; the appearance of new vulnerable groups, especially among young people graduating from school who are then unemployed; new migration flows caused by social, political and other undesirable developments; manifestations of economic crisis; discrimination; demographic growth; etc. This is why the recommendation of the **Action Plan (IV.4.1)** on "undertaking, in co-operation with civil society and NGOs, information campaigns to generate public awareness about trafficking in its various forms, including the methods employed by traffickers and the risks to victims" remains absolutely relevant. Self-explaining examples of the *modus operandi* of traffickers and the risks of THB to potential victims are available in the media. For example, the NGO "Alternativa" regularly informs the society at large about initiatives taken to rescue persons from enslavement in brick factories and small private enterprises.³³⁵ CNN and its three-year-long Freedom Project³³⁶ has also been an outstanding example of a long-term global awarenessraising campaign.

The recommendation **(IV.4.2)** of the **Action Plan** on "increasing awareness about trafficking among immigration authorities and consular and diplomatic personnel so that they use this knowledge in their daily contacts with potential victims" also belongs to long-term, targeted measures crucial for the prevention of transnational trafficking. Awareness among the personnel of the abovementioned structures is necessary so that they can apply the THB indicators in their contacts with potential victims or persons at risk of THB and prevent suspected cases of human trafficking by referring such persons to service-providers (as for example, to NGOs providing psychological and legal assistance). Consular and diplomatic offices should have a list of service providers and hotline numbers, booklets informing visitors about the risks of trafficking and its modern forms, information about the rights of victims (for example, access to justice and remedies, including compensation for suffered harm), and up-to-date information on the legislation in countries of destination regulating immigration, residence, family unification and labour issues. In other words, consular and diplomatic personnel should know everything a person needs to know to escape from the trap of trafficking, and if exploitation has already taken place, how a victim can claim his/her rights and get proper assistance. These issues are particularly addressed in the recommendation **(IV.4.3)**: "Encouraging national embassies to disseminate information on relevant national legislation such as family law, labour law and immigration law as is of interest to potential migrants, including through NGOs."

The implementation of the **Action Plan**'s recommendation **(IV.4.4)** on "increasing awareness of other relevant target groups, including policy makers, law enforcement officers, and other relevant professionals such as medical, social services and employment officials, and in the private sector, to THB, to enhance their readiness to address it adequately and to strengthen their institutional capacity to counter it" would be helpful for adjusting national anti-trafficking policies to the actual needs of particular countries, taking into account the scope of trafficking, its prevailing forms, and the links between national anti-trafficking measures and related policies (migration, human rights protection, employment opportunities, youth policies, child rights, gender equality, non-discrimination, eradication of poverty, and many others). This recommendation is addressed to policymakers. As for law enforcement, efforts should aim at better awareness of the human rights based approach, the principles of ethical and humane treatment of victims, and the disconnection between the immediate assistance and protection that must be provided to victims of trafficking and their readiness (or lack thereof) to co-operate with law enforcement officers investigating the crime. Law enforcement officers need to be aware of the indicators of THB in general, as well as the specific features of trafficking for the purpose of organ removal, THB for exploitation in begging, THB for exploitation in criminality, and all other forms that are problematic to recognize. Medical practitioners need awareness of the physical and psychological traumas victims may have experienced, sometimes as great as the suffering of victims of torture, and to be ready not only to provide medical assistance but also to alert law enforcement agencies and contact service-providers for other forms of assistance.³³⁷ As for employment officials and the private sector, these stakeholders are at the front line of recruitment and thus should be aware of their (as well as their subcontractors') responsibility to eliminate any possibility of child labour, forced labour, discrimination at work or inequality and to react to violations of these principles in the supply chain. In some countries labour rights are guaranteed by the Constitution and regulated by labour laws, but it is advisable to support the implementation of existing legislation by voluntary Codes of Conduct in the private sector. In this regard the **2013 Addendum** recommends in point **2.1** (in terms of capacity building and training) "encouraging the development and introduction of training programmes on THB-related issues for...personnel of human resources units of private sector companies."

The recommendation **(IV.4.5)** of the **Action Plan** on "encouraging the consular and visa sections of the diplomatic missions to use printed and other materials in their work with at-risk individuals" augments recommendation **(IV.4.2)**, discussed above, regarding cases of transnational THB. However, it is also particularly important for countries of origin, where per-

³³⁵ www.protivrabstva.ru accessed 19 January 2015.

³³⁶ <http://thecnnfreedomproject.blogs.cnn.com/> accessed 20 January 2015.

³³⁷ See, for example, *Combating trafficking in human beings. Brochure for medical practitioners* (accompanied by posters and information cards) (in Ukrainian). Available at: <http://www.osce.org/uk/ukraine/75896?download=true> accessed 20 January 2015.

sons concerned apply for visas. They must be alerted to the entire range of preventive and protective measures that are available and be advised to avoid taking any risks. An example of good practice in awareness-raising work, in this case being undertaken by a public institution, is provided by the website of the Russian Federation's Ministry of Foreign Affairs, which alerts persons planning to travel abroad about how "not to become a victim of trafficking in human beings".³³⁸ It includes a set of basic recommendations by the Consular Department of the Ministry and a short description of the problem. If these recommendations are taken seriously, this is sufficient to prevent many potential trafficking cases. The appointment of migration officers at Dutch Embassies in some participating States (strategically chosen from the most common countries to send migrant workers), is also aimed at preventing violations of migrants' rights for those travelling to the Netherlands or other EU countries to seek employment.

Raising awareness in the media (recommendation **IV.4.6**) and, in principle, the engagement of the media in the prevention of THB is absolutely crucial. The **Action Plan** proposes that "the perception of the problem of trafficking in human beings brought forward by the media should include a clear explanation of the phenomenon and a realistic portrayal of the victims. To maximize public knowledge and awareness, anti-trafficking campaigns should be conducted with media professionals." A ground-breaking anti-trafficking campaign of this type conducted by the media professionals of CNN International has already been mentioned above. Good examples of awareness-raising for the media include the OSCE Extra budgetary Project funded by the United States and Iceland and implemented by the Russian Union of Journalists and the Moscow State University (Faculty of Journalism).³³⁹ It resulted in the elaboration of the manual "Media against Trafficking in Human Beings" for students and postgraduates of media faculties. Other manuals (such as the Human Trafficking Manual for Journalists by ASTRA, published in 2008) were created by NGOs with the support of OSCE field operations in some host participating States. It is also advisable to consider the manuals and guidelines produced by major international organizations

(UNESCO³⁴⁰, WHO³⁴¹, UNICEF³⁴² and others) and NGOs.³⁴³ In particular, the UNICEF guidelines are meant to support the best intentions of ethical reporting: serving the public interest without compromising the rights of children.

The media (but not only the media) can become a partner in implementing the recommendation of the **2013 Addendum (1.4)** on "taking measures, where appropriate, to enhance capacities for monitoring, detecting, investigating and disrupting all forms of trafficking in human beings facilitated by ICTs [Information and Communication Technologies], in particular by the Internet, including trafficking for sexual exploitation." This recommendation of the **2013 Addendum** addresses all forms of trafficking in this particular context and broadens the scope of vulnerable groups who may be recruited via Internet (in comparison with the **2005 Addendum**). In point 13, the **2005 Addendum** recommends "addressing the use of the Internet in facilitating the **trafficking of children** for sexual exploitation and developing measures to combat it, including the exchange of images and other information in accordance with national law, in particular via the international child abuse images housed by Interpol with a view to identifying and protecting child victims as well as identifying their abusers." This issue with regard to children was also addressed by point 8 of the **MC.DEC/9/07** "Combating Sexual Exploitation of Children on the Internet".

Awareness-raising campaigns must be well designed and aimed at efficiency and effectiveness. In this regard, the recommendations of the **Action Plan (IV.4.7)** on "targeting awareness-raising campaigns also at the most vulnerable groups, including persons belonging to national minorities, children, migrants and internally displaced persons (IDPs)" and the recommendation (**IV.4.8**) on "extending awareness-raising campaigns to smaller towns and villages whose populations may be at particular risk" meet this requirement completely. It must be taken into account that the variety of "most vulnerable groups" is much wider than specifically mentioned in point IV.4.7. Actually each specified group has its own subgroups, which must be targeted by campaigns modified to their particular needs. Needless to add, awareness-raising campaigns alone cannot prevent vulnerable children from being trafficked if these campaigns are not supported by strong protective measures and individually designed assistance to such children or their families. The same can be said about campaigns for IDPs and refugees, whose vulnerable situation makes them an easy target for traffickers. Appropriate social support, housing, employment

338 http://www.kdmid.ru/info.aspx?lst=info_wiki&it=/%D0%A0%D0%B5%D0%BA%D0%BE%D0%BC%D0%B5%D0%BD%D0%B4%D0%B0%D1%86%D0%B8%D0%B8%20%D0%B2%D1%8B%D0%B5%D0%B7%D0%B6%D0%B0%D1%8E%D1%89%D0%B8%D0%BC%20%D0%B7%D0%B0%20%D0%B3%D1%80%D0%B0%D0%BD%D0%B8%D1%86%D1%83.aspx#victim accessed 19 January 2015.

339 The project consisted of a training course for media students and post-graduates on THB-related investigative journalism, principles of ethical reporting, indicators of trafficking, forms of THB, etc., and included the publication of the manual (in Russian) "Media against Trafficking in Human Beings", to be used as background material for lectures and seminars. The manual is available at: <http://www.osce.org/ru/secretariat/100483?download=true> accessed 20 January 2015.

340 United Nations, UNESCO Model Curricula for Journalism Education (2013). Available at: <http://unesdoc.unesco.org/images/0022/002211/221199E.pdf> accessed 20 January 2015.

341 World Health Organization, WHO Ethical and Safety Recommendations for Interviewing Trafficked Women (2003). Available at: <http://lastradainternational.org/lsidocs/120%20WHO%20ethical%20and%20safety%20recommendations.pdf> accessed 20 January 2015.

342 United Nations, UNICEF Ethical Guidelines. Principles of Ethical Reporting on Children (2003). Available at: http://www.unicef.org/ceecis/media_1482.html accessed 20 January 2015.

343 For example, *Human Trafficking – Manual for Journalists*, published by the NGO ASTRA in 2009. Available at: <http://www.astra.org.rs/wp-content/uploads/2015/01/novinari08ENG.pdf> accessed 2 October 2015.

and other measures cannot be substituted merely by awareness-raising; the two areas must complement one another. As for campaigns aimed at persons belonging to specific national/ethnic minorities and, equally, migrants, it is recommended to extend outreach to ethnic communities at large, including diasporas and religious communities with their leaders, to send not only the message of the risks of trafficking, but also to call for their collaboration in preventing this crime.

“Working in schools and universities as well as directly with families to reach young people and to raise their awareness about trafficking,” the recommendation **IV.4.9** of the **Action Plan**, is another extremely important area. Young people are vulnerable to trafficking due to multiple reasons. They lack life experience and easily believe that offers of employment abroad are “decent” and meet their expectations. They take risky decisions having been impressed by commercial advertisements and movies that display the high level of life abroad (especially in comparison to the low levels of many poor and remote areas). Their desire to earn money and become economically independent may be quite strong, or they may face an urgent need to earn money to help their parents or younger family members. High rates of unemployment and failing to find a job after graduating from school or university leave them little opportunities if any at all. This is why it is especially important to raise awareness on trafficking quite early, at the level of secondary schools. It must also be given particular attention in institutions/dormitories for children and child care facilities. Graduates from such institutions often suffer social exclusion, the lack of social and family support, and lower levels of education. To make such awareness-raising campaigns efficient, it is advisable to engage youth organizations, social media and the private sector (in the context of corporate social responsibility and employment programmes for young people) so that the better knowledge of the risks of trafficking can be accompanied by better opportunities and empowerment.

The OSCE field operations have contributed significantly to implementing this recommendation of the **Action Plan**. In various participating States, this has resulted in fruitful cooperation, supported by the OSCE, between civil society and State institutions responsible for youth policy.³⁴⁴

To prevent trafficking, it is important that a person in need of help be able to get assistance as quickly as possible, if not immediately. This is why the recommendation of the **Action Plan (IV.4.11)** to establish well-publicized telephone “hotlines” in

countries of origin, transit and destination is very important. Such hotlines “should serve three purposes: to act as an independent source of advice and guidance to potential victims who may be considering job opportunities or other offers to go abroad; to act as a first point of contact providing access to a referral mechanism for victims of THB; and, furthermore, to facilitate the anonymous reporting of cases or suspected cases of THB.” Government agencies, international organizations and NGOs need to ensure that such numbers are known and used by potential victims or their relatives.³⁴⁵ There are many ways to make hotline information available, such as information at consular and visa departments, or advertising at railway stations and airports, in taxis, buses and underground stations, at border crossing points, in hospitals, indeed, anywhere a potential victim might go. Leaflets or information postcards may be distributed by NGOs outreaching to vulnerable groups or working in schools or institutions for children.³⁴⁶

4.5.8 Legislative measures

Finally, the **Action Plan**, in its chapter on Prevention (**IV.5.2**)³⁴⁷, recommends ensuring that legislative “measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including their freedom of movement.” The risk of violating the freedom of movement, as a fundamental principle in the discourse on human rights, has been commented on with regard to the recommendations on Border Measures. But there are also other areas that are cause for this type of concern. These include: detention of trafficked persons in immigration or shelter facilities; prosecution of trafficked persons for status-related offences including illegal entry, illegal stay and illegal work; denial of exit or entry visas or permits, whether generally applied or only in relation to a group of persons identified as being especially vulnerable to being trafficked; denial of the right of all persons, including those who have been trafficked, to seek asylum from persecution; denial of basic rights to migrants, including migrant workers and those not lawfully within the territory of a State; raids, rescues and “crack-downs” that do not include full consideration of and protection for the rights of the individuals involved; forced repatriation of victims in jeopardy of being subjected to reprisals or re-trafficking; denial of a right to a remedy; violations of the rights of persons suspected of or convicted for involvement in trafficking and related offences, including unfair trials and inappropriate sentencing; and laws or procedures that authorize any of the above.³⁴⁸ The Commentary to the Recommended Principles

344 See, for example: Ministry for Family, Youth and Sport of Ukraine/OSCE Project Coordinator in Ukraine, *Methodological guide for the provision of services: Model of Social Support to Young Persons from Vulnerable Backgrounds, (in Ukrainian) Kyiv (2006)*, available at: <http://www.osce.org/uk/ukraine/75902?download=true> accessed 20 January 2015; Ministry for Family, Youth and Sport of Ukraine/OSCE Project Coordinator in Ukraine, *Methodological guide: Model of Promotion of Employment of Young Persons from Vulnerable Backgrounds, Kyiv (2006)*, available at: <http://osce.org/uk/ukraine/75903?download=true> accessed 20 January 2015 (both guides in Ukrainian); OSR/CTHB ExB Project in Moldova promoting life skills for children without parental care, available at: <http://www.osce.org/secretariat/125988> accessed 21 January 2015.

345 For example, the Human Trafficking Hotline Network initiated by Google, available at: <https://google.com/ideas/projects/human-trafficking-hotline-network> accessed 9 September 2015.

346 See, for example, the European Hotline for Missing Children, available at: missingchildreurope.eu/116000hotline accessed 9 September 2015.

347 Point IV.5.1 is discussed on p. 58

348 United Nations, Commentary of the UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2010), p.85. For more details, see: Global Alliance against Traffic in Women, Collateral Damage. The Impact of Anti-Trafficking Measures on Human Rights around the World, GAATW, 2007. Available at: http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/collateral_damage_gaatw_2007.pdf accessed 21 January 2015.

and Guidelines on Human Rights and Human Trafficking cited above underlines that this list is not exhaustive. Taking measures such as these with the aim of combating human trafficking actually contravenes **Art. 14 of the UN Trafficking Protocol**, which clearly states that “nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.” It is within the States’ capacity to ensure that trafficked persons never become “the victims of anti-trafficking measures” that have an adverse impact on their rights and dignity. Furthermore, it is the States’ obligation, under international human rights law, to protect the human rights of all persons under their jurisdiction and to take positive measures to prevent violations of human rights.

4.6 Updating Chapter V. Protection and Assistance

The **OSCE Action Plan**, in its recommendations on Protection and Assistance to the Victims of trafficking, drew from commitments undertaken by the participating States in the Ministerial Declaration on Trafficking in Human Beings (Porto, 2002), the Ministerial Decision No.6 (Bucharest, 2001), the Ministerial Decision No.1 (Vienna, 2000), and the Charter for European Security (Istanbul, 1999).

Though it was not mentioned in the text of Chapter V of the Action Plan, the relevant provisions of the UN Trafficking Protocol and the basic instruments of the international human rights law served as the universal basis for its content. The chapter of the **Action Plan** also referred to the CRC and recommended “ratifying or acceding to, and fully implementing, the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography”³⁴⁹ (provision 10.5) and to consider the provisions of the United Nations High Commissioner for Refugees Guidelines for the protection of unaccompanied minors.³⁵⁰

The **2005 Addendum** and the decisions taken in this regard by the Permanent Council (PC.DEC/685) and by the Ministerial Council of Ljubljana (MC.DEC/13/05) reflected a new political framework that served as a source of inspiration for the drafters. The same can be said about new legal obligations under the CoE Trafficking Convention (Warsaw, 2005) (the first regional treaty in this area that was focused primarily on the protection of trafficking victims) and the recommendations of “soft law” instruments, such as the UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking in South Eastern Europe, endorsed in the Statement on Commitments

on Victim/Witness Protection and Trafficking in Children by the Fourth Regional Ministerial Forum of the Stability Pact Task Force on Combating Trafficking in Human Beings (Sofia, 2003). In addition, the UNOCHCR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), by the time of the adoption of the 2005 Addendum, had also played a role and provided a positive atmosphere for the drafting of this document.

By the time of the adoption of the **2013 Addendum**, the international and regional anti-trafficking legal framework, advanced OSCE political commitments, “soft law”, guidelines and other documents had created a new background for updating the recommendations of the Action Plan. At the OSCE level, these included the Vilnius Declaration on Combating All Forms of Human Trafficking (MC.DOC/1/11, Vilnius, 2011)³⁵¹, MC Decision on Enhancing Criminal Justice Response to Trafficking in Human Beings through a Comprehensive Approach (MC.DEC/5/08, Helsinki, 2008), MC Decision on Combating Trafficking in Human Beings for Labour Exploitation (MC.DEC/8/07, Madrid, 2007), MC Decisions on Combating Sexual Exploitation of Children (MC.DEC/15/06, Brussels, 2006), MC Decision on Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive and Proactive Approach (MC.DEC/14/06, Brussels, 2006), and a number of MC decisions on related issues: MC Decision No.14/05 on Women in Conflict Prevention, Crisis Management and Post-Conflict Rehabilitation; the Ministerial Decision No.15/05 on Preventing and Combating Violence against Women³⁵²; the Ministerial Decision No.7/09 on Women’s Participation in Political and Public Life and the Ministerial Decision No.10/11 on Promoting Equal Opportunity for Women in the Economic Sphere. The Ministerial Decision No. 14/04 on the 2004 Action Plan for the Promotion of Gender Equality and the above mentioned decisions provide the main framework for the OSCE activities addressing gender equality as a precondition for the prevention of trafficking and the protection of victims of gender-based violence. The OSCE’s National Referral Mechanisms handbook³⁵³ also played a significant role in the evolution of the general approach of the participating States toward issues concerning protection and assistance.

At the international level, the UN Global Plan of Action to Combat Trafficking in Persons (2010) was meant to mobilize the global anti-trafficking community to step up efforts to eradicate THB. Also related to the fight against THB and victim protection were the ILO Convention No.189 Concerning

349 As of 28 March 2015, all OSCE participating States but one have ratified the Optional Protocol. The information on ratifications is available at: <http://indicators.ohchr.org/> accessed 28 March 2015.

350 United Nations, UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997). Available at: <http://www.unhcr.org/3d4f91cf4.pdf> accessed 5 February 2015.

351 This Declaration stated: “We urge participating States to implement comprehensive and appropriate measures on assistance to victims of trafficking in persons.”

352 In 2014, the OSCE Ministerial Council adopted a new Decision No.7/14 on Preventing and Combating Violence against Women, MC.DEC/7/14, 5 December 2014.

353 OSCE/ODIHR, National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook (2004). Available at: <http://www.osce.org/odihr/13967?download=true> accessed 10 September 2015.

Decent Work for Domestic Workers³⁵⁴ adopted in 2011, the 2008 ILO Declaration on Social Justice for a Fair Globalization³⁵⁵, and the discussions that were taking place in the course of drafting a new (adopted in 2014) Protocol to the Convention on Forced Labour.

At the European level the **Council of Europe Trafficking Convention** was already enacted (in 2008). As for the EU level, legally binding (in terms of the obligation to achieve certain results through a variety of means taken at the national level) was the **Directive 2011/36/EU** of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011]. Also legally binding was the Council **Directive 2004/81/EC** on issuing residence permits to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, if they cooperate with the competent authorities.³⁵⁶

Also at the regional level, though not legally binding, were the **CIS Model Law** on the Protection of the Victims of Trafficking (2008) and the **CIS Programmes of Co-operation** in Combating Trafficking in Human Beings of 2008–2010, 2011–2013 and 2014–2018³⁵⁷ which proclaimed as their purposes: ensuring due conditions for providing guaranteed and comprehensive State assistance to the victims of trafficking in human beings, the improving and harmonization of national legislation, including on the basis of anti-trafficking model laws adopted by the Inter-Parliamentary Assembly³⁵⁸, and consistent implementation of the provisions of fundamental treaties of the UN, Council of Europe, and the OSCE commitments in this area³⁵⁹. The Programme requires that in 2014 the CIS participating States establish expert working groups at the national level with a view to elaborate mechanisms for transposing international standards on CTHB and the CIS Model Laws into the national legislation³⁶⁰.

354 International Labour Organization, Convention Concerning Decent Work for Domestic Workers No.189 (2011). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 accessed 29 January 2015.

355 International Labour Organization, ILO Declaration on Social Justice for a Fair Globalization (2008). Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_099766.pdf accessed 29 January 2015.

356 European Union, Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004L0081> accessed 10 September 2015.

357 Commonwealth of Independent States, CIS Programme of Co-operation in Combating THB, 2014–2018 (Rus.), available at: <http://www.e-cis.info/page.php?id=23806> accessed 31 January 2015.

358 The Programme was adopted in 2013 at the level of the CIS Heads of State.

359 Ibid.

360 Ibid., point 2.1.

4.6.1 Data collection and research

Recommendation (V.1.1) of the **Action Plan** (Protection Chapter) is related to “collecting data through the exchange and analysis of best practices and other information regarding effective protection of and assistance to victims of trafficking in the OSCE participating States.” This should be considered together with Recommendation (4) of the **2005 Addendum**: Facilitating research and gathering data, including for the purpose of strengthening protection and assistance programmes, on the extent of all forms of child trafficking in their countries, and making the data publicly available. Strengthening co-operation and improving exchange of information among States with a view to preventing child trafficking and protecting and assisting child victims, including in conflict and post-conflict situations.”

