

TRAFFICKING IN HUMAN BEINGS AND TERRORISM

Where and how they intersect
Analysis and recommendations
for more effective policy responses

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Analysis and recommendations for more effective policy responses (Vienna, 2021)

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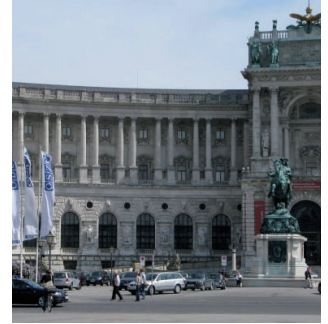
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Foreword

In recent years, my office has conducted a number of research projects drawing attention to the intersection between trafficking in human beings and various other spheres, such as the financial services industry, procurement practices and supply chains, and the technology sector, among others. This diversity of topics is a testament to how trafficking in human beings is multi-faced, cross-dimensional issue that is connected to many aspects of modern society. It also highlights the need for a collaborative and co-ordinated approach to prevent and tackle its various forms and manifestations.

Trafficking in Human Beings and Terrorism: Where and How They Intersect examines yet another evolving area: the connection between terrorism and trafficking in human beings. Despite the acknowledgement in various international reports of links between human trafficking and terrorism, there remains a dearth of well-grounded research on them, as well as a scarcity of policy guidelines for effectively tackling both crimes while protecting victims. Against this backdrop, my office launched a research effort to study the links between these two complex criminal acts to contribute to a better understanding of the issues involved.

This paper is the product of several years of desk research, expert consultations and analysis of terrorism-related cases through a human trafficking lens. It aims to fill the knowledge gap of legislators, policy makers and practitioners of the links between these two criminal acts and offers thoughts on counter-trafficking mechanisms that could be applied in the terrorism context. The foundation of this work has been a critical and comparative analysis of the normative and policy frameworks of human trafficking and terrorism, as well as an analysis of illustrative examples collected from across the OSCE that involve various elements of trafficking committed by terrorist groups.

In this work, we have observed that terrorist groups appear to accrue human capital, tactical adaptability and ideological reinforcement for their organizations by employing trafficking acts and means to exploit vulnerable adults and children for a variety of purposes, including sexual exploitation, forced labour and slavery, and even combat. Trafficking of children by terrorist groups poses an especially serious challenge for OSCE participating States, since children and youth are more susceptible to the recruitment and exploitative strategies of terrorist groups. Given the severe human rights violations perpetrated in these crimes, this paper encourages States to identify intersections between human trafficking and terrorism, and to implement joint prevention and protective strategies in line with human rights.

This paper provides a unique comparative analysis of the legal and policy frameworks pertaining to human trafficking and terrorism, whereby it acknowledges legal ambiguities in definitions and probes several relatively unexplored areas of the trafficking–terrorism nexus within the OSCE region and beyond. These topics raise complex questions related to security, vulnerability, gender, justice, and human rights, particularly whether individuals associated with terrorist groups could be defined as victims or perpetrators.

With the legal and practical complexities surrounding the trafficking–terror nexus in mind, I hope this publication will serve as a useful resource for a broad range of stakeholders, including legislators, policymakers and law enforcement practitioners in the fields of both counter-terrorism and anti-trafficking.

Valiant Richey

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

Acronyms

APOV	Abuse of power or of a position of vulnerability
CECPT	Council of Europe Convention on the Prevention of Terrorism
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CTDC	Counter-Trafficking Data Collaborative
CTED	(UN) Counter-Terrorism Committee Executive Directorate
CTHB	Combating Trafficking in Human Beings
FATF	Financial Action Task Force
FTF	foreign terrorist fighter
GCTF	Global Counter-Terrorism Forum
GRETA	Group of Experts on Action against Trafficking in Human Beings
ICAT	(UN) Inter-agency Coordination Group against Trafficking in Persons
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
ISIL	Islamic State of Iraq and Levant
MC	Ministerial Council
NGO	non-governmental organization
OHCHR	Office of the UN High Commissioner for Human Rights
OSR/CTHB	Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings
P/CVE	Preventing and countering violent extremism
RAN	Radicalization Awareness Network
THB	trafficking in human beings
TIP	Trafficking in persons
UATI	Universal Anti-Terrorism Instruments
UNESCO	United Nations Educational, Scientific and Cultural Organization
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNTOC	United Nations Convention against Transnational Organized Crime
USAID	United States Agency for International Development
VERLT	violent extremism and radicalization leading to terrorism
WHO	World Health Organization

Terminology

Terms	Meaning
Child	A child means every human being below the age of 18 years. ¹
Child soldiers	A child soldier is any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. ²
Child, early and forced marriage	Child marriage, or early marriage, is any marriage where at least one of the parties is under 18 years of age. Forced marriages are marriages in which one and/or both parties have not personally expressed their full and free consent to the union. A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent. ³
Counter-terrorism and violent extremism	There is no universal definition of the terms “terrorism,” “violent extremism,” “extremism,” “counter-terrorism,” “preventing violent extremism,” or “countering violent extremism.” In broad terms, counter-terrorism is understood to encompass “security-based” measures aimed at combating terrorism and implemented primarily by law enforcement, intelligence agencies and military officials. It is designed to be largely preventative in approach. ⁴ Additionally, counter-terrorism programmes are designed to tackle violent extremism, a phenomenon that is understood as both “wider” ⁵ than and “conducive to” terrorism. ⁶ In practice, however, the distinctions between “security-based counter-terrorism measures” and preventative approaches are often blurred. This is because the terms “violent extremism” and “terrorism” are “often used interchangeably and without a clear delineation of the boundaries between them, which raises a number of human rights issues/concerns.” ⁷
Foreign terrorist fighters (FTFs)	Individuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of training, including in connection with armed conflict. ^{8,9}
Forced labour	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/herself voluntarily. ¹⁰
Grooming	The action(s) of a person who builds an emotional connection with a child or vulnerable adult to gain their trust for the purposes of sexual abuse, sexual exploitation or trafficking. Grooming can occur both online and in person. Groomers will hide their true intentions and may spend a long time gaining their victim’s trust. ¹¹

Terms	Meaning
Reflection period	A period of at least 30 days provided to a victim to recover and escape the influence of trafficker and/or to take an informed decision on co-operating with the competent authorities. During the reflection period victims are provided, to varying degrees, assistance and support, such as secure housing, psychological counselling, medical and social services, and legal consultation. ¹²
Trafficking in human beings/trafficking in persons	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. ¹³
Terrorism	There is no universally accepted definition of terrorism. UNSCR Resolution 1566 (2004) characterizes terrorism as criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism. ¹⁴
Violent extremism and radicalization leading to terrorism (VERLT)	“Violent extremism is a diverse phenomenon, without clear definition. It is neither new nor exclusive to any region, nationality or system of belief.” ¹⁵ Radicalization that leads to terrorism is a dynamic process whereby an individual comes to accept terrorist violence as a possible, perhaps even legitimate, course of action. This may eventually, but not necessarily, lead this person to advocate, act in support of, or engage in terrorism. ¹⁶

Methodology and Scope

This study is a comparative and complementary analysis of legal and policy frameworks related to human trafficking and terrorism. The core of the paper is based on an analysis of media reports and illustrative examples collected in the OSCE participating States and Partners for Co-operation through desk research, interviews and consultations across the OSCE area, as well as a comparative analysis of the core elements of what constitutes a trafficking crime and a terrorism-related crime.

The study builds on the outcome of the thematic session “Trafficked for terrorism: children and youth in peril”, organized on the margins of the 17th Alliance against Trafficking in Persons Conference. The title of the Conference was “Trafficking in Human Beings and the Best Interests of the Child”¹⁸ and took place 3-4 April 2017 in Vienna. It also incorporates outcomes from two expert meetings organized by the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB) in Vienna (2017) and in London (2018),¹⁹ with the participation of anti-trafficking and counter-terrorism experts from a number of participating States as well as from the United Nations Office on Drugs and Crime (UNODC).

The study sheds light on various unexplored areas at the intersection of human trafficking and terrorism. It focuses on the recruitment practices of terrorist groups in relation to those used by human traffickers, as well as on the means used for such recruitment, as illustrated through examples. The research also explores the exploitative purposes intended by these groups.

While the paper’s scope is limited to the OSCE area, some of the examples provided therein occurred outside the OSCE. Those cases are reviewed with the purpose of detecting patterns in the motives and tactics used by terrorist groups when resorting to human trafficking.



17th Alliance against Trafficking in Persons Conference
“Trafficking in Human Beings and the Best Interests of the Child”¹⁸
took place 3-4 April 2017 in Vienna, Austria.

Disclaimer

A significant limitation to the research for this study was the lack of access to official documentation, particularly court records, as well as to victims/survivors or to evidence from the territories occupied by terrorist groups at the time. Another limitation was the differing definitions of trafficking and terrorism in various jurisdictions. Careful attempts were made to corroborate, wherever possible, the status and outcome of investigations and court cases. Nonetheless, as a general principle for this study, if no citations from official records are given, statements regarding specific cases should be treated as unconfirmed. The purpose and value of presenting illustrative examples is not to prove specific facts in court, but rather to explore the potential nuances and intersections of human trafficking and terrorism.

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Purpose of the Report

The purpose of this paper is to explore the intersections between human trafficking and terrorism by analysing the modus operandi of terrorist groups vis-à-vis the constituent elements of trafficking in human beings. It is based on illustrative examples collected from across the OSCE region. It aims to support the efforts of States to hold terrorist groups and their members fully accountable for their criminal behaviour. It also seeks to ensure that those exploited by these groups are identified and their rights protected.

Moreover, through a critical analysis of legal and policy regimes, the paper provides a comparative study of two crimes – human trafficking and terrorism. The purpose is to offer recommendations for tackling and combating both. To this end, it presents a discussion on key principles that guide anti-trafficking work, which include the irrelevance of consent and the principle of non-punishment in relation to victims of trafficking. It also examines the complexities related to subtle means of trafficking, such as coercion and abuse of the position of vulnerability, and the irrelevance of means in cases in which children have been targets of exploitation.

To conclude, the paper provides a set of targeted recommendations to challenge the trafficking practices of terrorist groups by leveraging existing preventative and protective mechanisms that exist in the anti-trafficking field. The intent of these recommendations is to support States in preventing the crime of trafficking while protecting its victims.

“ Through a critical analysis of legal and policy regimes, the paper provides a comparative study of two crimes – human trafficking and terrorism.”

Executive Summary

Since trafficking in human beings continues to evolve, with criminals employing ever more sophisticated and subtle modus operandi, a multi-disciplinary approach to combat trafficking is not only recommended but necessary. In recent years, several reports have emerged alluding to the nexus between terrorism and trafficking in human beings, including within the OSCE region. To better understand the intersection between these two distinct and complex crimes, this paper critically reviews normative and policy frameworks governing action against human trafficking and terrorism. It also examines exploitative activities of terrorist groups through a human trafficking lens, including illustrative examples that contain indications of trafficking elements, whereby it explores how anti-trafficking mechanisms can be leveraged when dealing with terrorism to identify and protect trafficking victims and prosecute perpetrators. Finally, it provides insights into various ways to prevent trafficking of vulnerable adults and children targeted by terrorist groups for various exploitative purposes. The paper offers a structured analysis presented in three chapters and concludes with targeted recommendations.

Normative and policy framework for combating trafficking in human beings and terrorism



The first chapter examines the evolution of the normative and policy framework in countering trafficking in human beings and terrorism through an analysis of the principles and key messages contained in these instruments. It starts by examining how the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000, not only defines the crime of trafficking in human beings, but also provides a range of positive and negative obligations to States, such as preventing trafficking through co-operation and criminalizing all acts and forms of trafficking. These obligations also aim at ensuring that victims receive assistance and redress, as well as addressing the special needs of children and preventing their re-victimization by aligning the provisions with the protection enshrined in the Convention on the Right of the Child.

The chapter examines how obligations provided by regional legal instruments and subsequent practices related to trafficking further placed the rights and needs of victims at the centre of all actions. The principle of non-punishment is among the tools available to protect the rights of victims of trafficking. This principle ensures that it is the trafficker who is held accountable for crimes committed by victims in the course of being trafficked or as a direct consequence thereof.

The chapter then moves on to an examination of the counter-terrorism framework. While the adoption of the United Nation's Global Counter-Terrorism Strategy in 2006 was an important milestone towards a shared international vision on countering terrorism, there is no internationally agreed-upon definition of terrorism, in contrast to the broad international consensus on the definition of human trafficking. The chapter explores how this gap has created challenges in building a common understanding of who victims of terrorism are, despite the recent increase of attention to the issue. This has led to insufficient protection of the human rights of victims implicated in the trafficking–terror nexus.

Elements of trafficking committed by terrorist groups



The second chapter provides an in-depth study of the constituent elements of human trafficking used by terrorist groups, this illustrated by an analysis of over twenty examples involving the exploitation of vulnerable individuals in the context of terrorist group activities. These examples were gathered across the OSCE region and describe various types of forced, deceptive or coerced recruitment, and the transfer and harbouring of vulnerable adults and children for the purpose of exploitation benefiting terrorist groups. Delving into analyses of acts and means, the paper then examines the nuances of the *irrelevance of consent* to the intended exploitation of adult victims, if trafficking means such as force, coercion or deceit or the abuse of the position of vulnerability have been used. With regard to children, it highlights that consent is never an element to be considered.

Information collected and analysed for the purpose of the present study suggests that, in some cases, individuals associated with terrorist activities, including those who have travelled to conflict zones where terrorist groups are based, have done so as a result of force, coercion or deceit in various phases of their engagement with such terrorist groups, or with those acting on behalf of such groups. The examples suggest that terrorist groups target vulnerabilities, whether social, economic and/or personal in nature, and choose individuals according to their perceived utility for the benefit of the terrorist group in question. Many of these persons have been subject to sexual or labour exploitation (or both), or have been forced to perform tasks benefiting a group's terrorist activities in other ways.

The paper also analyses various settings in which vulnerable individuals have been groomed and lured by terrorist groups for the purpose of exploitation. In this regard, the paper discusses the use of technology by terrorist groups and their associates in the many stages of the crime of human trafficking, including recruitment, movement, control and exploitation of victims. It documents the use of social media by terrorist groups to recruit vulnerable adults, youth and children for forced marriage or labour and sexual exploitation, using, for example, the “lover boy” method to recruit victims in vulnerable situations through chat rooms. Upon their arrival in a conflict zone, young girls or women recruited in this way have found themselves held captive, abused and tortured by their so-called “husbands”. Terrorist groups have also targeted young internet users and lured them into joining their organizations by manipulating their interests and vulnerabilities. As a result, such children have become involved in various illegal activities, including committing crimes in their countries of residence, but also travelling to conflict zones and becoming part of terrorist activities, where they are exploited for various purposes such as labour, sex or combat.

Gender and age dimension of trafficking by terrorism groups



Women and men experience divergent pathways when coming into contact with terrorist groups. The purpose of their recruitment also varies according to gender perceptions and stereotypes. The next chapter of the paper examines how terrorist groups tap into social constructions of masculinity and femininity in given communities, taking advantage of the diverse vulnerabilities of men and women in different local contexts to attract, recruit and maintain adherents. Terrorism ideology is often linked to human rights abuses specific to men and women. Thus, in a number of contexts victims of exploitative conduct by terrorist groups are affected differently based on gender. This includes sexual enslavement and subjugation of women, and preying on and exploiting male labour migrants.

Exploring the age dimension of trafficking committed by terrorist groups, the study has confirmed that children are ideal prey for the manipulative practices used by terrorist groups. Many children who have become involved in terrorist groups are highly vulnerable. This vulnerability may have arisen from a personal crisis such as the death of a close relative, an unstable situation at home, lack of good future prospects, or a sense of social exclusion. Some such children are searching for a sense of belonging, which make them vulnerable to someone coming with answers to their quest for identity. The paper shows that some children who have ended up in conflict zones are there through coercion, grooming, cyber-enticement or deception. While some have crossed international borders unaccompanied by adults, others have travelled with parents who have voluntarily or involuntarily joined terrorist groups. Others were born to women who travelled to join terrorist groups, or were born to women impregnated by fighters by force. Regardless of the conditions that enabled their affiliation with terrorist groups, the paper aligns itself with international child protection organizations and advocates treating these children as victims, recommending that any decisions regarding them should be made in accordance with their best interests.

Conclusions and recommendations for policy action



The paper concludes that many of the examples analysed in the course of the research contain elements of human trafficking, with trafficking acts and means employed by recruiters, transporters, harbourers or receivers with the intention to exploit persons for the purpose of sustaining and advancing terrorist activities. In some cases, limitations in accessing information from the moment of recruitment to exploitation impedes reaching a firm conclusion. Nonetheless, the legal response thus far shows that such cases have been addressed exclusively through a terrorism lens, with no consideration of trafficking elements. Therefore, in order to effectively thwart the use of human trafficking by terrorist groups, the intersection between human trafficking and terrorism must be reflected in strategies to prevent and combat both crimes.

In conclusion, the paper presents several issues that need further discussion among OSCE participating States, other international organizations, and policymakers, as well as practitioners involved in both anti-trafficking and counter-terrorism.

These issues include:

- identifying perpetrators in cases where families have been involved in transferring children or other family members to terrorist groups;
- establishing a person's victimhood due to the probability of intent to exploit that person, or observed patterns of trafficking in the chain of that person's engagement with a terrorist group;
- the complexities regarding consent of adults to certain activities if they were deceived or forced by a terrorist group;
- recognition of children primarily as victims of the crime of trafficking, and not as criminal accomplices to terrorist groups; and
- the scope of applying the non-punishment principle in relation to individuals subjected to subtle means of trafficking to undertake activities for the benefit of a terrorist group.

In the final chapter, the paper offers a set of targeted recommendations aimed at supporting participating States in breaking the silos between two distinct fields: combating human trafficking and countering terrorism. An effective response to various forms and manifestations of trafficking in human beings involves more than criminal intelligence and law enforcement agencies. The expertise and capabilities of civil society organizations, social services and psychologists can also provide meaningful input to better understanding, identifying and addressing pull and push factors, supporting those who are in need of care and assistance, and prosecuting perpetrators.

The recommendations aim to assist the OSCE's participating States to identify and protect victims of trafficking committed by terrorist groups; to develop tailored and effective prevention programmes targeted at vulnerable persons and risk groups; and to guarantee prosecution of trafficking offences, also by tracking illicit trafficking profits of terrorist groups. The recommendations are grouped according to the "4P" structure – prevention, protection, prosecution and partnership – and include a set of dedicated recommendations addressing child victims of trafficking.

“ The recommendations aim to assist the OSCE's participating States to identify and protect victims of trafficking committed by terrorist groups.”

Structure of the Report

With a view to understanding, comparing and contrasting the various elements of human trafficking as related to terrorism, the paper contains three parts:



The first part provides a comparative analysis of international legal and policy regimes connected to human trafficking and terrorism.



The second part provides an in-depth study of the constituent elements of human trafficking used by terrorist groups to exploit vulnerable individuals in terrorist activities through an analysis of illustrative examples. These examples have been gathered in the course of the research and describe the forced, deceptive and/or coerced recruitment, transfer and harbouring of adults and children from the OSCE region for the purpose of exploitation. While the examples are divided into sections to illustrate the different elements of trafficking (act, means, purpose), some of the examples illustrate two or more elements of trafficking. For example, illustrative examples under the “act” element may also show means or purposes of exploitation. The gender and age analysis provided in the paper aims to contribute to understanding of how gender perception of men and women are being abused by terrorist groups for exploitation and age dimension of the problem.



Finally, **the third part** presents conclusions and expanded recommendations directed at policymakers, practitioners in law-enforcement agencies in the areas of both counter-terrorism and anti-trafficking, legal professionals and social service providers, including National Anti-Trafficking Co-ordinators and Rapporteurs or equivalent mechanisms, child protection specialists, and civil society organizations.

Introduction

The OSCE approach to anti-trafficking and counter-terrorism

Trafficking in human beings is a human rights violation. It involves discrimination, damage to liberty and security, restrictions to freedom of movement, and gender-based violence.²⁰ Also terrorism, in its various forms and multi-layered threats, violates human rights. Both phenomena affect the fundamental sense of security within societies and lead to increased instability. Both phenomena destroy social structures, economies and lives.

