

Chapter 11

Designing Effective Measures against Trafficking in Human Beings

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Introduction

Within the range of security governance concerns, the worldwide scourge of trafficking in human beings (THB) deserves priority attention. First, it illustrates an outstanding category of human rights violations: involving the exploitation of persons as commodities for sexual and/or labour purposes, it amounts to a contemporary form of slavery that article 7(c) of the Rome Statute of the International Criminal Court refers to, under the heading of ‘enslavement’, as a special sub-category of crimes against humanity. Second, being undertaken by specialised groups or networks enmeshed in other criminal trafficking (drugs, weapons, human organs, etc.) that also could occasionally be connected with transnational terrorism, THB poses direct challenges to security sector institutions and, consequently, government authority. The development of widespread public corruption (including the judiciary and blackmailed politicians) combined with the negative effect of money laundering undermines transition processes, from authoritarian rule to democracy, and from centralised to market economy. Third, THB raises undue obstacles to the stabilisation of post-conflict societies that must be addressed through peacebuilding operations. Indeed, post-conflict countries are vulnerable – as a source for victims and traffickers and as transit countries. It is not uncommon that post-war government and security sector officials participate in THB, and the climate of impunity enables this trade, run by organised crime, which can flourish in a post-conflict situation.

In contrast with terrorism or questions relating to national minorities, THB is not elusive at a conceptual level. It has found an accepted international law definition through the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000) – an instrument supplementing (along with two other Protocols) the Palermo Convention against Transnational Organised Crime.¹ The definition was not easily reached. Some countries, where prostitution is legal, supported during the negotiations by a handful of NGOs viewing prostitution as a business activity, tried to limit the definition of THB to coerced prostitution, excluding ‘voluntary prostitution’. The attempt failed. Art. 3 (a) of the Protocol defines THB as involving ‘at a minimum the exploitation of 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’ – a wording encompassing all categories of victims, whether female or male, adult or child. The definition also targets the complete chain of participants in THB (from recruiters to transporters and exploiters) since it clearly refers to ‘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 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’. Finally, the text specifies that any apparent consent from victims to exploitation is vitiated by the use of deception and/or coercion and, thus, has to be considered as ‘irrelevant’.²

In addition to the UN Protocol, ‘soft’ norms have been developed through the UN High Commissioner on Human Rights in 2002 (Recommended Principles and Guidelines on Human

Rights and Human Trafficking) and UNICEF in 2003 (Guidelines on the Protection of Child Victims of Trafficking in South Eastern Europe).

THB plagues all regions of the world. At the global level, some 700,000 people – of whom 80% are women – are every year subject to transnational THB alone, not counting an unknown but considerable number of internally trafficked persons.³ Both trends are burgeoning in the Euro-Atlantic area, in particular South Eastern Europe (SEE) which to a greater or lesser extent is still an area of post-conflict rehabilitation.⁴ This chapter outlines the parameters of THB with a particular emphasis on SEE, describes the contribution of institutional actors to a regional strategy and discusses the obstacles hampering the effectiveness of anti-THB policies developed at the national level. Despite its focus on THB in SEE, the lessons learned and policy recommendations which come from this analysis can be more generally applicable, particularly to cases of post-conflict peacebuilding.

Trafficking in Human Beings in a Post-Conflict Setting

SEE serves as a transit zone for THB from some parts of the former Soviet Union (especially Moldova and Ukraine) to Western Europe. At the same time, much trafficking emanates from and takes place within the region. Under the combined effects of the two trends, SEE appears as a sub-regional ‘black hole’ within Europe. Three main reasons account for that dubious privilege. First, in SEE, women are perceived through the lens of a deep-rooted cultural deprecation and are currently treated as a male’s property, servants or even commodities. Second, as elsewhere in Europe, the perverse effects of the transition towards market economy (unemployment, impoverishment, social exclusion, etc.) has especially victimised women and, therefore, increased their socio-economic vulnerability to THB. Third, the breakdown of law and order accompanying the disintegration of Yugoslavia (1992-1995) allowed organised criminal networks engaged in all kinds of trafficking to proliferate and to flourish largely unchecked despite the end of armed hostilities in the region.

Noticeably, most of the political entities of SEE are in transition from war (or insurgency) to peace. Bosnia and Herzegovina, Croatia and the territory of Kosovo represent clear cases of post-conflict societies. The same label can be applied, *mutatis mutandis*, to Albania and Macedonia where post-conflict peacebuilding type activities are still taking place. After rescuing, in coordination with other international institutions, the Albanian State (which collapsed following a general uprising in 1997), the OSCE established a mission in Tirana tasked with a long-term democratic stabilisation programme. In Macedonia, an OSCE Spillover Mission contributes to the implementation of the Ohrid Agreement which put an end to the 2001 ethnic Albanian-led armed insurgency and committed the government to build a multiethnic society. Although representing a qualitatively different case, Moldova cannot be excluded from the picture: since the bloody secession of Transdnistria (1992) and the crystallisation of a so-called ‘frozen conflict’, it does present some features of a post-conflict country. While not representing a direct causal factor, the deployment of international civilian and/or military operations (by the UN, the OSCE, NATO and the European Union) has also contributed to some extent to THB in all those countries.