The OSCE commitments taken after 2005 also address the issue of data collection and research. In this context it would be advisable to refer to the MC Decision MC.DEC/14/06, which “urges the participating States, with the support of the OSCE structures and Institutions if requested, to improve research and the system of data collection and analysis, with due regard to the confidentiality of data, and where possible to disaggregate statistics by sex, age, and other relevant factors as appropriate, in order to better assess the character and scope of the problem and develop effective and well-targeted policies on trafficking in human beings. To this end, participating States are recommended to consider appointing National Rapporteurs or similar independent monitoring mechanisms.” Indeed, national monitoring and reporting mechanisms such as National Rapporteurs have proven their effectiveness in many OSCE participating States and are extremely instrumental in the collection and analysis of data, in making it available for the public and authorities, and, moreover, in providing evidence-based recommendations on improving anti-trafficking responses at the national level.³⁶¹

At the same time, the failure to have relevant data collected from various reliable sources, including NGOs and other independent institutions, may result in a chain of inefficient protective measures. The phenomenon of empty shelters and the reluctance of victims to identify themselves as such reflect serious deficits in the organization of protection facilities or in legal arrangements and schemes.

The Global Alliance against Trafficking in Women, in its cutting-edge publication “Collateral Damage. The Impact of Anti-Trafficking Measures on Human Rights around the World”,³⁶² demonstrates “in a small but compelling way that the road to hell may be paved with the best of intentions, and

361 Comments on national monitoring and reporting mechanisms, as well as on national coordination mechanisms are provided from p. 89.

362 Global Alliance against Traffic in Women, Collateral Damage. The Impact of Anti-Trafficking Measures on Human Rights around the World (2007). Available at: http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/collateral_damage_gaatw_2007.pdf accessed 29 January 2015.

the trafficked woman may find herself literally ‘from the frying pan into the fire’³⁶³ situation. She may suddenly discover that in trying to remove her from harm, her well-meaning advocate, be it the government, an NGO or an individual, who has come forward to assist and protect her, has actually done further harm and removed her even farther away from her desired destination.³⁶⁴ It is of a serious concern that the victim “in the name of protection ... can be confined to a shelter under conditions which are no different from detention, or packed off to go back ‘home’, into the very same environment that she wished to leave behind, with its joblessness, poverty, conflict, abuse, or even a not-so-dire middling situation, which to her offered neither promise nor possibility of realising her life’s full potential.”³⁶⁵ In the Preface to this publication, Jyoti Sanghera, a widely known anti-trafficking expert, points to other typical challenges faced by victims, such as conditions being attached to the assistance she is being offered (for example, co-operation with law enforcement and providing evidence against her trafficker). “At any event, it is clear to this trafficked woman that if she identifies herself as a ‘victim of trafficking’, she will eventually be sent home to be reunited with her misery once again. So she chooses not to identify herself as a ‘victim of trafficking’ – *in order not to become a victim of anti-trafficking*.”³⁶⁶

This proves how relevant the **OHCHR’s Primacy of Human Rights Principle** remains, where it is stated that “anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.”³⁶⁷

According to the **OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking**³⁶⁸, Principles 7–11 on Protection and Assistance require that:

7. Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

8. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.

9. Legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers. States shall provide protection and temporary residence permits to victims and witnesses during legal proceedings.

10. Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Child victims of trafficking shall be provided with appropriate assistance and protection. Account shall be taken of their special vulnerabilities, rights and needs.

11. Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.”³⁶⁹

These points form the fundamental basis of protection and assistance. They will be discussed in relation to the parallel provisions of the **Action Plan and the Addendums**. The implementation of these basic points, as in the case of many other commitments, is hampered for various reasons. Some of these reasons will be described in the concluding remarks of this Commentary. To facilitate the exchange of best practices that have been developed in the OSCE region, the OSR/CTHB convened quite a large number of events, especially the *Alliance against Trafficking in Persons* conferences dedicated to protection and assistance. These have included the high-level conferences: “Taking a Stand: Effective Assistance and Protection to Victims of Trafficking” (Vienna, 28 February 2005); “Combating Trafficking in Human Beings, Especially Women and Children: Prevention – Protection – Prosecution” (Vienna, 17 March 2006); “Assistance to Trafficked Persons: We Can Do Better” (Vienna, 10–11 September 2007); “Child Trafficking: Responses and Challenges at Local Level” (Vienna, 26–27 May 2008); and others. These events have provided an excellent opportunity for exchanging information and good practices. Another regular opportunity for exchanging best practices has been initiated by the OSCE Human Dimension Committee, where the delegations of the participating States volunteer to report on anti-trafficking measures taken at the national level. The Annual Human Dimension Implementation

363 Certainly today this is equally relevant for men and children victims of trafficking.

364 Global Alliance against Traffic in Women, *Collateral Damage. The Impact of Anti-Trafficking Measures on Human Rights around the World* (2007). Available at: http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/collateral_damage_gaatw_2007.pdf accessed 29 January 2015.

365 *Ibid.*

366 Global Alliance against Traffic in Women, *Collateral Damage. The Impact of Anti-Trafficking Measures on Human Rights around the World* (2007). Available at: http://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/collateral_damage_gaatw_2007.pdf accessed 29 January 2015.

367 United Nations, *UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2002). Available at: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf> accessed 29 January 2015.

368 *Ibid.*

369 The non-punishment clause, specified by the OHCHR in terms of the most frequent offences committed under duress, was already commented on p.42.

Meeting (HDIM), which regularly includes the topic of THB in its agenda, remains another excellent channel for exchanging good practices in this area, as well as for reviewing the implementation actions taken by OSCE participating States, including their NGOs' activities. Also the GRETA country reports³⁷⁰ serve as a rich source of information on the steps being taken by those CoE Member States who are Parties to the CoE Trafficking Convention³⁷¹, to ensure the implementation of its requirements on victim identification, protection of private life, assistance to victims, recovery and reflection period, residence permits, compensation and legal redress, repatriation and return of victims, and gender equality.

4.6.2 Legislative measures

Recommendation (V.2.1) of the **Action Plan** ("Considering the need for adopting legislation which will provide the legal basis for rendering assistance and protection to victims of THB, especially during pre-trial investigations and in court proceedings") follows the Vienna Ministerial Decision MC(8). DEC/1 of 2000 that stated: "Such legislation should take into account a human rights approach to the problem of trafficking, and include provision for the protection of the human rights of victims, ensuring that victims of trafficking do not face prosecution solely because they have been trafficked."³⁷² In the Porto Declaration on Trafficking in Human Beings, the participating States confirmed: "We will consider adopting legislative or other measures that permit victims of trafficking to remain in our territory, temporarily or permanently, in appropriate cases, and giving consideration to humanitarian and compassionate factors."³⁷³ This is a protective measure to prevent the rapid deportation (or forced repatriation) of victims without any assessment of the risks they may incur and without any assistance, legal advice or other forms of aid they may need. The opportunity to remain in the country of destination (taking for granted that the personal safety of the victim is guaranteed) helps victims to make informed decisions about their future (also in terms of possible participation in pre-trial investigations and court proceedings, if they so decide). Providing a reflection period (which, according to the CoE Trafficking Convention, should last at least 30 days) increases the chances that a victim is guaranteed access to remedies, including compensation for suffered harm. It must be taken into account that EU citizens trafficked within EU territory are less protected than third-country nationals.³⁷⁴

The **2005 Addendum** emphasized "ensuring that **child trafficking**, including internal trafficking, is criminalized in accordance with the UN Protocol ... in order to better address the need for protection and assistance of child victims of trafficking."³⁷⁵ This matches the next recommendation (V.2.2) of the **Action Plan** in the chapter on Protection. The OSCE commitments taken since this time have also addressed legal aspects of anti-trafficking in the context of child victim protection. For example, the **MC.DEC/5/08** "calls on the participating States that have not yet done so to provide for special measures of protection and assistance for child victims of human trafficking throughout criminal proceedings, in accordance with the principles of the best interest of the child, non-discrimination, participation and the opportunity for the child to be heard."³⁷⁶ The **MC.DEC/15/06** (Combating Sexual Exploitation of Children) "calls on the participating States to conform their legislation on this subject to their relevant international commitments and obligations."³⁷⁷ The Decision also "calls on the participating States to facilitate legal protection, assistance, appropriate medical care, rehabilitation and reintegration programmes for child victims of sexual exploitation and, where appropriate, to ensure the safe return of trafficked children."³⁷⁸

The OSCE commitments draw the attention of the participating States to an important point in protecting trafficked persons, namely letting them seek support from reliable and trustful agencies when going through criminal proceedings, as they may suffer from severe stress during this period. The **MC.DEC/5/08** "encourages the participating States where appropriate and where provided for by their respective laws to ensure that civil society organizations engaged in protecting the rights of victims of trafficking have a possibility to provide assistance and support to victims also during criminal proceedings, and in this context, to consider establishing cooperation between law enforcement agencies and civil society organizations."³⁷⁹ This commitment, though weakened by the formulae "where appropriate" and "where provided by respective laws", encourages countries to recognize the validity of the work being done by service-providers and NGOs, which in some cases are better able to support victims than representatives from State institutions. Thus, if such regulations are lacking, they should be considered.³⁸⁰

370 Council of Europe, GRETA country reports are available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Publications/Evaluations_en.asp accessed 30 January 2015.

371 The CoE Trafficking Convention mentions that its purpose (one of – V.G.) is "to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution."

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

373 OSCE, Ministerial Council Declaration on Trafficking in Human Beings, MC(10).JOUR/2, 7 December 2002.

374 For more info see: European Union, Together against Trafficking in Human Beings, EU Legislation. Available at: https://ec.europa.eu/anti-trafficking/legislation-and-case-law/eu-legislation/into/EU%20Legislation_en accessed 10 September 2015.

375 OSCE, Permanent Council Decision No.685 Annex "Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance", PC.DEC/685 Annex, 7 July 2005.

376 OSCE, Ministerial Council Decision No.5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach, MC.DEC/5/08, 5 December 2008.

377 OSCE, Ministerial Council Decision No.15/06 Combating Sexual Exploitation of Children, MC.DEC/15/06 5 December 2006.

378 Ibid.

379 OSCE, Ministerial Council Decision No.5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach, MC.DEC/5/08, 5 December 2008.

380 For more details, see: United Nations, UNODC/Council of Baltic Sea States, Human Trafficking in Baltic Sea Region: State and Civil Society Co-operation on Victims' Assistance and Protection (2010).

Protection is also an aspect of the provision of the **Vilnius Declaration on Combating All Forms of Human Trafficking** related to the need to enhance criminal justice responses to human trafficking by “ensuring that victims are treated in a manner that respects their human rights and that they are provided with access to justice, to legal assistance, and to effective remedies and other services as applicable.”³⁸¹ This short set of guaranteed measures – access to justice, legal assistance, effective remedies and services as needed – must be guaranteed by law. The same can be said about the protection of victims and witnesses who participate in criminal proceedings. Too often they (or their families) are threatened by traffickers, who pressure victims/witnesses to withdraw their testimonies. This is why, for example, the **2013 Addendum** was augmented with a recommendation for “providing the safety of immediate family members of foreign citizens who have been victims of THB, in cases of criminal prosecution of traffickers, in accordance with national law and where appropriate legal framework exists, and/or by using the existing channels of law enforcement cooperation.”³⁸²

Read in conjunction with the Trafficking Protocol, this provision is fully in line with the **UNTOC**. In Art. 24 (Protection of witnesses, para.1, 2, 3 and 4) the Convention requires that:

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their other persons close to them.
2. The measures envisaged in paragraph 1 of this Article, may include, *inter alia*, without prejudice to the rights of the defendant, including the right to due process:
 - a. Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
 - b. Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means;
3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article;

381 OSCE, Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/Corr.1, 7 December 2011.

382 OSCE, Permanent Council Decision No.1107/Corr. 11 Annex Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later, PC.DEC/1107/Corr.1, 6 December 2013.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.³⁸³

To accomplish this requirement, the participating States should at a minimum follow the requirements of UNTOC and not only adopt laws on victim/witness protection, but also establish a mechanism for their implementation supported by sufficient funding.

The **CoE Trafficking Convention**, strengthening the protection aspects of the Trafficking Protocol, in its Art. 28 (Protection of victims, witnesses and collaborators with the judicial authorities) requires that: “1. Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for: a. Victims; b. ...those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities; c. witnesses who give testimony concerning criminal offences...; d. when necessary, members of the family of persons referred to in subparagraphs a and c.”³⁸⁴ The Convention stipulates that: “2. Each Party shall adopt such legislative or other measures ... to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs; 3. **A child victim** shall be afforded special protection measures taking into account the best interests of the child; 4. Each Party shall adopt such legislative or other measures ... to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organizations which carry out the activities set out in Article 27, paragraph 3.”³⁸⁵

Protective measures also matter during court proceedings. Addressing this issue, the **CoE Trafficking Convention** (Art. 30) requires that: “Each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings: a. the protection of victims’ private life and ... identity; b. victims’ safety and protection from intimidation, in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children’s needs and ensuring their right to special protection measures.”³⁸⁶

383 United Nations, UN Convention against Transnational Organized Crime (2000). Available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf> accessed 30 January 2015.

384 Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art.28.

385 Ibid.

386 Council of Europe, CoE Convention against Trafficking in Human Beings (2005). Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#TopOfPage accessed 30 January 2015.

Given the crucial importance of a legal basis to guarantee protection and assistance to victims in pre-trial investigations and criminal proceedings, it can be useful to refer to the existing model legislation in the **UNODC Model Law against Trafficking in Persons (2009)**³⁸⁷ and the **CIS Model Laws on Combating Trafficking in Human Beings (2008)**³⁸⁸ and on **Victim Protection (2008)**³⁸⁹. It is also recommendable, when revising legislation, to consult the **UNODC Handbook for Parliamentarians “Combating Trafficking in Persons”**³⁹⁰, which compiles the international laws and good practices that have been developed to combat THB. It offers guidance on how national legislation can be brought in line with international standards, such as by defining trafficking in persons and criminalizing all its forms, and outlines measures for preventing the crime, prosecuting offenders and protecting victims. It also contains advice on how to make this crime known and to enlist civil society in its eradication.

In the regional approach to legislative measures in the area of victim protection, one might point to the **CIS Programme of Co-operation** in CTHB for 2014–2018, which stipulates, by 2014–2015, the adoption of national anti-trafficking and victim protection laws, and of laws creating national anti-trafficking programmes. It also stipulates the engagement of ombudspersons on human rights and on the protection of the rights of child victims. Special measures are to be implemented by the State to guarantee the safety of child victims and to provide them comprehensive assistance based on their rights and best interests.³⁹¹ The legal measures to be taken by the authorities of the CIS participating States include the non-punishment clause: victims of trafficking are not to be liable for unlawful acts committed under physical or psychological coercion and are not to be prosecuted under criminal or administrative law. Measures to be taken also include the provision of temporary residence permits conditional to co-operation with criminal prosecutorial bodies in the country of destination (in accordance with national law). With regard to the reflection period, the Programme recommends summarizing the existing practice of transposing the legal status of “a victim of trafficking” to national legislation and the mechanism of its implementation, as well as taking “coordinated measures to provide the victims with a reflection period, and measures for their social rehabilitation and guaranteed assistance before, during and after the end of criminal court proceedings.”³⁹² The Programme

also contains a provision envisaging the ratification of the CoE Trafficking Convention and other international instruments.³⁹³ All of this is a significant step forward.

In the context of protection, the implementation of Recommendation (V.2.2) of the **Action Plan** related to ratifying, or acceding to, and fully implementing the UN Trafficking Protocol means that the participating States are to take measures to accomplish at least the minimum agreed in Art. 6 of the Protocol: “(a) Protect the privacy and identity of victims in appropriate cases and to the extent possible under domestic law (art. 6, para. 1);(b) Ensure that victims receive information on relevant court proceedings in appropriate cases and have an opportunity to have their views presented and considered (art. 6, para. 2);(c) Endeavour to provide for the physical safety of victims while they are in their territory (art. 6, para. 5);(d) Ensure that measures exist to allow victims the opportunity to seek compensation for damages suffered (art. 6, para. 6);(e) Facilitate and accept the return of victims who are nationals or have the right of permanent residence, with due regard for their safety (art. 8, para. 1);(f) Verify without unreasonable delay whether a trafficking victim is a national or has the right of permanent residence and issue the necessary travel documents for re-entry (art. 8, paras. 3 and 4). In addition, each State party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons (art. 6, para. 3).”³⁹⁴

The UNTOC and the Trafficking Protocol are referred to in nearly every anti-trafficking decision, making it a true commitment for the OSCE participating States to adhere to the requirements of these fundamental treaties – both generally and with regard to particular forms of trafficking. For example, the **MC.DEC/14/06**, in the context of THB for labour exploitation, emphasizes the need to ensure “that their national criminal legislation on trafficking in human beings for labour exploitation complies with the requirements of the United Nations Protocol... To this end the participating States are encouraged to ensure that such crimes can be appropriately identified and prosecuted.”³⁹⁵ By 14 December 2014, all OSCE participating States had revised their national legislation to criminalize THB in accordance with (or close to) the definition of trafficking as found in these treaties.³⁹⁶

387 United Nations, UNODC, Model Law against Trafficking in Persons (2009). Available at: http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf accessed 30 January 2015.

388 Commonwealth of Independent States, CIS Model Law on Combating Trafficking in Human Beings (2008). Available at: <http://docs.cntd.ru/document/902124613> accessed 31 January 2015.

389 Commonwealth of Independent States, CIS Model Law on Victim Protection (2008). Available at: <http://docs.cntd.ru/document/902124615> accessed 31 January 2015.

390 United Nations, UNODC Handbook for Parliamentarians. Combating Trafficking in Persons (2009). Available at http://www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf accessed 30 January 2015.

391 Commonwealth of Independent States, CIS Programme of Co-operation in Combating THB, 2014–2018, points 1.2–1.4.

392 Ibid.

393 Ibid., point 1.5.

394 United Nations, Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocols Thereto (2004), p.282.

395 OSCE, Ministerial Council Decision No.14/06 Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive Approach, MC.DEC/14/06, 5 December 2006.

396 United Nations Treaty Collection, Status of Ratification, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=XVIII-12-a&chapter=18&lang=en accessed 30 January 2015.

4.6.3 National Referral Mechanisms

Recommendations of the **Action Plan** related to the creation of National Referral Mechanisms (NRM) (part 3 in Chapter V) address one of the most important components needed to ensure guaranteed protection and assistance to the victims of trafficking. Point **V.3.1** of the Action Plan recommends “establishing National Referral Mechanisms by creating a cooperative framework within which participating States fulfil their obligations to protect and promote the human rights of the victims of THB in coordination and strategic partnership with civil society and other actors working in this field.”³⁹⁷ This cooperative framework aims at creating conditions under which the human rights of trafficked persons are respected and at providing an effective way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policy and procedures on a broad range of victim-related issues, such as residence and repatriation regulations, victim compensation and witness protection. NRMs can establish national plans of action and set benchmarks to assess whether goals are being met.³⁹⁸

According to the ODIHR’s pioneering handbook on this issue, NRMs are not rigid structures but flexible mechanisms that are tailor-made to fit each country’s patterns of trafficking cases, as well as its social, political, economic and legal environment; they may vary from country to country. However, NRMs should be designed to formalize cooperation between government agencies and non-governmental groups dealing with trafficked persons. An NRM usually includes a national coordinator (or coordinating body/structure), often a high-level government official, and a roundtable made up of senior representatives of government agencies and civil society. Together they develop recommendations for national policy and procedures regarding victims of trafficking. NRMs also often include ad hoc working groups that deal with specific issues relating to victims. NRMs are likely to be most effective if they are based on a formal co-operation agreement among the participants – for example, a memorandum of understanding – that sets out the specific role and duties of each participant.³⁹⁹

This understanding of NRMs corresponds to the Guideline 2 “Identification of Trafficked Persons and Traffickers” of the **OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking**: “Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.”⁴⁰⁰

The **UNICEF Guidelines on the Protection of Child Victims of Trafficking**, referring to the OSCE/ODIHR Handbook, reflects the similar approach: “Complementarity and co-operation among all organizations and institutions concerned are critical for the care and protection of child victims. Co-operation between governmental and non-governmental sectors should be based on a clear delineation of responsibilities and transparency. Due to the potentially complex legal situations which may arise, it is advisable that cooperation and specific roles be outlined by a written agreement among the key actors.”⁴⁰¹

In the same spirit, the **UNODC-CBSS assessment report “Human Trafficking in the Baltic Sea Region: State and Civil Society Cooperation on Victims’ Assistance and Protection”** provides four possible patterns of formalized co-operation in the format of Memoranda of Understanding: between law enforcement agencies and assistance service providers (State/civil society organizations); State (variable actors) and civil society organizations; criminal justice authorities and civil society organizations; and labour inspectorates and civil society organizations.⁴⁰² The emphasis (in practice) lies on the first two forms. MoU in these cases regulate duties and responsibilities of those engaged, the financial and legal terms under which NGOs are supposed to administer services to trafficked persons, and the general division of labour in the identification of victims, their referral to service providers, assistance and support systems (housing, medical, psychological counselling, legal and administrative support, re-integration measures), taking decisions on residence regimes, victims/witnesses protection and assistance during criminal proceedings, and regional co-operation for the safe return and re-integration of victims.⁴⁰³

Recommendations on NRMs are further specified in points **(V.3.2–3.6)** of the **Action Plan**, and focus on:

- ▶ providing guidance to facilitate the accurate identification and appropriate treatment of the victims of THB, in ways which respect the views and dignity of the persons concerned;
- ▶ combining the efforts of law-enforcement bodies, including specially established anti-trafficking units and police at local level, officials of migration and border services, social protection units, medical institutions, as well as NGOs and other civil society institutions as the most relevant actors to be involved in NRM activities;

397 For more details, see: OSCE/ODIHR, A Practical Handbook. Joining Efforts to Protect the Rights of Trafficked Persons (2004). Available at: <http://www.osce.org/odihr/13967?download=true> accessed 31 January 2015.

398 Ibid., p.15.

399 Ibid., p.15.

400 United Nations, UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), p.6.

401 United Nations, UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006), p.13.

402 United Nations, UNODC/Council of Baltic Sea States, Human Trafficking in the Baltic Sea

Region: State and Civil Society Cooperation on Victims’ Assistance and Protection (2010), p.26.

403 Ibid., p.28.

- ▶ establishing appropriate mechanisms to harmonize victim assistance with investigative and prosecutorial efforts⁴⁰⁴;
- ▶ drawing special attention to the need for enhanced co-operation between the police and NGOs in identifying, informing and protecting victims of THB;
- ▶ and linking the activities of NRMs with those of interministerial bodies, national coordinators, NGOs and other relevant national institutions to form across-sectoral and multidisciplinary team capable of developing and monitoring the implementation of anti-trafficking policies.

