



Ca' Foscari  
University  
of Venice

Master's Degree programme - Second  
Cycle (*D.M. 270/2004*)  
in International Relations

Final Thesis

# **The Fight Against Women Sex Trafficking in International, European and Italian Law**

**A comprehensive strategy for  
protection and assistance of victims**

**Supervisor**

Ch. Prof. Sara De Vido

**Assistant supervisor**

Ch. Prof. Francesca Coin

**Graduand**

Laura Gaspari

Matriculation Number 837427

**Academic Year**

2016 / 2017



## TABLE OF CONTENTS

*Abstract*..... 7

*Table of Abbreviations* ..... 15

### INTRODUCTION

1. The issue of sex trafficking ..... 17

2. Data and flows of human trafficking: a female issue ..... 18

    2.1 The structural causes of sex trafficking ..... 23

    2.2 The process of sex trafficking ..... 29

3. Purpose of the analysis ..... 35

### CHAPTER 1: TOWARDS A DEFINITION: THE LEGAL INSTRUMENTS IN INTERNATIONAL, REGIONAL AND ITALIAN LAW

1. Historical background..... 37

2. The United Nations Instruments..... 42

    2.1 The Vienna Process ..... 46

    2.2 The UN Convention against Transnational Organized Crime ..... 50

    2.3 The Trafficking Protocol: the first definition of trafficking in human beings ..... 53

    2.4 Soft Law instruments against trafficking..... 59

3. Regional Law: The Council of Europe and the European Union..... 60

    3.1 The CoE Convention on Action against Trafficking in Human Beings ..... 61

    3.2 The ECtHR and its jurisprudence about sex trafficking as slavery ..... 67

    3.3 The Charter of Fundamental Rights of the European Union ..... 72

    3.4 The European Union Law ..... 74

4. Italian Law ..... 79

5. Conclusion ..... 84

## **CHAPTER 2: SEX TRAFFICKING - HUMAN RIGHTS, GENDER, AND THE DEBATE ON PROSTITUTION**

1. The centrality of the victim of trafficking .....	87
1.1 Human rights and human trafficking .....	88
1.2 States' positive obligations and the concept of due diligence .....	93
1.3 Human trafficking and its link with slavery .....	99
2. Women and Trafficking.....	102
2.1 Trafficking as a form of violence against women .....	102
2.2 Women as traffickers: the Nigerian Madame .....	108
3. The feminists NGOs role the debate on prostitution and human rights .....	111
4. Conclusion.....	115

## **CHAPTER 3: PREVENTIVE AND PROTECTIVE MEASURES IN THE LEGISLATIVE INSTRUMENTS**

1. Measures of prevention and protection in International, European and Italian law ....	117
1.1 The status of victim.....	118
1.2 The reflection period and the residency permit .....	124
1.3 Housing, medical care, psychological and legal assistance.....	128
1.4 Access to education and employment.....	131
1.5 Funds and compensation for victims .....	133
1.6 Repatriation.....	138
1.7 The recognition of the refugee status.....	141
1.8 Prevention strategies .....	147
1.9 Gender-based approach.....	152
1.10 Role of associations, NGOs and the civil society .....	155
2. Monitoring Systems.....	157
2.1 The Conference of Parties of the Organised Crime Convention .....	157
2.2 The Special Rapporteur for trafficking in persons, especially women and children.....	158
2.3 GRETA - Group of Experts on Action against Trafficking in human beings .....	158
2.4 EU Mechanism of evaluation and monitoring.....	161
2.5 The Italian National Anti-Trafficking Plan monitoring system.....	161

**CHAPTER 4: CASE STUDY – PROTECTION AND ASSISTANCE SYSTEM FOR  
TRAFFICKED WOMEN IN VERONA**

1. General Overview on Italy ..... 163  
2. Veneto and Verona overview ..... 165  
3. The N.A.Ve Project ..... 167  
4. Story of a survivor ..... 173  
5. Conclusive considerations about the case study ..... 175

**CONCLUSIONS ..... 179**

**BIBLIOGRAPHY ..... 187**

**RINGRAZIAMENTI ..... 207**



## ABSTRACT

La presente tesi affronta il tema della tratta degli esseri umani, più precisamente la tratta delle donne per sfruttamento sessuale. Il lavoro si articola in un'analisi comparata delle disposizioni in materia di protezione e assistenza alle vittime di tratta partendo dalla legislazione internazionale, per poi passare a quella Europea e concludendo con quella Italiana.

Il presente lavoro adotta un approccio orientato ai diritti umani e al benessere delle vittime di tratta, analizzando la tendenza degli ultimi anni a stabilire strategie pluridisciplinari (*comprehensive approach*) e basate sul lavoro multi-agenzia per contrastare un fenomeno così complesso e mutevole, prevedendo una collaborazione stretta tra gli attori impegnati nella repressione al crimine e quelli dediti alla prevenzione e alla protezione delle vittime. Con l'apporto di un caso studio basato su interviste condotte con operatori del settore (il responsabile della sezione reati contro la persona della Squadra Mobile di Verona - Polizia di Stato, tre assistenti sociali e una mediatrice culturale), ci si chiederà se questo approccio però è realmente efficiente e cosa dovrebbe essere modificato o implementato affinché si abbia una risposta adeguata, soprattutto nell'identificazione e nella presa in carico dei sopravvissuti.

La tratta degli esseri umani è, secondo l'UNICRI (Istituto Interregionale di Ricerca sul Crimine e la Giustizia delle Nazioni Unite), il terzo business illecito al mondo dopo il traffico di droga e armi. Secondo le stime dell'Organizzazione Mondiale del Lavoro (ILO), le vittime di tratta al mondo sono circa 21 milioni di cui 4,5 milioni sono sfruttate sessualmente. Secondo l'Ufficio delle Nazioni Unite per il Crimine e la Droga (UNODC), le vittime identificate nel 2014 sono state 63.251 persone, di cui 23.000 sono vittime di tratta per sfruttamento sessuale. Le vittime di tratta continuano a essere per la maggior parte donne e bambine, con una percentuale intorno all'80% del totale delle vittime.

La tratta degli esseri umani per sfruttamento sessuale trova le sue cause in fenomeni strutturali alle società di origine e di arrivo, denominati *push e pull factor*. Tra i push factor (fattori di spinta), la globalizzazione ha contribuito all'inasprimento del fenomeno, ma anche la povertà, le instabilità socio-economiche e i conflitti, che hanno portato ad un aumento esponenziale del fenomeno migratorio. Molte donne si vedono protagoniste delle migrazioni da aree meno avvantaggiate economicamente verso aree più ricche, come l'Europa e il Nord America, facendo parlare gli studiosi di "feminization of migrations", ossia un aumento delle

migrazioni femminili alla ricerca di nuove possibilità lavorative e di studio. Tale fenomeno è stato sfruttato in modo consistente dalle reti criminali legate alla tratta, che hanno visto in esso la possibilità di farne un business. I vari processi e metodi di reclutamento, trasporto e assoggettamento delle vittime di tratta hanno portato a definire modelli distinti che si caratterizzano per la loro fluidità e adattamento a tempi, luoghi e cambiamenti storici. Tra i pull factors (fattori di attrazione) dei Paesi di destinazione troviamo al primo posto la domanda di prestazioni sessuali a basso costo da parte dei cosiddetti “clienti”.

La tratta può svolgersi anche entro i confini di un Paese, nel caso di conflitti e schiavitù sessuale in tempo di guerra, o il fenomeno dei bambini soldato, in cui le persone vengono spostate da un'area all'altra dello stesso Stato con gli stessi scopi di sfruttamento della tratta transnazionale.

Le origini della tratta di esseri umani possono essere cercate nella schiavitù e nella tratta degli schiavi, soprattutto quella della rotta Atlantica dall'Africa alle colonie americane per i lavori nelle piantagioni. Né la Convenzione del 1926 contro la schiavitù, né la sua Convenzione Supplementare del 1956 contemplano la tratta degli esseri umani tra le proibizioni previste, così come essa non compare come divieto nei più importanti trattati internazionali sui diritti umani. Alla lotta alla tratta vengono dedicate altre Convenzioni internazionali del secolo scorso in seno alla Società delle Nazioni prima e alle Nazioni Unite poi; la prima nel 1904 che stabiliva la soppressione della cosiddetta white slavery, la tratta di donne bianche per scopi immorali (prostituzione), fino a quella del 1949 ancora in vigore. Nessuna di queste però riuscì a dare una concreta definizione di tratta.

Nei primi anni 90 la comunità internazionale si rese conto che, con i cambiamenti storici, politici e tecnologici in corso, il crimine organizzato transnazionale stava intensificando un vero e proprio business che già esisteva, ma che era riuscito a rimanere marginale e poco controllato, o comunque stereotipato sulla sola tratta di esseri umani al fine di farle prostituire in bordelli, in locali e per strada. Alla fine del secolo scorso la comunità internazionale aprì i negoziati con la partecipazione straordinaria di moltissime ONG e la loro attività di lobbying per la Convenzione sul Crimine Organizzato, che verrà poi proclamata il 15 novembre 2000. A supporto della Convenzione vengono prodotti tre Protocolli aggiuntivi: uno per il fenomeno di *smuggling*, tradotto in italiano come traffico di esseri umani, uno per il traffico di armi (adottato l'anno successivo) e uno per la tratta (*trafficking*) di esseri umani, specialmente donne e bambini.

Il Protocollo delle Nazioni Unite per la prevenzione, soppressione e la persecuzione



della tratta degli esseri umani, specialmente donne e bambini, noto anche come Protocollo di Palermo (perché adottato in una conferenza multilaterale nella città siciliana), contiene all'articolo 3 la vera e propria definizione di tratta di esseri umani che viene definita come:

il reclutamento, il trasporto, il trasferimento, l'alloggiamento o l'accoglienza di persone con la minaccia di ricorrere alla forza, o con l'uso effettivo della forza o di altre forme di coercizione, mediante il rapimento, la frode, l'inganno, l'abuso di autorità o una situazione di vulnerabilità, o con l'offerta o l'accettazione di pagamenti o di vantaggi al fine di ottenere il consenso di una persona avente autorità su di un'altra ai fini dello sfruttamento. Lo sfruttamento include, come minimo, lo sfruttamento della prostituzione di altre persone, o altre forme di sfruttamento sessuale, lavori o servizi forzati, schiavismo o prassi affini allo schiavismo, servitù o prelievo di organi.<sup>1</sup>

La definizione di tratta di esseri umani consiste in tre elementi principali: l'azione, i mezzi e lo scopo finale. L'azione è l'atto di reclutare e trasferire una vittima di tratta dal suo Paese di origine a quello di destinazione, passando per uno o più Paesi di transito. I mezzi sono quelli elencati dalla definizione, ossia la forza, la coercizione, il rapimento, la frode, l'inganno, l'abuso di autorità, l'offerta di pagamenti o vantaggi ecc. Uno dei metodi più usati per assoggettare le vittime è il fenomeno del debt bondage, ossia l'anticipazione dei soldi per il viaggio e l'alloggio della vittima, che questa poi dovrà restituire per intero. I debiti delle vittime si aggirano spesso su cifre esorbitanti. Il fine ultimo indicato dalla definizione è quello dello sfruttamento. Dalla definizione del Protocollo di Palermo si individuano, oltre allo sfruttamento lavorativo e sessuale, altre forme di tale fenomeno, rimanendo però vaga e generale e rendendone possibile il riconoscimento.

Nel 2002 l'Ufficio dell'Alto Commissario per i Diritti Umani elaborò un sistema di Principi e Linee Guida (Recommended Principles and Guideline for Human Trafficking and Human Rights) concernenti la tratta delle persone focalizzandosi su un approccio ai diritti umani delle vittime, predisponendo azioni e sistemi dettagliati in materia di prevenzione, protezione e assistenza. Si ipotizza per la prima volta una forma di risarcimento alle vittime. Nonostante sia uno strumento di *soft law*, i principi e le linee guida sono pian piano entrati anche in altri strumenti, soprattutto regionali, delineando una nuova serie di strategie.

---

<sup>1</sup> Legge del 16 marzo 2006, Ratifica ed esecuzione della Convenzione e dei Protocolli delle Nazioni Unite contro il crimine organizzato transnazionale, adottati dall'Assemblea generale il 15 novembre 2000 ed il 31 maggio 2001, Gazzetta Ufficiale Serie Generale n. 85 del 11 aprile 2006 – Suppl. Ordinario n. 91

Nel 2005 il Consiglio d'Europa proclamò a Varsavia la Convenzione contro la Tratta degli Esseri Umani, assimilando la definizione prevista dall'articolo 3 del Protocollo di Palermo, ma adottando un punto di vista diverso rispetto alle Nazioni Unite: dichiarando nel preambolo che la tratta degli esseri umani è una grave violazione dei diritti umani e una minaccia alla democrazia, la Convenzione prevede moltissime disposizioni atte a proteggere e tutelare le vittime di tratta. Al contrario, il Protocollo di Palermo ha un carattere più incentrato sulla repressione del crimine. Questo non dovrebbe stupire, dato che è il protocollo aggiuntivo di una Convenzione sul crimine organizzato. La Convenzione del Consiglio d'Europa è entrata in vigore nel 2008, dando così via a una tradizione pattizia europea incentrata sui diritti umani delle vittime e l'approccio punitivo verso il crimine della tratta.

La legislazione dell'Unione Europea si è adattata perfettamente agli standard internazionali e del Consiglio d'Europa con la Direttiva n. 36 del 2011 e la Direttiva n. 81 del 2004. La proibizione del crimine di tratta è entrata anche nella Carta dei Diritti Fondamentali dell'Unione Europea, che dal 2009 è vincolante per gli Stati Membri dell'Unione con l'entrata in vigore del Trattato di Lisbona. A fronte di ciò, anche la legge italiana si è conformata agli standard europei, nonostante vantasse già una legislazione all'avanguardia nel campo della protezione e assistenza delle vittime di tratta di esseri umani e grave sfruttamento. Infatti, il Testo Unico sull'Immigrazione includeva già nel 1998 un articolo che prevedeva il rilascio di uno speciale permesso di soggiorno per protezione sociale (articolo 18) che dà la possibilità alla vittima di seguire un percorso di inclusione sociale e di riabilitazione. Nel 2003 la legge 228 modificava l'articolo del Codice Penale che condanna il crimine di tratta (articolo 601 c.p.) inserendo importanti disposizioni per l'assistenza alle vittime e la loro identificazione (vedi articolo 13). Entrambi gli articoli prevedevano la disposizione di fondi per il finanziamento delle azioni anti tratta, cofinanziate in parte dagli enti locali. Nel 2016 il Governo Italiano ha promosso il nuovo Piano Nazionale Anti Tratta unendo, nel maggio dello stesso anno, i due articoli sopracitati in un programma che prevede un fondo unico che finanzia al 100% le azioni anti tratta, senza obbligo di cofinanziamento da parte delle entità locali.

Perché avviene questo cambio di prospettiva, dalla repressione a una maggiore considerazione delle vittime? La tratta delle persone è stata ormai riconosciuta internazionalmente come una seria violazione dei diritti umani. Nel caso della tratta per sfruttamento sessuale, questa è stata inoltre individuata come violenza e discriminazione di genere, oltre che una moderna forma di schiavitù. Su quest'ultimo punto vi sono ancora dei

dibattiti terminologici tra chi non esita a definire la tratta come una forma di schiavitù e chi invece la assimila al concetto di servitù, che non implica la proprietà di una persona su un'altra. Cruciale in questo senso è la giurisprudenza della Corte Europea dei Diritti dell'Uomo di Strasburgo, che nella sentenza *Rantsev v. Cyprus and Russia* assimila la tratta alle proibizioni previste all'articolo 4 della Convenzione Europea dei diritti dell'uomo (proibizione di schiavitù, servitù e lavoro forzato). Nel presente lavoro verranno analizzate anche altre due sentenze della Corte Europea, rispettivamente *Siliadin v. France* e la recentissima *L.E. v Greece*.

Gli Stati sono stati riconosciuti come titolari di obblighi positivi nei confronti delle vittime di tratta anche se il crimine non viene perpetrato da essi ma da attori non statali o da individui. Gli Stati hanno l'obbligo di prevenire, proteggere e condurre le appropriate indagini per sventare il pericolo di tratta e reprimere il crimine, tutelando gli individui siano essi cittadini o no. Viene riconosciuto quindi che anche le violazioni dei diritti fondamentali di cui le vittime di tratta e grave sfruttamento soffrono sono soggetti al concetto di *due diligence* o dovuta diligenza, cioè l'obbligo da parte degli Stati di punire, indagare e trovare un rimedio adeguato. Anche in ciò, le sentenze della Corte Europea sono state fondamentali per consolidare questo assunto.

La tratta delle donne è stata riconosciuta già nel 1979 all'articolo 6 della Convenzione sull'Eliminazione di ogni Forma di Discriminazione della Donna (CEDAW), dove gli Stati si impegnano a reprimere con ogni mezzo la tratta e lo sfruttamento della prostituzione delle donne in ogni sua forma. La Raccomandazione Generale n. 19 del Comitato CEDAW, previsto dalla stessa CEDAW, precisò che alle origini della tratta delle donne troviamo la povertà e la disoccupazione e che essa è incompatibile con il pari godimento dei diritti e della dignità umani. Lo sfruttamento sessuale non si limita solo alla prostituzione, ma comprende anche il turismo sessuale, il lavoro domestico e i matrimoni forzati. Queste situazioni, dice la Raccomandazione, espongono le donne e le bambine alla possibilità di violenze e abusi e per questo necessitano di una maggiore protezione. Soprattutto nelle situazioni di conflitto, le donne e le bambine vanno protette dagli stupri di guerra e dalla schiavitù sessuale. Sulla scia della Raccomandazione n. 19, altri strumenti internazionali (Dichiarazione contro la Violenza contro le donne, la Piattaforma di Azione di Beijing ecc.) hanno seguito questo filone, fino ad includere la lotta alla tratta delle donne per sfruttamento sessuale nei recenti Sustainable Development Goals per il 2030.

Tuttavia, le donne non sono solo vittime nel processo di tratta. Si assiste a un

fenomeno che le vede come le principali sfruttatrici all'interno della rete criminale, ricoprendo un ruolo importante, come dimostrato dal caso delle Madame Nigeriane analizzato in questo lavoro. Le Madame sono per di più ex prostitute che, dopo aver estinto il loro debito, rimangono nel circolo criminale "facendo carriera" e ritrovandosi a gestire nuove ragazze sfruttate per la prostituzione di strada, pagando loro il viaggio, diventando i così loro sponsor e le loro sfruttatrici. Le Madame, come si vedrà, sono elevate anche come capi spirituali attraverso il rito voodoo o juju di suggellazione del patto, in cui le ragazze si impegnano a non parlare con nessuno del loro debito fino a che non l'avranno estinto, pena la sventura, o le sciagure per loro e le loro famiglie.

Un altro punto su cui si soffermerà il presente lavoro è il dibattito femminista in sede di negoziati del Protocollo di Palermo sulla prostituzione e sui diritti umani. Come abbiamo già ricordato, la prostituzione è uno degli scopi finali della tratta per sfruttamento sessuale. L'attività intensa di lobbying di due coalizioni femministe di ONG hanno sollevato un accesissimo dibattito tra coloro che vedevano la prostituzione come un fenomeno da abolire completamente, in quanto simbolo dell'oggettificazione del corpo femminile e della limitazione delle libertà e della dignità della donna, e chi invece riconosceva il *sex work* come lavoro scelto volontariamente, non giustificando per questo motivo l'abolizione della prostituzione. Si insisteva inoltre sull'inserire un approccio più attento ai diritti umani. Su un punto però concordavano le due coalizioni: la donna, sia essa volontaria o forzata, non va criminalizzata e punita in quanto prostituta. Le due coalizioni non riuscirono mai a trovare un accordo tra le loro visioni, sacrificando così la possibilità di inserire nel Protocollo di Palermo disposizioni più attente nei confronti delle vittime di tratta. Il dibattito continua ad essere acceso, mettendo in contrapposizione visioni diverse della donna e della prostituta, tra autodeterminazione, dignità e diritti.

Per ciò che concerne le disposizioni in materia di protezione e assistenza, la strada che si sta intraprendendo è quella della strategia pluridisciplinare, ossia del lavoro in rete tra operatori del settore pubblico e privato, le forze dell'ordine, l'Autorità Giudiziaria e tutti gli altri *stakeholder* possibilmente coinvolti. Attraverso l'analisi comparata dei tre livelli di legislazione e conducendo interviste con gli operatori del Comune di Verona e di Venezia, si è identificato il processo di protezione e assistenza nelle seguenti fasi: identificazione e attribuzione dello status di vittima, concessione di un periodo di riflessione in cui la vittima può decidere di emergere oppure restare nella rete criminale, l'ottenimento di un permesso di soggiorno temporaneo se decide di uscire dalla rete ed eventualmente denunciare i propri

sfruttatori, il trasferimento in una struttura protetta e la possibilità di riabilitarsi, di imparare la lingua del Paese di destinazione e accedere allo studio e al mondo del lavoro. L'accesso a tali servizi non dovrebbe essere condizionato alla denuncia. Una persona deve poter avere la possibilità di riemergere e in caso, guadagnare quella fiducia necessaria per fare un passo così importante come la denuncia della rete criminale. La protezione e l'assistenza alla vittima devono essere un modo per far uscire da una situazione di sfruttamento una persona, ridandole fiducia nelle istituzioni e facendole capire che nulla le può accadere se decidesse di denunciare coloro che le hanno fatto del male, ingannandola.

A fare da corollario alle azioni concrete di protezione e assistenza, ci deve essere una buona attività di monitoraggio sia per l'implementazione delle normative, sia per il controllo del fenomeno. Il Protocollo di Palermo non ha, ad esempio, un meccanismo di monitoraggio tutto suo, facendo invece affidamento su quello della Convenzione contro il Crimine Organizzato, che non è adeguato per il problema. Tuttavia, importante per capire il problema della tratta a livello internazionale è il lavoro svolto dalla Special Rapporteur contro la tratta delle persone, specialmente donne e bambini istituita dall'Alto Commissario per i Diritti Umani delle Nazioni Unite. La Convenzione del Consiglio d'Europa prevede il suo sistema di monitoraggio tra le disposizioni della Convenzione stessa, ossia il Gruppo di Esperti sulle azioni contro la tratta degli esseri umani (GRETA). L'Unione Europea ha sviluppato un sistema di monitoraggio tra i vari National Rapporteurs nazionali, sotto l'egida del Coordinatore Europeo contro la Tratta. A livello italiano, con il nuovo Piano Nazionale, ci si sta avviando verso un sistema di monitoraggio unificato e centrale.

L'analisi delle misure di protezione e assistenza è supportata da un caso studio sul Comune di Verona, condotto attraverso interviste, che va ad analizzare il nuovo progetto Veneto in cui Verona è inserita, il Progetto N.A.Ve (Network Anti Tratta Veneto). Il progetto riprende esattamente la volontà di un lavoro di rete, multi-agenzia e con un approccio orientato verso i diritti umani. Attraverso l'analisi delle sue tre fasi principali (primo contatto, emersione, inclusione sociale), cercheremo di capire i punti di forza e debolezza di questi primi nove mesi di attività del progetto, partito a settembre 2016 e che si concluderà a novembre 2017.

Alla luce dell'analisi presentata finora sorge spontaneo chiedersi quanto un apparato normativo così completo stia facendo in realtà per le donne vittime di tratta di esseri umani che si trovano intrappolate in questa nuova forma di schiavitù. Quanto la legge riesce a scendere nella realtà e tutelarle e far valere i loro diritti fondamentali, se la tratta degli esseri

umani è un problema così complesso e vasto? Tutte domande a cui cercheremo di rispondere, nel limite del possibile.

Il presente lavoro si dividerà nelle seguenti parti: un'introduzione darà un quadro generale degli aspetti socio-economici della tratta degli esseri umani, con dati, cause e processi. Il primo capitolo analizzerà gli strumenti normativi, dall'internazionale al nazionale. Il secondo capitolo invece presenterà una riflessione giuridica su tratta e diritti umani, sul concetto di due diligence nei casi di tratta, sul legame con la schiavitù, sulla violenza di genere e sul dibattito in corso sulla prostituzione a livello internazionale. Il terzo capitolo invece entrerà nelle disposizioni specifiche degli strumenti normativi in materia di protezione e assistenza. Il capitolo quattro presenterà il caso studio sul progetto N.A.Ve e il Comune di Verona.

## TABLE OF ABBREVIATIONS

AMIF	– Asylum, Migration and Integration Fund
CAHTEH	– Ad Hoc Committee on Action against Trafficking in Human Beings
CAS	– Centro di Accoglienza Straordinaria
CATW	– Coalition Against Trafficking in Women
CEAS	– Common European Asylum System
CEDAW	– Convention on the Elimination of All Forms of Discrimination against Women
CoE	– Council of Europe
COP	– Conference of Parties
CRC	– Convention on the Rights of the Child
DDA	– Direzione Distrettuale Anti Mafia
DNA	– Direzione Nazionale Anti Mafia
EAW	– European Arrest Warrants
ECOSOC	– Economic and Social Council
ECHR	– European Convention on Human Rights
ECtHR	– European Court of Human Rights
EU	– European Union
EURODAC	– European Dactyloscopie (system of identification)
EUROPOL	- European Union Agency for Law Enforcement Cooperation
EWL	– European Women’s Lobby
GA	– General Assembly
GAATW	– Global Alliance Against Traffic in Women
GRETA	– Group of Experts on Action against Trafficking in Human Beings
HDI	– Human Development Index
IAF	– International Abolitionist Federation
ICC	– International Criminal Court
ICESCR	– International Covenant of Economic, Social and Cultural Rights
ICCPR	– International Coventant of Civil and Political Rights
IGO	– International Governmental Organisation
IHRLG	– International Human Rights Law Group
ILC	– International Law Commission
ILO	– International Labour Organisation

IOM – International Organisation for Migration  
ISTAT – Istituto Nazionale di Statistica  
MNR – Meccanismo Nazionale di Referral  
N.A.Ve – Network Anti Tratta Veneto  
NGO – Non-Governmental Organisation  
OHCHR – Office of the High Commissioner for Human Rights  
OJ – Official Journal  
OSCE – Organisation for Security and Co-operation in Europe  
SIRIT -  
TEU – Treaty of the European Union  
TFEU – Treaty on the Functioning of the European Union  
UDHR – Universal Declaration of Human Rights  
UN – United Nations  
UNDP – United Nations Development Programme  
UNHCR – United Nations High Commissioner for Refugees  
UNICEF – United Nations Children’s Fund  
UNICRI – United Nations Interregional Crime and Justice Research Institute  
UNODC – United Nations Office on Drugs and Crime



## INTRODUCTION

*Human trafficking is a parasitic crime that feeds on vulnerability, thrives in times of uncertainty, and profits from inaction.*<sup>2</sup>

### 1. The issue of sex trafficking

Sex trafficking, that is trafficking in persons with the purpose of sexual exploitation, is a complex and heterogeneous phenomenon. Trafficking for sexual exploitation is just a part of what it is known as human trafficking, or for some, modern day slavery.<sup>3</sup>

Human trafficking is estimated as the third most profitable illicit business in the world, after drugs and firearms trafficking.<sup>4</sup> It is a recognised violation of human rights and a serious crime, threatening security and democracy of societies.<sup>5</sup>

People can be trafficked for many purposes: the most detected forms are exploitative labour and sexual exploitation, but people can be trafficked also for forced marriages, organ removal, forced begging or pornography. In the case of children, they can be sold for adoptions and, in areas of the world affected by conflicts, for the exploitation as soldiers or sex slaves.<sup>6</sup>

However, women and young girls are the most common victims of sex trafficking, and this is the reason the present work is dedicated to them. Sexual exploitation is not limited to prostitution. It includes also pornography and sex tourism.<sup>7</sup>

Sex trafficking is the most publicised form of trafficking in human beings because it is one of the most diffused forms and it is visible to anybody.<sup>8</sup> Not all young women in the streets performing sex work have been trafficked, but many women who are trafficked are forced to sexual exploitation and prostitution. To understand better the situation, we should look at

---

<sup>2</sup> United Nations Office on Drugs and Crime Executive Director Statement on the UN World Day Against Trafficking in Persons, 30<sup>th</sup> July 2016, available at <https://www.unodc.org/endht/en/statements.html>, consulted 14<sup>th</sup> June 2017

<sup>3</sup> See *infra* Chapter 2, paragraph 1.2

<sup>4</sup> United Nations Interregional Crime and Justice Research Institute (UNICRI) website, Human Trafficking, available at <http://www.unric.org/en/human-trafficking>, consulted 8<sup>th</sup> June 2017

<sup>5</sup> UNICRI, *Countering trafficking and smuggling of women and unaccompanied minors in the Mediterranean: challenges, good practices and the ways forward*, 2016, UNICRI, Torino, p. 7

<sup>6</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2016*, 2016, United Nations Publications, New York, p. 8

<sup>7</sup> Hammond, G.C. & McGlone, *Entry, Progression, Exit, and Service Provision for Survivors of Sex Trafficking: Implications for Effective Interventions*, Global Social Welfare, Volume 1, Issue 4, pp. 157-168, p. 158

<sup>8</sup> K. A., *Common Forms: Sex trafficking*, contained in Burke, M.C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, p. 135

data, causes and processes, to build the framework that we should have in mind while reading and analysing all the legislations (from the international to the national) proposed in the present work.