Systematic international reporting on THB in SEE began only in 2000.⁵ Unfortunately, whether issued by states, intergovernmental institutions or NGOs, the data on THB from, through, to and within the region remain approximate, fragmented and barely comparable. Available data concerns identified, assisted female victims of sexual exploitation, which means a minimum number of persons belonging to just one category of victims. Scant information exists on children (trafficked from abusive or dysfunctional families for begging, sexual exploitation, removal of organs for transplants, etc.) or on male adults (exploited for labour purposes) and rarely identified as victims of trafficking.⁶ Almost no information exists about traffickers, who

generally operate in small rings with loose structures. Adding to the confusion, data on illegal migration, transborder prostitution etc., are not always distinct from those on THB.

What is clear is that, at varying degrees, almost all areas of the region serve as a recruitment source, transit route and final destination for THB – with Albania and Serbia representing the most egregious cases. The largest percentage of women and girls trafficked for purposes of sexual exploitation are usually recruited in Albania, Bulgaria, Romania and Moldova, and – outside the region – Ukraine. Serbia, Montenegro⁷ and Albania are major countries of destination for the same purposes. Bosnia and Herzegovina, Macedonia, Kosovo and Serbia are the primary places of both transit and destination. Internal trafficking need also be accounted for. To a lesser but growing extent, women are victimised within their own localities, especially in Albania (where men are also exploited for labour), Bosnia and Herzegovina, Macedonia, Serbia, Montenegro and Kosovo.

Initially approached from the exclusive lens of sexual exploitation of women, THB in SEE is now considered in broader terms, that is to say as also concerning girls under 18 years and male adults. However, one important issue remains controversial: the growth of trafficking (at both transnational and internal level) which affects or directly involves persons belonging to the Roma ethnic communities. The problem has to do with a reported lack of interest from the Roma communities to face the issue within their own structures or to address it with international actors. Two contradictory reasons are suggested to explain that reluctance: ‘some argue that it is part of traditional Roma cultural practices, such as early and arranged marriages, unequal position of the family members, using child labour – especially for begging – other, that it is a consequence of belonging to the most highly discriminated and poorest group in the society where trafficking is used a survival strategy’.⁸

Addressing Trafficking in Human Beings: the Regional Level

The countries of the region only began to react in a structured and coordinated way from September 2000, with the creation of a Special Task Force on THB (SPTF) in the framework of the Stability Pact for South Eastern Europe – a process launched in 1999 by the European Union in the aftermath of NATO’s military intervention in Kosovo.⁹ The SPTF provided a framework for periodic regional meetings (including at the ministerial level), the exchange of information, and the coordination of domestic policies. It developed a Regional Plan of Action which offered a template for individual national policies. It issued the Palermo Anti-Trafficking Declaration of South Eastern Europe (December 2000) whose provisions brought some added value to the UN Protocol on Trafficking as concerns the question of socio-economic reintegration of victims.¹⁰ Most importantly (and in addition to awareness-raising at the political level), it identified six priority areas for action, each of which was addressed by institutional actors serving, alone or in tandem, as focal points and lead institutions: prevention, awareness-raising, victim assistance and protection, return and reintegration, legislative reform as well as law enforcement, training and exchange of information (see Table 11.1).

Table 11.1: Priority Areas of Action and Institutional Actors

Priority area	Institutional actors
Prevention	United Nations High Commissioner on Human Rights (UNHCHR) and International Labour Organisation (ILO)

Awareness-raising	United Nations Children’s Fund (UNICEF) and Save the Children
Victim assistance and protection	International Catholic Migration Committee
Return and reintegration	International Organisation for Migration (IOM)
Legislative reform	OSCE’s Office of Democratic Institutions and Human Rights (ODIHR) and Council of Europe
Law enforcement cooperation, training and exchange of information	Southern European Co-operative Initiative (SECI) and International Centre for Migration Policy Development (ICMPD)

