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Child trafficking: the worst face of the world

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Global Commission on International Migration

In his report on the 'Strengthening of the United Nations - an agenda for further change', UN Secretary-General Kofi Annan identified migration as a priority issue for the international community.

Wishing to provide the framework for the formulation of a coherent, comprehensive and global response to migration issues, and acting on the encouragement of the UN Secretary-General, Sweden and Switzerland, together with the governments of Brazil, Morocco, and the Philippines, decided to establish a Global Commission on International Migration (GCIM). Many additional countries subsequently supported this initiative and an open-ended Core Group of Governments established itself to support and follow the work of the Commission.

The Global Commission on International Migration was launched by the United Nations Secretary-General and a number of governments on December 9, 2003 in Geneva. It is comprised of 19 Commissioners.

The mandate of the Commission is to place the issue of international migration on the global policy agenda, to analyze gaps in current approaches to migration, to examine the inter-linkages between migration and other global issues, and to present appropriate recommendations to the Secretary-General and other stakeholders.

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Potential contributors to this series of research papers are invited to contact the GCIM Secretariat. Guidelines for authors can be found on the GCIM website.

Introduction

The purpose of this article is to offer an overview on child trafficking; it briefly analyses the global phenomenon of trafficking in human beings and focuses on the major regional trends in child trafficking and the international response to this phenomenon. As regards the latter, an overview of international treaty law, soft law instruments and special mechanisms will underline the positive aspects of, as well as existing gaps in, the protection of child victims of human trafficking. Some of these instruments and mechanisms have only recently been adopted: for example, the Special Rapporteur on Trafficking in Persons, especially Women and Children was created at the end of 2004. Even if it is clear that this new mechanism created by the Commission on Human Rights will enhance the protection of trafficking victims, it is not easy to make predictions. It is, however, clear that there is a generalised denunciation of the phenomenon at the international level and increasing pressure is being put on states to act in the fight against this modern form of slavery.

The issue of trafficking in persons, and particularly in children, can be investigated from various points of view; trafficking is a criminal, a moral, a migration, a human rights, a public order, a labour and a gender issue. However, for the scope of this study it will only be analysed from a human rights perspective.

Trafficking in human beings as a modern form of slavery

Trafficking in human beings is a new form of slavery of our time and a serious violation of human rights. It involves the recruitment, transportation, transfer, harbouring and receipt of persons for the purpose of exploitation. The exact number of people trafficked annually through international borders is unknown. According to the International Organization for Migration (IOM), this is particularly due to the illegal nature of the phenomenon, the lack of anti-trafficking legislation in many countries of the world, the reluctance of the victims to denounce their traffickers and the low priority given by Governments to research activities and data collection in this field¹.

The lack of clear data is also related to the lack of a definition of trafficking in persons until the recent adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Consequently, many states still confuse data on trafficking in persons, smuggling in migrants and irregular immigration².

Recent estimates by the U.S. Department of State indicate that every year approximately 600,000 – 800,000 people, most of whom are women and children, are trafficked across international borders, generating huge profits for organised criminal groups of traffickers. However, the figure regarding internal trafficking may be even

¹ International Organization for Migration, *New IOM Figures on the Global Scale of Trafficking*, Trafficking in Migrants Quarterly Bulletin, No. 23 (2001), at 1, available at http://www.iom.int/documents/publication/en/tm_23.pdf

² Laczko F. and Gramegna M., *Developing Better Indicators of Human Trafficking*, The Brown Journal of World Affairs, Volume X, Issue 1, 179-194, at 179.

higher³. As regards children, the United Nations considers that 1.2 million are trafficked both internally and across international borders every year⁴.

The new slave trade has a variety of causes including, among others, extreme poverty, lack of access to resources, unemployment and poor education. Furthermore, trafficking in persons particularly affects women and children because of their marginalisation in society and the so-called ‘feminisation’ of poverty. The globalisation of labour and markets and increasing obstacles to legal migration are also contributing to human trafficking. Finally, transition countries and post-conflict situations are a perfect environment for the flourishing of the new slave trade⁵.

The phenomenon appeared in the last decades of the 20th century. At first the impression was that trafficking routes flourished between rich and poor countries, from the South to the North and from the East to the West of the world. This assumption was not entirely accurate because, as underlined by IOM, the new slave trade exhibits growing complexity with many states in Africa, Asia and Central and Eastern Europe becoming both countries of origin and destination for trafficking in human beings⁶.

As Arlacchi, Director of the United Nations Office for Drug Control and Crime Prevention (UNODC), has stated, trafficking in persons is the fastest growing form of organised crime, because it is less risky than drug or arms trafficking and guarantees greater profits⁷. EUROPOL estimates in its 2004 European Union Organised Crime Report that the earnings of the modern “human trade” are between 8.5 and 12 billion Euros per year⁸. Thus, considering the low risk compared to other forms of organised crime and the high profits it generates, human trafficking can be considered an easy and lucrative activity for traffickers.

Child trafficking: current situation, causes and consequences

Children are trafficked all around the world for a variety of purposes, although sexual exploitation of young boys and especially girls is probably the most widespread form of exploitation related to trafficking in persons. With regard to children trafficked for prostitution, Kelly concludes that girls and young women under the age of 18 constitute 10 - 30% of the total number of trafficked women⁹.

³ United States Department of State, *Trafficking in Persons Report*, June 2004, Washington, available at <http://www.state.gov/documents/organization/34158.pdf>, at 6.

⁴ United Nations, Special Session for Children, *Experts share strategies to stop child trafficking*, New York, 2002, available at <http://www.unicef.org/specialsession/activities/child-trafficking.htm>.

⁵ Kelly E., *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, IOM Migration Research Series No. 11, Geneva, IOM, 2002, at 24, available at http://www.iom.int/documents/publication/en/mrs_11_2002.pdf.

⁶ Supra note 1, at 1.

⁷ Arlacchi P., *Human Trafficking: Fastest Growing Form of Organized Crime*, Mr. Arlacchi tells OSCE Council, Press Release of 1 November 2001, available at http://www.osce.org/news/generate.php3?news_id=2110.

⁸ EUROPOL, *2004 European Union Organised Crime Report*, Luxembourg, EUROPOL, December 2004, at 12.

⁹ Supra note 5, at 22.

Once children are trafficked, the other main forms of exploitation they may be subjected to are: exploitative child labour, debt bondage, domestic work, begging, involvement in illicit activities - such as drug trafficking - or in armed conflicts, illegal adoptions, marriage and trafficking in organs¹⁰. As emphasised by M. Dottridge, the forms of exploitation to which trafficked children are subjected mostly depends on their age and gender¹¹.

In many countries of the world children may be abducted by traffickers, or sold by their parents, who are not able to feed them, or who consent to the child going away with a relative or a known person promising to find her/him a good job. Thus, the adoption of anti-poverty actions and education programmes - for boys but particularly for girls - and the introduction of women and girls into the labour market must surely be the first steps in the fight against trafficking in persons.

However, there are also cases in which young adolescents may be deceived by the trafficker(s) and decide themselves to follow him/her or them abroad. When children are very young, their documents are falsified and they are presented at the border as the trafficker's children. In the case of adolescents, falsified documents needed to pass through an international border may conceal age and nationality. Sometimes these documents are obtained by paying bribes to police or diplomatic officials¹².

The consequences of human trafficking on victims can be devastating. They may include damage to physical or mental health, exposure to sexually transmitted diseases (STDs), including HIV/AIDS, pregnancy and reproductive illnesses and even death¹³. Doubtless the trafficking experience has a significantly greater impact on a child than on an adult victim. Thus, apart from prevention measures, protection and recovery of trafficking victims should be a state priority. Moreover, special attention should be paid to children's recovery from the situation of exploitation, violence and abuse they have suffered during the trafficking process.

¹⁰ As regards organ trafficking there are rumours that an illegal trade in child organs exists; on this issue the *Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography* stated in her 1999 Report (E/CN.4/1999/71) that she "[H]as received allegations that street children in Argentina, Brazil, Colombia, Honduras, Mexico and the Russian Federation are being killed so that their organs can be used in transplant operations. Such allegations have recurred repeatedly for over 20 years, but to the best of the Special Rapporteur's knowledge, nobody has been convicted of being connected with such an offence".

¹¹ Dottridge M., *Kids as Commodities? Child Trafficking and What to do about it*, Lausanne, International Federation *Terre des Hommes*, May 2004, at 23.

¹² For an in depth study on the relationship between trafficking and corruption in south-eastern Europe see: Council of Europe – Programme against Corruption and Organised Crime in south-eastern Europe (PACO), *Trafficking in Human Beings and Corruption*, Report on the Regional Seminar, Portoroz – Slovenia, 19-22 June 2002, available at http://www.coe.int/T/E/Legal_affairs/Legal_cooperation/Combating_economic_crime/Programme_OCTOPUS/2003/Paco_netw_trafficking.pdf.

¹³ International Labour Organization, *Child Trafficking and Action to Eliminate it*, Geneva, ILO Publications, 2002, at XII. For a more comprehensive study on the health implications of trafficking see: London School of Hygiene & Tropical Medicine, *The Health Risks and Consequences of Trafficking in Women and Adolescents – Findings from a European Study*, London, 2003, available at: <http://www.lshtm.ac.uk/hpu/docs/traffickingfinal.pdf>.

Regional trends in child trafficking

An analysis of child trafficking routes may help to better understand how widespread the phenomenon is in every region of the world and how harmful it can be to the health and well-being of children. The United Nations Secretary General, Kofi Annan, recognised that

[n]o region is immune to this evil trade. From Asia to Eastern Europe, from Latin America to Africa, traffickers recruit victims, who, like commodities are smuggled across borders, sold and then exploited under the threat of violence¹⁴.

It is not very easy to provide clear data on child trafficking due to the fact that research has been mostly focused on trafficking in women for sexual exploitation¹⁵. Therefore, much of the information on human trafficking is on this specific form of exploitation. However, in many cases states do not collect separate data on women and children trafficked for sexual slavery. Even if there is no precise data on child trafficking, estimates are available, as well as information on child trafficking routes and on the most common forms of exploitation. Below is a brief summary of child trafficking in Europe, Asia, Oceania, the Middle East, America and Africa.