What really matters is that the first step is assistance – immediate and unconditional (as recommended by the **2013 Addendum** in point 1.1, Chapter 4, and clearly articulated in the OSCE commitments, EU Directives, CIS Model Law and international soft law guidelines). National Referral Mechanisms are the most effective and practical means to ensure the provision of such assistance. Thus they contribute to the restoration of the rights of trafficked persons as well as to the successful prosecution of offenders. It is a precondition for co-operation between trafficked persons and law enforcement officials, and not the other way around.

National Referral Mechanisms take the role of front-line stakeholders in the identification of trafficked persons, which is to be accomplished jointly by the law enforcement and NGOs, labour inspectors, migration officials, social service officials, medical personnel, border officers and others who chance across a potential case of trafficking. Prompt and accurate identification is the first step in a chain of steps that would be impossible without this initial one: identification leading to the referral of a presumed victim to relevant service providers for immediate protection and assistance.

This is why the **2013 Addendum**, in relation to “Identification and assistance”, as mentioned above, strongly recommended **(1.1)** “that relevant State authorities identify individuals as trafficked persons, who have suffered human rights abuses, as soon as there are reasonable grounds to believe that they have been trafficked, and, in accordance with national law, ensure that victims of THB are provided with assistance even before the investigation is initiated; ensuring that this assistance is not made conditional on the victim’s willingness to participate in legal proceedings, without prejudice to the national regulations on the conditions of the residence of the victim in the territory of the State.” This is a clear confirmation of the non-conditionality of assistance and the requirement that assistance comes first.

⁴⁰⁴ “Harmonization of assistance and protection with investigative and prosecutorial efforts” does not mean that such assistance and protection must depend on the readiness of trafficked persons to co-operate with law enforcement officials. On the contrary, trafficked persons are entitled to assistance and protection as victims of human rights violations and also as victims of the crime committed against them.

New and important is the recommendation of the **2013 Addendum (1.4)** on “facilitating, where appropriate, simplified procedures for relevant NGOs to obtain permits from the competent authorities to access State facilities, including social service and immigration reception centres, prisons and detention facilities, to contribute to the timely identification of trafficked persons.” If NGOs can be involved through simplified procedures, these are places where it may be possible to identify trafficked persons. Persons who have been trafficked and exploited but have not been recognized as victims often end up as offenders – either as “illegal migrants” or as violators of other laws. Their stay in detention centres or prisons means further abuse of their rights, double traumatization and potential re-trafficking if they are deported or forced to return to their place of origin.

With regard to the role of NRMs in the identification and referral of **trafficked children**, the **2005 Addendum** additionally recommends “developing, where necessary, national co-ordinating and referral mechanisms to specifically address protection and assistance measures which focus on the special needs of child victims of trafficking and ensure that child victims are referred expeditiously to appropriate services. Forming partnerships with civil society to develop a comprehensive approach to protect and assist child victims of trafficking.” And furthermore: “Any child presumed to be a victim of trafficking shall be referred without delay for appropriate assistance.” The creation and proper functioning of National Referral Mechanisms can ensure that this concept of “without delay” is carried out.

The **2013 Addendum** (point **1.2**) specifies new actors to be engaged in NRMs (namely, relevant NGOs, trade unions and social welfare services), emphasizes the need to provide them with the right to initiate referrals through a National Referral Mechanism (NRM) or other relevant structures to assist victims of all forms of trafficking, regardless of their nationality, and cooperate with relevant authorities by providing information in the identification process of THB victims. The **2013 Addendum’s** recommendation **(1.3)** on “ensuring that the process for decisions regarding all referrals of the victims of trafficking is fair, transparent and respects the human rights and fundamental freedoms of the victims, and that the decisions can be reviewed, in compliance with national law”, adds to this, especially the proposal offering the possibility of revising decisions which have been taken in order to ensure that the rights of trafficked persons are protected and observed.

The recommendations of the **Action Plan and the 2005 Addendum** became a starting point for new OSCE anti-trafficking commitments. Examples of such commitments are the MC.DEC/14/06 (“...the participating States are recommended to establish National Referral Mechanisms [NRMs], as well as to appoint national co-ordinators”); MC.DEC/8/07 (“Increase multi-agency co-operation and interaction on labour trafficking issues among their labour and immigration officials, law enforcement, judicial officials and social services providers,

including through the establishment or strengthening, as appropriate, of national referral mechanisms as recommended in the OSCE Action Plan to Combat Trafficking in Human Beings⁴⁰⁵); and MC.DEC/5/08 (“Urges the participating States to ensure that law enforcement agencies and where appropriate the judiciary co-operate with each other and with other bodies including social services, and where appropriate with relevant civil society organizations in order to enhance identification of victims of human trafficking”).

4.6.4 Shelters⁴⁰⁵

Part 4 of Chapter V on Protection is related to the creation of shelters for victims of trafficking. Such shelters, according to the recommendations of the **Action Plan (V.4.1)**, whether run by governmental bodies, NGOs or other institutions of civil society, should meet the needs of trafficked persons and “provide safety, access to independent advice and counselling in a language known by the victim, first-hand medical assistance, and an opportunity for reflection delay after the experienced trauma.” This recommendation was enhanced by the **MC.DEC/5/08**, which encouraged the participating States “to ensure that victims of human trafficking have access without undue delay to secure accommodation, psychological and medical treatment and counselling regarding their legal rights and the services available to them.”⁴⁰⁶ The factor of timing is possibly crucial for a victim; undue delay may ruin efforts to rescue the trafficked person as well as the criminal case as such.

The **Action Plan** mentioned that “shelters may be established on the basis of already existing facilities such as crisis centres for women.” Taking into account financial difficulties which may hamper the creation of new, specialized institutions, this recommendation is certainly still valid. Nonetheless, due to the realities of today, with increasing numbers of trafficked children and male victims, additional measures need to be undertaken. Existing facilities for children (such as shelters for child victims of violence, or for street and homeless children) or rehabilitation centres for men (the homeless or persons in difficult life situations) may well serve this goal if staff members at such facilities receive special training.

The **OHCHR Guideline 6, Protection and support for trafficked persons**, strongly recommended that States and, where applicable, intergovernmental and non-governmental organizations, should consider: “1. Ensuring, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal

proceedings.” This approach matches point V.4.2 in Chapter V of the **Action Plan**: “Providing access to shelters for all victims of trafficking, regardless of their readiness to co-operate with authorities in investigations”, and with Art. 12, point 6 of the **CoE Trafficking Convention**: “Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness. The **OHCHR Guideline** continues: “Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.”⁴⁰⁷

When trying to justify placing victims in locked facilities, authorities often argue that this is done for their safety and protection. In this regard the position of the **OHCHR** is clear: “Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.”⁴⁰⁸ It furthermore recommends “protecting the right of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe upon this right.”⁴⁰⁹ The **OHCHR Guideline 2** recommends “ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.”⁴¹⁰

Still, “immigration laws in many countries permit an automatic right of detention for unauthorized migrants, and it is under such provisions that many trafficked persons end up in prison or immigration detention facilities pending deportation.”⁴¹¹ With regard to freedom of movement, it is easier to apply the **OHCHR** recommendations to migrants who have a legal status in a country of destination or to victims of internal trafficking.⁴¹² Gallagher finds a solution to this legal problem in the “limitation clauses” of the International Covenant on Civil and Political Rights (ICCPR), but nevertheless she underlines that “it would be important to ascertain independently that the claimed restrictions do not separately violate other rights recognized by the ICCPR, for example, the prohibition of discrimination.”⁴¹³ Gallagher provides the opinion of the UN Human Rights Committee, which noted: “Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest of the protected....”⁴¹⁴ In other words, detention in

405 For practical issues related to the organization of victims' protection, see: International Organization for Migration, Handbook on Direct Assistance to Victims of Trafficking (2007). Available at: http://publications.iom.int/bookstore/free/IOM_Handbook_Assistance.pdf accessed 1 February 2015.

406 OSCE, Ministerial Council Decision No.5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach, MC.DEC/5/08, 5 December 2008.

407 United Nations, UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), p.8.

408 *Ibid.*, p.1.

409 *Ibid.*, p.3.

410 *Ibid.*, p.5.

411 Anne T. Gallagher, *The International Law of Human Trafficking*, Cambridge, 2010, p. 288.

412 *Ibid.*

413 *Ibid.*, p.291.

414 *Ibid.*

shelters of victims lawfully residing in a country should be regulated by law, consistent with their other rights, and necessary for protecting them.⁴¹⁵

The services that should be provided in shelters to victims (or presumed victims) are primarily health care and counselling. According to the **OHCHR**, it is also important that “trafficked persons should not be required to accept any such support and assistance and they should not be subject to mandatory testing for diseases, including HIV/AIDS.”⁴¹⁶ This is echoed by Art. 12, point (7) of the **CoE Trafficking Convention**, which requires that “each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.”⁴¹⁷ At shelters it should also be that “trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality.”⁴¹⁸ There is one more important clarification: “Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons.” However, “these provisions would not apply to trafficked asylum-seekers.”⁴¹⁹ This is because persons seeking asylum in a country other than their own, also when they have been trafficked, do so out of fear of retaliation and persecution from their own origin State.

Other provisions of the **OHCHR Guideline 6** include “providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters...” and “...with information in a language that they understand.”

The issues of physical safety of victims are covered by **Guideline 6**, provision 6, which recommends “ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons”, which also means “no public disclosure of the identity of trafficking victims” and “their privacy ... [is] respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial.” Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.⁴²⁰ The same concerns are reflected in Chapter V of the **Action Plan**, point (V.4.3): “Giving special

attention to ensuring security for personnel of such shelters, confidentiality of information obtained, and safety and privacy for victims of THB.”

The **Action Plan** also recommends (V.4.4) “using shelters to provide the kind of training opportunities for victims of THB which will facilitate their future reintegration, employment and independence, as well as improving their competitive capabilities after the experienced trauma.” Certainly, the implementation of this recommendation depends on the duration a trafficked person stays in a shelter, their individual needs, level of education, physical condition, and, not least, whether the shelter has received adequate funding from the State. In addition, it would be advisable to take into account that trafficked persons may be well-educated but have found themselves in a difficult life situation. In this case they may not need access to basic education or need literacy, communication or other skills while staying in a shelter. Rather such persons may need one-time social assistance or employment assistance, and possibly psychological help or legal advice.

The **Action Plan** placed the recommendations on the **protection of child victims of trafficking** in part 10. Still, its provisions can be included thematically here. For example, the recommendation (V.10.1) on “ensuring that the special needs of children and the best interests of the child are fully taken into account when deciding upon appropriate housing, education and care” should be considered in the context of the availability of special shelters for children. The **Action Plan** highlights the importance of education for such children and recommends, “in appropriate cases, if there is no direct threat to the safety of the child, providing the children with access to the State educational system”. This can be accomplished within special shelters for children. In some countries, this is being done with no discrimination for all those rescued.

The **2005 Addendum** also stressed the significance of special **shelters for children** (or, at least, measures to keep child victims separate from adults) by recommending: “providing in appropriate cases presumed child trafficking victims who are not nationals or residents of the country in which they are identified with appropriate status entitling them to stay, at least temporarily, in the country and be eligible to receive immediate assistance which should include safe shelter, medical and psychological care, legal assistance, social services and education.” Such care and services must be provided at shelters. The **Action Plan** specifically addressed the vulnerable situation of undocumented minors, recommending in this particular context (V.10.3) “considering the provisions outlined in the United Nations High Commissioner for Refugees Guidelines for the Protection of Unaccompanied Minors when elaborating policies targeted at this risk group, and in particular for those who are not in possession of identification documents.” The **Action Plan** also highlighted, in provision (V.10.4), the need to use “bilateral and/or regional agreements on fundamental principles of good reception of unaccompanied children in order to combine efforts targeted at the protection of children.” Later,

415 This approach should be applied to adult victims of trafficking. The fundamental difference between adult and child victims is based on the lack of full agency and, hence, the much higher vulnerability of a child whose “premature release from a secure place of care without individual case assessment (including risk assessment) could greatly endanger the child and expose him or her to further harm, including re-trafficking.” Anne T. Gallagher, *ibid.*, p. 294.

416 OHCHR Guideline 6, Art. 2.

417 Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art.12.

418 OHCHR Guideline 6, Art. 3.

419 *Ibid.*

420 *Ibid.*

in 2010, the Alliance Expert Coordination Team made a **Joint Statement** on “Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to Enhance Prevention of Child Trafficking”. This Statement called, *inter alia*, to “ensure that all children, including migrant, undocumented, unaccompanied, separated and asylum seeking children, receive immediate care and assistance unconditionally, regardless of their administrative status and on an equal footing with national children.”⁴²¹

In addition, it is advisable to remember that very young children may not recollect or even know the place/country of their origin, and/or that they may have been residents of the same country but of another city. Hence they should also be entitled to immediate protection and placement in a shelter until further data related to their origin become available. In the experience of service-providers, cases of long stays of children in shelters (due to complexities in identifying them) are not exceptional.

Special **needs of child victims** of trafficking are also addressed in the **OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (Guideline 8)**. These are:

- ▶ the rapid identification of child victims of trafficking;
- ▶ ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons;
- ▶ steps to identify and locate family members of a child victim who is not accompanied by a relative or a guardian;
- ▶ measures to facilitate the reunion of trafficked children with their families where this is deemed to be in their best interest and upon a risk assessment and consultation with the child;
- ▶ establishing adequate care arrangements that respect the rights and dignity of the trafficked child in situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child’s best interests;
- ▶ ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, in particular concerning decisions about his or her possible return to the family, with the views of the child given due weight in accordance with his or her age and maturity;

- ▶ specialized policies and programmes to protect and support children who have been victims of trafficking to provide such children with appropriate physical, psychosocial, legal, educational, housing and health-care assistance.

The **Guidelines** also contain recommendations on measures “to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation; protecting the privacy and identity of child victims and measures to avoid the dissemination of information that could lead to their identification; and measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking.”⁴²²

To conclude, shelters for victims of trafficking may be not the only effective solution for restoring victims’ rights. For most victims, the most desired outcome of investigation and prosecution (also through non-judicial means) would be real access to remedies, including compensation of unpaid wages and general compensation for suffered harm, as well as access to justice.

4.6.5 Compensation

Access to remedies, including compensation, was not given a separate sub-section in the **Action Plan**. However, in the entire group of protective measures, remedies indeed constitute the most empowering instruments.

The **Action Plan** addressed the issue of compensation in Chapter III (Investigation, Law Enforcement and Prosecution, part Criminalization) in the context of legal provisions for the use of confiscated proceeds of trafficking and related offences for the benefit of victims and “the establishment of a compensation fund for victims of trafficking and the use of the confiscated assets to help finance such a fund.”

Still, not all OSCE participating States have established State compensation funds for victims of trafficking. Arguments include limited State budgets, the need for adopting a new law, or that victims of trafficking have the same right for compensation as any other victims of crime and thus they should not be discriminated positively in this regard. Whatever the arguments, the **Action Plan** recommended (**V.6.2**) “considering, where not inconsistent with national legislation, legal measures to allow confiscated assets to be used to supplement government funding for programmes that address the needs of victims of THB and to compensate the victims in accordance with the gravity of the crime committed against them.” From this point it is clear that the participating States should have legal provisions permitting (or even demanding) the confiscation of criminal assets. But this is also not enough. There should

421 OSCE, *Alliance against Trafficking in Persons Expert Coordination Team Joint Statement* “Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to Enhance Prevention of Child Trafficking” (2010). Available at: <http://www.osce.org/home/72015?download=true> accessed 5 March 2015.

422 United Nations, UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), p.11.

be provisions for channelling THB-related confiscation assets to a State compensation fund (instead of them being directed straight to the State budget).

The **Action Plan** also refers to the issue of compensation in Chapter V (Protection, part 6 “Provision of social assistance”), recommending there (**V.6.2**) “considering, where not inconsistent with national legislation, legal measures to allow confiscated assets to be used to supplement government funding for programmes that address the needs of victims of THB and to compensate the victims in accordance with the gravity of the crime committed against them.” Social assistance to victims of trafficking and their reintegration is directly linked with their ability to claim and receive compensation for the harm suffered. If this is not done, they are often driven back to the starting point of their “survival project”. For them, compensation means social justice provided by the State. Ethically, this may matter even more than a verdict against a trafficker. Compensation empowers former victims and provides them an impetus to start a new life.

The subsequent OSCE commitments reflected the overall recognition of the value of guaranteed access to remedies (including compensation) for victims. For example, in the **MC.DEC/14/06** the Ministerial Council underlined the importance of providing effective access to justice for victims of THB, including the possibility to obtain compensation for damage suffered, and calls on the participating States to implement their obligations under the relevant provisions of the UNTOC and its Trafficking Protocol (Art. 14 of the Convention, “Disposal of confiscated proceeds of crime or property”, envisages that “1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures. 2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.”).⁴²³ The Protocol, Art. 6, point 6, requires that “each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”⁴²⁴

The OSCE Ministerial Council, in its **Decision No.8/07**, also called on participating States to “consider elaborating or strengthening their legislation that offers victims of trafficking for labour exploitation the possibility of obtaining compensa-

tion for damage suffered, including, where appropriate, restitution of wages owed to them.”⁴²⁵ The Ministerial Council, in its MC Decision No. 5/08, encouraged “the participating States to take measures in accordance with the conditions under their respective laws so that victims of human trafficking have the possibility of obtaining fair and appropriate compensation for damage they have suffered, and to claim damages during criminal and/or civil proceedings as appropriate.” It would be much easier for trafficked persons to obtain compensation if both criminal and civil procedures envisaged such an option.

Furthermore, the participating States, in the **MC.DOC/1/11/Corr.1**, recognized “the need to enhance the criminal justice responses to human trafficking, including the prosecution of traffickers and their accomplices, while ensuring that victims are treated in a manner that respects their human rights and that they are provided with access to justice, to legal assistance, and to effective remedies and other services as applicable.”

It was in the **2013 Addendum to the Action Plan** that the participating States, for the first time, included a separate provision under the title “Access to justice and appropriate remedies”. The recommendations of the 2013 Addendum provide for **(2.1)** “facilitating access for victims of trafficking, on an individual basis, to relevant legal counselling and legal assistance in order to enable them, in accordance with national laws, to use the opportunities of obtaining appropriate remedies, including compensation for material and moral damage suffered”, and **(2.2)** “establishing, where necessary, or facilitating access of victims of THB, regardless of their legal status or nationality, to a State compensation fund or other relevant mechanisms in accordance with national law.”

Good practices on this issue were collected in the OSCE/ODIHR study *Compensation for Trafficked and Exploited Persons in the OSCE Region*⁴²⁶, which also provided an overview of regulations in international law, examples of national frameworks for compensation (including state funds for the victims of violent crimes)⁴²⁷, judicial issues and challenges, and described the role of NGOs in advocacy for compensation and victim support.

Remedies in the trafficking context⁴²⁸ have been addressed at the international level by the **UN Trafficking Protocol**, which, in Art. 6, requires State Parties to ensure that their domestic legal systems contain measures which offer victims of traffick-

423 United Nations, UN Convention against Transnational Organized Crime (2000), Art.14.

424 United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), Art.6.

425 OSCE, Ministerial Council Decision No.8/07 Combating Trafficking in Human Beings for Labour Exploitation, MC.DEC/8/07, 30 November 2007.

426 OSCE/ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (2008). Available at: <http://www.osce.org/odihr/32023?download=true> accessed 6 February 2015.

427 *Ibid.*, p.32–34.

428 The Commentary to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, p.230, provides the list of effective and appropriate remedies which include: restitution (restoring the situation that existed prior to the violation), compensation (payable for damage caused by trafficking and economically assessable), rehabilitation (with a range of support services), and satisfaction and guarantees of non-repetition.

ing in persons the possibility of obtaining compensation for the damage suffered. In other words, as emphasized in the Commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, States only need to offer the legal possibility of seeking compensation.⁴²⁹ This means that the victims should be allowed to sue offenders for civil damages; provisions should exist that allow criminal courts to award criminal damages (paid by offenders) or to impose orders for compensation or restitution against persons convicted of trafficking offences; or provisions should be made for establishing dedicated funds or schemes to allow victims to claim compensation from the State for injuries or damages.⁴³⁰ The **CoE Trafficking Convention**, pursuing a much more human rights based approach, requires victims to be provided with appropriate information (Art. 15), including on the procedures they can use to claim compensation. Victims are required to be given access to legal assistance so that this right for compensation can be translated into practice. The Convention specifically provides that victims have the right to monetary compensation from traffickers, and requires, in cases when it is impossible to force traffickers to pay compensation, that States make sure this is done through other means, as for example, by establishing a compensation fund or adding resources from other confiscated proceeds.⁴³¹

Still, as is made clear in the ODIHR's study, since only "a small minority of trafficked persons claim compensation and even fewer receive compensation payments, states must make more efforts to improve compensation systems for the benefit of trafficked persons, in light of their international legal obligations. There is no single model that will guarantee that compensation is made to all or a majority of trafficked persons and there are numerous practical barriers which may prove difficult to overcome. They should therefore ensure that a multiplicity of remedies is available so that trafficked persons have some chance of success in making a claim."⁴³²

4.6.6 Provision of documents

In the Protection Chapter of the **Action Plan**, recommendation (V.5.1) regards documents: "Ensuring provision of documents, if necessary, as a first step to clarifying the victim's identity and status in countries of destination, thus making it possible to proceed with options of assistance in appropriate cases, such as repatriation, preferably voluntary, provision of a temporary or permanent residence permit, and/or legalization of employment." This should be implemented in each relevant case as soon as possible. In this recommendation, the wording "if necessary" refers to the fact that documents belonging to trafficked persons are usually taken away by traffickers at the destination, and labour migrants without legal status who

are nevertheless hired by employers (with or without a THB-related recruitment phase) immediately become so-called "undocumented migrants" vulnerable to exploitation.

The CoE Trafficking Convention, in its Art. 9 (Legitimacy and validity of documents) also refers to the importance of speedy verification of documents and requires that "at the request of another Party, a Party shall, in accordance with its internal law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in human beings."⁴³³ To facilitate the return and repatriation of victims who have no proper documentation, the Convention requires that "the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory."⁴³⁴

The **IOM**, in its Handbook on Direct Assistance to the Victims of Trafficking, underlines that "the geographical extent of the trafficking chain will have an impact on the use and relevance of documents. Clearly, in the case of internal trafficking, possession of identity documents may not have the same significance as in external trafficking cases. The point may not even arise, unless there is a legal requirement to always carry some form of identity documents and where traffickers deprive their victims of identity documents to control and coerce them into submission."⁴³⁵

In the regional context, the Handbook clarifies further that

...the use of genuine or bogus documentation may also be less prevalent because the victims, particularly children, often do not possess any form of identity papers and are clandestinely transported across porous 'green' borders. Again, however, this varies by country and region, depending on border controls, as well as the ease or difficulty of getting falsified documents. The use of documents is more prevalent in the case of intercontinental trafficking as this is more likely to involve the use of airplanes, trains or ferries, where the illegal entry will be an overt one requiring proof of identity and travel documents. Documents may be real, containing true information about the victim, or they may be falsified, using fake names or nationalities, and, not uncommonly, falsified birthdates to increase the age of minors. In such cases, the traffickers may give the passports or travel documents to the victim to pass through immigration or police control points and then collect them back again.