The following sections will present sex trafficking through the lens of data, structural causes and with a reconstruction of types of processes of trafficking to introduce the reader into the underground and illegal world around trafficking in persons for sexual exploitation. This is just an attempt to draw a model, or multiple models, as trafficking in human beings is a phenomenon constantly in evolution, adapting to time, places and societies. Finally, the purpose of the analysis will be presented.

## **2. Data and flows of sex trafficking: a female issue**

Precise and accurate statistic data on the phenomenon of sex trafficking are difficult to source: it is a hidden and clandestine phenomenon, difficult to identify. The only reachable and recent data are those provided by the International Labour Organisation (ILO) and by the *Global Report on Trafficking in Persons 2016* by the United Nations Office on Drugs and Crime (UNODC)<sup>9</sup>, the UN Agency who promoted the UN Convention on Transnational Organized Crime and Protocols Thereto. Even if the report is of last year, data date back the period between 2012-2014 and refer to criminal justice convictions and victims detected in States parties of the Convention and communicated to UNODC, who works as the monitoring apparatus.

Trafficking in human beings and, consequently, sex trafficking is a vast phenomenon: for instance, the area of the world with the highest presence of citizenships of victims of trafficking is Europe with 137 different identified nationalities.<sup>10</sup> The other regions of the world mainly affected by trafficking are North America and South East Asia. Trafficking is not necessarily transnational, it can happen within borders or across borders of the same region of the world. In the light of these considerations and to understand the aim of the present study and the features of sex trafficking, it is important to focus on data about victims, those about traffickers, on the consistency of flows and the causes behind it. For every insight, there will be attention to the European situation.

---

<sup>9</sup> The United Nations Office on Drugs and Crime was established in 1997, from the United Nations Drug Control Programme and the Centre for International Crime Prevention. The UNODC's role is to assist Member State in the fight against drug, crime, terrorism, with regard to transnational crime. Information available in the UNODC website <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop> consulted the 4th of March 2017

<sup>10</sup> UNODC, *Global Report on Trafficking in Persons 2016*, p. 5

The total number of *detected* victims of human trafficking globally in the period 2012-2014 is 63,251 people in 106 countries and territories. The ILO *estimates* 21 million exploited persons all over the world. 4.5 million people are sexually exploited of which the 79 per cent is composed by adults. The 98 per cent of the estimated victims of trafficking for sexual exploitation, according to ILO estimates, is female.<sup>11</sup> Data and trends change with reference to the different regional experiences, both in the profile of victims and in the type of exploitation. According to the 2016 UNODC Global Report, analysing a sample of 17,752 victims detected in 85 countries in 2014, it has been observed that the majority is constituted by women and young girls that are about the 70 per cent. Despite this fact, the report registers a decrease in the percentage of women trafficked all over the world, from 84 per cent to 71 per cent in 2014 (51 per cent of adult women and 20 per cent of girls under age).<sup>12</sup> However, the characterisation of victims has changed in the last ten years: men and boys' presence has increased, to the 21 per cent and the 8 per cent of the totality of the victims detected.<sup>13</sup>

In the present analysis, we only focus on trafficking for sexual exploitation of women and young girls, that continues to be the first form of female trafficking all over the world. Between 2012 and 2014, about 23,000 sex trafficking victims and exploited as prostitutes were detected and the 96 per cent of them were women and girls.<sup>14</sup>

Concerning Europe, an overall analysis of victims detected in Western and Southern Europe (about 15,200 victims) shows that the 56 per cent is constituted by women, while the 18 per cent are young girls, the 7 per cent boys and the 19 per cent men.<sup>15</sup> It has been registered a decrease in the percentage of women trafficked and an increasing in men in the last seven years. Sexual exploitation is the main purpose of human trafficking in this area, with a percentage of 67 per cent of women and girls in Western and Central Europe.<sup>16</sup> In Eastern Europe, the pattern is highly similar, with the 54 per cent of women and the 23 per cent of girls trafficked on 6,780 people, and 65 per cent of trafficking was for sexual exploitation. Women and girls sexually exploited in Eastern Europe were the 97 per cent.<sup>17</sup>

For what concerns data collected by the UNODC about traffickers, and considering

---

<sup>11</sup> International Labour Organisation website, Topics, Forced Labour, modern slavery and human trafficking, statistics available at <http://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm> consulted the 31st May 2017. These data dates back 2012. New estimates will be issued in September 2017.

<sup>12</sup> UNODC, *Global Report on Trafficking in Persons 2016*, p. 23

<sup>13</sup> *Ibid.*, p. 6

<sup>14</sup> *Ibid.*, p. 27

<sup>15</sup> *Ibid.*, p. 71

<sup>16</sup> *Ibid.*, p. 72

<sup>17</sup> *Ibid.*, pp. 78-79

the three phases of criminal proceedings (investigations, prosecutions, and convictions), it is interesting to notice that in almost all areas of the world the majority of them is male. In fact, in 6,800 cases collected by UNODC in the period taken into examination, about the 60 per cent is male. Despite of this trend, there is a high percentage of women involved in trafficking crimes, about the 37 per cent. In fact, sex trafficking is the only crime in which there is such a presence of women as offenders. In Central Asia and Eastern Europe there is a high percentage of women leading a criminal organisation involved in trafficking in human beings.<sup>18</sup> However, women are often involved in the so-called low ranking activities of trafficking, such as recruitment and mostly in the country of origin of victims (44 per cent), and less in the country of destination (30 per cent). Some of them are former victims of trafficking and this is a trend mainly registered in trafficking for sexual exploitation, as traffickers can use them to reach the highest number of victim's recruitment, playing on the relationship of trust that a woman can have in relation to another woman.<sup>19</sup>

Traffickers in the countries of origin and victims often share the same nationality: sometimes they come from the same ethnic and cultural background and the same language environment.<sup>20</sup> According to the UNODC report, the majority of traffickers convicted in the country of destination are citizens of the country itself (75 per cent). The remaining 14 per cent are foreigners within the same region and the 11 per cent are foreigners of other regions. The only exception is the Middle East, which have almost the totality of foreigners convicted for trafficking.<sup>21</sup> Giving an insight to the European situation, in Western and Southern Europe the convicted offenders are male, 78 per cent, while the percentage of women is very low with regards with the rest of the world (22 per cent). The 40 per cent of them share their nationality with the country of destination and foreigners convicted for trafficking come from almost all other regions of the world, making Western and Southern Europe the region most affected by human trafficking in the world. The nationalities of both victims and traffickers involved in trafficking in Western and Southern Europe are from Eastern Europe and West Africa.<sup>22</sup> In Southern-Eastern Europe the situation is almost the same, with a higher percentage of men convicted, 84 per cent, and less presence of women, 16 per cent of the total amount of convictions registered in the region. Only the 4 per cent are of foreign

---

<sup>18</sup> *Ibid.*, pp. 33-34

<sup>19</sup> *Ibid.*, pp. 35-36; See *infra* Chapter 2, para. 2.2

<sup>20</sup> *Ibid.*, p. 7

<sup>21</sup> *Ibid.*, p. 37

<sup>22</sup> *Ibid.*, pp. 73-74

nationality, while the 95.8 per cent are nationals of the country where they are convicted.<sup>23</sup>

Another important issue to be considered is that of trafficking flows. As stated above, trafficking in human beings is not necessarily transnational, it can happen also within borders. For example, cases of domestic trafficking are registered in armed conflicts areas, where people are trafficked for labour, sex slavery, for become combatants or for other purposes.<sup>24</sup> In cases of transnational trafficking, we should consider a country of *origin* and one of *destination*, even if sometimes they are not separated concepts, as some countries can be both of origin and of destination. In fact, some countries can register both inflows and outflows of trafficked persons.

The UNODC report precises that it is not possible to define clearly trafficking routes because of the insufficiency of data available. Despite this lack of data, the UNODC registered that most trafficking flows are transnational, with 57 per cent of victims trafficked cross borders. Domestic trafficking, that it is conducted within the borders of a country, is increased to the 43 per cent in 2012-2014.<sup>25</sup> Transnational trafficking can happen within the same region and between different continents. Looking at data collected by UNODC about victims detected and repatriated, it is possible to reconstruct an overall view of trafficking flows for the different parts of the world. Victims from Sub-Saharan Africa are trafficked almost globally, precisely in 69 different countries, followed by victims from East Asia, detected in 64 countries and Eastern Europe victims, in 56 countries.<sup>26</sup>

The report builds an overall scheme of trafficking all over the world. For instance, victims from Europe, West Africa and South America are the most trafficked to Europe; a high percentage of victims from Central and South-Eastern Europe are trafficked to Western and Southern Europe; victims from Eastern Europe and Central Asia are trafficked to Western and Central Europe and the Middle East; people from East Asia are trafficked to the Middle East; people from Sub-Saharan Africa are trafficked to the Middle East too.<sup>27</sup> In the last two years, with the great migrations that interested Europe, it has been observed that more and more trafficking flows coincide with migration flows.<sup>28</sup>

Considering in more detail trafficking flows in Europe, it is important to remark that Western and Southern Europe are the regions most affected by trafficking in human beings

---

<sup>23</sup> *Ibid.*, pp. 80-81

<sup>24</sup> *Ibid.*, p. 64

<sup>25</sup> *Ibid.*, p. 40

<sup>26</sup> *Ibid.*, p. 46

<sup>27</sup> *Ibid.*, p. 45

<sup>28</sup> *Ibid.*, p. 57

from almost all over the world. Countries of the European Union are point of both origin and destination of trafficking: with the freedom of movement granted by the Schengen Area, and the enlargement process of the European Union, there is a high percentage of trafficking in human beings from Eastern Europe to Western Europe, with the 47 per cent of victims mostly from Romania and Bulgaria of the totality of 13,000 victims detected in 2012-2014, as it is easier now to move beyond borders. Flows from the Western Balkans are not so consistent while those from Central Europe concentrate more in France, Germany, and the Netherlands. Victims from South Eastern Europe are trafficked all over the region. Data show how intra-regional trafficking in human beings is substantial in the European situation.

The second area of origin of victims in Europe is West Africa, precisely Nigeria, with the 16 per cent of the total number of victims, followed by victims from Cameroon, Ghana, Guinea, and Sierra Leone.<sup>29</sup> Trafficking from East Asia (China, Indonesia, Thailand, Vietnam, and the Philippines) is the 7 per cent of the totality of European flows of trafficking. Trafficking from South America constitutes the 3 per cent of the total number of victims detected. Limited traffic has been registered from Central Asia and North Africa (Maghreb).<sup>30</sup>

For our analysis, it is important to briefly mention some data collected by the UNODC about the implementation of the Palermo Protocol all over the world since its entering into force in December 2003. First, at October 2016, 170 States have ratified the Protocol. Comparing data of 2003, there is an increase in the percentage of States that have integrated a full criminalisation of human trafficking as a specific offence, as the Protocol states, from the 18 per cent to the 88 per cent. The greatest effort to implement measures at a national level to contrast trafficking in human beings was made in the following five years the entering into force of the Protocol.<sup>31</sup> The first to introduce adaptation to the Protocol in their legislations were countries of Central and Southern Europe, followed by East Asia, Western Europe, and North America. Some countries are still without a proper legislation, especially those in West and East Africa, South America and the Caribbean, where a partial legislation was implemented. Also in this case, the UNODC has insufficient data, but it estimates that 2 billion people all over the world are without a proper protection against trafficking.<sup>32</sup> Despite this high commitment to criminalisation of trafficking, the level of criminal justice response is decreasing. Criminal proceedings have been classified in three stages: investigation,

---

<sup>29</sup> *Ibid.*, pp.75-76

<sup>30</sup> *Ibid.*, p. 76

<sup>31</sup> *Ibid.*, pp. 48-49

<sup>32</sup> *Ibid.*, p. 50

prosecution, and convictions. It has been observed that there is as decreasing as they pass to the conviction stage: percentages about investigations are higher than those of prosecutions and those of prosecutions are higher than those of convictions. 26 per cent of investigations stop at the first stage.<sup>33</sup> A stagnation of criminal justice proceedings has been observed all over the world, with few virtuous experiences in Europe and North America, especially against trafficking for sexual exploitation. The 2016 report does not mention any percentage and data about the protection system of victims, concentrating more on data about repression of trafficking as a crime.

To conclude, women are still the most affected victims, especially in the sex trafficking process, with some experiences of women as traffickers or recruiters together with a high percentage of men. Trafficking flows are an heterogenous phenomenon, difficult to identify clearly and precisely and they require a more detailed analysis of both causes and processes to have an idea about the range of the issue.

## **2.1 The structural causes of sex trafficking**

To understand the phenomenon of sex trafficking, we should give an insight into causes and factors that influence it, especially regarding women. The analysis of these causes is important as it helps to define the situation and tries to design new and effective policies to contrast the phenomenon<sup>34</sup>, given the fact that data are sometimes imprecise and difficult to find.

Observing issues and data like migrations, gender, criminal justice reports, victims' depositions, it is possible to have *indicators* about patterns, flows, and mechanism of trafficking. The importance of national statistics and polls, international report of specialised agencies or NGOs connected to issues related to trafficking here are very useful to provide information to comprehend the phenomenon.<sup>35</sup>

The mainstream leads us to think of the victims of sex trafficking as vulnerable and submissive women or children kidnapped or lured by the organised crime of a given country and displaced against their will in another country and forced to sell their bodies.<sup>36</sup> The real

---

<sup>33</sup> *Ibid.*, p. 51

<sup>34</sup> Cameron, S. and Newman, E., *Trafficking in humans: structural factors*, contained in *Trafficking in humans: social, cultural and political dimensions*, 2007, United Nations University Press, p. 21

<sup>35</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, 2015, Leiden: Brill, Boston, p. 42

<sup>36</sup> Burke, M. C., *Introduction to Human Trafficking*, contained in Burke, M. C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, Routledge, New York, p.9

situation is more complex and, as abduction is not so common as a practice to recruit victims to exploit, as we will see below. In fact, there are many external factors that play a pivotal role in the expansion of the phenomenon.

So, to analyse transnational sex trafficking we should take into consideration both the *push* and *pull factors* involved<sup>37</sup>: the former refers to those socio-economic, political, legal, and cultural factors affecting the *supply* of trafficked human beings and they can be traced in the countries of origin, while the latter refers to those factors we can find in the countries of destination and that foster the *demand* for sex services or that can influence the decisions of traffickers and victims. Considering the roots of trafficking for sexual exploitation of women as an intersection of *push and pull factors*, we assume that the business of trafficking behaves as an economic market, driven by the meeting of supply and demand for human bodies and sex services. For this reason, it is possible to talk about the *commodification of migration* regarding trafficking.<sup>38</sup>

Among the *push factors*, we can observe that social, economic, legal, and cultural factors are highly linked one another in influencing the process of trafficking. Above all, gender inequalities and globalization issues are very important for the present analysis. Socio-economic and socio-cultural factors help us to define those categories of people at risk and to understand why traffickers recruit them. As we saw in data provided by the UNODC report explained in the previous section, the problem seriously affects women, especially for sexual exploitation. In fact, women are considered a vulnerable category of people due to inequalities in matters like employment, health security and education, especially in developing countries.<sup>39</sup>

According to data provided by the Human Development Report 2014 by the United Nations Development Programme (UNDP)<sup>40</sup>, Women's Human Development Index (HDI)<sup>41</sup>

---

<sup>37</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, pp. 44-45

<sup>38</sup> Cameron, S. and Newman, E., *Trafficking in humans: structural factors*, 2007, p.27

<sup>39</sup> Kara, S., *Sex Trafficking - inside the business of modern slavery*, 2009, Columbia University Press, New York, p. 30

<sup>40</sup> The United Nations Development Programme is a UN programme funded in 1966 after a Resolution of the General Assembly of the United Nations of 1965. Its headquarters is in New York. Its focus is on poverty reduction, HIV/AIDS fight, sustainable development, energy and environment, women empowerment, crisis prevention, and the writing of the Human Development Report at a global, regional, and local level. The organisation operates in more than 170 countries. Information taken in the United Nations Development Programme (UNDP) website [http://www.undp.org/content/undp/en/home/operations/about\\_us.html](http://www.undp.org/content/undp/en/home/operations/about_us.html) consulted the 10th of March 2017.

<sup>41</sup> The Human Development Index is a measure of average achievements in human development taking into consideration long and healthy life, decent standards of living, and knowledge. So, the HDI is a measure on these three dimensions. In turn, the three dimensions are composed by three index that are life expectancy, education, and gross national income (GNI). The result of this average gives an overall vision of the situation



is 8 per cent lower than that of men.<sup>42</sup> Their participation in the labour market and in the educative process is widely below the average of men. Women participation in the labour market in 2014 worldwide was 51 per cent compared to those of men that was 77 per cent. The report shows that in 2014 the 60 per cent of women of 25 years of age had at least a secondary education, while men of the same age were the 67 per cent.<sup>43</sup>

In almost all parts of the world, women suffer from physical violence and abuses and lack of support for their fundamental rights. Some of them are part of ethnic groups, religious minorities or lower castes who are discriminated, exploited, or treated like objects without any access to their freedom and rights. The mix of all the aspects listed above, make us talk about “feminisation of poverty”<sup>44</sup>, as it is proved that most poor people in the world is female.<sup>45</sup>

It has been registered that women in poor rural areas are more likely to suffer the greatest discriminations and violence: for example, they are more likely to be sold by their relatives or acquaintances to traffickers for money, as men are seen as useful for the economy of the family while women are not.<sup>46</sup> So, as the report affirms, “globally, women suffer the most pervasive discrimination”.<sup>47</sup> Gender inequality is one of the causes fostering trafficking in women<sup>48</sup> as it leads to poverty and therefore, poverty is one of the catalyst of human trafficking. It is a vicious circle.

At the same time, the phenomenon of *globalization* in the early 1990s contributed to widening the gap between developed and developing countries, making the economic position of women in poorer areas less stable and precarious<sup>49</sup>, while it brought a new way in driving commerce, free market economies, new speed in communication and transportation and facilitated the process of migration all over the world. However, it created

---

of human development in each country or area. Information taken in the United Nations Development Programme website <http://hdr.undp.org/en/content/human-development-index-hdi> consulted on the 10th of March 2017.

<sup>42</sup> United Nations Development Programme, Human Development Report 2014 - Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience, 2014, New York , p. 39 taken from UNDP website <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf> consulted the 9th of March 2017

<sup>43</sup> *Ibid.*, p. 41

<sup>44</sup> Monzini, P., *Il mercato delle donne - Prostituzione, tratta e sfruttamento*, 2002, Donzelli Editore, p.36

<sup>45</sup> Cameron, S. and Newman, E., *Trafficking in humans: structural factors*, 2007, p. 38

<sup>46</sup> Turek, J. M., Human Security and Development Issues, contained in Burke, M. C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, p. 80

<sup>47</sup> United Nations Development Programme, Human Development Report 2014, p. 74

<sup>48</sup> Turek, J. M., Human Security and Development Issues, 2013, p. 79

<sup>49</sup> Burke, M. C., Introduction to Human Trafficking, contained in Burke, M.C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, p. 10

a new trafficking industry in which people are exploited for high profits at low risks<sup>50</sup> also taking advantage of migration flows. For example, in transition economies like former Soviet Union countries just after the end of the Cold War, the privatisation process of the economy registered a high rate of women unemployed in rural areas that fostered the recruitment for sexual exploitation.<sup>51</sup>

The idea of female migration changed radically over the last fifty years due to the globalization process and the increasing in women poverty, unemployment, and lack of proper education. Women began to migrate on their own, and not just following their husbands who were the breadwinners of families. Hence, women themselves became the primary source of income of their family searching for a better future abroad in rich countries or in urban areas of their country of origin. For this reason, many scholars talk about the “feminisation of migration”<sup>52</sup>, a concept in contrast with the traditional view about migration and stereotypes about the male migrant. This phenomenon is evident observing data provided by the International Organisation for Migration (IOM)<sup>53</sup>, as in 2015 women were the 48 per cent of the whole migrant population.<sup>54</sup> In certain parts of the world, women who migrate are those not married, divorced, and not well seen by their community and in search for new opportunities. Some women decide to migrate from poor areas to escape violence, discrimination, hoping for emancipation and freedom from an oppressive society who sees the role of woman as subordinate.<sup>55</sup> Increasing women's migration flows encouraged traffickers to recruit them (especially young ones) who are willing to emigrate, by cheating them offering jobs abroad or marriage opportunities, making high profits on their dreams and expectancies.

---

<sup>50</sup> Turek, J. M., *Human Security and Development Issues*, 2013, p. 75; Williams, P., *The role of transnational organized crime*, contained in *Trafficking in humans: social, cultural and political dimensions*, 2007, p. 149. In his essay, Williams explains that trafficking is a low risk activity because of the weakness of legal frameworks in country of origins and the criminalisation of victims, which can suffer violence and treats also from the part of law enforcement agents.

<sup>51</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, 45 and Hughes, D. M., *Trafficking for Sexual Exploitation: The case of the Russian Federation*, IOM Migration Research Series n° 7, 2002, International Organization for Migration, pp. 8-9

<sup>52</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, 51

<sup>53</sup> The International Organisation for Migration (IOM) was established in 1951 and is the United Nations agency dealing with the issue of migration. It counts 166 States parties and 8 with the status of observer. It works for a better regulation of migration, with regards to human rights, promoting international cooperation and providing aid for migrants in need. IOM recognises the link between migration, and development and the human right to freedom of movement. Information taken from <https://www.iom.int/about-iom>, consulted the 23rd of March 2017.

<sup>54</sup> 2015 Global Migration Trends Factsheet, 2016, IOM's Global Migration Data Analysis Centre, p. 5, [http://publications.iom.int/system/files/global\\_migration\\_trends\\_2015\\_factsheet.pdf](http://publications.iom.int/system/files/global_migration_trends_2015_factsheet.pdf) consulted the 9th of March 2017

<sup>55</sup> Monzini, P., *Il mercato delle donne - Prostituzione, tratta e sfruttamento*, p. 21

Global migration itself has become sensitive to the issue of trafficking, especially the irregular one. In this concern, it is possible that an irregular migrant may become a victim of trafficking. Not only could the undocumented migrant be smuggled to cross borders, but he or she may become vulnerable to trafficking in case he or she cannot immediately pay smugglers, leading to a situation of exploitation to repay his/her debt (*debt bondage*).<sup>56</sup>

Also, refugees are at risk to fall into the wrong hands in their attempt to escape conflicts and persecutions in their home country.<sup>57</sup> The desperate escape from war and the urgent need for protection in a safe place is used by traffickers to recruit people. Unaccompanied minors are the most vulnerable in this sense.<sup>58</sup> Moreover, as Kara explains, refugee camps are “the most effective location for the use of deceit in recruiting slaves”<sup>59</sup>: refugees are trapped inside refugee’s camps, so the only way to escape is to accept fake job opportunities of traffickers, as many of them know to have no other choice. Also, refugee camps are not so safe as displaced people think. Criminal gangs are frequent and they are dedicated to various criminal acts, including trafficking.<sup>60</sup>

Trafficking in human beings is exacerbated in areas affected by war, armed conflicts, and also environmental disasters: political instability and the collapse of the rule of law are other push factors that make easy the work of traffickers, especially in internal trafficking in human beings for forced enrolment of child soldiers and sex slavery.<sup>61</sup> It has been registered that also the presence of some foreign contingents in a conflict area may foster trafficking for sexual exploitation.<sup>62</sup>

Moreover, the lack of proper legislation and the presence of a high rate of corruption of law enforcement agents or border controls can facilitate the illegal trade in humans and the presence of organised crime networks who engage themselves in trafficking because of its high profits. Frequently, this situation is present both in many countries of origin, transit,

---

<sup>56</sup> UNODC, *Global Report on Trafficking in Persons 2016*, p. 60

<sup>57</sup> *Ibid.*, p. 17

<sup>58</sup> European Commission, Report on the progress made in the fight against trafficking in human beings (2016), May, 19th 2016, Brussels, p. 8, [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report\\_on\\_the\\_progress\\_made\\_in\\_the\\_fight\\_against\\_trafficking\\_in\\_human\\_beings\\_2016.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016.pdf) consulted the 9th of March 2017

<sup>59</sup> Kara, S., *Sex Trafficking - inside the business of modern slavery*, 2009, p. 7

<sup>60</sup> Turek, J. M., *Human Security and Development Issues*, 2013, p.83

<sup>61</sup> UNODC, *Global Report on Trafficking in Persons 2016*, pp. 64-65; Turek, J. M., *Human Security and Development Issues*, 2013, p. 82

<sup>62</sup> UNODC, *Global Report on Trafficking in Persons 2016*, p. 10; McCabe, K. A., *Common Forms: Sex trafficking*, contained in Burke, M.C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, p.138; Cameron, S. and Newman, E., *Trafficking in humans: structural factors*, contained in *Trafficking in humans: social, cultural and political dimensions*, 2007, p. 49.

and destination, where traffickers take advantage of incomplete or non-existent laws to combat human trafficking or easily corruptible police officers. Furthermore, it is common for traffickers in these countries to hide behind apparently legal employment agencies or travel agencies to recruit quickly among people, especially women, with the desire to work abroad.<sup>63</sup>

Trafficking process is possible also because *pull factors* exist. Above all, the possibility to improve one's economic situation is considered one of the main pull factors in discussing trafficking. For this reason, it has been registered that the wealthier a country or a region are, the higher are migration and trafficking flows that enter. This is the case for Europe and North America, where the number of victims detected is very high.<sup>64</sup> Moreover, migrations, the abundance of human beings and the legislative framework making difficult the legal entrance of migrants indirectly favour the so-called *informal markets* (or grey areas of the economy) and forms of exploitation based on illegal migration.<sup>65</sup>

*Demand* for cheap sex services in the countries of destination is very important and influences heavily the process of trafficking.<sup>66</sup> Clients' preferences and needs in the countries of destination are also considered: young women are more likely to be trafficked, women of certain nationalities, colour of their skin or ability are at disposal of traffickers and exploiters, who conduct their business to meet all demand existent. Sometimes clients displace themselves to meet the *supply* for sex service: this is the case of sex tourism, especially where minors are sexually exploited.

Connected to the issue of demand, another pull factor of sex trafficking is *profit*. As a high lucrative illegal business, it permits to minimize costs for recruiting, transportation, and exploitation of women, maximizing profits. In a normal labour condition, employers pay labour cost to their workers. In the case of sex trafficking, labour costs are almost nothing because of women's condition of exploitation. Moreover, the more women are available on the illegal sex market, the cheaper is the price for their services. At a cheaper price, more clients may afford it, further decreasing prices, in a situation of *elasticity of demand*.<sup>67</sup> If

---

<sup>63</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, p. 48

<sup>64</sup> UNODC, *Global Report on Trafficking in Persons 2016*, p. 5

<sup>65</sup> Engle, L. E., *The world in motion: short essays on migration and gender*, 2004, International Organisation for Migration, pp. 66-67

<sup>66</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, p. 49

<sup>67</sup> Kara, S., *Sex Trafficking - inside the business of modern slavery*, 2009, p. 34-35; Kara explains that economists use the curve of demand to understand the level of it and the relative price of a commodity. If the price increases, the demand decreases. Elasticity of the price means that the percentage of demand decreases for every 1 per cent of price increase. Not all commodities are elastic: it depends on the needs and preferences of clients, the availability of substitutes goods on the market etc. Kara uses this economic assumption to draw

prices raise abruptly, the high revenue-generating of sex trafficking would be seriously in trouble.<sup>68</sup> For this reason, as we will see, address demand for sex services is one of the consolidated strategies of almost all legislative instruments analysed.

To conclude, we have seen how in the last two decades sex trafficking has deep roots in the global situation both in countries of origin and in those of destination. We have seen that we can look at these causes of trafficking in a social, political, and economic perspective, from gender inequalities and discrimination to poverty, war, and migrations. Moreover, in countries of destination, the desire for cheap sex services, higher profits and the presence of a wealthy economic environment which attract migrants, foster the supply-demand model of sex trafficking. This proves how sex trafficking is a multi-faceted phenomenon worldwide. One step further is to briefly draw a model about how the process of trafficking is carried, from the country of origin to that of destination.