Europe

Trafficking in persons within Europe principally revolves around the provision of commercial sexual services and has undergone considerable expansion in recent years¹⁶. Figures provided by the European Commission in 2001 suggest that 120,000 women and girls may be trafficked within and into Europe each year¹⁷. While girls are primarily trafficked to be exploited in the sex trade sector, young boys are mainly trafficked to Europe from the Balkan States¹⁸ – and, in particular, from Albania – to beg in the streets, or to work in sweatshops or restaurants.

¹⁴ United Nations, Press Release: *Secretary-General calls human trafficking 'one of the greatest human rights violations' of today*, message to the International Summit on Human Trafficking, Child Abuse, Labour and Slavery held at Abuja, Nigeria, 2-4 August 2002, available at: <http://www.unhchr.ch>.

¹⁵ Supra note 2, at 181.

¹⁶ EUROPOL, *Crime Assessment – Trafficking of Human Beings into the European Union*, Luxembourg, EUROPOL, 2002, available at: http://www.europol.eu.int/index.asp?page=publ_crimeassessmentTHB.

¹⁷ European Commission, *8th March, 2001, International Women's Day - Combating the inhuman trade*, available at http://europa.eu.int/comm/justice_home/news/womanday_en.htm.

¹⁸ The Balkan States are: Croatia, Serbia and Montenegro, Bosnia and Herzegovina, Albania, Macedonia, Bulgaria, European Turkey and Romania. Slovenia and Greece are Balkan countries as well but considering their membership to the European Union they will not be included when speaking of the “Balkans” or the “Balkan States”.

Trafficking victims are smuggled to Europe not only from Eastern European and Commonwealth of Independent States (CIS)¹⁹ countries but also from some African countries, namely Ghana, Nigeria and Morocco; Latin American countries, such as Brazil, Colombia, and the Dominican Republic; and South East Asian countries, including the Philippines and Thailand²⁰.

Moreover, on 1 May 2004 the European Union (EU) enlarged its membership to include Hungary, Slovenia, Latvia, Lithuania, Poland, Estonia, Slovakia and Czech Republic, Malta and Cyprus. Apart from the two islands, the other eight states are central and eastern European countries that are, in most cases, countries of origin of victims trafficked to Western Europe. Joining the EU will surely affect their economic situation, their unemployment rates, the inclusion of women in the labour market and, consequently, trafficking in human beings.

Thus, it is very likely that trafficking routes over the next decades will move eastwards, towards the countries of the Balkans and the Commonwealth of Independent States (CIS). Consequently, the new EU Member States may stop being countries of origin, while remaining transit and sometimes, even destination of trafficking in human beings.

Asia

According to estimates, the majority of trafficking victims are smuggled within and into Asia and the Pacific.

IOM estimates that 225,000 women and children are trafficked annually from South-East Asia²¹. On the other hand, ILO estimates that, in Thailand alone, 200,000 – 300,000 women are trafficked annually to work in the sex sector²². Even if there are conflicting estimates, it is clear that sex tourism, which is widespread in Thailand, Cambodia, and the Philippines, creates a huge demand for women and child prostitutes in the region²³. Furthermore, the belief that having sex with a virgin may protect from infectious diseases has had the effect of shifting the demand to very young girls. In some cases in India, girls as young as 8 years old are sexually exploited²⁴.

¹⁹ The Commonwealth of Independent States comprehends: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

²⁰ Miko F. T., *Trafficking in Women and Children: The U.S. and International Response*, Washington, Congressional Research Service Report, 2003, at 6 - 7, available at <http://www.usembassy.it/pdf/other/RL30545.pdf>.

²¹ Derks A., *Combating Trafficking in South-East Asia*, IOM Migration Research Series No. 2, Geneva, IOM, 2000, at 16, available at http://www.iom.int/documents/publication/en/mrs_2_2000.pdf. For the purpose of this study the South East Asian countries are: Brunei Darussalam, Cambodia, East Timor, Indonesia, Laos, Malaysia, Myanmar (Burma), the Philippines, Singapore, Thailand and Vietnam.

²² Lim L. L., *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*, Geneva: ILO, 1998, 130.

²³ Supra note 19, at 4.

²⁴ Terre des Hommes, *India: between religious prostitution and Slavery*, Stop Child Trafficking Campaign, available at: http://www.stopchildtrafficking.org/site/uploads/media/english/InBrief_India.pdf.

Human trafficking in South East Asia is not only connected with the demand of the sex industry; women and children are also trafficked for sweatshop labour, marriages and street begging. Throughout the Mekong region, including Cambodia, Laos, Myanmar, Thailand and Vietnam, child begging has recently increased. The number of children - mostly from Cambodia - trafficked to Thailand to be exploited for street begging has more than doubled since 1997²⁵. In her 1999 Report, the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography acknowledged the problem and expressed the fear that some of them have been mutilated in order to bring more money to their traffickers²⁶.

After the Tsunami disaster at the end of 2004 there has been growing alarm about child trafficking in that area; many newspapers highlighted the disappearance of children and raised the issue of child trafficking. However, the latter was widespread before the Tsunami disaster in that area and traffickers have almost certainly tried to take advantage of a situation that has increased children's vulnerability²⁷.

South Asian countries experience internal trafficking and widespread trafficking across borders too²⁸. India, which is the major destination country, receives around 5,000 to 7,000 women annually from Nepal and an estimated 300,000 Bangladeshi children work in Indian brothels²⁹. Furthermore, Indian children are trafficked both internally and across international borders to be sold on the illegal adoption market³⁰.

East Asian countries are also affected by human trafficking³¹. In the People's Republic of China, trafficking in women and children is both a domestic and transnational problem: on the one hand, China is actually a source, transit and destination country for people trafficked for sexual or labour exploitation while on the other, Chinese women and children are trafficked domestically for marriage and forced labour³². Japan is a destination country for Asian, Latin American and Eastern European women and children, who are mainly trafficked for forced labour and sexual exploitation³³.

²⁵ ILO, *A new kind of trafficking: Child beggars in Asia*, World of Work, No. 26, September/October 1998, available at: <http://www.ilo.org/public/english/bureau/inf/magazine/26/child.htm>.

²⁶ E/CN.4/1999/71. The Special Rapporteur emphasises at paragraph 74 of her Report that: "Handicapped children, old women and mothers with babies from Cambodia are especially popular with traffickers as they are very effective beggars with tourists. The sadder or sicker they look, the more money they will bring in, so that there is fear that some of the children may have been mutilated on purpose. It is reported that they are usually brought to Thailand and that when they are caught and brought back to Cambodia, the traffickers are usually waiting for them at the border to bring them back the following day".

²⁷ For more information see: Taylor J., *Child trafficking concerns add to tsunami woes*, ABCNews Online, 4 January 2005, available at <http://www.abc.net.au/news/newsitems/200501/s1276276.htm>;

Aglionby J., *Criminals may be trafficking orphans – Police begins investigations*, The Guardian, 5 January 2005, available at <http://www.guardian.co.uk/tsunami/story/0,15671,1383489,00.html>.

²⁸ South Asian countries are: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

²⁹ Supra note 19, at 3.

³⁰ The Protection Project, *Human Rights Report on Trafficking in Persons, Especially Women and Children*, Washington, John Hopkins University, 2nd edn., 2002, at 248.

³¹ Eastern Asian countries are: the People's Republic of China, including Hong Kong and Macau, Japan, North Korea, South Korea, Mongolia and Taiwan.

³² Supra note 3, at 92.

³³ Supra note 3, at 96.

Oceania

Australia and New Zealand are destination countries for women and children trafficked from Asia to be exploited in the sex sector³⁴. Moreover, in the latter, the internal trafficking of children for sexual exploitation is also a major problem³⁵.

The Middle East

The Middle East is a region of destination for trafficking in children. According to IOM, South Asian women and girls are trafficked to the Middle East and Gulf States as domestic maids, while children, especially from Bangladesh, India and Pakistan, are trafficked to the United Arab Emirates to act as camel jockeys for camel races³⁶. These races may be very dangerous and children can be injured or even die in accidents during the race³⁷. The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography intervened on this issue expressing concerns in her 1999 Report that

[I]n the Gulf States, mainly in the United Arab Emirates, the lives of young boys are being put at risk for the entertainment of spectators at camel races. For many years the boys, sometimes as young as four years of age, have been trafficked from countries in South Asia to supply the demand for camel jockeys. The children are attached to the camels' backs with cords, and the camels are made to run down a track. Children who fall risk being trampled to death by the other camels on the track, and if they refuse to ride the camels, they are beaten and forced to ride anyway³⁸.

Americas

On the American continent there are countries of origin, transit and destination of child trafficking.

A study of the International Human Rights Law Institute (IHRLI) of Central America shows that trafficking in women and children for their commercial sexual exploitation is widespread in the region and it occurs both internally, from poorer to richer areas, and across international borders. Internal trafficking is common in Guatemala, Honduras and the Dominican Republic, with women and children trafficked from rural villages to the tourist destinations along the coast. At the same time, an

³⁴ Supra note 30, at 24 and 392.

³⁵ Supra note 3, at 103.

³⁶ Supra note 1, at 2-3.

³⁷ For a more comprehensive study on child camel jockeys from Pakistan see: Anwar M., *Child Trafficking for Camel Races: A Perspective from Pakistan*, Centre for Research and Social Development (CRSD), 2004, available at <http://www.enut.ee/>.

³⁸ Supra note 26, at paragraph 79.

international route flourishes northward, due to the Free Transit Agreement concluded by Nicaragua, Honduras, El Salvador and Guatemala³⁹.

Women and girls from Latin America and the Caribbean are primarily trafficked to the United States and Western Europe. In addition, restrictions on sex tourism put in place by some Asian countries have increased in recent years the number of sex tourists travelling to Latin America⁴⁰.

With regard to North America, while the United States is primarily a country of destination for human trafficking victims, Canada is a country of both transit and of destination⁴¹. Between 18,000 and 20,000 people are trafficked annually to the United States from South East Asia and the former Soviet Union and end up in prostitution, sweatshop or domestic labour; children are also kidnapped and sold on the adoption market⁴².

Africa

IOM statistics highlight the growth of human trafficking in Africa⁴³. On this continent, poverty and the marginalisation of women, as well as war and civil strife, make women and children easy prey for human traffickers.

According to a UNICEF Innocenti Research Centre's Report, trafficking is a serious problem in more than 70% of West and Central African countries, and 33% of countries in East and Southern Africa; and it is a 'worrying phenomenon' in Western Africa, whilst in Northern Africa information is scarce and there is a low level of awareness⁴⁴.