When addressing both trafficking in human beings and terrorism, whether while preventing, investigating or punishing these crimes, States are obliged to respect and protect human rights. In the context of trafficking in human beings, States should ensure that anti-trafficking measures respect human rights, including, for example, by adopting victim-centred approaches that guarantee the full range of human rights to victims; addressing root causes as part of prevention; respecting the principle of non-punishment of trafficking victims; recognizing that certain groups (such as women and children) require additional protection; guaranteeing the right to remedy for victims and the right to fair trial for perpetrators; and ensuring that governments assume responsibility for eliminate trafficking and the related exploitation of all individuals within their jurisdiction, irrespective of citizenship status, gender, age, or other distinction.

When it comes to terrorism, States also have the obligation to ensure that their responses are human rights-compliant. This includes, for example, guaranteeing the absolute prohibition of torture and other ill-treatment, following principles of legality and non-discrimination, non-refoulement of individuals suspected of terrorist activity, as well as a range of obligations related to due process and the right to fair trial of alleged perpetrators.

In the OSCE region, terrorism and trafficking in human beings are significant threats to peace, security and stability. Moreover, they threaten the enjoyment of human rights, as well as social and economic development. With this in mind, the OSCE has adopted several policy documents to guide participating States in preventing and combating terrorism and human trafficking, as well as ensuring that perpetrators are held accountable and victims are protected.

The protection of human rights is an integral part of the OSCE's concept of comprehensive security. When taking measures to prevent and combat terrorism and human trafficking within the OSCE's three comprehensive dimensions of security – the politico-military dimension, the economic and environmental dimension, and the human dimension – it is the duty of OSCE participating States to respect human rights.²¹ OSCE participating States have also committed themselves to all obligations regarding human rights under international law.

The various OSCE anti-trafficking commitments adopted by consensus by OSCE Ministerial Councils since 2000 constitute a comprehensive political framework for action against trafficking in human beings.²² The OSCE Ministerial Council (MC) Decision taken in Porto in 2002²³ was an important milestone in the OSCE's anti-trafficking action. Not only did it pronounce trafficking in human beings to be a threat to security and an “abhorrent violation of human rights”, but it also specifically highlighted the crime's root causes, calling for more action to mitigate economic and social inequalities. This Decision highlighted for the first time the increased trafficking of children, and called for the development of special measures that take due consideration of the special needs and best interests of children. Subsequently, the OSCE adopted its first Action Plan to Combat Trafficking in Human Beings in 2003, and two Addenda in 2005 and 2013, respectively.²⁴ The Action Plan draws on the entire compendium of relevant international treaties and best practices. Moreover, in recent years, the OSCE participating States adopted three MC Decisions which advanced the OSCE's response to human trafficking in several key areas, including child trafficking, labour exploitation and supply chains, technology, and partnerships among governments, civil society, the private sector and international organizations.²⁵

In the area of counter-terrorism, as early as 1980, the participating States of the then-Conference on Security and Co-operation in Europe (CSCE) expressed “their determination to take effective measures for the prevention and suppression of acts of terrorism”.²⁶ Over the last decade, the fight against terrorism has become a priority for the OSCE participating States. In this context, the importance of respect for human rights has been emphasized. The OSCE Consolidated Framework for the Fight against Terrorism, adopted in 2012,²⁷ is aimed at enhancing the profile and value of the OSCE's contribution to the global efforts to eradicate terrorism. It also identifies the promotion and protection of human rights as a strategy focus

in OSCE counter-terrorism efforts. OSCE participating States have adopted numerous consensus documents²⁸ to prevent and combat terrorism and violent extremism within the framework of the OSCE's cross-dimensional and comprehensive security approach. This approach links the politico-military, economic and environmental, and human dimensions, thereby providing a framework for coherent and sustained actions in preventing and combating terrorism.

This comprehensive approach is pivotal for addressing the challenges posed by terrorism, as well as to ensure respect for the rule of law, human rights and fundamental freedoms, to identify and address the factors conducive to terrorism, and to explore synergies in addressing new and emerging transnational threats and challenges to security and stability. In the Bucharest Plan of Action for Combating Terrorism adopted at the 2001 OSCE Ministerial Council, participating States highlighted the close connection between terrorism and transnational organized crime.²⁹ This document was later complemented by the OSCE Charter on Preventing and Combating Terrorism, through which participating States expressed concern about "the links between terrorism and transnational organized crime [...], trafficking in human beings [...]" and emphasize[d] the need to enhance co-ordination and develop co-operative approaches at all levels in order to strengthen their response to these serious threats and challenges to security and stability."³⁰

Further, the Bucharest Plan states that "The OSCE participating States recognize that similar approaches can be used to address terrorism and other transnational threats to security, such as organized crime [...] and [...] trafficking in [...] human beings which refers to an inclusive and co-ordinated approach to develop a co-operation at all levels, including co-ordination among national authorities, co-operation among States, co-operation with relevant international and regional organizations and, where appropriate, establishment of public-private partnerships between State authorities, the private sector (business community, industry), civil society and the media. Therefore, they leverage synergies to strengthen their comprehensive response to these threats."³¹

Over the years, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has produced substantial policy guidance on human rights and counter-terrorism issues. For example the Office has issued guidelines for addressing the threats and challenges of "foreign terrorist fighters" within a human rights framework,³² and has called for the urgent repatriation of FTFs and their families from the conflict zones to safeguard human rights and security.³³ It has published a number of background papers and guidance material elaborating on various topics, such as the human dimension aspects of countering the incitement and recruitment of FTFs.³⁴ ODIHR has also engaged in high-level discussions examining the challenges to defining "victims" of terrorism by comparing perspectives from political, social and legal angles,³⁵ and looking at the role of victim assistance programmes.³⁶

Nevertheless, despite the concerted efforts of States, civil society and international organizations, the patterns of both human trafficking and terrorism continue to evolve, with ever more complex and subtle means being used to recruit and exploit persons, such as the abuse of positions of vulnerability. Likewise, the purposes for which people are trafficked have expanded, now involving not only sexual and labour exploitation, but also exploitation involving forced and organized begging, removal of organs, and other forms. Hence, the modus operandi of criminal organizations have grown in many dimensions, making use of the skills, routes, existing contacts and networks that have developed in various kinds of markets.³⁷

The development of technology and increased use of social media has also had an important influence on the crime of trafficking in human beings and deceptive recruitment for terrorist and violent extremist activities.

In an effort to address the changing patterns and forms of human trafficking, the OSR/CTHB has studied the use of trafficking by criminal groups and individuals as a lucrative business venture, which has created a market in which victims are bought, sold and traded like commodities.³⁸ It has also become particularly urgent to address the use of human trafficking as a tactic by terrorist groups,³⁹ since this affects many OSCE participating States, with citizens being recruited into such groups through force, threats, coercion and other means. Moreover, their repatriation has become a complex issue that must be dealt with.

PART I



THE LEGAL FRAMEWORK: HUMAN TRAFFICKING AND TERRORISM

Introduction

The legal frameworks regarding human trafficking and terrorism are distinct from one another, and on occasion, are in conflict with one another other, particularly at points where the two crimes intersect. Terrorism and human trafficking are addressed in isolation, with varying national approaches and policies to prevent and tackle the two crimes. Moreover, there are persistent legal ambiguities with regard to definitions. These problems can undermine the investigation, prosecution and adjudication of both crimes, and constrain the provision of justice to victims.

To understand the legal and policy implications involved in human trafficking and terrorism, the following sections will examine legal doctrines of both phenomena, compare legal frameworks to prevent and combat the criminal acts associated with them, and contrast protection mechanisms available for victims of both crimes.

The international normative and policy framework for preventing and combating trafficking in human beings

The international normative basis for combating human trafficking is contained in a number of international instruments (see Table 1 below). The obligations of States with regard to trafficking are found in human rights instruments, as well as in specific anti-trafficking treaties at the regional and international level. Moreover, articles in core human rights treaties not specifically related to human trafficking are nonetheless considered relevant to human trafficking due to their inclusion of principles of non-discrimination and equality.

International obligations and commitments on trafficking in human beings

Early statements regarding States' obligations related to human trafficking are found in the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,⁴⁰ and in the 1985 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁴¹ Both instruments are predominantly concerned with trafficking for the purpose of the sexual exploitation of

women in the context of prostitution. Additionally, the 1966 International Covenant on Civil and Political Rights (ICCPR)⁴² prohibits a number of practices directly related to trafficking, including slavery, slave trade, servitude and forced labour.

The 1989 Convention on the Rights of the Child (CRC)⁴³ relates to the abduction, sale or trafficking of children. Adopted by 56 OSCE participating States,⁴⁴ this Convention provides a definition of violence against children. The Convention requires that States take action to protect children from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".⁴⁵

The CRC calls for the best interests of the child to be taken as a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.⁴⁶

The primary obligations of signatory States related to human trafficking are contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol),⁴⁷ which is a supplement to the 2000 United Nations Convention against Transnational Organized Crime (UNTOC).⁴⁸ Ratified by 56 OSCE participating States,⁴⁹ the Protocol is the overarching international treaty that gives rise to defined legal obligations as well as the first international definition of human trafficking.

The Protocol establishes minimum key legal standards for signatory States. Whilst States may legislate to enhance their domestic laws on trafficking beyond the scope of the Protocol, they may not fall below the provision of these minimum standards. The Protocol includes a comprehensive set of obligations for its signatories: criminalizing human trafficking in all its forms according to the agreed-upon definition (Article 3); protecting and assisting victims of trafficking (Article 6); preventing trafficking through the co-operation of States; and the establishment of prevention strategies (Article 9). With regard to victims of trafficking, the Protocol requires States to ensure that victims are able to receive assistance towards legal redress (Article 6.2 b), as well as to consider the provision of physical, psychological and social support (Article 6.3). In addition, it mandates States to take into account the special needs of children, including appropriate housing, education and care (Article 6.4). Measures must also be established to protect victims, especially women and children, from re-victimization (Article 9.1 b).

International Legal Instruments	Date
ILO Convention on the Abolition of Forced Labour No. 29	1930
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	1949
ILO Convention on Forced or Compulsory Labour No. 105	1957
International Covenant on Civil and Political Rights	1966
Convention on the Elimination of all forms of Discrimination against Women	1985
Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict and the Option Protocol on the Sale of Children, Child Prostitution and Child Pornography	1989
ILO Convention on Worst Forms of Child Labour No. 182	1999
United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children	2000
Council of Europe Convention on Action against Trafficking in Human Beings	2005
Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA	2011
Protocol to the ILO Forced Labour Convention No. 29	2014

Another duty involves the sharing of information between law enforcement, immigration or other relevant authorities to enable States to determine whether individuals crossing international borders are perpetrators or victims of trafficking (Article 10.1). This information includes the means and methods used by organized criminal groups for the purposes of trafficking in persons, including the recruitment and transportation of victims, the routes and links between individuals and groups engaged in such trafficking, and possible measures for detecting them.

Human Trafficking Definition

“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.”

Article 3, Palermo Protocol

The Palermo Protocol’s framework for combating human trafficking is based equally on “the three Ps” of prosecution, victim protection and prevention, and is supported by the fourth P of partnership between the State and civil society, international organizations and the private sector. It is designed to meet developments in human trafficking in OSCE participating States and beyond, with increasingly effective and collaborative responses.

In defining human trafficking, the Palermo Protocol was able to resolve various aspects of the implementation of human trafficking law. For instance, the Protocol rejected the previous understanding of trafficking as solely the cross-border sexual exploitation of women and girls. Instead, the Protocol’s definition embraced the fact that there are a multitude of forms of human trafficking in which men, women, and children can be exploited.

Human rights obligations and commitments relating to trafficking in human beings

In addition to trafficking-specific instruments, States are also bound by a series of human rights obligations in their efforts to combat trafficking in human beings and provide remedies for victims.

The relation between human rights and human trafficking was established through human rights law, which has unequivocally proclaimed fundamental rights, prohibiting inter alia forced labour, debt bondage, forced marriage, and the sexual exploitation of children and women.⁵⁰

To ensure that human rights are adequately reflected throughout legislation and policy which is relevant to human trafficking, the Office of the UN High Commissioner for Human Rights (OHCHR) also developed Recommended Principles and Guidelines on Human Rights and Human Trafficking in 2002.⁵¹ The non-binding document complements the foundation provided by the Palermo Protocol. For example, the Principles and Guidelines refine the Protocol's definition of the provision of victim compensation, and elaborate effective remedies to victims of trafficking, including the provision of information and protection.

In regard to cases involving children, in addition to the strong protection enshrined in the CRC, Principle 10 of the UN Recommended Principles and Guidelines provides that "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. Full account shall be taken of their special vulnerabilities, rights and needs."⁵²

Regional instruments relating to trafficking in human beings

Over time, the normative basis for addressing human trafficking has broadened, reflecting the consistent effort by the international community to regulate various aspects of the phenomenon and to ensure protection measures for its victims. In this regard, regional trafficking treaties and legal instruments play a crucial role in establishing a legal and policy framework for combating trafficking in human beings. They bind the majority of the OSCE participating States and provide more precise requirements building on the Palermo Protocol's guarantees in terms of States' obligations. It should be stressed that such regional obligations enhance and complement the duties of signatory States, especially with regard to protection of vic-

tims, but do not conflict with their international obligations under the Palermo Protocol. Indeed, the requirements of these regional obligations often serve as benchmarks for developing improved legal and policy responses to respond to human trafficking.

Primary examples include the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings of 2005,⁵³ and the EU Trafficking Directive 2011/36/EU.⁵⁴ The CoE Convention also provides for the setting up of an independent monitoring mechanism – Group of Experts on Action against Trafficking in Human Beings (GRETA)⁵⁵ – guaranteeing Parties' compliance with its provisions.

An important aspect of the 2005 CoE Convention is how it broadened the scope of human trafficking to include acts perpetrated both within and across borders, and irrespective of their connection to organized crime (Article 2). Such stipulations go beyond the application of the Palermo Protocol and the UNTOC, which impose conditions related to the transnational qualification of the crime (Article 3.2), the involvement of an organized criminal group (Article 3.1), and the "seriousness of the act", preconditioning a criminal offence that has as its consequence a minimum of four years imprisonment (Article 3.1 b).

A key contribution of the CoE Convention is its strong emphasis on States' obligation to identify and protect victims through a set of protection measures for victims. For example, it stipulates a mandatory minimum of a thirty-day recovery and reflection period for trafficked persons (Article 13), to enable them to recover and escape the influence of traffickers and to take an informed decision on co-operating with the competent authorities. This provision also forbids States to enforce any expulsion order against the individual during that period. The Convention also safeguards rights to an array of assistance and counselling services, including legal advice (Article 12) and protection of private life (Article 11). Furthermore, in Article 26, the CoE Convention recognizes the obligation to provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities to the extent that they have been compelled to do so, thus guaranteeing the application of the principle of non-punishment of trafficked persons.

The EU Anti-Trafficking Directive 2011/36/EU further expanded the definition of human trafficking (Article 2 [3] and preamble 11) by including forced begging and forced criminality as exploitative purposes. It also clarified further the concept of "vulnerability" in relation to victims as referring to "a situation in which the person concerned has no real or acceptable

alternative but to submit to the abuse involved” (Article 2 [2]). In addition to international and regional instruments, detailed international guidance has also been provided to assist signatory States in their application of some of the more complex elements of the trafficking definition, including the UNODC’s Issue Papers on Abuse of a Position of Vulnerability,⁵⁶ on Consent,⁵⁷ and on Exploitation.⁵⁸ The OSCE has also produced a detailed guidance on policy and legislative recommendations for participating States to promote the application of the non-punishment provision in regard to victims of trafficking (2013),⁵⁹ and has developed mechanisms for the identification and referral of trafficked persons.⁶⁰

The non-punishment principle

All legal systems impose responsibility on persons who commit crimes and offences. Responsibility and accountability may however be averted in cases in which the person concerned has a recognized defence, has acted under coercion, or lacks capacity.⁶¹ One of the major principles guiding anti-trafficking work is the principle of non-punishment of victims of trafficking. This entails that victims of trafficking should not be re-victimized by being detained, charged or prosecuted for activities committed while being trafficked or are a direct consequence of their situation as trafficked persons.⁶² In practice, “while the outer limits and the mechanics of the non-punishment principle will vary under different domestic laws, the determination of whether someone is a trafficking victim will be mitigating. It could mean, in some instances, the difference between whether someone is fully prosecuted or reintegrated into their communities.”⁶³

An obligation of non-punishment has been recognized in several instruments since the adoption of the Palermo Protocol. As stated above, Article 26 of the CoE Convention imposes a clear obligation on States to provide for the possibility of non-punishment. Similarly, Article 8 of the EU Directive established an express obligation not to prosecute trafficked persons for crimes which they have been compelled to commit as a direct

consequence of being subjected to trafficking. Broader calls for States to take action to implement the non-punishment principle can also be found in the UN General Assembly resolution 64/293 and UN Security Council resolutions 2331 (2016) and 2388 (2017).⁶⁴ In 2017, in its Resolution 2388, the UN Security Council urged Member States “thoroughly to assess the individual situation of persons released from the captivity of armed and terrorist groups so as to enable prompt identification of victims of trafficking, their treatment as victims of crime and to consider, in line with domestic legislation, not prosecuting or punishing victims of trafficking for unlawful activities they committed as a direct result of having being subjected to trafficking.”⁶⁵

The starting point for applying this principle is early identification of a situation of human trafficking. Both “identification and assistance” are “prerequisites for the application of the non-punishment principle.”⁶⁶ It is indeed essential to have effective mechanisms and procedures in place to identify victims of trafficking as quickly as possible. “State authorities are required to act proactively in order to uncover potential situations of human trafficking.”⁶⁷

In addition to enabling effective identification and assistance, compliance with the non-punishment principle requires authorities to ensure that trafficked persons are not penalized for “offences they have committed in the process of being trafficked (causation-based offences)” or “for offences not connected with the act of trafficking but which they have been compelled to commit, as trafficked persons lacking autonomy in their acts (duress-based offences).”⁶⁸ An example of the latter are “cycle of abuse” offences in which a trafficked person, due to their being trafficked, traffics or exploits another person.⁶⁹

In certain types of cases, a causation-based approach to the non-punishment principle may be easy to establish and can be applicable for a wide range of conduct.⁷⁰ Such cases include breaches of immigration laws that would normally be penalized, such as the use of false documents, overstaying permitted visa periods, or illegally crossing borders.

Subtle means of control exerted by traffickers, such as by abusing a person's vulnerability, are not always evident, and thus when reviewing offences committed by victims, there may not be clear evidence that they acted under coercion or threat, or had no other alternative but to submit to the perpetrator. Thus, great diligence by investigators and prosecutors is required when examining trafficking cases. Particularly in cases of trafficked children, various forms of compulsion need to be taken into account. The notion of "compulsion" is linked to the means of trafficking in the Explanatory Report to the CoE Convention. Here the non-punishment principle includes involvement in unlawful activities undertaken as a result of coercion, abduction, fraud or deception, or the abuse of a perpetrator's power or a victim's position of vulnerability.⁷¹ Both Article 26 of the CoE Convention and Article 8 of the EU Anti-Trafficking Directive state that States should adopt a broad, not literal, interpretation of the word "compelled" as it appears in the definition of trafficking. In particular, it should be considered whether offences committed by children are related to their having been trafficked.⁷²

"Compulsion" is to be understood in a broad sense, particularly in the case of children. For example, OSCE-produced policy and legislative recommendations hold that, "in cases involving children (...) a broad application of compulsion needs to be understood in light of the child's vulnerability on account of their age alone, and of the irrelevance of consent in the legal definition of child trafficking (...). Where (...) the child commits a criminal act related to their trafficked status, the application of the non-punishment provision is crucial, not only from a child safeguarding perspective but also to prevent the risk of secondary traumatization to the child at the hands of the State."⁷³

Because the list of trafficking-related offences is not exhaustive, the application of the non-punishment principle requires a case-by-case consideration of "the extent to which the offence is connected with the trafficking of the victim and their lack of autonomy."⁷⁴

In addition to crimes, States are recommended to add civil, administrative and immigration offences to the range of offences covered by the non-punishment principle. The OSCE Recommendations of 2013⁷⁵ and the Council of Europe monitoring body GRETA have both expressly disapproved the exclusion of any offences. Nonetheless, the UN Special Rapporteur has noted that "the more serious the offence, the more probing the enquiry will need to be to establish the circumstances in which the offence was committed and whether the right to non-punishment can validly apply. Far from entailing a sort of 'blanket immunity', such safeguard responds to (1) the necessity of identifying the true circumstances in which an offence is committed, (2) enables victims to be diverted into safeguarding and assistance mechanisms, to which they are entitled and (3) encourages the investigation of the crime of human trafficking to take place, resulting in increasing the prosecution of traffickers and decreasing the prosecution of victims for offences they committed when they were subject to another's dominant influence or exploitation."⁷⁶

Provision of non-punishment principle in the OSCE area

As of 2020, 18 OSCE participating States (of 57) have specific legal provisions concerning non-punishment of victims of human trafficking.⁷⁷ In some countries (e.g., Belgium, Croatia, Denmark, Netherlands, Norway, Serbia, Spain, United Kingdom), guidance on the application of the non-punishment provision has been developed for prosecutors and law enforcement agencies.⁷⁸ The legislation of four States (Azerbaijan, Cyprus, Luxembourg and the Republic of Moldova) apply the non-punishment provision to any offences related to the fact that the person had been trafficked.⁷⁹ In other countries, the application of this provision is limited in scope to offences of minor or medium gravity, namely the offences of prostitution, begging, crossing the border illegally, or giving organs, tissues or cells of human origin. In Spain, a proportionality test is applied between the perpetrated criminal act and the means to which the victim was subjected.⁸⁰

The normative and policy basis for preventing and combating terrorism

The international legal regime related to terrorism currently consists of a set of conventions, protocols,⁸¹ Security Council Resolutions, and increasingly non-binding or “soft law” instruments.⁸² There is no comprehensive terrorism instrument or definition comparable to the Palermo Protocol.