429 United Nations, Commentary to the UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, p.228.

430 Ibid.

431 Ibid., p.229.

432 OSCE/ODIHR, Compensation for Trafficked and Exploited Persons in the OSCE Region (2008), p.164.

433 Council of Europe, Convention on Action against Trafficking in Human Beings (2005).

434 Ibid., Art. 16

435 International Organization for Migration, Handbook on Direct Assistance to Victims of Trafficking (2007), p.29.

In the context of regional and transcontinental trafficking for sexual exploitation, the seizure of documents is a regular feature of the control and coercion mechanisms used by the traffickers, and the lack of documents in the victim's possession can be a strong indicator of trafficking. However, it must be borne in mind that the same is true in the case of the majority of asylum seekers and some instances of people smuggling, and this indicator will have to be judged on its merits and according to the context and circumstances of each case.⁴³⁶

Identity documents are a key to many other steps that must be taken to restore victims' rights. To accomplish the verification of personal data, the participating States are recommended (V.5.2) to enhance "co-operation amongst law enforcement bodies in the countries of origin, transit and destination, and responsible officials of all institutions involved in the restoration of rights of victims of THB, including the personnel of embassies and consulates of participating States in order to facilitate the speedy verification of personal data and the avoidance of undue or unreasonable delay." Quite often this is not easy and may take months, especially in case of child trafficking. Cases are known in which it was impossible to verify the identification of children within a year, whereby they were granted the citizenship of the destination country and placed in a child-care institution/dormitory⁴³⁷ for orphans. In other words, the country of destination acted in the best interest of the child and took full responsibility for his/her rehabilitation and integration. This is why the **2005 Addendum to the Action Plan** recommends "providing in appropriate cases presumed child trafficking victims who are not nationals or residents of the country in which they are identified with appropriate status entitling them to stay, at least temporarily, in the country and be eligible to receive immediate assistance which should include safe shelter, medical and psychological care, legal assistance, social services and education."

In addition, the **Action Plan** recommends (V.5.3) "informing identified victims of THB of their right to access to diplomatic and consular representatives of their country of nationality." Actually any person who is abroad automatically has this right. Trafficked persons, however, may be unaware of their right to contact their embassies, or have no contact details, or try to avoid such contacts due to fears of retaliation, forced return or persecution in their country of origin. They may also have justified grounds for seeking asylum, a case in which contacts with their embassy would not be, for them, the best solution

(comments on this issue are provided below in section "Ensuring the right to apply for asylum", p.87, as well as above in the section "Shelters", p.77).

4.6.7 Provision of social assistance

To implement Recommendation (V.6.1) of the **Action Plan** (Chapter on Protection) on "developing social assistance and integration programmes, including legal counselling in a language known by the victim, medical and psychological assistance and access to health care, to be made available either in shelters or other relevant institutions", it is necessary to know who is eligible for legal counselling, what kind of medical assistance and health care (and to whom) should be guaranteed, and what should be included in social assistance and integration programmes. According to the **OHCHR Recommended Principles and Guidelines** (Principle 8), "States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings."⁴³⁸ A similar provision is found in the **CoE Trafficking Convention**.⁴³⁹ The principle of non-conditionality – assistance and protection not being conditional to a victim's participation in the investigation of a THB case – means that trafficked persons (or presumed trafficked persons) should be eligible for "adequate physical and psychological care" immediately upon being rescued from an exploitation situation.

The **OHCHR** recommends that "legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers. States shall provide protection and temporary residence permits to victims and witnesses during legal proceedings.... Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Full account shall be taken of their special vulnerabilities, rights and needs."⁴⁴⁰ In this regard, the **2005 Addendum (11)** pays particular attention to the role of structures providing social assistance. It recommends "strengthening structures to promote social inclusion and (re)integration of child victims of trafficking in countries of origin and destination, taking into account the special needs of children." It is relevant to mention that efforts to provide foster care for such children or to ensure sustainable adoption remain especially challenging. Widespread opinions about the impact of trafficking experiences on a child's state of mind and mental health (and even "morals") often prevent potential adoptive families from accepting a formerly trafficked child.

436 Ibid., p.29.

437 Although UNICEF advocates moving away from institutionalized care and a number of countries have committed themselves to closing such institutions, in many countries the option of foster families or the adoption of children from an institution (especially a child with a record of having been trafficked) is hardly feasible. Potential adoptive parents usually do not dare face the challenges of rehabilitation and socialization of child-victims of sexual exploitation. The stigmatization of such children is truly a problem to solve.

438 United Nations, UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), p.1.

439 Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art.12.

440 United Nations, UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), p.1.

The **CoE Trafficking Convention** contains binding requirements on the issue of temporary residence permits. In Art. 10 of the Convention, where the importance of timely identification of victims is pointed out, it is stated: “Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.”⁴⁴¹ It is clear that identification of trafficked persons should be paramount. But if they are detained and prosecuted as migrants without regular status, this may likely lead to premature deportation, thereby depriving them of their right to be protected and assisted as victims of crime and human rights violations. Proper identification, as a precondition for assistance and protection, is crucial also for nationals trafficked within the borders of their country of origin.

The **CoE Convention**, in Art. 12 (Assistance to Victims), states that “each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery.” The Convention also provides State Parties with the minimum content of such assistance: a standard of living capable of ensuring subsistence; appropriate and secure accommodation; psychological and material assistance; access to emergency medical treatment; translation and interpretation services, if needed; counselling and information, in particular with regard to legal rights and available services, in a language they can understand; assistance to ensure that their rights and interests are presented and considered at appropriate stages of criminal proceedings against offenders; and access to education for children.

The scope of medical assistance and health care depends on a victim’s status, that is, whether they are legal residents or not: emergency medical treatment shall be provided to all, while in addition, “each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.”⁴⁴² The range of assistance for victims legally residing in the country of destination is broader in other terms as well. For example, they should be eligible “to have access to the labour market, to vocational training and education”⁴⁴³, and the **Convention** obliges the State Parties to adopt relevant rules to make this feasible.

The **Convention** highlights the necessity of taking “due account of the victim’s safety and protection needs”⁴⁴⁴, meaning that each case and each person is individual; there may be differences in what type of protection or safety measures they need. This individual approach is also reflected in the provision requiring that “each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.”⁴⁴⁵

The link between social assistance and social justice was rightfully reiterated in the OSCE anti-trafficking commitments. For example, the **MC.DEC/14/06** “underlines the importance of providing effective access to justice for victims of trafficking in human beings, including in the areas of counselling and information about their legal rights in a language that they can understand, as well as in providing the possibility to obtain compensation for damage suffered.”⁴⁴⁶ In **MC.DEC/8/07** the OSCE Ministerial Council called on participating States to “ensure that victims of trafficking for labour exploitation have access to justice”; with reference to the **Action Plan and the 2005 Addendum**, they should also “ensure the provision of assistance to victims of trafficking for labour exploitation, and in particular access to shelter, healthcare, legal assistance and social assistance ... and raise awareness about the availability of such services.”

4.6.8 Repatriation, rehabilitation and reintegration

Recommendations of the Action Plan, Protection Chapter V (**V.7.1–7.3**) related to “assisting the victims of THB in – preferably – voluntary repatriation to the country of origin with due regard for their safety and that of their families, and without undue or unreasonable delay”; “ensuring due process in all return and removal proceedings, taking into account a humanitarian and compassionate approach”; and “considering contributing to the rehabilitation and social reintegration of victims of THB by providing them with social and economic benefits”⁴⁴⁷ must be considered within the human rights based approach. Its content, in terms of repatriation, is provided by the **OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking**. In point 11, the OHCHR recommends that “safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their

444 Ibid.

445 Ibid.

446 OSCE, Ministerial Council Decision No 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive Approach, MC.DEC/14/06, 5 December 2006.

447 This issue is discussed in connection to the Action Plan Chapter IV, Prevention, on p.61–64

441 Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art.10.

442 Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art.12.

443 Ibid.

families.⁴⁴⁸ Failing to conduct a risk assessment before returning and repatriating a victim may result in extremely negative consequences, including, *inter alia*, re-trafficking, stigmatization and persecution of former victims and their families.

The **OHCHR Guidelines** further explain the need of “ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely).” The OHCHR recommends, “in partnership with non-governmental organizations, ensuring that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking. Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficking victims.”

The **CoE Trafficking Convention**, in Art. 16 (Repatriation and return of victims), obliges the State Parties receiving a victim, “with due regard for his or her rights, safety and dignity, facilitate and accept his or her return without undue or unreasonable delay.” As for State Parties returning a victim to their country of origin, the Convention requires that “such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.”⁴⁴⁹

To make repatriation a long-term solution, the State Parties to the Convention must “adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non-governmental organizations. These programmes aim at avoiding re-victimization...”⁴⁵⁰

It is also important that former victims have necessary information about service-providers in their country of origin prior to their return. In this regard, the Convention obliges the State Parties to make available to victims contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organizations, legal professions able to provide counselling and social welfare agencies.⁴⁵¹

The **Action Plan** recommendations on this issue were enhanced by the OSCE commitments taken in the **MC.DEC/14/06**, which “urges the participating States, in co-operation with international organizations and NGOs when appropriate, to seek

to diminish the risk for repatriated victims to be re-trafficked, particularly by addressing factors that make persons more vulnerable to trafficking in human beings such as poverty, discrimination, lack of access to education and economic opportunities, sexual abuse, and domestic violence and by conducting risk assessments to ensure that return of victims is done with due regard for their safety.”⁴⁵² Certainly this reflects a strategic approach to the root causes of THB whose implementation needs time, funding/resources and political will. There is, however, no other way to overcome and eliminate these roots of trafficking and protect repatriated victims from harm and renewed risk of being trafficked.

The most updated recommendations on the issue of repatriation, rehabilitation and reintegration, which were presented at the 2014 HDIM, were published in the **OSCE/ODIHR’s Guiding Principles on Human Rights in the Return of Trafficked Persons**.⁴⁵³ These Principles consist of “safe return”, “return conducted in due process”, “a set of protection measures when return is not an option”, “a set of special measures in returning child victims”, “return that should lead to a durable solution without further harm”, “access to effective remedies”, and, finally “co-operation and monitoring”. It would be advisable to ensure that the country of origin and country of destination “permit victims of trafficking who wish to return to their country of origin to do so without undue or unreasonable delay” and that the return of trafficked persons is preferably voluntary. It means that the trafficked person “must be able to make a free and informed choice, including through the availability of complete, accurate and objective information on the situation in the country of origin” and that no “coercive measures that would compel the person to return to the country of origin or to stay in the destination country” are applied.

“Forced return is permissible only when it has been established that the proposed return is safe and that it does not interfere with the rights of the person being returned, including the right to be protected from the risk of being subjected to re-trafficking, persecution, torture or inhuman or degrading treatment or punishment, and hence does not necessitate any additional protection measures.”⁴⁵⁴ It is important to assure that “safe” “refers to both the process and the outcome of return.”⁴⁵⁵

According to the **Guide**, “risk assessments should address: the risk of reprisals by the traffickers against the trafficked person and/or her/his family; the risk of being harassed, arrested, detained or prosecuted by the authorities; the social position of trafficked persons upon return; the availability of and actual access to social assistance programmes for victims of traffick-

448 United Nations, UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002), p.2.

449 Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art.16.

450 Ibid.

451 Ibid.

452 OSCE, Ministerial Council Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive Approach, MC.DEC/14/06, 5 December 2006.

453 OSCE/ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014). Available at: <http://www.osce.org/odihr/124268?download=true> accessed 20 October 2015.

454 Ibid.

455 Ibid.

ing; and the situation of the children of trafficked persons.... In cases of trafficking in children, the solution that is in the child's best interests must be determined in consultation with the child."⁴⁵⁶

With regard to the "due process" the **Guide** strongly recommends that "the process of returning trafficked persons should not result in a violation of any of their rights, including the right to due process of law. Decisions taken in relation to forced return must be non-arbitrary, individualized and lawful."

The **Guide** also states: "Forced return must involve a reasonable and objective examination of the particular circumstances of each individual affected by the return. Trafficked persons have the right to be heard prior to an individual measure being taken that will affect them, the right to be represented before a competent authority and the right to appeal a negative decision."⁴⁵⁷ In this context it is worth mentioning the **2013 Addendum's** provision that recommends "ensuring that the process for decisions regarding all referrals of the victims of trafficking is fair, transparent and respects the human rights and fundamental freedoms of the victims, and that the decisions can be reviewed, in compliance with national law." An opportunity to revise a decision that has been made is often needed if in the course of an investigation new information is received or a victim wishes to present such information.

The **2013 Addendum** also recommends (2.5) "ensuring that the necessary assistance is provided in the process of safe return and, through co-operation, where possible, in the reintegration of former victims of trafficking by the authorities, social services or NGOs, as appropriate, of the country of origin."

The **Guide** stresses that in some cases, return, even if voluntary, will not be possible, owing to ongoing safety and security concerns or humanitarian considerations. "In such cases, destination countries are obliged to consider complementary humanitarian or other immigration options, including the granting of temporary or permanent residence and, in the case of children and when deemed to be in the best interests of the child, resettlement in another country. States should have the capacity to provide both shortterm and longterm solutions as alternatives to return."⁴⁵⁸ These include: a reflection and recovery period; temporary residence permits for the duration of criminal proceedings; temporary residence on humanitarian or other grounds; and international or complementary/subsidiary protection on the basis of the right to seek and enjoy asylum from persecution. None should be conditional on the willingness of a victim to participate in criminal proceedings or his/her legal status in the country of destination.

One of the OSCE/ODIHR Guiding Principles is related to durable solutions without further harm, which means taking measures to avoid the re-victimization of victims in the form of their criminalization for status-related offences, such as unlawful entry or illegal work, or their arrest, prosecution and detention. The non-punishment clause is also applied here: "Trafficked persons should not be detained, charged, prosecuted or penalized (including through forced return) merely on account of their illegal entry or presence in a state, or for their involvement in unlawful activities, to the extent that such involvement is a direct consequence of their situation as trafficked persons, regardless of their ability or willingness to co-operate with the authorities."⁴⁵⁹ While recognizing the value of this clause, countries often tend to interpret such "unlawful activities" quite narrowly, limiting them to what seem relatively minor offences (for example, prostitution in countries that either prohibit it or regulate it under a code of administrative offences, or begging in those places where it is prohibited). Illegal migration and involvement in the selling of drugs are nearly always excluded from status-related offences, with the ones who benefit from this limited approach being traffickers. They are not caught, not prosecuted, and easily find a new labour force to exploit.

There are a number of other measures for preventing further harm, such as ensuring that the return process is conducted without discrimination of any kind, including the race, colour, sex, language, religion, national or social origin, minority status, or political or other opinions of the trafficked person. There must also be no gender discrimination in terms of access to assistance and support; no re-entry bans; and appropriate post-return assistance aimed at promoting victims' well-being and supporting their effective reintegration.⁴⁶⁰ Further harm can theoretically (and, unfortunately, does in practice) occur with the disclosure of personal data or information about the identity of victims by the media. Cases leading to tragic results have been reported by NGOs (as for example, the disappearance of a victim soon after she was interviewed on television and information was disclosed about her location). This is why the **Action Plan** recommends (V.7.4) "raising media awareness of the need to safeguard privacy by avoiding public disclosure of the identity of victims of THB, or publication of confidential information inimical to victims' security or to the cause of justice in criminal proceedings." This is important for the physical safety of the person concerned as well as for the success of investigation and prosecution.

All decisions with respect to child victims, regardless of whether or not they are unaccompanied, must be based on the primary consideration of the best interests of the child. This Guideline follows the **OHCHR Guideline 8 "Special measures for the protection and support of child victims of**

456 Ibid.

457 Ibid.

458 Ibid.

459 Ibid.

460 Ibid.

trafficking⁴⁶¹: child victims should be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs. This includes, *inter alia*, the assumption of age, the immediate granting of a temporary residence permit until a best interest assessment is conducted and a durable solution is found, giving due consideration to the views of the child on his/her future, appointing of a guardian and providing legal aid, safety and security. The **Action Plan**, adopted a year after the OHCHR Guidelines, included in this regard the provision (V.10.2) encouraging the participating States to decide “on the repatriation of a child victim of THB only after having taken account of all the circumstances of the specific case and if there is a family or special institution in the country of origin to ensure the child’s safety, protection, rehabilitation and reintegration.”⁴⁶²

Two years later, in 2005, the **CoE Trafficking Convention** included a provision dedicated to the **repatriation of child victims** and obliged the State Parties to conduct a risk and security assessment. As clearly required by the treaty, “child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.”⁴⁶³

The **2005 Addendum** also addressed the issue of the **return of child victims** of trafficking, and recommended “making available special assistance and protection when it is in the best interest of the child to return him/her to the country of origin, providing returning children with appropriate care for the return process and supporting the monitoring, by the authorities in the country of origin of their well-being upon return.”⁴⁶⁴

The **OSCE/ODIHR Guide (2014)** emphasizes that the decision to return a child victim of trafficking can only be made once secure and concrete arrangements for long-term care and custodial responsibilities have been established in consultation with the responsible authorities in the country or place of origin.⁴⁶⁵

4.6.9 Provision of a reflection delay and temporary or permanent residence permits

The recommendations of the **Action Plan** in the chapter on Protection, part 8, introduce provisions (and concepts) that are crucially important for protecting victims and restoring their rights: (V.8.1) “Considering the introduction of a reflection delay to give the victim due time to decide whether or not to act as a witness”; (V.8.2) “Considering on a case-by-case basis, if appropriate, the provision of temporary or permanent residence permits, taking into account such factors as potential dangers to victims’ safety”; and (V.8.3) “Considering, if appropriate, the provision of work permits to victims during their stay in the receiving country”. In 2004, for example, the EU Directive 2004/81/EC⁴⁶⁶ made these requirements a part of the EU anti-trafficking legislation with regard to protection and assistance to the victims of trafficking who are non-EU nationals.

Why are these points so important? In the 2002 Porto Declaration the participating States agreed that they “will consider adopting legislative or other measures that permit victims of trafficking to remain in our territory, temporarily or permanently, in appropriate cases, and giving consideration to humanitarian and compassionate factors.” This approach was supported and made more specific in the **CoE Trafficking Convention**, which, in Art. 13 (Recovery and reflection period), obliged each State Party “to provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned⁴⁶⁷ to recover and escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her.... During this period, the Parties shall authorise the persons concerned to stay in their territory.” The **Convention** clarified that during the reflection period, victims shall be entitled to a set of immediate assistance measures (Art. 12, points 1-2).⁴⁶⁸

The **OSCE/ODIHR Guiding Principles** on Human Rights in the Return of Trafficked Persons provide more information on this issue. The Guide clarifies that participating States can regularize the status of trafficked persons for a number of reasons and in a variety of ways, including by granting a reflection and recovery period to victims of trafficking. During this time

461 United Nations, UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002).

462 Ibid.

463 Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art.13.

464 OSCE, Permanent Council Decision No.685 Annex “Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance”, PC.DEC/685 Annex 7 July 2005.

465 OSCE/ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014).

466 European Union, EU Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004L0081> accessed 4 October 2015.

467 Experts dealing with the severe traumas of trafficked persons believe that their recovery may need long-term care strategies that are longer than the 30 days of such reflection periods. For more details, see: Cathy Zimmermann, *The health risks and consequences of trafficking in women and adolescents. Findings from a European Study*. London, 2003. Also: Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment. OSR/CTHB, 2013.

468 The Convention makes a reservation by stating that “the Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.”

support (both physical and psychological), legal advice and information tailored to an individual's gender, age and culture is to be given, with the aim of providing victims with the time and means to reflect on their options, including whether they will co-operate with criminal justice agencies in the investigation and prosecution of the perpetrators.⁴⁶⁹

The **CoE Convention** and the **OSCE/ODIHR Guiding Principles** similarly suggest the option, in appropriate cases, of granting temporary or permanent residence permits to victims of trafficking. The **Convention** provides, in Art. 14, that “each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both: a. the competent authority considers that their stay is necessary owing to their personal situation; and b. the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.”

The **OSCE/ODIHR Guide** follows this and includes more details, whereby it recommends “issuing a temporary residence permit on the basis of the (usually criminal) legal proceedings against traffickers for the duration of both the pre-trial and trial periods”, and “granting temporary residence on humanitarian or other grounds concerning, for example, respect of the principle of *non-refoulement*, an inability on behalf of the returning and receiving states to guarantee a safe and secure return and the risk of re-victimization, including through re-trafficking. Where the results of a risk assessment determine that a trafficked person is likely to face serious reprisals or is at risk of re-trafficking, then this may, in certain circumstances, trigger the obligation of *non-refoulement*.”⁴⁷⁰ The content of these requirements/recommendations is the same.

The recommendations of the **Action Plan** on a reflection period and, as well, on work permits for trafficked persons legally staying in the country of destination (**V.8.3**) were further developed and transformed into a commitment by the **MC.DEC/8/07**, in which the OSCE Ministerial Council called on participating States, “in conformity with domestic law and international obligations, [to] provide a reflection delay and grant temporary or permanent residence permits to victims of trafficking, allow for the provision of work permits to victims during their stay, and raise awareness of such opportunities.”⁴⁷¹

Furthermore, in the **MC.DEC/5/08** the Ministerial Council called on the participating States “to ensure that, when authorities have reasonable grounds to believe that a person is a victim of human trafficking, that person will not be deported until the identification process has been adequately completed, and that

person has been given appropriate assistance, including, if required under domestic law, an appropriate recovery and reflection period during which deportation shall not be enforced.”⁴⁷²

This was repeated in the **2013 Addendum**, which recommended (**2.3**) “recognizing the need of victims of THB to have adequate time to recover from trauma, and providing, in conformity with domestic law and international obligations, a reflection delay, granting temporary or, where applicable, permanent residence permits to victims of THB, as well as the possibility of victims obtaining work permits during their stay and raising awareness of such opportunities.” The reiteration of this recommendation meant that irrespective of the legal requirements or the long-standing recommendations and political commitments, the enforcement of a reflection period remains an issue that needs to be addressed. Work permits constitute an effective instrument to empower victims, providing them with the opportunity to earn money legally for their immediate needs, and to stabilize the rehabilitation process. In contrast, the lack of work permits makes victims fully dependent and uncertain about their future.

4.6.10 Ensuring the right to apply for asylum

Part 9 in the chapter on Protection of the **Action Plan** and its recommendations are based on: a) the extreme vulnerability to THB of refugees (including in detention facilities); b) the high probability of trafficked persons in groups of refugees; and c) the serious grounds for seeking asylum by trafficked persons who may fear retaliation and persecution in their country of origin.⁴⁷³ These are the reasons for the inclusion of recommendation (**V.9.1**) on “ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including victims of THB, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through effective application of the principle of *non-refoulement*.” This reflects the 2002 **OHCHR Recommended Principles and Guidelines**, which emphasize at the beginning that “anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.”⁴⁷⁴

This also meets the vision of the **UNHCR** and its engagement in the fight against THB. As was forcefully explained in the UNHCR compilation of international instruments for tackling the issue, “Refugee Protection and Human Trafficking: Se-

469 OSCE/ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014).
470 Ibid.

471 OSCE, Ministerial Council Decision No.8/07 Combating Trafficking in Human Beings for Labour Exploitation, MC.DEC/8/07 30 November 2007.