According to the same report, child trafficking in West and Central Africa is widespread⁴⁵; 200,000 West and Central African minors are trafficked annually both internally and across international borders⁴⁶. Boys follow a well-known trafficking route from Benin to Gabon to work on agricultural plantations, while girls are exploited as domestic servants. Children are also trafficked from Togo to other West African countries or to Europe, where they may be economically or sexually exploited⁴⁷.

³⁹ International Human Rights Law Institute – De Paul University College of Law, *In Modern Bondage: Sex Trafficking in the Americas – Central America and the Caribbean*, Chicago, IHRLI, 2002, available at <http://www.law.depaul.edu/ihrli>.

⁴⁰ Supra note 19, at 6-7.

⁴¹ Supra note 30, at 580 and at 107.

⁴² Supra note 19, at 7.

⁴³ Supra note 1, at 2.

⁴⁴ UNICEF, *Trafficking in Human Beings, Especially Women and Children, in Africa*, Florence, UNICEF Innocenti Research Centre, 2002, at 18 – 19, available at <http://www.unicef-icdc.org/publications/pdf/insight9e.pdf>.

⁴⁵ West and Central African countries are: Angola, Benin, Burkina Faso, Cameroon, Cap Verde, Central African Republic, Chad, Côte d'Ivoire, Congo, Democratic Republic of the Congo, Gabon, Gambia, Ghana, Guinea, Equatorial Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Saint Helena, Sao Tome and Principe, Senegal, Sierra Leone, and Togo.

⁴⁶ UNICEF, *Update on Child Trafficking*, available at <http://www.unicef.org/newsline/01nn01.htm>.

⁴⁷ For a more comprehensive study on child trafficking in West Africa see: UNICEF, *Child Trafficking in West Africa – Policy Responses*, Florence, UNICEF Innocenti Research Centre, 2002, available at:

Another significant trafficking route is the one from Mali to Côte d'Ivoire, where children are obliged to work on the cocoa fields⁴⁸. An estimated 15,000 Malian children between the age of 6 and 16 are reported to have been trafficked to work on the cocoa plantations in Côte d'Ivoire⁴⁹. Moreover, the figure may be even higher; a documentary shown on television in Great Britain in 2000 alleged that 90% of all the 700,00 farmers in Côte d'Ivoire use forced labourers on their plantations⁵⁰.

In Southern Africa⁵¹, research conducted by IOM emphasises that children are trafficked to South Africa from border countries such as Lesotho, Mozambique and Malawi⁵². Moreover, police estimates reported by Terre des Hommes state that 28,000 children of both sexes work as prostitutes and that in Cape Town alone about 25% of the prostitutes are minors⁵³.

The international response to child trafficking

Many international instruments deal, directly or indirectly, with trafficking in human beings. The analysis of their provisions and eventually, of their enforcement mechanisms is the starting point for understanding states' obligations under international treaty law as regards the prevention of trafficking in persons, victim protection and the fight against this phenomenon.

The most important treaty dealing with human trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which was adopted in Palermo in 2000. Other treaties, such as the Convention on the Rights of the Child and its Protocols on the Sale of Children, Child Prostitution and Child Pornography and on the Involvement of Children in Armed Conflicts or ILO Convention 182 on the Worst Forms of Child Labour, deal with trafficking in children as well. Finally, two other international instruments that can contribute to the fight against trafficking in children are ILO Convention 138 on the Minimum Age for Admission to Employment and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

<http://www.unicef-icdc.org/publications/pdf/insight7.pdf>; information on child trafficking in Togo may be found in: Human Rights Watch, *Borderline Slavery - Child Trafficking in Togo*, April 2003, available at: <http://hrw.org/reports/2003/togo0403/togo0403.pdf>.

⁴⁸ Supra note 30, at 545.

⁴⁹ *Mali's children in Slavery*, BBC News, Friday 29 September 2000, available at <http://news.bbc.co.uk/1/hi/world/africa/948135.stm>.

⁵⁰ *Massive use of Slaves on Ivorian Cocoa Plantations Documented*, Afrol.com, 29 September 2000, available at http://www.afrol.com/News/civ002_slavery.htm.

⁵¹ Southern Africa includes the following countries: Botswana, Lesotho, Namibia, South Africa and Swaziland.

⁵² Martens J., Pieczkowski M. and van Vuuren-Smyth B., *Seduction, Sale & Slavery: Trafficking in Women & Children For Sexual Exploitation In Southern Africa*, Pretoria, International Organisation for Migration, 2003, available at: <http://www.iom.org.za/Reports/TraffickingReport3rdEd.pdf>.

⁵³ Terre des Hommes, *South Africa: the Trafficking of Children for Purposes of Sexual Exploitation*, Stop Child Trafficking Campaign, available at http://www.stopchildtrafficking.org/site/uploads/media/english/InBrief_SouthernAfrica.pdf.

General human rights instruments attribute rights to every human being and may also be of help in clarifying the human rights of trafficked children. These are the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

Finally, a brief summary of the mandate and functions of the recently elected Special Rapporteur on Trafficking in Persons, especially Women and Children will emphasise the potential of this new special mechanism created by the Commission on Human Rights to enhance the human rights protection of trafficked victims⁵⁴.

The UN Trafficking Protocol

While the definition of slavery has been clearly provided by the 1926 Slavery Convention⁵⁵ as “[T]he status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”⁵⁶, the concept of trafficking in human beings has only recently been defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (‘the UN Trafficking Protocol’)⁵⁷. The previous international agreement dealing with human trafficking, namely the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (‘the 1949 Convention’), did not define the phenomenon⁵⁸.

⁵⁴ For more information on the new Special Rapporteur on Trafficking in Persons, especially Women and Children see: <http://www.ohchr.org/english/issues/trafficking/index.htm>.

⁵⁵ 60 LNTS 253. As regards the definition of the slave trade, it is contained in Article 7.(c) of the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery* as being: “[A]ll acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance”.

⁵⁶ Article 1.1 of the *Slavery Convention*. As regards the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery*, it gave the definition of children involved in an institution or practice similar to slavery as being: “Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”. Even if the purpose of exploitation is clear in this definition as in the one contained in the Palermo Protocol, some differences may be underlined between the two: the former presupposes the consent of the parents or of the guardian and thus, it makes reference to specific institutions or practices (such as, for example, the exploitation of young girls as domestic maids in some African countries or of young boys for debt bondage in some Asian ones).

⁵⁷ A/RES/55/25 of 15 November 2000. For an analysis of the previous working definitions of trafficking in human beings, as well as an analysis of universal and regional instruments to fight against trafficking in persons, see: Scarpa S., *Universalism and Regionalism: the Synergy to Fight against Trafficking in Human Beings*, Human Rights Law Review, No. 4, Special Issue 2004, Proceedings of Trafficking in Persons Conference of June 2003, 4 – 19, at 6. This article gives also an overview of international and regional instruments to fight against trafficking in persons and of a “third path”, namely agreements and periodical meetings among States, International Organisations (IOs), Inter-Governmental Organisations (IGOs) and Non-Governmental Organisations (NGOs).

⁵⁸ 96 UNTS 271. For a detailed study on the 1949 Convention see: Marcovich M., *Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of*

The UN Trafficking Protocol was adopted in Palermo in 2000 and together with the Protocol against the Smuggling of Migrants by Land, Sea and Air, it supplements the United Nations Convention against Transnational Organized Crime⁵⁹.

The adoption of the UN Trafficking Protocol in December 2000 introduced an internationally recognised definition, which should be the basis for every other international instrument dealing with trafficking in human beings. Article 3(a) of the UN Trafficking Protocol defines human trafficking as

[T]he 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.

The UN Trafficking Protocol outlines that if one of the means set forth in Article 3(a) is used, it is irrelevant whether the person expressed her/his consent or not⁶⁰. With regard to children, it poses an even stricter rule: child trafficking is the recruitment, transportation, transfer and harbouring of a minor for the purpose of exploitation, even if none of the means set forth in Article 3(a) are used⁶¹. According to this definition, any child who has been taken away from her/his house and family and transported somewhere else across an international border by an organised criminal group to be exploited is a victim of trafficking.

The Palermo Trafficking Protocol has been criticised for narrowing human trafficking to situations where two elements are present: the activity must be carried out by organised criminal groups and it should be transnational⁶². Therefore, internal trafficking without any transnational element, which is quite widespread in some countries of the world, such as India, Cambodia, Sri Lanka and Thailand, risks being excluded from the UN Trafficking Protocol. This is due to the fact that the United Nations Convention against Transnational Organized Crime and the two Additional

the Prostitution of Others, 2002, available at http://action.web.ca/home/catw/attach/Guide%20to%20UN%20C_vention-singl.pdf.

⁵⁹ A third Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime was adopted on 31 May 2001 by the General Assembly of the United Nations. Having reached 40 ratifications it will soon come into force.

⁶⁰ Article 3.(b) of the *UN Trafficking Protocol*.

⁶¹ Article 3.(c) of the *UN Trafficking Protocol*.

⁶² Article 4 of the *UN Trafficking Protocol* makes reference to offences that are “transnational in nature”. Article 3.2 of the *Convention against Transnational Organized Crime* further explains that an offence is transnational in nature when; “(a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State”.

Protocols are aimed at creating basic and universal framework agreements to fight against transnational crime.

However, according to some international experts⁶³, even if the UN Trafficking Protocol restricts trafficking in persons, criminalizing only the transnational crime committed by an organised criminal group, states should adopt national legislation to combat both internal and international trafficking in persons, whether it is committed by individuals or by groups. Recently, the United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children stated that she will take action not only in cases of transnational trafficking but also on internal trafficking, implicitly broadening the definition of trafficking in persons given by the UN Trafficking Protocol⁶⁴.

On the other hand, the definition of an “organised criminal group” is contained in article 2(a) of the Convention against Transnational Organised Crime as being

[A] structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences [...] in order to obtain, directly or indirectly, a financial or other material benefit.

The Ad Hoc Committee that elaborated the Convention against Transnational Organised Crime and the Protocols underlined in the Travaux Préparatoires that the financial or material benefit that the traffickers wish to obtain should be interpreted broadly. Two examples clarify this idea and both of them are related to child trafficking. According to the Ad Hoc Committee, in fact, “sexual gratification” of pornographers and paedophiles shall be considered as included in the “benefits” mentioned in the trafficking definition⁶⁵, the removal of organs from a child with the consent of a parent or of a guardian done for legitimate medical or therapeutic reasons is out of the scope of the UN Trafficking Protocol, while illegal adoption is defined by article 1.(d) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery⁶⁶.