From the outset, the anti-THB activities developed within the SPTF were chaired by the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) and when the SPTF Secretariat was discontinued (in October 2004), its functions were handed over to the OSCE. Indeed, when launching the Stability Pact process, the European Union requested the OSCE to place it under its proper ‘auspices’, because the Western Balkans countries were OSCE member States and the organisation has long-term field missions operating in each of these countries. In other words, the OSCE offered a more appropriate venue than the European Union for monitoring the Pact’s implementation. Another reason was linked to the pioneering contribution of the OSCE to the fight against THB. In cooperation with the United Nations Children’s Fund (UNICEF) and the United Nations Office for the High Commissioner for Refugees (UNOHCR), the OSCE drafts annual reports on the situation of THB in SEE. Within the Eurasian region, the OSCE recognises that THB affects ‘all of its participating States’ – whether countries of origin, transit and destination – and represents a threat to security ‘in [its own] area and beyond’.¹¹ Initially, it approached the issue from a narrow gender perspective, in connection with the protection of women against economic discrimination and all forms of violence.¹² However, since 2000, through several successive Ministerial Council’s decisions,¹³ cutting across the three dimensions of its comprehensive security programme, the OSCE arrived at tackling THB as a human security problem. Thus, the Anti-Terrorism Unit and the Strategic Police Matters Unit address the issue in connection with the detection of false passports and through police capacity building and training for law enforcement officials, while the Office of the Coordinator for Economic and Environmental Activities is concerned by the socio-economic roots of THB. A key role is assumed by ODIHR, which hosts Anti-Trafficking and Gender units and whose democratisation programmes currently include concrete anti-THB projects.¹⁴ Finally, whether established for the management of post-conflict situations or for assistance to democratisation, long-term field missions also contribute to the fight against THB through monitoring, practical assistance to governments and support to NGOs for the resolution of individual cases of trafficking.¹⁵

To date, OSCE’s specific contribution has taken three main forms. First, the OSCE adopted in 1999 a comprehensive Action Plan to Combat Trafficking in Human Beings that it updated in 2003 and supplemented with an addendum concerning the special needs of children in 2004.¹⁶ Second, in order to raise awareness among its personnel and to ensure that they do not engage in or facilitate any THB activities, it devised stringent Anti-THB Guidelines for Staff (2001).¹⁷ Third, in 2003, the OSCE set up a Special Mechanism for the Combating of Trafficking in Human Beings consisting of a Special Representative supported by a dedicated structure (the Anti-Trafficking Assistance Unit) of the Vienna Secretariat. The mechanism’s aims are to assist governments in the implementation of their international and regional commitments (by means of legislative and varied forms of technical assistance), to coordinate OSCE efforts across the activities of its three dimensions and to cooperate with international agencies and NGOs involved in anti-THB.¹⁸ Furthermore, it should be noted that an OSCE Border Security and Management Concept is under elaboration; scheduled for completion by the end of 2005, its objectives include

the prevention and repression of cross-border movements related to THB along with terrorism, organised crime, illegal migration, corruption, smuggling, and trafficking in weapons, drugs and human beings.¹⁹

Alongside the OSCE, the major European security institutions have also been involved in the fight against THB. Through its Committee of Ministers and Parliamentary Assembly, the Council of Europe began to display interest in the matter as early as 1997²⁰ and, currently, is engaged in the drafting of a regional convention expected to develop legal norms for trafficked victims as well as to establish a monitoring mechanism. The European Union's first efforts to develop a comprehensive approach in 1996 came up against the divergence of national legislations. Ultimately, the European Commission issued 'framework decisions' dealing with THB (2002) and the sexual exploitation of children (2004).²¹ NATO joined the movement only in 2004 with the adoption of specific Guidelines for its staff and its military and civilian personnel deployed in the field, as well as for the development of training and educational anti-THB programmes.²² The Alliance's policy stemmed from the need to ensure that the credibility of NATO-led operations in host countries would not be undermined by the possible involvement of peacekeepers in THB and also out of the necessity of coping with a major factor of destabilisation in the fragile States of SEE – through assistance to local law enforcement bodies (for prosecution purposes) and cooperation with civil society groups in the protection of victims. Within and outside the Stability Pact, so many organisations, regional institutions, subregional processes and international NGOs interact in the fight against THB that SEE can be credited for being the most advanced region in the world in terms of a coordinated anti-THB approach.

Addressing Trafficking in Human Beings: the National Level

All SEE countries except Moldova are now parties to the UN Protocol on Trafficking. All have adopted a national plan of action against THB aimed at the prevention of trafficking, the prosecution of traffickers and the protection of trafficked persons (see Table 11.2).