472 OSCE, Ministerial Council Decision No.5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach, MC.DEC/5/08 5 December 2008.

473 This is even more relevant in conflict situations or in post-conflict areas for populations affected by displacement for any reason.

474 United Nations, UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002).

lected Legal Reference Materials⁴⁷⁵, firstly, “the UNHCR has a responsibility to ensure that refugees, internally displaced persons (IDPs), stateless persons and other persons of concern do not become victims of human trafficking. Secondly, UNHCR has a responsibility to ensure that individuals who have been trafficked and who have a wellfounded fear of persecution if returned to their country of origin are recognized as refugees and afforded international protection. Lastly, as part of the UN’s interagency response to combat trafficking, UNHCR has a responsibility to ensure that victims of trafficking without international protection needs are referred on to appropriate actors which can provide them with support and assistance.”⁴⁷⁶

The UNHCR gives a precise explanation of who, among trafficked persons, is eligible for the status of refugee: “While all victims of trafficking are subject to grave abuses of their human rights, not every victim will qualify for international refugee protection. In order to be recognized as a Convention refugee, an individual who has been trafficked must meet all the requirements of the 1951 *Convention Relating to the Status of Refugees* and/or its 1967 Protocol. Victims of trafficking who do not meet the criteria of the 1951 Convention but are nevertheless in need of international protection may qualify for complementary forms of protection based on *non-refoulement* obligations under international human rights law or the national law of the country in which they are in. Other victims of trafficking may be entitled to various forms of assistance under either the *Anti-Trafficking Protocol* or regional anti-trafficking conventions. Such measures, however, vary considerably from one state to another and, in all cases, are outside the international refugee regime. Additional entitlements may arise under international human rights law.”⁴⁷⁷

One more explanation can be found in the Commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking. The Commentary clarifies that “a claim for international protection in the case of trafficking can arise in different circumstances. For example: (i) Where the victim has been trafficked to a country other than her/his own and seeks the protection of the host State; or (ii) Where the victim, fearing trafficking or having already been trafficked within her or his own country, manages to escape and flee to another country in search of protection.”⁴⁷⁸

The right to seek asylum is positively addressed in the **UN Trafficking Protocol**, which, in its Art. 14 (Saving clause), states that “1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.” Moreover: “2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.”⁴⁷⁹

Since it refers to the UN Trafficking Protocol, it is advisable to take into account the commentary provided by the **Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocols Thereto**, which explains that under the basic principle it is established “that any rights, obligations or responsibilities applied to a State party prior to the Protocol are maintained and not affected by the Protocol. The Protocol does not narrow or diminish rights, obligations or responsibilities; it only adds to them to the extent that is provided for in the text (Art. 14 of the Protocol). Thus, for example, requirements established by different instruments for dealing with asylum seekers and victims of trafficking would apply jointly to the same case whenever a victim requests political asylum.”⁴⁸⁰

As far as regional instruments are concerned, the **CoE Trafficking Convention**, for example, in Art. 14 (Residence permit) and in Art. 40 (Relationship with other international instruments), indicates that “each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum”, and that “nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.”⁴⁸¹

In 2014, the OSCE/ODIHR, in its Handbook **Guiding Principles of Human Rights in the Return of Trafficked Persons**, calls for granting international or complementary/subsidiary protection on the basis of the right to seek and enjoy asylum from persecution. The OSCE reiterates that “the granting of asylum should not be made conditional on the willingness of the victim of trafficking to participate in legal proceedings. Moreover, when determining the refugee status or need for

475 United Nations, UNHCR, *Refugee Protection and Human Trafficking: Selected Legal Reference Materials* (2008). Available at: <http://www.refworld.org/pdfid/498705862.pdf> accessed 15 February 2015. This publication includes international criminal law, international human rights law, international refugee law, international labour law, resolutions of the General Assembly, regional law and policy documents, including the relevant OSCE Ministerial Council Decisions (MC.DEC/8/07; MC.DEC/14/06; 13/05; 13/04; OSCE Action Plan and its 2005 Addendum).

476 *Ibid.*, pp.11–12.

477 *Ibid.*, p.12.

478 United Nations, *Commentary to the Recommended Principles and Guidelines on Human Rights and Human Trafficking*, p.69.

479 United Nations, *Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocols Thereto* (2010).

480 *Ibid.*, p.255.

481 Council of Europe, *CoE Convention on Action against Trafficking in Human Beings*, Art.14 and Art.40.

other forms of international protection of a trafficked person, due consideration should be given to the different risks of reprisals or retaliation by perpetrators of trafficking that male and female victims may face. Finally, the fact that a trafficked person entered or remained in the country of destination without legal authorization should not affect her/his access to asylum proceedings or the outcome of those proceedings.”⁴⁸²

To conclude, it is highly advisable to take into account also the **UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (1997)** that are relevant to child victims of trafficking. These include: “Children should always have access to asylum procedures, regardless of their age; Children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection; Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children.”⁴⁸³ Moreover: “All efforts must be made to have them released from detention and, placed in other appropriate accommodation.”⁴⁸⁴ For general issues related to adult victims of THB, extremely helpful are the **Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked.**⁴⁸⁵

4.6.11 Protection of children

The recommendations of the **Action Plan**, Chapter V, part 10, related to the protection of child victims of trafficking, with regard to specific issues of protection, have been commented on above according to topic. They have been integrated into the various sub-sections, as for example, provision (**V.10.1**) on “ensuring that the special needs of children and the best interests of the child are fully taken into account when deciding upon appropriate housing, education and care” is found in the section “*Shelters*”. The approach to protecting child victims was considerably strengthened in 2005 by the **Addendum Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance**.

The **2013 Addendum** placed even more emphasis on the protection of child victims of trafficking, and specifically addressed new forms of THB-related exploitation of children. In provision 1.5, the **2013 Addendum** recommended “enhancing the capacity of police, social workers and other public authorities who may come in contact with children and other individ-

uals trafficked and exploited in forced and organized begging to ensure prompt response to their particular needs, with the objective to immediately remove, where possible, victims from harmful and exploitative situations.” By emphasizing forced and organized begging as a form of exploitation particularly harmful for trafficked children, the **2013 Addendum** opened a new page in the fight against child trafficking. Child victims exploited in forced begging rarely attract the attention of social services or law enforcement agencies. The problem is even more challenging when such children are forced to beg (or commit petty crimes, such as pickpocketing) by their parents. Rescuing such children means engaging them in long-term rehabilitation programmes that separate them from criminal networks completely and provide opportunities for education and socialization. As mentioned above (p.82–83), it is nearly impossible to rely on adoption or even foster families for their care due to the wide-spread negative presumption that the influence of a criminal environment or the impact of their exploitation, in whatever form, may have been too strong and destructive in a child for an adoptive family to overcome. Quite a number of NGOs and serviceproviders (from Russia, Albania, as well as other places) have reported that attitudes of this kind obstruct the rehabilitation of child victims and lead to their possible re-trafficking, irrespective of protective measures that have been taken. Given the complexity of the problem, it is highly advisable to do more than just “remove” victims from exploitative and harmful situations. To achieve results that are sustainable and meet the best interests of the child, measures must be established that provide psychological and medical assistance, safe housing, individually designed empowerment programmes and longterm social support.

4.7 Updating Chapter VI: Follow-up and Coordination Mechanisms

In its final chapter, the **Action Plan** is dedicated to follow-up and coordination mechanisms. These two aspects are highly effectual in mobilizing State agencies in the fight against THB. The **Action Plan** recommends (**VI.1**) “to consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements”; and (**VI.2**) “to consider establishing Anti-Trafficking Commissions (task forces) or similar bodies responsible for coordinating activities within a country among State agencies and NGOs, and for elaborating measures to prevent THB, to punish perpetrators of THB and to protect its victims.”

A National Rapporteur or an equivalent mechanism is a means for obtaining the most realistic and evidence-based data on THB at the national level, for assessing the scope of trafficking and the effectiveness of the anti-trafficking measures being taken by a State, and, drawing on this data collection and analysis, for producing recommendations for the government and the parliament. This vital role was already described in 1997 in **The Hague Ministerial Declaration on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploita-**

482 OSCE/ODIHR, *Guiding Principles on Human Rights in the Return of Trafficked Persons* (2014), p.22–23. Available at: <http://www.osce.org/odihr/124268?download=true> accessed 15 February 2015.

483 UNHCR *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* (1997). Available at: <http://www.refworld.org/docid/3ae6b3360.html> accessed 15 February 2015.

484 *Ibid.*, p.10.

485 United Nations, UNHCR, *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked* (2006). Available at: <http://www.refworld.org/docid/443679fa4.html> accessed 15 February 2015.

tion (under the **Dutch Presidency of the European Union**). This Declaration was one of the first in a series of policy documents highlighting the necessity of national monitoring and reporting in the fight against trafficking. **The Hague Declaration** encouraged the EU Member States at the ministerial level to: “Provide or explore the possibilities for the appointment of national rapporteurs, who report to Governments on the scale, the prevention and combating of trafficking in women; Develop criteria for reporting on the scale, nature and mechanisms of trafficking in women and the effectiveness of policies and measures concerning this phenomena; Encourage the cooperation of national rapporteurs on a regular basis.”⁴⁸⁶ It was followed by the **2003 Resolution of the Council of the European Union**, which invited the Commission and the member States to “promote measures to set up a monitoring system on trafficking in human beings in order to provide updated data through the continuous and regular collection of information from the competent National Authorities such as National Bureaux and National Rapporteurs.”⁴⁸⁷

In 2009, the **Council of the EU, in its Conclusions on establishing an informal EU network of National Rapporteurs or Equivalent Mechanisms on THB**, developed its well-established position further, stating that “bearing in mind that many Member States have already appointed a National Rapporteur or an equivalent mechanism and also taking into account the various reasons why certain tasks exercised by such bodies in some Member States are bound with the National Coordinator or National Task Force ... [e]ach Member State, on the basis of national conditions, is invited to designate a National Rapporteur or equivalent mechanism, with the scope of activity that includes collection of information and advising on human trafficking to participate in the activities of the network.”⁴⁸⁸ The Council of the EU stated that National Rapporteurs are invited to “contribute to the exchange of best practices and sharing of experience at a national and European level; contribute to existing efforts to develop indicators and criteria that will improve the comparability and consistency of information and assist in the development of the European Union activities related to statistics on THB; contribute to gathering and analysing qualitative and quantitative information related to THB, which has been collected by National Rapporteurs or equivalent mechanisms in the course of their activities, while fully respecting the applicable rules on the protection of personal data.”⁴⁸⁹

Article 19 of the **Directive 2011/36/EU** provides for the formal establishment of national rapporteurs or equivalent mechanisms (NREMs) in charge, *inter alia*, of carrying out assessments of THB trends, measuring the results of anti-trafficking action, including the gathering of statistics in cooperation with civil society organizations, and reporting. The Directive further requires the Member States to facilitate the tasks of an Anti-Trafficking Coordinator (ATC) and transmit the information referred to in Article 19 to the ATC. On the basis of this, the ATC is to contribute to the Commission’s biannual progress reports.

According to the “Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings”⁴⁹⁰, an informal network of NREMs was established under the Council Conclusions adopted on 4 June 2009. Together with the EU Presidency, the EU ATC holds biannual meetings with the network. This plays an important role in discussing issues related to the collection of comparable data and assessing trends based on commonly developed and agreed-upon reporting templates, in line with Articles 19 and 20 of the Directive.⁴⁹¹

As for the Council of Europe, the **CoE Trafficking Convention** also contains a relevant provision on National Rapporteurs. Its drafters used the same wording as found in the **OSCE Action Plan**: “Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.” As an example of good practice, the Explanatory Report to the Convention, commenting on Art. 29 “Specialised authorities and co-ordinating bodies”, refers to the rich experience gained by the Dutch National Rapporteur. This is an independent institution, with its own personnel, whose mission is to ensure the monitoring of anti-trafficking activities. It has the power to investigate and make recommendations to persons and institutions concerned and makes an annual report to the Dutch Parliament containing its findings and recommendations.⁴⁹²

The OSCE anti-trafficking commitments in this regard are clear. The Brussels OSCE **Ministerial Council Decision No 14/06** “urges the participating States to promote a comprehensive approach to combating all forms of THB through national, regional and international arrangements, cooperation and coordination between law enforcement personnel, labour inspectorates, social protection units, medical institutions, immigration and border service officials, civil society organizations,

486 <http://www.legislationline.org/documents/action/popup/id/8747> accessed 16 February 2015.

487 European Union, EU Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women (2003/C 260/03). Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/council_resolution_20_oct_2003_en_1.pdf accessed 11 September 2015.

488 European Union, EU Council Conclusions on establishing an informal EU network of National Rapporteurs or Equivalent Mechanisms on THB (2009). Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/108312.pdf accessed 16 February 2015.

489 Ibid.

490 European Commission, Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings (COM(2014)635 final). Available at: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20141017_mid-term_report_on_the_2012-2016_eu_strategy_on_trafficking_in_human_beings_en.pdf accessed 18 February 2015.

491 Ibid.

492 Council of Europe, Explanatory Report to the CoE Convention on Action against Trafficking in Human Beings, point 298.

victim support services, and the business community and other any other relevant actors, also including a gender sensitive approach. To this end, the participating States are recommended to establish National Referral Mechanisms (NRMs), as well as to appoint national co-ordinators". And further-on: the Ministerial Council "Urges the participating States, ..., to improve research and the system of data collection and analysis, ..., in order to better assess the character and scope of the problem and develop effective and well-targeted policies on trafficking in human beings. To this end, the participating States are recommended to consider appointing National Rapporteurs or similar independent monitoring mechanisms."

Although stronger wording on this issue (such as "we commit ourselves to appoint...", or "we shall appoint...") would have been unacceptable for the participating States, the OSCE OSR/CTHB promotes the establishment of National Rapporteurs or equivalent mechanisms as an important step towards implementing 1) comprehensive qualitative and quantitative data collection, research and analysis of the trafficking situation in the participating State concerned, and 2) a systematic analysis of the effectiveness of measures and policies undertaken to prevent and combat THB with a view to improve understanding about the nature of the problem in its various forms within the participating States, evaluate the effectiveness and impact (both positive and unintended negative consequences) of government policies and actions against THB and in support of its victims, and present actionable recommendations to improve policies and practices addressing all forms of trafficking.⁴⁹³

Twenty-four OSCE participating States had established a THB monitoring mechanism by 2008. In response to an OSCE SR/CTHB questionnaire, several participating States responded that they had established an "Independent National Rapporteur". There were several variations in the format this rapporteur took.⁴⁹⁴ For example, The Netherlands has utilized such a model since 2000, whereby important features associated with the independence of its National Rapporteur position (and staff) were stressed in the questionnaire, such as an annual report, "which can include directing criticism at the way governmental institutions at the various levels are handling things."⁴⁹⁵ Sweden has created a designated National Rapporteur mechanism implemented by a police officer affiliated with the National Criminal Investigation Department structure. Germany has given this task to the German Bundeskriminalamt (Federal Criminal Police Office), which produces an annual Federal Situation Report on Trafficking in Human Beings. In the United States, the Department of Justice introduced the production of an annual report entitled Assessment of U.S. Government Efforts

to Combat Trafficking in Persons. In addition to this U.S. TIP Report, the Department of Justice, in its oversight role, also prepares a report for the United States Congress detailing the United States' efforts, entitled the Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons. In Belgium the function of a NR is held by the Centrum voor Gelijkheid van Kansen en Racismebestrijding (Centre for Equal Opportunities and Opposition to Racism); it provides a critical review of Belgium's efforts in the light of international standards, also including a victim-centred perspective as well as a review of the criminal issues involved. In Lithuania the Ministry of the Interior commissions an independent report from a research institute or similar organization at the end of each year to evaluate the implementation of the National Action Plan and the general situation regarding THB in Lithuania. In Finland, Ms. Eva Biaudet, the former OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings, was appointed as an Ombudsperson on Minorities and the Finnish National Rapporteur on Human Trafficking. National Rapporteurs or equivalent reporting mechanisms have also been established in Belarus, Ukraine, Tajikistan and several other participating States.

More recent information on the establishment of National Rapporteurs or equivalent mechanisms in EU Member States is provided by the EU through its website⁴⁹⁶, which includes well-structured national data (general information; institutional and legal framework; implementation of anti-trafficking policy; EU and international co-operation; and resources). There are also various EU models for this function. Denmark, for example, has not appointed a National Rapporteur, rather anti-trafficking activities in Denmark and the impact of such efforts are monitored by the National Centre of Investigation (NCI) of the Danish National Police and the Danish Centre against Human Trafficking (CMM).⁴⁹⁷ The Czech Republic has assigned the function of a National Rapporteur to the Ministry of Interior (Security Policy Department Analyses and Strategies Unit).⁴⁹⁸ Other countries have decided to combine coordinating and monitoring functions within one body. For example, in Croatia a national anti-trafficking coordinator was appointed as the equivalent mechanism of a national rapporteur.⁴⁹⁹ In Hungary the post of a National Coordinator, established in 2008, is an equivalent mechanism to that of a National Rapporteur; the position is held by the Deputy State Secretary for EU and International Relations of the Hungarian Ministry of Interior.⁵⁰⁰ In Portugal a National Rapporteur was nominated in January 2008; in accordance with the National Action

493 *Ibid.*, pp. 23–24.

494 *Ibid.*, pp. 57–67.

495 OSCE, OSR/CTHB, 2008 Annual Report "Efforts to Combat Trafficking in Human Beings in the OSCE Area: Coordination and Reporting Mechanisms". Available at: <http://www.osce.org/cthb/36159?download=true> accessed 16 February 2015. The Annual Report also provides examples from Sweden, Azerbaijan, Cyprus, Portugal, Latvia, Norway, Czech Republic, Switzerland, Serbia, and some other participating States.

496 http://ec.europa.eu/anti-trafficking/member-states_en accessed 19 February 2015.

497 http://ec.europa.eu/anti-trafficking/content/nip/denmark_en#2.%20INSTITUTIONAL%20AND%20LEGAL%20FRAMEWORK accessed 19 February 2015.

498 <http://ec.europa.eu/anti-trafficking/national-rapporteurs/czech%20republic> accessed 20 February 2015.

499 <http://ec.europa.eu/anti-trafficking/national-rapporteurs/croatia> accessed 20 February 2015.

500 <http://ec.europa.eu/anti-trafficking/national-rapporteurs/hungary> accessed 20 February 2015.

Plan the NR also exercises the role of National Coordinator.⁵⁰¹ These are just a few examples of these two functions having been merged into one.⁵⁰²

Indeed, there is no obligatory format. According to the SR/CTHB, “governments should decide which type of mechanism is most appropriate and effective within their own institutional, legal and financial constraints. However, while variations of models for issuance of government reports may all constitute a ‘reporting mechanism’ – and be satisfactory means of producing descriptive accounts of a country’s activities – they are not necessarily equivalent tools for taking stock of and in forming policy and practice.” In this regard, a certain independence of such national mechanisms and functions is necessary so that the activities of governmental agencies engaged in combating THB can be assessed critically.

The other crucial role in ensuring efficient responses to THB at the national level belongs to National Co-ordination Mechanisms (NCMs). The **Action Plan** recommends “to consider establishing Anti-Trafficking Commissions (task forces) or similar bodies responsible for coordinating activities within a country among State agencies and NGOs.” The participating States have been much more responsive in this area, with the vast majority having created national coordinating structures. While these often differ regarding their composition or the status of NGOs as participants, nonetheless their mandate and mission are generally very similar.

As stated in the **SR/CTHB’s 2008 Annual Report** dedicated to this particular issue, “National Co-ordination Mechanisms (NCMs) exist to provide leadership for the co-ordination of concrete anti-trafficking efforts and activities and also to foster positive collaboration in the pursuing and achieving of a participating State’s anti-trafficking objectives domestically and internationally. The fundamental purpose of the existence of an NCM is to organize the collective efforts of a country to produce the most effective and significant anti-trafficking results. This requires that such mechanisms, as far as they can, synthesize and integrate different missions, competencies, responsibilities, authorities, expertise, and perspectives into a unified and coherent operational vision and approach.”⁵⁰³

The establishment of a coordinating mechanism is fully in line with the OSCE commitments, starting from the **Vienna Ministerial Decision MC(8).DEC/1**, in which the Ministerial Council encouraged “the nomination, where appropriate, of governmental representatives on trafficking to coordinate national activities and to ensure regional and international co-operation and to make this contact information available

to other participating States.” In the **Porto Declaration on Trafficking in Human Beings (MC(10).JOUR/2)**, the participating States reiterated “the need for national strategies in order to unite efforts directed towards combating trafficking in human beings and to enhance co-ordination among national, international and regional organizations in this field.” They stressed that “this need could be met through measures such as appointing interministerial bodies and national coordinators, or, as appropriate, other relevant bodies or mechanisms.” In the Brussels **OSCE Ministerial Council Decision MC.DEC/14/06**, the Ministerial Council “recommended to establish National Referral Mechanisms (NRM) as well as to appoint national co-ordinators.”

The **CoE Trafficking Convention**, in addressing this issue, imposes an obligatory and straightforward provision (Art. 29): “Each Party shall adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments’ departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies.” Other regional organizations also reiterate the need for ensuring national coordination by special bodies. For example, the **CIS Programme of Co-operation in Combating THB** provides for the establishment of an Institution of National Coordinator for combating human trafficking; the majority of the CIS participating States have implemented this requirement.

As mentioned above, information about the National Coordinators of the EU Member States, including their functions and composition, are found on the EU website.⁵⁰⁴ It is clear that there are many national variables regarding the level of the National Coordinators and which Ministry they are affiliated with, as well as the status of NGOs as participants of interagency coordinating commissions or other mechanisms. Most frequently such commissions are headed by the Deputy State Secretary, the Prosecutor General, or the Minister/Deputy Minister of Justice or the Interior. Less frequently they are headed by the Minister/Deputy Minister of Social Protection and Labour, or the Minister/Deputy Minister on Women’s Issues. Rarely is a National Coordinator a full-time job. The composition of Task Forces or interagency commissions is more or less similar: they include agencies responsible for law enforcement, national security, foreign policy, justice, social protection, youth and health policies, labour, migration, borders, customs, education, culture and other sectors that have a role in combating THB. Interagency commissions or task forces are strongly encouraged to engage anti-trafficking NGOs, such as service-providers or human rights institutions (for example, their ombudspersons), on a regular basis, and, where and when appropriate, representatives of the private sector (for example, from employers’ associations). In theory, interagency commissions chaired by a National Coordinator should have the mandate to coordinate the activities of state agencies to ensure

501 <http://ec.europa.eu/anti-trafficking/national-rapporteurs/portugal> accessed 20 February 2015.

502 Regrettably, the limited length of the Commentary does not permit the inclusion of data from all participating States.

503 OSCE, OSR/CTHB 2008 Annual Report “Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms”. Available at: <http://www.osce.org/cthb/36159?download=true> accessed 16 February 2015.