⁶³ For example M. Dottridge (*Kids as Commodities? Child Trafficking and what to do about it*, International Federation Terre des Hommes, Lausanne, May 2004, at 41 – 42), says that: “As many children are trafficked by just one or two people, this could be interpreted to imply that such children are not victims of trafficking. This would be a nonsense. The definition represents a recent international consensus on what human trafficking involves”. A. Jordan (*The Annotated Guide to the Complete Trafficking Protocol*, International Human Rights Law Group, August 2002, at 14), emphasises on this issue that: “Domestic legislation should go further than the Trafficking Protocol and include all domestic and cross-border trafficking and should punish individual traffickers as well as organized criminal groups. Trafficking within some countries is as serious as, or more serious than, cross-border trafficking”.

⁶⁴ Special Rapporteur on Trafficking in Persons, especially Women and Children, *Report of the Special Rapporteur on Trafficking in Persons, especially Women and Children*, E/CN.4/2005/71, 22 December 2004, paragraph 26.

⁶⁵ A/55/383/Add.1, par. 3.

⁶⁶ Article 1.(d) includes in the practices similar to slavery that States shall try to abolish as soon as possible: “Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.

The UN Trafficking Protocol contains measures designed to prevent human trafficking, to protect the victim and to prosecute traffickers. It provides for States Parties to criminalize trafficking in human beings and to punish the attempt to commit, take part in, or organise offences related to trafficking⁶⁷. Considering that the Protocol is an instrument of criminal law primarily designed to punish human traffickers, the provisions dedicated to the protection of victims are vague and do not create clear and binding obligations on States Parties. The Special Rapporteur on Violence against Women, its Causes and Consequences expressed her concerns in her 2000 Report dealing specifically with the issue of trafficking in women, women's migration and violence against women, stating that

[T]he first modern international instrument on trafficking is being elaborated in the context of crime control, rather than with a focus on human rights. [This is] a failure of the international human rights community to fulfil its commitment to protect the human rights of women⁶⁸.

According to article 6, States Parties undertake to protect the identity and privacy of trafficking victims, and to guarantee them physical, psychological and social assistance as well as the opportunity to find a job and to attend professional courses. The following two provisions suggest that States Parties shall adopt measures to guarantee trafficking victims the right to remain within their territory temporarily or permanently or to return to the state of nationality or permanent residence. Finally, articles 9 to 13 of the Protocol stress that States Parties should consider adopting prevention policies, co-operating through the exchange of information, providing training for their officials, strengthening border controls, issuing travel or identity documents that cannot be easily falsified and verifying upon request by another State Party the validity of travel or identity documents suspected of being used in the trafficking of persons.

The only specific reference to children's rights is contained in article 6.4 of the Protocol, which emphasises that, in granting assistance to and protection of trafficking victims, special attention should be paid to children, in particular insofar as this concerns housing, education and care.

Article 17.1 of the UN Trafficking Protocol states that the Protocol comes into force on the ninetieth day after the date of deposit of the 40th instrument of ratification, but not before the coming into force of the Convention against Transnational Organized Crime. The latter finally entered into force on 29 September 2003. There are currently 147 states signatory, and 105 States Parties. Having obtained 40 ratifications on 23 September 2003, the UN Trafficking Protocol entered into force on 25 December 2003 and the UN Smuggling Protocol followed on 28 January 2004. The former has been signed by 117 and ratified by 84 States, while the latter has been signed by 112 and ratified by 74 States⁶⁹.

⁶⁷ Article 5 of the *UN Trafficking Protocol*.

⁶⁸ E/CN.4/2000/68.

⁶⁹ For more information see the homepage of the United Nations Office on Drugs and Crime (UNODC) available at http://www.unodc.org/unodc/en/crime_cicp_signatures.html.

The Convention on the Rights of the Child and its Protocols

The Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly in 1990, contains various measures against the illicit transfer of children abroad, their exploitation and trafficking⁷⁰. The Special Rapporteur on Trafficking in Persons, especially Women and Children, has emphasised in her 2004 Report that the CRC is the main reference as regards the situation of trafficked children⁷¹.

Article 11 of the CRC promotes bilateral and multilateral agreements to fight against the illicit transfer and non-return of children. Moreover, articles 32, 34 and 36 emphasise that children must be protected from every form of economic, sexual or any other kind of exploitation. Article 35 of the CRC also obliges State Parties to

[T]ake all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Finally, article 39 recognises the right of children to physical and psychological recovery and social reintegration in case they have been subjected to, among others, any forms of exploitation or abuse. Thus, according to the CRC, States Parties have the duty to prevent child exploitation and to protect and help them recover in case they are being, or have been, exploited.

A treaty monitoring body, namely the Committee on the Rights of the Child, monitors the implementation of the CRC and of its two Protocols⁷². Thus, States Parties have to submit to the Committee their first report on the progress made in the recognition of the rights granted by the Convention and the Protocols two years after their accession to the Convention or the Protocols and, subsequently, their reports are due every five years. Unfortunately, neither the CRC nor the two Protocols allows for the Committee to receive individual complaints from individuals - in this case, children - who consider that a State Party may have committed a violation of their rights as listed in the Convention or in the Protocols.

In light of articles 32-36 of the CRC, the Committee made reference to child trafficking in the recommendations and observations made to States Parties' reports many times; among the suggestions are the following:

- to ratify and implement some international conventions, such as the ILO Convention 138 on Minimum Age for Admission to Employment and ILO Convention 182 on the Worst Forms of Child Labour⁷³, the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the Palermo Trafficking Protocol⁷⁴, and the 1993 Hague Convention on

⁷⁰ A/RES/44/25 of 20 November 1989. For the purpose of the CRC a child is: "[E]very human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

⁷¹ E/CN.4/2005/71, paragraph 20.

⁷² For more information on the *Committee on the Rights of the Child* see: <http://www.ohchr.org/english/bodies/crc/index.htm>.

⁷³ CRC, Concluding observations to Mauritania, CRC/C/111 (2001) 8 at paragraph 77.

⁷⁴ CRC, Concluding observations to Gabon CRC/C/114 (2002) 47 at paragraph 237.

Protection of Children and Cooperation in Respect of Intercountry Adoption⁷⁵;

- to develop a national plan of action on the sexual exploitation of children in line with the Declaration and Agenda for Action and the Global Commitment adopted by the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children⁷⁶;
- to take legislative and other measures to fight against the phenomenon⁷⁷;
- to take measures aimed at preventing trafficking in children⁷⁸;
- to investigate, prosecute and sentence traffickers, including through international co-operation⁷⁹;
- to implement policies and programmes aimed at the recovery and rehabilitation of children and to grant basic services to children awaiting repatriation⁸⁰;
- to facilitate the reunification of child victims of trafficking with their families⁸¹;
- to avoid the prosecution of children victims of prostitution and of other forms of sexual exploitation and to continue training initiatives for the police and social services⁸²;
- to conduct studies on the phenomenon to fill the gap due to the lack of information on it⁸³;
- to establish “a confidential, accessible and child-sensitive mechanism” in charge of receiving and addressing individual complaints from children⁸⁴;
- to continue the recruitment of female police officers to facilitate contacts with women and girls who are sexually exploited, to allocate adequate human and financial resources, to undertake awareness-raising campaigns in countries of origin of trafficked children, to co-operate with countries of origin and with the International Organization for Migration⁸⁵;

⁷⁵ CRC, Concluding observations to Saint Vincent and the Grenadines, CRC/C/118 (2002) 101 at paragraph 444.(c).

⁷⁶ CRC, Concluding observations to Mozambique, CRC/C/114 (2002) 65 at paragraph 316.(b). The *First World Congress against Commercial Sexual Exploitation of Children* was an event organised by ECPAT, UNICEF and the NGO Group for the Convention on the Rights of the Child. It was held in Stockholm in 1996 and more than 1,300 persons participated to it. There were also government officials representing 122 countries who adopted the *Stockholm Agenda for Action*, calling for action against the commercial sexual exploitation of children. To implement the Agenda in the five areas of coordination and cooperation, prevention, protection, recovery and reintegration and child participation, States may develop National Plans of Action. The commitment to the *Stockholm Agenda for Action* has been renewed during the *Second World Congress Against Commercial Sexual Exploitation of Children*, held in Yokohama (Japan) in 2001. The final outcome of this event was the *Yokohama Global Commitment*, re-stating the principles contained in the *Stockholm Agenda for Action*. Thus, considering that 35 new States participated to the Yokohama World Congress, 161 States have committed themselves to the *Stockholm Agenda for Action*. For more information on the two World Congresses Against Commercial Sexual Exploitation of Children see: http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/monitoring.asp.

⁷⁷ CRC, Concluding observations to the Libyan Arab Jamahiriya, CRC/C/132 (2003) 74 at paragraph 389.(b).

⁷⁸ CRC, Concluding observations to Cape Verde, CRC/C/111 (2001) 135 at paragraph 655.(c).

⁷⁹ CRC, Concluding observations to Pakistan, CRC/C/133 (2003) at paragraph 243.(c).

⁸⁰ Supra note 74, at paragraph 236.

⁸¹ CRC, Concluding observations to Cameroon, CRC/C/111 (2001) 71 at paragraph 386.(b).

⁸² Supra note 76, paragraph 316.(d) and (f).

⁸³ CRC, Concluding observations to the Republic of Moldova, CRC/C/121 (2002) 89 at paragraph 416.

⁸⁴ CRC, Concluding observations to Georgia, CRC/C/133 (2003) 111 at paragraph 577.(c).

⁸⁵ CRC, Concluding observations to Belgium, CRC/C/15/Add.178 (2002) at paragraph 30.

- to seek assistance from the ILO International Programme on the Elimination of Child Labour (IPEC),⁸⁶ and from UNICEF⁸⁷.

The CRC, with its 192 State Parties, is the international instrument with the highest number of ratifications; the United States of America and Somalia are the only two countries of the world that have signed but still not ratified this Convention.

The Protocol to the Convention on the Rights of the Child, dealing specifically with the involvement of children in armed conflicts, was opened for signature on 25 May 2000 and entered into force on 12 February 2002. It may also be of assistance in the fight against trafficking in minors as regards their recruitment and abduction for involvement in armed conflicts.