## 1.2 The process of sex trafficking

To define a unique model of the trafficking process is not a simple task: mechanisms vary according to the structure of the offenders, the structure of the journey from one country to another, how economic transactions are carried, means of transportation and communication used, methods of recruitment, coercion, and control over victims for the purpose of exploitation. There are differences in the process of trafficking according to the nationality of traffickers and victims. The inexistence of a common pattern due to the illegality of the phenomenon is another proof of its complexity and heterogeneity.<sup>69</sup> Moreover, offenders can change and adapt the process to new laws of both States of origin and transition which may come into force to contrast trafficking.<sup>70</sup> In this section, we would like to attempt to find common points to better understand how the process of trafficking works and why it is so efficient.

As we said, human trafficking, especially the one for sexual exploitation, is one of

---

an economic model of sex services in an Indian brothel. He used interviews to common people he gathered in the streets, he imagined the level of their income and expenses for sex each month. He proved that the demand for sex services in that brothel is very elastic: if the price for a sex service doubles, the demand drops by the 80 per cent, according to Kara's economic model. He demonstrated that substitute goods for sex services are alcohol and pornography. So, having trafficking victims forced to perform sex acts keeps prices low, and demand high, maximising profits for traffickers and exploiters.

<sup>68</sup> *Ibid.*, p. 37.

<sup>69</sup> Monzini, P., *Il mercato delle donne - Prostituzione, tratta e sfruttamento*, 2002, Donzelli Editore, p.55

<sup>70</sup> Bernardotti, A. and Carchedi, F., *L'immigrazione nigeriana in Italia*, contained in Bernardotti, A., Carchedi, F., Ferone, B., *Schiavitù emergenti - la tratta e lo sfruttamento delle donne nigeriane sul Litorale Domitio*, 2005, Ediesse, Roma, p. 51

the most profitable illegal businesses in the world<sup>71</sup> and it attracts interests in transnational and local actors both in countries in origin, transit, and destination. Actors involved in the business of trafficking are of different nature: they could be individual, sometimes members of the family or acquaintances of the victim, small and local criminal organised groups, or transnational organised networks.<sup>72</sup> The latter work in more than one country, and they may also be involved in firearms and drug trafficking. Criminal networks are sometimes less hierarchical and decentralised than local groups and for this reason they are difficult to detect. Different transnational organised groups may cooperate one another or may compete. They may trade single individuals or small groups in a well organised division of labour developing in phases that could be sometimes conducted by *subcontractors* to expand the business and to maintain illegality.<sup>73</sup>

Globalization favoured traffickers with a fast development of new communicative technologies at a relative cheap price and easy availability, such as mobile phones, computers, social networks, emails and even Skype calls. This made trafficking hard to detect because of their ability to adapt to new situations and contexts.<sup>74</sup>

Approximately, the phases of trafficking are the *recruitment (or acquisition)* of the victim in the country of origin, the *transport or movement* and the *exploitation* in the country of destination.

Concerning the recruitment of women and girls, various systems have been observed, namely five among the most used.<sup>75</sup> Every type of organised crime is specialised in recruiting victims in its own way. For instance, in the European (and Italian) case, the prominent ones are the Russian mafia, the Albanian mafia, and above all the Nigerian organised crime.

Among the different ways of recruiting, criminal organisations may *deceive* victims through employment and travel agencies that select them and provide visas and documents for the journey, organising the whole process. This is method used mostly by the Russian mafia according to criminal proceeding and witnesses.<sup>76</sup> Other ways of deceit involve the

---

<sup>71</sup> United Nations Office on Drug and Crime (UNODC), Human Trafficking - people for sale factsheet, United Nations Office on Drug and Crime website [https://www.unodc.org/documents/toc/factsheets/TOC12\\_fs\\_humantrafficking\\_EN\\_HIRES.pdf](https://www.unodc.org/documents/toc/factsheets/TOC12_fs_humantrafficking_EN_HIRES.pdf) consulted the 10th of March 2017.

<sup>72</sup> Cottingham M. et al, *Underlying Causes*, contained in Burke, M.C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, p. 60

<sup>73</sup> *Ibid.*, p. 63

<sup>74</sup> Cameron, S. and Newman, E., *Trafficking in humans: structural factors*, 2007, pp. 30-31

<sup>75</sup> Kara, S., *Sex Trafficking - inside the business of modern slavery*, 2009, p. 6

<sup>76</sup> Monzini, P., *Il mercato delle donne - Prostituzione, tratta e sfruttamento*, 2002, p.60

promise of a good work abroad<sup>77</sup>, the possibility of marriage, the opportunity of studying abroad for those women who decide voluntarily to migrate for the purposes described in the previous section. Sometimes the fake jobs are found in newspapers and, with the advent of Internet, in websites. In some cases, recruiters contact directly girls and their families.

Recruiters could also pretend to be emotionally interested in the victim, convincing her to migrate abroad for love and sending her to the exploiters who are in the country of destination.<sup>78</sup> It is the phenomenon of the *loverboys*, used mostly in Central and Eastern Europe.<sup>79</sup> Sometimes victims can be sold to traffickers by their family or relatives, especially children and young women coming from poor areas.<sup>80</sup>

Some victims are abducted, but it is not a common practice in the recruitment of victims for sex trafficking unlike the mainstream. For traffickers, to move a person who has been kidnapped is a risky business, as she is more willing to escape and difficult to control.

Victims could be recruited by former victims in their country of origin. This is a phenomenon typically widespread in the Nigerian model of sex trafficking, where the role of women is pivotal. In fact, former trafficked prostitutes, called *Madame*, return to their homeland under the admiration of all and convince young and poor girls to migrate, imitating them.<sup>81</sup> Of course, it is a false promise, but the efficiency of this method is extraordinary because of the high level of trust and entrustment. This way of recruiting is used also in Indian trafficking, where former sex slaves, called *gharwali*, return to their village to recruit new women.<sup>82</sup>

Successively, victims must be displaced to the countries of destination. The *transport* may occur with every means of transportation known, even on foot. The movement involves a country of origin, eventually countries of transit and a country of destination. Instead, considering internal trafficking, we have a single country that behaves as country of origin, transit, and destination.

As reported in the section above, transportation of victims is made easier by the high

---

<sup>77</sup> Hughes, D. M., *Trafficking for Sexual Exploitation: the Case of the Russian Federation*, 2002, p.34. The report by the IOM indicates some examples of fake jobs used by the Russian recruiters, namely, waitresses or bartenders, fruit gatherers, models, nannies, teachers, dancers, cooks, translators, secretaries etc.

<sup>78</sup> *Ibid.*, pp. 48-49

<sup>79</sup> Kara, S., *Sex Trafficking - inside the business of modern slavery*, 2009, p. 9; Monzini, P., *Il mercato delle donne - Prostituzione, tratta e sfruttamento*, 2002, p. 48

<sup>80</sup> Cameron, S. and Newman, E., *Trafficking in humans: structural factors*, 2007, p. 24

<sup>81</sup> Bernardotti, A. and Carchedi, F., *L'immigrazione nigeriana in Italia*, contained in Bernardotti, A., Carchedi, F., Ferone, B., *Schiavitù emergenti - la tratta e lo sfruttamento delle donne nigeriane sul Litorale Domitio*, 2005, p.56. See *infra* Chapter 2 paragraph 2.2 of the present study.

<sup>82</sup> Kara, S., *Sex Trafficking - inside the business of modern slavery*, 2009, p. 9

rate of corruption to law enforcement agents at borders and by the production and use of travel and identity documents provided to victims. If trafficking is carried by a transnational organised network, the phase of transport is performed by different actors during the journey, who at every step may sell the girls to another trafficker in clandestine auctions in hotels or apartments.<sup>83</sup> As reported by Monzini, prices of girls are decided according to the length of the journey, their beauty etc. The price of the trade is charged on the final amount of money that the victims owes to the final exploiter once arrived in the country of destination. Some victims are not sold during the journey as they are recruited, moved, and exploited by the same single criminal group.<sup>84</sup>

During the journey, victims can be forced to begin to sell their bodies in one country of transit as a form of training, and they could suffer the worst abuses and violence perpetrated by traffickers themselves.<sup>85</sup> In fact, frequently victims are informed during the journey that they will be exploited as sex slaves and they have a debt to repay to their exploiters. If the victim tries to escape or refuses it, she could be beaten, raped and abused by traffickers until she complies.

We reported that some victims of trafficking are smuggled but are not able to afford the price of the journey so they are exploited to repay their debt: this is the case in which the movement of the trafficked person occurs before the act of recruitment because originally it consisted in a case of *smuggling*, and not trafficking. Kara observes that the issue of movements became progressively composed by two steps, namely the transportation from a rural area to an urban area in the country of origin, a first exploitation, and then victims are transported to a designated country of destination.<sup>86</sup> The reason for this new trend is found in the will and need to exercise further control on victims, proving a high rate of efficiency of the organised crime involved.

Finally, once they arrive at destination, victims are *exploited*. They are forced to have sex acts with numerous clients each day at full rhythm, giving all earnings to exploiters or pimps. In the case of the Nigerian sex trafficking, money is collected and managed by the Madames, former prostitutes in the country of destination, that supervise small groups of four

---

<sup>83</sup> This method is typically used in Eastern European model of trafficking, especially the Albanian and Russian models as underlined by Monzini, P., *Il mercato delle donne - Prostituzione, tratta e sfruttamento*, 2002, p. 66; Ciconte, E. and West Project, *The trafficking flows and routes of Eastern Europe*, 2005, Morandi, Fusignano (RA), p. 68

<sup>84</sup> Monzini, P., *Il mercato delle donne - Prostituzione, tratta e sfruttamento*, 2002, p. 66

<sup>85</sup> We will see this case in chapter four, referring to young Nigerian women that before coming to Italy are forced to engage in sex work in Libya for a while.

<sup>86</sup> Kara, S., *Sex Trafficking - inside the business of modern slavery*, p. 11



or five girls.<sup>87</sup> Victims may be exploited in different venues, namely brothels, clubs, massage centres, apartments, hotels, and the street. In each of these venues, victims of trafficking suffer the worst violence, both physical and psychological, used to control them and to break their spirit in order not to allow them to escape. In fact, the purpose of many exploiters is to lead the victim toward a sort of Stockholm Syndrome<sup>88</sup>, in which she may think she has no other choice than continuing her life as a sex slave. Among the methods of control over victims one may find violence, rape, threats to the victim and its family at home, deprivation of food, water and sleep, isolation, the confiscation of documents so as they are not identified, keeping them in a situation of lawlessness in the country of destination, to make them believe that the police will harm them rather than help them, impeding this way the access of victims to protection and assistance measures.

A common practice of all types of sexual exploitation is the use of the *debt bondage*. The Supplementary Convention on the Abolition of Slavery, signed in Geneva in 1956, in article 1, paragraph (a) defines debt bondage as:

the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.<sup>89</sup>

Under this regime, victims are forced to repay to their exploiters the costs for the journey, the food, the lodging, documents and small expenses for clothes, and personal objects. To keep the victim under control, the debt is progressively increased with false

---

<sup>87</sup> Bernardotti, A. and Carchedi, F., *L'immigrazione nigeriana in Italia*, contained in Bernardotti, A., Carchedi, F., Ferone, B., *Schiavitù emergenti - la tratta e lo sfruttamento delle donne nigeriane sul Litorale Domitio*, 2005, pp. 50-51

<sup>88</sup> According to the online English Oxford Living Dictionaries, the Stockholm Syndrome is composed by "Feelings of trust or affection felt in many cases of kidnapping or hostage-taking by a victim towards a captor." Information available at [https://en.oxforddictionaries.com/definition/stockholm\\_syndrome](https://en.oxforddictionaries.com/definition/stockholm_syndrome) consulted the 14th of March 2017. Many scholars refer to the Stockholm Syndrome referring to the condition of victims of sex trafficking in relation to their exploiters. Reference to the Stockholm Syndrome of the victims of trafficking in Burke, M. C., *Introduction to Human Trafficking*, contained in Burke, M.C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, p.9. Burke affirms that this phenomenon is more frequent in children rather than in adults.

<sup>89</sup> United Nations Supplementary Convention on the Abolition of Slavery, the Slave trade, and institutions and practices similar to slavery, 226 UNTS 3, adopted by the United Nations Conference of Plenipotentiaries with Resolution 608(XXI) of the Economic and Social Council in April, 1956, done Sept. 7th, 1956, entered into force in accordance with article 13 on April, 30th, 1957. Article 1, para. (a). Available in the OHCHR website at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx> consulted the 14th of March 2017

expenses and false contracts not legally binding, so the victims must work more and for a longer time to repay it.<sup>90</sup>

A peculiar method of coercion is that exercised by Nigerian traffickers, especially the Madames, through magical and *voodoo* or *juju* rituals before leaving Nigeria<sup>91</sup>, deriving from animism. Many victims from Nigeria are particularly in awe of these practices, considering them as oral unbreakable contracts. Subjects of these rituals are the victim herself or her family.

Even though every organised group has its own method and process, there is an attempt to define some standard roles involved in these three major steps of human trafficking. Among them we have: the *recruiter*, that is the one who identifies and contacts the victim in the first phase of trafficking. The *broker, or agent* who is the middle person between the recruiter and the employer. The *contractor*, who is in charge of supervising all exchanges in the process of trafficking. The *transporter* that is the one in charge of displacing victims from a country to another and it could be more than one. The *guard*, who controls victims and ensures their compliance: this role is that given to former prostitutes or Madames in the country of destination. Finally, the *pimp*, the final purchaser of the victim of sex trafficking and the final exploiter, that directly or indirectly controls the victim, making profit of it, and abusing or perpetrating violence against her.<sup>92</sup> Another role is the one of the *sponsor*, typical of Nigerian prostitution, that is the one who pays for the whole journey of the victim and to whom the victim should repay her debt. As we will see, sometimes the sponsor is the Madame herself, who deals with the recruitment in Nigeria.<sup>93</sup>

---

<sup>90</sup> Turek, J. M., *Human Security and Development Issues*, contained in Burke, M.C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, p.78

<sup>91</sup> This practice is frequently used with girls from the Edo State in South Nigeria, on the Niger Delta. Rituals are sometimes carried by the Madame and consist in the cutting of a lock of hair, pubic hairs, or nails of the victim, sealing a bond of loyalty to the traffickers, the family and ancestors and make her swear to repay her debt to traffickers. To break this bond is considered a severe act of betrayal. For this reason, less frequently Nigerian trafficked women are willing to search help through the protection and assistance measures. For further information Bernardotti, A. and Carchedi, F., *L'immigrazione nigeriana in Italia*, contained in Bernardotti, A., Carchedi, F., Ferone, B., *Schiavitù emergenti - la tratta e lo sfruttamento delle donne nigeriane sul Litorale Domitio*, 2005, p. 53, and Kara, S., *Sex Trafficking - inside the business of modern slavery*, 2009, p. 90 and Monzini, P., *Il mercato delle donne - Prostituzione, tratta e sfruttamento*, 2002, p. 74. See also Chapter 2, paragraph 2.2 of the present study

<sup>92</sup> Burke, M. C., *Introduction to Human Trafficking*, contained in Burke, M.C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, pp. 16-17

<sup>93</sup> See Chapter 2, para. 2.2

### 1.3 Purpose of the analysis

The main purpose of this study is to deal with trafficking in human beings, especially sex trafficking of women. It will not deal with *smuggling* in migrants even if, as we saw, the two phenomena could be highly correlated. The difference between the two is the presence or not of the exploitative purpose, and the subject affected by the crime: the purpose of trafficking is the exploitation for financial gains, and the subject affected by the crime is the person per se. Smuggling, instead, is a crime against the State law and it is defined as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.<sup>94</sup>

To draw a perfect scheme describing the mechanism of sex trafficking is a difficult task: every criminal group behaves in its own way, making the understanding of this phenomenon quite schizophrenic, and making this heterogeneity the real efficiency and fleetingness of trafficking. The process is sophisticated through time and history, being influenced also by cultural models of traffickers and victims and historical challenges.

Therefore, the legislation process should take care of these aspects, not only in the criminalization of traffickers, but also in the protection and assistance to victim’s project. This is the final aim of the present study: to present the issues of protection and assistance to victims of trafficking using a victim-oriented lens, not criminalising them or focusing only in the penalisation of traffickers, ignoring the need for help and shelter of victims.

A human rights-based approach is the main focus of the present study as trafficking has been recognised as a serious crime and a violation of human rights. In addition, trafficking in women is considered as a form of gender violence and discrimination. Focusing on victims and their protection can foster also the repressive task against the crime per se because victims could be led to denounce their traffickers and exploiters if they feel protected by institutions.

Moreover, the present study will support an analysis on the comprehensive approach in the fight against trafficking in human beings, trying to understand if it works in practice. Comprehensive approach means the tendency of the last ten years to deal with trafficking in human beings unifying efforts of different actors in order to reach the better results. It aims at tackling trafficking in all its aspects, from the preventive strategies to discourage structural

---

<sup>94</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, done Nov. 15, 2000, GA Res. 55/25, Annex III, UNGAOR, 55th Session, Supp. No 49, at 62, UN Doc. A/45/49 (Vol.I) (2001), entered into force Jan. 28, 2004, at art. 3

causes, respond effectively to the crime, protecting victims and vulnerable subjects in compliance with human rights.<sup>95</sup>

After this overall framework of what is sex trafficking and what are its features, the present study will attempt to give in the first chapter a view of the principal legislation against human trafficking at international and European (regional) level, with an insight into the Italian national legislation. The second chapter will focus on gender issues and human rights violations and on the issue of protection of individuals in considering sex trafficking, reflecting on its link to slavery and dealing with the debate on prostitution that animated the negotiations of the Palermo Protocol. The third chapter will focus on a comparison between the three different levels of legislation (international, regional, and Italian) with regards to the different protection, assistance and prevention measures for trafficking victims. A case study will be presented in the fourth chapter, that is the one of Verona in Northern Italy, a city in the middle of European trafficking in persons, that is part of the new regional N.A.Ve project (Network Anti Tratta Veneto). The case study presented will support the crucial question of this work: does the current comprehensive protection and assistance mechanism for victims of trafficking in human beings for sexual exploitation really work?

This final part will be ground on interviews and depositions of operators, police officers and a former trafficked woman that now works as cultural mediator for other trafficking victims. For reason of privacy all the names of people interviewed will be omitted or censored in the present study.

---

<sup>95</sup> United Nations Office on Drugs and Crime, *Comprehensive Strategy to Combat Trafficking in Persons and Smuggling of Migrants*, 2012, UNODC, p. 7 available at [http://www.unodc.org/documents/human-trafficking/UNODC\\_Strategy\\_on\\_Human\\_Trafficking\\_and\\_Migrant\\_Smuggling.pdf](http://www.unodc.org/documents/human-trafficking/UNODC_Strategy_on_Human_Trafficking_and_Migrant_Smuggling.pdf) , consulted 8<sup>th</sup> June 2017

## CHAPTER 1: TOWARDS A DEFINITION: THE LEGAL INSTRUMENTS IN INTERNATIONAL, REGIONAL AND ITALIAN LAW

### 1. Historical Background

If we consider human trafficking as a contemporary form of slavery<sup>96</sup>, it is possible to affirm that it is included in the most ancient form of domination of a human being above another in history.<sup>97</sup> Following the evolution of civilisation, slavery and trafficking in persons appeared in different shapes and characteristic over time and space and experienced different paths through the legitimisation on one hand, and abolitionism on the other hand. The coerced recruitment, the purchase and transportation of humans seen as commodities for forced labour in agricultural fields or for sexual exploitation in the past was fostered by the possibility of maximize profits and minimise the costs of labour, by the need of entertainment, or by the need of the expression of dominion. In fact, slaves of every sex and age were traded for free work, and they were usually captured in warfare among enemies or ethnic minorities as a test of strength.<sup>98</sup>

In Ancient Greece and in the Roman Empire people were sold and bought to work in the agricultural sector, in mines, in construction of public works or in households. The Greek civilisation established also a profitable trafficking system in the Aegean Sea, involving men for labour exploitation, while women and girls, usually treated as spoils of war, were exploited for sexual purposes.<sup>99</sup> Also, the Roman Empire was involved in trafficking and exploitation of slaves in its society system. The advent of Christianity changed the European pattern, as it was not acceptable to sell a Christian to a non-Christian. In fact, Medieval times in Europe registered the advent of feudalism, that was not properly a form of slavery, but instead it was *serfdom*: serfs had their own rights and they received by their feudal lord protection and justice, while slaves were dehumanized, considered not worth to have any

---

<sup>96</sup> The first to define trafficking in human beings a form of slavery was Nina Boyle, funding member of the Women's Enfranchisement League in South Africa and activist of the Women's Freedom League. In 1932 in her pamphlet "What is Slavery?" she denounced the issue of forced marriages of girls in India, complaining that this practice was not included in the 1926 Slavery Convention and totally forgotten by associations aiming at abolish slavery like the Anti-Slavery Society. She affirmed that girls are bought by their future husbands as goods and this practice deprives them of freedom. Despite the property of the girl owned by her husband, the Convention turned a blind eye on this issue, claiming that these are cultural practices. For further information, see Bianchi, B., *Nina Boyle, Che cos'è la schiavitù? Un appello alle donne (1932)*, 2017, Deportate, esuli, profughe n. 34/2017 [forthcoming].

<sup>97</sup> M. C. Burke, *Human Trafficking – Interdisciplinary Perspectives*, 2013, Routledge, New York, p. 5; Obokata, T., *Trafficking of human beings from a human rights perspective: towards a holistic approach*, 2006, Martinus Nijhoff Publishers, Boston, p. 10

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.* p. 34

basic access to human rights and totally subjugated to their master that can do whatever he wanted.

Europeans began to be involved in foreign slave trades and trafficking, like in Islamic societies, with the great amount of purchase and trafficking of women and girls to exploit them as concubines, prostitutes and dancers that were paid at high prices. The more the woman or the girl was light skinned, the higher was the price: this is the beginning of the what will be known as *white slavery*.<sup>100</sup>

With the discoveries and opening of new sea routes to the so-called *new world* and the establishing of colonies in North and South America in the XVI century, Europeans entered in the African slave market and established the first intercontinental system of trafficking in human beings: the Atlantic Slave Trade. Slaves were captured in Africa through violent and brutal means (warfare, tribal conflicts, kidnappings etc.) and transported to American colonies to work in plantations to substitute the local population that was dying because of endemic diseases brought by Europeans. The new Atlantic slave trade introduced also a form of racial classification of slavery: white slavery on one side, and black, negro slavery on the other.

From the XVIII century, new abolitionist pressures came from the Enlightenment thinkers to criminalise and abolish slave trade and finally in the XIX century slave trade was abolished and began to be considered as a threat to human rights and this idea progressed on a global scale and spread in all continents. Numerous international Conventions and declarations on human rights began to condemn slavery from the beginning of the XX century.

Human trafficking became one of the major concerns of activists and international organisations in the last thirty years. However, the real origin of the campaign against human trafficking can be traced back in anti-prostitution and anti-sexual exploitation movements, which fought against the phenomenon under the name of the aforementioned *white slavery*.<sup>101</sup>

In considering the evolution of human trafficking definition in international law, one can immediately notice that we must wait until 2000, with the *United Nations Convention on Transnational Organized Crime and its Protocols Thereto* to have a clear and precise definition of what trafficking in human beings is.

---

<sup>100</sup> *Ibid.*, p. 38; Obokata, T., *Trafficking of human beings from a human rights perspective: towards a holistic approach*, 2006, p. 11

<sup>101</sup> Quirck, J., *Modern Slavery*, contained in *Routledge History of Slavery*, edited by Heuman, G. and Burnard, T., 2011, Routledge, Abingdon (UK), p. 333

In earlier treaties, one can find mention of the expression white slave traffic in the *International Agreement for the Suppression of the White Slave Traffic*, promoted by the French Government and signed in Paris the 18<sup>th</sup> of May 1904 and entered into force in 1905.<sup>102</sup> Twelve States ratified the Agreement, mostly Europeans, and applied to their dominions, protectorates, and colonies. Here, *white slavery* is a term used referring to the recruitment for prostitution of European women and girls by non-Europeans and European traders using the force or fraud.<sup>103</sup> It was distinguished by *female sexual slavery* which refers to African slaves exploited for sexual purpose. In fact, the Agreement is inherently discriminatory, as it did mention only white slavery, excluding women and girls from colonies, dominions, and protectorates, that were still seen as inferior at the time. So, there was an implicit moral distinction between the two terms, fostering the stereotype of poor and innocent coerced white women exploited abroad for immoral practices.<sup>104</sup>

In the preamble, the signatories expressed the desire “of securing to women of full age who have suffered abuse or compulsion, as also to women and girls under age, effective protection against criminal traffic known as the ‘White Slave Traffic’”.<sup>105</sup> The Agreement encouraged the coordination of all information among national authorities to combat and prevent the recruitment of women and girls for “immoral purposes”.<sup>106</sup> States should protect and establish the identity and civil status of women and girls in general and those already fallen into the trap of trafficking for white slavery even if they are of foreign nationality, without criminalised them. Jansson notes that the Agreement implicitly discriminate those who were previously prostitutes and successively were trafficked, reinforcing the myth of the coerced innocent victim of trafficking that still exists today.<sup>107</sup> Despite immoral life was the synonym for prostitution and State signatories wanted to get their society rid of the problem, the Agreement states at article 3 that assistance to victims of white slavery should come from charitable institutions or private individuals, offering security within legal limits and for a

---

<sup>102</sup> International Agreement for the Suppression of White Slave Traffic, 1 LNTS 83, done May 4 1904, entered into force July 18, 1905, amended by a Protocol approved by the UN General Assembly on Dec. 3, 1948 30 UNTS 23, (hereinafter International Agreement for the Suppression of White Slave Traffic), available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-8&chapter=7&clang=en#1](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-8&chapter=7&clang=en#1) , consulted the 1<sup>st</sup> March 2017

<sup>103</sup> Gallagher, A. T., *The International Law of Human Trafficking*, 2010, Cambridge University Press, New York, p.12

<sup>104</sup> *Ibid.*, pp. 55- 56

<sup>105</sup> International Agreement for the Suppression of White Slave Traffic, at preamble.

<sup>106</sup> *Ibid.*, at art. 1.

<sup>107</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, 2015, p.64

limited period.<sup>108</sup> Repatriation of the woman involved in trafficking for immoral purposes is preferred to practical assistance within borders. Article 3 states that Governments may engaged themselves to send back victims to their countries of origin, if the latter wanted or if they are “claimed by persons exercising authority over them”.<sup>109</sup>

This Agreement was the son of his age: the unprivileged conditions of women are underlined in this article, treating women as properties of *someone* who can claim them and who exercise *authority* over them, implicitly assuming that women’s destiny was in the hand of someone else.<sup>110</sup> Moreover, no criminal provision has been established to penalise traffickers, focusing more on the exchange of information among States Parties to make easier cross-border cooperation. In fact, the international dimension of the issue is clearly stated in the first article, where the word *abroad* is underlined.<sup>111</sup> Surely, the 1904 Agreement was very broad and incomplete, but it was a starting point towards an identification of trafficking in human beings as a crime and to a non-criminalisation of victims, even if with limited instruments and a focus for still a very stereotyped analysis.

The provision of the 1904 Agreement were recalled six years later, in the *International Convention for the Suppression of the White Slave Traffic*, signed in Paris in 1910<sup>112</sup> and entered into force in 1912. The signatories of the Convention stated to punish in article 1 “whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes [...]”.<sup>113</sup>

The State parties broaden the *means* by which women and girls of every nationality could be led to sexual exploitation in different countries, not necessarily involving the use of force. There is still reference to white slavery. The Convention gave a remarkable improvement to the prosecution of traffickers and offenders and the cooperation among States, listing some methods to coordinate activities through intermediaries and diplomatic channels<sup>114</sup>, without mentioning any form of further protection and assistance to victims than the 1904 Agreement.

---

<sup>108</sup> International Agreement for the Suppression of White Slave Traffic, at art. 3

<sup>109</sup> *Ibid.*

<sup>110</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, 2015, p.66

<sup>111</sup> International Agreement for the Suppression of White Slave Traffic, at art. 1

<sup>112</sup> International Convention for the Suppression of the White slave Traffic, 3 LNTS278, done May 4 1910, entered into force Aug. 8, 1912, amended by a Protocol approved by the UN General Assembly on Dec. 3, 1948, 30 UNTS 23 (hereinafter 1910 White Slavery Convention), available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=VII-10&chapter=7&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=VII-10&chapter=7&clang=en) , consulted the 1<sup>st</sup> March 2017.

<sup>113</sup> *Ibid.*, at art. 2

<sup>114</sup> *Ibid.*, at article 6.