504 http://ec.europa.eu/anti-trafficking/member-states_en accessed 19 February 2015.

the implementation (or elaboration and then implementation) of a National Action Plan/Programme, and they should communicate/co-operate with National Coordinators at the regional/international level. A National Rapporteur has a different function: to assess the effectiveness of a State's coordinated response and provide recommendations to the government and parliament on how to improve it. To combine these two functions in a single mechanism may be problematic due to the nature of self-assessment. Usually countries justify the merging of these the two functions with lack of budgetary resources.

In the majority of participating States, civil society plays a role in NCMs, either as members or as partners in formalized and co-ordinated consulting relationships. This is in line with the OSCE Action Plan, which recommended the participating States to establish a National Referral Mechanism by creating a co-operative framework within which participating States fulfil their obligations to protect and promote the human rights of the victims of trafficking in co-ordination and strategic partnership with civil society and other actors working in this area. Nonetheless, in 2008, according to official responses of the participating States, one third did not yet involve civil society in their NCM, although some States utilized other means of soliciting input from NGOs and for including their participation.⁵⁰⁵ Since that time, many more countries have introduced civil society in the work of these structures. Updated information on this matter will be available in 2016. It will be based on official responses from the participating States to a new OSR/CTHB survey.

A higher level of NGO engagement should be considered in view of the recommendation (**VI.3**), Chapter VI of the Action Plan: "To improve co-operation between State institutions and national NGOs active in rendering protection and assistance to the victims of THB, combating violence against women and children, promoting gender equality and raising awareness in human rights issues." Such co-operation can be enhanced by coordinating mechanisms.

This recommendation was reiterated in the **2005 Addendum** in the particular context of combating child trafficking. It recommended (3) "Developing, where necessary, national coordinating and referral mechanisms to specifically address protection and assistance measures which focus on the special needs of child victims of trafficking and ensure that child victims are referred expeditiously to appropriate services. Forming partnerships with civil society to develop a comprehensive approach to protect and assist child victims of trafficking."

The OSCE MC Decisions continued to develop the proposal of various partnerships within national coordinating mechanisms, as well as between state agencies and civil society in-

stitutions. In addition to the **MC.DEC/14/06** cited on pp.90 and 92, the Ministerial Council, in reference to THB for labour exploitation, called on participating States in its Decision **MC.DEC/8/07** to (8) "increase multi-agency co-operation and interaction on labour trafficking issues among their labour and immigration officials, law enforcement, judicial officials and social services providers, including through the establishment or strengthening, as appropriate, of national referral mechanisms as recommended in the OSCE Action Plan to Combat Trafficking in Human Beings"; and (9) to "ensure that civil society organizations, which legally provide assistance to victims of trafficking for labour exploitation, are not penalized or criminalized for providing such assistance." Cases of this type would undermine the very basis for any co-operation.

4.8 2013 Addendum: The New Chapter on Partnerships

The recommendations of the Action Plan and the provisions on co-operation found in the OSCE anti-trafficking commitments from 2000 to 2011 were enhanced with the adoption of the 2013 Addendum to the Action Plan. By introducing a new chapter on Partnerships, the Addendum gave a new impetus to co-operation at the national, regional and international level. Such co-operation could be based either on generally shared values and strategic goals, or on more focused and target-oriented tasks, as for example, addressing specific forms of exploitation, thus involving specific agencies.

The importance of partnerships had been addressed in a number of MC Decisions. For example, **MC.DEC/5/08**, highlighting the proper and timely identification of the victims, urged "the participating States to ensure that law enforcement agencies and where appropriate the judiciary co-operate with each other and with other bodies including social services, and where appropriate with relevant civil society organizations in order to enhance identification of victims of human trafficking." Furthermore, the participating States were encouraged "where appropriate and where provided for by their respective laws to ensure that civil society organizations engaged in protecting the rights of victims of trafficking have a possibility to provide assistance and support to victims also during criminal proceedings, and in this context, to consider establishing co-operation between law enforcement agencies and civil society organizations." The **CoE Trafficking Convention** requires (Art. 35) the same: "Each Party shall encourage state authorities and public officials, to co-operate with non-governmental organizations, other relevant organizations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention."⁵⁰⁶

Co-operation between State agencies and civil society organizations as "a must" was specifically addressed in the 2000 **UN Trafficking Protocol**. The Legislative Guides on the Implementation of the TOC and Protocols Thereto points to the

⁵⁰⁵ For more details, see: OSCE, OSR/CTHB 2008 Annual Report "Efforts to Combat Trafficking in Human Beings in the OSCE Area: Co-ordination and Reporting Mechanisms". Available at: <http://www.osce.org/cthb/36159?download=true> accessed 16 February 2015.

⁵⁰⁶ Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art.35.

following: “State parties are required, where appropriate, to cooperate with nongovernmental organizations, other relevant organizations and other elements of civil society in matters relating to the prevention of trafficking and the provision of assistance to its victims. This recognizes the knowledge possessed by such organizations and other bodies in this field, as well as the fact that many victims fear deportation or prosecution in their countries of destination and are reluctant to come forward and approach officials or agencies that are too closely associated with the State. The value and principal role of non-governmental organizations in such situations lies in their independence and ability to act on behalf of victims, often serving as a bridge between otherwise isolated victims and officials.”⁵⁰⁷

The **2013 Addendum** strengthened the logical interrelationship between various formats of such co-operation, and recommended (2) “enlarging, where appropriate, multi-disciplinary partnership in the framework of NRMs, such as national co-ordinator/co-ordination mechanisms or other national structures, to facilitate dialogue and co-operation between public authorities, NGOs, trade unions and other relevant institutions engaged in anti-discrimination programmes and protection of the rights of women, children, members of ethnic, national and religious minorities, and migrants to contribute to the identification of trafficked persons and advance the protection of the rights of potential, presumed and actual victims of THB.” This recommendation is important and innovative in making the link between the effectiveness of anti-discrimination programmes in the prevention of THB, the significance of dialogue between stakeholders, including trade unions and NGOs, and the protection of the rights of those who are most vulnerable to trafficking, in particular due to discrimination on the grounds of sex/gender, ethnicity, beliefs, age or citizenship/nationality. It is also highly important because it embraces potential, presumed and actual victims of THB in the context of the protection of their rights. The inclusion of potential and presumed victims in the category of those who deserve protection should help prevent their victimization as well as in identifying actual victims among them, and ensure that also their right to protection is safeguarded. The role of NGOs in this identification process is always crucial. In 2011 this was highlighted by **MC.DOC/1/11/Corr.1**, which acknowledged “the important role of civil society organizations in providing assistance and empowerment to victims of trafficking in persons”, and reaffirmed the participating States’ “determination to implement OSCE commitments ... and to strengthen the OSCE’s partnership with other international and regional organizations, as well as with civil society”.

Another example of target-oriented partnership is reflected in the **MC.DEC/8/07**, which, in the context of addressing THB for labour exploitation, called upon participating States

to “support and promote partnerships between civil society, including NGOs, and State agencies with a labour protection mandate to monitor working conditions, to provide, among others, assistance to victims and prevent trafficking for labour exploitation and violation of labour laws, including through targeted awareness-raising programmes or voluntary codes of conduct.” This approach was developed further in 2011 in the **MC.DOC/1/11/Corr.1**, which encouraged participating States “to work with the business sector to apply principles of due diligence and transparency in assessing and addressing risks of exploitation throughout supply chains and ensuring that workers have access to mechanisms for the redress and remedy of abusive practices.” The Declaration called for the dissemination and implementation of the newly adopted United Nations Guiding Principles on Business and Human Rights and encouraged governments to consider incorporating similar standards, including “zero-tolerance” policies, in government procurement of goods and services. **The United Nations Global Plan of Action to Combat Trafficking in Persons (Art. 53)** also calls to “promote cooperation and coordination among governmental institutions, civil society and the private sector ... to strengthen prevention and protection policies and programmes.”⁵⁰⁸

The **2013 Addendum** contains innovative recommendations that engage the private sector and promote co-operation with the business community in addressing THB-related money-laundering. The Addendum stresses the need for (4) “encouraging cooperation between law enforcement authorities, other relevant State structures and the private sector to combat THB-related money-laundering activities.” This is broader than the provision of the **Action Plan** recommending “enhancing cooperation between law enforcement investigating bodies in order to establish the possibly criminal, trafficking-related origins of suspicious assets” (Chapter III, point 2.5).

In this regard, the role of the private sector (especially the banking sector) is important, since money-laundering, being a final stage in the “legalization” of criminal assets, serves as a precondition for THB to flourish. According to the report “Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings”⁵⁰⁹, published jointly by the OCEEA, TNTD and OSR/CTHB, in countries where THB occurs and where its proceeds flow into both the formal and criminal economies, THB proceeds are known to challenge economic security, feed corruption and undermine the rule of law. This is why the engagement of the private sector in combating THB-related crimes can significantly “increase the possibility of the

507 United Nations, Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocol Thereto, p.313.

508 United Nations, UN Global Plan of Action to Combat Trafficking in Persons (2010). Available at: http://www.unodc.org/documents/human-trafficking/United_Nations_Global_Plan_of_Action_to_Combat_Trafficking_in_Persons.pdf accessed 21 February 2015.

509 OSCE, Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings (2014). Available at: <http://www.osce.org/secretariat/121125?download=true> accessed 21 February 2015.

proceeds of human trafficking/migrant smuggling being identified and confiscated, and thereby discouraging the activity of human trafficking or migrant smuggling.”⁵¹⁰

The OSCE, drawing from the *Alliance against Trafficking in Persons* Expert Seminar on Leveraging Anti-Money Laundering Regimes to Combat Human Trafficking (2011) and a Regional Meeting on Combating Human Trafficking and Money Laundering in the Mediterranean Rim Region (2008), concluded that “the role of the private sector in preventing the laundering of THB proceeds should not be underestimated. Nearly all of the THB case studies published to date noted the use of financial institutions or money transfer services in moving the proceeds and instrumentalities of THB from one location to another. By fully leveraging the private sector’s access to the financial transactions of criminals, countries can often be more effective in identifying suspicious financial activity.”⁵¹¹ As for the private sector, the OSCE believes that “businesses should increase their awareness of THB and use publicly-available sources⁵¹²... to learn about and address THB risks in the sectors and regions in which they are active. Businesses should make use of all available information, including internal audits and financial reporting to identify whether trafficked labour is used at any stage of their global supply chain. Businesses should implement effective monitoring procedures and report violations to Law Enforcement Agencies. Whistle blower protections should be extended to those who report on trafficking activity.”⁵¹³

The OSCE has been actively promoting internal co-operation between various national agencies and the private sector to improve the use of anti-money-laundering regimes to combat THB, and furthermore, to support closer co-operation between countries of origin, transit and destination for THB. “International networks gathering law enforcement, judicial and financial intelligence units and anti-trafficking structures can provide a useful platform for developing operational contacts with other countries and exchanging experiences. A challenge for many countries, however, is to make full use of professional contacts in countries of origin, transit and destination in order to exchange case-related information.”⁵¹⁴

The **2013 Addendum** recommendation (6) in the chapter on Partnerships, closely and logically linked to the one cited above, encourages “the private sector, including the banking sector, credit card companies, ICT companies and Internet service providers, to contribute to the prevention of all forms of THB and disrupting trafficking networks, *inter alia*, by providing THB-related information to the relevant authorities, and encouraging private legal sector entities⁵¹⁵ to provide legal assistance to victims of THB, as applicable.”

On a more general and strategic note, the **2013 Addendum**, following the related provision of the Vienna Ministerial Council Decision MC(8).DEC/1⁵¹⁶ and the overall agreement that the “primary responsibility for combating and preventing trafficking in human beings” rests with participating States, underlines that “the link of this phenomenon to transnational organized crime requires co-operation at the international and regional level, involving the private sector and relevant NGOs.”⁵¹⁷ The same approach is reflected in the **UN Global Plan of Action to Combat Trafficking in Persons**, in which (Art. 51) the UN Member States encourage “effective cooperation and coordination of efforts at the national, bilateral, sub-regional, regional and international levels, especially among countries of origin, transit and destination, and take advantage of the networks provided by relevant organizations to share best practices in capacity-building for responding to and combating trafficking in persons, while stressing the importance of mutual legal assistance efforts and the exchange of information with full respect for domestic laws.”⁵¹⁸ The **Global Plan of Action** (Art. 55) calls on States to “intensify international, regional and sub-regional cooperation to combat trafficking in persons, as well as technical assistance for countries of origin, transit and destination aimed at strengthening their ability to prevent all forms of trafficking in persons.”⁵¹⁹

There are many examples of such co-operation in the OSCE region, including those within the EU (partnership within the EU Strategy towards the Eradication of Trafficking in Human Beings [2012–2016] which provides for “enhanced coordination and cooperation among key actors and policy coherence” as a key priority⁵²⁰); the Council of Baltic Sea States (CBSS Task Force against Trafficking in Human Beings⁵²¹); the Nor-

510 FATF, *Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants* (2011), p.9.

511 OSCE, *Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings*. (2014). Available at: <http://www.osce.org/secretariat/121125?download=true> accessed 21 February 2015.

512 Such as international and national reports (for example, the US ICE (Immigration and Customs Enforcement) Cornerstone Report, available at: <http://www.ice.gov/cornerstone> accessed 21 February 2015; also: <http://www.ice.gov/doclib/news/library/reports/cornerstone/cornerstone8-1.pdf> accessed 21 February 2015; Verite (an independent non-profit organization monitoring international labour rights abuses in off-shore production sites), available at: <http://www.verite.org/> accessed 21 February 2015; and Stop the Traffik’s Finance Against Trafficking initiative (UK), available at: <http://www.financeagainstrafficking.org/> accessed 21 February 2015.

513 *Ibid.*, p.31.

514 *Ibid.*

515 For example, private law firms.

516 OSCE, Ministerial Council Decision No.1 Enhancing the OSCE’s Efforts to Combat Trafficking in Human Beings, stating that the Ministerial Council “recognizes the primary responsibility of participating States in combating trafficking based on an integrated and co-ordinated approach which includes prevention of trafficking, protection of victims and prosecution of traffickers and their accomplices”. MC(8).DEC/1, 28 November 2000.

517 Certainly this can never serve as “a justification” for the failure to take action at the national level.

518 United Nations, *UN Global Plan of Action to Combat Trafficking in Persons* (2010). Available at: http://www.unodc.org/documents/human-trafficking/United_Nations_Global_Plan_of_Action_to_Combat_Trafficking_in_Persons.pdf accessed 21 February 2015.

519 *Ibid.*

520 European Union, *EU Strategy towards the Eradication of Trafficking in Human Beings, 2012-2016*. Available at: http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings_2012-2016_1.pdf accessed 21 February 2015.

521 Council of Baltic Sea States, *Task Force against Trafficking in Human Beings*, available at: <http://www.cbss.org/safe-secure-region/tfthb/> accessed 21 February 2015.

dic Council of Ministers (project activities in the Member States⁵²²); the Commonwealth of Independent States (the CIS Programmes of Co-operation in Combating Trafficking in Human Beings for 2008–2010, 2011–2013, and 2014–2018⁵²³); and the Stability Pact Task Force for SEE on Trafficking in Human Beings (2000–2004)⁵²⁴.

The **2013 Addendum** (3) contains one more detailed recommendation on partnerships: on “strengthening international co-operation between NRMs or other relevant national structures and continuing to work towards an enhanced comprehensive and coordinated approach to prevent and combat trafficking in THB and to protect and assist victims of trafficking in cross border cases through the appropriate national and international mechanisms.” To be precise, this recommendation encourages considering the creation of transnational referral mechanisms (TRM).⁵²⁵ The concept of TRM, less familiar in the OSCE participating States than the concept of National Referral Mechanisms (NRM), has been elaborated by the **International Centre on Migration Policy Development** (ICMPD) in the framework of two projects: one related to the “Programme to Support the Development of Transnational Referral Mechanisms for Trafficked Persons in South-Eastern Europe”, funded by USAID (2006–2012), and the other the “Development of a Transnational Referral Mechanism for Victims of Trafficking between Countries of Origin and Destination (TRM-EU)”, funded by the European Commission (2008–2010).⁵²⁶ These projects were designed to improve assistance to and protection of victims of transnational trafficking. The challenges of such cases include “language barriers, lack of easily identifiable focal points and time-consuming procedures when intermediaries need to be involved, information cannot be exchanged fast enough to identify a victim, ensure immediate and proper assistance and provide for the safe and voluntary return, should the trafficked person want to return to their place of origin.”⁵²⁷

According to the ICMPD publication, a Transnational Referral Mechanism (TRM) is a cooperative agreement for comprehensive cross-border assistance and/or the transfer of identified or potential trafficked persons. A TRM links all stages of the referral process, from initial screening, through formal identification and assistance, to voluntary assisted return, so-

cial inclusion and civil or criminal proceedings. It is based on co-operation between governmental institutions, intergovernmental agencies and non-governmental organizations in countries of origin, transit and destination of the assisted trafficked persons. Through a TRM, state actors of different countries fulfil their obligations to promote and protect the human rights of trafficked persons.⁵²⁸ TRM’s Primary Elements include: standard operating procedures (SOPs); formal international co-operative agreement between anti-trafficking stakeholders; and mechanisms for monitoring and evaluating the TRM. The TRM principles and approaches are human rights based; they include government ownership, civil society participation, multi-disciplinary and cross-sectoral approach, acting in the best interests of the child, and accountability and transparency.⁵²⁹ The importance of establishing both TRMs and NRMs has been recognized at the EU level and is foreseen in the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016⁵³⁰ as an Action to accomplish Priority A: Identifying, protecting and assisting victims of trafficking (creation of a Model for the EU Transnational Referral Mechanism in 2015).

Finally, the **2013 Addendum**, taking into account the rich experience that had been collected in the collaboration between the OSCE and its Partners for Cooperation in combating human trafficking⁵³¹ and the need to develop it further, recommends (5) “strengthening international co-operation between relevant agencies in countries of origin, transit and destination, including the OSCE Asian and Mediterranean Partners for Cooperation, in compliance with the provisions of OSCE MC Decision No. 5/11 ‘Partners for Cooperation’, and in particular by establishing joint investigation teams, where appropriate.” Indeed, since human trafficking knows no borders and persons are trafficked from the OSCE participating States to all destinations, including the countries of the OSCE Partners for Cooperation in Asia and in the Mediterranean, as well as from these countries to the OSCE participating States, such cooperation is vital, especially in victim protection and assistance, and in the investigation of THB-related crimes. The latter issue has been highlighted by the **CoE Trafficking Convention**, which requires (Art. 32) that “the Parties shall co-operate with each other, in accordance with the provisions of this Conven-

522 Nordic Council of Ministers, news portal available at: <http://www.norden.org/en/search?SearchableText=combating+trafficking+in+human+beings> accessed 20 October 2015.

523 Commonwealth of Independent States, Programme of Co-operation in Combating Trafficking in Human Beings, 2014–2018 (Rus.). Available at: <http://www.e-cis.info/page.php?id=23806> accessed 20 October 2015.

524 Stability Pact for South Eastern Europe, available at: <http://www.ilo.org/public/english/region/asro/tokyo/pdf/sptf.pdf> accessed 21 February 2015.

525 International Centre for Migration Policy Development, Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe: TRM-EU (2010). Available at: http://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD-Website_2011/Capacity_building/THB/Publications/TRM_EU_guidelines.pdf accessed 21 February 2015.

526 European Commission, Together against Trafficking in Human Beings, available at: https://ec.europa.eu/anti-trafficking/eu-projects/development-transnational-referral-mechanism-victims-trafficking-between-countries_en accessed 21 February 2015.

527 Ibid.

528 For more details, see: Rachele Tesel, On-line Presentation Transcript of Transnational Referral Mechanism for Trafficked Persons in E Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons in Europe: TRM-EU (2014). Available at: <https://prezi.com/7daaej2mnabe/transnational-referral-mechanism-for-trafficked-persons-in-e/> accessed 21 February 2015.

529 Ibid.

530 European Union, EU Strategy towards the Eradication of Trafficking in Human Beings, 2012–2016. Available at: http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf accessed 8 November 2015.

531 For more details, see: OSCE, OSR/CTHB, Enhancing Co-operation to Prevent Trafficking in Human Beings in the Mediterranean Region (2013). Available at: <http://www.osce.org/secretariat/108481?download=true> accessed 21 February 2015. See also OSCE, OSR/CTHB Annual Report (2013), pp. 28–29, available at <http://www.osce.org/secretariat/109731?download=true> accessed 21 February 2015; OSCE, OSR/CTHB Annual Report (2012), pp. 13–14, available at: <http://www.osce.org/secretariat/98249?download=true> accessed 21 February 2015, and other publications of the OSR/CTHB.

tion, and through application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of: ... investigations or proceedings concerning criminal offences established in accordance with this Convention.”⁵³² Although the OSCE Partners for Co-operation are not Members of the CoE (Israel and Japan having Observer status), the Convention is open for non-Members and in this regard has a common meaning for all. A much wider scope, in terms of membership, is featured in the **United Nations Global Plan of Action to Combat Trafficking in Persons**, which, in Art. 49, “encourage(s) the law enforcement, immigration, border patrol or other relevant authorities of concerned States to cooperate with one another by exchanging information with full respect for domestic laws, such as data protection laws, and continue to promote cooperation among countries of origin, transit and destination in order to enhance investigations, prosecutions and detection of trafficking networks.”⁵³³

532 Council of Europe, CoE Convention on Action against Trafficking in Human Beings (2005), Art. 32.

533 United Nations, UN Global Plan of Action to Combat Trafficking in Persons (2010).

CHAPTER 5.

OVERVIEW OF THE OSCE'S ROLE IN PROVIDING ASSISTANCE TO THE PARTICIPATING STATES IN THE IMPLEMENTATION OF THE ACTION PLAN AND ITS 2005 AND 2013 ADDENDUMS

While the Action Plan provided the OSCE participating States with recommendations on actions to be taken at the national level, with the 2005 and 2013 Addendums complementing these recommendations through more detailed and advanced provisions, the OSCE structures and institutions have been tasked by the Action Plan and the subsequent Addendums to assist the participating States in their implementation. These parts of the **Action Plan and the Addendums**, as well as the tasks included in the OSCE anti-trafficking **commitments**, are obligatory for the OSCE structures and institutions (although once again it should be noted that the primary responsibility in the implementation of the OSCE political commitments and recommendations stays with the participating States, with the OSCE's structures and institutions available for advice, expertise, technical assistance and support).

Given that the **2003 Action Plan** was adopted prior to the establishment of the so-called Antitrafficking Mechanism and the appointment of the Special Representative and Coordinator for Combating Trafficking in Human Beings⁵³⁴, it did not contain any tasks for the Special Representative and the Office. These unique OSCE structures appeared in the context of a mandate and tasking in the **MC.DEC/2/03**, the historical decision that endorsed the adoption of the Action Plan, created the high-level position of the Special Representative and specified the SR's responsibilities. In 2006, the **MC.DEC/3/06** introduced a few changes in terms of the SR's subordination, but the mandate of the SR/CTHB remained as solid and comprehensive as in 2003. In short, the mandate can be described from the points of: a) assistance; b) internal co-ordination; and c) external co-operation.