The Coalition to Stop the Use of Child Soldiers estimates that 300,000 children have been involved in armed conflicts and obliged to take part directly in the hostilities or to perform other activities in 36 conflicts around the world⁸⁸. Girls form around one third of the total estimate of children involved in armed conflicts and they are usually used as cooks and sexual slaves, even if they may also be involved in direct hostilities⁸⁹.

Trafficking in minors is not explicitly mentioned in the Protocol on the involvement of children in armed conflicts, but article 4 states that: “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years”. Thus, the recruitment of children for their involvement in armed conflicts may be a form of trafficking in minors according to the definition contained in the UN Trafficking Protocol.

Article 4.2 imposes on States Parties the responsibility to take “all feasible measures” to fight against this phenomenon, prohibiting and criminalizing it; article 6.3 provides for States Parties to assist children involved in armed conflicts in their physical and psychological recovery and social reintegration in society and, finally, article 7.1 obliges them to co-operate to recover and rehabilitate child victims.

The Protocol on the involvement of children in armed conflicts has been signed by 117 States and ratified by 96⁹⁰. However, States like Colombia, Russia, Nepal, India, Myanmar, Indonesia, Iran, Israel, Iraq, Sudan, Yemen, Guinea, Liberia, Côte d’Ivoire, Burundi, Republic of Congo, Central African Republic, Somalia, Angola and Sudan, where children are still involved in armed conflicts, have not yet ratified the Protocol.

The potential of the CRC in the fight against child trafficking has been also enhanced by the Optional Protocol on the Sale of Children, Child Prostitution and Child

⁸⁶ Supra note 73, paragraph 77.(c).

⁸⁷ CRC, Concluding observations to the United Arab Emirates, CRC/C/15/Add.183 (2002) at paragraph 41.(d) and CRC, Concluding observations to Cape Verde, CRC/C/111 (2001) 135 at paragraph 655.(e).

⁸⁸ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report*, London, May 2001, available at: <http://www.child-soldiers.org>.

⁸⁹ Coalition to Stop the Use of Child Soldiers, *Facts about Child Soldiers*, at <http://hrw.org/campaigns/crp/facts.htm>. Estimates on child girls are referred to the following countries: El Salvador, Ethiopia and Uganda.

⁹⁰ For the list of signatures and ratifications see: http://www.ohchr.org/english/countries/ratification/11_b.htm.

Pornography ('the Protocol on the Sale of Children') that came into force on 18 January 2002⁹¹. Article 2(a) of the Protocol gives the definition of the sale of children as being

[A]ny act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

Article 3.1 of the Protocol calls on State Parties to criminalize the domestic or transnational sale of minors committed by an individual or by an organised group for the purposes of sexual exploitation, removal of organs, forced labour or illegal adoption, while articles 8, 9 and 10 provide for victim assistance, prevention policies and international co-operation and co-ordination among States, International Organizations and NGOs.

Thus, as emphasised by Figure 1 (page 23), there is an overlap between the scope of application of the Optional Protocol on the Sale of Children and the UN Trafficking Protocol as regards children trafficked transnationally by an organised group for the purpose of sexual exploitation, removal of organs, forced labour or illegal adoption. The UN Trafficking Protocol thus provides for a broader interpretation of the means of exploitation, while the Optional Protocol on the Sale of Children criminalizes the offence committed either domestically or transnationally by a single person or by an organised group.

As of 27 April 2005, 95 instruments of ratification of this Protocol were delivered to the Secretariat of the United Nations⁹².

A special mechanism, namely the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, was also appointed by the Commission on Human Rights in 1990 to monitor the alarming phenomenon of commercial sexual exploitation of children. Every year the Special Rapporteur presents a report dealing specifically with a particular issue related to the sale of children, child prostitution and child pornography. In 1999 the Report was dedicated to sale and trafficking in children. The Special Rapporteur emphasised in this Report that: "[I]n most cases where there is sale there is also trafficking involved"⁹³. Mr. Juan Miguel Petit from Uruguay, appointed in July 2001, is currently the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography⁹⁴.

⁹¹ A/RES/54/263 of 25 May 2000.

⁹² For more information see: http://www.ohchr.org/english/countries/ratification/11_c.htm.

⁹³ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Ms. Ofelia Calcetas-Santos*, 29 January 1999, E/CN.4/1999/71, at 2.

⁹⁴ The mandate of Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography was previously held by Ms. Ofelia Calcetas-Santos (1994-2001) and Mr. Vítit Muntarhorn (1991-1994).

The ILO Conventions 138 on the Minimum Age for Admission to Employment and the 182 on the Worst Forms of Child Labour

According to the International Labour Organization, 250 million children between the age of 5 and 14 are engaged in some kind of labour⁹⁵. 120 million minors work on a full-time basis, while the others combine working with going to school or other non-economic activities. The majority of child workers live in developing countries; approximately 61% of them live in Asia, 32% in Africa and 7% in Latin America. Considering in relative terms the number of child workers as a percentage of the total population between 5 and 14 years old, Africa has pre-eminence with 41% of children performing some kind of economic activity.

Furthermore, ILO estimates that approximately 180 million children between 5 and 17 years old are engaged all over the world in the worst forms of labour, as described by the ILO Convention 182, and over 8 million of these minors are engaged in the so-called unconditional worst forms of child labour, including: “Slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment for use in armed conflicts, prostitution and pornography, and illicit activities”. This figure has, however, to be treated with caution given the hidden and illegal nature of such activities⁹⁶.

The most relevant conventions adopted by the International Labour Organisation in the field of child labour are Number 138 concerning the Minimum Age for Admission at Work (‘the ILO Convention 138’) and Number 182 concerning the Elimination of the Worst Forms of Child Labour (‘the ILO Convention 182’).

The ILO Convention 138 was adopted in June 1973 by the General Conference of the International Labour Organization; it entered into force on 19 June 1976 and it has been ratified by 136 countries⁹⁷. Its aim was to replace ten existing ILO Conventions, which had set up minimum ages for admission to employment in some economic sectors, introducing a generalised abolition of child labour. Thus, its aim is twofold; not only does it apply to exploitative child labour situations but also more broadly to every form of child labour⁹⁸.

According to article 2 of the Convention, upon ratification each State Party should have declared a minimum age for children to be admitted at work. The minimum age shall not be less than the age of completion of compulsory schooling and in any case no less than 15 years. A derogation is possible, according to article 2.4, for those States with insufficiently developed economic and educational facilities; for this reason, they can initially specify a minimum age of 14 years. The Convention establishes a minimum age of 18 - or, in some circumstances, 16 - for hazardous

⁹⁵ ILO, *Statistics on Working Children and Hazardous Child Labour in Brief*, Geneva, ILO, at 1, available at <http://www.ilo.org/public/english/standards/ipec/simpoc/stats/child/stats.htm>.

⁹⁶ International Labour Organization, *A Future without Child Labour*, International Labour Conference, 90th Session, Report I (B) 2002, Geneva, at X, http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=1566.

⁹⁷ For the complete list of ratifications see: <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C138>.

⁹⁸ Diller J. M. and Levy D. A., *Child Labour, Trade and Investment: Toward the Harmonization of International Law*, *The American Journal of International Law*, Vol. 91, No. 4, October 1997, 663-696, at 671.

work, namely work that “[B]y its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons”⁹⁹.

The ILO Convention 182 dealing specifically with the abolition of the worst forms of child labour was adopted in June 1999 by the General Conference of the International Labour Organization; it entered into force on 19 November 2000 and it has been ratified by 153 countries¹⁰⁰.

Article 3 of the ILO Convention 182 defines the worst forms of child labour¹⁰¹ as including:

- (a) [A]ll forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflicts;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The definition of “child labour” given by the ILO Convention 182 contains in itself both the “sale of children” as defined by the Optional Protocol on the Sale of Children and “trafficking in children” as defined by the UN Trafficking Protocol. Therefore, the ILO 182 Convention is the broadest international instrument dealing specifically with child labour exploitation, including - but not limited to - child trafficking and the sale of children for sexual or other forms of exploitation. This assumption is schematised by Figure 1 (page 23).

As regards the selection of the types of work that may harm the health, safety and morals of children, the ILO Convention 182 gives a lot of freedom to the States Parties which have to draw up a list in consultation with the organizations of employers and of workers concerned. However, to perform this duty they have to take into full consideration the Worst Form of Child Labour Recommendation adopted in June 1999, stating that the types of work that may harm the health, safety and morals of children shall include work that exposes children to physical,

⁹⁹ Article 3.1 of ILO Convention 138.

¹⁰⁰ For a complete list of the States that ratified ILO Convention 182 see: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C182>.

¹⁰¹ As also stated in the *Trafficking Protocol*, for the purpose of the *ILO 182 Convention* a child is a person under the age of eighteen.

psychological or sexual abuse, or one that is particularly dangerous¹⁰², or that exposes children to an unhealthy environment¹⁰³, or finally, to difficult conditions¹⁰⁴.

Articles 5, 6 and 7 of the ILO Convention 182 provide for States Parties to eliminate the worst forms of child labour, creating a mechanism to monitor the implementation of the relevant provisions that gives effect to the mentioned Convention, including the application of penal sanctions. Moreover, States Parties shall take measures designed to prevent child engagement in the worst forms of child labour, to provide assistance to stop child exploitation and to guarantee their rehabilitation and social integration that may include access to free education. Finally, States Parties shall take into special consideration the situation of children at risk, and of girls.

Article 8 provides for inter-state co-operation aimed at guaranteeing the respect of the provisions contained in the ILO Convention 182 that may include the adoption of programmes designed to enhance social and economic development, to eradicate poverty and to spread child education. As recognised in this provision and also in the Preamble of the ILO Convention 182, poverty is the biggest cause of child labour and the solution to the problem must surely take into consideration the imperative of economic growth of the poorest countries of the world.

The final text of article 8 is, however, a compromise that emerged during the Convention negotiations. The fear of many states with regard to the extent of States Parties' obligation to co-operate and assist one another led to the adoption of a text containing "no legal obligation concerning the nature or amount of any cooperation or assistance"¹⁰⁵.

According to article 22 of the ILO Constitution, ILO Member States are required to report to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the implementation of the Conventions that they decide to ratify¹⁰⁶. Article 10.2 of the ILO Convention 182 states that this international treaty would have entered into force one year after the receipt by the Director-General of two instruments of ratification; the following paragraph concludes saying that the Convention would thereafter come into force in a Member State one year after its ratification.