The same provisions are intended also for women and girls under age, which means under twenty years old.<sup>115</sup>

The concept of white slavery was abandoned in 1921 as it was not appropriate to describe the nature and the scope of the issue. Indeed, in 1921 the *International Convention for the Suppression of the Traffic in Women and Children* was concluded under the League of Nations in Geneva and entered into force the year after.<sup>116</sup> The term *traffic in women and children* entered in the preamble of the Convention and in the common sense, substituting the old-fashioned concept of white slave traffic.

Even if a clear definition of trafficking is still absent and there is a large reference to the two previous conventions, the 1921 Convention brought some changes in the understanding of the phenomenon. First, in article 2 it is mentioned that State parties must prosecute those engaged in trafficking of women and children of both sexes, not only women and girls and “within the meaning of article 1 of the Convention of May 4, 1910”.<sup>117</sup> The limit of age changed from twenty to twenty-one years old.<sup>118</sup> Moreover, the Convention aims at improving prevention against trafficking in women and children: in article 6 and in article 7 it is stated that States have to protect women and children, especially those on emigrant ships, not only at the point of origin or destination, but also during their journey, raising awareness on travelling women and children of the danger of being trafficked, indicating them places of assistance and accommodation and paying attention to them when they seek employment in another country.<sup>119</sup> These provisions were a sort of early stage of preventive strategies to vulnerable subjects.

The second Convention that was concluded under the supervision of the League of Nations in 1933 was the *International Convention for the Suppression of the Traffic in Women of Full Age*.<sup>120</sup> In the preamble, States parties expressed the will to expand further

---

<sup>115</sup> *Ibid.*, at Final Protocol (B).

<sup>116</sup> International Convention for the Suppression of Traffic in Women and Children, 9 LNTS 415, done Sept. 30, 1921, entered into force June 15, 1922, amended by a Protocol approved by the UN General Assembly on Oct. 20 1947, 53 UNTS 13, available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-2&chapter=7&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-2&chapter=7&clang=en), consulted the 1<sup>st</sup> March 2017.

<sup>117</sup> *Ibid.*, at article 2. It refers to the already quoted article: “whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes [...]” (See 1910 White Slavery Convention, at art. 1)

<sup>118</sup> *Ibid.*, at art. 5

<sup>119</sup> *Ibid.*, at art. 6 and 7.

<sup>120</sup> International Convention for the Suppression of the Traffic in Women of Full Age, 150 LNTS 431, done Oct. 11, 1933, entered into force the April 24, 1950 with the amendments provided by the Protocol of Nov. 12, 1947. Available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-)

the provisions of the previous Conventions.<sup>121</sup> In article 1, the Convention states that it punishes those who traffic in women and girls of full age “even with her consent”<sup>122</sup>, opening the way to a less stereotyped vision of the coerced innocent of the previous international legal instruments. The acts preliminary to trafficking in women (especially in countries of origin) are also punished by the Convention, and States parties engaged themselves in adjust their national laws to the provisions of the Convention.<sup>123</sup> Communication among States parties is very important, above all about the records of convictions and information about the offender and details about the immigration status of the offender himself.<sup>124</sup> It is interesting the use of the masculine in adjectives and pronouns in the text of the Convention, assuming that the offender has to be a man.

The points in common of the first four international conventions on the issue of trafficking in persons are a little attention to detailed measures about protection and assistance to victims, preferring repatriation, voluntary or compulsory, a system of shared information across borders, preserving the sovereignty of States in the regulation of migration and internal prostitution of women. Moreover, no definition of trafficking is given by these first four international instruments.

## 2. The United Nations instruments

These four agreements were reunited into one single legal instrument, the United Nations *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* of 1949.<sup>125</sup> The 1949 Trafficking Convention has achieved 82 ratifications and 25 signatures.<sup>126</sup> The Convention is limited to trafficking for sexual exploitation of both women and men and prostitution is defined as “incompatible with the human dignity and worth of the human person and endanger the welfare of the individual, the family and community”<sup>127</sup> in the preamble. The Convention is focused on the purpose of

---

[4&chapter=7&clang=en](#) consulted the 17th of March 2017

<sup>121</sup> *Ibid.*, at preamble

<sup>122</sup> *Ibid.*, at art. 1

<sup>123</sup> *Ibid.*, at art. 2

<sup>124</sup> *Ibid.*, at art. 3

<sup>125</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 UNTS 271, done Dec. , 1949, entered into force July 24, 1951 (hereinafter 1949 Trafficking Convention) available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-11-a&chapter=7&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-11-a&chapter=7&clang=en) consulted the 17th of March 2017.

<sup>126</sup> Information in accordance with the UN Treaty Collection website [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-11-a&chapter=7&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-11-a&chapter=7&clang=en) consulted the 17th of March 2017.

<sup>127</sup> 1949 Trafficking Convention, at the preamble

combating the exploitation of prostitution, even with the consent of the persons trafficked, contrary to the previous conventions who referred to *immoral purposes*.<sup>128</sup> There is still no definition of trafficking, even if the 1949 Trafficking Convention broadens the acts connected to the sexual exploitation of persons to prohibit and punish: in fact, those who keep and finance brothels or rent buildings aimed at the exploitation of persons, those who engage in preparatory acts and those who are participating to the offence shall be punished by States parties of the Convention.<sup>129</sup> So, the international community moved from the simple prosecution of those involved in the movement of persons from one country to another, focusing also in the final act of exploitation. Gallagher notes that the Convention has an *abolitionist* behaviour with regards to prostitution, even if it does not explicitly prohibit or criminalise it.<sup>130</sup> This contradiction in the text of the Convention reflects the need for consensus from the highest number of States, from those who prohibited prostitution in their national laws, to those who tolerate it. This tension between the two different attitudes is still present, and animated also debates in negotiations of the 2000 Trafficking Protocol. The 1949 Trafficking Convention focuses on the cross-border cooperation between countries to arrest and prosecute offenders, giving detailed practical procedures to follow by States to achieve this goal.<sup>131</sup>

Regarding provisions for protection and assistance to victims, the 1949 Trafficking Convention encourages States parties to take measures to prevent trafficking and rehabilitate victims of forced prostitution through public and private channels; to protect both immigrants and emigrants in countries of origin, transit and destination, especially to protect women and children; to raise awareness on the dangers of trafficking in persons; to check railways, airports, seaports to prevent trafficking; to inform authorities in the case of arrival of a suspected victim or offender.<sup>132</sup> No detailed measures of protection and assistance to victims are provided.<sup>133</sup> Instead, the Convention focuses more on the issue of repatriation and

---

<sup>128</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 59

<sup>129</sup> 1949 Trafficking Convention at art. 2, 3 and 4

<sup>130</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 59

<sup>131</sup> 1949 Trafficking Convention at articles 8, 9, 13, 14 and 15. Detailed norms on extradition are listed in the Convention. Moreover, States are required to execute letters of request with regards to the offences present in the Convention by direct communication between judicial authorities, Ministers of Justice, other competent authorities of the State or through diplomatic channels. States should maintain a service of coordination and centralization of the investigations and share information about all the criminal proceedings with other States.

<sup>132</sup> *Ibid.*, at articles 16 and 17

<sup>133</sup> At article 19 the Convention limits to read with reference to repatriation that State should “make suitable provisions for their [destitute victims] temporary care and maintenance”. See, 1949 Trafficking Convention, at art. 19.

expulsion, reclaiming the provision of 1904 regarding the repatriation of “who may be claimed by persons exercising authority over them”.<sup>134</sup> The Convention engages parties to identify victims and take their declarations according to their national law and communicate them to authorities of countries of departure in order to facilitate repatriation.<sup>135</sup>

The 1949 Convention is still in force, even if it is criticised and quite *obsolete*<sup>136</sup> with the advent of the 2000 Trafficking Protocol. First, the Convention does not cover other forms of exploitation, such as forced labour, organ removal etc. Secondly, it fails to protect the rights of the victims, especially women, as reported by the former UN Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy in 2000. She stated in her *Report on violence against women. its causes and consequences, on trafficking in women, women’s migration and violence* that:

The 1949 Convention has proved ineffective in protecting the rights of trafficked women and combating trafficking. The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the ‘evils of prostitution’.<sup>137</sup>

The 1949 Trafficking Convention survived about fifty years as the only one international legal instrument on the issue of trafficking until the early 1990s in which a call for a stronger and more complete instrument emerged, which was put into effect with the drafting, the proclamation and the entry into force of the *United Nations Convention against Transnational Organized Crime* and in particular of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* of 2000.

In 1979 the *Convention on the Elimination of All Forms of Discrimination Against Women*<sup>138</sup> (CEDAW) was adopted by the United Nations General Assembly. Although

---

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*, at art. 18

<sup>136</sup> Gallagher, A. T., *The International Law of Human Trafficking*, 2010, p. 62

<sup>137</sup> *Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on violence against women, its causes and consequences, on trafficking in women, women’s migration and violence against women*, UN Doc. E/CN.4/2000/68 submitted to the Economic and Social Council of the United Nations on Feb. 29, 2000, at para. 22. available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/113/34/PDF/G0011334.pdf?OpenElement> consulted the 17th of March 2017

<sup>138</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS 13, done Dec. 13, 1979, entered into force Sept. 3, 1981 (hereinafter CEDAW) available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=en) (text at

apparently the CEDAW does not regulate the matter of trafficking, its article 6 contains some important obligations for contracting States as it reads that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.<sup>139</sup>

The provision by the CEDAW is vague as it does not provide any reference to specific measures or legislations to apply from the part of States to contrast trafficking, but for the first time in the history of international treaties about trafficking, a direct reference to “all forms of traffic in women” and to the “exploitation of prostitution of women” departing from the abolitionist view of the previous conventions appeared.<sup>140</sup> The addition of the issue of trafficking in the CEDAW is very important, as it regards gender discrimination and violence, allowing to fight trafficking analysing the causes and the background less visible that foster it.<sup>141</sup>

Another important international legal instrument that explicitly nominated trafficking in its provisions before the year 2000 is the *Convention on the Rights of the Child (CRC)*<sup>142</sup> adopted in 1989. The object of this treaty is to protect the rights of children<sup>143</sup> at an international level and among them to prevent children to be exploited or trafficked. In fact, article 35 reads “States Parties shall take 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.”<sup>144</sup>

State parties should take all measures to prevent children from sexual exploitation and abuse, the use of children in pornography or prostitution, and the illicit transportation and non-return of children in a foreign territory.<sup>145</sup> Moreover, States should take all necessary means to recover and rehabilitate children who suffered any form of exploitation.<sup>146</sup> The Committee on the Rights of the Child, established in accordance with article 43 of the Convention itself, that issues related to children trafficking refer to articles 34 and 35.

---

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> ) consulted the 17th of March 2017

<sup>139</sup> *Ibid.*, at art. 6

<sup>140</sup> Gallagher, A. T., *The International Law of Human Trafficking*, pp. 64-65

<sup>141</sup> For further information see Chapter 2, paragraph 2.1 of the present work

<sup>142</sup> Convention on the Rights of the Child, 1577 UNTS 3, done Nov. 20, 1989, entered into force Sept. 2, 1990 (hereinafter CRC) available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en) (text available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> ) consulted the 17th of March 2017.

<sup>143</sup> At article 1, the CRC specifies that with child it is understood those under the age of eighteen years old.

<sup>144</sup> Convention on the Rights of the Child, at art. 35

<sup>145</sup> *Ibid.*, at art. 11, 19 and 34.

<sup>146</sup> *Ibid.*, at art. 39

Furthermore, even if the Committee is strongly committed to the fight against children trafficking for sexual exploitation, it recognised also other forms of trafficking, such as economic exploitation, forced labour and for the purpose of adoption.<sup>147</sup> The issue of trafficking is recalled also in the Optional Protocol to the CRC concerning the sale of children, child prostitution and child pornography<sup>148</sup>, adopted in 2000 by the United Nations Commission on Human Rights. The Optional Protocol has a more repressive approach with regards to offences, as it is more involved in the criminal and penal prosecution of offenders engaged in sexual exploitation of children<sup>149</sup>. The Optional Protocol urges States to collaborate one another in investigations and prosecution internationally, in the protection of children victims and in the prevention against the sale of children, child prostitution and pornography.<sup>150</sup> However, the reference to trafficking can be traced only in the preamble, in which a *holistic approach* is required to combat the phenomenon also taking into account its structural causes.<sup>151</sup> Moreover, the term *sale of children* made us think of one of the recruiting situations exposed in the introduction of the present study, so inherently connected to the issue of trafficking, even if the act of sell children does not imply directly a situation of exploitation and vice versa.<sup>152</sup> In fact, the purpose of exploitation is the key element in the definition of trafficking provided in the year 2000 by the Protocol dedicated.

This brief historical overview led us to the years 1990s that were crucial for the international production of treaties about trafficking, and it is useful to understand the evolution that involved the definition of trafficking in international law. Next section will analyse in depth the UN Convention against Transnational Organized Crime and the Protocol against Trafficking, of great interest for the present study.

## 2.1 The Vienna process

The process of drafting of the *Convention against Transnational Organized Crime and its Protocols* was, as we will see, very fast and without unexpected events, but animated by many debates. Despite this, the works and initiatives of the United Nations to reach an

---

<sup>147</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p.66

<sup>148</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, GA Res. 54/263, done May 25, 2000, entered into force Jan. 18, 2002 (CRC Optional Protocol) available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=en) (text available at <http://www.ohchr.org/Documents/ProfessionalInterest/crc-sale.pdf>) consulted the 17th of March 2017.

<sup>149</sup> *Ibid.*, at art. 3

<sup>150</sup> *Ibid.*, at articles 6, 7, 8, 9 and 10

<sup>151</sup> *Ibid.*, at the preamble

<sup>152</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p.68

international agreement to fight transnational organised crime began thirty years before the opening to ratification of the new Convention. The first United Nations forums were organised starting from 1975, following the course of changes that were taking place in the organisation of transnational organised crime, especially related to corruption, prosecution of offenders, drugs trafficking and money laundering. The efforts were increasingly focused on the issue at each meeting, adopting action plans and recalling States to increase their efforts against the organised crime within their borders.<sup>153</sup>

The early 1990s have marked a turning point at international level in setting guidelines against transnational crime: in fact, the growing number of States of new formation, due to the process of decolonization that happened many years before, the advent of globalization and a new freedom of movement of commodities and persons contributed to an intensification of cross-border criminal activities.<sup>154</sup> In 1991 the United Nations General Assembly, with resolution 46/152<sup>155</sup>, established the creation of the United Nations Crime Prevention and Criminal Justice Programme, approving a recommendation of a Ministerial meeting that was held in Paris in November of the same year<sup>156</sup>.

From 1993 to 1996, the Commission organised some world ministerial meetings to discuss the possibility of drafting an international agreement on transnational organised crime, encountering some divergences in opinion of different and numerous States that attended the meetings.<sup>157</sup> Everyone agreed on the fact that an international framework against transnational organised crime was required, which included also measures to protect victims, not in contrast with different national constitutions and respecting human rights. There was a call for an increasing national effort in the context of a more efficient international cooperation. Finally, in 1996 most States were in favour of the creation of an international framework agreement to enact this desire. The Commission has long discussed the form of this international framework.<sup>158</sup>

---

<sup>153</sup> United Nations Office on Drugs and Crime, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, 2006, pp. ix-xi, available at [https://www.unodc.org/pdf/ctoccop\\_2006/04-60074\\_ebook-e.pdf](https://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf) (hereinafter *Travaux Préparatoires*)

<sup>154</sup> *Ibid.*, at p. xii

<sup>155</sup> G.A. Res. 46/152, *Creation of an effective United Nations crime prevention and criminal justice programme*, UNGAOR, 46th Session, 18th Dec. 1991, available at <http://www.un.org/documents/ga/res/46/a46r152.htm> consulted the 18th of March 2017. The same resolution established also the governing body of the Programme, the Commission on Crime Prevention and Control, functional to the Economic and Social Council and composed by forty Governments.

<sup>156</sup> *Ibid.*

<sup>157</sup> *Travaux Préparatoires*, at p. xiv

<sup>158</sup> *Ibid.*, at p. xvii



The first initiative came by the Government of Poland in 1996, who proposed to the General Assembly a draft international framework convention against transnational organised crime. With resolution 51/120<sup>159</sup>, the General Assembly invited all States to submit comments, observations, and drafts on this issue. The Polish proposal was discussed in an informal meeting organised in Palermo, Italy, in 1997. The debates concentrated on what the Convention should have included herein. The convention should have been as much comprehensive as possible and designed as a framework for the different national legislations.<sup>160</sup> It has been decided that the best way to pursue a common ground was to hear the greatest number of contributions, from the European Community, to expert groups, to States' opinions. In 1997 a resolution of the General Assembly established an intergovernmental group of experts to elaborate a preliminary draft of the convention. During discussions everyone agreed on the fact that the new convention should have included a serious protection of human rights and not only criminal justice proceedings<sup>161</sup>.

For what concerns the issue of trafficking in persons, the initiative for a new document to contrast trafficking in children was proposed by the Government of Argentina, underlining the fact that organised crime groups were increasingly involved in trafficking of humans in their activities, especially children. The Government of Argentina also, pushed to treat the problem not only from the point of view of human rights, but also as a tool to attack transnational organised crime acting as a united international community.<sup>162</sup> The proposal was discussed and well accepted by powerful States and a general awareness on the comprehensive approach of crime control and human rights defence was raised. So, it was established to include some important issue, namely trafficking in persons, the smuggling of migrants<sup>163</sup>, and trafficking in firearms, that will be incorporated in the convention with the form of additional instruments.<sup>164</sup>

In December 1998, with the resolution 53/111<sup>165</sup>, the General Assembly decided to

---

<sup>159</sup> G.A. Res. 51/120, *Question of the elaboration of an international convention against organized transnational crime*, UNGAOR 51st Session, 7th of March 1997, available at <http://www.un.org/documents/ga/res/51/ares51-120.htm> consulted the 18th of March 2017.

<sup>160</sup> Travaux Préparatoires, at p. xxi

<sup>161</sup> *Ibid.*, at p. xxiii

<sup>162</sup> Gallagher, A.T., *Human Rights and the new UN Protocols on Trafficking and Migrant Smuggling: a Preliminary Analysis*, in *Human Rights Quarterly* n° 23 pp. 975-1004, 2001, Johns Hopkins University Press, electronic copy available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1409831](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1409831), at p. 982

<sup>163</sup> The initiative for an international agreement about smuggling was proposed by the Government of Austria and that of Italy.

<sup>164</sup> Travaux Préparatoires, at pp. xxiv-xxv

<sup>165</sup> G.A. Res. 53/111, *Transnational Organized Crime*, UNGAOR, 53rd Session, 85th plen. mtg., U.N. Doc. A/RES/53/111 (1998) available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/53/111](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/53/111)



establish an Ad Hoc Committee to create the new international convention<sup>166</sup> and in December 1999 it asked the Ad Hoc Committee to intensify the drafting process, posing a tight deadline at the end of December 2000. After only eleven sessions and a year of negotiations, the Convention and two additional documents, namely the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, were proclaimed by the United Nations General Assembly with Resolution 55/25 in November 2000.<sup>167</sup> They were opened to signatures with an intergovernmental conference held in Palermo in December 2000.

In the whole process of negotiation, that it is known as the Vienna process<sup>168</sup>, there was a high level of participation of governments of States, but also of non-State actors, such as IGOs and NGOs. Non-State actors brought their expertise on the issues, especially in the drafting process of the Trafficking Protocol, raising aspects linked to trafficking that turned on a debate in the negotiation process.

Two coalitions animated the drafting process with an important debate on the issue of non-coerced adult prostitution. The first coalition, the Human Rights Caucus<sup>169</sup> was led by the Global Alliance Against Trafficking in Women (GAATW) and the International Human Rights Law Group (IHRLG). The second one, instead was represented by the Coalition against Trafficking in Persons (CATW), the European Women's Lobby (EWL) and the International Abolitionist Federation (IAF)<sup>170</sup>. Briefly, the debate focused on the need to have a broad definition where all the situations of exploitation were covered and, above all, the definition should have excluded voluntary prostitution. The second group of NGOs thought that prostitution, even voluntary one, is a violation of human rights and must be abolished. This debate was not solved during the negotiations of the Palermo Protocol and continues

---

consulted the 18th of March 2017

<sup>166</sup> Gallagher, A.T., *Human Rights and the new UN Protocols on Trafficking and Migrant Smuggling: a Preliminary Analysis*, at p. 975.

<sup>167</sup> G.A. Res. 55/25, *United Nations Convention Against Transnational Organized Crime*, UNGAOR 55th Session, UN Doc A/RES/55/25 available at [https://www.unodc.org/pdf/crime/a\\_res\\_55/res5525e.pdf](https://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf) consulted the 19th of March 2017

<sup>168</sup> It took this name because the Convention and the supplementing Protocols were negotiated, as we saw, under the United Nations Commission on Crime Prevention and Criminal Justice, which is based in Vienna. Also, the Secretariat of the Ad Hoc Committee in charge for the drafting of the documents was based in Vienna, at the United Nations Centre for International Crime Prevention.

<sup>169</sup> They were supported by the UN Special Rapporteur on Violence against Women and the Inter Agency Group (OHCHR, UNHCR, UNICEF and IOM).

<sup>170</sup> This position was supported by the Governments of Argentina and the Philippines

today, so the definition in the final draft was a compromise between these two visions.<sup>171</sup> However, their contribution was fundamental in the decision of States of adopting or including some important issues in the Protocol, which will be explained further in the present study. In the following sections a better explanation of both the Convention, the Trafficking Protocol and their connection will be provided, regarding the definition of trafficking given by the Protocol.

## 2.2 The UN Convention against Transnational Organized Crime

The *United Nations Convention Against Transnational Organized Crime*<sup>172</sup> was proclaimed the 15th of November 2000 with a resolution by the General Assembly and opened to signatures from the 12th to the 15th of December 2000 in Palermo in the framework of an intergovernmental meeting. At the current time, it has been ratified by 187 States and signed by 147.<sup>173</sup> The Convention has three supplementing Protocols, namely the *Protocol against the Smuggling of Migrants by Land, Sea and Air*<sup>174</sup>, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*<sup>175</sup> and the *Protocol Against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition*.<sup>176</sup> For the purpose of our analysis, only the Trafficking Protocol will be taken into consideration. For a correct interpretation of the Convention, in 2006 the official Travaux Préparatoires have been issued, in accordance with articles 31 and 32 of the Vienna Convention on the Laws of Treaties<sup>177</sup>, together with a great number of

---

<sup>171</sup> On this issue, see Jansson, *Modern Slavery: a comparative study of the definition of trafficking in persons*, pp. 74-77; Gallagher, *The International Law of Human Trafficking*, pp. 26-28

<sup>172</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto, 2225 UNTS 209, done Nov. 15th, 2000, entered into force Sept. 29, 2003 (hereinafter Organized Crime Convention)

<sup>173</sup> Information available at [https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en) consulted the 19th of March 2017

<sup>174</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, done Nov. 15, 2000, GA Res. 55/25, Annex III, UNGAOR, 55th Session, Supp. No 49, at 62, UN Doc. A/45/49 (Vol.I) (2001), entered into force Jan. 28, 2004.

<sup>175</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime, done Nov. 15, 2000, GA Res. 55/25, Annex III, UNGAOR, 55th Session, Supp. No 49, at 53, UN Doc. A/45/49 (Vol. I) (2001) entered into force Sept. 29, 2003. (hereinafter UN Trafficking Protocol)

<sup>176</sup> Protocol Against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition supplementing the United Nations Convention Against Transnational Organized Crime, GA Res. 255, Nov. 15, 2000, UN Doc. A/RES/55/255 (2001), done May 31, 2001, entered into force July 3, 2005.

<sup>177</sup> Vienna Convention on the Law of Treaties, 1155 UNTS 331, done May, 23rd, 1969, entered into force Jan., 27th, 1980, at art. 31-32, available at [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en) consulted the 19th of March 2017

Interpretative Notes which may facilitate the understanding of the approach used during the drafting process. The UNODC released a Legislative Guide to the Convention and the Protocols in 2008, aimed at clarifying the difficult aspects of the documents to favour a better implementation of the provisions.

The purpose of the Convention is expressed not in the preamble, that is inexistent, but in article 1 and it is the promotion of “cooperation to prevent and combat transnational organized crime more effectively”.<sup>178</sup> According to the Legislative Guide provided by the UNODC, the Convention is structured as follows: it gives standard definitions of certain terms involved in criminal procedures; it introduces measures for offenders, victims and witnesses; it encourages international investigations, sharing of information, training of law enforcement agents, and cooperation; it establishes measures to prevent crimes.<sup>179</sup> For the correct application of the Convention, three elements should be considered: the offence should be transnational, an organised crime group should be involved in it<sup>180</sup> and it should constitute a “serious crime”<sup>181</sup>.<sup>182</sup>

Not all provisions contained in the Convention and its Protocols are mandatory. In fact, one can distinguish three levels of obligations: some of them are mandatory; for other measures, States must take them into consideration and try to implement them; other measures are optional.<sup>183</sup> The same applies to the Protocols.

According to article 4, States are required to cooperate but they are also required to respect the principles of international law of “sovereign equality”, “territorial integrity” and

---

<sup>178</sup> Organized Crime Convention, at art. 1

<sup>179</sup> United Nations Office on Drugs and Crime, *Legislative Guide For The Implementation Of The Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime*, 2005, United Nations Publications, New York, at p. 6 available at <https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html> consulted the 19th of March 2017. (hereinafter UNODC Legislative Guide)

<sup>180</sup> The term “organized crime group” is defined by article 2 of the Organized Crime Convention as “a structured group of three or more persons, existing for a period and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit” (See Organized Crime Convention, at art. 2). As specified by the UNODC Legislative Guide and by the Travaux Préparatoires of the Convention, financial or other material benefit has to be understood in a broader sense, to include personal benefit and sexual gratification, as to prosecute those involved in trafficking in human beings or child pornography not for monetary reasons. (see UNODC Legislative Guide, p. 13 and Travaux Préparatoires, at par. 3, available at [https://www.unodc.org/pdf/crime/final\\_instruments/383a1e.pdf](https://www.unodc.org/pdf/crime/final_instruments/383a1e.pdf) consulted the 20th of March 2017).

<sup>181</sup> Serious crime is defined by article 2 of the Organized Crime Convention as a “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (See Organized Crime Convention, at art. 2)

<sup>182</sup> Gallagher, A. T., *The International Law of Human Trafficking*, pp. 74-75.

<sup>183</sup> UNODC Legislative Guide, pp. 6-7

“non-intervention in the domestic affairs of other States”.<sup>184</sup> The importance of State sovereignty is underlined in other provision of the Convention.<sup>185</sup> As the Legislative Guide by the UNODC states, the Convention and its Protocols establish “minimum standards” States should respect and introduce in their national legislation systems, while they are free to choose how implement them.<sup>186</sup>

Another important useful issue for our analysis is the establishment of jurisdiction, provided by article 15. State parties shall establish jurisdiction in acts of investigation, prosecution and punishment established in the Convention itself and within their borders and on board of ships and aircraft sailing under the contracting State flag. In other circumstances, States are encouraged but not required to do so, for example when persons of that State party are either offenders or victims.<sup>187</sup> On a general basis, States are required to start criminal proceedings for crimes of persons of their nationality that are committed abroad or to make the crime affected by extradition.<sup>188</sup>

Moreover, the Convention provides the establishment of a Conference of Parties to monitor its implementation in contracting States and to facilitate cooperation among them.<sup>189</sup> In article 34 it is affirmed that the Convention should be implemented with respect to the fundamental laws in domestic legislations, such as Constitutions.<sup>190</sup> New laws or amendments to the existing ones are highly recommended for the implementation of the provisions of the Convention, suggesting a close conformity to it.

For what concern the relationship between the Convention and its Protocols, the general rules are both in the Convention and in the Protocols, as for example in article 37 of

---

<sup>184</sup> Organized Crime Convention, at art. 4. These three principles are crucial in International Law. The principle of sovereign equality is found in article 2, par. 1 of the UN Charter and expresses the parity among members of the international community (States). The principles of territorial integrity and non-intervention in the domestic affairs of other States are contained in the same article of the UN Charter at par. 4 and they refer to the prohibition in international law to invade another country, violating its borders or to promote secessionist pressures in another country and to interfere in its internal affairs using also force. See United Nations, *Charter of the United Nations and Statute of the International Court of Justice*, done June, 26<sup>th</sup>, 1945, entered into force Oct., 24<sup>th</sup>, 1945, 1 UNTS XVI, at art. 4, available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> , consulted 18<sup>th</sup> June 2017

<sup>185</sup> For example, Organized Crime Convention, at art. 11 (6) it is stated that: “Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.” (See Organized Crime Convention, at art. 11(6)).