International conventions, protocols and resolutions

The 19 Universal Anti-Terrorism Instruments (UATI) are examples of international conventions and protocols (Table on International Legal Instruments).⁸³ The UATI address specific criminal acts that are generally considered acts of terrorism by signatory States. Typically, these instruments demarcate a certain type of terrorist act as an offence under individual conventions; mandate the criminalization of that activity in the domestic law of Member States; establish jurisdiction over offenders under agreed-upon conditions; and create international co-operation mechanisms that enable the prosecution or extradition of alleged offenders.

To a large degree, demarcation is needed due to the fact that there is no internationally accepted definition of terrorism. Although efforts have been made by the international community to define the phenomenon of terrorism, none of these attempts have become legally binding. Nevertheless, on the basis of Resolution 1566 (2004) of the UN Security Council (hereafter UNSC), three cumulative criteria can be identified that characterize terrorism as criminal acts:

- committed with the intent to cause death or serious bodily injury, or taking of hostages;
- committed with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act; and
- constituting offences within the scope of and as defined in international conventions and protocols relating to terrorism.⁸⁴

In 2006, through the adoption of the United Nation’s Global Counter-Terrorism Strategy (see details at page 27 under UN strategy and policy framework), UN Member States affirmed that “acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments”.

International Legal Instruments	In force
1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft	1973
1970 Convention for the Suppression of Unlawful Seizure of Aircraft	1970
1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	1974
1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons	1976
1979 International Convention against the Taking of Hostages	1983
1980 Convention on the Physical Protection of Nuclear Material	1987
1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation	1992
1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	1989
1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf	1992
1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection	1998
1997 International Convention for the Suppression of Terrorist Bombings	2001
1999 International Convention for the Suppression of the Financing of Terrorism	2002
2005 International Convention for the Suppression of Acts of Nuclear Terrorism	2007
2005 Amendment to the Convention on the Physical Protection of Nuclear Material	2016
2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	2010
2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf	2010
2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation	2018
2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft	2018
2014 Protocol to the Convention on Offences and Certain other Acts Committed on Board Aircraft	2020

Alongside the 19 UATI, which are binding for the States that became parties to these instruments, the UNSC has addressed terrorism in a number of other resolutions. Some of these are legally binding since they were adopted under Chapter VII of the UN Charter.⁸⁵ The UNSC, through these resolutions, mandates States to take action to prevent and criminalize acts of and support to terrorism; expresses solidarity following specific attacks; and draws the international community's attention to specific terrorism challenges. For instance, the UNSC Resolution 1373 (2001), passed after the terrorist attacks in the United States of America in September 2001, also more generally obligated UN Member States to prevent and suppress the financing of terrorist acts by criminalizing such financial support.⁸⁶ Together with the above-mentioned instruments, these resolutions have deepened the counter-terrorism legal landscape substantially, primarily through their expanded reference to Security Council resolutions,⁸⁷ including 1373 (2001), 1390 (2002), 1540 (2004) and 1566 (2004).⁸⁸

The financing of terrorism is further addressed through a number of other UNSC resolutions, namely, Resolution 2133 (2014) on kidnapping and hostage-taking by terrorists; Resolution 2178 (2014) on suppressing the flow of so-called “foreign terrorist fighters” (FTFs), financing and other support to terrorist groups in Iraq and Syria; Resolution 2195 (2014) on preventing terrorists from benefiting from transnational organized crime; and Resolution 2199 (2015) aiming to prevent terrorist groups in Iraq and Syria. The resolutions targeting Al-Qaeda and the Islamic State of Iraq and Levant (ISIL) (2253) further focused on disrupting terrorist funding, and evolved into Resolution 2331 (2016), which aimed at dismantling terrorist funding deriving from acts of sexual and gender-based violence, including when associated to trafficking in human beings. And finally, in 2019, Resolution 2462 further expressed concern on terrorist funds raised through a variety of means, including trafficking in human beings, and called for enhanced measures in a number of areas, including assessing the risks for terrorist financing.

Furthermore, on the basis of the UNSC Resolutions, the United Nations' mandate also includes listing and applying a targeted sanctions regime for individuals and groups.⁸⁹ A number of these sanctions are imposed against individuals and entities associated with Al-Qaeda and ISIL. Specific Security Council resolutions⁹⁰ establish targeted asset freezes, travel bans and arms embargos as means to sanction individuals and groups associated with such designated groups. In 2018, as part of the Libya sanctions regimes, the Sanctions Committee placed six individuals involved in human trafficking and smuggling on a human trafficking sanctions list imposing travel bans and asset freezes.⁹¹

UN strategy and policy framework

In 2006, an important milestone toward a shared international vision on countering terrorism was introduced – the United Nations Global Counter-Terrorism Strategy.⁹²

The Strategy was passed as UN General Assembly Resolution 60/288, and has since provided the core strategic framework and policy guidance to the collective effort of the UN system on countering terrorism. The Strategy characterizes terrorism as “one of the most serious threats to international peace and security”. It contains the four following pillars:

- tackling the conditions conducive to the spread of terrorism;
- preventing and combating terrorism;
- building States' capacity to prevent and combat terrorism and to strengthen the role of the UN system in that respect; and
- ensuring respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.⁹³

While the 2006 Strategy is not legally binding for UN Member States, it is an important benchmark that indicates the potential direction of a future international framework for preventing and combating terrorism and protecting its victims. Together with its biennial reviews by the UN General Assembly,⁹⁴ the Strategy can be seen as an important collective international agreement on the need to fight international terrorism in a comprehensive sense, including recognizing the needs and protection of terrorism's victims.

Preventing and countering violent extremism

Over the years, preventing and countering violent extremism has gained increasing attention in policy debates related to counter-terrorism. In 2015, the UN Secretary General introduced the UN Plan of Action to Prevent Violent Extremism.⁹⁵ The Plan is intended to signal a shift from solely “security-based” counter-terrorism measures toward non-coercive or “soft” preventive approaches, including by “reinvigorating those measures covered under” Pillars I (conditions conducive) and IV (ensuring human rights) of the UN Global Counter-Terrorism Strategy. The UN General Assembly has also encouraged Member States to develop their own national and regional plans of action to prevent violent extremism.⁹⁶

The increasing focus on violent extremism, however, also raises a number of human rights challenges.⁹⁷ State actions and strategies to prevent and counter violent extremism that lead to terrorism (P/CVERLT)⁹⁸ can differ in various international, regional, and domestic contexts. While there is no universally agreed-upon definition of “terrorism”, the concept of “violent extremism” is even more elusive.⁹⁹ This further exacerbates potential human rights risks stemming from counter-terrorism measures that are based on vague and overbroad definitions of terrorism offences in national law.¹⁰⁰

Regional counter-terrorism instruments and “soft law”

There are also a large number of regional and sub-regional instruments that establish obligations on their respective member States with regard to selected aspects of terrorism. For example, the CoE’s 1977 European Convention on the Suppression of Terrorism¹⁰¹ was designed to facilitate the extradition of persons who had committed acts of terrorism. In order to do this, the Convention listed a number of offenses that were to be considered terrorist in nature and thus applicable to the

Convention. The 2005 CoE Convention on the Prevention of Terrorism (CECPT)¹⁰² built upon this by including provisions relating to: the Public Provocation to Commit a “Terrorist Offence” (Article 5); Recruitment for Terrorism (Article 6); and the Provision of Training For “Terrorist Offences” (Article 7). In 2015, the adoption of an Additional Protocol to the Convention on the Prevention of Terrorism enabled States to address criminal law aspects of the phenomenon of “foreign terrorist fighters” and returnees. It requires State parties to criminalize taking part in an association or group for the purposes of terrorism, receiving terrorist training, travelling abroad for the purposes of terrorism, and financing or organizing travel for this purpose.¹⁰³

In turn, the EU’s Framework Decision on Combating Terrorism and the Amending Framework Decision¹⁰⁴ define terrorist offences, as well as offences related to terrorist groups linked to terrorist activities, and set the rules for perpetrator exchange between EU Member States.

There has also been a proliferation of “soft law” norms in counter-terrorism governance, including by bodies such as the Financial Action Task Force (FATF).¹⁰⁵ Soft law includes UN General Assembly resolutions, declarations, guidelines, technical manuals, opinions from quasi-judicial bodies and certain publications of United Nations entities. The increased proliferation and use of “soft law” regulation in the counter-terrorism arena has had a significant impact on the protection and promotion of human rights.¹⁰⁶ Within the plethora of formal and informal regulation in the counter-terrorism and VERLT field, it has been noted that sometimes national security actions can be at cross purposes. Some concerns were raised, for example, on the role of counter-terrorism financing in undermining humanitarian assistance, by women’s rights organizations and gender equality due to their profile and operating environments of those organizations.¹⁰⁷

Comparison of policy and legislation: Human trafficking and terrorism

While the United Nations, the Council of Europe and the EU systems operate with complementary anti-trafficking agenda, they are distinct in their approaches to creating counter-terrorism frameworks. As mentioned above, there is no internationally agreed-upon definition of terrorism, nor is there a common structure supporting anti-terrorism strategies, such as the 4P's reflected in human trafficking statutes and the aforementioned regional trafficking treaties. In short, there is no internationally agreed framework shared by States to combat terrorism that is comparable to the Palermo Protocol on human trafficking.

The preamble of the UNTOC recognizes the growing links between transnational organized crime and terrorist crimes, and expresses the conviction that the UNTOC would constitute an effective tool and the necessary legal framework for international co-operation in combating such criminal activities. The UNSC resolutions 2331 (2016) and 2388 (2017) highlighted the connection between trafficking in persons, sexual violence in conflicts, and terrorism, stressing that this connection can prolong and exacerbate conflict and instability, or intensify its impact on civilian populations. Resolutions 2253 (2015), 2368 (2017) and 2482 (2019) further recognized the link between human trafficking as a form of organized crime by ISIL, Al-Qaeda and associated individuals and groups, expressing concern about its use as a source of financing or logistic support to maintain their terrorist activities. Similarly, the OSCE Charter on Preventing and Combating Terrorism¹⁰⁸ expressed concerns about the links between terrorism, transnational organized crime, and trafficking in human beings in particular.

Despite different approaches in legal and policy responses, there are many similarities between the crimes of human trafficking and terrorism reflected in international law. Some elements of human trafficking, such as acts of kidnapping or abduction, correspond directly to acts censured by various international conventions related to acts of terrorism. Indeed, as will be explored below, the means used by perpetrators of both crimes, such as the threat of use of force, fraud and deception, are often similar.

Conversely, the purpose or criminal intent of human trafficking differs from that of terrorism. The intent *ab initio* on the part of the trafficker is to exploit the person and gain profit or advantage from that exploitation.¹⁰⁹ In contrast, the intent of terrorism is often understood as intimidation of a population or compelling of a government or international organization to do or to abstain from doing certain acts.¹¹⁰ In addition to activities carried out to reach the purposes described above, terrorist acts can refer to a plethora of activities, including human trafficking, intended to achieve tactical gain or sustain the operations of a particular group. Thus, when acts of human trafficking and terrorism overlap, the separate intent of the two crimes can become linked.

While the international framework to address human trafficking has sought to prevent and prosecute the offence and protect its victims, counter-terrorism efforts have largely focused on prosecuting perpetrators of the crime, with somewhat less attention given to preventing terrorism and even less to protecting victims. The key differences between these two bodies of law are linked to the absence of a legally binding definition of terrorism and, consequently, a lack of consideration regarding the protection of victims. This in turn highlights another gap: the lack of a common understanding about who qualifies as a victim of terrorism.

The Palermo Protocol and the CoE Convention include obligations to protect and assist trafficking victims. These obligations are based on the general duty, first of all, to identify victims of trafficking. They also include – but are not limited to – providing immediate protection and support, legal assistance, secure accommodation and temporary legal residency. The CoE Convention defines a “victim of trafficking” as any natural person who has been subject to trafficking in human beings.¹¹¹ A person is considered a victim “regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.”¹¹²

With regard to terrorism, stipulations for victim protection are not evident at either the international or regional level. To date, the lack of a definition of terrorism has led States to embrace a variety of measures in their counter-terrorism domestic laws to fit their security objectives. These often focus on criminalizing terrorists, and do not expressly mention identifying or protecting victims. The deference to national practice accounts for significant variance at the national level in the protection and promotion of human rights.¹¹³ As explored below in this paper, this has consequences in cases at the intersection of terrorism and human trafficking: victims of human trafficking may not be identified as being separate from perpetrators, or a single person may be identified as a victim of human trafficking and at the same time as a perpetrator of a terrorist act. In such cases, the obligation of States to co-operate as foreseen under the Palermo Protocol may not be complied with because of the sensitivity of security-related information. Based on the separate – international vs. national – development of the legal frameworks, various aspects of laws to combat trafficking and terrorism can conflict rather than complement each other. Thus, identifying victims of trafficking by terrorist groups would “help overcome gaps in the current level of assistance given to victims, as well as frame its rationale. There can be a tendency to treat assistance to victims as charity when it is instead legally required even if action on prosecuting the perpetrators themselves is stalled.”¹¹⁴

A few steps have been taken toward recognizing victims of terrorism. In 2017, the UN General Assembly adopted a resolution establishing 21 August as the International Day of Remembrance and Tribute to the Victims of Terrorism. In 2019, the International Commission of Jurists (ICJ) developed a paper compiling all relevant UN General Assembly, Human Rights Council, and Security Council resolutions; findings and recommendations of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; as well as other UN and regional sources.¹¹⁵ In June 2019, the UN General Assembly adopted resolution 73/305 condemning “all forms of sexual and gender-based violence, abductions, trafficking in persons, rape, forced marriage, enslavement and other forms of violence perpetrated by terrorist groups, and stressing the importance of bringing perpetrators to justice and addressing the needs of victims, in particular women and children, in this regard.”¹¹⁶

Recent developments with regard to the treatment of victims of terrorism include the recognition of the role of victims in countering and preventing terrorism and violent extremism,¹¹⁷ an area that is being increasingly strengthened, also within anti-trafficking mechanisms, such as the FAST Survivor Inclusion Initiative,¹¹⁸ or the International Survivors of Trafficking Advisory Council (ISTAC) that is established by the OSCE/ODIHR based on the OSCE MC Decisions 6/18, 6/17 and 7/17.

Despite the growing attention being given to victims of terrorism,¹¹⁹ in practice concrete measures at the national or global level to respect, protect and fulfil the actual human rights of victims of terrorism are nascent and have not been established or tested broadly. Moreover, while there has been a modest increase in attention being given to victims in the context of both crimes, challenges remain, since victims are often stigmatized or rejected by their communities, especially when speaking publicly about their experiences.¹²⁰ Thus the importance of promoting and protecting the human rights of victims of terrorism, as also underlined by UN General Assembly Resolution 72/284, should be recognized and strengthened.¹²¹

When discussing victims, the application of the non-punishment principle has been debated in contexts where trafficking in human beings and terrorism intersect. In 2015, the UN Security Council issued a statement underscoring the need to “ensure that victims of trafficking in persons are treated as victims of crime and in line with domestic legislation not penalized or stigmatized for their involvement in any unlawful activities.”¹²² UNODC further clarified that “whenever the violence committed against a child by a terrorist or violent extremist group qualifies as trafficking in persons, the child should be treated and afforded protections as a victim of trafficking in persons and should not be prosecuted, deprived of liberty or otherwise sanctioned, whether criminally or administratively, for offences committed as a consequence of his or her situation as a trafficked person.”¹²³ Nevertheless, while States have an obligation to follow the principle of non-punishment if a crime committed by a trafficking victim was caused or directly linked to their having been trafficked, States nonetheless have a degree of discretion regarding how to implement this principle according to their national legal systems.

Various aspects complicate the efforts of States to ensure that their responses to human trafficking committed by terrorist groups comply with all of their legal obligations. These include the need to comply with multiple instruments and frameworks (e.g., counter-terrorism, anti-trafficking, and human rights); the lack of uniform definitions (e.g., of terrorism); the inconsistent application in practice of accepted definitions (e.g., of human trafficking); and the tendency of states to increasingly prioritize security (e.g., counter-terrorism and P/CVE or border security in the case of trafficking) over human rights obligations, despite international commitments reinforcing that these two objectives are not competing but mutually reinforcing.¹²⁴ These challenges contribute to ongoing gaps in ensuring the human rights of victims implicated in the trafficking–terror nexus. These challenges can be particularly acute at the critical intersection between crimes for which, in the most complex instances, an individual involved or associated with terrorist groups could potentially be defined as a perpetrator under terrorism statutes and a victim under trafficking statutes.

For example, recruitment into a terrorist organization may be viewed as trafficking under one jurisdiction (in cases in which trafficking means were involved in the recruitment), but as terrorism in another (if the person has been engaged with that terrorist group). In both cases there is the potential of human rights protections being reduced. With regard to trafficking, this has implications for the full and effective application of the non-punishment principle regarding all crimes committed as a result or in the course of a person’s trafficking situation. Thus, the wide definition of human trafficking and the open-ended list of offences relevant to trafficking are essential. A recent pattern observed in this regard is exploitation for the purpose of military service or membership in armed groups being included in lists of trafficking purposes. For example, the definition in national legislation of at least one OSCE participating State includes trafficking for military service.¹²⁵

The above-mentioned elements and principles are examined further in the following sections of this report, where illustrative examples of human trafficking patterns employed by terrorist and violent extremist groups will be presented and analysed.

PART II



RESEARCH FINDINGS

Examining the nature and scope of trafficking in human beings as it relates to terrorist groups is important because whether certain conduct is characterized “as ‘trafficking’ has significant and wide-ranging consequences for the alleged perpetrators of that conduct, and for the alleged victims”.¹²⁶ For perpetrators, it affects the nature of crimes for which they might be prosecuted and the length of sentence they might receive. For victims, this classification is important because it means, among other things, that they might be entitled to specific rights and remedies, including protection and assistance without discrimination,¹²⁷ or that they might be viewed as a victim instead of an accomplice.

This section will explore, through an analysis of illustrative examples, various elements of trafficking – acts, means and purposes – employed by terrorist groups. It will also explore the trafficking modus operandi of these groups. As has been mentioned in the previous sections of this report, examples presented in specific sections might also illustrate other elements of trafficking. For instance, examples of trafficking acts might also illustrate means or purposes of exploitation. Nonetheless, each example will be presented in only one section.

Trafficking acts used by terrorist groups

This section explores various trafficking acts employed by terrorist groups to recruit, transfer and harbour vulnerable adults and children. The illustrative examples elucidate the trafficking *modus operandi* of terrorist groups. There are various environments or venues where recruitment occurs: the internet, including social media and chat rooms, family and local community centres and places of worship, (deceptive) friendships or romance, etc. In many cases, the “successful” recruitment and control of a person utilizes several of these methods in an overlapping fashion.

The “act” element of trafficking in persons

The “act” element of trafficking in persons can be fulfilled by a wide range of practices; these practices can be considered as “neutral actions, which become criminally relevant if they are conducted with the intention of exploiting others.”¹²⁸ The non-exhaustive – and undefined – list of “acts” in the Palermo Protocol includes recruitment, transportation, transfer, harbouring, or receipt of persons. Four features of this element are particularly important for analysing whether certain activities meet the definition of “act” of trafficking in persons: (1) the “act” element can be part of the initial trafficking process, the end point, or the maintenance of exploitation; (2) the act can be committed by any of a broad range of actors; (3) the listed “acts”, e.g., recruitment or transportation, are expansive and non-exhaustive; and (4) acts include national or internal trafficking of victims, as well as cross-border actions.