¹⁰² The *Recommendation* includes work performed "underground, under water, at dangerous heights or in confined spaces", or that requires the use of "dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads".

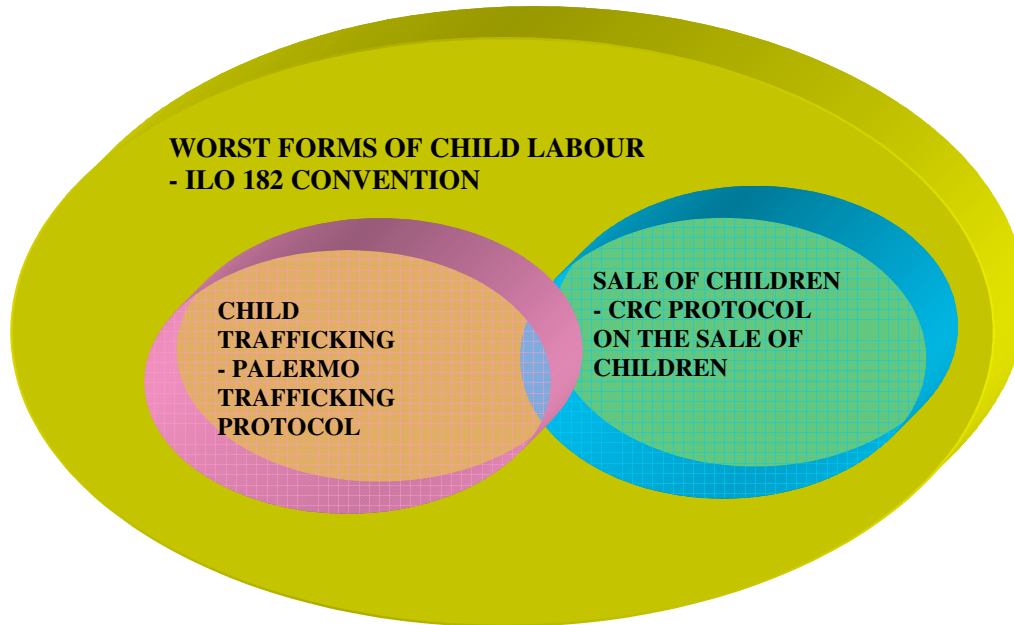
¹⁰³ In this case the *Recommendation* makes reference to the exposure of children to "hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health".

¹⁰⁴ This includes working for long hours or during the night or being confined to the premises of the employer.

¹⁰⁵ Dennis M., *The ILO Convention on the Worst Forms of Child Labour*, *The American Journal of International Law*, Vol. 93, No. 4, October 1999, 943-948, at 947.

¹⁰⁶ Article 22 of the ILO Constitution states that: "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request".

Figure 1: Links among the definitions contained in the *UN Trafficking Protocol*, the *CRC Protocol on the Sale of Children, Child Prostitution and Child Pornography* and the *ILO 182 Worst Forms of Child Labour Convention*.



In its 2004 Observations to twenty States Parties to the ILO Convention 182¹⁰⁷, the CEACR made comments specifically dealing with trafficking in children to sixteen of them¹⁰⁸. In most of these comments, the CEACR clearly emphasised the need to prohibit trafficking in children as a worst form of child labour, as stated in article 3(a) of the Convention, to create a mechanism to monitor the implementation of the Convention, to adopt programmes of action to eliminate child trafficking, to sanction those involved in it and to co-operate at the international level to fight against the phenomenon.

¹⁰⁷ Observations were made in 2004 to the reports delivered by the following States: Gabon, Mexico, Morocco, Niger, Oman, Philippines, Qatar, Sri Lanka, Turkey, Ukraine, United Arab Emirates, United States. These States are requested to hand over a new report with replies to the CEACR between 1 June and 1 September 2005. The following States received observations by the CEACR in 2004 but are requested to reply in subsequent years: Bangladesh, Brazil, Burkina Faso, Czech Republic, Dominican Republic, El Salvador, Guatemala and Indonesia.

¹⁰⁸ States which received specific comments on child trafficking as one of the worst forms of child labour are: Gabon, Mexico, Morocco, Niger, Qatar, Sri Lanka, Turkey, United Arab Emirates, United States. Brazil, Oman, the Philippines and Ukraine received comments on other worst forms of child labour, namely Brazil on child labour and on the use, procuring and offering a child for prostitution; Oman on camel jockeys; the Philippines on children in armed conflicts; and Ukraine on the involvement of children for prostitution and pornography.

The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption

According to the Travaux Préparatoires, the definition of child trafficking contained in article 3(c) of the UN Trafficking Protocol has to be interpreted as including the possibility of a child being smuggled for illegal adoption. Moreover, as recently recognised by S. Huda, nominated last year as Special Rapporteur on Trafficking in Persons, especially Women and Children, children are trafficked for international adoptions, or for sexual or labour exploitation¹⁰⁹. Thus, a short summary of the most important international treaty dealing with international adoptions follows.

The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption was adopted on 29 May 2003 during the Hague Conference on Private International Law¹¹⁰. Among the aims of the Convention there is the necessity to establish a system of co-operation among States Parties to “prevent the abduction, the sale of, or traffic in children”¹¹¹. For this purpose, the Convention sets out the rules and the modalities in which intercountry adoption may be conducted.

The Convention does not fight combat trafficking directly way indirectly, as G. Parra-Aranguren emphasises in his Explanatory Report on the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption¹¹². Moreover, as he also states in the Report, the Secretary-General of Interpol expressed his strong support for the draft convention on intercountry adoption, recognising that

[T]he establishment of strict international civil and administrative procedures would make it much more difficult for people to use intercountry adoption procedures as a means of trafficking in children, or as a cover for moving children from one country to another.

As of 25 February 2005 the Hague Convention has been only ratified by 64 States. According to article 40, States may pose no reservations to the text of the Convention.

Human rights instruments and the prohibition of slavery and trafficking

Reference to the abolition of slavery and trafficking in persons may also be found in some international instruments on the protection of human rights. Article 4 of the 1948 Universal Declaration of Human Rights¹¹³ outlines the abolition of slavery and the slave trade. Article 8 of the 1966 International Covenant on Civil and Political Rights (ICCPR) adds the prohibition of servitude and forced or compulsory labour to the abolition of slavery and the slave trade¹¹⁴. Moreover, according to Article 4.2 of

¹⁰⁹ E/CN.4/2005/71, paragraph 8.

¹¹⁰ The text of the Convention may be downloaded at: <http://www.hcch.net/e/conventions/text33e.html>.

¹¹¹ Article 1.(b) of the Hague Convention.

¹¹² The Report can be downloaded at: <http://hcch.e-vision.nl/upload/exp133e.pdf>.

¹¹³ A/RES/217 A (III) of 10 December 1948.

¹¹⁴ 999 UNTS 171. The International Covenant on Civil and Political Rights has been ratified by 154 States. The list of ratifications is available at: <http://www.ohchr.org/english/countries/ratification/4.htm>.

the ICCPR, even in a situation of public emergency that threatens their existence, States Parties cannot derogate from Article 8.

The implementation of the ICCPR is monitored by the Human Rights Committee which is a body of 18 independent experts. The ICCPR has the competence to examine State reports, and to consider inter-state complaints¹¹⁵ as well as individual complaints¹¹⁶. As regards the latter, however, no individual complaint on human trafficking as ever been submitted to the Human Rights Committee.

The Committee also publishes general comments on thematic issues or on its methods of work, containing its interpretation of the ICCPR provisions. In 2000, the Committee published General Comment 28, in which it stated that, on the basis of States Parties' obligations under article 8, ICCPR, they should include in their reports information on

[M]easures taken to eliminate trafficking in women and children, within the country or across borders, and forced prostitution. They must also provide information on measures taken to protect women and children, including foreign women and children, from slavery, disguised inter alia as domestic or other kinds of personal service. States [P]arties where women and children are recruited, and from which they are taken, and States [P]arties where they are received should provide information on measures, national or international, which have been taken in order to prevent the violation of women's and children's rights¹¹⁷.

In so doing, even if trafficking in women and children was not mentioned in article 8 ICCPR, the Human Rights Committee formally stated that States Parties should report on measures taken to eliminate both the domestic and transnational phenomenon, to protect women and children and to prevent the violation of their human rights. Considering the fact that trafficking also affects adult men, the Human Rights Committee should update this General Comment, asking States Parties to include in their reports information on trafficking in persons – and thus, on women, men and children.

The Human Rights Committee made observations to many States on the need to fight against trafficking in human beings as a violation of article 8 ICCPR. As specifically regards children, it made observations to Mali in 2003 to underline the need to eradicate trafficking of Malian children to other countries in the region for forced labour¹¹⁸. In the same year, observations on child trafficking in relation to article 8 were also made to Sri Lanka¹¹⁹.

Another important observation made by the Human Rights Committee was the establishment of a clear link between the situation of street children and their vulnerability to sexual violence and sexual trafficking. On this basis the treaty

¹¹⁵ Article 41 ICCPR.

¹¹⁶ On the basis of the Optional Protocol to the ICCPR.

¹¹⁷ ICCPR General Comment 28, A/55/40 Vol. I (2000) 133 at paragraph 12.

¹¹⁸ ICCPR, A/58/40 Vol. I (2003) 47 at para.81(17).

¹¹⁹ ICCPR, A/59/40 Vol. I (2003) 30 at para.66(14).

monitoring body made comments to three American countries, namely Mexico¹²⁰, Guatemala¹²¹ and Venezuela.¹²² The Human Rights Committee asked them to adopt effective measures to protect and rehabilitate street children. Finally, the Human Rights Committee expressed appreciation to those states such as Finland that adopted new measures to fight against trafficking in women and children¹²³, and Italy, whose judiciary assimilated trafficking for the purpose of prostitution to slavery¹²⁴.

The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) contains a number of provisions on fair and just conditions of work, which may well apply to trafficked persons¹²⁵. ICESCR application by State Parties is monitored by the Committee on Economic, Social and Cultural Rights. The latter may, however, only examine State reports delivered once every five years¹²⁶. Even if scepticism on the enforceability of economic, social and cultural rights and the lack of a complaining system are among the causes of the low profile of the Committee on Economic, Social and Cultural Rights, this monitoring body succeeded in creating a constructive dialogue with States Parties to the ICESCR¹²⁷.