5.1 Assistance

The **MC Decision No.3/06** tasked the SR/CTHB to “(a) assist OSCE participating States in the implementation of commitments and full usage of recommendations set forth in the OSCE Action Plan to Combat Trafficking in Human Beings, including its Addendum Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance.”⁵³⁵

This assistance is the cornerstone of the mandate. It can be accomplished through strengthening (c) “co-operation among the relevant authorities of the participating States and between the OSCE and other relevant organizations” (as for example, by means of the *Alliance against Trafficking in Persons*); through (f) providing and facilitating “advice and technical assistance in the field of legislation as well as policy development, together, as necessary, with other OSCE structures engaged in this field”; through (g) offering “advice to senior level authorities representing the legislative, judicial, and executive branches in participating States” and discussing with them the implementation of the OSCE Action Plan including its Addendum⁵³⁶ as well as commitments in the area of combating THB.

The **MC.DEC/3/06** emphasizes that in specific cases calling for special attention, the SR/CTHB will “seek direct contacts, in an appropriate manner with the participating State concerned and discuss the providing of advice and concrete assistance, if needed.” This provision has been used by the SR/CTHB on a number of occasions after having received alarming information about alleged cases of THB, including for labour exploitation. The SR/CTHB's direct communication with relevant authorities led to in-depth discussions on the matter in question as well as follow-up actions.

Taking into account the recommendations of the **Action Plan** to ensure better coordination at the national level and the call for proper data collection, monitoring and reporting, the SR's obligation to (h) “co-operate with national co-ordinators, national rapporteurs or other national mechanisms established by participating States for co-ordinating and monitoring the antitrafficking activities of State institutions” and “with rel-

⁵³⁴ The OSCE structures and institutions were tasked by the **Action Plan** to provide assistance to the participating States in the implementation of recommendations related to the so-called Follow up mechanism. This task envisaged “augmenting current structures and examining the need for a new mechanism, with a view to enhancing the OSCE's efforts in fighting trafficking in human beings by raising its political profile and giving it a prominent role on the issue, as well as better co-ordinating work among the three dimensions of the OSCE.” The Chairmanship's consultations on this issue led to the establishment of the SR/CTHB and the Anti-Trafficking Mechanism.

⁵³⁵ Unfortunately, this task's implementation has sometimes been challenged due to the use of the “diplomatic” formulae “upon request” and “where appropriate”, which have diminished the scope and the comprehensive nature of the SR/CTHB's assistance. In this regard, it would be appropriate to point out that neither of the MC Decisions contain reservations of this kind in point a), although they appear in other points.

⁵³⁶ The drafters are referring here to the 2005 Addendum to the Action Plan: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance.

evant non-governmental organizations in the participating States” provides an excellent opportunity for such networking. The mandate of the SR/CTHB demands that the SR “will assume responsibility within the OSCE for hosting and facilitating meetings for the exchange of information and experience between national coordinators, representatives designated by participating States, or experts on combating trafficking in human beings.” This task has been implemented by convening annual high-level conferences of the *Alliance against Trafficking in Persons*, as well as through joint anti-trafficking events organized at the national level, the SR/CTHB country visits, and the OSR/CTHB’s contributions to national capacity-building.

The **2013 Addendum** reaffirmed these provisions of the SR’s mandate, stating that “the SR/CTHB will continue to make use of country visits to assist participating States, upon their request, in the implementation of OSCE commitments and support them in the conduct of their national anti-trafficking measures and activities. The SR/CTHB will provide participating States with country visits’ reports and, upon their request, technical assistance and expertise, in cooperation with OSCE field operations and other OSCE executive structures, where appropriate.”⁵³⁷

The mandate of the SR/CTHB is undertaken in a geographically balanced manner, supported by the clearly formulated task to (e) “operate in the whole OSCE area and as appropriate, assist the participating States, in a spirit of cooperation and following consultations with the relevant authorities of the participating States concerned, in aiming at the implementation of their commitments in combating human trafficking.” Indeed, it would be useless to pay attention only to countries of origin or to countries of destination, first, because the boundaries between these have merged, and secondly, because of the very nature of THB as a criminal phenomenon. It is highly flexible (adapting quickly to new measures taken to combat trafficking), and has transnational features and links across the OSCE region. The **2013 Addendum**, in the new chapter on Partnerships, expanded the geographical boundaries of the SR/CTHB’s activities and tasked the SR/CTHB, as mentioned above, to “further engage, within existing resources, in action-oriented cooperation with the Mediterranean and Asian Partners, in view of preventing all forms of trafficking in human beings, of protecting victims of trafficking and of contributing to better prosecution against traffickers in countries of origin, transit and destination.”

In line with the **MC.DEC/3/06**, the **2013 Addendum** reaffirmed that “the SR/CTHB will further promote and facilitate, within existing resources, all forms of co-operation among OSCE participating States, including at the bilateral and regional level, where appropriate, and collaboration with major international bodies and entities engaged in combating traf-

ficking in human beings, as well as relevant NGOs.” To accomplish this task, the SR/CTHB has established excellent working relationships at the bilateral and multilateral level with the UNODC, UNHCR, OHCHR, ILO, IOM, UNICEF, CoE, EU/EC, CBSS, CIS Executive Committee and other organizations. International NGOs, such as Anti-Slavery International, La Strada International, Terre des Hommes, and many others actively contribute to fruitful partnerships as well.

The above-mentioned provisions of the mandate create the basis for implementing the task to (d) “raise the public and political profile of combating trafficking in human beings.” A “high profile” is desperately needed to keep anti-trafficking action in the political agenda of the participating States and to ensure adequate attention, budgeting, awareness and efficiency in implementing the “three Ps” plus Partnerships. The **2013 Addendum** also addressed this important issue, stating, in terms of tasks, that “the relevant OSCE executive structures, within existing resources, will propagate the OSCE Action Plan and its Addendums in order to raise the profile of THB prevention amongst the general public, in civil society, and in the government and private sectors.” Interestingly, ten years earlier, the **OSCE Action Plan**, by tasking the OCEEA to “help mobilize and strengthen the private sector’s efforts to combat trafficking in human beings by raising awareness and by identifying and disseminating best practices, such as self-regulation, policy guidelines and codes of conduct”, clearly pointed to the role of the business community in the prevention of human trafficking and labour exploitation. This particular attention to the private sector was further developed in the OSCE commitments and in the **2013 Addendum**.

According to the **Action Plan** and the **2013 Addendum**, tasks given to the OSCE structures and institutions are grouped according to **Prosecution, Prevention and Protection**. They also clarify areas, ways and means of assistance to be provided by the OSCE to the participating States in their implementation of the recommended actions at the national level. These tasks must be accomplished by the OSCE structures in co-ordination with the SR/CTHB.

The first set of tasks is related to **the first “P” (investigation, law enforcement and prosecution)**. This envisages promotion and support of legislative review and reform efforts in compliance with international standards; promotion of the concept of community policing (supported by the SPMU/TNTD); facilitating the exchange of information between participating States on best practices to be used by relevant investigating units to check the possible criminal and trafficking-related origin of suspicious assets (supported by the SPMU/TNTD jointly with the OCEEA); to work together with the UNODC Global Programme against Money Laundering and use its good offices

⁵³⁷ The country visits reports are, upon the consent of the State concerned, placed on the SR/CTHB website and are publically available.

to promote the organization of workshops on tackling money-laundering in interested participating States (supported by the OCEEA).⁵³⁸

All relevant OSCE structures are tasked with promoting and encouraging co-operation between law enforcement agencies and civil society. The ODIHR, the SPMU/TNTD and the field operations have contributed to the development of training materials designed for law enforcement authorities dedicated to the investigation of THB and sex crimes, and to the funding of training sessions for law enforcement officers. The SPMU/TNTD initiated a series of online training seminars on child sexual abuse. The Anti-Terrorism Unit (now a part of TNTD) organized workshops that focused on detecting documents used for illegal purposes in relation to trafficking in human beings, detecting false travel documents being used for entry of trafficked persons, and improving non-technical means of detection, such as interview techniques.

The **2013 Addendum to the Action Plan**, consistent with the previously defined role of the OSCE structures, tasked the OSR/CTHB, in co-ordination with other relevant OSCE executive structures according to their respective mandates, to continue raising awareness in co-operation with participating States and to promote, upon their request, the exchange of best practices developed by participating States and relevant international organizations in the protection of victims and the prosecution of THB offenders, including the use of THB-related financial investigations and antimoneylaundering measures.

Furthermore, in accordance with the **2013 Addendum**, relevant OSCE executive structures, in line with their respective mandates and upon the request of the participating States, are to assist, where appropriate, in the planning and implementing of different activities in the sphere of awareness-raising and training in anti-trafficking strategies, in particular in capacity building for law enforcement efforts to prevent and combat THB. This task is undertaken on a regular basis by the OSR/CTHB and the TNTD/SPMU, in close cooperation with, for example, FRONTEX and the CIS International Training Centre on Migration and Combating THB.

In the area of *prevention (the second “P”)* the participating States tasked the OSCE structures “to enhance data collection and research on trafficking in persons, particularly on trafficking in children, including its effects on Roma and Sinti communities.” Due to on-going debates concerning potential forms of THB that are, as yet, not recognized at the international level, the OSR/CTHB, in coordination with other relevant OSCE structures according to their mandates, was tasked by the **2013 Addendum** to “contribute within available resources to the efforts aimed at providing evidence-based data on patterns, forms and flows of THB for which a lack of reliable data persist.” In this regard, it would be highly valuable if official in-

formation were provided by the participating States on the investigation and prosecution of THB-related crimes (not merely allegations, stories or assumptions).

As a means of assistance in combating and preventing THB for labour exploitation, the OCEEA was tasked by the **Action Plan** “to support the promotion and the development of national public information resource centres to allow individuals to check the legitimacy of businesses, particularly those advocating employment abroad...; to continue to promote SMEs [small and medium enterprises] training and to target it in particular at high-risk groups, including by assisting in the development of legislation to reduce barriers to the establishment of SMEs; to develop programmes to tackle economic factors that increase vulnerability of women and minorities to trafficking, including discrimination in the workplace and lack of access to credit.” Also in this area a great deal of work has been done by the OSCE’s Senior Gender Adviser, OSR/CTHB, ODIHR and the field operations in Central Asia, SEE and Eastern Europe.

Furthermore, the OSCE Parliamentary Assembly in its Resolution on Responsibility to Combat Human Trafficking in Government Contracts for Goods and Services, adopted in July 2015, “calls on participating States to require by law and regulation that all government contracts for goods and services go only to businesses that have a plan in place to ensure that their subcontractors and employees do not participate in activities that contribute to or that constitute human trafficking.”⁵³⁹

The OSCE structures were also recognized as instrumental in awareness-raising. For this purpose the ODIHR and the field operations, where appropriate, were tasked to “continue to contribute to research efforts as well as promoting and carrying out awareness-raising initiatives in co-operation with relevant partners throughout the OSCE region.” The OSCE’s Press and Public Information Section (PPIS) engaged in helping “to raise media awareness of OSCE activities in the field of trafficking.” The ODIHR was tasked “to enhance training activities with regard to the responsibility of the media for dealing with the topic of trafficking in a sensitive manner and without reinforcing negative stereotypes.” The **2013 Addendum** developed this provision further, stating that the “Gender Section of the Secretariat will, where appropriate, assist participating States, upon their request, with promoting gender equality for men and women including through training and the use of tools for raising public awareness thus contributing to the prevention of all forms of THB.” The OSCE executive structures were tasked by the **Addendum** to “provide assistance to the participating States, upon their request and within existing resources, in the development of training modules for various stakeholders mentioned in Chapter III, paragraph 2.1.” For example, the

⁵³⁸ This task was implemented in 2008 and 2011; the results were subsequently published.

⁵³⁹ OSCE Parliamentary Assembly, Resolution on Responsibility to Combat Human Trafficking in Government Contracts for Goods and Services, (2015). Available at <https://www.oscepa.org/meetings/annual-sessions/2015-annual-session-helsinki/2015-helsinki-final-declaration/2287-12> accessed 18 November 2015.

OSR/CTHB took pioneering steps in providing the participating States with the Handbook “How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers”.⁵⁴⁰ As already mentioned, the OSR/CTHB also co-operated with the Russian Union of Journalists and Moscow State University in drafting the manual “Media against Trafficking in Human Beings” for media students and postgraduates⁵⁴¹, and in preparing and presenting a related training course. This course later became part of the regular curriculum at the Faculty of Journalism, thus ensuring the sustainability and effectiveness of the work done by the OSCE partners in this project.

Awareness-raising was also needed for OSCE personnel. In this regard, important roles were assigned by the **Action Plan** to the OSCE Training Co-ordinator, the Senior Adviser on Gender Issues and the Senior Security Co-ordinator, with the aim of developing and implementing compulsory staff training on gender issues, THB, and relevant regulations and guidelines. To ensure that staff members of OSCE field operations do not engage in or in any way knowingly facilitate THB (part 4 of the OSCE Code of Conduct, which is an integral part of the Staff Regulations), the Secretary General was responsible for adopting comprehensive staff instructions. The **2013 Addendum** strengthened this, tasking the OSCE structures to “update, within existing resources, the relevant internal regulations to ensure that no activities of the OSCE executive structures, including contracts for goods and services, contribute to any form of THB.” Furthermore, the **Addendum** stated that the OSCE structures “will update the relevant internal regulations to ensure that the OSCE personnel understand their duties and responsibilities and receive relevant training, in particular with regard to the employment of domestic workers.” This provision of the **Addendum** manifested a direct response by the OSCE to the challenge of THB for the purpose of domestic servitude, including in diplomatic households, and the OSCE’s due diligence in addressing this issue. To translate this readiness into practice, in 2014 the OSR/CTHB organized a staff briefing and contributed to a new Staff Circular No. 05/2014 on the “Requirements for the employment of private domestic workers in private households by persons enjoying privileges and immunities in Austria”, issued on 24 November 2014.

To be even more consistent with the pioneering efforts in combating THB for domestic servitude, in 2013 the OSR/CTHB, in co-operation with relevant OSCE executive structures, was tasked to “continue to promote the exchange of best practices aimed at the prevention of THB for domestic servitude, *inter alia* in diplomatic households, and protection of the victims.” The OSR/CTHB had already conducted a series of re-

gional workshops for the personnel of protocol departments of ministries of foreign affairs in co-operation with participating States. These had taken a proactive stand against this extremely lucrative form of trafficking, sharing methodology and good practices. A number of participating States have already taken action to better prevent THB in diplomatic households by adopting new guidelines/regulations.⁵⁴²

In the area of Protection (the third “P”), the OSCE structures advocated the creation of National Referral Mechanisms. Upon the request of participating States, the OSCE structures were to assist the establishment of such NRM. This task was first given to the ODIHR as the major proponent of the NRM concept. The OSR/CTHB and the field operations also actively supported the rationale behind NRM and promoted its benefit to the participating States whenever possible.

In order to assist the participating States, the **Action Plan** tasked the SPMU/TNTD together with the ODIHR with developing guidelines or a manual on identifying suspected victims and evidence of THB. This was successfully accomplished and applied a few years later.⁵⁴³ The handbooks on the identification of potential and presumed victims and on the role of community policing in this regard are widely used by the Collective Security Treaty Organization (CSTO), the CIS (at the CIS International Training Centre on Migration and THB) and other organizations.

The task (given to the OCEEA) to facilitate contacts between public and private actors in order to encourage the business community to offer job opportunities to victims of trafficking was accomplished in co-operation with the OSCE field operations. For example, in Central Asia and other regions, quotas were set for engaging victims of trafficking at various enterprises, and empowerment programmes at rehabilitation centres were developed that were designed to help victims acquire new professional skills and to decrease their vulnerability. The field operations have worked closely with employers’ associations and trade unions to address the root causes of THB and thus better prevent the crime (including the re-trafficking of those who fail to find a legal source of income).

The **Action Plan** tasked the OSCE as a whole to “give special attention to the issue of trafficking in children and to recognizing the vulnerability of unaccompanied children.” According to the Action Plan, “efforts should be made to develop co-operation with specialized international agencies, especially the United Nations Children’s Fund and relevant international

540 OSCE, OSR/CTHB, How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers. Handbook (2014). Available at: <http://www.osce.org/handbook/domestic servitude?download=true> accessed 2 February 2015.

541 Media against Trafficking in Human Beings (in Russian), Manual for media students, 2012. Available at: <http://www.osce.org/ru/secretariat/100483?download=true> accessed 29 March 2015.

542 For more details, see: OSCE, OSR/CTHB, How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers. Handbook (2014), p.34: <http://www.osce.org/handbook/domestic servitude?download=true> accessed 4 October 2015.

543 OSCE, TNTD/SPMU, OSCE Resource Police Training Guide: Trafficking in Human Beings. Publication Series Vol. 12 (2013); also, OSCE, SPMU, Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach. SPMU Publication Series Vol. 10 (2011).

NGOs, on expert meetings, research and the development of guidelines promoting the best interest of the child.” This task was accomplished in part in 2005 by the adoption of the **2005 Addendum**, as well as by addressing child trafficking at several high-level Alliance against Trafficking in Persons conferences, including: “Combating Trafficking in Human Beings, Especially Women and Children: Prevention – Protection – Prosecution” (Vienna, 17 March 2006) and “Child Trafficking: Responses and Challenges at Local Level” (Vienna, 26–27 May 2008). These were preceded by one of the first *Alliance* expert workshops, “Victim Protection Tailored to the Needs of Children – a Challenge” (Vienna, 6–7 December 2004). The resulting Position Paper on this issue was presented at the high-level conference “Taking a Stand: Effective Assistance and Protection to Victims of Trafficking” (Vienna, 28 February 2005)⁵⁴⁴ as part of its agenda. This contributed directly to the forthcoming work on the 2005 Addendum. In a more general context, the increasing trend of child trafficking has been on the agendas and addressed in the most vigorous manner at practically all *Alliance* events, in particular at the Kyiv high-level OSCE Conference, which paid particular attention to the plight of child victims.

The **Action Plan** tasked the OSCE Training Co-ordinator, the Senior Adviser on Gender Issues and the Senior Security Co-ordinator, in co-operation with the ODIHR, with, among other things, developing information material on how to assist victims of trafficking, especially children, in response to requests from either individuals or governmental bodies and NGOs, and providing training for OSCE mission members. According to the **Action Plan**, “the material might also be disseminated to military personnel, peacekeepers and other international staff in the field.” Since then, THB-related issues have been included in the OSCE General Orientation Programme on a regular basis, and constitute an integral part of various training programmes provided by the OSCE field operations (*inter alia*, for peacekeepers). In 2014 the ODIHR presented the OSCE’s approach to victims’ assistance (in the context of repatriation) in the Guiding Principles on Human Rights in the Return of Trafficked Persons.⁵⁴⁵

The **Action Plan** tasked the ODIHR with collecting and disseminating information on measures, training programmes and materials already in place in OSCE participating States.⁵⁴⁶

Other OSCE structures, in particular the OSR/CTHB⁵⁴⁷, also took part in this activity. A huge number of resources have been collected in terms of national good practices as well as challenges to combating THB. Moreover, the exchange of good practices has been facilitated between the participating States through the high-level events of the Alliance against Trafficking in Persons, at technical workshops, the annual Human Dimension Implementation Meeting, the Supplementary Human Dimension Meetings and the Human Dimension Seminars. All of these forums provide excellent opportunities for the participating States to learn from each other and to consider applying the experience of other countries in their own national context. This has been another manifestation of tasks being translated into practice by relevant OSCE structures and institutions, as for example, the task given to the ODIHR “with the further development of its clearing-house function for the exchange of information, contacts, materials and good practices and with the enhancement of its project activities.”

Closely linked to this **Action Plan** task is another: engaging “the OSCE relevant structures with hosting and facilitating annual meetings in Vienna of national co-ordinators, representatives or experts on combating trafficking, to monitor the process of the implementation of the OSCE Action Plan ... to build networks, exchange information, and outline priorities for cooperation.” The OSR/CTHB has taken full responsibility for such networks, especially that of the *Alliance against Trafficking in Persons*, working in close cooperation with other OSCE structures (the ODIHR, TNT/D, OCEEA, Senior Gender Adviser, PPIS, and the field operations when relevant).

The ODIHR’s task to “continue to assist participating States, upon their request, in bringing their national legislation into compliance with international norms and standards, particularly by promoting a humanitarian and compassionate approach to the victims of THB”, to be accomplished in co-ordination with the UNODC, the CoE and other relevant actors, linked the OSR/CTHB and the OSCE field operations to many other international organizations (for example, the ILO, UNICEF, UNHCR, UN OHCHR, etc.). Expanding collaborations was necessary due to the rapid evolution of human trafficking, its penetration into manifold economic sectors, and its complexity as a criminal phenomenon, one that is able to change its modus operandi, move from one form of exploitation to another, and manoeuvre from severe forms of coercion to subtle and sophisticated forms of control over its victims. These challenges had to be addressed at the national level with due account of the international law of human rights as well as international standards regulating labour relations, migration, gender equality, non-discrimination, youth and child protection, and many other issues.

544 OSCE, OSR/CTHB, Annual Report “From Policy to Practice: Combating Trafficking in Human Beings in the OSCE Region” (2006). Available at: <http://www.osce.org/cthb/24335> accessed 1 March 2015.

545 OSCE/ODIHR, Guiding Principles on Human Rights in the Return of Trafficked Persons (2014). Available at: <http://www.osce.org/odhr/124268?download=true> accessed 15 February 2015.

546 This task was, for example, implemented through the website <http://www.legislationline.org/>, which provides the participating States and other users with national legal frameworks adopted to combat and prevent THB. It is also in line with the task (to the ODIHR) to render “necessary technical assistance to participating States, when appropriate, in developing National Anti-Trafficking Plans of Action, including legislative and other assistance measures aimed at effective prevention and combating trafficking and protection of victims.”

547 The OSR/CTHB includes such information in its Occasional Papers, Country Visits Reports, Annual SR/CTHB’s Reports, handbooks and position papers.

The **2013 Addendum** confirmed that “the relevant OSCE executive structures will continue, within existing resources, to promote a comprehensive, including human rights-based approach in the best interest of the victim to combating all forms of THB and will assist participating States, upon their request, in the implementation of relevant commitments”, taking into account the UN Trafficking Protocol, the UN Global Plan of Action to Combat Trafficking in Persons, and, where appropriate, the Council of Europe Trafficking Convention.

This rather general task was followed by the more concrete task of the TNTD/SPMU to “facilitate, within existing resources, the exchange of best practices developed in the participating States regarding the protection of witnesses and trafficked persons before, during and after criminal proceedings.” The last words of this sentence are crucial due to the extremely high vulnerability of victims and witnesses “before, during and after criminal proceedings”. Indeed, it is too often the case that they are threatened by criminals; well-grounded fears, both for their own lives and for the security of their families, pose a serious obstacle to victims’ readiness to testify in court and participate in proceedings. Victims as well as witnesses cannot be sure of a court’s decision until the end of the process; if there is no conviction (due to the lack of evidence or any other reason, including corruption), their physical safety, if not ensured by the State, becomes uncertain.