Table 11.2: Major Features of National Plans of Action Against THB

Prevention of THB	Prosecution of traffickers	Protection of and assistance to victims of THB
Measures to address the cultural stereotypes and socio-economic inequalities that render persons vulnerable to THB, as well as the direct causes of the 'demand factor'.	Criminalisation of offences committed by persons or entities, including all direct or indirect accomplices.	Deliverance of provisional identity documents and temporary residence permits.
Awareness-raising campaigns targeting potential victims and the general public, as well as training programmes for law enforcement personnel.	Special penalties for acts of active or passive corruption of public officials.	Establishment of shelters for the provision of medical, psychological, social assistance.
Control of business sectors that could engage in or contribute to THB.	Effective implementation of legal penalties by law-enforcement agencies	Establishment of national referral mechanisms, repatriation, rehabilitation and reintegration programmes
More effective management	More effective	

of borders.	management of borders.	
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Prevention of Trafficking

The basic premise of prevention is to address the cultural and socio-economic root causes of trafficking – the ‘supply factor’ – as well as the immediate causes which triggers the ‘demand factor’. For countries of origin, this means programmes for the reduction of the socio-economic inequalities that incite persons to engage in illegal migration and/or prostitution and make them vulnerable to THB: impoverishment, social exclusion, discrimination in the marketplace, lack of educational and vocational training, insufficient development of small and medium-sized enterprises, etc. As to countries of transit and destination, their own responsibility is to discourage the demand side for sexual exploitation and cheap unprotected labour through measures against prostitution and underground economic activities, as well as to disseminate information concerning legal channels of migration. All concerned countries (whether of origin, transit or destination) are expected to develop programmes aimed at the systematic promotion of equality between the sexes and female empowerment.

The launching of general and specific awareness-raising campaigns, preferably with local NGOs and the media, represent another crucial need. In countries of origin, information campaigns have especially to target potential victims (women, children, migrants, displaced persons, members of national minorities, etc.), reaching out to small villages and remote locations. In other countries, there is a need for training programmes (on human rights as well as on child and gender issues) for officials responsible in the areas of immigration, criminal justice, social services, consular and diplomatic services, etc. Furthermore, the control of business sectors that could engage in or contribute to THB is also necessary in all categories of countries. This concerns bureaus advocating employment abroad and also tourist, au pair, adoption or mail-order bride agencies. In any case, more effective control of borders has to be achieved, especially for preventing any means of commercial transport carriers being used for THB.

As in the case of conflict management, prevention seems to be an ideal method to tackle THB. Nevertheless, the obstacles to anti-THB preventative strategies are considerable. First of all, there is the financial cost of prevention programmes for countries of origin and the reluctance of foreign donors to assume or to share the burden. The resilience of gender-based cultural traditions and the lack of a human rights culture constitute an equally serious impediment. The fact that prostitution is a legal (or a tolerated) business activity in a number of European countries raises another type of obstacle: prostitution feeds the demand for THB and offers welcome avenues for traffickers. Even if all those obstacles were to be reduced to the minimum, a preventative policy would have little chance to succeed in the context of a poorly performing security sector, run by ill-informed, ineffective and/or corrupt law enforcement personnel, and where decisions of the judiciary are seldom abided by.

Prosecution of Traffickers

Viewed from the repressive angle, anti-THB policies concern the security sector in a direct way since they have to address issues related to border control, implementation of law enforcement decisions and moral integrity of public officials. Several obstacles block effective prosecution of offenders. The first is the size of criminal networks engaged in THB: traffickers do not usually form large structured groups, but very small and loose ones operating with constantly changing methods. For that reason, THB activities reap high profits and, in many countries, entail much

lower risks and penalties than the trafficking of drugs and weapons.²³ Indeed, fearing retaliation from traffickers, trafficked persons are generally reluctant to cooperate with the authorities of transit or destination countries hence the impunity of traffickers since the victim's testimony is often the only available evidence against them. Besides, the legalisation of prostitution makes it more complex for law enforcement authorities to properly identify and punish the traffickers. In any event, prosecution can barely be expected to be effective in countries where the security sector is dysfunctional, managed by institutions whose weakness or corruption permit traffickers to circumvent border controls and evade penalties pronounced by tribunals. The major obstacle to prosecution lies however in the obsession of transit and destination States with illegal migration, particularly in the context of the protection component of anti-THB policies.

Protection of and Assistance to Victims of Trafficking

Sadly, the human rights dimension represents the most problematic aspect of the fight against THB. From a humane perspective, countries of origin and of transit/destination are expected to protect and assist victims of THB. Their preliminary responsibility should be to deliver provisional documents clarifying the victim's identity and status (in terms of residence, housing, employment, etc.), with due account of potential dangers to the victims safety especially during pre-trial and judicial proceedings. They are also expected to create special shelters (run by governmental officials or civil society bodies) able to provide legal, medical, psychological and social assistance to all victims in full confidentiality and regardless of their willingness to cooperate with official authorities in investigations. Finally, they are supposed to establish (in coordination with civil society institutions and countries of origin) national referral mechanisms facilitating voluntary repatriation processes with due regard to the safety of victims.²⁴ As to countries of origin, their duty is to facilitate the reintegration of the victims to domestic society and to contribute to their economic and social rehabilitation by means of dedicated procedures and mechanisms. Cooperation among all relevant actors (countries of origin, transit and destination, as well as NGOs and intergovernmental organisations) is obviously critical for the achievement of such goals. Unfortunately, the victims of trafficking do not generally display enthusiasm for either return or reintegration. On the one hand, the basic reasons that incite people to be mired in THB (lack of employment and social marginalisation) will still confront the returnees and, on the other hand, the latter will have to face social stigmatisation or even ostracisation: hence re-trafficking, a problem that reintegration programmes rarely address.²⁵