<sup>186</sup> UNODC Legislative Guide, p. 11

<sup>187</sup> Organized Crime Convention, at art. 15

<sup>188</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p.81

<sup>189</sup> Organized Crime Convention, at art. 32. Among the cooperative provisions one can find technical assistance, exchange of information and cooperation with IGOs and NGOs.

<sup>190</sup> Organized Crime Convention, at art. 34

the Convention, or article 1 of the Trafficking Protocol. Protocols are not separated treaties from the Convention, so they must be interpreted together and the provisions in the Convention apply to Protocols.<sup>191</sup> For this reason, what is considered as an offence in the Protocols is applied as an offence even in the Convention. The same is applied to other general provisions, such as victims' protection.

### **2.3 The Trafficking Protocol: the first definition of trafficking in human beings.**

As anticipated, the *Protocol to prevent, suppress and punish trafficking in persons, especially women and children* is one of the three additional documents of the Convention against Transnational Organized Crime. It was adopted at the same moment of the Convention it supplements and it was opened to signatures at the same intergovernmental meeting in Palermo, Italy. It entered into force the 25th of December 2003.<sup>192</sup> It is also known with the name *Palermo Protocol*. One hundred and seventy countries ratified the Protocol, while signatories are one hundred and seventeen.<sup>193</sup>

The drafting process, as we have already mentioned, was full of harsh debates. Above all, there was little agreement on some parts of the definition of trafficking itself. In the end, after some compromises, the Palermo Protocol provides the first definition of trafficking in persons universally accepted, therefore it serves as basis for all States parties to develop an effective domestic legislation to fight it.<sup>194</sup>

Before discussing in detail the definition and its elements, a brief overview of the Protocol is required. First of all, the relation with the Organized Crime Convention is explained in article 1, where it is stated that it has to be interpreted together with the

---

<sup>191</sup> Article 31 of the Vienna Convention on the Rule of Treaties states that treaties must be interpreted in good faith, according to the ordinary meaning of the terms used and in their context. See Vienna Convention on the Rules of Treaties, at art. 31(1). Regarding the context, article 31, paragraph 2 intends "(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty" (See Vienna Convention on the Rules of Treaties, at art. 31(2)). Moreover, the context is intended also as any following agreement regarding the interpretation of the treaty, any following practice and any international law rule connected with the treaty interpretation. (See Vienna Convention on the Rules of Treaties, at art. 31(3)). We can assume that the Protocols of the Organised Crime Convention are part of its context and shall be interpreted in the light of the Convention provisions. For further information see Carreau, D., and Marrella, F., *Diritto Internazionale*, 2016, Giuffrè Editore, Milano, pp. 136-138

<sup>192</sup> The entry into force of the Protocol is specified in article 17 of the Protocol itself that reads: "This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention." (See UN Trafficking Protocol, at art. 17)

<sup>193</sup> Information available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en) consulted the 20th of March 2017.

<sup>194</sup> UNODC Legislative Guide, p. 267

Convention itself and that “the provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein”.<sup>195</sup> The Protocol is divided into four sections, namely *general provisions* (from article 1 to article 5), *protection of victims of trafficking in persons* (from article 6 to article 8), *prevention, cooperation and other measures* (from article 9 to article 13) and *final provisions* (from article 14 to article 20).

The purpose of the Protocol is found both in the preamble and in article 2, where States parties expressed the need to prevent trafficking of persons, especially women and children, to punish traffickers and to protect the victims and their internationally recognized human rights.<sup>196</sup> Despite this threefold commitment, the Protocol adopts a repressive approach instead that a victim oriented approach. As we have already stated, there are three levels of obligation in the Organized Crime Convention and, consequently, in the supplementing Protocols. According to the UNODC Legislative Guide, provisions about the criminalisation, investigation and punishment of offenders are mandatory<sup>197</sup> while the protection and assistance to victims’ issues are optional because of the high costs required to implement them.<sup>198</sup> So, the Protocol highlights provisions aimed at criminalising traffickers.

What concerns us the most in the present section is the definition of trafficking contained in article 3 of the Protocol, which states:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>199</sup>

---

<sup>195</sup> UN Trafficking Protocol, at art. 1 (2). The Interpretative Notes in the Travaux Préparatoires specify that in case of modifications in the Convention, the provisions of the Protocol applied to article 1 will be interpreted the same way they are applied in the Convention.

<sup>196</sup> UN Trafficking Protocol, at preamble and at art.2

<sup>197</sup> UNODC Legislative Guide, p. 270

<sup>198</sup> The UNODC Legislative Guide at p. 288 states: “[...] the high costs of these benefits and the fact that they apply equally to all States parties in which victims are found, regardless of the level of socioeconomic development or availability of resources, precluded these from being made obligatory. States seeking to ratify and implement the Protocol are, however, required to consider implementing these requirements and are urged to do so to the greatest extent possible within resource and other constraints” (See UNODC Legislative Guide, p. 288)

<sup>199</sup> UN Trafficking Protocol, at art. 3

The definition provided by the Protocol can be divided into three elements: *action*, *means* and *purpose*. To recognise a crime as trafficking in human beings, all these three elements shall be present. The only exception is children trafficking, as article 3 states, where only the action element is sufficient.<sup>200</sup> The crime of trafficking of human beings is complete even before a situation of exploitation happens.<sup>201</sup> So, the Protocol establishes that the crime of trafficking must be criminalised as a set of elements, not only individual acts.<sup>202</sup>

For what concerns the *action* element, it involves some activities namely “the recruitment, transportation, the transfer, harbouring or receipt of persons”.<sup>203</sup> None of these actions are defined in the definition and in the interpretative materials provided by the UNODC, so they should be interpreted in a broader sense. Apart from the normal actions of recruitment and transportation, widely recognised as elements in the trafficking process, the inclusion of terms such as *harbouring* and *receipt* is interesting: they refer not only to the process of trafficking itself but also to the maintenance of a situation of exploitation that is the final end of trafficking.<sup>204</sup> Interpreting the text of article 3 literally, also people not involved in the process of trafficking but involved in activities in the country of destination as guards or owners of brothels, hotels and so on can be criminalised for crimes connected to human trafficking.

The *means* element is defined in article 3 as “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.”<sup>205</sup> Not all these elements have been clarified in the Interpretative Notes of the Protocol. The common point of the means element is *coercion*. Some of the coercive means are evident and direct, such as the use or the threat of the use of brute force and abduction. The others are less direct such as fraud or deception and, as we saw, they are widely used.

Interesting is the attempt to explain the concept of *vulnerability* in the Interpretative Notes. As Gallagher reminds, the abuse of vulnerability appears for the first time in the

---

<sup>200</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 29. According to article 3 subparagraph c: “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article”. (See UN Trafficking Protocol, at art. 3(c)).

<sup>201</sup> The UNODC Legislative Guide, at p. 269

<sup>202</sup> *Ibid.*, at p. 268

<sup>203</sup> UN Trafficking Protocol, at art. 3 (a)

<sup>204</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 30

<sup>205</sup> UN Trafficking Protocol, at art. 3 (a)



Palermo Protocol, while *abuse of power* was already used, for instance in the White Slavery Convention of 1910.<sup>206</sup> Abuse of vulnerability has been explained in the *Travaux Préparatoires* as: “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved”.<sup>207</sup> However, in 2012 the UNODC issued a paper focusing on the concept of abuse of vulnerability defined as follows:

In the context of trafficking, “vulnerability” is typically used to refer to those inherent, environmental or contextual factors that increase the susceptibility of an individual or group to being trafficked. These factors are generally agreed to include human rights violations such as poverty, inequality, discrimination and gender-based violence – all of which contribute to creating economic deprivation and social conditions that limit individual choice and make it easier for traffickers and exploiters to operate.<sup>208</sup>

As we saw, some subjects are considered vulnerable because of gender discrimination, ethnic minority belonging and age. By the way, vulnerability here is treated like a mean to a final exploitation. The definition of the Palermo Protocol deals with the abuse of this vulnerability, not with the condition of vulnerability. The overlapping of the two concept is possible.<sup>209</sup> However, the Interpretative Notes to the Protocol take into account the possibility of a situation in which people are trafficked by a relative or a member of the same community, in which cultural and legal issues play an important role in the lack of alternatives.<sup>210</sup>

Another obscure concept in the definition is “the giving or receiving of payments or benefits to achieve the consent of a person having control of another person”<sup>211</sup>: Gallagher argues that it is not clear if it is referring to a situation of legal control, which means a *de jure* control (parents and children) or *de facto* control (employer and employee).<sup>212</sup> Even in this case, the *Travaux Préparatoires* and all the other explicative documents provided by the UNODC do not provide any explanations. The fact that the definition of means is so broad and that there is no clear explanation let us think to an intentional vagueness to cover all

---

<sup>206</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p.32

<sup>207</sup> *Travaux Préparatoires*, at p. 347 available at [https://www.unodc.org/pdf/ctococop\\_2006/04-60074\\_ebook-e.pdf](https://www.unodc.org/pdf/ctococop_2006/04-60074_ebook-e.pdf) consulted the 21st of March 2017

<sup>208</sup> United Nations Office on Drugs and Crimes, *Issue Paper: Abuse of a Position of Vulnerability and other "Means" Within the Definition of Trafficking in Persons*, 2012, United Nations Publications, New York, p. 13

<sup>209</sup> *Ibid.*, at p.15

<sup>210</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, p. 83

<sup>211</sup> UN Trafficking Protocol, at art. 3

<sup>212</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 33



possible situations that lead to exploitation.

The *purpose* element is the result of the aforementioned actions through the means indicated, that is to say *exploitation*. Hence, exploitation is the final intention of the offenders. The definition gives us a list of exploitative situations, such as “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”.<sup>213</sup>

As the Travaux Préparatoires suggest, the wording *at a minimum*<sup>214</sup> was added in the definition to avoid a limitation in the treatment of exploitative situations, leaving the definition open to new forms of exploitation that could have been occurred in future.<sup>215</sup> However, no definition of the term exploitation is given. Neither the exploitative situations listed are defined in article 3, even if it is assumed that the definition given by previous international agreements are accepted even in the interpretation of the Palermo Protocol, for example forced labour and slavery.<sup>216</sup> *Practices similar to slavery* comes from the 1956 Supplementary Slavery Convention<sup>217</sup> that in article 1 lists debt bondage, serfdom, servile forms of marriage, and every situation in which a child is sold.<sup>218</sup> Regarding *servitude*, a definition appeared during the drafting process but it disappeared as there is no accepted definition in international law and, according to some delegations, it was not clear.<sup>219</sup> Anyway, the acceptance of definitions of other international agreement is supported by article 14 (saving clause), which affirms the coexistence between the present Protocol and all pre-

---

<sup>213</sup> UN Trafficking Protocol, at art. 3 (a)

<sup>214</sup> “Exploitation shall include, at a minimum [...]”, (See UN Trafficking Protocol, at art. 3)

<sup>215</sup> Travaux Préparatoires, p. 343 note 22 states: “The words “at a minimum” will allow States parties to go beyond the offences listed in this definition in criminalizing. It was also intended to make it possible for the protocol to cover future forms of exploitation (i.e. forms of exploitation that were not yet known)” (See Travaux Préparatoires p. 343 note 22)

<sup>216</sup> The Convention n°29 of 1930 of the International Labour Organization (ILO) defines forced labour at article 2 as: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (See International Labour Organisation (ILO), *Convention concerning Forced or Compulsory Labour* n° 29, done June, 28<sup>th</sup>,1930, entered into force May, 1<sup>st</sup>, 1932, 39 UNTS 55, at art. 2, available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_346435.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_346435.pdf) consulted 18th June 2017). Slavery is defined in the 1926 Slavery Convention in article 1 as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (See 1926 Slavery Convention, at art. 1).

<sup>217</sup> United Nations Supplementary Convention on the Abolition of Slavery, the Slave trade, and institutions and practices similar to slavery, 226 UNTS 3, adopted by the United Nations Conference of Plenipotentiaries with Resolution 608(XXI) of the Economic and Social Council in April, 1956, done Sept. 7<sup>th</sup>, 1956, entered into force in accordance with article 13 on April, 30<sup>th</sup>, 1957, at art. 1

<sup>218</sup> *Ibid.*, at art. 1

<sup>219</sup> Travaux Préparatoires p. 344 note 29. Servitude was defined as: “the condition of a person who is unlawfully compelled or coerced by another to render any service to the same person or to others and who has no reasonable alternative but to perform the service, and shall include domestic servitude and debt bondage” (See Travaux Préparatoires, p. 344, note 29).

existent rights, obligations, and responsibilities under international law.<sup>220</sup>

For what concerns the exploitation of prostitution, the drafting group came to a solution of compromise, indicating as a form of exploitation that of prostitution or other forms without defining it and leaving every State to deal with their domestic laws and policies.<sup>221</sup> Sexual exploitation in the case of adults proved some difficulties in definition as in international law it refers principally to children.<sup>222</sup> There was an attempt during the negotiation process to define sexual exploitation of adults<sup>223</sup>, but it was deleted as they convened there was no need to define it.<sup>224</sup> Gallagher argues that such an inattention could lead to consider sexual exploitation in a broader sense including practices such as prostitution and pornography per se, while the intention of the drafters was not to include these issues.<sup>225</sup> However, this reflects the harsh debate that animated the drafting process on the issue of prostitution, and the correlated dispute between the two NGOs coalitions.

One last focus should be done on the issue of *consent*, that appears in the definition at article 3. Consent is irrelevant when one of the means listed in article 3 of the Palermo Protocol takes place.<sup>226</sup> Consent has been largely debated during the negotiation process, counterpoising the two NGOs coalitions: on one side, they believed that there was no need to precise the issue of consent in the definition as the means used to fulfil the action element explained above preclude the consent of the victim.<sup>227</sup> On the other side, they believed that even if the consent of the victim is present at a certain point of the process of human trafficking, it should be considered trafficking anyway. The Legislative Guide explains that consent cannot be used as a defence by perpetrators to justify their acts.<sup>228</sup> Some victims of trafficking are voluntary migrants who fall in the trap of traffickers because of false promises of work, or they are smuggled persons that then are exploited to repay their debt with smugglers. It is argued that focusing about victim in his/her country of origin and in the issue

---

<sup>220</sup> UN Trafficking Protocol, at art. 14

<sup>221</sup> UNODC Legislative Guide, p. 268, note 15.

<sup>222</sup> Convention on the Rights of the Child, at art. 34 and the Optional Protocol to the Child Convention, at art. 3

<sup>223</sup> Travaux Préparatoires, at p. 341 in which it is read that sexual exploitation of an adult is “[forced] prostitution, sexual servitude or participation in the production of pornographic materials, for which the person does not offer himself or herself with free and informed consent” (See Travaux Préparatoires, at p. 341)

<sup>224</sup> *Ibid.*, at p. 342 note 14

<sup>225</sup> Gallagher, A. T., *The International Law of Human Trafficking*, pp. 33-34

<sup>226</sup> UN Trafficking Protocol, at art. 3 (c) states: “The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;” (See UN Trafficking Protocol, at art. 3 (c).

<sup>227</sup> This was the position of the Human Rights Caucus, led by the Global Association Against Trafficking in Women (GAATW) as explained in Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, p. 86

<sup>228</sup> UNODC Legislative Guide, p. 270

of victim's consent could distract from the crucial point that is exploitation in the country of destination.<sup>229</sup> No one consent to be exploited, and to be treated like a commodity is a violation of human rights fully recognised by international human rights law, as freedom is taken away.

The definition of the Palermo Protocol has been globally accepted and used in other regional instruments. Though, it has been recognised as a framework to further expansion, so it is limited. It needed other instruments, even of so-called soft law, which will be discussed in the next section.

## 2.4 Soft Law instruments against trafficking

With the term *soft law* we mean all those instruments created by international organisations, or promoted by them, especially about human rights issues that do not have any legal or binding obligations on States. According to Cassese, soft law instruments have three common characteristics: they provide new trends of the international community on a specific issue; they raise awareness on a specific concern; States are not able to reach a binding agreement in certain matters, so they agree to follow some non-binding instruments that may become customary law<sup>230</sup> in the future.<sup>231</sup>

In the case of trafficking, the instruments of soft law are numerous. Some of them are provisions contained in some binding instruments that do not create obligations for member States. This is the case of optional provisions of the Trafficking Protocol, cited above, about the protection and assistance of victims. They are recognizable by the language used in the text.<sup>232</sup>

---

<sup>229</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, p. 89

<sup>230</sup> According to article 38 of the International Justice Court Statute of 1945, customary law is one of the primary sources of international law, defined as “evidence of a general practice accepted as law” (International Justice Court Statute, 1945, at art. 38 (b)). Customary law is made by two elements: the *usus*, the general practice and the *opinio iuris*, the conviction that this general practice reflects the law or exigencies. The privileged position has been confirmed by the jurisprudence of the International Permanent Court of Justice in the sentence Lotus (1927) classifying it as a “tacit consent” between States and that States should respect it as it is a rule established and accepted by States themselves to foster coexistence and to follow common purposes. The same has been confirmed in consecutive sentences of the International Court of Justice, and among them the North Sea Continental Shelf case (1969), specifying that there no need to have the agreement of all States to determine a customary law, but a consistent number of them. See Carreau D., and Marrella F., *Diritto Internazionale*, 2016, Giuffrè Editore, Milano, pp. 243-247; See also United Nations, *Charter of the United Nations and Statute of the International Court of Justice*, done June, 26<sup>th</sup>, 1945, entered into force Oct., 24<sup>th</sup>, 1945, 1 UNTS XVI, at art. 38, available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>, consulted 18<sup>th</sup> June 2017

<sup>231</sup> Cassese, A., *International Law - Second Edition*, 2005, Oxford University Press, New York, p. 196

<sup>232</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 139. Gallagher gives some examples of what she identifies as vague provisions that can be classified under the category of soft law even if they are part of a binding treaty: for example, “consider”, “endeavour” or “to the extent possible”.

Other examples of soft law instruments implied on the issue of trafficking are real bodies of guidelines and principles, organised as real norms, and aimed at inspiring and promoting a certain kind of conduct. The 2002 *United Nations Principles and Guidelines on Human Rights and Human Trafficking*<sup>233</sup> are an example of this type of soft law instruments. No State participated to the drafting process of them and they were produced by the United Nations High Commissioner for Human Rights (OHCHR), IGOs and some experts. They were never submitted to States for their approval.<sup>234</sup> The document was issued in 2000 and submitted to the Economic and Social Council of the United Nations (ECOSOC) and approved in 2002. The key principles are four: the primacy of human rights, the prevention of trafficking, the protection and assistance and the criminalisation, punishment, and redress of trafficking. Each one of them is supported by guidelines which are eleven in total.

Numerous other instruments, namely General Assembly Resolutions, guidelines from agencies of the United Nations, declarations of IGOs or action plans have been issued to contrast the phenomenon of trafficking and the protection of human rights of victims.

Soft law instruments are not irrelevant in the international environment: as we saw above, they can become customary law, or inspire new treaties and norms. They can clarify present norms and they can be taken as guidelines by States. We will see it in the case of protection and assistance to victims, where the 2002 Recommended Principles and Guidelines will be used in the present study analysis.

### **3. Regional Law: The Council of Europe and the European Union**

As we previously saw, the phenomenon of human trafficking widely affects the European area as a region of destination. For this reason, numerous legislative instruments have been adopted, with a different focus compared to the UN Trafficking Protocol.

The present section will recall the steps of European law in the fight against trafficking in persons, first with the Council of Europe Convention on Action Against Trafficking in Human Beings, then with the European Court on Human Rights and its jurisprudence, the Charter of Fundamental Rights of the European Union, and finally, with the European Union law evolution.

---

<sup>233</sup> Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights, E/2002/68/Add. 1), available at <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>. (hereinafter 2002 Recommended Principles and Guidelines). A Commentary issued in 2010 supports the principles.

<sup>234</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 140

### 3.1 The CoE Convention on Action Against Trafficking in Human Beings

The international law on human trafficking had further developments in regional experiences, such as the European one with the Council of Europe (CoE).<sup>235</sup> The path that led to the Council of Europe Convention on Action against Trafficking in Human Beings began in the 1990s, starting from the assumption of the two main institutions of the Council of Europe, namely the Committee of Ministers and the Parliamentary Assembly, that victims of human trafficking needed more protection.

The first document adopted by the Committee of Ministers of the CoE was the Recommendation (91) 11 of the 9th of September 1991 on “sexual exploitation, pornography and prostitution of, and trafficking in children and young adults”.<sup>236</sup> Even if the subjects of this soft law instrument are children and young adults, it was a first important step towards enhancing policies and measures to prevent trafficking in children for sexual exploitation, pornography or prostitution, to protect and assist victims, to intensify criminal procedures activities and collaboration among States using the EUROPOL agency.

In 1997 in a Final Declaration of a Summit of Heads of State and Government which took place in Strasbourg, it was highlighted that violence against women and their sexual exploitation is a threat to security and democracy.<sup>237</sup> Various activities were carried after the Summit, from raising awareness activities to seminars with the civil society, police, social workers etc.<sup>238</sup>

In 2000, the Committee of Ministers issued Recommendation (2000) 11 “on action against trafficking in human beings for the purpose of sexual exploitation”<sup>239</sup>, inviting

---

<sup>235</sup> The Council of Europe is an international organisation established in 1949 in Rome (Italy) but it has its headquarters in Strasbourg (France). It counts forty-seven members and among them, twenty-eight are members of the European Union. The Council of Europe is not a European Union institution. Its main institutions are the Committee of Ministers, the Parliamentary Assembly and the European Court of Human Rights. For further information see Jacobs, White and Ovey, *The European Convention on Human Rights - fifth edition*, 2010, Oxford University Press, Oxford, pp- 5-7

<sup>236</sup> Council of Europe, Committee of Ministers, *Recommendation No R (91) 11 of the Committee of Ministers to Member States concerning sexual exploitation, pornography, and prostitution of, and trafficking in, children and young adults*, (9th of September 1991, Rec (91)11E, available at [http://www.coe.int/t/dghl/standardsetting/victims/recR\\_91\\_11e.pdf](http://www.coe.int/t/dghl/standardsetting/victims/recR_91_11e.pdf) consulted the 23rd of March 2017

<sup>237</sup> Council of Europe, *Final Declaration and Action Plan*, adopted Oct., 11, 1997 by the Second Summit of Heads of State and Government, Strasbourg, CM(97)169, at p. 3, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063dced> consulted the 23rd of March 2017

<sup>238</sup> Council of Europe, *Explanatory Report on the Convention on Action against Trafficking in Human Beings*, ETS 197, 16.V.2005 at para. 15, (hereinafter CoE Trafficking Convention Explanatory Report), available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3812> consulted the 23rd of March 2017

<sup>239</sup> Council of Europe, Committee of Ministers, Recommendation (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, adopted the

member States on taking action to protect victims and sanction the offenders, to raise awareness on trafficking, taking into consideration gender issues. The year after, Recommendation (2000) 16 was adopted by the Committee of Ministers, “on protection of children against sexual exploitation”.<sup>240</sup> These two soft law instruments by the Committee of Ministers of the CoE created a strategy dealing with criminal justice issues and human rights protection even focusing on trafficking for sexual exploitation. It is possible to assume that the United Nations experience and that of the Council of Europe were proceeding in parallel.

The idea for a Convention against Trafficking came out in some soft law instruments by the Parliamentary Assembly of the Council of Europe, namely the Recommendation (1997) 1325 on traffic in women and forced prostitution in Council of Europe member States<sup>241</sup>, and Recommendation (2002) 1545 on a campaign against trafficking in women.<sup>242</sup> These two documents urged the Committee of Ministers to create a Convention for State members of the CoE and also non-members, focusing on victims’ protection, human rights and gender perspective.<sup>243</sup> The intention was that of create a legally binding instrument that could complete other international ones on the issue of trafficking in human beings and that focuses its attention on victims of trafficking.<sup>244</sup>

In February 2003, even the United Nations and the Organization for Security and Cooperation in Europe (OSCE), that met in Geneva with some representatives of the Council of Europe, expressed their approval for a pan-European Convention on trafficking in persons that focused on victims’ human rights and protection.<sup>245</sup> The same year, the Committee of Ministers nominated an Ad Hoc Committee of Experts on Action against Trafficking in Human Beings (CAHTEH)<sup>246</sup>, who oversaw the draft Convention. The drafting process

---

9th of May 2000. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804fda79&format=native> consulted the 23rd of March 2017.

<sup>240</sup> Council of Europe, Committee of Ministers, Recommendation (2001) 16 of the Committee of Ministers to member states on the protection of children against sexual exploitation, adopted on the 31st of October 2001. Available at [http://www.coe.int/t/dghl/standardsetting/victims/rec\\_2001\\_16.pdf](http://www.coe.int/t/dghl/standardsetting/victims/rec_2001_16.pdf) consulted the 23rd of March 2017

<sup>241</sup> Council of Europe (Parliamentary Assembly) ‘Recommendation No 1325 (1997) on Traffic in Women and Forced Prostitution in Council of Europe Member States’ (23 April 1997) available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15359&lang=en> consulted the 23rd of March 2017

<sup>242</sup> Council of Europe (Parliamentary Assembly) ‘Recommendation No 1545 (2002) on a Campaign against trafficking in women’ (21 January 2002) available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16965&lang=en> consulted the 23rd of March 2017

<sup>243</sup> Scarpa, S., *Traffic in Human Beings: modern slavery*, 2008, Oxford University Press, pp. 142-143

<sup>244</sup> *Ibid.*, p. 143 and Gallagher, A. T., *The International Law of Human Trafficking*, 2011, p. 111

<sup>245</sup> CoE Trafficking Convention Explanatory Report, at para. 31

<sup>246</sup> CoE Trafficking Convention Explanatory Report, at para. 33. The acronym derives from the translation in French of the name of the Ad Hoc Committee that is *Comité Ad Hoc sur la lutte contre la Traite des Êtres*



started in September and lasted about a year, until February 2005. It was not an easy process of drafting, as there were harsh discussions on the draft, criticised to be not so effective from the point of view of victims' protection.<sup>247</sup> Moreover, the drafting process was reserved only to drafters and not to NGOs like the Palermo Protocol. After some pressure from the part of Amnesty International or Anti-Slavery International, they could participate to the later phase of drafting.<sup>248</sup>

Finally, the Council of Europe Convention on Action against Trafficking in Human Beings<sup>249</sup> was opened to signatures the 16th of May 2005 in Warsaw (Poland) during the third Summit of Heads of State and Government of COE Member States. It has been opened to ratification also to non-Members that participated to the drafting process, namely Canada, the United States, the Holy See, Japan and Mexico. The ratification is open also to the European Union.<sup>250</sup> It entered into force the 1<sup>st</sup> of February 2008, according to the provision of article 42. Now, it counts forty-six members (all members but the Russian Federation) of the CoE that ratified the Convention, and Belarus, that ratified the Convention in 2014.<sup>251</sup>

The Convention is composed by a preamble and ten chapters, namely *Purposes, scope, non-discrimination principle and definitions, Prevention, co-operation and other measures, Measures to protect and promote the rights of victims, guaranteeing gender equality, Substantive criminal law, Investigation, prosecution and procedural law, International co-operation and co-operation with civil society, Monitoring mechanism, Amendments and Final clauses*. For the purpose of the present study, it is important to better understand first the scope, purpose and definition of the Convention, the relation with other international instruments, its territorial application and to introduce its monitoring mechanism.

Some elements of the scope of the Convention may be traced in the preamble, that is different from that of the Palermo Protocol, as the importance of human rights is strongly

---

*Humains.*

<sup>247</sup> Scarpa, S., *Traffic in Human Beings: modern slavery*, 2008, p. 145. Scarpa affirms that the Parliamentary Assembly submitted 50 amendments dealing with victims' protection and complaining on the fact that civil society has not been involved in the process of drafting, European Community representative hindered the drafting process, the provisions about protection of victims were optional and the monitoring mechanism established by the Convention did not involve the Committee of Ministers. Two third of the Parliamentary Assembly amendments were rejected.