Defining the scope of the “act”

First, the “act” element in the UN Trafficking Protocol covers activities that are part of a *process* (e.g., recruitment, transportation, transfer) leading to an exploitative situation, as well as both the “*end situation of trafficking*”¹²⁹ (e.g., forced labour of migrant workers after legal migration) and the “*maintenance of that person in a situation of exploitation*” (e.g., harbouring a person to restrict movement). This means that such circumstances “could result in the concept of trafficking being extended to situations of exploitation in which there was no preceding process. A working environment that changes from acceptable to coercively exploitative practices provides another example of potential trafficking without any preceding process.”¹³⁰

This potential for a change in circumstances – e.g., when individuals are moved into a particular situation without the intention of being exploited, but there is then a shift such that they are “harboured” through a specified “means” for an exploitative purpose – to result in trafficking in persons is relevant for assessing a number of established patterns of individuals’ experience with terrorist or violent extremist groups or individuals.¹³¹ For example, it has been reported that “when women and girls join ISIL, they might find themselves in situations where an originally agreed-to-marriage takes on a nature of domestic servitude or sexual slavery.”¹³² As such, “because trafficking can occur due to changed circumstances, if women linked to ISIL originally agreed to a marriage that instead became ‘domestic servitude or sexual slavery’ this might change voluntary travel to the caliphate to an involuntary stay.”¹³³

Illustrative example 1

In 2015, ISIL recruited a school girl, aged 15, from a Western European country through a man deceiving the girl into a romantic relationship on Facebook, whereupon she converted her religion for him. She had been unhappy at school despite excellent grades. She was groomed online through videos of an idyllic life where men and their wives and children wander together through parks and bake bread together. As a result, in 2016 she left her home to travel to Syria and then Iraq to marry a member of a terrorist group. While in Syria, it appears she was primarily forced to undertake domestic duties as a servant to her husband, who died in combat five months after they married. As well as being unable to consent as a minor to her own exploitation through traveling to be married, it was also reported that when she arrived she was surrounded by fighting, haunted by the jets and drones that flew over the house she shared with other women in Mosul, and forced to carry dead babies. She was arrested a year later by special forces in Mosul. Media reports indicate an absence of evidence that she was involved in violent acts, though “she was likely (...) part of a brigade that checked that women on the streets were dressed according to the rules of the caliphate. Those who were not were reportedly whipped on the spot by members of the brigade.” In late 2017, at the age of 17, she was held in an Iraqi prison awaiting trial in Baghdad. She was sentenced to six years of incarceration in Iraq for joining a terrorist organization.

Illustrative example 2

A girl from Central Asia was married at the age of 16. A few months later she divorced her husband. Subsequently, a man approached her through the internet and persuaded her to travel to a city in an OSCE participating State for marriage. He facilitated her transportation by sending her 3,000 US dollars for the trip.

After deceiving her parents, she left her country in 2016 and flew to a neighbouring country. At this time she was 17. A man from a terrorist group who was responsible for safe houses met her. He harboured her in one of the apartments for three months.

The man immediately took away her passport, allegedly in order to get her a Syrian visa. For two weeks after each prayer session, he read sermons about the role of women in jihad. Then he told her that fighters from Syria would come to her apartment every night and she must provide them sexual services.

After two and a half months, the man said that she would be transported to Syria, where she would have a permanent husband, a fighter from the terrorist group. She decided to escape, using sheets to descend from the third floor at night, whereupon she ran and reached her embassy. She succeeded in returning to her home country.

Deceptive recruitment by terrorist groups has long been part of the *modus operandi* of human traffickers to lure young girls and women with promises of gainful employment or romance into sexual exploitation in the OSCE region and beyond.

These two examples reflect recruitment from within the OSCE region into territories outside the OSCE, coupled with deceptive means that changed the person’s situation from perceived or expected romantic relationship into exploitation. As both cases suggest, the internet is often leveraged to secure such ends via processes of cyber-enticement, grooming and the use of “lover-boy” techniques to recruit vulnerable individuals. These cases also point to the need to consider the “act” element of recruitment as the starting point in an analysis; adopting a trafficking-based perspective could assist in this regard.

Moreover, since the “act” element covers the process that precedes exploitation as well as the process of the maintenance of exploitation, “it is not just the recruiter, broker, or transporter who can be identified as a trafficker, but also the individual or entity involved in initiating or sustaining the exploitation.”¹³⁴ This means that “owners and managers, supervisors, and controllers of any place of exploitation such as a brothel, farm, boat, factory, medical facility, or household”¹³⁵ are potentially subject to the application of the definition of trafficking in persons.

Additionally, it is important to highlight that the acts described above – e.g., harbouring and receipt – can, in and of themselves, comprise activities that form part of the process of trafficking, as well as the endpoint of exploitation. For example, the harbouring of persons “means accommodating or housing persons in whatever way, whether during their journey to their final destination or at the place of the exploitation.”¹³⁶ The definition of receipt of persons “is not limited to receiving them at the place where the exploitation takes place either, but also means meeting victims at agreed places on their journey to give them further information on where to go or what to do.”¹³⁷ These definitions of harbouring and receipt encompass the full range of persons involved in both the processes and endpoints of, for example, child recruitment and forced marriage practices.

Similarly, in its analysis of radicalization processes, the NGO International Crisis Group describes the range of actors involved in the recruitment of individuals to join ISIL, from recruiters and funders of travels of young males, to escorts of females from Central Asia facilitating their undetected transfer to ISIL.¹³⁸

When speaking about actors involved in the process of trafficking an individual, the role of family members and others in the person's close social circle need to be examined as well. Recently released data contributed by multiple agencies has revealed that family members are involved in nearly half the cases of child trafficking.¹³⁹ Similar to trafficking for sexual and labour exploitation, families or communities may be involved in the recruitment of children for terrorist and violent extremist groups. Indeed, it has been observed that "ISIL recruitment also heavily involved family members in co-opting children into joining the group."¹⁴⁰ A report published by the think-tank Quilliam has described mothers raising children with a high exposure to ISIL ideology from early ages through the help of books provided by the group.¹⁴¹

Media reports in a country in Central Asia also alleged that there is a pattern of family involvement in child recruitment and handover to terrorist groups.¹⁴² There are cases of parents bringing children into conflict zones, initially without the intention of indoctrinating them, but then losing control over the children or being killed, resulting in these children becoming orphaned and subject to the will of others. In such situations, it may well be that such child are entitled to a level of protection, including repatriation. It should be stressed, however, that in these case studies of "parental" recruitment and transfer, an important question arises regarding whether it is the parent who is responsible for the recruitment, or whether by previously recruiting the parent, the terrorist group is ultimately responsible for recruitment across generations.

At times, the receipt of persons occurs through "proxies". Terrorist groups offer benefits to traffickers who are in a position of control over other persons. Such traffickers are able to deceive and "deliver" such persons to a place where members of terrorist groups can then abduct them. Others are offered rewards to provide such groups with information about potential recruits in their communities.¹⁴³ In contrast to traditional human trafficking cases, where a "broker" tricks a person into exploitation carried out by a third party, such proxies generally only provide the terrorist groups information about possible individuals to target.

Recruitment of adults and children into terrorist groups has occasionally happened at religious venues and social centres. Similar to the *modus operandi* of traffickers, terrorist groups also use community centres or associations to recruit adults and children into their networks. The illustrative example 3 demonstrates how religious venues and social centres in particular have played a role in the grooming and recruitment of children seeking self-identification and unity.

Illustrative example 3

Between 2006 and 2011, some 27 Somali-Americans disappeared from their local communities in the United States to fight in Somalia.¹⁴⁴ One of them was a 17-year-old boy from North America who went missing on 4 November 2008. He had left Somalia as an infant, transited in a refugee camp in Kenya, and arrived in North America at the age of four with his three siblings. He was raised by his single mother after his father died in an accident. He was a straight-A high-school student and took advanced courses. He aspired to become a doctor or lawyer. Despite his academic achievements, reportedly the boy had been radicalized in North America, where he attended a religious centre. The centre has "repeatedly denied accusations by families of some of the missing men that the religious centre played a role in their decision to leave."¹⁴⁵ Nevertheless, as more boys and young men went missing, in 2012 a case unfolded that resulted in the conviction of a man, a janitor at the mosque, who played a key role in enticing boys and young men into joining al-Shabaab and organized their travel to Somalia.¹⁴⁶

"Like his peers, this boy was never interested in Somali politics, or understood Somali clan issues," his uncle testified in 2009. "These kids have no perception of Somalia except the one that was formed in their mind by their teachers at a local mosque. We believe that these children did not travel to Somalia by themselves. There must be others who made them understand that going to Somalia and participating in the fighting is the right thing to do." The uncle thus was emphasizing his nephew's vulnerability: the boy, according to his uncle, was a "kid", a "child" who didn't know any better and was subject to manipulation and enticement by adults pursuing ulterior motives.

His mother – surprised to have found that he had skipped his school classes that November day – later checked his bedroom to discover that his luggage, clothes and passport were gone. She received a phone call two weeks later from her son. He told her that he was in Somalia and that, for the time being, he was safe.

The boy contacted his mother again in December of the same year and once more the following May. "If I come back to North America, will they arrest me?" he asked his mother during the May call. He sounded ill on the phone. On 5 June 2009, someone who claimed to be a member of al-Shabaab informed the boy's mother that her son had been killed in Mogadishu. He was found "shot in the head in an open area of the city". His family members suspect that he was killed to prevent him from either returning home to North America or from divulging too much information to his family about the circumstances of his departure, such as the name of the recruiters in North America who had facilitated his flight.

As alluded to above, in some cases acts have been defined quite broadly. For example, recruitment “is to be understood in a broad sense, meaning any activity leading from the commitment or engagement of another individual to his or her exploitation. It is not confined to the narrow list or form of acts and therefore also includes the use of modern information technologies.”¹⁴⁷

Technology has become an important tool in the recruiting, harbouring and transferring of vulnerable adults and children by terrorist and violent extremist groups. Adults and children have been groomed, lured and finally recruited by such groups via use of modern communication technologies, above all social media and mobile phone applications.

Similar to the grooming and manipulation of adults and children for the purpose of trafficking, recruitment *modus operandi* of terrorist groups can happen subtly, incrementally, and from afar – often over a period of time. Once recruited, victims may themselves contribute to the recruitment of others through posting videos (or having videos of themselves posted) on global video platforms, chatrooms and other widely accessible platforms. As described by experts, ISIL organized a “slick, modern social media campaign” through which it distributed messages “across a variety of open Application Programming Interface (API) and encrypted social media platforms in as many as 25 languages, including American Sign Language.”¹⁴⁸ It has been estimated that ISIL had “at least 46,000 Twitter accounts with which it reached millions of followers.”¹⁴⁹ Recruiters “groom” targets by tailoring their messages based on what they have learned about the targets’ interests, goals, fears and aspirations – this helps build a relationship of trust and intimacy.

Factors and methods in the recruitment of labour migrants to ISIL

The recruitment of Central Asian migrants into ISIL has been attributed to a range of factors, including the influence of social media and marginalization and discrimination in the context of economic migration.

- The online influence leading to recruitment of labour migrants can take many forms; both impersonal, with on-line propaganda, and personal, with social media communications^{150,151};
- In economic migration,¹⁵² because some countries in the region have made their migration laws increasingly strict, many Central Asian migrant labourers face pressure to legalize their status after arriving; failure to do so can leave them vulnerable to radicalization,¹⁵³ as well as because “migration and subsequent marginalization or ghettoization breaks important community bonds for the migrants and removes them from positive mitigating factors – family, community, religious leaders – that all work to prevent militant mobilization at home”¹⁵⁴;
- Economic exploitation, as well as other marginalization (e.g., discrimination against labour migrants) that leave individuals susceptible to either monetary incentives from recruiters or with grievances that can be readily exploited.¹⁵⁵

In practice, transportation “is also a general term and does not define any particular means or kinds of transportation”; it encompasses both transnational and domestic trafficking.¹⁵⁶ Moreover, the interpretation of “acts” is broad enough that it covers situations where the intended activities themselves have not been completed:

*The transfer of a person includes any kind of handing over or transmission of a person to another person. This is particularly important in certain cultural environments where control over individuals (mostly family members) may be handed over to other people. As the term and the scope of the offence are broad, the explicit or implied offering of a person for transfer is sufficient; the offer does not have to be accepted for the offence of trafficking in human beings to be constituted if the other elements are also present.*¹⁵⁷

And finally, the transportation of an individual involves the “act of transporting a person from one place to another”¹⁵⁸; it is “not necessary for the victim to cross any borders, nor is it necessary for the victim to be present illegally in a state’s territory.”¹⁵⁹ Thus, the definition of trafficking in persons extends to national or internal trafficking of victims in their own countries as linked to terrorist groups.

Illustrative example 4

Two children aged 6 and 9 from a country in South-Eastern Europe were abducted by their father in 2014 and taken to Syria without their mother’s consent. The man had sold the house, leading his wife to believe that the money would be used for the purchase of another house and that the transaction would take place at a notary. Thinking that she was signing for the sale, she instead signed an authorization to allow the children to travel with their father. The children have not communicated with the mother since they left the country. They have called the grandmother (the father’s mother), stating that they have been told they could not leave the territory until they become adults. The father is believed to have been killed in Syria. The fate of the children is unknown at the time of drafting this paper.

While in some cases the intention to exploit children may not be definite, as illustrated in the above paragraph, the fate of children after the death of a parent is unclear and the risk of exploitation of such children by terrorist groups is high. This assumption is supported by academic reports and media coverage, which have alleged that Al-Qaeda in Iraq is very active in recruiting children to create a new generation of mujahedeen; it has recruited children younger than fourteen years old to conduct suicide attacks.¹⁶⁰

Targeting children for multiple exploitative purposes

ISIL has trained thousands of children for military engagement,¹⁶¹ and has dedicated operations to entrap and recruit girls, including from the OSCE area, as brides or suicide bombers.¹⁶² While ISIL has been largely ousted from the territory it occupied in Iraq and Syria, the fate of many of these children formerly associated with ISIL, of whom some have meanwhile reached adolescence, remains unsettled. In Syria alone, UNICEF estimates that there are close to 29,000 foreign children, most under the age of 12. Some 20,000 of these children are from Iraq, with the rest from approximately 60 other countries. UNICEF has raised the concern that “most of these children were born in the conflict areas controlled by ISIL or travelled there with their parents. The rest – mostly boys – were either coerced or manipulated into supporting armed groups or had to do so to ensure their own survival.”¹⁶³

Trafficking means used by terrorist groups

The “means” element of trafficking in persons

The definition of trafficking in persons in the Palermo Protocol identifies particular ways through which adults can be recruited, transported, received, etc., with the intent to exploit those persons. These are called the “means” by which someone is trafficked. When the victim is a child it is not necessary to prove “means”; since children cannot consent to their own exploitation; in all other cases, proof of means is required. In the Protocol, the listed means are:

- threat or use of force or other forms of coercion;
- abduction;
- fraud;
- deception;
- abuse of power or a position of vulnerability (APOV); and
- the giving or receiving of payments or benefits to achieve consent of a person having control over another person.

The list reflects a mix of both physical and non-physical means, such that the “inclusion of fraud, deception and the abuse of power or of a position of vulnerability recognizes that trafficking can occur without the use of any overt (physical) force.”¹⁶⁴ Some of the “means” listed in various international instruments are discussed below.

Coercion

Coercion “is an umbrella term, used previously in the trafficking context to refer to a range of behaviours including violence, threats and deceit, as well as abuse of a position of vulnerability.”¹⁶⁵ For example, the UNODC Model Law Against Trafficking in Persons of 2009 defines “coercion” as the “use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to: (i) Threats of harm or physical restraint of any person; (ii) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; (iii) Abuse or any threat linked to the legal status of a person; (iv) Psychological pressure.”¹⁶⁶ Similarly, the OSCE has described coercion as follows:

*Coercion is understood as the use or threat of the use of force, including some forms of non-violent or psychological force. People may be coerced into prostitution, forced labour, etc., through abduction or kidnapping. Coercion can also include: threats of harm or physical restraint against a person; any scheme, plan or pattern intended to cause a person to believe that failure to perform an act will result in serious harm or physical restraint; abuse or any threat linked to the legal status of a person; psychological pressure, etc.*¹⁶⁷

In practice, while these explanations – and the other definitions – provide helpful parameters for the range of conduct that may constitute coercion, deception or fraud, the assessment of “means” is context specific. Also subtle forms of coercion are widely used to control victims. One example that is relevant in the trafficking-terrorism context is the confiscation of travel documents. For example, in relation to ISIL it has often been reported that passports are confiscated.¹⁶⁸ Confiscation of a victim’s personal documents is a particularly effective method of preventing trafficking victims from escaping, since without any personal documents, victims often feel that they have no other option than submitting to exploitation.¹⁶⁹

In each case, whether certain means constitute coercion, deception or fraud depends on the extent to which the individual understood and agreed to the arrangement(s) (e.g., of travel documents being taken) and is free to exit the situation or arrangement if the conditions differ from those originally consented to.

The examples below, collected through interviews and from reports, reflect the combination of means employed by terrorist groups in various stages of trafficking of persons into their groups. These means can develop from deception during the recruitment phase into use of force, coercion and threats to control and harbour the persons.

Illustrative example 5

A husband and his friends coerced a young woman from the South Caucasus into travelling to the city of Tal Afar in Iraq. She maintained contact with her sisters via WhatsApp. Her initial calls gave the impression of her living conditions being good. However, in later calls she informed them that she was living under pressure and threats, and that ISIL had deceived her and her husband by offering some trade deals in Iraq. Upon arrival, ISIL confiscated their passports and harboured them in an apartment specially allocated for the family. She could leave the apartment only under supervision. For the first few months her husband lived with the family, but then he left, informing them that he was living in another city for business reasons. Six months after arriving in Tal Afar, she received the news that her husband had been killed. Three months after the death of her husband, she told her sisters that ISIL had forced her to remarry another man. In 2016, she gave birth to a daughter who was registered as an Iraqi citizen. Her second husband was killed in August 2017. ISIL forced her to remarry still another fighter and to become pregnant again to increase the number of the future generation of ISIL fighters. Her children were called “the soldiers of freedom”.

The above story is similar to the documented cases of ten other women ranging in age between 19 and 38 years. ISIL forced the women to lie to their families about their living conditions, and threatened to take away their children and force them to fight. Similar to the case above, ISIL confiscated the passports of all these women and their family members and informed them that they would be given new passports of the Islamic State. Two women mentioned that they had witnessed the burning of their documents.

Illustrative example 6

A 56-year-old man from the South Caucasus received a proposal to expand his business in a country neighbouring Syria from acquaintances working with him at the market (bazaar). He was also told that if he travelled with his family, it would be easier to receive a residence permit, and that he would earn more interest when depositing money in banks in that country. In 2015, he moved to the country neighbouring Syria, along with his wife, his two sons and his daughter, and other family members (in total 19 persons, comprising 8 adults and 11 children). The men were then sent to Syria to purchase goods. Upon arriving in Syria, ISIL took away their money and documents and forced them to bring their families to Syria. After the women and children had moved to Syria, the man called his sister and informed her about the good living conditions in a city in the neighbouring country and that his business had expanded. After checking the number, the sister discovered that the call had been made from Syria and despite her attempts to call the number back, she was unable to reach her brother.

In August 2017, the man’s wife called her sister-in-law and informed her that the family was detained in camps in Tal Afar and that her husband and sons had been killed. She pleaded with her to inform the authorities in her home country and to save them. She also informed her sister-in-law that since their arrival in Syria, ISIL kept the whole family as slaves, and forced the wives of her sons to marry and become pregnant.

Illustrative example 7

A young man from an OSCE participating State approached a 30-year-old migrant woman from Central Asia online and offered her a romantic involvement. After becoming attached to the man, she travelled to a country neighbouring Syria, where the man met her at the airport. But instead of going to the city, the man forced her to make a 12-hour trip to the Syrian border. She related the situation as follows: “I was actually kidnapped – they brought me to the border at midnight, where I was met by a group of unknown men. They started to threaten me by saying that if I didn’t cross the border they would kill me, or I would be killed by the frontier guards as a terrorist. I was forced to cross the border, where I was met and put in a house where many women were accommodated.”

According to her, the house was crowded with women of different nationalities who were used as sex slaves. The house was supervised by a woman from the Caucasus. The women who refused to marry were threatened with torture and starvation to the point of death. Looking for a way out, the woman escaped the house and found her way to representatives from her country.