The obstacles standing in the way of protection and assistance are exactly those which have been identified for prosecution: the elusiveness of small-sized and unstructured trafficking networks, the existence of a legal prostitution business, the dysfunctions of the security sector and, above all, the obsession of states with illegal migration. Transit and destination states often consider THB as an issue of migration (and thus of national security), rather than a human rights violation deserving priority concern. Therefore, the victims of what is an abhorrent slavery-related crime are often treated as offenders guilty of illegal migration in countries of transit and destination – a fact that induces them to turn to NGOs rather than to official public assistance. As matter of fact, despite occasional overlaps, trafficking and illegal migration are distinct phenomena. The latter involves only cross-border smuggling, while the former may also take place within a given country: THB can be both internal and transnational. Furthermore, and contrary to most cases of illegal migration, THB is fraught with coercion and violence.

A telling illustration of the concern of States to protect themselves from illegal migration rather than caring for the victim's rights can be found in the ongoing attempts of the Council of Europe to frame a Convention on action against THB. When in 2005 the Committee of Ministers finally submitted a draft text to the Parliamentary Assembly (which has been requesting such an instrument since 1997), the MPs realised that the core element expected to constitute the added value of a regional instrument – the protection of victims' rights – was absent.²⁶ Therefore, they

tabled amendments committing governments to exercise jurisdiction over anyone placed under their authority or effective control and to refrain from detaining, charging or prosecuting victims on the grounds of an illegal entry or for their involvement in any unlawful activities linked to their status as victims. Other amendments also addressed, *inter alia*, the right of victims to appeal to an independent body against a government’s decision not to identify them as such, the granting to all victims of a recovery and reflection period of a least 30 days, as well as access to necessary medical care and not only emergency treatment. However, within the Council of Europe’s Ad Hoc Committee on Action against THB, the European Commission opposed most of those amendments on behalf of the Member States of the European Union. It also objected to the scrutiny of the Convention regime through a Council of Europe monitoring mechanism for matters falling within the competence of the European Union. It even went as far as proposing a ‘disconnection clause’ under which the instrument would not be applicable by the European Union and its member States for issues on which Community or EU legislation was lacking.²⁷

Conclusion and Policy Recommendations

Clearly, anti-THB policies in Europe remain underdeveloped at all three areas discussed above: prevention of trafficking, prosecution of traffickers and protection of trafficked persons. More often than not the major obstacles to anti-THB policies are the same in all three areas. This holds particularly true for repression and protection (see Table 11.3).

Table 11.3: Major Obstacles to Anti-THB Policies

Prevention	Repression	Protection of and assistance to victims
Financial cost of preventative programmes and lack of foreign donors interest to contribute.	Obsession of transit and destination States with illegal migration.	Obsession of transit and destination States with illegal migration.
Resilience of gender-based cultural traditions and lack of a human rights culture.	Small size of unstructured trafficking networks.	Small size of unstructured trafficking networks.
Legalised prostitution.	Legalised prostitution.	Legalised prostitution.
Dysfunction of the security sector (ineffective law enforcement institutions, weak border control, corruption, etc.).	Dysfunction of the security sector (ineffective law enforcement institutions, corruption, weak border control, etc.).	Dysfunction of the security sector (ineffective law enforcement institutions, corruption, weak border control, etc.).

The latest reports on THB suggest that two new trends are now developing in SEE. First, an emergency situation has ceased to exist there, a fact which hints to a global improvement of the situation prevailing in the region.²⁸ Second, THB has become less visible and, at the same time, more sophisticated: in reaction to preventive and/or repressive measures taken at national level, traffickers are quickly and constantly adapting their *modus operandi* through full exploitation of the Internet, the transfer of trafficked women from brothels or bars to anonymous apartments, the recruitment of female pimps and the use of commercial flights instead of overland travel.²⁹ Given the increase of internal trafficking of women and the growing number of trafficked children, it would be wrong to assume that the scourge is on the decline. THB continues to represent a serious threat to the security of individuals and the stability of states in Europe. A main reason for the lack of significant progress has to be attributed to three ‘nexus gaps’ which generally

characterise the anti-THB programmes of action adopted by concerned countries, whether of origin, transit or destination.