<sup>248</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 113

<sup>249</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings*, ETS 197, done May, 16th, 2005, entered into force Feb., 1st, 2008 (hereinafter CoE Trafficking Convention)

<sup>250</sup> Scarpa, S., *Traffic in Human Beings: modern slavery*, p. 146

<sup>251</sup> Information available at [http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/signatures?p\\_auth=4aMrUXq2](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/signatures?p_auth=4aMrUXq2) consulted the 23rd of March 2017

reaffirmed. In fact, it is stated that human trafficking is a “violation of human rights, offence to the dignity and the integrity of the human beings”<sup>252</sup>, and that the action taken to protect victims must be without any discrimination, respecting gender equality<sup>253</sup> and the rights of children. Moreover, it is stated that the one of the main intentions of the Convention is that of improving the protection to victims’ provisions of the Palermo Protocol.<sup>254</sup> About this, one can assume that the CoE Convention adds value to the Palermo Protocol, defining what it does not.<sup>255</sup> So, while we stated above that the Palermo Protocol has a repressive approach focused on the crime of trafficking, the CoE Convention is oriented to victims and their protection standards and their human rights. In fact, the present Convention is a human rights instrument, as Gallagher remarks.<sup>256</sup>

Article 1 lists the purposes of the Convention that are similar to those of the Palermo Protocol (prevention, protection and promotion of international cooperation), with some remarkable differences. First of all, gender equality is included as a requirement in preventing and combating trafficking in human beings. Secondly, the protection purpose is expanded, with a commitment to the creation of a “comprehensive framework for the protection and assistance of victims and witnesses”<sup>257</sup>, always taking into account gender equality and a multidisciplinary approach.<sup>258</sup> Lastly, the Convention establishes a monitoring mechanism.<sup>259</sup>

The scope is expressed in article 2, which affirms that the Convention applies to all forms of trafficking, international or internal and carried by the organised crime or not.<sup>260</sup> The explanatory report states that this provision applies to men, women, and children indiscriminately, to those who entered legally or illegally in the country of destination in the

---

<sup>252</sup> CoE Trafficking Convention, at preamble

<sup>253</sup> The concept of gender equality is expressed in paragraph 54 of the Explanatory Report to the CoE Trafficking Convention, which reads: “Gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life. [...] It means accepting and valuing equally the complementarity of women and men and the diverse roles they play in society”. (See CoE Trafficking Convention Explanatory Report, at para. 54). The issue of gender will be expanded further in Chapter 2, paragraph 2.1.

<sup>254</sup> CoE Trafficking Convention, at preamble

<sup>255</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 114 and CoE Trafficking Convention Explanatory Report, at para. 36 which explains that the CoE Trafficking Convention aims at improving protection provisions for victims of all forms of trafficking. Moreover, the Convention provides a monitoring mechanism (GRETA)

<sup>256</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p.114

<sup>257</sup> CoE Trafficking Convention, at art. 1

<sup>258</sup> With “multidisciplinary” is meant an approach to trafficking which could balance crime prevention, investigations and international cooperation among law enforcement agencies and the protection and respect of human rights of victims and witnesses.

<sup>259</sup> See *infra* Chapter 3, para. 2.3

<sup>260</sup> CoE Trafficking Convention, at art. 2



case of transnational trafficking.<sup>261</sup>

Linked to the scope of the Convention is the non-discrimination principle stated in article 3, which reads that the provisions, especially those of protection of the human rights of the victims, are applied without distinctions based on “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.<sup>262</sup> However, the Explanatory Report to the Convention explains that the article is intentionally broad in its sense to allow certain States to apply their national restrictions based on nationality when they are acceptable and reasonable.<sup>263</sup>

Regarding the definition of trafficking, article 4 reclaims the definition provided by the Palermo Protocol and analysed in the previous section of the present study, with the same division into three elements - action, means and purpose - and the same characteristics.<sup>264</sup> However, the CoE Trafficking Convention gives a definition of victim, which means “any natural person who is subject to trafficking in human beings as defined in this article”.<sup>265</sup> This underlines the strong commitment to human rights and the centrality of the victim of trafficking and his/her protection.

Another difference with the UN Trafficking Protocol is the provision in article 6, under the second chapter dedicated to prevention and cooperation measures. In fact, it provides measures to “discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”.<sup>266</sup> Demand is officially recognised as an important factor influencing human trafficking and, as we stated in the introductory chapter, it is considered one of the pull factors for the supply of trafficked human beings in the countries of destination.

The Convention establishes a monitoring mechanism at articles 36 and 37 and composed by the Group of Experts on Action Against Trafficking in Human Beings

---

<sup>261</sup> CoE Trafficking Convention Explanatory Report, at paras. 60-62

<sup>262</sup> CoE Trafficking Convention, at art. 3. This provision retraces article 14 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) as reported in the Explanatory Report at para. 66. Scarpa reminds that it is identical also to the Universal Declaration of Human Rights, to the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, all three at art. 2 (Scarpa, S., *Traffic in Human Beings: modern slavery*, 2008, p. 147)

<sup>263</sup> CoE Trafficking Convention Explanatory Report, at para. 65

<sup>264</sup> To define a situation of trafficking, all the three elements must be present, except for children, where it is sufficient to have only the action element. This assumption is reminded in the Explanatory Report to the CoE Trafficking Convention, at para. 76. Moreover, the Explanatory Reports explains better than the Travaux Préparatoires to the UN Trafficking Protocol the various means and purposes, clarifying several aspects of trafficking that could be controversial. Also in this matter, the CoE Convention is an expansion of the UN Trafficking Protocol.

<sup>265</sup> CoE Trafficking Convention, at art. 4 (e)

<sup>266</sup> *Ibid.*, at art. 6

(GRETA) and a Committee of Parties.<sup>267</sup> GRETA is in charge of monitoring the implementation of the Convention by member States, issuing reports and conclusions on the situation of State Parties in the implementation of the Convention.<sup>268</sup> Further explanations of the functioning of GRETA will be provided in the present study.

Finally, the Convention provides in the eighth chapter all the provisions about its relationship with the UN Trafficking Protocol and with other international instruments. In article 39, it is stated that the Convention does not affect rights and obligations provided by the UN Trafficking Protocol, but it is reaffirmed the will to improve the protection standards to victims, not widely provided by the Protocol.<sup>269</sup> In article 40, States parties are encouraged to conclude bilateral or multilateral agreements in order to strengthen the provisions contained in it.<sup>270</sup>

The provision dedicated to the European Union, whose directives and strategies against human trafficking will be discussed below, is interesting and generated debates. In fact, paragraph 3 of article 40 represents the “disconnection clause”<sup>271</sup> for European Union State parties. It states that:

Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community of European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other parties.<sup>272</sup>

European Union members may choose to apply European Union law on this issue instead of the provisions of the CoE Convention. The disconnection clause was widely contested by Amnesty International in a public statement, accusing the European Union to reduce the power of the human rights protections provided by the CoE convention, applying lower standards for victims.<sup>273</sup> European Union member States answered with a Declaration

---

<sup>267</sup> *Ibid.*, at artt. 36 and 37

<sup>268</sup> *Ibid.*, at art. 38 (5) and (6)

<sup>269</sup> *Ibid.*, at art. 39

<sup>270</sup> *Ibid.*, at art. 40 (2)

<sup>271</sup> Scarpa, S., *Traffic in Human Beings: modern slavery*, p.160

<sup>272</sup> CoE Trafficking Convention, at art. 40 (3)

<sup>273</sup> Amnesty International, *Council of Europe: European Institutions must cooperate to ensure the highest standards of human rights protection*, Public Statement, issued the 11st of April 2005, Index Number IOR 30/008/2005, available at <https://www.amnesty.org/en/documents/IO30/008/2005/en/> consulted the 24th of March 2017.

in which they stated that the structure of the Union needed to be taken into account, especially concerning the degree of competence on certain subjects, when States sign or ratify an international treaty. The disconnection clause is not aimed at decreasing the power of the provisions in the CoE Convention for European Union members, but it aims at avoiding that they apply them directly among themselves (or between themselves and the Union), without taking into consideration European Union law first. Nonetheless, European Union States apply fully the Convention and are bound by it.<sup>274</sup> Moreover, the Convention does not affect any provision under international law for State parties, including the Refugee Convention of 1951 and its Protocol of 1967, as well as the principle of non-refoulement established by them.<sup>275</sup>

To conclude, the Council of Europe Convention on Action against Trafficking in Human Beings has been revolutionary: in few years after the UN Trafficking Protocol, it took at the centre of the attention the issue of victims and their human rights. It created strong commitments and obligations to the protection and assistance of them without any discrimination or condition. It addressed strongly the issue of demand for the first time in history, recognising it as one of the major factors fostering trafficking in persons. It created a monitoring mechanism to check the situation. Even if it is extraordinary, it is still limited: there are some issues that States want to regulate by their own and with their domestic provisions, such as migration legislations. However, the CoE Convention is a good starting point as Europe is one of the most affected destination of trafficking.

### **3.2 The ECtHR and its jurisprudence in the definition of sex trafficking as slavery**

The European Court of Human Rights (ECtHR), which has its headquarters in Strasbourg (France), was first established in 1959, under provision of article 19 of the European Convention on Human Rights<sup>276</sup>, to assure that the rights expressed in the Convention are observed by Contracting Parties to the Convention. The European Convention on Human Rights was adopted in 1950 and it entered into force in 1953 under the auspices of the Council of Europe. The Convention is amended by two Protocols, namely n° 11 and 14 and supplemented by six other Protocols, which provide additional rights and

---

<sup>274</sup> CoE Trafficking Convention Explanatory Report, at para. 35

<sup>275</sup> CoE Trafficking Convention, at art. 40 (4)

<sup>276</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter European Convention on Human Rights), 223 UNTS 222, done Nov., 4th, 1950, entered into force Sept., 3rd 1953, at art. 19, available at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) consulted the 30th of March 2017.

freedoms (n° 1, 4, 6, 7, 12 and 13). Protocol n° 11 of 1998 establishes that the Court has to be permanent, making it the Court with the largest jurisdiction in the world.<sup>277</sup> The Strasbourg Court counts numerous cases, whose applicants are both individuals (including non-nationals and non-residents in territories of the Council of Europe) and States. Judgements are legally binding and declaratory<sup>278</sup>. Under article 41, the Court may provide in its judgements a form of compensation to the victim.<sup>279</sup> The number of judges is the same as the Contracting Parties to the Convention, according to article 20<sup>280</sup> and they are elected by the Parliamentary Assembly of the Council of Europe from a list of three candidates provided by the Contracting Parties<sup>281</sup> for a single mandate of nine years.<sup>282</sup> Judges are chosen for their high moral character and they have to be national supreme court judges. They are independent by Member States. To accede to the Court, individuals and States must have passed all levels of national judgment. According to article 26, the Court may sit in a formation of one judge, three judges, seven judges or in a Grand Chamber of seventeen judges.<sup>283</sup>

The European Court on Human Rights has been crucial also for the definition of trafficking in human beings. In fact, its jurisprudence heavily influenced the understanding of trafficking at a European level, both for the definition and for the positive obligations appointed to States by the Court. The judgements taken into consideration in the present study will be *Siliadin v. France*<sup>284</sup>, *Rantsev v. Cyprus and Russia*<sup>285</sup> and *L.E. v. Greece*<sup>286</sup>.

The European Convention on Human Rights does not contain any provision against trafficking. Article 4 prohibits slavery, servitude and forced or compulsory labour.<sup>287</sup> There is no mention to slave trade. The case *Siliadin v. France* has been considered as a pioneer in the inclusion of human trafficking under the provisions of article 4. The applicant was a

---

<sup>277</sup> Jacobs, White, Ovey, *The European Convention on Human Rights: sixth edition*, 2014, Oxford University Press, Oxford, p. 21

<sup>278</sup> *Ibid.*, p. 29

<sup>279</sup> European Convention on Human Rights, at art. 41

<sup>280</sup> *Ibid.*, at art. 20

<sup>281</sup> *Ibid.*, at art. 22

<sup>282</sup> *Ibid.*, at art. 23

<sup>283</sup> *Ibid.*, at art. 26

<sup>284</sup> *Siliadin v. France*, application n° 73316/01, 26th July 2005, available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/siliadin\\_v\\_france\\_en\\_4.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/siliadin_v_france_en_4.pdf) consulted the 30th of March 2017. (hereinafter *Siliadin v. France*)

<sup>285</sup> *Rantsev v. Cyprus and Russia*, application n° 25965/04, 7th January, 2010, available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/rantsev\\_vs\\_russia\\_cyprus\\_en\\_4.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/rantsev_vs_russia_cyprus_en_4.pdf) consulted the 30th of March 2017 (hereinafter *Rantsev v. Cyprus and Russia*)

<sup>286</sup> *L.E. v. Greece*, application n° 71545/12, 21st January 2016, available in French at <http://hudoc.echr.coe.int/eng?i=001-160218> consulted the 30th of March 2017 (hereinafter *L.E. v. Greece*)

<sup>287</sup> *European Convention on Human Rights*, at art. 4 reads: “No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour [...]” (See *European Convention on Human Rights*, at art. 4).

Togolese girl who was brought to France by one of her relatives when she was fifteen years old with the promise of good education and better life. She entered the European State with a tourist visa from three to six months. After her arrival, she was lent to a family who exploit her as a domestic worker in hard conditions, they confiscated her documents, prohibited her to leave the house alone and made her live in poor housing conditions. She was not payed for her work as she had to repay the costs of her travel from Togo to France. She was constantly threatened to be denounced to the police if she tried to escape, as she was an irregular migrant. At the end, she managed to free herself and denounce her exploiters to French authorities, without obtaining sufficient justice. The applicant addressed to the Strasbourg Court for violations under article 4. The deliberation of the Court is important for the advancement of legislation against trafficking in human beings as the Court recognised her condition of *servitude*<sup>288</sup> that was generated by a situation of trafficking by her relative.<sup>289</sup> The Court provided also positive obligations to State under article 4: States must create a proper legal framework to criminalize slavery, servitude and trafficking in human beings and protect victims or potential victims. France failed in doing so, as it did not provide an adequate criminalisation of slavery and servitude.<sup>290</sup>

The landmark case for the issue of trafficking in human beings under the Strasbourg Court was the case *Rantsev v. Cyprus and Russia*. The facts involved a Russian girl who was brought with an “artist” visa to work in a nightclub in Limassol (Cyprus). After three days of work she escaped to return to Russia. She was brought to the Cypriot police by her employer to have her arrested and deported back to Russia. Police officers answered that she should be brought to the immigration officers the day after. The girl returned with her employer in an apartment and during the night she fell from the balcony and died. The applicant to the Strasbourg Court was her father.

The Court established that the case fell under the provisions of article 4.<sup>291</sup> Moreover, the situation was identified as trafficking for sexual purposes as it has been recognised that *artiste* in Cyprus is synonym for prostitute.<sup>292</sup> Recalling the *Siliadin* judgement, which was

---

<sup>288</sup> The Court concluded that the applicant was not held in slavery, as intended with the meaning given by the 1926 Convention, but she was held in servitude. In fact, she was not an object, she was not owned by her exploiters. She lacked freedom and lived under harsh working conditions. See *Siliadin v. France*, at paras 122, 123, 124 and 129.

<sup>289</sup> *Siliadin v. France*, at para. 92 states: “She noted that she had not come to France in order to work as a domestic servant but had been obliged to do so as a result of the trafficking to which she had been subjected by Mrs B., who had obtained her parents' agreement through false promises” (See *Siliadin v. France*, at para. 92)

<sup>290</sup> *Siliadin v. France* at para. 141

<sup>291</sup> *Rantsev v. Cyprus and Russia*, at para. 278

<sup>292</sup> *Ibid.*, at para. 83. The Cypriot Ombudsman appointed that since the mid-70s, many young women foreigners

the first one that mentioned the issue of trafficking, the Court stated that:

The Court considers that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere [...] It implies close surveillance of the activities of victims, whose movements are often circumscribed [...] It involves the use of violence and threats against victims, who live and work under poor conditions.<sup>293</sup>

As trafficking was defined as a violation of human rights and dignity and a threat to democracy, what is relevant for our analysis is the new life given by the Court to article 4 of the Convention. In fact, the Court deliberated that:

In view of its obligation to interpret the Convention in light of present-day conditions, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes “slavery”, “servitude” or “forced and compulsory labour”. Instead, the Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.<sup>294</sup>

Calling into question the Palermo Protocol and the CoE Trafficking Convention as milestones of the legislation against trafficking in persons, the Court recognised the definitions given by these two instruments of international law as part of the scope of article 4. The Court interpreted the Convention as a *living instrument* and according to present days’ exigencies and changes. It recognised also that trafficking in human beings is a modern form of the old slave trade, in line with what is written in the Explanatory Report to the CoE Convention.<sup>295</sup> So, the Court recognised trafficking as slavery. Also in Rantsev case the Court appointed to States positive obligations deriving from article 4, already expressed in Siliadin case. The obligations appointed to States are those of penalising and prosecuting traffickers,

---

entered in Cyprus with the artiste visa but were de facto employed as prostitute in nightclubs and that the phenomenon increased in the 90s with the collapse of Soviet Union.

<sup>293</sup> *Ibid.*, at para. 281

<sup>294</sup> *Ibid.*, at para. 282

<sup>295</sup> CoE Trafficking Convention Explanatory Report, at para. 3 and Rantsev v. Cyprus and Russia, at para. 161

establishing a proper legal framework aimed at prohibit trafficking. The Court recalled the importance of a comprehensive approach to trafficking, taking into consideration issues of prevention and protection of victims.<sup>296</sup> Both Cyprus and Russia did not comply with these obligations, as we will observe below in discussing States obligations to protect victims of trafficking.<sup>297</sup> Rantsev case was a great improvement in the international law of human trafficking. It assumed an evolutive approach to the issue, marking an important step for the future case law.

A recent case of the Court, *L.E. vs Greece*<sup>298</sup>, highlighted the inefficiency of law enforcement agents and public authorities in dealing with a victim of human trafficking for sexual exploitation and restated the existence of positive obligations under article 4 in case of human trafficking. The applicant was a young Nigerian woman that in 2004 was trafficked to Greece by a compatriot, with the promise of a job in a bar or in a nightclub. When she arrived in Greece, she discovered she owed 40,000 euros to her trafficker, who confiscated her documents and forced her to become a prostitute. During two years as a trafficked victim, she has been arrested three times by Greek law enforcement agents because she was a prostitute, violating the Greek law, and because she was an illegal migrant without a residency permit. While she was in prison waiting for deportation to Nigeria, she asked for help to a Greek NGO, to receive support and assistance as a victim of human trafficking for sexual exploitation. She also denounced her trafficker and another woman (probably her Madame), but the Greek Criminal Court rejected her claim. She asked for a re-examination of her request and it was accepted, since it appeared that the testimony of the NGO in charge of her assistance and support has not been included in her file. Her traffickers were put before the judge for human trafficking after several years from the complaint of the victim, and she received the status of victim and a special residency permit. However, her trafficker was not prosecuted and the other woman was not found guilty but she was identified as another victim of human trafficking.

The Court followed the footsteps of the case *Rantsev vs. Cyprus and Russia* in identifying the case as a violation of article 4 that is one of the basic commitment of a

---

<sup>296</sup> Rantsev v. Cyprus and Russia, at paras. 285-286. The same position was taken by the Cypriot Ombudsman in para. 89 of the sentence that: “The phenomenon of trafficking in person has so tremendously grown worldwide. Trafficking in persons concerns not only sexual exploitation of others but also exploitation of their employment under conditions of slavery and servitude” (See Rantsev v. Cyprus and Russia, at para. 89)

<sup>297</sup> See *infra* chapter 2, paragraph 1.2

<sup>298</sup> *L.E. vs Greece*, application n° 71545/12, 21st January 2016, available at <http://hudoc.echr.coe.int/eng/?i=001-160218> consulted the 12th of April 2017 (available only in French), (hereinafter *L.E. v. Greece*)

democratic society.<sup>299</sup> The Court stated that States have positive obligations in the case of human trafficking (a proper national legislation, a good protection system for victims and an effective criminal investigation process). According to the Court, Greece has failed to provide adequate protection to a victim of human trafficking even though its legislation is appropriate and in line with the Palermo Protocol and the CoE Convention.<sup>300</sup> There was a failure in the identification of the victim, who was not immediately recognised as a victim of human trafficking, so she could not enter in a programme of support and protection. She risked expulsion three times due to this inefficiency. Moreover, when she stated to be a victim of human trafficking, there was an unreasonable delay in the recognition of her status. In the field of investigation, Greece was found responsible in not having cooperated with Nigeria in the prosecution of her trafficker, which was released at the end of the trial.

The specificity of this judgment will be analysed further in the present study. Nevertheless, it is very important because it is another step towards a proper recognition of human trafficking as a violation of article 4. Moreover, in this case article 4 was pulled together with article 6 (right to a fair hearing within a reasonable time) and article 13 (right to an effective remedy), to underline that States should commit themselves more in the protection of victims because they are useful in investigation processes and prosecutions. Since *Rantsev*, the European Court of Human Rights took a strong position against trafficking, seeing it as a phenomenon that could fall in the prohibition of slavery provision of the Convention.

### **3.3 The Charter of Fundamental Rights of the European Union<sup>301</sup>**

The Charter of Fundamental Rights of the European Union was proclaimed in Nice (France) in 2000 by the European Parliament, the European Commission and the Council. It includes all the civil, political, economic and social rights pertaining to European Union citizens and residents. It is composed by fifty-four articles divided into seven chapters, namely *dignity, freedoms, equality, solidarity, citizens' rights, justice* and *general provisions*. The Charter became legally binding for European Union States with the entry into force of the Treaty of Lisbon in 2009, as recognised in article 6 of the Treaty on the European Union

---

<sup>299</sup> L.E. vs Greece, at para. 64. The Court stated that article 2 (right to life), article 3 (prohibition of torture) and article 4 are basic of a democratic society.,

<sup>300</sup> L.E. vs Greece, at para. 70

<sup>301</sup> The Charter of Fundamental Rights of the European Union proclaimed by the European Commission, the European Parliament, and the Council of the European Union in Dec., 18th, 2000, OJ C 364/1, entered into force Dec. 1, 2009, with the Treaty of Lisbon. (hereinafter European Charter of Fundamental Rights)



(TEU)<sup>302</sup>. It enshrines the rights and provisions of the European Convention on Human Rights.

For what concerns trafficking in human beings, the Charter is the first instruments that nominates it directly in an article. In fact, article 5 reads “No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour. Trafficking in human beings is prohibited.”<sup>303</sup>

Article 5 corresponds to article 4 of the European Convention on Human Rights, with the addition of human trafficking. It reflected the developments in the fight against organised crime, like networks involved in sexual exploitation.<sup>304</sup> Article 5 is included in the first chapter of the Charter, the one of dignity, as it has been recognised that human trafficking violates human dignity as intended in the first article of the Charter.<sup>305</sup> It is also linked with other articles of the Charter such as the right to integrity, the prohibition of using human body as a source of gain (art. 3)<sup>306</sup> and the prohibition of ill treatment (art. 4).<sup>307</sup> Moreover, liberty and security of persons<sup>308</sup> is called into question, as well as the equality between men and women<sup>309</sup>, the rights of the child<sup>310</sup>, the prohibition of child labour<sup>311</sup>, fair working conditions<sup>312</sup> and the freedom of movement and residence.<sup>313</sup>

It is interesting to note that the European Union has competence on trafficking since the Treaty of Maastricht, in the field of Justice and Home Affairs. The provision of article 5 and the European legal framework suggest a little consideration of trafficked individuals. The narrow provision of article 5, where there is only a prohibition of the act of trafficking, remarks the tension between an approach based on fundamental rights in immigration and asylum and the desire of States to maintain their sovereignty and control on borders.<sup>314</sup> As we will see, this is one of the biggest concerns in the discourse about the fight against human trafficking, especially in European Union law development, from a repressive approach to a

---

<sup>302</sup> Treaty of the European Union, 26th October 2012, OJ C 326, at art. 6 and Geiger, R., Khan, D.E., Kotzur, M., *European Union treaties: a commentary*, 2015, C.H. BECK HART, Munchen, p. 41

<sup>303</sup> European Charter of Fundamental Rights, at art. 5

<sup>304</sup> Peers et al, *The European Charter of Fundamental Rights: a commentary*, 2014, Oxford, p. 101

<sup>305</sup> *Ibid.*, at p. 104

<sup>306</sup> The European Charter of Fundamental Rights, at art. 3

<sup>307</sup> *Ibid.*, at art. 4

<sup>308</sup> *Ibid.*, at art. 6

<sup>309</sup> *Ibid.*, at art. 23

<sup>310</sup> *Ibid.*, at art. 24

<sup>311</sup> *Ibid.*, at art. 32

<sup>312</sup> *Ibid.*, at art. 15

<sup>313</sup> *Ibid.*, at art. 45

<sup>314</sup> Peers et al, *The European Charter of Fundamental Rights: a commentary*, 2014, Oxford, p. 107

more comprehensive approach.

### 3.4 The European Union Law

Even the European Union has dealt with human trafficking since the 90s. The issue of trafficking entered in the legislation of the European Union indirectly since the abolition of internal frontiers and the creation of a space in which movements of capitals, persons, services, and goods would have been free.<sup>315</sup> The abolition of internal frontiers would have made transnational crime acts easier, so there was a strong need to cooperate between member States on matters of immigration and security.<sup>316</sup> Also, the Schengen Convention, adopted in 1990 and entered into force in 1995 included some provisions of border patrolling against some offences, including trafficking.<sup>317</sup> In 1992 The Treaty of Maastricht was adopted, reorganizing the European Community, and creating a three-pillar structure (the European Communities, a common foreign and security policy and cooperation in the field of justice and home affairs). Trafficking in human beings was inserted in the second and third pillars, based on cooperation between member States and that the Council could provide common actions.<sup>318</sup> In 1997, the Joint Action to “combat trafficking in human beings and sexual exploitation of children”<sup>319</sup> was issued, marking a starting point of the strong European Union commitment against the crime of trafficking in human beings. The Treaty of Amsterdam<sup>320</sup> successively regulated common judicial actions of member States to combat organised crime in Title VI, establishing an Area of Freedom, Security and Justice. The inclusion of

---

<sup>315</sup> The Internal Market was established in the Single European Act of the 28th of February 1986 and defined in article 13 (Single European Act - SEA, done Feb. 28th, 1986, entered into force July, 1st, 1987, OJ L 169/1). The Internal Market should have been established in 1992.

<sup>316</sup> Scarpa, S., *Trafficking in Human Beings: Modern Slavery*, 2008, p. 171

<sup>317</sup> Convention implementing the Schengen Agreement of 14th of June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, done 1990, entered into force March, 26th, 1995, OJ L 239/19, at art. 40 para. 7 and art. 41 para. 4. These articles are inserted in Title III concerning Police and Security, chapter one on police cooperation. available at <https://www.consilium.europa.eu/uedocs/cmsUpload/SCH.ACQUIS-EN.pdf> consulted the 29th of March 2017. The Schengen Convention entered in the acquis of the European Union with a Protocol of the Treaty of Amsterdam.

<sup>318</sup> Treaty establishing the European Union (Maastricht Treaty), done Feb., 7th, 1992, entered into force Nov. 1st, 1993, OJ L 224/1. Article K.3 para. 2 contained in Title VI established that until 1999 Council could adopt joint actions to harmonise those of individual member States.

<sup>319</sup> Council Joint Action of the 24th of February 1997 to combat trafficking in human beings and sexual exploitation of children, 97/154/JHA, OJ L 063/2, March, 4th, 1997, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31997F0154>, consulted the 28th of March 2017

<sup>320</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts (Treaty of Amsterdam), done Oct., 2nd, 1997, entered into force May, 1st, 1999, OJ C 340/1. The article which makes reference to human trafficking is article K.1.

trafficking in human beings within an article that deals with judicial cooperation underlines the repressive approach of the earliest forms of the European Union actions.

As we recalled above in the previous section, another important milestone for the fight against trafficking in human beings in the European Union is the Charter of Fundamental Rights of the European Union at article 5.

In 2002 the Council of the European Union adopted under the provisions of the Title VI of the Treaty on the European Union<sup>321</sup> the Council Framework Decision on combating trafficking in human beings<sup>322</sup>, aimed at replacing the 1997 Joint Action.<sup>323</sup> The aim of the framework decision was that of establishing obligations for Member States in order to conform their national laws to a common action, as expressed in the preamble at paragraph 7.<sup>324</sup> In fact, at article 10, Member States were required to comply with the provisions in their domestic laws before the 1st of August 2004 and communicate to the Council and the Commission the text of the domestic law that transposed the Decision.<sup>325</sup> The Council Framework of 2002 was highly concentrated in adopting a repressive approach against the crime of trafficking in human beings, establishing a system of penalties and sanctions to offenders, unlike the Palermo Protocol<sup>326</sup>, with little attention to the protection and assistance to victims. almost inexistent.

The weakness of the 2002 Council Framework Decision became evident in the two-year period 2006-2008 in some reports about its implementation. For this reason, the Commission submitted to the Council a proposal for a Directive<sup>327</sup>, to be discussed and approved with the new process established in the Treaty of Lisbon<sup>328</sup> of 2009. In fact, with

---

<sup>321</sup> The articles recalled in the preamble of the Council Framework Decision were article 29, 31 and 34. As Scarpa recalls, art. 29 inserts human trafficking among EU priorities for the first time. Article 34 established the legislative process for this subject, that is to say through decisions and frameworks decisions by the Council proposed by the Commission or a Member State. Article 31 instead introduced cooperation for penal matters among States also through Eurojust and Europol.