She received amnesty from prosecution and was assisted in returning home.

While the abduction of foreign citizens as well as nationals has been a common practice among terrorist and violent extremist groups in Afghanistan,¹⁷⁰ Cameroon, Chad¹⁷¹ and other places, example number 7 also shows that this particular means was used by ISIL to force citizens of OSCE participating States to join terrorist groups. Individuals who have been kidnapped and then sexually exploited, used as forced labour, or forced to fight often suffer severe punishment if they are caught in their attempt to escape the situation. While the violence is mostly directed at the victims, it is not uncommon for terrorist groups to also threaten the families of abductees in order to secure co-operation.¹⁷²

Deception and fraud

Deception and fraud “are examples of less direct means and will generally relate to the nature of the promised work or service, and/or the conditions under which an individual is to undertake that work or perform that service.”¹⁷³ For example, the UNODC Model Law against Trafficking in Persons of 2009 offers two potential definitions of “deception”: (a) “any conduct that is intended to deceive a person”, or (b) any deception by words or by conduct concerning: “(i) The nature of work or services to be provided; (ii) The conditions of work; (iii) The extent to which the person will be free to leave his or her place of residence; or (iv) other circumstances involving exploitation of the person.”¹⁷⁴ The Commentary to the Model Law elaborates on this as follows:

Deception or fraud can refer to the nature of the work or services that the trafficked person will engage in (for example the person is promised a job as a domestic worker but forced to work as a prostitute), as well as to the conditions under which the person will be forced to perform this work or services (for instance the person is promised the possibility of a legal work and residence permit, proper payment and regular working conditions, but ends up not being paid, is forced to work extremely long hours, is deprived of his or her travel or identity documents, has no freedom of movement and/or is threatened with reprisals if he or she tries to escape), or both.¹⁷⁵

There are numerous accounts of means that may constitute deception and/or fraud of trafficking in human beings by terrorist groups. The deceptive practices range from manipulation of emotional vulnerabilities such as love, romance and marriage, to manipulation of economic and social vulnerability involving deceptive job offers and financial incentives, or a combination of both. One example is making false promises of marriage: according to a report provided by a civil society organization in an OSCE participating State, six mothers aged 21 to 29 were recruited in South Caucasus with promises of finding rich husbands in Syria. They were sent to Syria and forced to become sex slaves. The fate of these women has not been known since December 2017.

Illustrative example 8

In 2014, a 36-year-old woman from the South Caucasus met a man on the internet who lured the woman with idyllic promises of marriage. After a month of communication, in August 2014, she left the country without notifying her mother. According to her aunt, she lived with her mother under difficult economic conditions. After two days, her mother informed law enforcement authorities about her missing daughter. After a search, it was found that she had crossed the border to a city neighbouring Syria. After two months, the mother received a message on her mobile phone that her daughter was now married and had moved to Syria. The mother answered the message and expressed the wish to visit her daughter. As a response to her message, she was informed that she would be met at the border to Syria on 9 January 2015. Despite concerns of family members, the mother left her home country on 4 January 2015. In May 2017, the aunt received a message from her sister that she and her daughter were being held in prison. According to the message from the mother, her daughter had been deceived by the man to travel to Syria, and that she had been abused and tortured by him upon arrival and kept as a slave.

In other cases, deception can potentially be present when jobs are falsely promised as a form of recruitment. According to the US Department of State, “there is growing concern that some ISIL recruits from Central Asian countries may be vulnerable to trafficking after arriving in Syria. Others, deceived by recruiters promising jobs in Turkey, are later taken to Syria and forced by extremist groups to fight, work, or endure sexual servitude.”¹⁷⁶ In one case, a construction worker in a OSCE participating State described how his nephew was nearly recruited by a terrorist group through deception by a work opportunity being offered to him while he was travelling in a country bordering Syria.

In other cases, deception has been used as a tactic by offering monetary incentives to lure recruits. Young recruits have reportedly been given money and told they would work in construction, but in reality end up on the battlefield as fighters. When they get there “they put a machine gun in their hands (...) by then it is too late’ (...) As an Uzbek businessman living in Moscow said: ‘They snare them with beautiful words, money and lies.’”¹⁷⁷

Illustrative example 9

In 2014, a 21-year-old nurse from Central Asia, divorced and the mother of a baby, was offered a job as a nurse in a country neighbouring Syria. Upon arrival, ISIL took her passport and transferred her to Idlib, Syria. ISIL forced her to work without pay and to marry a fighter (who was later killed in battle). She gave birth to a son from him.

Illustrative example 10

A young divorced mother aged 23 from Central Asia worked as a labour migrant in the catering industry in an OSCE participating State. In 2015, she was offered a job opportunity in Syria, with promises of a good income. Upon reaching Syria, ISIL confiscated her passport and exploited her as a domestic worker in Idlib. She never received the promised money for her work.

When she tried to escape, ISIL members caught, raped and mutilated her. The last known evidence of her whereabouts was received on 17 November 2015, when the information was received that she had been enslaved by a terrorist group.

Abuse of power or a position of vulnerability

The abuse of power or a position of vulnerability (APOV) is an additional subtle means through which individuals can be recruited, transported, received, etc., with the intent to exploit. According to a UNODC Case Digest,¹⁷⁸ understanding a victim's vulnerabilities assists courts in understanding why victims were persuaded to enter seemingly risky situations and why they remained.

The interpretative note that forms part of the UN Trafficking Protocol's Travaux Préparatoires refers to the abuse of a position of vulnerability as "any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved."¹⁷⁹ Under the UNODC Model Law Against Trafficking in Persons of 2009, two definitions are offered of APOV. The first reflects the understanding as found in the interpretative note above. The second is quite detailed, defining APOV as follows: "taking advantage of the vulnerable position a person is placed in as a result of:

- Having entered the country illegally or without proper documentation;
- Pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance;
- Reduced capacity to form judgments by virtue of being a child, illness, infirmity or a physical or mental disability;
- Promises or giving sums of money or other advantages to those having authority over a person;
- Being in a precarious situation from the standpoint of social survival; or
- Other relevant factors."¹⁸⁰

When assessing whether the APOV is the means by which a trafficking "act" (recruitment, transportation, transfer, harbouring or receipt of persons) has been committed for an exploitative "purpose", the "mere existence of proven vulnerabil-

ity is not sufficient to support a prosecution that alleges APOV as the means by which a specific 'act' was undertaken. In such cases both the *existence* of vulnerability and the *abuse* of that vulnerability must be established by credible evidence."¹⁸¹

Vulnerability – whether pre-existing or created by the trafficker, personal, situational, or circumstantial vulnerability – "will not constitute a means of trafficking in persons unless that situation of vulnerability has also been abused to the extent that the victim's consent is negated."¹⁸² This abuse of a position of vulnerability occurs when "an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her, and that belief is reasonable in light of the victim's situation. In determining whether the victim's belief that he or she has no real or acceptable option is reasonable, the personal characteristics and circumstances of the victim should be taken into account."¹⁸³

For instance, personal vulnerability may relate to a person's physical or mental disability. Situational vulnerability may relate to a person being irregularly in a foreign country where he or she is socially or linguistically isolated. Circumstantial vulnerability may relate to a person's employment or economic situation. Such vulnerabilities can be pre-existing or can be created by the trafficker. Pre-existing vulnerability may relate (but not be limited) to poverty; mental or physical disability; youth or old age; gender; pregnancy; culture; language; belief; family situation; or irregular status. Created vulnerability may relate (but not be limited) to social, cultural or linguistic isolation; irregular status; or dependency cultivated through drug addiction, a romantic or emotional attachment, or the use of cultural or religious rituals or practices.¹⁸⁴

These observations on APOV are particularly important for assessing whether men and women are considered to have “voluntarily” joined and/or remained in terrorist organizations. Although not specifically developed to analyse human trafficking, the Radicalization Awareness Network (RAN) Centre of Excellence has laid out a set of factors related to vulnerability¹⁸⁵ that may have relevance to human trafficking:

- Socio-economic factors that relate to limited social mobility, education or employment opportunities resulting in social exclusion and discrimination; displacement; criminality;
- Political factors, which include grievances framed around victimhood as a result of government action or inaction. There is a strong sense of alienation and injustice, which is often reinforced by xenophobia, discrimination and marginalization;
- Individual socio-psychological factors, including grievances and emotions such as: alienation, anger and frustration; grievances and a strong sense of injustice; feelings of humiliation, a sense of victimhood and living in opposition to the mainstream cultural norms.

In particular, psycho-social vulnerabilities in relation to ISIL recruitment have been elaborated in depth by the International Centre for the Study of Violent Extremism.

Some of these vulnerabilities are often exploited by terrorist groups to deceive persons by promising that their grievances will be addressed. For example, a number of children captured by Puntland authorities in 2016 stated that Al-Shabaab had approached them with offers of education and potential livelihoods (unemployment is one of the most cited vulnerabilities in the table below).¹⁸⁷ Enticed by these promises, the children joined the group, only to be forced into conflict as soldiers.

In order to establish whether APOV is present in the trafficking of adults, a case-specific analysis should be utilized. In cases involving children, although a proof of means is not required since due to their age, children enjoy special protection, it can nonetheless be helpful to analyse the means used to better understand the various dimensions of the intended exploitation and the tactics used. To lure children into terrorist groups, deception, threat, force and APOV are employed. For example, often the targeting of young girls to become “jihadi” brides takes the form of online “grooming,” such that “[the girls are] befriended online, told they’re loved, [and] showered with praise and flattery. These girls, like victims of child sexual exploitation, don’t see themselves as victims. They see themselves as girls going to be with men who genuinely love them.”¹⁸⁸ It has also been noted that “there are instances where the Internet, particularly social media, has been used by extremist groups

Vulnerabilities of individuals who joined ISIL¹⁸⁶

Vulnerability	Men Mentioned	Women Mentioned	Men Average Score	Women Average Score
Criminal History	13.7%	5.3%	0.29	0.11
Prison History	10.4%	0%		
Emotional Abuse	0%	7.9%	0.00	0.22
Physical Abuse	1.7%	7.9%	0.05	0.25
Sexual Abuse	0%	2.6%	0.00	0.08
Emotional Neglect	1.7%	0%	0.05	0.00
Physical Neglect	0%	0%	0.00	0.00
Domestic Violence Exposure	1.7%	5.3%	0.04	0.11
Household Substance Abuse	1.7%	7.9%	0.05	0.22
Household Mental Illness	2.2%	0%	0.05	0.00
Parental Separation/Divorce	8.8%	21.0%	0.20	0.42
Incarcerated Household Member	1.1%	5.2%	0.03	0.14
Deceased Parent	12.1%	7.9%	0.32	0.19
Unmarried Parents	1.1%	7.9%	0.01	0.19
Father had Multiple Wives	5.0%	0%	0.06	0.00
Family Conflict	9.3%	23.6%	0.28	0.69
Personal Substance Abuse	13.2%	5.3%	0.34	0.17
Poverty	24.2%	26.3%	0.65	0.69
Left Home Early	2.7%	10.5%	0.06	0.34
Personal Divorce	3.8%	7.9%	0.07	0.24
Unemployment/Underemployment	19.2%	2.6%	0.49	0.03
Prior Trauma	11.6%	23.6%	0.32	0.72

in a deceptive manner to exploit the vulnerability of educated young children from middle class families in Western countries in order to recruit them.¹⁸⁹

Under the Palermo Protocol definition, there is a “clear link between the ‘act’ and the ‘means.’”¹⁹⁰ Accordingly, “the ‘means’ element of the definition can be usefully viewed as a supplementary component of the *actus reus* of trafficking in persons,”¹⁹¹ such that when the existence of any means are alleged, it must be shown that those means were used to commit a proscribed act. For example, when a position of vulnerability is “being alleged as the ‘means,’ an offender should be shown to have abused the victim’s vulnerability *in order to* recruit, transfer, harbour, or receive that person.”¹⁹² In assessing the relationship of the “means” element to the “act” element of the trafficking definition in the context of activities linked to terrorist groups and/or individuals, the illustrative examples 11 and 12 show that the offenders have used certain means, e.g., they have abused a victim’s vulnerability *in order to* recruit, transfer, harbour, or receive that person.

The relationship of the “means” element to the exploitative “purpose” element of the UN Trafficking Protocol’s definition must also always be identified as coming within the definition’s scope. This is significant, since:

*The requirement to show ‘means’ affirms that, at least within the Trafficking in Persons Protocol, exploitative conditions alone are insufficient to establish trafficking of adults: An agreement to work in a situation or provide a service that may be considered exploitative will not constitute trafficking, if that agreement was secured and continues to operate without threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. While exploitation alone may involve offences, including human rights violations, ‘means’ must be used to constitute trafficking of adults within the confines of the Trafficking in Persons Protocol.*¹⁹³

In scenarios linked to terrorist groups and/or individuals, the challenge of providing evidence to establish “means” may vary according to what means are being alleged. Generally “evidence of APOV may be less tangible than for other means of trafficking (such as use of force).”¹⁹⁴ Additionally, evidence of some types of means – such as APOV – “may be located in a jurisdiction other than that in which prosecutions are taking place. Thus, procedures should be in place to facilitate and support cross-border co-operation between practitioners to ensure such evidence is identified and made available.”¹⁹⁵ Some critics have stated that this process has been lacking, for example, in the extremely brief trials in Iraq of foreign women allegedly

linked to ISIL¹⁹⁶; indeed “governments that do not have a system in place to identify whether trafficking occurred are *prima facie* in violation of States’ obligations under international law, including human rights and anti-trafficking regimes.”¹⁹⁷ Additionally, in cases where the alleged “means” are not overtly coercive (e.g., APOV), “victims may not identify themselves as victims, particularly where they continue to remain dependent on or otherwise attached to those who have abused their vulnerability.”¹⁹⁸ This includes being in a romantic relationship with the perpetrator.

Illustrative example 11

A young woman from a Central Asian country came from a poor family and had not completed her secondary education. Her husband also came from a poor and uneducated family and was in dire need of an employment opportunity. Initially, the couple moved from Central Asia to another OSCE participating State, where the husband worked in the local construction sector. After one year, the husband informed his wife about his wish to move to Syria; in his opinion, it would be the best way to realize their dreams. After the wife put up strong resistance, she believed the idea had been dropped. However, a month later he told his wife that he had been promised a well-paid job in a country bordering Syria. Soon after leaving, the husband called and invited his wife to join him in that country, where he claimed he had a job. After she arrived at the airport, the couple travelled for several hours, first by bus and then in a car carrying four people. The car brought them to a desert area on the Syrian border, where the husband told his wife that they would now cross the border and live in Syria. Despite begging her husband to change his mind, she was forced to cross the border with the threat that if she did not, she would be killed by the border guards. In Syria, the couple frequently changed accommodation, almost once a month. Usually the wife shared a house (a kind of dormitory) with other women from many different countries; the majority of them were wives of ISIL fighters, although they rarely saw their husbands. The women lived in small rooms, usually shared by five to six persons, including children. Her husband visited her only once a week, bringing her food, mainly potatoes and macaroni. The women and children often suffered from malnutrition and lived in extremely poor conditions, with no heating, air conditioning or running water. As a result, many children got sick with no medical treatment. The mothers cried regularly about being unable to help their sick children. All of the women living in the house complained and regretted coming to Syria; the majority of them blamed their husbands for their decision to bring their families and children along. Their communication and interaction with the outside world was extremely limited; during her stay in Syria, the woman in question never managed to call her parents. After the death of her husband in combat, she was forced to remarry. Nevertheless she managed to escape together with two other women and reached a bordering country, where she appealed to her own country’s consulate for help.

Illustrative example 12

A man from a country in the South Caucasus was a drug addict for many years. Together with his like-minded friends, he was told and convinced that they must live in a place where they would not be able to obtain or use drugs and that this would be the only way out for them. The friends believed that Syria would be the place where they could be rehabilitated. In 2013, after a long discussion, the man together with a few of his friends moved to Iraq. According to his daughter, after three months, he video-called his family to inform them that he and his friends had finally overcome their drug addiction. In his video call, he showed a luxury apartment and a table full of food, and invited his family to visit him. After numerous calls, he finally reached his objective: in December 2013, his wife, three sons with their wives and nine children (all boys, between 3 and 14 years old) travelled to Iraq. Although his daughter was also asked to travel with the family, she decided not to join them. In order to move his family, 4,000 US dollars were sent to the name of the man's wife. In 2015, the wife called her daughter and informed her of the death of all the men in the family and asked her daughter to sell their apartment and save them from slavery. Following her mother's instructions, she travelled to a neighbouring country and met some persons. They told her she had to bring 100,000 US dollars to get her family out of Iraq. Since she could not provide that amount, she returned home. She had two telephone calls with her mother until May 2017, when her mother begged her to save at least the children from the situation. The situation of the family was unknown at the time of drafting this paper.

Consent

The relationship between “means” and consent in the definition of trafficking in persons presents a series of issues when assessing trafficking in human beings for terrorist activities. The Palermo Protocol makes it clear that consent is irrelevant with regard to trafficking in children. Also in cases of adults, if any of the specified means of trafficking are established, consent is irrelevant. In practice, however, the issue of consent can be complex, with various questions arising based on the actual means used, as well as on the alleged exploitative purposes. In terms of the relationship between “means” and consent, four issues are particularly relevant when assessing trafficking in persons for terrorism purposes: (1) in practice, consent is mainly assessed in cases involving APOV, as opposed to those involving physical force; (2) a victim's consent must actually be vitiated by the means; (3) the timing of consent; (4) the significance of consent for criminal liability.

1. In practice, consent of the victim is more readily seen as irrelevant in cases in which “more physical means are used to move or maintain the individual into a situation of exploitation (such as force or abduction).”¹⁹⁹ Consent is often considered more relevant when APOV is being assessed, whereby “in some countries APOV may only be considered

relevant as a potential ‘means’ where the victim appears to have given his or her consent to the situation: it is the victim's vulnerability that is used to explain away and nullify the apparent consent.”²⁰⁰

2. “The mere use of means alone is not enough; the result of the use of those means to achieve the relevant ‘act’ must be that the victim's consent was vitiated.”²⁰¹ Specifically this means that the “use of deception will not vitiate consent for instance, where the victim is not deceived” and that “abuse of a position of vulnerability alone is not enough to fulfil the ‘means’ element of the offense; that abuse must have been sufficiently serious so as to have negated the victim's consent”, such that the “victim is left with no alternative but to submit to the trafficker.”²⁰²
3. Challenges arise due to the lack of clarity regarding the timing of consent as it relates to “means”, as well as what level of severity of the “means” is required. More specifically as has been stated by UNODC:

Should any kind of deceit at any point in the process operate to render consent irrelevant or must the deceit relate to a fundamental aspect of the arrangement? One practitioner provided the example of a person being promised a salary at one point in the recruitment process but receiving only half of the agreed amount. A broad definition of deception could result in this being characterized as a trafficking case, even if the “victim” testifies that the disparity between what was promised and what was received did not influence her decision to accept or remain in the position.”²⁰³

The issue of consent can be particularly complicated in cases of women who followed their husbands to territories controlled by terrorist groups, or in cases involving romantic feelings, such as a woman befriending someone online and being convinced she was travelling to meet her lover. In many instances, victims were ready to undertake a journey on their own and travel to the territory where terrorist groups were active. It would be inaccurate, however, to qualify this as “consent” in all circumstances, since the purpose of that travel was often a direct result of deception. In 2018, there were 560 foreign wives of ISIL fighters being kept in detention in Iraq. According to the UN Counter-Terrorism Executive Directorate (CTED), “it is estimated that between 6,797 and 6,902 women travelled to the conflict zones of the Middle East and only 609 women, or nine per cent of those who travelled, have been recorded as returned.”²⁰⁴ Due to the rejection of the concept that their position of vulnerability was abused in order to receive their consent, some of these women have faced the death penalty in expedited trials in Iraq, despite their pleas that they had been duped, threatened or forced by their husbands to join them. Citizens of OSCE participating States are among those women.²⁰⁵

4) There are also challenges in determining how consent impacts the question of the criminal liability of trafficked persons. These challenges are particularly relevant in cases in which a victim of trafficking has been involved in the trafficking or exploitation of yet another individual. Other offences that may be committed by victims in the course of being trafficked range from violations of immigration laws, giving false information to obtain travel documents or work and residence permits, illegal crossing of state frontiers, to overstaying visa periods. In relation to terrorism, these challenges may include, but are not limited to, the criminalization in many States of membership in or support to terrorist groups. Such umbrella crimes would cover, *inter alia*, travel and getting married to a member of such a group.²⁰⁶

All of these offences pose threats to public safety and order. The State has a legitimate interest in preventing them and apprehending offenders. However, if a victim of trafficking has committed an offence as a direct consequence of being trafficked, the prosecutor or judge must consider the extent to which the offence is connected with the victim having been trafficked and their lack of autonomy. When the offence is linked to the situation of the accused person or suspect having been trafficked, the State must keep them immune from prosecution, detention and the application of a penalty. If instead the trafficked person acted independently of their trafficking and voluntarily committed the offence, free from the operation of one or more of the means as foreseen in the definition of trafficking, that person should be held fully accountable.²⁰⁷

However “the situation is less clear with regard to legal responsibility for victim involvement in criminal activities where such activities appear to be the exploitative purpose of the trafficking itself – such as trafficking for purposes of drug production and organized theft”. In the context of crimes committed as a direct manifestation of an exploitative purpose, particularly when there is some indication of possible consent, in practice the non-punishment principle is not consistently applied in criminal justice systems. In such cases, the threshold for disregarding apparent consent appears to be higher. Courts have been less willing to accept broad interpretations of subtler means (such as APOV) as justification for disregarding apparent consent to involvement in criminal activities.²⁰⁸

When assessing whether the principle of non-punishment applies, it is important to note that offences committed during the process of being trafficked, or as a consequence of it, can range in seriousness. Moreover, there are cases that involve a “cycle of abuse”²⁰⁹ in which a trafficked person exploits or traffics another individual. The more serious the offence, the more probing the enquiry needs to be. The circumstances in which the offence was committed must be established to decide whether the right to non-punishment can validly apply.²¹⁰

Deception inducing women to travel to Iraq and Syria

A number of commentators have argued that ISIL recruiters have used deception and fraud to recruit women to travel to Iraq and Syria. For example, it has been stated that “recruiters lure girls by painting a ‘distorted view’ of life inside the Islamic State, falsely advertising the ‘joys of sisterhood’ and living for a higher purpose. In reality, a ‘woman’s role is circumscribed for childbearing, marriage, cooking and cleaning, and they may not even be able to leave the house.”²¹¹ Furthermore, “recruiters frequently describe the glory and honor of being the wife of a jihadi living in utopia, without mention of the extreme violence perpetrated by IS, or the possibility that these girls will contribute to, and find themselves subject to, such violence.”²¹²

For an act of deception to be included in the stipulated “means”, it must be shown that these women were actually deceived.²¹³ Additionally, it may be relevant to assess the effect of the disparity between what was promised and the reality; if this disparity did not influence a person’s decision to travel to or stay in Iraq and Syria, it is more difficult to fulfil the deception “means” requirement. Such assessments must be context specific.