(1) Nexus between the human rights and national security components of anti-THB policies. The fight against THB is not a matter of human rights versus law enforcement: it concerns State security *through* the assistance to and protection of victims. However, at domestic level, the issue of trafficking continues to be tackled most often by means of measures aimed at the repression of illegal migration and organised crime. Significantly, the Stabilisation and Association Agreements concluded by the European Union with some States of the region (Macedonia and Croatia) refer to THB from the same narrow angle.³⁰ According to the latest joint Report by UNICEF, UNOHCHR, and the OSCE, the neglect of the nexus between human rights and internal state security is not due to insufficient understanding of what is at stake, but rather with ‘the paucity of human rights-based strategies and their lack of implementation within a democratisation framework’.³¹ The absence of clear human rights standards for the treatment of victims currently permit national authorities to subject persons to criminal proceedings just because they have been victims of trafficking. Legal prostitution aggravates further the problem. THB and prostitution, which both result in the degradation and abuse of women, are not only morally-correlated phenomena; at a practical level, they intersect: THB cannot flourish without legal prostitution markets which nurture the demand for THB, create convenient legal façades for trafficking and complicate the task of law enforcement authorities to identify and, as a last resort, indict the traffickers. As long as an artificial dichotomy between ‘coerced’ and ‘voluntary’ prostitution persists, the fight against THB will have little chance to become fully effective. The need for a European instrument going beyond the minimum standards provided for by universal texts has been met with the adoption, on 3 May 2005, of the Council of Europe Convention on Action against Trafficking in Human Beings. The new instrument is wider in scope than the United Nations document since it concerns not only transnational but also national trafficking (whether or not the latter is conducted by organised criminal groups), covers recruitment by means of the Internet and commits State Parties to adopt measures for discouraging the “demand factor” as concerns sexual exploitation, forced labour and organ removal. The main added value of the Convention lies on the one hand in a human rights perspective and focus on victim protection and assistance through a comprehensive legal framework: Chapter III contains provisions applicable to all kinds of victims, including those with no legal residence permit or even persons not yet been identified as formal victims. On the other hand, Chapter VII establishes a monitoring system involving action from an independent technical body, the Group of Experts against trafficking in human beings (GRETA) and a political dialogue body, the Committee of the Parties.³²

(2) Nexus between anti-THB and socio-economic policies. All expert reports routinely recommend long-term prevention programmes to address such root causes of THB as poverty, unemployment, anti-gender discrimination, domestic violence against women and child abuse in countries of origin, as well as restrictive migration and labour policies in countries of destination. Preventative measures envisaged in the action plans of countries of origin have not been, however, consistently implemented so far and, furthermore, UNDP’s programmes in SEE do not yet include anti-THB components.³³ As to the countries of destination, they rule out the idea of loosening existing immigration regulations or offering alternative options to migration, such as legal employment quotas in specific market sectors. This appears all the more regrettable given that the tightening of immigration policies within the European Union is certainly not the least significant among the several socio-economic factors which encourage the development of trafficking channels. Restrictive immigration policies incite potential migrants to resort to illegal channels and, thus, fall into the trap of THB. As long as socio-economic and migration agendas

do not integrate THB, the fight against that scourge will remain superficial with, at best, limited achievements of a quick-fix type.

(3) *Nexus between anti-THB policies and security sector governance.* THB directly concerns security sector governance. It feeds organised crime, cripples the performance of law enforcement bodies, challenges the authority of the State and erodes the rule of law through the corruption of officials, in particular those of the police and the judiciary. In SEE, where the judiciary appears to be the weakest of all security sector institutions, the limited effectiveness of anti-THB policies has direct implications for regional stability and political integration in the European Union. The resilience of THB hampers the overall progress of SSR in SEE. Conversely, security sector dysfunctions create huge obstacles to the prevention of THB, the prosecution of traffickers and the protection of victims in that region. There is a need to incorporate more systematically anti-THB projects in the SSR programmes implemented in the countries of SEE. For that purpose, the following concrete policy recommendations are proposed:

- First, more needs to be done in mainstreaming training programmes for the police, immigration officers, border guards, judges and other law enforcement personnel. Such training should be sustained, go much beyond simple awareness-raising - leading to in-depth understanding of the abstract and practical tenets of human rights in general and of THB in particular - and include regular follow-up assessments of progress achieved. A genuine knowledge of the nature of THB would allow law enforcement institutions to adopt and to implement consistent standard protocols for the systematic identification of both the traffickers and the victims – or, more simply put, to become more effective and less prejudiced at the same time;
- Second, given that anti-THB is closely linked to the global fight against organised crime, an integrated approach should be promoted. The establishment of national and regional mechanisms providing for a cross-sector cooperation and coordination between police forces, border guards and the judicial system would certainly contribute to increased effectiveness;
- Third, anti-THB deserves to be undertaken as consistently as the fight against terrorism, trafficking in arms or drugs and other forms of organised crime. Projects conducted in the framework of SSR should be targeted at trafficking networks and not just cases. Furthermore, a NATO-sponsored regional structure dedicated to criminal intelligence would be welcome, as much as a body performing early warning functions as regards THB.