<sup>322</sup> Council Framework Decision of 19th of July 2002 on combating trafficking in human beings, 2002/629/JHA, OJ L 203/1, Aug, 1st, 2002 (hereinafter 2002 Framework Decision on Trafficking), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002F0629> consulted the 28th of March 2017.

<sup>323</sup> 2002 Framework Decision on Trafficking, at art. 9

<sup>324</sup> 2002 Framework Decision on Trafficking, at preamble, para. 7 reads: "It is necessary that the serious criminal offence of trafficking in human beings be addressed not only through individual action by each Member State but by a comprehensive approach [...]. In accordance with the principles of subsidiarity and proportionality, this Framework Decision confines itself to the minimum required in order to achieve those objectives at European level [...]" (See 2002 Framework Decision On Trafficking, at preamble, para. 7).

<sup>325</sup> 2002 Framework Decision on Trafficking, at art. 10

<sup>326</sup> As Gallagher notes, the 2002 Council Framework Decision expanded the criminal justice focus provided by the UN Protocol, strengthening the provisions about sanctions, criminal penalties, investigations and prosecutions. Gallagher, A. T., *The International Law of Human Trafficking*, p. 98

<sup>327</sup> Gallagher, A. T., *The International Law of Human Trafficking*, p. 103

<sup>328</sup> The Treaty of Lisbon entered into force the 1st December 2009. Before that date, matters of judicial

the reformation of the Treaties of the European Union, the articles devoted to judicial cooperation in criminal matters, including also trafficking in human beings, are found in the Treaty on the Functioning of the European Union (TFEU) at article 82 and 83<sup>329</sup>: in particular, article 83 states that the European Parliament and the Council legislate through Directives with the Ordinary Legislative Procedure<sup>330</sup> everything that involves the transnational organised crime, also trafficking in human beings and sexual exploitation of women and children.<sup>331</sup> Moreover, trafficking in human beings, especially women and children is included in Title V, article 79 about immigration.<sup>332</sup> The new proposal was more concerned on trafficking victims' needs of protection and assistance, identifying trafficking as a violation of human rights. The new Framework Decision did not enter into force because of the changing of the rules in the decision-making process established by the reformation of the Treaties, but a new directive on the concern of trafficking appeared in 2011, to substitute the old 2002 Framework Decision.

The new Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims<sup>333</sup> was proclaimed the 5th of April 2011 and entered into force the 15th of April 2011. It is a comprehensive document following the three main concerns of the fight against human trafficking, such as prevention, protection and prosecution and it replaces completely the 2002 Framework Decision, as established in article 21.<sup>334</sup> The scope of the Directive is set in article 1 and it is to establish common provisions to fight against trafficking in persons.<sup>335</sup> In the preamble, trafficking is defined as a serious crime and a violation of human rights.<sup>336</sup> The gender specific dimension

---

cooperation were legislated by the Council through Decisions.

<sup>329</sup> Geiger, R., Khan, D.E., Kotzur, M., *European Union treaties: a commentary*, p. 442 and 447.

<sup>330</sup> Directives are, according to article 288 TFEU, is a legal act of the European Union which commits member States to harmonise their domestic laws on a certain subject through the transposition of the provisions of the directive in national laws. Geiger, R., Khan, D.E., Kotzur, M., *European Union treaties: a commentary*, p. 937; the Ordinary Legislative Procedure (OLP) is established in article 294 TFEU and it involves both the Council and the European Parliament after an initiative of the Commission. It involves three readings of both the Council and the European Parliament and before the last one a Conciliation Committee. It is the most used Legislative Procedure in the European Union and it substituted the former co-decision procedure introduced in the Maastricht Treaty. Geiger, R., Khan, D.E., Kotzur, M., *European Union treaties: a commentary*, pp. 955-958

<sup>331</sup> Geiger, R., Khan, D.E., Kotzur, M., *European Union treaties: a commentary*, 2015, p. 447

<sup>332</sup> *Ibid.*, p. 432. Also in this article the Ordinary Legislative Procedure is provided for the legislation about this subject.

<sup>333</sup> Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, 2011/36/EU, 5th April 2011, OJ L 101/1, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0036> consulted the 28th of March 2017 (hereinafter Directive 2011/36)

<sup>334</sup> Directive 2011/36, at art. 21. It is also stated in the preamble at paragraph 30.

<sup>335</sup> *Ibid.*, at art. 1

<sup>336</sup> *Ibid.*, at preamble at para. 1

of human trafficking is recalled in the Directive which states that women and men are trafficked for different purposes and that assistance mechanism should also consider the issue of gender, and the push and pull factors that fosters the phenomenon.<sup>337</sup> The Directive explicitly declares to use an integrated approach to put together criminal justice provisions and human rights protection<sup>338</sup>, encouraging the collaboration with NGOs, civil society actors in all aspects of the fight against trafficking in human beings.<sup>339</sup> The Directive uses a broader understanding of the terms trafficking and it clarifies it in the preamble, where it recognises many other forms of exploitation apart from sexual exploitation or forced labour.<sup>340</sup>

It has a victim oriented approach, unlike its predecessor of 2002. It contains a clear and strong commitment to all aspects of victims' protection, according to their vulnerability, in case of trafficked children, their status and cultural context. Prevention of trafficking is another crucial aspect of the Directive. Like the CoE Convention, the Directive addresses directly demand, recognised as one of the factors that foster trafficking and the need to discourage it, and it encourages a network of monitoring systems of National Rapporteurs, which provide the Union with data, information and best practices in order to cooperate better.<sup>341</sup> The 2011 Directive is the new framework of reference at the European level for Member States, which had to transpose it in their domestic laws within the 6th of April 2013.<sup>342</sup> In the present study, we will analyse further its system of protection and assistance to victims, together with another Directive, concluded by the Council the 29th of April 2004, regarding the "residency permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities" which supports the European Union framework of action against trafficking and that is still in force<sup>343</sup> and the Directive of the European Parliament and of the Council establishing minimum standards on the rights,

---

<sup>337</sup> *Ibid.*, at preamble para. 3

<sup>338</sup> *Ibid.*, at preamble para. 7

<sup>339</sup> *Ibid.*, at preamble para. 6

<sup>340</sup> *Ibid.*, at preamble para. 11. The Directive recognised as forms of exploitation also forced begging, exploitation of "criminal activities", such as theft, drug dealing etc. and trafficking in human beings for the removal of organs.

<sup>341</sup> *Ibid.*, at preamble paras. 25 and 27

<sup>342</sup> *Ibid.*, at art. 22

<sup>343</sup> Council Directive on the residency permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, 29th of April 2004, 2004/81/EC, OJ L 261/19, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML> consulted the 28th of March 2017. The Directive was proposed in 2002 by the European Commission and adopted by the Council of Ministers on the basis of article 63 contained in the Title IV on visas, asylum and immigration of the Amsterdam Treaty.

support and protection of victims of crime that replaced Council Framework Decision 2001/220/JHA.<sup>344</sup>

Finally, the last effort of the European Union to combat trafficking in human beings is the European Union Strategy towards the Eradication of Trafficking in Human Beings 2012-2016<sup>345</sup>, adopted in 2012 to supplement and complete the European Union framework. It covers a strategy lasting five years and it is composed by five key priorities adopting a comprehensive and multifaceted approach which attempts to cover all aspects of trafficking. The key priorities are: *identifying, protecting and assisting victims of trafficking; stepping up the prevention of trafficking in human beings; increasing prosecution of traffickers; enhancing coordination and cooperation among key actors and policy coherence; increasing knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.*<sup>346</sup> Every key priority is divided into actions that involve different actors, namely the European Commission, Member States, NGOs, the civil society, the External Action, European Union Agencies, Eurojust and National Rapporteurs, with a different timing. As a system of monitoring and evaluation, Member States should do their evaluation of their own national laws and activities, while the Commission issues a report every two years to comment the developments of the strategy. There was also a final report in 2016 on the impact of national laws.

This strategy marked an important step in the European fight against human trafficking and changed the European point of view, from a strictly repressive approach to a more victim oriented and human rights concerned one. In few years, the European Union did a great number steps towards a common policy contrasting trafficking in human beings through criminal law and human rights protection. The same prohibition of trafficking inside a legal instrument concerning fundamental rights is a great and unique step forward in international legal provisions.

It may be interesting now to observe how a country which is Member State of the European Union has dealt with the fight against trafficking in human beings and how it has

---

<sup>344</sup> Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, 2012/29/EU, 14th November 2012, OJ L 315/57, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

<sup>345</sup> European Commission, *European Union Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, adopted 19th June 2012, COM(2012), available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the\\_eu\\_strategy\\_towards\\_the\\_eradication\\_of\\_trafficking\\_in\\_human\\_beings\\_2012-2016\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings_2012-2016_1.pdf) consulted the 29th of March 2017 (hereinafter 2012-2016 European Union Strategy)

<sup>346</sup> *Ibid.*, at p. 5



implemented the aforementioned regional provisions. The next section will focus on the case of Italian law on trafficking in human beings.

#### 4. Italian Law

Italy is recognised as one of the major European Union countries of destination of human trafficking, especially from Eastern Europe and West Africa.<sup>347</sup> Its position at the centre of the Mediterranean Sea, being the doorway of Europe, contributes to a great diffusion of the phenomenon. Moreover, its legislation about human trafficking is recognised as one of the most complete and integrated since the end of the 90s. In fact, Italy is one of the few European countries to have come with a specific legislation against trafficking, making incredible progress in regulatory terms.<sup>348</sup>

Before listing all the laws applied in the fight against human trafficking in Italy, it is important to recall all the signatures, ratifications, and European Directives transpositions.

Italy signed the Transnational Organized Crime Conventions and the UN Trafficking Protocol the 12th of December 2000. Even if it was one of the first countries to sign the documents, it ratified it only the 2<sup>nd</sup> of August 2006.<sup>349</sup> The Council of Europe Convention was signed by Italy the 8th of June 2005 and ratified the 29th of November 2010. The Convention entered into force the 1st of March 2011 in the Italian legislation.<sup>350</sup> Regarding the European Union law<sup>351</sup>, Italy transposed the Directive 2011/36/EU with the Legislative

---

<sup>347</sup> Aronowitz, A., *Human Trafficking, Human Misery: the global trade in human beings*, 2009, Greenwood Publishing Group – Social Sciences, Westport (USA), p. 91

<sup>348</sup> Ferone, B., *La normativa contro la tratta ai fini di sfruttamento sessuale*, contained in Bernardotti, A., Carchedi, F., and Ferone, B., *Schiavitù emergenti: la tratta e lo sfruttamento delle donne nigeriane sul litorale Domitio*, 2005, Ediesse, Roma p. 27

<sup>349</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en) consulted the 6th April 2017; Fiandaca G., Giarda, A., *Codice Penale e Codice di Procedura Penale - Leggi complementari XVI Edizione*, 2012, IPSOA Gruppo Wolters Kluwer, Milano, pp. 1165 - 1170. Italy adopts the international conventions in its domestic legislation through an act called “*ordine di esecuzione*” (execution order). It could be a law, a legislative decree or a decree in which it is declared that the international treaty has full execution in Italian jurisdiction. The text of the Convention is annexed to the act in question. So, there are no direct statement of norms, but through the reference to the treaty itself. The choice of the act to use is given by the importance of laws contained in the treaty. In the Italian legal practice, the “*ordine di esecuzione*” is issued before the exchange and deposit of ratifications in case of international treaties in the disposition of article 80 of the Italian Constitution. So, the law to authorise the ratification includes the “*ordine di esecuzione*”, that will enter into force only when the international treaty will begin to produce obligations for States. See Carreau, D., and Marrella, F., *Diritto Internazionale*, 2016, Giuffrè Editore, Milano, pp. 540-541; Cassese, A., *Diritto Internazionale*, 2006, Il Mulino Editore, Bologna, p. 315

<sup>350</sup> [http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/signatures?p\\_auth=C8VCXTSf](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/signatures?p_auth=C8VCXTSf) consulted the 6th of April 2017

<sup>351</sup> Italy is bound to respect European Union obligations under article 117(1) of the Italian Constitution. As directives are not directly adopted by the State, Italy implements directives through laws or legislative decrees ad hoc, in which the directive is re-formulated. For many years, this issue was regulated by Law 86/1989, called La Pergola Law and various successive legislative acts aimed at a more involved participation of Italy to the

Decree 24/2014 of the 4th of March 2014<sup>352</sup> and Directives 2004/81/EC<sup>353</sup> and 2012/29<sup>354</sup>.

Before the last developments, the only sources of Italian domestic law to which we must refer for our analysis are the Italian Criminal Code of 1930, book II, title XII at articles 600 (slavery and servitude), 601 (trafficking of persons) and 602 (purchase of slaves)<sup>355</sup> and the Ordinary Law n. 75 of 1958 (Merlin Law) for the abolition of the regulation of prostitution and fight against the exploitation of others (article 3).<sup>356</sup> The three articles of the Criminal Code punish the crime of slavery and trafficking of humans with the purpose of slavery, while article 3 of the Merlin Law punishes the organised recruitment of people with the end of exploitation of the prostitution, even from one State to another.<sup>357</sup>

Starting from the end of the 90s, Italy began to develop its own legislation, amending, or completing the previous provisions, with a particular attention to human rights and the unconditional assistance to victims recognised worldwide.

In 1998, long before the signature of the Palermo Protocol or the CoE Convention, the Consolidated Immigration Act<sup>358</sup> (Legislative Decree 286/1998, called “Turco-Napolitano”) was adopted in Italy, with provisions concerning the issue of a residency permit

---

normative process of the European Community (and then, Union). Since 2012, with Law 234/2012, there were changing in the process of implementation of European Union legislative acts, because Italy registered delays and problems for many years in giving execution to them in its domestic legislation. See Conforti, B., *Diritto Internazionale – X Edizione*, 2014, Editoriale scientifica, Napoli, pp. 369-370; Tesaurò, G., *Diritto dell’Unione Europea*, Sesta Edizione, 2012, CEDAM, Padova, pp. 163-164.

<sup>352</sup> D. Lgs. 24/2014, Attuazione della direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime, che sostituisce la decisione quadro 2002/629/GAI., of March, 4th, 2014, published on the Official Journal n. 60 of March, 13th, 2014, entered into force March, 28th, 2014 (hereinafter D. Lgs 24/2014), available at <http://www.gazzettaufficiale.it/eli/id/2014/03/13/14G00035/sg>, consulted the 6th of April 2017

<sup>353</sup> This Directive was not implemented in the Italian domestic legislative system with a Legislative Decree as usual. It was transposed with a note from the Department of Equal Opportunities of the Italian Government called “Recepimento direttiva 2004/81/CE riguardante il titolo di soggiorno da rilasciare ai cittadini di paesi terzi vittime della tratta di esseri umani o coinvolti in una azione di favoreggiamento dell’immigrazione illegale che cooperino con le autorità competenti: Note del Dipartimento per i Diritti e le Pari Opportunità e del Ministero dell’Interno” on Aug., 5th, 2006, information available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=NIM:149320>, consulted on 31st May 2017

<sup>354</sup> D. Lgs. 212/2015, Attuazione della direttiva 2012/29/UE del Parlamento europeo e del Consiglio, del 25 ottobre 2012, che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che sostituisce la decisione quadro 2001/220/GAI, of Dec., 15th, 2015, published on the Official Journal n. 3 of Jan., 5th, 2016, entered into force on Jan., 20th, 2016, available at <http://www.gazzettaufficiale.it/eli/id/2016/01/05/15G00221/sg> consulted 31st May 2017

<sup>355</sup> Garofoli, R., *Codice penale e delle leggi penali speciali*, contained in Collana i Codici Superiori, directed by Alpa, G., and Garofoli, R., 2014, Nel Diritto Editore, Roma, pp.1924 - 1947

<sup>356</sup> Fiandaca G., Giarda, A., *Codice Penale e Codice di Procedura Penale - Leggi complementari XVI Edizione*, p. 1705

<sup>357</sup> *Ibid.*, at art. 3

<sup>358</sup> Translation by the author of the Italian *Testo Unico sull’Immigrazione*



for social protection to a victim of human trafficking at article 18<sup>359</sup>. As we will see in chapter three, the issuing of the residency permit is not completely conditional to the collaboration with the law enforcement agents of the victim: in fact, sometimes the denunciation from the part of the victim is the point of destination of the path of rehabilitation.<sup>360</sup> In fact, the beneficiary of the residency permit can choose two paths: the judicial one with the denunciation, and the social one, guaranteed by social workers and NGOs, registered in the second section of the register. This new approach to victims made Italy pioneer in Europe and worldwide, as it has been recognised that there are no collaborations or investigations without the guarantee for fundamental rights and protection.<sup>361</sup>

The next step was the addition of a revised definition of human trafficking in the Italian legislation. In fact, the definition by the Palermo Protocol was not contained in the Criminal Code but in the immigration law, making the repressive process difficult and incomplete. Moreover, this affected also the status of victims, that were not sufficiently protected by law enforcement agents.<sup>362</sup> So, in 2003 the Ordinary Law n. 228<sup>363</sup> amended the definition of *enslavement* in the Criminal Code in article 600, 601 and 602, pulling it together with the concept of *servitude*. The new article 600 defines slavery and servitude as the status of a person kept by a person who carries sort of property rights, with continuing subjection, forcing her/him to work, or have sexual performances, or begging or every exploitative service.<sup>364</sup>

Article 601 refers specifically to human trafficking and punishes everyone who recruits and introduces in the Italian territory, sells, hosts people with the means and purposes listed in article 600 and mentioned above, above all the deceit of the persons trafficked. This is true also in cases of internal trafficking. The same provision is applied in cases of children victims.<sup>365</sup> The crime of human trafficking in Italy is punished with the imprisonment from eight to twenty years according to article 601. From 2003, Italy has a proper legislation even

---

<sup>359</sup> De Vincentiis, D., *Testo Unico sull'immigrazione e norme sulla condizione dello Straniero: D. Lgs. 25.7.1998, n. 286*, 1999, Edizioni Giuridiche Simone, Napoli, pp. 50-52 (hereinafter D. Lgs. 286/1998). From 2007 also EU nationals can benefit from this special residency permit with Law 17/2007.

<sup>360</sup> Ferone, B., *La normativa contro la tratta ai fini di sfruttamento sessuale*, p. 25

<sup>361</sup> *Ibid.*, pp. 27-28

<sup>362</sup> *Ibid.*, p. 29

<sup>363</sup> L. 228/2003, *Misure contro la tratta di persone*, of Aug., 11th, 2003, published on the official journal n. 195, Aug. 23rd, 2003 (hereinafter L. 228/2003), available at <http://www.camera.it/parlam/leggi/032281.htm>, consulted the 9th of April 2017.

<sup>364</sup> Garofoli, R., *Codice penale e delle leggi penali speciali*, p. 1924, at art. 600, para. 1

<sup>365</sup> *Ibid.*, at pp. 1943-1944, at art. 601 and L. 228/2003, at art. 2

in the field of criminal law, not only in immigration law.<sup>366</sup>

In addition to modify the provisions of the above-mentioned articles of the Criminal Code, the most important articles of the law 228/2003 are articles 12 and 13: the first one establishes a fund for anti-human trafficking measures, while the other sets a special programme for victims of human trafficking. This defined very well the strategy of Italy in fighting human trafficking and protecting victims, combining article 13 of the law 228/2003 and article 18 of the Consolidated Immigration Act.

In the years 2000, the Italian Minister for the Equal Opportunities delegated by the Prime Minister established a free and anonymous Anti-Trafficking Free Helpline (Numero Verde) with the purpose of giving information and immediately help victims of human trafficking. It helps also to monitor the situation in all the Italian territory.<sup>367</sup>

In the recent years, after the transposition of the 2011 Directive of the European Union, also Italy has endeavoured to adopt a more integrated approach, recognising the recalled multi-agency vision of the issue. The Legislative Decree n. 24/2014 which transposes into the domestic law the 2011 Directive establishes the adoption of a national plan and strategy to fight against human trafficking within three months since its entry into force.<sup>368</sup> On the 26th of February 2016 the Italian Council of Ministers adopted the National Anti-Trafficking Plan 2016-2018, a single and unique plan which provides funds (also European funds) for projects aimed at preventing and repressing trafficking, as well as protecting victims.<sup>369</sup> The Plan is divided into four shares according to the four directions laid down in international and European laws on *prevention, protection, prosecution and partnership*. It aims at following the guidelines of the 2012-2016 European Strategy against trafficking in human beings mentioned above. It provides precise measures which involve different actors in different Italian territories, from the State apparatus to private entities and using structural funds to finance projects against human trafficking, especially for the

---

<sup>366</sup> In Italy, the crime of trafficking of human beings is also subjected to the National Directorate Against Mafia (DNA – Direzione Nazionale Antimafia), and the District Directorates Against Mafia (DDA – Direzioni Distrettuali Antimafia) who are judiciary bodies in charge of the investigations about crimes committed by organised crime networks.

<sup>367</sup> Monzini, P., *Il mercato delle donne*, p. 94 and Minister of Equal Opportunities website available at <http://www.pariopportunita.gov.it/contrasto-tratta-esseri-umani/numero-verde-800-290-290/> consulted the 10th of April 2017. The emergency number is 800 290 290. As we will see in Chapter 4, the operative headquarter is in the city of Venice (Veneto).

<sup>368</sup> D. Lgs. 24/2014, at art. 9.

<sup>369</sup> Council of Ministers of the Italian Republic (Consiglio dei Ministri della Repubblica Italiana), Piano Nazionale d'azione contro la tratta e il grave sfruttamento 2016-2018, adopted on Feb., 26th 2016, (hereinafter Anti Trafficking National Plan), available at <http://www.pariopportunita.gov.it/media/2687/piano-nazionale-di-azione-contro-la-tratta-e-il-grave-sfruttamento-2016-2018.pdf>, consulted the 10th of April 2017

protection of victims. It aims at creating a national and integrated network in order to cope with the problem in its entirety. The integrated approach, both repressive regarding exploiters and traffickers, and also concerned with issues of victims is strongly recalled, respecting human rights and gender specific concerns, with particular attention to minors. The actors involved in the Plan are Italian law enforcement agents, social workers, NGOs, private associations, religious and charitable organisations etc. Even if the anti-trafficking policies and monitoring systems are entrusted by the Minister of Equal Opportunities, other Ministries such as the Ministry of Labour and Social Policies, the International Affairs one, the Justice one, the Home Affairs one and the Health one are involved and they should cooperate together to guarantee an effective response to the issue of human trafficking. Cooperation with international actors is suggested, especially with the European Union and GRETA. The actions are managed at three levels: the *national level*, that of the State, which is more concerned with activities of monitoring and planning (through the Ministry of Equal Opportunities and a “Control Room”<sup>370</sup> supported by proposals and in-depth analysis of the academic and scientific community, trade unions and the third sector), *the regional level*, concerned with financing projects, coordinating actions and training professionals. Finally, at *the local level*, law enforcement agents and the judiciary are entitled to conduct investigations and to prosecute traffickers, while social workers and organisations of any kind are in charge of protection and assistance measures using funds and projects. They should act in a coordinate way.

For what concerns the present analysis, only the protection and assistance and the prevention provisions will be analysed in detail. The aim of the Plan is to build a common programme of emergence, assistance and social integration establishing a multi-agency action to better cover all the aspects of the complex phenomenon of human trafficking. This common programme has been approved in May 2016 and it aims at replacing the previous one based exclusively on article 13 of Law 228/2003 and on article 18 of the Consolidated Immigration Act.<sup>371</sup>

---

<sup>370</sup> The Control Room (in Italian, Cabina di Regia) aims at monitoring the phenomenon of human trafficking and its changes and evolutions through time and space in order to adopt a system of early warning for future policies.

<sup>371</sup> Decree of 16th of May 2016 by the Prime Minister of the Italian Republic together with the Ministry of the Interior, Labour and Social Policy and Health, *Single programme of emergence assistance and social inclusion*, available at <http://www.pariopportunita.gov.it/media/2767/dpcm-16-maggio-2016.pdf> consulted the 10th of April 2017.

## 5. Conclusions

After all this legislative *excursus*, one can easily assume that the contrast to trafficking in persons changed perspective throughout the years, from a mere repressive strategy to fight the crime itself to a more human-rights sensitive approach. It depends on how we look at the phenomenon and what lens we decide to use in our analysis. However, we agreed at least on the definition of human trafficking, even if it is not yet so specific.

It is not surprising that the Trafficking Protocol contains non-mandatory provisions with regards to protection and assistance to victims: being a supplementary document to an international treaty committed with organised crime, the focus is on the criminal prosecution of the alleged criminals of trafficking. However, it has been a milestone in the fight against trafficking in human beings, because it laid the foundations for a change in the attitude of the international community to the phenomenon – though quite imperfectly. One can say that the UN Trafficking Protocol triggered a chain reaction of regional legislations and important soft law provisions that led to a re-shaping of actions that must be taken.<sup>372</sup> Gallagher argues that to accuse solely the UN Trafficking Protocol to be too repressive means to not recognise the political power it had at the time of the entry into force, fostering cooperation among States on such a delicate issue, even though human rights provisions were in fact inexistent.<sup>373</sup>

As we will see in chapter two, human trafficking is also a serious violation of human rights and a recognised form of violence against women. So, human beings are at the centre of the international concern with regards to trafficking. In this manner, soft law instruments like the 2002 Recommended Principles and Guidelines and regional treaties like the CoE Trafficking Convention in 2005 put the victim at the centre.

The Council of Europe considers human rights as one of its three pillars. Together with the concern of the Council of Europe, the development of the European Court of Human Rights jurisprudence proved to be a strong step forward, shaping the future European approach to the issue.

In fact, European Union adapted its legislation to all these steps. The current legislation could be defined as *comprehensive*: protection of the victim, prevention of trafficking and repression are equally important and they are interconnected. For instance, to protect a trafficked person and give her/him assistance unconditionally to a denunciation may lead to a future will to collaborate by her/his part. The important collaboration to the research

---

<sup>372</sup> Gallagher, A. T., *Two Cheers for the Trafficking Protocol*, 2015, *Anti-Trafficking Review*, Issue 4, p. 15

<sup>373</sup> *Ibid.*, at pp. 16-17

and strategies of IGOs, NGOs and the civil society began to gain ground, affirming increasingly the multi-agency approach.

Multi-agency approach is, in fact, the path followed by the Italian legislation with its new provisions. The situation of Italy is peculiar, as trafficking in human beings affects it consistently due to its geographical position, that makes it country of transit and, mostly, of destination.

The phenomenon of trafficking is constantly changing and shaping, adapting to time and places. The definition given by the Palermo Protocol is proving to be too broad and too incomplete in a sense, as new forms of exploitation appeared in the last seventeen years. Debates are still going on regarding issues like prostitution, or sexual exploitation. Numerous debates revolve around human rights and gender-based discrimination. Next chapter will try to focus on the issue of human rights violations, positive obligations appointed to States regarding trafficking, the concept of modern day slavery and gender violence involved in trafficking, focusing exclusively on women, as both victims and agents. The debate on prostitution will be briefly recalled, to highlight the different visions of NGOs and also States about it, that could in a way block the development of the contrast to trafficking.



## CHAPTER 2: SEX TRAFFICKING - HUMAN RIGHTS, GENDER, AND THE DEBATE ON PROSTITUTION

### 1. The centrality of the trafficked person: women, gender- based violence and violations of human rights

Human trafficking is considered as a gross violation of human rights and human dignity in almost all the documents analysed in the previous chapter.

The fact that the focus of the Palermo Protocol definition is on the exploitative purpose is a recognition of the status of vulnerability and danger of the person that is trafficked. We saw also that the approach changed from a merely repressive to a more comprehensive one, taking into consideration the criminal prosecution of traffickers and the needs of trafficked persons. The vulnerability of certain subjects who are trafficked has been recognised and stated in some documents and it entered also in some legislative bodies, like the European and the Italian one.<sup>374</sup> Also, the issue of gender and age entered the trafficking discourse, recalling for equality and non-discrimination as the main path to follow in the fight against trafficking. The key role of NGOs has prompted this new integrated perception of the problem in the negotiation process and in all the successive legislative path towards a definition, finding a unique way to fight against human trafficking.

Many issues connected to the victim's sphere need to be highlighted. Especially in transnational trafficking, States deal with people that are not their citizens, so the need to guarantee the same rights of citizens to them is crucial in this manner, as provided by international human rights law. Protection and assistance of victims of human trafficking, especially women involved in sexual exploitation start with the general awareness of the violations they encounter, the abuses, the diseases, and the social unrest they should tackle.