Illustrative example 13

A girl born in 1995 in a country in Eastern Europe graduated from secondary school with honours and entered higher education. In 2012, at the age of 17, she met a man through a social media chat-club who lured her into a romantic relationship under the false promises of a happy life together in Syria. The woman accepted his proposal to marry him and move to ISIL-controlled territories. She married the fighter via Skype. He transferred her money for her move to Syria. When the woman, now 20, did not come home on the evening of 27 May, her father started to search for his daughter, first through social networks and then using his contacts in various law enforcement agencies. When the daughter arrived at the border to Syria, where she arrived together with 16 other women from Eastern Europe and the South Caucasus, she was arrested by security forces when attempting to cross the border.

In September 2015, the woman changed her name and participated as a witness in a criminal case against the recruiters. However, she was later arrested and charged with “preparation for participation in the activities of a terrorist organization”.

The above example demonstrates deception employed by terrorist groups to recruit girls and young women by luring them into romantic relationships. It is not clear what would have happened to the above girl if she had managed to cross border and join the terrorist group. While to date only a few people have been able to leave and describe what happened in the then-ISIL controlled territories, there are reports documenting young girls being used as gifts and passed around and exploited among ISIL fighters.²¹⁴

Trafficking purposes of terrorist groups

The “purpose” element of trafficking in persons

The third element in the Palermo Protocol’s definition of trafficking is that the act and means must have an exploitative purpose or intent. The Palermo Protocol does not define “exploitation”; instead it identifies a non-exhaustive list of types of exploitation: “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.” While these terms are not further defined in the Protocol, “some have been defined in other international instruments.” Their scope is also discussed in the following sections.²¹⁵

The forms of exploitation mentioned in the UN Trafficking in Persons Protocol²¹⁶ are non-exhaustive. As highlighted by the United Nations,²¹⁷ the definition of trafficking can also encompass situations in which people are trafficked for the purpose of being exploited to carry out or provide support to terrorist activities. When placing or maintaining individuals in exploitative situations for economic gain, human trafficking employs coercion, deception, fraud or use of the position of vulnerability of an individual. These same means have been observed in the *modus operandi* of terrorist groups.

Trafficking in persons can also occur “without exploitation taking place.”²¹⁸ For trafficking in adults, the intention to exploit through acts suffices to define it as an act of trafficking if the relevant means are used; for children, the crime of trafficking has occurred as soon as an act and the intention to exploit are present.

In general terms, there are many exploitative purposes for terrorist groups to traffic adults and children. This concern has been expressed in several UNSC Resolutions,²¹⁹ such as Resolution 2331 (2016), in which Member States stated that trafficking in conflict and post-conflict areas related to ISIL and AL-Qaeda has involved “exploitation of the prostitution of others or other forms of sexual exploitation, forced labour, slavery or practices similar to slavery, servitude or the removal of organs.”²²⁰

Importantly, for the purposes of assessing the trafficking–terrorism intersection, there is no profit element that must be proven to establish “exploitation” as outlined in the Palermo Protocol. At the time of its drafting, the view was that such an “explicit reference to profit was unnecessarily restrictive.”²²¹

Nevertheless, there are reports indicating that financial gain is one of the reasons terrorist groups engage in trafficking in human beings. For example, in 2018 the Financial Action Task Force (FATF) stated that “terrorist organizations who have controlled, or partially controlled territory, have used human trafficking as a way to raise funds and support to their organizations and activities.”²²² The UN Secretary General has reported that women forced to marry fighters were then sold.²²³ The sale and exploitation of Yazidi women and girls has also been reported. According to a report of the UN Human Rights Council, Yazidi women and children were sold between ISIL fighters for between 200 and 1,500 U.S. dollars.²²⁴ In this way, terrorist groups are able to gratify their fighters, and individual fighters are able to generate revenue.

In its analysis of the intersection of human trafficking and terrorism in terms of financial incentives, the CTED has likewise noted that anecdotal evidence, seen in the increase in funding for terrorist activities, suggests that ISIL has benefited from the sale of women and girl victims of trafficking at a slave market in Homs in Syria.²²⁵

However, in general, terrorist groups using human trafficking to generate income appears to be rarer than trafficking for other exploitative purposes. FATF has noted, for example, that the small amounts generated by ISIL through human trafficking make it difficult to envisage trafficking as a lucrative source of revenue for ISIL, thus concluding that trafficking may be more important as a means of meeting the demands of ISIL fighters.²²⁶

For example, persons in the captivity of terrorist groups are often forced to undertake labour as cooks, maids, etc. Relegating domestic work duties to enslaved individuals allows fighters and their dependents to devote their attention to other activities, such as training or overseeing new recruits. Although not quantifiable in monetary terms, the enslavement of individuals results in free provision of services, thus cutting operational costs and increasing organizational efficiency.

In addition, ransom is a source of sizable revenue and thus kidnapping is a common *modus operandi* for some terrorist groups. It should be noted that there is a growing debate whether kidnapping for ransom constitutes a form of exploitation within the concept of trafficking.²²⁷

Nonetheless, in many cases that have been studied, ransom was only the final element of the captivity and exploitation to which such victims of terrorist groups were subjected. For example, when ISIL received payments from Yazidi families for the return of 200 individuals, the individuals in question had already been exploited sexually or for forced labour.²²⁸ They were not originally abducted for the primary purpose of ransom, and ISIL derived financial benefits from their exploitation. It thus can be argued that these persons were human trafficking victims. This is regardless of whether the act of seeking ransom for an abducted person constitutes an exploitative purpose within the definition of human trafficking. An unprecedented trial was started in April 2020 in an OSCE participating State against a former ISIL fighter on charges of genocide against Yazidis and an aggravated form of human trafficking that resulted in the death of a minor.²²⁹

Given that the list of examples of “exploitation” set out in the Palermo Protocol is non-exhaustive,²³⁰ and that those practices which are listed are left undefined, it is important to continue to explore the range of different kinds of “exploitation” that can arguably fall within the definition of the Protocol. The compiled data and analysis made for the purpose of this study has shown that persons who are targeted for trafficking for terrorist purposes are selected based on their “utility” to terrorist groups.

With this in mind, examples of types of “exploitation” that are identified in the Palermo Protocol are as follows:

Exploitation of the prostitution of others or other forms of sexual exploitation

With regard to the “exploitation of the prostitution of others and other forms of sexual exploitation,” the “exploitation of the prostitution of others” is “generally understood as referring to profiting from the prostitution of another person.”²³¹ The term “sexual exploitation” is not defined in international law except as it relates to children.²³² The UN Convention on the Rights of the Child requires State parties to “undertake to protect the child from all forms of sexual exploitation and sexual abuse”, including measures to prevent “(a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials.”²³³

Trafficking of women as a pull factor in recruitment of male fighters

A number of academic studies and research projects have explored ISIL’s tactical use of sexual exploitation. For example in a research paper published by the Henry Jackson Society in 2017, it was concluded that “terrorists use sexual violence, including rape, sexual slavery, and forced marriage, to bolster recruits, galvanise fighters, and, in the case of Islamist groups, punish *kuffar* (disbelievers). Propaganda on sexual slavery serves as incentive for new recruits and foreign fighters, with the promise of wives and sex slaves acting as a ‘pull factor’”.²³⁴

Also media reports have suggested that women were trafficked by ISIL for sexual exploitation as an incentive to attract more male members to the group. For example, The *New York Times* reported in 2015 that “the trafficking of women has been used to reward fighters, and as a recruiting tool to lure men from deeply conservative Muslim societies, where casual sex is taboo and dating is forbidden.”²³⁵ In an interview with a captured ISIL fighter, *Mirror* reported “the Islamic State would buy them slave girls and give them as rewards”.²³⁶

Illustrative example 14

Exploitation of women in particular for the purpose of forced impregnation was evident in a case of 10 women from the South Caucasus aged 19 to 38 who were forcefully taken to Iraq by their spouses and, after the death of the men, were all forced to remarry. In total, 9 women delivered 45 children in a short period of time. According to family members, 6 women are currently in prisons in Baghdad or are being kept in camps as hostages with their children by Kurdish Peshmerga forces. There is no information about 19 children or the other 4 women. The women informed their relatives that they were forced to misinform their family members about their living conditions and were threatened that their children would be taken away and forced to fight.²³⁷

Illustrative example 15

Three girls aged 15 and 16 from a country in Western Europe were recruited online by a known female ISIL recruiter, who facilitated their travel to Raqqa in February 2015. Upon arrival they were kept in a house with other “newly arrived brides-to-be” and were then married off to fighters. One of the girls was killed in an airstrike in Syria (apparently while planning to escape). The fate of the second girl is to date unknown. The third girl, still a child, was impregnated and delivered three children, all of whom died. She is currently aged 19 and has expressed the wish to return home.

Illustrative example 16

A woman aged 56 years from Central Asia taught Islam in a covert religious school to 8 girls aged 13 to 14 years. The parents voluntarily allowed their daughters to be taught in the school. After six months, the woman began to explain to the girls that they needed to go to Syria and marry what she called true Muslims – those who are fighting against so-called infidels.

The woman told the girls' parents that she had to take the girls for additional training to a madrassa in a country neighbouring Syria for two weeks. After the flight tickets were bought, one of the girls told her parents the true reason behind their trip, and that the destination would be Syria. The parents of the girls managed to have them removed from the plane before it departed.

The woman admitted that the girls had been destined for sexual slavery for a terrorist and violent extremist group in Syria.

Forced labour or services

Forced labour is defined in Convention No. 29 of the International Labour Organization as “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.”²³⁸ By way of example, according to the data collected from one Central Asian country, there are confirmed cases of twelve single women who were trafficked from 2013 to 2017 to Iraq and Syria. The women were either used for forced labour (e.g., women were either paid a pittance or nothing for work) or for sex.²³⁹ According to CTED, “men and boys have been not only forcibly recruited and indoctrinated, but also subjected to forced labour in agriculture (e.g., on sheep and poultry farms in Iraq) and on construction projects. One example of the latter is ISIL’s use of trafficked people to build a tunnel system under the streets of Mosul. The tunnels were responsible for significant casualties and for extending the siege of the city.”²⁴⁰

Illustrative example 17

A 31-year-old female widow with two children worked as a doctor in Central Asia, where she was recruited in 2016, with the recruiter promising her a big salary in Syria. Upon arrival in Idlib, her passport was taken away. Fighters forced her to work in a field hospital for a terrorist and violent extremist group. She was given a salary of 50 US dollars a month.

Illustrative example 18

Another example from Central Asia concerned twelve male labour migrants 21 to 25 years old who worked in the construction, retail, hospitality and transportation sectors in Eastern Europe. The men were promised peaceful and gainful employment as builders and cooks in the territory of ISIL. After being in contact with a recruiter, over the course of two to three months they were taken to Syria, their passports were confiscated, all the men were forced to learn how to shoot weapons, and against their will they were turned into militants.

Illustrative example 19

In 2017, 25 children aged from 7 to 16 were trained in a camp controlled by fighters of a terrorist and violent extremist group in an OSCE Partner for Co-operation. While previously only male children had been trained in the camp, female children were now also included so that both girls and boys would have the same training. The majority of these children were of Central Asian descent and were orphans, their parents having been killed in combat. The routine of the camp life included studying Arabic and arithmetic, but the majority of their time was spent studying Sharia law. The children were also trained in hand-to-hand combat and in how to use various types of small arms and mines.

In the children’s daily routine at the camp they had seven hours of sleep and three meals a day. However, the portions were meagre and the children were poorly nourished. The children prayed five times a day, studied the Koran for six hours (with interruptions), studied Arabic for two hours and exercised for four hours (with interruptions). Training in arms and assembling explosives was taught for two hours. Children were not entitled to any free time during the week.

In the camp, children reported feeling constant fear. They were afraid of making mistakes, for which they were beaten with sticks and risked being locked in a basement (dungeon). Allegedly, the children who complete training in this camp were sold to commanders of ISIL in Syria and IMU in Afghanistan for large sums.

According to information provided to the OSR/CTHB in 2018, more than 140 children have gone through this camp. All of them became fighters and are being exploited in various conflict zones.

Gender and age analysis of trafficking in human beings by terrorist groups

Slavery or practices similar to slavery

The reference in the Protocol to slavery or practices similar to slavery is understood as referring to the 1956 Supplementary Slavery Convention and therefore brings a range of practices into the Protocol's concept of "exploitation", including²⁴¹ debt bondage, serfdom, servile marriage (which does not include "forced marriage"),²⁴² sale of children for exploitation, "as well as, potentially, the forced or compulsory recruitment of children into armed conflict."²⁴³ Reports of trafficking in and sale of children by ISIL²⁴⁴ are particularly relevant in this context.

Illustrative example 20

A divorced female medical nurse aged 21 from Central Asia was deceived with an offer of gainful employment in a country bordering Syria. Upon her arrival in another OSCE participating State, she was deprived of her passport and forcibly transferred to Syria. She was forced to work as a nurse without pay and to marry a fighter, with whom she gave birth to a boy. After the death of the husband, no information was received by relatives concerning her whereabouts.

Illustrative example 21

Three migrant women 24 to 26 years old from Central Asia were recruited in an OSCE participating State for a job opportunity abroad. None of the women had any formal education. The recruiter sent the women to Syria. Upon reaching the destination, their passports were taken away. The women were forced into domestic work without pay and were regularly raped. Due to their lack of identity documents, the women could not run away. Their whereabouts remain unknown at the time of the drafting of the present paper.

Removal of organs

"Removal of organs" is unique among the stipulated forms of exploitation in that – unlike slavery, servitude, exploitation of prostitution or sexual exploitation – it does not constitute a practice that might inherently be considered exploitative.²⁴⁵ In addition to the Palermo Protocol, the 2000 Council of Europe Convention on Human Rights and Biomedicine, together with the 2002 Additional Protocol thereto on the transplantation of organs, prohibits financial gain from the sale of the human body and its parts as well as "organ and tissue trafficking".²⁴⁶ Despite vitiated consent in which one of the "means" of the crime of trafficking have been used, the issue of consent can arise in organ removal cases, particularly because in some cases victims may consent forms which are required by organ transplant regulations. The abuse of the position of vulnerability, such as a donor's economic desperation or social marginalization, is likely a contributing factor in many cases.

A gender analysis of trafficking in human beings by terrorist groups

While Article 3(a) of the Palermo Protocol provided the first gender-neutral definition of trafficking in persons, gender-sensitive approaches are nonetheless critical in determining whether elements of that definition are present in specific cases. For example, under the "means" element of trafficking in persons, the Protocol lists particular ways in which adults can be recruited, transported, received, etc., with the intent to exploit. Included in the list is "abuse of power or a position of vulnerability", which can be either pre-existing or created by the trafficker. Depending on the particular case, the personal or circumstantial situation of an alleged victim may relate to their gender. This is particularly relevant for policy-makers and practitioners seeking to assess – without engaging in gender stereotyping – the different strategies used by terrorist groups in male and female adult recruitment.

Terrorism is gendered in its dimensions and effect, since not only do women and men experience distinct pathways when joining terrorist groups, but the purposes of their recruitment also vary according to gender perceptions. Terrorist groups exploit social constructions of masculinity and femininity and take advantage of existing gender stereotypes. To attract, recruit and maintain adherents, terrorist groups tap the diverse vulnerabilities of men and women in different local contexts.²⁴⁷

The UNODC Report on the gender dimension of criminal justice responses to terrorism has shown that terrorist groups recruit women, men, girls and boys against their will in a variety of ways, including by abducting them, making threats against them, their families or communities, or relying on spouses or other family members to coerce them. It suggests, however, that there is stronger evidence of involuntary recruitment of women than of men. This disproportionality may be a manifestation of broader gender inequalities, including unequal power relations between women and men.²⁴⁸ The report further notes that compared to men, women are more likely to be recruited online. The online radicalization of often vulnerable girls and women has been described as a "grooming" process.²⁴⁹ This pattern is particularly evident in the examples presented in this paper.

As illustrated and discussed in the various sections of this paper, the profiles of men and women trafficked by terrorist groups vary significantly. They include, for example, married women forced to accompany their spouses, single women deceived by romance or promises of good living conditions, women deceived and pressed into forced labour, individual migrant workers, both male and female, seeking to escape abusive

working conditions who are deceived with false employment promises, and males with particular skills and vulnerabilities who are deliberately targeted for deceptive recruitment for the purpose of exploitation. Thus, the purposes and forms of exploitation for trafficking in persons by terrorist groups are often highly gendered. Careful analysis of the particular role an individual has played – including their material contribution to crime and their intent understood in context – is necessary to effectively respond to foreign terrorist fighters (FTFs).²⁵⁰ OSCE/ODIHR has noted a shift in prosecutorial policy to focus on more on female roles and to discontinue routine decisions made on gender grounds. In the past, men were routinely detained and prosecuted, whereas women were not. ODIHR also calls for a careful analysis of the links between individuals and criminal acts.²⁵¹ The CTED has concluded that “the response so far lags behind ISIL’s skilful and manipulative use of gendered narratives.”²⁵²

As noted above, the UN Security Council has expressed its concern that “acts of sexual and gender-based violence are known to be part of the strategic objectives and ideology of certain terrorist and violent extremist groups”²⁵³ and that trafficking in persons and sexual and gender-based violence in conflict can be “used as a tactic by certain terrorist and violent extremist groups, by, inter alia, (...) advancing ideology which includes the suppression of women’s rights and the use of religious justification to codify and institutionalize sexual slavery and exert control over women’s reproduction.”²⁵⁴

In a number of contexts, men and women are affected differently because terrorism ideology is often linked to human rights abuses. These include sexual enslavement and subjugation of women, and preying on identity crises of young men.²⁵⁵ As highlighted by the UN Special Rapporteur on trafficking in persons, “men and boys are typically forced into soldiering while women and girls are generally forced into support roles, and they typically face much greater risk of sexual assault as either a primary purpose or an additional manifestation of their exploitation.”²⁵⁶ As such “sexual enslavement, a practice exacerbated by situations of conflict, is highly gendered in that it disproportionately affects women and girls.”²⁵⁷ Nevertheless, while reports have brought to light some of the gender disparity resulting from exploitation of women for sexual exploitation, gender-specific forms of harm for men and boys who have been trafficked by terrorist groups for the purposes of forced labour or combat must also be identified and addressed. For example, as shown through illustrative examples 3, 6 and 19, men and boys are exploited in labour and for military purposes, often falling prey to deceptive promises or the targeting of their personal vulnerabilities.