The combating of THB necessitates strong political will as much as the appropriate use of significant material resources by a functional security sector. Being a typical security governance problem in post-conflict rehabilitation, THB cannot be approached in a piecemeal fashion. At both national and intergovernmental level, only an integrated and multidisciplinary response has the chance to effectively reduce (if not eradicate) a scourge reflecting the ‘ugly face of Europe’,³⁴ and certainly, one of the darkest sides of human nature.

Notes

1 The Protocol to Prevent, Suppress and Punish Trafficking in Persons entered into force on 25 December 2003 and presently (as of April 2005) links 80 Parties. The Convention against Transnational Organised Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, became effective respectively on 29 September 2003 and 20 January 2004. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their

- Parts and Components and Ammunition has not yet obtained a sufficient number of ratifications to permit entry into force.
- 2 For more details see Raymond, J. G., 'The New UN Trafficking Protocol', *Women's Studies International Forum* vol. 25, no. 5 (2002), pp. 491-502 and Jordan, A. D., 'The Annotated Guide to Complete UN Trafficking Protocol', URL <www.hrlawgroup.org/initiatives/trafficking>.
 - 3 According to UN estimates, there are about 4 million people annually trafficked worldwide. See Hughes, D. M., 'The *Natasha* Trade – The Transnational Shadow Market of Trafficking in Women', *Journal of International Affairs* vol. 53, no. 2 (Spring 2000), pp. 625-626.
 - 4 For the purposes of this chapter, the area encompasses the five countries of the Western Balkans (Albania and all the successor States of the former Yugoslavia except Slovenia), Bulgaria, Romania and Moldova (Moldova was granted accession to the Stability Pact on 28 June 2001 in the framework of the EU's new neighbourhood policy). It also includes the internationally-administered territory of Kosovo, which participates to the Stability Pact through the United Nations Interim Mission in Kosovo (UNMIK) in whose framework a Trafficking and Prostitution Investigation Unit exists.
 - 5 Comprehensive Reports have been established by Jane Gronow for UNICEF in 2000, see URL <www.unicef.org>, and by Barbara Limanowska on behalf of UNICEF/UNOHCHR/OSCE as from 2002 at URL <www.seerights.org>. See also the 2003 Stability Pact/IOM/ICMC Report focused on victims of trafficking at URL <www.iom.int>, the 2004 Stability Pact's Task Force Report: El-Cherkeh, T. et al, *South Eastern Europe's Struggle Against Trafficking in Persons and EU-Enlargement, Migration and Trafficking in Women : The Case of South Eastern Europe*, Report 247 (Institute of International Economics: Hamburg, 2004). Data on the individual countries of the region can also be found in the global *Trafficking in Persons Reports* annually published by the US Department of State since 2000, URL <www.state.gov>.
 - 6 Limanowska, B., *Trafficking in Human Beings in Southeastern Europe. Focus on Prevention*, UNICEF, UNOHCHR and OSCE/ODIHR publication (2004), p. 65.
 - 7 It is to be noted that, in international reporting, Serbia and Montenegro are treated separately due to the different dynamics of THB taking place in each of them and also because of the lack of coordination of their respective anti-THB policies.
 - 8 Limanowska, B., *op. cit.*, p. 64.
 - 9 The SPTF was created within the Sub-table on justice and home affairs as part of Working Table III which deals with external and internal security issues. Given the multifaceted nature of THB, it coordinated its activities with those of the Pact's Task Force on Gender and Initiative against Organised Crime.
 - 10 Limanowska, *op. cit.*, pp. 11-12.
 - 11 OSCE Porto Declaration on Trafficking in Human Beings (2002), para I.1.
 - 12 See para 40.7 of the Moscow Document on the Human Dimension (1991) and para 24 of the Istanbul Charter for European Security (1999).
 - 13 MC(8).DEC/1 of 28 November 2000 (Vienna decision), MC(9).DEC.6 of 4 December 2001 (Bucharest decision), MC(10).JOUR/2, Annex 2, of 7 December 2002 (Porto Declaration), MC.DEC/2/03 of 2 December 2003 (Maastricht decision) and MC.DEC/13/04 of 7 December 2004 (Sofia decision).
 - 14 Within the SPTF, ODIHR produced *inter alia* a *Reference Guide for Anti-Trafficking Legislation Review with Particular Emphasis on South Eastern Europe* (2001).
 - 15 On the contribution of the OSCE Mission to Moldova, see Kartusch, A., Thompson, K., *Trafficking in Persons, Witness Protection and the Legislative Framework of the Republic of Moldova: An Assessment*, OECD report (2003), URL <www.osce.org/documents/mm/2003/12/3191_en.pdf>.
 - 16 Initial Action Plan: ODIHR.GAL/32/00 of 1 June 2000. Revised Action Plan: PC.DEC/557 of 24 July 2003 and MC.DEC/2/03 of 2 December 2003. Addendum concerning children: MC.DEC/13/04 of 7 December 2004.
 - 17 PC.DEC/426 of 12 July 2001. A provision on THB was also included in the *Secretariat's Code of conduct for OSCE Mission Personnel* which is an integral part of the Staff regulations (SEC.GAL/87/01 of 19 June 2001).
 - 18 For more details on OSCE's contribution to anti-THB, see Kanics, J. et al, 'Trafficking in Human Beings: A Threat Under Control?', *Helsinki Monitor* vol. 16, No. 1 (2005), pp. 53-67. In an effort to foster joint institutional strategies after the closure of the Stability Pact Task Force's Secretariat, the OSCE Special Representative created in July 2004 a special forum ('Alliance Against Trafficking in Persons') meeting annually at expert level and high-level Conference.
 - 19 MC.DEC/2/04 of 7 December 2004 (Sofia Ministerial decision) and PC.DEL/134/04 of 1 March 2004 (Secretariat's paper on OSCE related-border activities).
 - 20 See for instance Recommendations No R (91) 11 of 9 September 1991, No R (97) 13 of 10 September 1997, No R (2000) 11 of 19 May 2000 and Rec (2001) 11 of 19 September 2001 by the Committee of Ministers, as well as Recommendations 1325 (1997), 1545 (2002) and 1611 (2003) of the Parliamentary Assembly.
 - 21 See OJ L 203 of 1 August 2002 (p. 1) and OJ L 13 of 20 January 2004 (p. 44). See also the 2004 Report of the Experts Group to the European Commission on trafficking in human beings, URL <http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum.htm_forum#2610-04>.