Like the Human Rights Committee, the Committee on Economic, Social and Cultural Rights also made reference to trafficking in persons, especially women and children in its observations on States' reports. In 2002, it expressed concern about trafficking in women and the sexual exploitation of children in the Czech Republic¹²⁸, and in Slovakia¹²⁹, and on trafficking in children within Benin and between this country and others of the same region¹³⁰.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

With regard, specifically, to women and girl children, the 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) provides under Article 6 that

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women¹³¹.

This international instrument has been ratified by 180 States¹³².

¹²⁰ ICCPR, A/54/40 Vol. I (1999) 61 at paragraph 327.

¹²¹ ICCPR, A/56/40 Vol. I (2001) 93 at paragraph 85(26).

¹²² ICCPR, A/56/40 Vol. I (2001) 49 at paragraph 77(24).

¹²³ ICCPR, A/53/40 Vol. I (1998) at paragraph 257.

¹²⁴ ICCPR, A/53/40 Vol. I (1998) at paragraph 333.

¹²⁵ A/RES/2200 A (XXI) of 16 December 1966. The International Covenant on Economic, Social and Cultural Rights has been ratified by 151 countries. For the list of ratifications see: <http://www.ohchr.org/english/countries/ratification/3.htm>.

¹²⁶ ECOSOC, Resolution 1988/4, 24 May 1988.

¹²⁷ Craven M., *The UN Committee on Economic, Social and Cultural Rights*, in Eide A., Krause C. and Rosas A., *Economic, Social and Cultural Rights*, The Hague, Kluwer Law International, 2001, at 455.

¹²⁸ ICESCR, E/2003/22 (2002) 25 at paragraphs 85 and 104.

¹²⁹ ICESCR, E/2003/22 (2002) 50 at paragraphs 321 and 335.

¹³⁰ ICESCR, E/2003/22 (2002) 34 at paragraphs 172 and 191.

¹³¹ A/RES/34/180 of 18 December 1979.

The CEDAW established the Committee on the Elimination of Discrimination against Women; according to article 18, this body examines every four years, or upon its request, States Parties' reports on the legislative, administrative and judicial measures they have taken to comply with the commitments established under the CEDAW Convention. The Committee on the Elimination of Discrimination against Women may also make suggestions and recommendations to the States Parties, which may be included in its annual report to the UN General Assembly.

The Optional Protocol to the CEDAW, adopted by the UN General Assembly in 1999 and which entered into force one year later, recognises the competence of the Committee on the Elimination of Discrimination against Women to receive written and non anonymous communications submitted by or on behalf of individuals or groups of individuals, claiming the violation of one of the rights enlisted in the CEDAW. The Optional Protocol has been signed by 76 States and ratified by 71¹³³. Thus, more than 100 States have ratified the CEDAW but not the Optional Protocol that would allow individual complaints.

According to article 3, a Communication may be taken into consideration only if it concerns a violation committed by a state that is party both to the CEDAW and to the Protocol. Moreover, it cannot be taken into consideration if all available domestic remedies have not been exhausted. If the communication is not considered inadmissible according to article 4.2, the Committee on the Elimination of Discrimination against Women may ask for written explanation from the State Party concerned to be provided within six months. In the meantime, it can also ask the State Party to adopt interim measures to avoid further damages to the person concerned. However, the Committee on the Elimination of Discrimination against Women did not receive any individual communication claiming the violation of article 6 of the CEDAW in relation to trafficking in women.

Like other human rights treaty monitoring bodies, the Committee on the Elimination of Discrimination against Women expressed concern and made recommendations to States Parties on trafficking in women and young girls too. In 2002 it recommended that Estonia adopt and implement legislation on human trafficking, co-operate with other countries of origin, transit and destination of trafficking and create social support and reintegration programmes for victims¹³⁴. Similar concerns and recommendations have been expressed by the Committee to many other countries.

Finally, the Commission on Human Rights appointed in 1994 a Special Rapporteur on Violence against Women, its Causes and Consequences¹³⁵. The Special Rapporteur may receive individual complaints from individuals, undertake country visits and submit thematic annual reports to the Commission on Human Rights. Dr. Yakin Ertürk from Turkey was nominated Special Rapporteur on Violence against Women, its Causes and Consequences in August 2003. During the previous nine years the mandate was held by Ms. Radhika Coomaraswamy from Sri Lanka.

¹³² For a complete list of States Parties to the CEDAW see:

<http://www.un.org/womenwatch/daw/cedaw/states.htm>.

¹³³ For the status of ratifications see:

<http://www.un.org/womenwatch/daw/country/OptionalProtocoltbl.pdf>.

¹³⁴ CEDAW, A/57/38 part I (2002) 13 at paragraphs 101 and 102.

¹³⁵ Resolution 1994/45, adopted on 4 March 1994.

Ms. Radhika Coomaraswamy submitted in February 2000 a thematic report to the Commission on Human Rights that dealt specifically with trafficking in women, women's migration and violence against women¹³⁶. In it, the Special Rapporteur reviewed the international instruments to fight against trafficking in persons and considering the lack of a definition of the phenomenon in any international instrument dealing with it, she gave the first definition of the phenomenon before the adoption of the Palermo Trafficking Protocol in December 2000¹³⁷.

The Special Rapporteur recognised that trafficking in women is a component of the larger phenomenon of trafficking in human beings, also including men and children. However, she highlighted that many human rights violations committed by traffickers have a "woman-specific character". Therefore, she called on states to adopt policies based on gender-awareness to respond to such violations of human rights¹³⁸. As regards children, she acknowledged that

[T]he phenomenon of trafficking in children needs different, child-specific remedies that are likewise gender-specific¹³⁹.

In the same year, the Special Rapporteur conducted a country visit to Bangladesh, Nepal and India on the issue of trafficking in women and girls¹⁴⁰. Four years earlier, she had already conducted another country visit to Poland on the issue of trafficking in women and forced prostitution¹⁴¹.

The Rome Statute of the International Criminal Court

The 1998 Rome Statute of the International Criminal Court ('the Rome Statute'), which came into force on 1 July 2002, has jurisdiction on the crime of genocide, the crimes against humanity, war crimes and the crime of aggression¹⁴². The Rome Statute includes enslavement among the crimes against humanity and builds on the Slavery Convention definition to take specific account of trafficking in persons¹⁴³. For the purpose of the Rome Statute, enslavement means

[T]he exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children¹⁴⁴.

¹³⁶ E/CN.4/2000/68.

¹³⁷ *Ibid.*, at 4.

¹³⁸ *Ibid.*, paragraph 1.

¹³⁹ *Ibid.*, paragraph 2.

¹⁴⁰ E/CN.4/2001/73/Add.2.

¹⁴¹ E/CN.4/1997/47/Add.1

¹⁴² As regards the latter, according to article 5.2 of the Rome Statute, the Court will exercise jurisdiction over the crime of aggression once this crime will be defined and the conditions under which the Court may exercise its jurisdiction will be set out.

¹⁴³ Doc. A/CONF.183/9 of 17 July 1998.

¹⁴⁴ Article 7(c) of the Rome Statute.

Unlike the two ad hoc Tribunals for Yugoslavia and Rwanda, the ICC is a permanent institution having jurisdiction over any person who commits, orders, solicits, or induces the commission of a crime and facilitates or contributes to the commission or attempts to commit a crime¹⁴⁵. According to article 26, the Court does not have any jurisdiction over persons who were minors at the time of the alleged committing of the crime. France had proposed extending the jurisdiction of the ICC to organizations, but this proposal did not receive enough support and thus it was not included in the final text of the Rome Statute¹⁴⁶. The Court has jurisdiction with respect to crimes committed after the entry into force of the Rome Statute in the territory of a State Party or by a national of a State Party¹⁴⁷. As of 15 March 2005, 98 states had ratified the Rome Statute of the ICC¹⁴⁸.

The Special Rapporteur on Trafficking in Persons, especially Women and Children

At the 60th Session of the Commission on Human Rights, some states, including Australia, Costa Rica, Congo, Germany, Libyan Arab Jamahiriya, Philippines and Poland, sponsored a resolution to appoint a Special Rapporteur on Trafficking in Persons, especially Women and Children. Thus, on 1 November 2004, Mr. Mike Smith, Chairman of the Commission on Human Rights appointed Ms. Sigma Huda from Bangladesh as Special Rapporteur on Trafficking in Persons, especially Women and Children. The mandate of the new Special Rapporteur will expire in 2007.

On 22 December 2004, Ms. Huda presented her first Report on Trafficking in Persons, especially Women and Children to the Commission on Human Rights. The Special Rapporteur clearly emphasised that trafficking in persons is mainly perceived and treated by States as a “law and order” problem, with no focus on the protection of victims’ human rights¹⁴⁹. Ms. Huda stated that she will perform her mandate having in mind the following two basic principles:

- (a) that the human rights of trafficked persons shall be at the centre of all efforts to combat trafficking and to protect, assist and provide redress to those affected by trafficking; and (b) that anti-trafficking measures should not adversely affect the human rights and dignity of the persons concerned¹⁵⁰.

Moreover, she emphasised that special attention will be devoted to the situation of trafficked children and that she will deal with this issue separately in future reports, formulating separate recommendations for States on how to better protect the human rights of the most vulnerable victims of human trafficking¹⁵¹.

¹⁴⁵ Article 25 of the Rome Statute.

¹⁴⁶ For more information on the negotiation process that led to the adoption of the Rome Statute of the ICC see: M. H. Arsanjani, *The Rome Statute of the International Criminal Court*, The American Journal of International Law, Vol. 93, N. 1, January 1999, 22-43, at 36.

¹⁴⁷ Articles 11 and 12 of the Rome Statute.

¹⁴⁸ For the complete list of ratifications see: <http://www.icc-cpi.int/asp/statesparties.html>.

¹⁴⁹ E/CN.4/2005/71, paragraph 56.

¹⁵⁰ *Ibid.*, paragraph 11.

¹⁵¹ *Ibid.*, paragraph 58.

As regards the mandate of the Special Rapporteur, it consists of the following:

- she will undertake country visits in order to understand the phenomenon better and to gather information on existing programmes and policies, so as to be able to suggest lessons learned and good practices in victims' protection¹⁵² ;
- she will present annual reports to the Commission on Human Rights and specific reports on country visits and on communications sent to and received from States. Ms. Huda has already stated that she will consider devoting her future annual reports to thematic issues related to trafficking in persons¹⁵³;
- she will send urgent appeals to Governments whenever she receives information that the human rights of a trafficking victim may be imminently violated or are continuously violated¹⁵⁴;
- she will send communications to Governments to focus their attention on specific cases or on legislation, policies and practices that may have adverse effects on trafficking victims¹⁵⁵;
- in case she does not receive any reply from a Government on previous communications, she may send "follow-up" letters to urge a response or to add new information on a specific case¹⁵⁶.