In addition, as illustrated through the examples presented in this paper, “other forms of trafficking-related exploitation particular to or especially prevalent in conflict, including forced and temporary marriage,²⁵⁸ are highly gendered in their motivation and impact, which underscores the importance of a gender analysis in all trafficking prevention efforts and responses.”²⁵⁹ With regard to trafficking for forced marriage, this can include “where the wife carries out household duties while experiencing severe forms of violence, abuse and coercion including rape and non-consensual sexual intercourse.”²⁶⁰

On occasion there is a tendency to make gendered assumptions about women as being inherently or particularly vulnerable, lacking of agency, or being readily “tricked” into travelling to a foreign country. However, to assess whether an individual has been trafficked, a more nuanced approach is required, an approach that reflects more fully that “motivations for women to travel [are] diverse,” that “there is no singular profile for women who travelled,” and that while some “women appeared willing and eager to travel to Syria and Iraq, it also appears that some were more likely coerced and in some cases forced to travel.”²⁶¹ As the UN Special Rapporteur notes in her position paper, “States must also bear in mind that the distinction between victims and perpetrators can be complex, with returnees being victims of terrorism, trafficking, slavery or sexual violence as well as perpetrators of criminal offences.”²⁶² A careful assessment of the examples listed above can help identify individuals who have been deceptively recruited by terrorist groups, how they have been recruited, and for what – exploitative – purposes.

To enhance counter-terrorism prevention strategies, an analysis of gender dynamics is thus critical for understanding and identifying the trafficking means and purposes of terrorist groups, as well as the factors that make adults and children vulnerable to deceptive or coerced recruitment. Consideration of a gender perspective is also important to ensure the full right to remedy for trafficking victims. Victims of trafficking by terrorists – particularly women and children – often face stigma and retaliation.²⁶³ Identifying the gender dimensions of their exploitation will help provide victims with the appropriate level of targeted needs-based assistance for their rehabilitation and reintegration back into society. Whether a labour trafficking victim, a domestic or international sex trafficking victim or survivor, or any other type of victim of trafficking, these individuals are subject to the effects of trauma. Addressing these issues will also help, for example, to “ensure that victims of sexual violence associated with human trafficking perpetrated by terrorist groups are recognized as legitimate victims of conflict and/or terrorism and that measures to address their situation are considered to be an integral part of counter-terrorism strategies.”²⁶⁴

Women in ISIL

A 2016 briefing of the European Parliament on gender perspectives of radicalization and counter-radicalization indicated that around 550 Western women have travelled to ISIL-occupied territory; a report on European foreign fighters suggests that 17% of them are women.²⁶⁵ As of 2019, hundreds of European citizens – including women and minors, most very young children – remain in detention in the Iraqi and Syrian conflict zones.²⁶⁶ The absolute number of women who have travelled to and remained in the conflict zones is relatively low for most EU Member States, but the number of women from France appears quite high: 33% of the 1,324 individuals who travelled from France to ISIL-controlled territories after 2012 were women.²⁶⁷

According to a 2018 study undertaken by the International Centre for the Study of Radicalization, women comprised 13% of ISIL FTFs or affiliates, and on average 17% of the nearly 20,000 FTFs accounted for came from the OSCE region.²⁶⁸

An age analysis of trafficking committed by terrorist groups

Children are frequent targets of traffickers for a variety of exploitative purposes – they are trafficked and exploited for sex, labour, begging and forced criminality. Although numerous anti-trafficking mechanisms have been established in the last decade, child trafficking has not diminished, but rather evolved. According to the UN Global Report on Trafficking in Persons, in 2019, children accounted for up to 30% of trafficked persons.²⁶⁹ This figure was 20% in 2020.²⁷⁰ Moreover, far more girls were detected than boys. Girls continue to face a higher risk of being trafficked into sexual exploitation or child marriages; boys are at greater risk of being trafficked for use in armed forces or militant groups.²⁷¹

Children trafficked by terrorist groups pose a new challenge for the OSCE region. Children associated with terrorist groups have often witnessed and may have committed atrocities. This presents unique needs and complexities that require additional attention and support from policymakers, child protection and servicing agencies, providers and caregivers, not only with regard to targeted protection measures, but also when developing prevention strategies.

Physically vulnerable and easily intimidated, children typically make obedient fighters. Moreover, in addition to being exploited for sex and labour, children are exploited by terrorist groups

to feature in ISIL propaganda. Such propaganda includes photos eulogizing children as martyrs, and widely circulated videos of young boys executing prisoners accused of being spies or captured Syrian regime troops.²⁷² The recruitment of children by means of grooming and deception is also a significant concern, with terrorist groups in the Middle East luring children from Western Europe.²⁷³ Youth in search of identity and role models are at high risk of being fascinated by groups that offer them recognition, a life purpose, and a sense of belonging to a community. According to data collected and as evident from the illustrative examples in this paper, the age of children targeted by terrorist groups ranges between 14 and 18.

The examples presented in this study have revealed two different scenarios in which children are trafficked by terrorist groups: those recruited directly through the internet or in other settings such as at community centres or by family members, and those who were taken by their families to or born in areas under the effective control of terrorist groups. The exploitation of children for combat by terrorist groups is illustrated in example No. 17, which depicts direct recruitment by targeting particularly boys and girls deprived of parental care to exploit them for military purposes from young ages. Clearly identifying the “act” element of trafficking is essential for developing tailored preventive and protection measures that address this issue. In both scenarios, children must be treated primarily as victims, even if they perpetrated crimes themselves. Hence, States should approach these children with the primary consideration of their best interests, and develop rehabilitation and reintegration policies to care for them after they are separated from terrorist groups.

Based on the analysis above, a gender- and age-sensitive response is crucial to ensure an adequate assessment of the degree and circumstances in which an individual has engaged with a terrorist group. According to the civil society organizations consulted when drafting this paper, security screenings are conducted especially for women and children who have been separated from terrorist groups, but information about whether such screening resulted in identifying trafficking victims was not disclosed. According to data available in June 2020, approximately 11,000 to 13,500 foreign citizens are being held in camps in Syria and Iraq, the majority of them children.²⁷⁴ According to international organizations, although the prosecution of women has stopped in Iraq, very few OSCE participating States have repatriated their citizens, despite a call by international institutions for repatriation as a component of a human rights-based strategy for the prosecution, rehabilitation and reintegration of FTFs.²⁷⁵

PART III



CONCLUSIONS AND RECOMMENDATIONS FOR POLICY ACTIONS

Final observations and conclusions

Although the link between human trafficking and terrorism was identified by the OSCE participating States in the OSCE Charter on Preventing and Combating Terrorism (2002), this link has not been thoroughly explored in the intervening period. Extensive desk research, consultations and the review of numerous illustrative examples, including those presented in this paper, indicate that in recent years the connection between the two crimes within the OSCE region was largely manifested by the recruitment of citizens from OSCE participating States in Western, Central, Eastern Europe and Central Asia, who travelled or attempted to travel to areas controlled by terrorist groups outside the OSCE region.

Elements of trafficking in human beings in terrorism

Under international law, trafficking in human beings occurs if a certain “act” occurs through a certain “means” with the specific intention or *mens rea* of the involved individual or entity that the action will lead to exploitation (“purpose”). Where “means” are used within the scope of this definition, consent to those means is “irrelevant”. For trafficking in children, a certain act that is undertaken with the specific intention to exploit (purpose) suffices to meet the definition of trafficking in persons. This is particularly important when assessing the status of child recruits – under 18 – of terrorist groups. “Unlike trafficking of adults, it is not required to show ‘means,’ such as actual deception or ‘grooming,’ because a child cannot give informed consent to their own exploitation even if they understood what was happening.”²⁷⁶

The findings of the research conducted for this study have concluded that terrorist groups recruit, transport, transfer, harbour and receive adults and children by means of threat or use of violence or other forms of coercion, abduction, fraud, deception and by abusing their vulnerabilities for a variety of exploitative purposes such as sexual exploitation, forced labour, forced conscription or, occasionally, organ removal or financial exploitation such as ransom. In engaging in these practices, terrorist groups use some of the same tactics as traffickers to exploit the vulnerability of individuals to use them for the benefit of these groups’ operations. One of the most common tactics is the effective misuse of the internet to facilitate the deceptive recruitment of vulnerable adults and children into travelling to conflict areas controlled by such groups. Additional factors such as the lack of understanding of on-line risks or trust in virtual interactions have contributed to children being recruited by terrorist groups. The role of social circles and families has also been seen in recruitment and transfer patterns.

Numerous sources and consultations also indicate the use of forced marriage to exploit women for multiple purposes, including sexual exploitation, domestic work and forced impregnation.

The examples illustrated and analysed in this paper are consistent with the components of trafficking as they are legally defined. Many of the examples contain some elements of human trafficking, with trafficking means having been employed with the intention of the recruiter, transporter, harbourer or receiver to exploit that person for the purposes of sustaining and advancing terrorist activities. In some cases, limits to accessing the full story from the moment of recruitment to exploitation impedes reaching a firm conclusion. Nonetheless, the legal response thus far has addressed most such cases exclusively through the terrorism lens, without consideration of the trafficking elements.

Human trafficking can provide terrorist groups various benefits, including sustaining their terrorist activities through human capital, tactical adaptability, and ideological reinforcement. Men, women and children are trafficked to serve terrorist groups in various roles; moreover, women and girls are trafficked as sexual rewards for fighters. Thus, human trafficking can be considered a tactic of terrorist and violent extremist groups.

It is apparent that such groups use human trafficking as a tool to accomplish their overall objectives. However, based on the evidence gathered, this is rarely for the express purpose of generating income, despite this usually being the primary objective of traffickers since trafficking is typically a financially motivated crime.

Modus operandi of terrorist groups from a THB perspective

Given the complex *modus operandi* employed by terrorist groups to abuse pre-existing or created vulnerabilities, and to use deception, force or coercion to successfully recruit and harbour vulnerable adults and children in their groups, it can be assumed that human trafficking is likely to continue to be a strategy and tactic used by existing and emerging terrorist and violent extremist groups. These groups continue to thrive in situations of conflict or instability, poverty, human rights violations, polarization and fractures to social cohesion – all factors conducive to exploitation. International reports indicate that although some of these groups seem to have been weakened by international or regional military interventions, they are actively “regrouping” and strategizing to attract support and continue operations in new places.²⁷⁷ The exploitative tactics of terrorist groups will continue to find fertile ground amid vulnerable conditions, and continue to lure people into the nets of traffickers for terrorist purposes. Without effective preventative action by the governments of the affected States and the international community, these groups will likely continue to resort to grooming, deception and force to expand and carry out violent activities.

Despite the territorial collapse of ISIL, the psycho-socio-economic and vulnerability factors as well as other causes that once drew large numbers of so-called “foreign terrorist fighters” from the OSCE region to the ISIL territories require further analysis. It cannot be ruled out that the reincarnation of this or other groups with equally sophisticated global online and offline recruitment methods will again recruit citizens of OSCE participating States to their ranks by using means of trafficking.

In order to effectively defeat the use of human trafficking by terrorist groups, the intersection between human trafficking and terrorism must be reflected in strategies to prevent and combat both crimes, as well as to address the circumstances in which criminal networks of terrorists and traffickers thrive. This also encompasses measures geared at identifying and understanding patterns that implicate terrorism and trafficking, with the aim of developing coherent institutional and legal frameworks that incorporate anti-trafficking, counter-terrorism and P/CVELT, and human rights regimes. This includes, for example, optimizing international and regional co-operation on legal,

judicial and policy matters to improve the provision of justice and remedies to victims, as well as to ensure that prevention strategies of human trafficking and terrorism are designed and jointly implemented in ways that respect human rights.

Critically, the internet has become a central tool for realizing criminal intentions, including for terrorist and human trafficking purposes. It provides ample opportunities for traffickers to target potential victims, abusing for example their socio-economic vulnerability, lack of educational and family support, homelessness, mental or physical disabilities, and migration status. The internet has allowed terrorist organizations and traffickers to recruit worldwide and to co-ordinate their criminal activities. ISIL was arguably the first such terrorist group to harness the power of the internet and social media. Their well-organized online propaganda campaign helped them recruit thousands of people into terrorist activities, including as wives, domestic workers and other roles to sustain the operations of the group. The illustrative examples in this paper demonstrate how young girls were groomed online, befriended by “lover boys” – a method employed by human traffickers to seduce and make young people fall in love – and lured into joining terrorist groups. In turn, young boys were usually deceived with ideological and religious promises.

Nevertheless, as a recent OSCE publication has concluded, while traffickers can use technological progress to their own advantage, law enforcement authorities, civil society and businesses can also leverage it to combat human trafficking,²⁷⁸ including in the context of terrorism. Electronic evidence may also serve as a basis for establishing the requisite proof of guilt in prosecution cases. For this purpose, policies and legislation are necessary to curb the misuse of technology and incentivize the positive use of tech tools to combat both crimes. Greater attention should also be given to developing alternative, tailored approaches, adapted to the unique characteristics of the internet, for responding to illegal content while maintaining protection for fundamental freedoms.²⁷⁹ For example, many of the technology innovations discussed in the OSCE 2020 publication²⁸⁰ are applications that exist for other sectors and are now being applied to countering THB with the support of private and corporate entities or governments. Many of these tools serve to prevent the crime from occurring rather than for punitive purposes, such as to identify potential victims or discourage potential offenders.²⁸¹

Applying a human trafficking lens and associated instruments to prevent and counter terrorism

The current lack of convergence between anti-trafficking and counter-terrorism doctrines and responses can have significant consequences for both victims and perpetrators who come into contact with justice systems, a lack that can potentially lead to their unjust treatment by judicial institutions. Such consequences are particularly severe for persons who were kidnapped, deceived or coerced by terrorist groups, for women who were deceived by their partners into joining a terrorist group, and for children who were taken by parents to a terrorist group or lured by a group's deceptive grooming strategies. As evidenced in this paper, it is rare for such situations to be analysed from the viewpoint of laws pertaining to human trafficking.

If authorities do not consider trafficking indicators in the course of prosecuting members of terrorist groups, it is possible that they will not be held fully accountable for all of their crimes, including trafficking in human beings. Conversely, victims of human trafficking risk being prosecuted for aiding, abetting or providing material support to terrorism.

Currently the effectiveness of preventing and tackling both counter-terrorism and anti-trafficking crimes is impacted by the limited harmonization of their different legal and policy regimes. Moreover, this impacts whether human rights are respected in State responses. The result has been impunity for trafficking offences committed by terrorist groups, and injustice and lack of assistance for victims. The failure to identify victims of trafficking by terrorist groups undermines the right of victims to access justice, as well as the fundamental right to due legal process and fair punishment. If States reconcile the imperative of addressing security concerns with their obligation to uphold standards of human rights, tackling trafficking recruitment patterns and examining cases individually if there is suspicion of trafficking means, it may be possible for States to undermine the objectives of terrorist groups and prevent trafficking that supports and sustains such groups. Moreover, by focusing on trafficking patterns employed by terrorist groups, States can prevent terrorism recruitment.

In the case of children, such an approach should focus first and foremost on recognizing children as victims and promoting, as discussed above, the "best interests of the child".²⁸² One major and recurrent problem is that children who are associated with terrorist groups, if they are captured or have escaped the group, are often detained indefinitely by the government of the

state where they were captured, and in some cases even face being deprived of their citizenship/nationality. If they do return home, in some cases they are criminalized for their conduct during their association with the terrorist group. It must be emphasized that children cannot consent to exploitation, and thus whatever agency the child may have demonstrated must be placed in the context of the grooming and indoctrination that child faced. The factors that led to their involvement in the first place must also be taken into account. Instead of criminalizing such children, their repatriation, rehabilitation and reintegration should be pursued. This will improve the prospects of deterrence of terrorism and prevent re-trafficking.

International law requires States to criminalize all actors in the chain of human trafficking, including those who attempt and or are complicit in the crime.²⁸³ Complicity in trafficking not only includes participating as an accomplice, but also organizing or directing another person to commit a trafficking offense.²⁸⁴ Thus, trafficking statutes can be used to charge persons involved in deceptive or forceful recruitment, transfer, or harbouring of individuals. In light of the illustrative examples describing trafficking chains run by terrorist groups presented in this paper, this could have wide-ranging applicability.

There are some prosecutors in Europe who are increasingly considering approaches of this type, calling for more interaction between different sets of laws, including laws on human trafficking, in order to become more effective in charging suspects and to achieve higher sentencing rates.²⁸⁵

A human trafficking lens can also lead to better responses to victims and acknowledgement of the impact human trafficking has on them – especially trafficking for the purpose of sexual exploitation. In many parts of the world, victims of trafficking are stigmatized by their communities, in particular those who have been trafficked for sexual exploitation. Thus, many victims do not seek help for the physical harm or psychological trauma endured during their trafficking experience due to fear of being shamed or shunned by their communities. Moreover, terror tactics involving sexual violence such as rape have long-lasting and pernicious effects on victims and their communities, and often result in secondary victimization. In traditional communities, rape can lead to the strong stigmatization of victims, who are rejected due to being considered "impure" or "worthless".²⁸⁶ Similar stigma is likely to affect men and women who were coerced, deceived or forced into terrorist groups and are now returning to their countries of origin. In addition to being stigmatized, they may be distrusted and perceived as terrorist collaborators or sympathizers.²⁸⁷

Paying greater attention to the rights and needs of possible victims of trafficking by terrorist groups can contribute to victim identification, assistance, rehabilitation and reintegration, and prevention of re-victimization. Doing so would require international dialogue, cross-border criminal justice and prosecutorial co-operation. Co-operation would enable law- and policy-makers to discuss and resolve issues regarding these crimes, and from their example, these discussions would enter the public discourse. Only when it is understood that persons who were deceived and forced into terrorist groups are victims will society be able to reject the current taboos and the associated stigma²⁸⁸ surrounding such persons.

Anti-terrorism laws usually do not consider the circumstances of a person's recruitment into or participation in a terrorist group from the viewpoint of human trafficking. And yet, whenever an OSCE participating State criminalizes a person who moved to the conflict zones occupied by ISIL, this plays into the hands of recruiters and traffickers. The unintended consequence of anti-terrorism laws focussing on criminal responsibility is possible trafficking victims bearing criminal consequences rather than the actual perpetrators, particularly in States where there is no discretion but to prosecute in cases related to terrorism.

Considering human trafficking law in cases related to terrorism would facilitate the inclusion of additional factors during criminal proceedings. This would provide prosecutors and courts with opportunities to prosecute members of terrorist groups for trafficking offences, and to consider the vulnerability of victim-defendants as a factor for establishing whether the "abduction", "transfer", "recruitment" or "harbouring" of that individual for the purpose of "exploitation" overrides their "consent".²⁸⁹ By not viewing defendants solely as accomplices in or perpetrators of terrorism, but realizing that a defendant's actions may have potentially stemmed from human trafficking, the judiciary may find that some defendants are actually victims. In cases of persons who have travelled to, or been persuaded to travel to, areas controlled by terrorist groups, if any elements of trafficking are found, it must be examined whether the principle of non-punishment of victims of trafficking should be applied. To this end, assessing individual cases with regard to trafficking indicators would contribute to more effective criminal justice responses, with individuals trafficked by terrorist groups being recognized as victims of crime.

Jurisdictional issues and transnational co-operation

The transnational nature of both human trafficking and terrorism creates complicated jurisdictional issues that often require multilateral co-operation. In order to establish jurisdiction to prosecute these crimes, a State is required to invoke one of the following: territorial jurisdiction (for crimes committed in its territory, or on board vessels flying its flag or aircraft registered in that State); active personality jurisdiction (the suspects are nationals of that State); passive personality jurisdiction (the victims are nationals of that State); or universal jurisdiction (the conduct amounts to a serious international offence, such as crimes against humanity or war crimes). In this regard, greater acknowledgement of the intersection between terrorism and human trafficking to establish joint approaches that comprehensively consider diverse legal and policy regimes would result in better outcomes for prosecutions as well as for victims. Such co-operation can be developed in two ways: interdisciplinary (interagency) co-operation between anti-trafficking and counter-terrorism agencies, and transnational co-operation addressing the gaps that persist due to human trafficking having an internationally accepted definition but definitions of terrorism being mostly based on national laws.