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- 22 The texts of the three policy papers are available on URLs <www.nato.int/docu/comm/2004/06-istanbul/docu-traffic-app1.htm>, <www.nato.int/docu/comm/2004/06-istanbul/docu-traffic-app2.htm>, and <www.nato.int/docu/comm/2004/06-istanbul/docu-traffic-app3.htm>.
- 23 In 2002, the UN estimated that trafficking was producing an annual 5-7 billion \$ revenues. Raymond, J. G., 'The New UN Trafficking Protocol', *Women's Studies International Forum* vol. 25, no. 5 (2002), p. 492. Present NATO estimations are much higher: around \$ 12 billion.
- 24 See *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook* (OSCE/ODIHR: Warsaw, 2004).
- 25 Limanowska, B., *op. cit.*, pp. 89-90.
- 26 For the text of the draft Convention, see Parliamentary Assembly of the Council of Europe doc. 10389 (4 January 2005).
- 27 For more details, see Parliamentary Assembly of the Council of Europe doc. 10397 (17 January 2005) and doc. 10474 (15 March 2005) ['Vermot-Mangold Reports'] as well as doc. 10433 (25 January 2005) ['McNamara Report']. See also Recommendation 1695 (18 March 2005).
- 28 Limanowska, B., *op. cit.*, pp. 93.
- 29 *EU-Enlargement, Migration and Trafficking in Women, op. cit.*, pp. 26 and 96.
- 30 Limanowska, B., *op. cit.*, p. 94.
- 31 *Ibidem*, p. 85.
- 32 As requested by the European Union, the Convention included a disconnection clause stipulating that "without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties, Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case" (§ 3 of art. 40). In a special declaration, the European Union explained that such a clause was meant "to take account of the institutional structure of the Union when acceding to international conventions, in particular in case of transfer of sovereign powers from the Member States to the Community" and that it was necessary "for those parts of the convention which fall within the competence of the Community/Union, in order to indicate that European Union Member States cannot invoke and apply the rights and obligations deriving from the Convention directly among themselves (or between themselves and the European Community/Union). For the text of the Declaration, see Doc. 10584 of the Parliamentary Assembly of the Council of Europe (17 June 2005). For the text of the Convention (with explanatory commentary) see www.coe.int/trafficking
- 33 Limanowska, B., *op. cit.*, p. 86. While a gender impact assessment is current in World Bank programmes, it does not refer to THB (*ibidem*, p. 94).
- 34 Konrad, H., 'Trafficking in Human Beings: The Ugly Face of Europe', *Helsinki Monitor* vol. 13, no. 3 (2002), pp. 260-271.