The **2013 Addendum** also tasked the ODIHR, within existing resources, to “collect and provide participating States with relevant information on best practices related to identification, assistance to and return of trafficked persons to the countries of origin.” As mentioned above, this task was implemented in 2014 through the publication of Guiding Principles on Human Rights in the Return of Trafficked Persons.

5.2 Internal co-ordination

Another part of the SR/CTHB’s mandate is related to internal co-ordination. In 2003 the **Action Plan** tasked the OSCE Secretariat, its institutions and field operations with “the pursuit of close interaction ... to assist participating States, where appropriate, in implementing the current Action Plan.” This task became a part of the SR/CTHB’s mandate: to “(b) Ensure co-ordination of the OSCE’s efforts in combating trafficking in human beings across all three dimensions of the OSCE and act as a focal point for the OSCE’s efforts in this area.” Indeed, taking into account that the Action Plan’s tasks engage quite a number of the OSCE structures and institutions⁵⁴⁸, it is crucial that they all pursue the human rights based approach and avoid unnecessary duplication through proper coordination.

⁵⁴⁸ These were the ODIHR (until mid-2014) and the OSCE Secretariat structures: SPMU, ATU, Border Unit (now all three units comprising TNT/D), OCEEA, Senior Gender Adviser, Office of Internal Oversight, OSCE Training Coordinator, Senior Security Co-ordinator, PPIS and the OSCE field operations.

Otherwise messages coming from differing perspectives might cause counterproductive effects and lead to serious budgetary problems.

This is why the SR/CTHB was tasked by the **MC.DEC/3/06** to “closely co-operate, in a coordinating role and in full respect of their mandates, with the ODIHR and other OSCE institutions, relevant structures of the Secretariat including the OCEEA, the SPMU, the Senior Gender Adviser, as well as, where appropriate, the OSCE field operations.” The OSCE structures undertaking activities in this area, in their turn, were tasked, drawing on the expertise within the OSCE, to “closely consult with each other and the Special Representative in order to avoid duplication, ensure complementarity and coherence and, as appropriate, seek to develop an integrated approach.”

From the second half of 2014, due to the re-classification of posts at the ODIHR Antitrafficking Programme, with only one post remaining for THB issues, some tasks that had been affiliated with the ODIHR had to be reviewed and redistributed among other OSCE structures, with the major portion of those tasks being transferred to the OSR/CTHB.

5.3 External co-operation

To conclude, the **Action Plan** tasked the “OSCE institutions and bodies with engaging in more extensive regular exchange of information, data collection and research with relevant international organizations.” This wording was chosen by the participating States prior to the establishment of the *Alliance against Trafficking in Persons* and before the creation of the position of the SR/CTHB. It is thus understandable that the **MC.DEC/2/03**, which endorsed the adoption of the Action Plan and approved the establishment of the high-level post of the SR/CTHB, when underlining the significance of international co-operation, entrusted the SR with the task of cooperating and coordinating with relevant international actors, including the UNODC, UNHCR, UNHCHR, UNICEF and ILO, as well as the IOM, ICMPD, EU, CoE, SPTF on Trafficking in Human Beings, CBSS, SELEC, Interpol and Europol. In the **MC.DEC/3/06**, taking into account the wide recognition of the new, efficient partnerships that had been initiated by the SR/CTHB, the participating States tasked the SR to further “co-operate and seek synergies with relevant international actors, including regional organizations, intergovernmental agencies and NGOs; continue to convene, chair and organize joint initiatives of the *Alliance against Trafficking in Persons*.” Indeed, the OSCE took a pioneering step in creating the *Alliance against Trafficking in Persons*, a stable and, at the same time, innovative partnership with international and regional intergovernmental organizations and NGOs based on shared democratic values, including the human rights and victim-centred approach.

The *Alliance* platform has proven that collaboration with international organizations and NGOs is not only a concrete tool for putting successful anti-trafficking action in place. More importantly, such partnerships have a strategic nature aimed at exploring new approaches to better tackle THB. Shared pri-

orities can be established and common initiatives undertaken to prevent and effectively combat THB. Including key regional and international NGOs in the *Alliance* enriched the dialogue with participating States considerably and ensured their compliance with basic principles and the rights-based approach.

The first meeting of the *Alliance* in July 2004 was a manifestation of the strong intention of international organizations and NGOs⁵⁴⁹ to develop a co-operative relationship with the OSCE, which was commended for its initiative. Since 2004 the *Alliance against Trafficking in Persons* has become an OSCE “brand”; it is recognized by the United Nations, the EU, CoE, CIS and other partners as a significant contribution to the international community’s efforts to achieve greater synergy in combating THB. As such, it will remain a priority for the OSR, and, enjoying the increasing support of its partners, it will become stronger and be expanded. It will continue to serve as a forum to provide the OSCE participating States and Partners for Co-operation with harmonized approaches, best practices and expertise, as well as a platform for dialogue with civil society. As of March 2015, the *Alliance* has united a common platform for over thirty organizations⁵⁵⁰ well known for their expertise and high anti-trafficking profile.

The **2013 Addendum to the Action Plan** demonstrated the general recognition of the significance of this unique partnership, tasking the SR/CTHB “within the existing mandate and resources, to strengthen the work of *the Alliance against Trafficking in Persons* as a framework for the dedicated cooperation of relevant major international organizations and NGOs.”

549 Such as: OSCE PA, UN OHCHR, UNHCR, UNDP, UNICEF, UNICEF Innocenti Research Centre, UNIFEM, UNODC, UNICRI, UNMIK, ILO, WHO, IOM, International Federation of Red Cross and Red Crescent Societies, NATO, Council of Europe, PACE, ICMPD, Council of Baltic Sea States, Europol, Interpol, European Commission, EC Expert Group, Central European Initiative (CEI), Stability Pact for South Eastern Europe, Stability Pact Anti-Corruption Initiative (SPAI), Stability Pact Initiative against Organized Crime (SPOC), Stability Pact Task Force on THB, Dutch National Rapporteur, Nexus Institute, Anti-Slavery International, Caritas, ABA CEELI, ECPAT International, La Strada International, International Federation of Terre des Hommes, Save the Children International Alliance, LEFOE, Amnesty International, ASTRA-Anti-Trafficking Action, Ludwig Boltzmann Institute for Human Rights, USAID.

550 The list of the *Alliance partners with their websites is available at: <http://www.osce.org/secretariat/107221> accessed 24 February 2015.*

CONCLUDING REMARKS

Together with the international community, above all the UN agencies (UNODC, UNHCHR, UNHCR, UNICEF, ILO), the IOM, and prominent regional organizations (including the Council of Europe, European Union, the Commonwealth of Independent States, the Council of Baltic Sea States, and the Nordic Council), the OSCE has taken a leading role in elaborating a comprehensive anti-trafficking framework combining legal obligations, political commitments, soft law guidelines, and commentaries to the major anti-trafficking instruments. The Commentary to the OSCE Action Plan is a clear manifestation of the similarities in approach that the various international players are following. While they have different mandates, they nonetheless have one and the same goal – to prevent human trafficking, protect trafficked persons and prosecute offenders. Together their goal is to break the vicious cycle of modern-day slavery.

There is no question that it makes sense to develop this framework further. Human trafficking is a criminal phenomenon that continues to evolve. To face and tackle it effectively requires not merely awareness, it requires resources, expertise and special training, coherent and coordinated counteraction, modern legal instruments, operational capacity, and much more. To make counteraction effective, all international instruments, the OSCE anti-trafficking commitments and recommendations equally so, must be implemented. They have been adopted by countries at the highest political level, but whether legal obligation or political commitment, their validity only becomes visible in the course of due implementation.

Nonetheless, the OSCE commitments, as happens to all similar instruments, are constantly challenged by factors obstructing their efficiency. Participating States that could have benefitted from the implementation of the OSCE commitments and recommendations lose this viable opportunity for many reasons. Possibly they underestimate the threat of human trafficking as a part of organized crime or underestimate the significance of the human rights based approach or the extent of THB in their own country. They possibly fear publically acknowledging the scope of the problem for socio-cultural reasons or because it is “politically incorrect”, or acknowledging that daily goods and services involve trafficking that is “hidden in plain sight”.

Trafficking is a phenomenon that indeed needs the co-ordinated response of all stakeholders. Failing to implement recommendations (or even a breach of commitment) in one place may have an immediate or long term negative impact someplace else. For example, failing to make a risk assessment prior to the repatriation of trafficked persons often leads to their re-trafficking in the country of origin, annulling all of the efforts taken to rescue them. Or the lack of protective measures or not providing a reflection period for a trafficked person can lead to the failure of the perpetrator’s prosecution.

The various manuals that have been written and the training materials that have been created remain underused. And opportunities to learn from each other’s experiences are often ignored or lost. But problems such as these are relatively easy to overcome. A more complicated issue, especially in times of economic and financial crisis, is the lack (or reduction) of State funding for anti-trafficking programmes. This is one reason why only a few State compensation funds for trafficking victims have been established by the participating States. Lack of funding also hampers the recognition of labour migrants as victims of trafficking for labour exploitation, a form of trafficking that is increasing rapidly. Restrictive migration policies, mistakenly considered by some as a tool to prevent human trafficking, have the opposite effect; such policies often help traffickers increase their profits. People migrate illegally, leaving them highly vulnerable to being trafficked, not because they intentionally ignore migration and labour regulations, but because their search for better labour opportunities becomes their only viable perspective, a question of survival for themselves and their families.

Another problem affecting the effectiveness of the implementation of the OSCE political commitments and recommendations derives from the different nature of OSCE monitoring mechanisms in comparison to those established by the United Nations or the Council of Europe for monitoring the implementation of legal obligations by Member States. While the OSCE does conduct an annual Human Dimension Implementation Meeting in Warsaw and, for other dimensions of the Organization, the Annual Security Review Conference and the annual Economic Forum, the recommendations expressed at these forums are not mandatory for the participating States, though obviously useful and important to consider. Voluntary reporting, initiated by the Human Dimension Committee, while a good example of sharing experience, usually discloses the best practices and impressive results participating States are ready to present to others, but not the many challenges and shortcomings they face in implementing anti-trafficking commitments and recommendations. The effectiveness of voluntary reporting may also be limited due to the focused agenda of the Human Dimension Committee not necessarily addressing the cross-dimensional nature of the THB phenomenon. Conducting joint meetings of the three Committees on THB-related issues may help to pursue better a comprehensive approach to the fight against human trafficking. All in all, the complexity of the problem of human trafficking, its links to other forms of organized crime, its global scale, its intrusion into the global economy, and many other real obstacles are very difficult to overcome. The advanced OSCE commitments and recommendations have been elaborated in order to make the eradication of human trafficking a reality. But too often it seems as if there is an invisible wall between words and deeds. One of the ambitious aims of the Commentary is to tear down this wall,

to overcome the huge gap between the advanced level of the OSCE commitments and recommendations, and the lack, too often, of their implementation into real action.

The Commentary is designed to provide technical assistance to the participating States, in line with the SR/CTHB's mandate. It also is to serve as a useful, and much needed, reminder of the so-called "agreed OSCE language", language that clearly demonstrates basic human rights principles and internationally agreed human rights norms and terminology. In accordance with the tasks agreed to in the 2013 Addendum to the OSCE Action Plan, the OSR/CTHB and all other relevant OSCE structures will continue, in any way they can, to support all OSCE participating States in their efforts to finally eradicate modern-day slavery. It is a noble and imperative goal.

ANNEX 1.

LIST OF OSCE ANTI-TRAFFICKING AND RELATED COMMITMENTS AND RECOMMENDATIONS

OSCE, Charter for European Security, Istanbul (1999);

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

Decision No. 6 by the Ministerial Council, MC(9).DEC/6, 4 December 2001;

Decision No. 426 Trafficking in Human Beings, PC.DEC/426, 12 July 2001;

Declaration on Trafficking in Human Beings, MC(10).JOUR/2, 7 December 2002;

Permanent Council Decision No.557, 24 July 2003.

Decision No.2/03 Combating Trafficking in Human Beings, MC.DEC/2/03, 2 December 2003;

Decision No.2/03 Annex, OSCE Action Plan to Combat Trafficking in Human Beings MC.DEC/2/03 Annex, 2 December 2003;

Decision No. 13/04 The Special Needs for Child Victims of Trafficking for Protection and Assistance, MC.DEC/13/04, 7 December 2004;

Decision No. 13/05 Combating Trafficking in Human Beings, MC.DEC/13/05, 6 December 2005;

Permanent Council Decision No.685 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, PC.DEC/685, 7 July 2005;

Permanent Council Decision No.685 Annex Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance, PC.DEC/685 Annex, 7 July 2005;

Decision No. 15/05 Preventing and Combating Violence against Women, MC.DEC/15/05, 6 December 2005;

Decision No. 16/05 Ensuring the Highest Standards of Conduct and Accountability of Persons Serving on International Forces and Missions, MC.DEC/16/05, 6 December 2005;

Decision No. 3/06 Combating Trafficking in Human Beings, MC.DEC/3/06, 21 June 2006;

Decision No. 14/06 Enhancing Efforts to Combat Trafficking in Human Beings, including for Labour Exploitation, through a Comprehensive Approach, MC.DEC/14/06, 5 December 2006;

Decision No. 15/06 Combating Sexual Exploitation of Children, MC.DEC/15/06, 5 December 2006;

Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation, MC.DEC/8/07, 30 November 2007;

Decision No. 9/07 Combating Sexual Exploitation of Children on the Internet, MC.DEC/9/07, 30 November 2007;

Decision No. 5/08 Enhancing Criminal Justice Responses to Trafficking in Human Beings through a Comprehensive Approach, MC.DEC/5/08, 5 December 2008;

Ministerial Declaration on Combating All Forms of Human Trafficking, MC.DOC/1/11/Corr.1, 7 December 2011;

Decision No.10/11 on Promoting Equal Opportunity for Women in the Economic Sphere, MC.DEC/10/11, 7 December 2011;

Permanent Council Decision No.1107/Corr.1¹ the Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later, PC.DEC/1107/Corr.1¹, 6 December 2011;

Permanent Council Decision No.1107/Corr.1¹ Annex Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later PC.DEC/1107/Corr.1¹ Annex, 6 December 2013;

Decision No.7/13 Combating Trafficking in Human Beings, MC.DEC/7/13, 6 December 2013;

Decision No.7/14 on Preventing and Combating Violence against Women, MC.DEC/7/14, 5 December 2014.

ANNEX 2.

LIST OF SELECTED UNIVERSAL AND REGIONAL INSTRUMENTS; “SOFT LAW” RECOMMENDATIONS AND GUIDELINES; MODEL LAWS

Selected Universal Human Rights Instruments (in chronological order):

International Agreement for the Suppression of the White Slave Traffic (1904);

International Convention for the Suppression of White Slave Traffic (1910);

International Convention for the Suppression of Traffic in Women and Children (1921);

Slavery Convention (ILO, 1926);

Forced Labour Convention No.29 (ILO, 1930);

International Convention for the Suppression of Traffic in Women of Full Age (1933);

Universal Declaration of Human Rights (1948);

The Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);

Convention concerning Migration for Employment No.97 (ILO,1949);

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (ILO, 1956);

Convention concerning the Abolition of Forced Labour No.C105 (ILO, 1957);

Convention for the Elimination of All Forms of Discrimination against Women (1979);

Private Employment Agencies Convention No.181 (ILO, 1997);

Convention on the Rights of the Child (1989);

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 (ILO, 1999);

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000);

UN Convention against Transnational Organized Crime (2000);

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000);

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000);

Convention Concerning Decent Work for Domestic Workers No.189 (ILO, 2011);

Protocol to the Forced Labour Convention No. 29, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

Regional Instruments

Commonwealth of Independent States (CIS)

Agreement on Co-operation in the Field of Labour Migration and Social Protection of Migrant Workers (1994);

Convention on Human Rights and Fundamental Freedoms (1995);

Agreement on Co-operation in Combating Trafficking in Human Beings, Human Organs and Tissues (2005);

Agreement on Co-operation in the Issues of the Repatriation of Minors to the Countries of their Permanent Residence (2005);

Convention on the Legal Status of Migrant Workers and their Family Members (2008);

CIS Programme of Co-operation in Combating THB 2007–2010 (2006);

CIS Programme of Co-operation in Combating THB 2011–2013 (2010);

CIS Programme of Co-operation in Combating THB 2014–2018 (2013);

- CIS Programme Co-operation in Combating Illegal Migration for 2015–2019 (2014);
- CIS Concept of Co-operation in Combating Trafficking in Human Beings (2014).
- Council of Europe**
European Convention for the Protection of Human Rights and Fundamental Freedoms (1950);
- The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (1997);
- Convention on Cybercrime (2001);
- Civil Law Convention on Corruption (1999);
- Criminal Law Convention on Corruption (1999);
- Convention on Action against Trafficking in Human Beings (2005);
- Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007);
- Convention against Trafficking in Human Organs (2014);
- Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults;
- Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence;
- Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation;
- Recommendation Rec (2001) 16 on the protection of children against sexual exploitation;
- Recommendation Rec (2002) 5 on the protection of women against violence.
- Parliamentary Assembly of the Council of Europe (PACE) Recommendations**
Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states;
- Recommendation 1450 (2000) on violence against women in Europe;
- Recommendation 1545 (2002) on a campaign against trafficking in women;
- Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution;
- Recommendation 1611 (2003) on trafficking in organs in Europe;
- Recommendation 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;
- Recommendation 1695 (2005) “Draft Council of Europe convention on action against trafficking in human beings”;
- Opinion no. 253 (2005) on the Draft Council of Europe convention on action against trafficking in human beings;
- Resolution 1494 (2006) “Stopping trafficking in women before the FIFA World Cup”;
- Resolution 1702 (2010) Action against trafficking in human beings: promoting the Council of Europe Convention;
- Recommendation 1895 (2010) Action against trafficking in human beings: promoting the Council of Europe Convention;
- Written Declaration No.376 “Ending all forms of human trafficking”.
- OSCE Parliamentary Assembly (OSCE PA) Resolutions**
Resolution on Trafficking of Women and Children (July 1999)
- Resolution on Combating Trafficking in Human Beings (6–10 July 2001);
- Resolution on Combating Trafficking in Human Beings, Especially Woman and Children (6–10 July 2002);
- Resolution on Combating Trafficking and Exploitation of Children (5–9 July 2003);
- Resolution on Combating Trafficking in Human Beings (5–9 July 2004);
- Resolution on Combating Involvement in Trafficking in Human Beings and Sexual Exploitation and Abuse by International Peacekeeping Forces (1–5 July 2005);
- Resolution on Combating Trafficking in Human Beings (1–5 July 2005);
- Resolution on Combating Trafficking and the Exploitation of Children in Pornography (3–7 July 2006);
- Resolution on Strengthening of Counteraction of Trafficking in Persons in OSCE Participating States (5–9 July 2007);
- Resolution on Combating Sexual Exploitation for Children (29 June–3 July 2008);
- Resolution on Strengthening Efforts to Combat All Forms of Trafficking in Human Beings and Addressing the Special Needs of Child Victims (29 June–3 July 2008);

- Resolution on Protecting Unaccompanied Minors and Combating the Phenomenon of Child Begging (29 June–3 July 2009);
- Resolution on Not Using Hotels Which Assist the Sex Trade (6–10 July 2010);
- Resolution on Stepping up the Struggle Against Human Trafficking for Purposes of Sexual Exploitation in OSCE Countries (6–10 July 2010);
- Resolution on Combating Demand for Human Trafficking and Electronic Forms of Exploitation (6–10 July 2010);
- Resolution on Combating Transnational Organized Crime (6–10 July 2011);
- Resolution on Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons (6–10 July 2011);
- Resolution on the Co-Ordination of Migration Policy in the OSCE (6–10 July 2011);
- Resolution on Combating Labour Trafficking in Supply Chains (6–10 July 2011);
- Resolution on Gender, Migration and Economic Independence (6–10 July 2011);
- Resolution on Combating Illicit Trade in Human Organs (6–10 July 2011);
- Resolution on Protecting Vulnerable Populations from Human Trafficking (5–9 July 2012);
- Resolution on Trafficking Victim Watchfulness: Planes, Trains, Buses and Hotels (29 June–3 July 2013);
- Resolution on Gender Aspects of Labour Migration (29 June – 3 July 2013);
- Resolution on Ensuring that Children have the Right to be Protected from Economic Exploitation (29 June–3 July 2013);
- Resolution on Comprehensive Immigration Reform (28 June–2 July 2014);
- Resolution on the Situation of Refugees in the OSCE Area (28 June–2 July 2014);
- Resolution on Protection of Cultural Property in the OSCE Area (28 June–2 July 2014);
- Resolution on Prevention and Prosecution of Child Sex Trafficking (28 June–2 July 2014);
- Resolution on Responsibility to Combat Human Trafficking in Government Contracts for Goods and Services (5–9 July 2015).
- European Union**
- Charter of Fundamental Rights (2000);
- EU Council Framework Decision 2002/629/JHA on combating trafficking in human beings;
- EU Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001);
- EU Council Resolution of 20 October 2003 on initiatives to combat trafficking in human beings, in particular women (2003/C 260/03),
- EU Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration who cooperate with competent authorities (2004);
- EU Action Oriented Paper on Strengthening the EU External Dimension against Trafficking in Human Beings (2009);
- EU Council Conclusions on establishing an informal EU network of National Rapporteurs or Equivalent Mechanisms on THB (2009);
- EU Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (2009);
- Proposal for a Replacement to the 2002 Framework Decision (2009–2010);
- EU Directive 2011/93/EU on Combating Abuse and the Sexual Exploitation of Children and Child Pornography, and replacing Council Framework Decision 2004/68/JHA (2011);
- EU Directive 2011/36/EU of the European Parliament and of the Council of April 2011 of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;
- EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, 19 June.2012 COM(2012) 286 final (2012);
- EU Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (2012);

EU Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the Conditions of Entry and Stay of Third-country Nationals for the Purpose of Employment as Seasonal Workers (2014);

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (2014);

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (2014).

Organization of American States

Inter-American Convention on International Traffic in Minors (B-57) (1994)

Soft Law

UN Committee on the Elimination of Discrimination against Women, “General Recommendation No. 19: Violence against Women,” UN Doc. A/47/38, Jan. 29, 1992 (CEDAW General Recommendation No. 19);

UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997);

UN Women, Gender Mainstreaming: Strategy for Promoting Gender Equality, (2001);

UNOHCHR Principles and Guidelines on Human Rights and Human Trafficking (2002);

UNICEF Ethical Guidelines. Principles of Ethical Reporting on Children (2003);

UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006);

UNODC/UNICEF, “Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime” (2009);

UN Global Plan of Action against Trafficking in Persons (2010).

Model Laws

UNODC Model Law against Trafficking in Persons (2009);

CIS Model Law on Combating Trafficking in Human Beings (2008);

CIS Model Law on Providing Assistance to the Victims of Trafficking in Human Beings (2008).

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