With regard to human trafficking, concurrent jurisdiction is specifically addressed by the United Nations Convention against Transnational Organized Crime (UNTOC). In cases of concurrent jurisdiction, the Convention requires States to consult one another and co-operate from the outset in order to co-ordinate actions and determine the most appropriate jurisdiction in which to prosecute the case. Specifically, the Convention provides that where several jurisdictions are involved, state parties are to consider transferring the case to the best forum, which is defined as the forum most likely to effectively provide the "proper administration of justice".²⁹⁰

The international conventions and protocols related to the prevention and suppression of terrorism include provisions that specify instances in which states must or can establish jurisdiction in relation to the offences contained in the relevant instrument.²⁹¹ Jurisdictional co-operation between states is determined by the international conventions and protocols that relate to the acts of terrorism in question. In cases where crimes fall within the sphere of transnational organized crime, such as in cases of trafficking in human beings committed by

terrorist and violent extremist groups, the UNTOC can be considered in addition to the international instruments relating to terrorism to resolve jurisdictional matters.²⁹²

Once the jurisdiction is determined in accordance with domestic law, the UNTOC and relevant terrorism conventions, States that are conducting the investigation, prosecution or judicial proceedings in respect to the same crime are required to consult one another with a view to co-ordinating their actions.²⁹³

In the context of terrorism and human trafficking, the requirement to consult and co-operate also holds for the related matters of extradition, mutual legal assistance and the transfer of sentenced persons. There are however challenges linked to offences committed in conflict settings. Co-operating on legal matters in individual cases offers an opportunity for developing a more systematic approach to jointly tackle the nexus of terrorism and human trafficking. Cross-training of law enforcement (police, investigative teams, border control) and the judiciary within individual States as well across borders can contribute to developing and implementing such a systematic approach. Successful co-operation practices can serve as valuable lessons towards building bilateral and regional strategies for tackling both terrorism and human trafficking, including where they intersect.

Finally, a number of problems have emerged during the research conducted for this study. These would benefit from further discussion, in international organizations and participating States, between policymakers and practitioners involved in both anti-trafficking and counter-terrorism. For example, there are still problems related to identifying perpetrators in cases where families have been involved in transferring children or other family members to terrorist groups; establishing a person's victimhood due to the probability of intent to exploit that person, and/or observed patterns of trafficking in the chain of that person's engagement with the terrorist group; the complexities regarding consent of adults to certain activities if they were deceived or forced by a terrorist group; primary recognition of children as victims of the crime of trafficking; and finally, the scope of the application of non-punishment principle in relation to individuals subjected to subtle means of trafficking to commit grave crimes, such as terrorism.

Recommendations for policy action

A broad range of steps related to advancing a normative framework, enhancing international co-operation and developing regional assistance are recommended to improve the OSCE's response to the intersection of terrorism and trafficking in human beings. This includes designing tailored national and cross-border strategies to prevent and combat human trafficking in States that suffer from the presence and influence of terrorist groups, anticipate the emergence of such groups, or see the effects of such groups within their borders through recruitment or other acts. Such strategies should include, among other things, measures that consider and are geared at aspects of gender and age in human trafficking; raising awareness about the risks of human trafficking and terrorism; reducing the vulnerability of at-risk populations; instituting identification, protection and assistance to victims of both crimes to ensure their rehabilitation and reintegration and prevent their re-victimization; and eliminating regional criminal networks through joint criminal justice response. These strategies should also include measures targeting financial assets and harnessing the use of technology to disrupt trafficking cycles. According to FATE, few reports exist on how terrorist organizations profit by facilitating or allowing human trafficking networks within their territory. However, links between human trafficking and terrorist groups may be stronger than currently thought, given the well-reported proclivity of territory-controlling terrorist organizations to tax all activity occurring within their borders.²⁹⁴ Assessing the risk of human trafficking being involved in suspicious transactions that suggest money laundering and terrorism financing can help disrupt the business models of both crimes and lead to both victims and perpetrators being identified.²⁹⁵

To address such threats, increased domestic co-operation between counter-terrorism and anti-trafficking agencies on a national level is vital, both to correctly assess individual cases and to craft effective national strategies. Such co-operation can be achieved through (1) bringing together co-ordinating mechanisms that already exist in the anti-trafficking arena between policymakers and criminal justice practitioners to ensure the mutual engagement of law-enforcement and prosecutors specialized in human trafficking and terrorism offences; (2) applying the protective measures that exist in anti-trafficking frameworks for victims of trafficking committed by terrorist groups; and (3) aligning legal doctrines when addressing individual crimes to allow for the consistent and fair application of law in situations where crimes overlap.

Based on the analysis outlined in the above sections of this paper, the following broad areas of action are recommended for consideration by policymakers and practitioners in the fields of both anti-human trafficking and counter-terrorism with regard to prevention, protection, prosecution and partnerships.



Preventing trafficking in human beings in the context of terrorism

- Establish co-operation between counter-terrorism agencies and National Anti-Trafficking Co-ordinators and Rapporteurs or equivalent mechanisms to collect and analyse data on the nexus between human trafficking and terrorism at the national level, including the use of trafficking means employed by terrorist groups to recruit adults and children for various exploitative purposes. Such data should be disaggregated by gender, age and form of exploitation, and supported by an analysis of the exploitative purposes imposed by these groups on women, men, girls and boys. Co-operation can be established on the basis of co-operation protocols or memoranda of understanding between agencies in order to place data collection on a formal footing with due consideration of data confidentiality.
- Apply the mechanisms that exist in the anti-trafficking field by engaging community leaders, municipal executive structures and the religious community to identify and refer persons at high risk or who are vulnerable to deceptive or forceful recruitment by terrorist groups for tailored assistance, in order to prevent the recruitment of these persons.
- Promote the inter-State development of public prevention campaigns dealing specifically with matters of human trafficking and terrorism, thereby broadening public awareness about the crimes and fates of those affected. These campaigns should aim to end the socio-cultural stigma attached to victims of both trafficking and terrorism, alert the public about possible risks, call for recognition of the rights of victims of such forms of trafficking, and facilitate rehabilitation and reintegration efforts. Careful integration of the voices of victims into awareness raising efforts could foster understanding about the scourge of human trafficking by terrorist groups.
- Develop online prevention education for at-risk groups, labour migrants and children, specifically targeting online grooming and deceptive recruitment of at-risk population. Such education tools should consider gender aspects of the trafficking process.



Protection of individuals trafficked by terrorist groups

- Establish multidisciplinary joint working groups with the participation of anti-terrorism and anti-trafficking practitioners to ensure regular co-ordination and co-operation to review/discuss and conduct individual assessments of cases that are suspected of involving forced or deceptive recruitment of persons by terrorist groups to ensure identification of and adequate assistance to victims of trafficking. Such assessments should be made with due regard to protecting the confidentiality and privacy of the individuals involved to avoid stigmatization or re-victimization.
- Use human trafficking indicators to identify victims of trafficking among persons who have been recruited, transferred or harboured by terrorist groups through the use of trafficking means and exploited in various roles, including those who have been forcefully impregnated as a result of sexual exploitation or have been subjected to other forms of sexual exploitation or sexual and gender-based violence. Identifying victims of trafficking by terrorist groups will also help prevent future similar instances and contribute to dismantling such groups.
- Consider including as “victims of terrorism” persons who have been trafficked by terrorist groups for various exploitative purposes, including sexual, labour and forced criminality.
- Study and make use of existing anti-trafficking mechanisms, such as the National Referral Mechanism,²⁹⁶ to identify and refer victims to assistance and support programmes. Once identified, victims of all forms of human trafficking committed by terrorist groups should be classified as such, with the purpose of rendering them also eligible for the official support, recognition and redress available to victims of terrorism, including access to national relief and reparations programmes. Due consideration should be given to their degree of association with a terrorist group, with specific safeguards put in place to prevent their repeated association with that or another group.
- Consider applying the definition of trafficking for the purpose of forced criminality in the context of trafficking in human beings committed by terrorist groups.
- Provide first-line responders, officials and service providers with the specific mandate and multiagency guidance and training necessary to properly identify cases of human trafficking committed by terrorist or violent extremist groups. Document the abuses and experiences of trauma suffered by victims, assess their individual needs and develop potential responses to these needs.
- Develop joint in-depth research on the circumstances of trafficking vulnerable adults and children by terrorist groups with national civil society organizations, or support them to conduct such research.



Prosecution of terrorist groups and individuals for trafficking offences

- Guide investigators and prosecutors to consider the potential of charges related to human trafficking when evaluating the criminal activities of terrorist groups in order to hold such groups accountable for the full scope of their criminal conduct and ensure that trafficking victims receive justice. This also includes developing gender-sensitive guidelines for the judiciary on identifying and adjudicating cases of trafficking committed by terrorist groups.
- Institutionalize inter-disciplinary and cross-country co-operation of law enforcement agencies, including border control agencies, prosecutors and judiciary, on the detection, investigation and prosecution of cases of forced and deceptive recruitment of persons by terrorist groups for purposes of exploitation in various roles to sustain terrorist operations.
- Use existing guidelines, such as UNODC's Anti-Human Trafficking Manual for criminal justice practitioners, when prosecuting recruiters involved in serious human trafficking violations.²⁹⁷
- Conduct criminal investigations and prosecutions of individuals and legal entities who manage websites used for recruiting adults and children into terrorist groups.
- Use OSCE policy and legislative recommendations²⁹⁸ to consider applying the principle of non-punishment in regard to victims of trafficking to persons who were recruited and exploited by terrorist groups in forms that fit the definition of human trafficking.
- In line with the FATF recommendations, identify cases in which the proceeds of human trafficking are financing terrorist activity by assessing suspicious financial transactions for human trafficking indicators to determine how proceeds are being realized and used.



Partnerships between different disciplines

- Develop joint capacity-building between counter-terrorism and anti-trafficking agencies, and produce guidance for practitioners of both disciplines on preventing and combating trafficking by terrorist groups.
- Build an international task force for identifying and analysing the links between human trafficking, sexual violence and terrorism, and compile and publish the relevant evidence found.
- Establish co-operation with financial institutions and other businesses to leverage their knowledge and capacity to identify illicit finances linked to trafficking and terrorism.
- Establish a consortium of international organizations to analyse potential legislative shortcomings, case law and operational gaps, as well as to enable the exchange of information and evidence to more effectively address human trafficking and terrorism crimes. Such a knowledge base would contribute to the gradual strengthening of the legal basis and potentially enable responses to some of the current gaps in cross-disciplinary approaches to terrorism.
- Conduct and support national and regional research on the pull and push factors that feed the forced and deceptive recruitment *modus operandi* of terrorist groups, and include analyses of actual cases in which terrorism and human trafficking have intersected, as also recommended by the UN coordination mechanism.²⁹⁹



Recommendations related to trafficking of children by terrorist groups

- Identify children who have been trafficked for the purpose of exploitation by terrorist groups, and treat them primarily as victims, in line with the Paris Principle applicable to children associated with armed forces or armed groups.
- Place the principle of “best interests of the child” as a primary consideration in all States’ procedures involving children trafficked by terrorist groups, including interviewing, information gathering and any proceedings, as well as the pivotal obligation of rehabilitation, reparation and reintegration into civilian life.³⁰⁰
- Conduct in-depth and individual assessments of cases of children associated with terrorist groups, particularly of recruitment patterns and related elements, to identify further aspects of trafficking in human beings by terrorist groups. Leverage and mobilize multi-agency mechanisms comprised of child protection specialists, along with experts on trafficking in human beings, cyber-crime and terrorism, to assess each case of child recruitment by terrorist and violent extremist groups.
- Apply the principle of non-punishment to children trafficked by terrorist groups, including in relation to their conduct and association with the group.
- Consider applying a “one stop” model for interviewing child victims/witnesses of grave violence perpetrated by terrorist groups upon their repatriation. One such model is known as Barnahaus (“Child House”), which is based on a multidisciplinary and interagency approach that offers comprehensive services to children and their families.³⁰¹
- Protect the privacy and identity of children who have been associated with terrorist groups as a result of circumstances outlined in the present report. This includes also taking measures to avoid the dissemination of information about such children, particularly personal details, to prevent their re-victimization and possible identification by potential traffickers or other terrorist groups. Such protection is also important for preventing stigmatization or re-victimization of children involved with terrorist and violent extremist groups at later stages in their life.
- Provide children associated with terrorist groups with appropriate documentation (for example, a Nansen-style passport³⁰²) to facilitate their repatriation in line with Article 8 of the Palermo Protocol.

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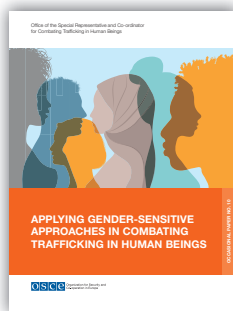
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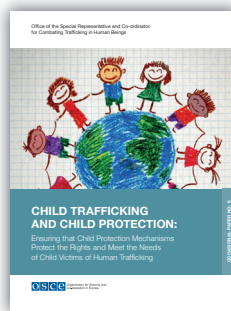
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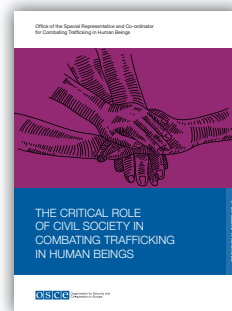
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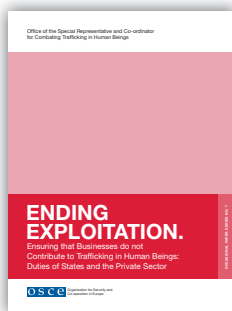
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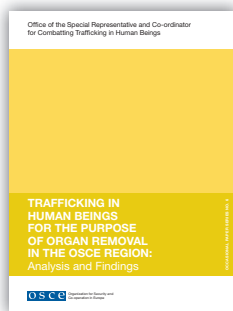
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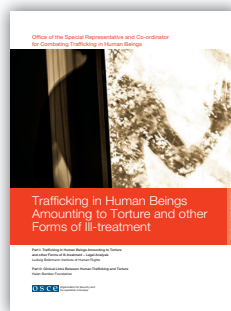
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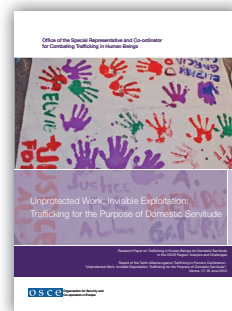
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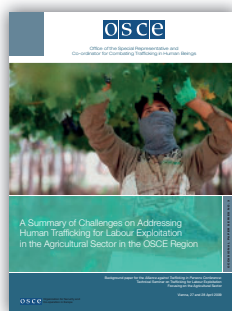
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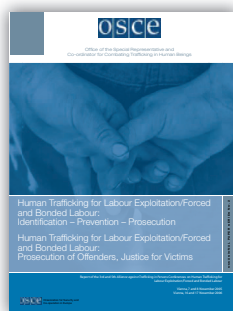
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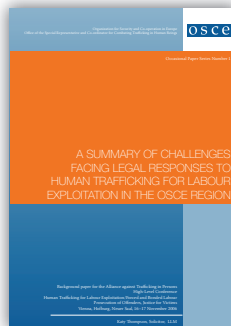
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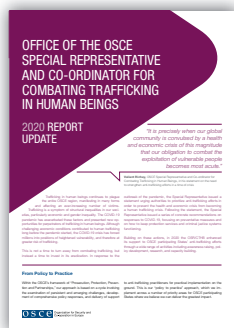


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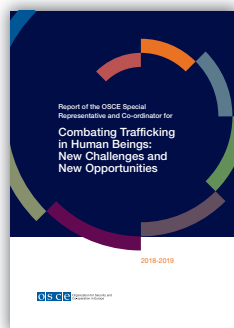


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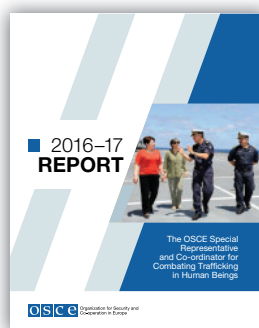
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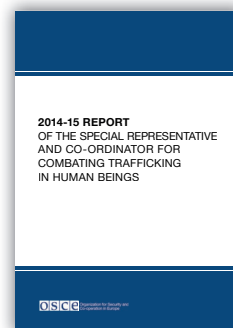
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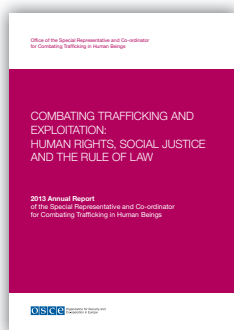
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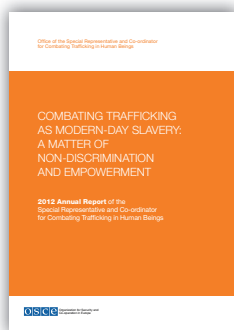
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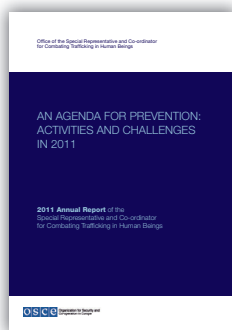
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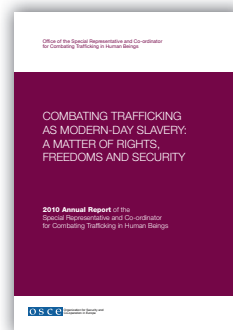
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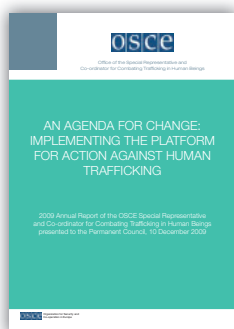
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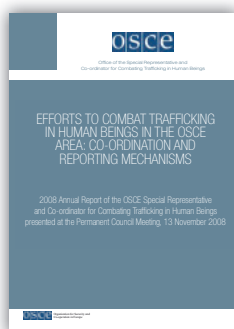
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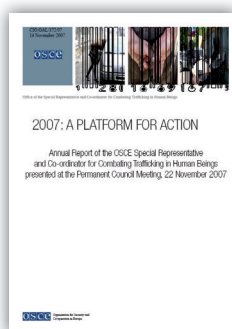
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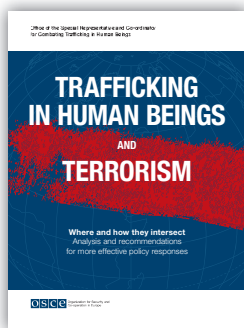


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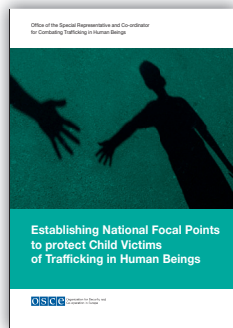


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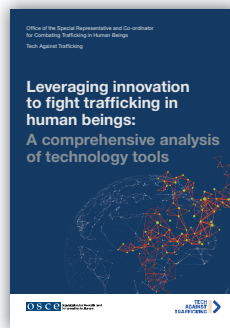
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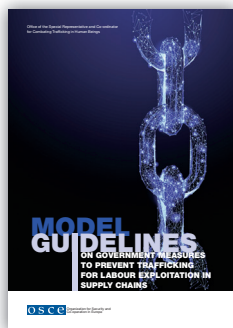
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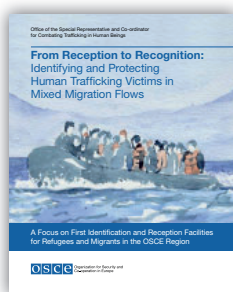
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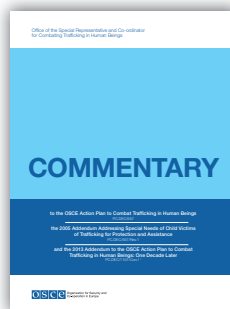
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2018
Model Guidelines on Government Measures to Prevent Trafficking for Labour Exploitation in Supply Chains
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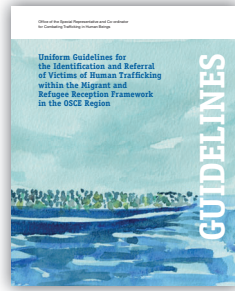
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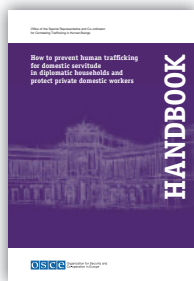
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