To perform her mandate, the Special Rapporteur prepared a questionnaire that may be used to inform her on the situation of trafficking victims who suffered the violation of their human rights¹⁵⁷. The hope is that individuals – directly or with the help of NGOs – will complain about the violation of their human rights in relation to a trafficking situation.

Ms. Huda conducted her first country visit to Bosnia Herzegovina on February 2005 following an invitation by its Government. The Special Rapporteur has already presented a note with some preliminary observations on this visit at the beginning of March¹⁵⁸. She emphasised that the increasing efforts made by Bosnia and Herzegovina have significantly improved the situation in this country¹⁵⁹. With regard specifically to children, Ms. Huda underlined the need to set up separate facilities for child victims of trafficking, to better address their specific rights¹⁶⁰.

Finally, the human rights of children trafficked for sexual exploitation fall specifically under the mandate of both the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography and the Special Rapporteur on Trafficking in Persons, especially Women and Children. Thus, in welcoming the establishment of the new mandate of the Special Rapporteur on Trafficking in Persons, especially Women and Children, Mr. Petit declared his commitment to work collaboratively and emphasised the possibility of addressing joint communications to Governments, of

¹⁵² *Ibid.*, paragraph 37.

¹⁵³ *Ibid.*, paragraph 24.

¹⁵⁴ *Ibid.*, paragraph 27.

¹⁵⁵ *Ibid.*, paragraph 28 and 29.

¹⁵⁶ *Ibid.*, paragraph 30.

¹⁵⁷ The questionnaire can be downloaded at:

<http://www.ohchr.org/english/issues/trafficking/questionnaire.htm>.

¹⁵⁸ E/CN.4/2005/71/Add. 1.

¹⁵⁹ *Ibid.*, paragraph 6.

¹⁶⁰ *Ibid.*, paragraph 11.

co-ordinating country visits, of undertaking joint missions, of consulting on the issues addressed in their thematic reports and of producing joint statements¹⁶¹.

Soft law instruments dealing with child trafficking

Even if they are not binding on States, an analysis of some relevant soft law instruments, such as the United Nations High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking and the UNICEF Guidelines for Protection of the Rights of Children victims of Trafficking in Southeastern Europe can provide some hints on the minimum standards that States should adopt to protect the rights of adult and child victims of trafficking in human beings.

The UN High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking

The United Nations High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking ('the Recommended Principles and Guidelines') adopted in May 2002 are an effort to emphasise the need to protect and assist trafficking victims instead of merely trying to fight the traffickers¹⁶². Whilst primarily addressed to States, the seventeen principles and eleven guidelines seek to have national, regional and international actors adopt a human rights perspective for dealing with trafficking. Thus, they emphasise the primacy of trafficked persons' human rights, the need to adopt strategies to prevent trafficking and to protect and assist the victims and, finally, the necessity to criminalize trafficking, to punish traffickers and to guarantee appropriate legal remedies for victims.

Even if they are a soft law instrument, the Special Rapporteur on Trafficking in Persons clearly stated in her 2004 Report that: "The Guidelines and their implementation must be considered within the broader framework of the Protocol and other relevant conventions and treaties"¹⁶³. In so doing, she is paving the way for the creation of a new custom in international law that would be binding on all the States of the world.

Recommended Principle 10 and Guideline 8 deal specifically with children. The former states 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.

¹⁶¹ E/CN.4/2005/78, at paragraph 10.

¹⁶² E/2002/68/Add.1.

¹⁶³ Supra note 64, paragraph 15.

Guideline 8 further specifies the special protection that has to be granted to child victims of trafficking. Thus, States should rapidly try to identify child victims and, if they are unaccompanied, find members of their families, not subjecting them to criminal procedures or sanctions for offences they may have committed which were directly related to their condition of trafficking victims. In cases in which it may not be in the best interests of the child to be reunited with her/his family, other care arrangements should be identified. Moreover, a child victim of human trafficking should enjoy the right to express her/his views “freely in all matters affecting him or her”. Other specific rights of child victims are the protection of their rights in all stages of criminal proceedings, the right to privacy and identity, and the granting of appropriate physical, psychosocial, legal, educational, housing and health-care assistance.

Other hints on child trafficking may be found in Guideline 4, which stresses that in criminalizing trafficking in human beings, states should consider aggravating circumstances, such as the victim being a child, or the crime being committed with the help of a State official. As mentioned also in the UN Trafficking Protocol, Guideline 5 further acknowledges the need to train law enforcement personnel taking into account the specific needs of children. Finally, Guideline 7, which is dedicated to prevention policies, underlines that States may recognise the importance of improving child education, in particular of girls.

UNICEF’s Guidelines for Protection of the Rights of Children Victims of Trafficking in south-eastern Europe

In 2003 UNICEF developed a series of guidelines dealing specifically with child trafficking. While it applies specifically to the situation in south-eastern European countries, the Guidelines may, however, be broadly applied by States, international organizations and non-governmental organizations of any other region of the world. The Guidelines adopt a definition of “child trafficking” broader than that of the UN Trafficking Protocol, with no limitations as regards the person(s) committing the crime and with the lack of a transnational element. As under the UN Trafficking Protocol, consent is irrelevant; however, the list of means that may be used to obtain the consent of a non-child victim are different from those listed in the Palermo Protocol definition of trafficking in human beings. It would have avoided confusion to propose the Palermo internationally recognised list of means used to obtain the consent of a person.

The Guidelines make reference to the rights granted to children on the basis of the CRC and, in particular, to the principle of the best interests of the child, to her/his right not to be discriminated on the basis of her/his “[S]tatus, nationality, race, sex, language, religion, ethnic or social origin, birth or other status”, to express her/his views, which should be given due weight according to the age and maturity of the child, to obtain information in a language that the child may understand, to maintain the right to confidentiality and to be assisted and protected by States.

Following this list of rights, there are some guidelines specifically stating the correct actions in a case of child trafficking. The most interesting ones are that, following the rapid identification of the child victim of trafficking, a guardian has to be

appointed¹⁶⁴; that children are entitled to have access to health-care, psychological support, legal assistance, social services and education¹⁶⁵; that children should be placed in “safe and suitable accommodation”¹⁶⁶, and not in a law enforcement detention facility; and that they shall be granted a Temporary Humanitarian Visa¹⁶⁷.

As a general principle, children may go back to their country of origin but only if a member of their family or the government of that state takes responsibility for the child concerned¹⁶⁸. Otherwise, if it is not possible to safely return the child to her/his country of origin, the authorities of the state in which the child find her/himself should arrange long-term care for the child¹⁶⁹. In cases in which the child may not return to the country of origin and she/he may also not remain in the country of destination, resettlement in a third country should be arranged¹⁷⁰.

Another important principle is contained in Guideline 3.9.1 with regard to the possibility for children to testify in criminal proceedings against their traffickers. Children should be granted some time to make up their decision and their protection should not in any case be conditional on their willingness to testify. On the contrary, children who testify against their traffickers should be granted special protection to guarantee their security and that of their family, whether they are staying in the country of destination or not¹⁷¹.

Conclusion

The aim of this article was to analyse the various international treaties, special mechanisms and soft law instruments dealing with trafficking in persons and in particular with child victims of this serious human rights violation. Some of them are relatively new, such as, for example, the Special Rapporteur on Trafficking in Persons, especially Women and Children, so it is not easy to predict the effects of their work in the enhancement of human rights protection for child victims of human trafficking. However, it is clear that in recent years there has been an increased focus on this horrible practice and a great deal of pressure has been put on states to act.

Even if the Trafficking Protocol does not contain an obligation for States Parties to protect the human rights of trafficking victims, the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN High Commissioner for Human Rights filled this gap. Even if they are a soft law instrument, the Special Rapporteur on Trafficking in Persons clearly stated that she considers them within the broader framework of the UN Trafficking Protocol and of other relevant international instruments. If broadly applied by States, they could become in the future part of an international custom, binding on all the States of the world.

¹⁶⁴ Guideline 3.2.

¹⁶⁵ Guideline 3.5.1.

¹⁶⁶ Guideline 3.5.2.

¹⁶⁷ Guideline 3.6.

¹⁶⁸ Guidelines 3.8.2 and 3.7.

¹⁶⁹ Guideline 3.8.1.

¹⁷⁰ Guideline 3.8.3.

¹⁷¹ Guideline 3.10.

Moreover, the Convention on the Rights of the Child, which is the most ratified international instrument, poses an international obligation on States to protect children from any kind of exploitation and to prevent child trafficking. Thus, any State in the world – apart from the United States of America and Somalia, which have not yet ratified the CRC – may be considered accountable for not acting to prevent child trafficking and to protect children who have been exploited. The two CRC Protocols establish clear commitments for States Parties too. As regards the ILO 182 Convention against the Worst Forms of Child Labour, it imposes an obligation on States Parties to fully implement its provisions, preventing and eliminating the worst forms of child labour and assisting the exploited children in their rehabilitation and social integration.

The protection of trafficked victims' human rights has also been enhanced through some United Nations Human Rights Treaty Bodies, such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. They all made comments to States Parties' reports on measures in the field of trafficking in persons, and in particular in children. Even if the Human Rights Committee and the Committee on the Elimination of Discrimination against Women may also receive individual communications and complaints from persons who suffered for the violation of their human rights, no complaint was presented to these treaty monitoring bodies dealing specifically with trafficking in persons.

Furthermore, this system has been improved with the recent nomination of the Special Rapporteur on Trafficking in Persons, especially Women and Children, who will present an annual report on specific topics related to trafficking in human beings and who will be able to receive communications from trafficked victims. Moreover, she can bring specific situations to the attention of governments and she can request them to take measures to protect the human rights of the victim concerned. Finally, the Special Rapporteur can send communications to States regarding their specific legislation, policies and practices in the field of human trafficking as well.

To conclude, some steps forward have been made over the last few years to focus the attention of the international community on the need to guarantee the protection of trafficking victims. However, work remains to be done to induce States to modify their legislation putting the human rights of trafficking victims, and especially of children, who are the most vulnerable victims, at the centre of their actions in the fight against human trafficking.