The present chapter will focus on human rights aspects, to see trafficking as a form of gender violence, touching also the debate around prostitution. An analysis of the human rights violation regarding human trafficking will be proposed, moving to the examination of the concept of due diligence and States' positive obligations in cases of human trafficking, and its link with slavery. Trafficking will be analysed through the lens of gender violence, together with an insight into the role of women as victims and agents of sex trafficking. Then,

---

<sup>374</sup> See Directive 2013/33/UE at art. 21 and its transposition in Italian Law with the Legislative Decree of 18th of August 2015 n. 142 at art. 17. They identified victims of human trafficking, especially women and children as vulnerable people who has to be hosted in particular structures due to their condition.

the debate around prostitution and human rights during the negotiations of the Palermo Protocol will be highlighted, focusing on the key role of the two coalitions of feminist NGOs and the last developments internationally and in the European Union.

### **1.1 Human rights and human trafficking**

As we saw in the previous chapter, the focus on trafficked persons gained more and more ground in the global discourse thanks to some admirable strides in international, regional and even national law and also to the jurisprudence of the European Court of Human Rights (ECtHR). Human trafficking has been recognised not only as a criminal law issue, but also as a human rights issue. The tension between these two perspectives is highlighted by the fact that it is difficult to determine whether human trafficking is a threat to the individual or to the State, as it also concerns the breach of its immigration and criminal law by the part of traffickers. Mostly, as we recalled, trafficking is considered as a crime against the individual, while smuggling is a crime against the State, but sometimes issues of sovereignty and repressive actions against traffickers stand before the care of victims. Moreover, it has been recognised that the organised crime concerned with human trafficking violates not only the human rights of the trafficked individual, but also some democratic values, for example the prohibition of slavery to which trafficking is closely related.

Human trafficking is mostly a transnational issue in which exploitation takes place in a country different from the country of origin of the trafficked individual. So, we should take into consideration the fact that we are analysing the situation of non-national individuals and aliens<sup>375</sup> entered in the territory of a State both legally or illegally and that sometimes do not have documents because they live their country without them or they are sued by their exploiters. This makes difficult to identify and consequently protect them, creating situations of discrimination and inequality.

International law recognises as customary law the principle of the respect of non-nationals, of the minimum standard in dealing with non-nationals and their goods.<sup>376</sup> States

---

<sup>375</sup> According to a principle of customary law, only States can attribute or revoke citizenship to an individual. It means that States has an exclusive competence. It has been restated in a famous case by the International Court of Justice, the *Nottebohm Case* in 1955. With citizenship, we mean the link between and individual and the State (genuine connection) that entitles it to rights and duties, access to political rights, economic activities and so on. Citizenship should be real and the genuine connection between the individual and the State that attributed it to him should be proved. See Carreau, D., and Marrella, F., *Diritto Internazionale*, 2016, pp. 323-326 and Gallagher, A., *The International Law of Human Trafficking*, p. 144

<sup>376</sup> Carreau, D., and Marrella, F., *Diritto Internazionale*, 2016, Giuffrè Editore, Milano, pp. 320-321



must respect non-nationals that lives in their territories and respect a minimum standard that presents two aspects: on the one hand, the equal and fair treatment and on the other hand, the protection and safety of the foreigner in the territory of the State. These are two minimum limits that States should respect in order not to be recognised as internationally responsible.<sup>377</sup>

Everyone as a human being is holder of fundamental human rights, such as the right to life, to liberty and security, the protection from inhumane and degrading treatment, from slavery, from refolement<sup>378</sup> and so on. The Universal Declaration of Human Rights (UDHR) of 1948 in the preamble recalls values of universality and equality in guaranteeing fundamental human rights to *the human family* as a whole.<sup>379</sup> The international human rights law provides important responsibilities and binding obligations appointed to States to all the individuals presents on their territories. In fact, human rights are guaranteed to all individuals who are subject to the jurisdiction of a State, without discrimination on any kind.<sup>380</sup> Jurisdiction means the authority of the government of a State as a whole. It is intended as both territorial and extraterritorial: territorial means within the borders of the State. Extraterritorial instead that States must respect human rights of everybody also when they act outside their borders, like in military basis abroad.<sup>381</sup> Article 2 of the International Covenant on Civil and Political Rights (ICCPR) of 1966<sup>382</sup> reads:

---

<sup>377</sup> *Ibid.*

<sup>378</sup> The principle of no-refoulment is found in article 33 of the 1951 Refugee Convention (see *infra* Chapter 3, paragraph 1.7) and provides that the refugee or asylum seeker cannot be expelled by a State territory if there is ground to believe he/she may be persecuted or receive cruel, inhumane or degrading treatment in his/her State of origin. The only exception to this important provision of international human rights law is that the presence of the individual in the territory of the State is a menace for public security. See Conforti, B., *Diritto Internazionale – X Edizione*, 2014, Editoriale scientifica, Napoli, p. 251

<sup>379</sup> Universal Declaration of Human Rights, adopted by UNGA Res. 217A (III), UN Doc. A/810 at 71, Dec., 10th, 1948, at preamble; Eide, Asbjorn, *The Universal Declaration of Human rights: a commentary*, 1992, Scandinavian University Press, Oslo, pp. 19-21

<sup>380</sup> Shelton, D. L., *Advanced Introduction to International Human Rights Law*, 2014, Edward Elgar Publishing Limited, Cheltenham (UK), pp. 190-191; Nowak, M., *The International Covenant on Civil and Political Rights*, contained in Gomez Isa, F., De Feyter, K., *International Protection of Human Rights: Achievements and challenges*, 2006, University of Deusto Bilbao, p. 143

<sup>381</sup> Focarelli, C., *La Persona Umana nel Diritto Internazionale*, 2013, Il Mulino, Bologna pp. 122-123

<sup>382</sup> International Covenant on Civil and Political Rights, 999, UNTS 171, done Dec., 16th, 1966, entered into force Mar., 3rd, 1976, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en) consulted the 16th of April 2017 (hereinafter ICCPR)

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and *subject to its jurisdiction* the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>383</sup>

This means that State Parties of the Covenant must act also through international cooperation in order to comply with the allow people within the borders and under the jurisdiction, which means under control of a State to fully enjoy their human rights.<sup>384</sup> According to this provision, human rights could have positive (*ensure*) and negative (*respect*) character: the former means that States must comply with positive actions in order to allow individuals under their jurisdiction to enjoy their rights. The latter instead means that States must not interfere with the enjoyment of fundamental rights<sup>385</sup>, recognising that some of them, namely the right to life, the prohibition of torture and cruel and inhumane treatments or the prohibition of slavery, servitude and forced labour are absolute, which means that they do not have ground for derogation or limitations.<sup>386</sup> With regard to the positive obligation to ensure the enjoyment of the rights established in the Covenant is provided by the same article 2 at paragraph 2, as it reads

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.<sup>387</sup>

The International Covenant of Economic, Social and Cultural Rights<sup>388</sup> (ICESCR) does not give any indication about jurisdiction, while the Convention on the Rights of the Child

---

<sup>383</sup> *Ibid.*, at art. 2 (1)

<sup>384</sup> Nowak, M., *The International Covenant on Civil and Political Rights*, p. 143

<sup>385</sup> De Vido, S., *States' Due Diligence Obligations to Protect Women from Violence: a European Perspective in Light of the 2011 CoE Istanbul Convention*, 2014, *European Yearbook on Human Rights*, p. 370

<sup>386</sup> *Ibid.*, at p. 144

<sup>387</sup> ICCPR, at art. 2(2)

<sup>388</sup> International Covenant on Economic, social and Cultural Rights, 993 UNTS 3, done Dec., 16th, 1966, entered into force Jan., 3rd, 1976, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en) consulted the 16th of April 2017; Saul, B., Kinley, D., Mowbray, J., *The international covenant on economic, social and cultural rights: commentary, cases and materials*, 2014, Oxford University Press, Oxford.

provides it at article 2, paragraph 1.<sup>389</sup>

The same provision is restated in the European Convention on Human Rights at article 1 that reads “the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”.<sup>390</sup> As we will see, States must protect people under their jurisdiction also if the violation is committed by a private entity or an individual, as established by the principle of *due diligence*.

These rights must be applied also to victims of human trafficking that are transported and exploited in a country different from theirs. However, in the case of trafficking in human beings the issue of the attribution of protection of human rights of the individuals is quite complicated by the fact it is a transnational issue. The violations of human rights do not occur only in the country of destination, where the exploitation takes place. Observing the trafficking definition of the Palermo Protocol, the exploitation is not the only element of trafficking: it involves also the recruitment and the transportation which occur in countries that are different from that of destination, namely the one of origin and the one (or the ones) of transit. As we saw above, violations of the trafficked persons’ human rights may occur also during these two different steps of the process of trafficking, not only during the exploitation phase.

The European Court of Human Rights recognises the universality of human rights and the protection of individuals (also non-nationals of a CoE member State) under jurisdiction of Member States, recognising them the possibility to submit the application to the Court<sup>391</sup>, as demonstrated by the case *Siliadin v. France* and the recent *L.E. v. Greece*, recalled in the previous chapter.<sup>392</sup>

In the case of human trafficking, particularly significant is the jurisprudence of the Court concerning jurisdiction of States and human rights of trafficked persons according to article 1 of the European Convention on Human Rights. In the *Rantsev v. Cyprus and Russia* judgment the Court, recalling previous judgements, established that:

---

<sup>389</sup> Convention on the Rights of the Child, 1577 UNTS 3, done Nov. 20, 1989, entered into force Sept. 2, 1990 (CRC), at art. 2(1) available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, consulted 8<sup>th</sup> June 2017

<sup>390</sup> European Convention on Human Rights, at art. 1

<sup>391</sup> Jacobs, White and Ovey, *The European Convention on Human Rights - fifth edition*, p. 40

<sup>392</sup> In these two cases the applicants were African women, one from Togo and the other from Nigeria. Neither of the two women is a citizen of a member State of the Council of Europe. Both were recognised by the Court with rights and States were found in charge with positive obligations in their regards.

[...] from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial. Accordingly, a State's competence to exercise jurisdiction over its own nationals abroad is subordinate to the other State's territorial competence and a State may not generally exercise jurisdiction on the territory of another State without the latter's consent, invitation or acquiescence. Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction<sup>393</sup>

Thus, the Court recognised the territorial jurisdiction of the State and the non-interference of another State without its consent, even if its own nationals are involved in a violation of human rights. However, the Russian national trafficked to Cyprus for sexual exploitation was recruited in Russia and, even if Russia was not responsible for the exploitation that happened in Cyprus, it did not comply with the obligation to investigate and combat trafficking in its own territory, failing to protect the girl from trafficking under its jurisdiction, meaning under its control.<sup>394</sup> Finally, the Court declared that:

[...] trafficking is a problem which is often not confined to the domestic arena. When a person is trafficked from one State to another, trafficking offences may occur in the State of origin, any State of transit and the State of destination. Relevant evidence and witnesses may be located in all States. Although the Palermo Protocol is silent on the question of jurisdiction, the Anti-Trafficking Convention explicitly requires each member State to establish jurisdiction over any trafficking offence committed in its territory.<sup>395</sup>

The Court also affirmed that States may comply with the obligation to collaborate to combat trafficking and are subjected to duties because trafficking is a cross border and transnational phenomenon that starts in a State and concludes in another.<sup>396</sup> So, Cyprus had the territorial obligation to protect the girl from the exploitation that occurred within its borders, conducting a correct identification as a trafficking victim when she was brought to the police and Russia should have protected her, by preventing the act of trafficking to take place, employing its positive obligations.

To sum up, human rights and the protection of these rights should be guaranteed to

---

<sup>393</sup> *Ranste v. Cyprus and Russia*, at para. 206

<sup>394</sup> *Ibid.*, at paras. 207-208

<sup>395</sup> *Ibid.*, at para. 289

<sup>396</sup> *Ibid.*

all subjects that are under the jurisdiction of a given States, which means under its control. Trafficked victims are included, of course. However, human trafficking poses some challenges to this principle as it is a transnational crime that starts from a country, involves many transit areas and finishes with exploitation in the country of destination. To consider only exploitation as a violation of human rights is wrong, as trafficking is a serious threat to persons in all its aspects.

Human trafficking involves violations of human rights perpetrated by non-state actors such as the right to life, the right to security, the prohibition of torture, cruel and inhumane treatments, the prohibition of slavery, servitude and forced labour, and the prohibition of arbitrary detention. Many issues revolve around human rights in human trafficking. The complexity of the status of the victims implies a deep analysis of the international human rights law treaties and conventions, as well as a more specific examination of the States' positive obligations, the concept of due diligence and the linkage between trafficking and slavery and the violation of women's rights and the discrimination they face in the process of trafficking.

## **1.2 States' positive obligations and the concept of *due diligence***

To determine whether State is responsible for a violation of international law in the case of trafficking is not easy. A State is responsible for internationally wrongful acts when these acts or omissions are attributable to the State itself under international law and they constitute a breach of an international obligation.<sup>397</sup> That is to say that the requirement of attribution is satisfied only when the acts or the omissions are perpetrated by organs of the government, agents of States (e.g. police) and everyone who has this entitlement conferred by the internal law of the State in conducting its duties. However, trafficking in persons is perpetrated by non-state actors such as individuals or criminal organisation that are not linked to the State apparatus. So, State is not directly involved in the trafficking process. There are cases in which officials of the State have been corrupted by traffickers, but usually the harm of trafficking is not directly imputable to States.<sup>398</sup> Gallagher observes that by maintaining

---

<sup>397</sup> International Law Commission (ILC), Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, UN GAOR, 56th Session, Supp. N. 10, at 43, UN Doc. A/56/10, available at [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf), consulted the 24th May 2017, at art. 1-2 (hereinafter ILC Draft Articles)

<sup>398</sup> Gallagher, *The International Law of Human Trafficking*, p. 236

the concept of State responsibility tied only to direct involvement of States in the wrongful actions of trafficking, the whole international legal order set to fight trafficking in human beings risks to fail in its scope and purpose.<sup>399</sup>

The Commentary to the ILC Draft Articles states that “rules of attribution [...] have a cumulative effect, such that a State may be responsible for the effects of the conduct of private parties, if it failed to take necessary measures to prevent those effects.”<sup>400</sup> This is true in cases of violations of human rights, and human trafficking is considered as a serious violation of human rights. So, as we already mentioned in the previous paragraph, States must respect and fulfil *negative and positive obligations*.<sup>401</sup>

The standard widely recognised in the field of human rights to fulfil positive obligations is that of *due diligence*<sup>402</sup>. It means that States are obliged to prevent and respond to acts of privates or non-state entities that could be against established rights. If States fail in doing so, they are considered responsible. This is true also for the guarantee to have access to remedies by States. The principle has become a concept well established in international law, as recalled by the former Special Rapporteur on Violence Against Women, Rashida Manjoo in her 2013 Report<sup>403</sup>, even if it is still vague and general.<sup>404</sup> In fact, the content of the obligations appointed to States is hard to identify.<sup>405</sup> However, Manjoo in her 2013 report provided a step further in the attribution of State responsibility and due diligence: she specified that this responsibility is *systemic-level*, as to create an appropriate framework to address the violations of fundamental rights, their causes and consequences (she was

---

<sup>399</sup> *Ibid.*

<sup>400</sup> ILC Draft Articles, at Part One, Chapter II, para. 4

<sup>401</sup> See *infra*, Chapter 2 paragraph 1.1

<sup>402</sup> The concept of due diligence entered in international human rights law with the sentence *Velasquez Rodriguez* of the Inter-American Court of Human Rights of 1988. The case referred to the disappearance of the complainant by State officials. In addition, the State was found responsible for the lack of due diligence because it did not prevent and punish the perpetrators of the crime, investigate properly and restored the rights violated. However, the Court recognised that the State is not responsible of the effective private illicit act, so the standard of due diligence does not change the general international rules about State Responsibility. (*Velasquez Rodriguez Case*, Judgment of July 29th, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), available at [http://hrlibrary.umn.edu/iachr/b\\_11\\_12d.htm](http://hrlibrary.umn.edu/iachr/b_11_12d.htm) consulted the 24th May 2017; Gallagher, *The International Law of Human Trafficking*, at p. 242; De Vido, S., *States' Due Diligence Obligations to Protect Women from Violence: a European Perspective in Light of the 2011 CoE Istanbul Convention*, pp. 373-375.

<sup>403</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, May, 14<sup>th</sup>, 2013, A/HRC/23/49, para. 11, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A\\_HRC\\_23\\_49\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A_HRC_23_49_English.pdf), consulted 14<sup>th</sup> June 2017

<sup>404</sup> De Vido, S., *States' Due Diligence Obligations to Protect Women from Violence: a European Perspective in Light of the 2011 CoE Istanbul Convention*, p. 370

<sup>405</sup> *Ibid.*, p. 371

referring to violence against women), but also it is *individual-level*, so States must take care of each victim in order to prevent, protect, provide reparations (also monetary compensation and a rehabilitation in the society) and punish perpetrators.<sup>406</sup>

In the case of violence against women, General Recommendation n.19<sup>407</sup> recognised the principle of due diligence and States' responsibilities for acts committed by non-state actors, indicating a long list of provisions States should implement<sup>408</sup> The UN Declaration on the Elimination of Violence Against Women also recognised the concept of due diligence.<sup>409</sup> In 2006, the Special Rapporteur Yakin Ertük dedicated one of her annual reports to the concept of due diligence, recognising it as a concept of customary international law in addressing violence against women<sup>410</sup> and recommending the international community to expand it, to reach the full compliance of States' positive obligations.<sup>411</sup> States must prevent, protect, punish and provide reparation to victims<sup>412</sup> in an appropriate way, which means with a good legislative framework effectively applied in practice.<sup>413</sup>

The concept of due diligence in cases of human trafficking is also recalled in Principle 2 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking. It recognises that States "have the responsibility to prevent, investigate and prosecute traffickers and to assist and protect trafficked persons".<sup>414</sup> For this purpose, in 2015 the Special Rapporteur on trafficking in persons Maria Grazia Giammarinaro<sup>415</sup> issued a report about the due diligence standard applied to trafficking in human beings. The Special Rapporteur identified six areas in which the due diligence standard is applied in cases of

---

<sup>406</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, May, 14<sup>th</sup>, 2013, A/HRC/23/49, para. 20

<sup>407</sup> See *infra* Chapter 2, paragraph 2.1

<sup>408</sup> UN Committee on the Elimination of Discrimination against Women, *General Recommendation n° 19: Violence against Women*, 1992, United Nations website, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>, at paragraphs 9 and 24. See also, De Vido, S., *States' Due Diligence Obligations to Protect Women from Violence: a European Perspective in Light of the 2011 CoE Istanbul Convention*, p. 371

<sup>409</sup> UN General Assembly, Declaration on the Elimination of Violence Against Women, 1993, A/RES/48/104, 85th Plenary Meeting, United Nations website, <http://www.un.org/documents/ga/res/48/a48r104.htm>, para. 9

<sup>410</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertük, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, Jan., 20<sup>th</sup>, 2006, E/CN.4/2006/61, para. 29, (hereinafter CEDAW General Recommendation n. 19), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement>, consulted 14<sup>th</sup> June 2017

<sup>411</sup> *Ibid.*, at para. 102

<sup>412</sup> *Ibid.*, at para 38ff

<sup>413</sup> *Ibid.*, at para 56

<sup>414</sup> 2002 Recommended Principles and Guidelines, Principle 2

<sup>415</sup> For further information about the Special Rapporteur on trafficking in persons, see *infra* chapter 3, paragraph 2.2 of the present work



trafficking in persons, namely identification, support and assistance to victims, criminalisation, investigation, prosecution and punishment of criminals involved in trafficking, prevention, guaranteed access to remedies, cooperation between institutions of the State and due diligence of businesses.<sup>416</sup> Ms Giammarinaro stated in her report that due diligence is also applied to areas such as violence against women, sex-based discrimination, environmental issues, consumer protection, anti-corruption and migrant workers' issues.<sup>417</sup> Applying due diligence standards to human trafficking issues and a human rights based approach allow States to have an holistic understanding of the phenomenon and comply with all the positive obligations that the international and regional systems provide.<sup>418</sup> Moreover, as human rights has no territoriality, also due diligence standard should be followed with no regards to borders or territories.<sup>419</sup> This is the case of *Rantsev v. Cyprus and Russia* case, in which the victims was found dead in Cyprus, but also the Russian Federation was found responsible for lack of due diligence in preventing trafficking of women toward Cyprus. Due diligence is an obligation of conduct. This means that there is not a single way to fulfil the obligations under due diligence by States, the most important thing is the outcome. The lack of resources by States is not an excuse to do not apply the due diligence standard: as it is internationally accepted that States should share efforts to contrast trafficking with NGOs and the civil society, they can solve problems of lack of resources. However, States cannot delegate their due diligence obligations completely to the civil society.<sup>420</sup>

The European Court of Human Rights (together with other regional human rights courts) posed an important turning point about the responsibility of States in cases of illicit acts related to human trafficking conducted by privates.<sup>421</sup> Even if it does not mention due

---

<sup>416</sup> United Nations Office of the High Commissioner for Human Rights, OHCHR, *Annual Report of the Special Rapporteur on trafficking in persons, especially women and children Ms Maria Grazia Giammarinaro: due diligence and trafficking in persons*, 2015, 70th Session, A/70/260, at p. 2, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/260](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/260), consulted on 26th May 2017. (Due Diligence Report hereinafter)

<sup>417</sup> *Ibid.*, at para. 13

<sup>418</sup> *Ibid.*, at para. 15

<sup>419</sup> *Ibid.*, at para 16

<sup>420</sup> *Ibid.*, at para.17-18

<sup>421</sup> The Court was not new in its jurisprudence to the concept of due diligence and States' positive responsibilities: in 1998, with the case *Osman v. United Kingdom*, the Court elaborated the so-called test Osman, which established that a State is responsible for violations of fundamental rights done by a non-state entity and that pose to a "real and immediate" risk, if it does not respond appropriately and effectively. As quoted by De Vido, Judge Du Albuquerque specified in a concurring opinion that if the State is aware of the ongoing risk that part of its population is encountering and does nothing to prevent it or to protect the subjects at risk, it is responsible for the resulting human rights violations. For further information, see De Vido, S., *Donne, violenza e diritto internazionale*, 2016, Mimemis Edizioni S.r.l., Milano, p. 149;



diligence directly, it recognised that States have *positive obligations* that they must fulfil in cases of human trafficking. Remarkable are the already analysed judgements *Siliadin v France*, *Rantsev v Cyprus and Russia* and the most recent *L.E. v Greece*, that recognised positive obligations of States under article 4 of the European Convention on Human Rights (prohibition of slavery, servitude, and forced labour).<sup>422</sup>

In *Siliadin v France*, the Court recognised that States have positive obligations in criminalise and prosecute practices which violates article 4.<sup>423</sup> France was considered responsible for a violation of its positive obligations under article 4 as it did not provide adequate criminal law against trafficking and exploitation and an adequate protection for minors (at the time, the victim was an adolescent). The Court recognised that the law was amended and ameliorated, but it was not retroactive with regards to the applicant situation.<sup>424</sup>

In the *Rantsev v Cyprus and Russia*<sup>425</sup> case, considered pivotal in the jurisprudence concerning human trafficking, the Court went further the findings of *Siliadin* cases, identifying more positive obligations appointed to States under article 4 of the ECHR. The Court stated that in the *Siliadin* judgment only the positive obligation to penalise and prosecute a violation of article 4 by establishing an adequate legal framework according to international (and also, regional) legislation against trafficking was highlighted. However, it observed that both the Palermo Protocol and the CoE Trafficking Convention establish a comprehensive approach against trafficking, so also protection and prevention strategies are positive obligations appointed to States, not only criminalisation. So only the combination of prevention, protection and prosecution is effective to fight trafficking.<sup>426</sup> So, States should take operational measures in order to (a) put in place an appropriate legislative and administrative framework, (b) to take protective measures and (c) to investigate potential trafficking actions. The Court affirmed that States should be aware or suspect that the identified person is a victim of trafficking or at risk of trafficking: if they did not do anything, they failed to fulfil their positive obligations.<sup>427</sup> States also have the obligation to cooperate

---

<sup>422</sup> For a summary of the facts involved in the mentioned cases, see *infra* Chapter I, paragraph 3.2 of the present work.

<sup>423</sup> *Siliadin v. France*, application n° 73316/01, 26th July 2005, at para. 89

<sup>424</sup> *Ibid.*, at paras. 148-149

<sup>425</sup> *Rantsev v. Cyprus and Russia*, application n° 25965/04, 7th January, 2010

<sup>426</sup> *Ibid.*, at para. 285 is stated that: “Accordingly, the duty to penalise and prosecute trafficking is only one aspect of member States’ general undertaking to combat trafficking. The extent of the positive obligations arising under Article 4 must be considered within this broader context.” (See *Rantsev v. Cyprus and Russia*, at para. 285).

<sup>427</sup> *Ibid.*, at para. 286

with each other in order to eradicate the phenomenon, as trafficking is a transnational phenomenon involving a country of origin, countries of transit and a country of destination.<sup>428</sup> Thus, Cyprus was found responsible for having violated the positive obligation of identify the victim owning the artiste visa when she was brought by her exploiter to the police station, and to investigate properly about her death, punishing also the perpetrator.<sup>429</sup> Regarding Russia, the Court recognised that the Russian Federation was well-aware of the problem of trafficked women for sexual exploitation abroad, and failed in the investigations to tackle traffickers in its territory.<sup>430</sup>

Finally, the more recent *L.E. v Greece*<sup>431</sup> case recalled the provisions established in *Rantsev v. Cyprus and Russia*. The complainant, a Nigerian woman trafficked to Greece for sexual exploitation, was identified and granted with the status of victim with a remarkable delay, even if she identified herself as a trafficked person, with the help and support of a Greek NGO. She was arrested multiple times and risked deportation, before she was recognised as a trafficked person. Greek authorities failed to properly prosecute her traffickers, a man and her Madame (who was arrested and released as she was believed to be a victim rather than one of the offenders). The Court recalled the three positive obligations identified in the *Rantsev* case and found that Greece had a satisfactory legal framework to contrast human trafficking that adheres properly with the Palermo Protocol, the CoE Trafficking Convention, and with the Directive 2011/36 of the European Union so as it has an adequate protective system for victims.<sup>432</sup> The Court found responsible Greece for the delay in formalise the status of victim of L.E. In fact, nine months passed between the denunciation of L.E. against her exploiters and the formalisation of her status. Unlike *Rantsev v Cyprus and Russia*, Greece was found responsible for having failed to protect the victim only in this case and not generally, meaning a structural failure of positive obligations.<sup>433</sup> The

---

<sup>428</sup> *Ibid.*, at para. 289

<sup>429</sup> *Ibid.*, at para. 296

<sup>430</sup> *Ibid.*, at para 308-309

<sup>431</sup> *L.E. v. Greece*, application n° 71545/12, 21st January 2016

<sup>432</sup> Stoyanova, V., *L.E. v. Greece: Human Trafficking and the Scope of States' Positive Obligations under the ECHR*, 3 *European Human Rights Law Review* (2016), 290-230, p. 7. The author complains that the Court had a "lack of rigour" in its pronouncement, as it declared that Greece has a satisfactory legal framework against trafficking but the victim was not identified due to deficiencies in the system. L.E. was not recognised as victim because she did not denounce immediately her exploiters. However, as we saw above describing measures of identification, assistance and protection, they are not conditional to the collaboration with justice of the victim. L.E. was given the status of trafficking victim the same day the Greek judicial authority sued her offenders. Strasbourg Court implicitly assumed that the identification of victim is part of the repressive side in the fight against trafficking. As we observed in the present study, identification is crucial for victim's protection.

<sup>433</sup> *Ibid.*, at p. 12.

delay of the Court to formalise the victim status provided the failure of the positive obligation to protect the victim.<sup>434</sup>

To conclude, since Rantsev judgement the Court introduced the respect of positive obligations under article 4 of the ECHR also in cases of human trafficking, namely to (a) put in place an appropriate legislative and administrative framework, (b) to take protective measures and (c) to investigate potential trafficking. This reinforces the internationally recognised thesis of the responsibility of States for due diligence even in cases where non-state actors commit the crime of trafficking in human beings.

### 1.3 Human trafficking and its link with slavery

Human trafficking is identified as modern day slavery or modern slavery<sup>435</sup> as to underline the connection between the two concepts: they both refer to the displacement of people for one area to another with the aim of exploitation. Moreover, they are organised by privates for profits. As we mentioned above, exploited individuals (in our case, women) are controlled and suffer several violations of their human rights.<sup>436</sup> The link between human trafficking and slavery is frequently used by human rights activists to reinforce the commitment to eradicate human trafficking issues and give a political weight to the cause.<sup>437</sup> In fact, the prohibition of slavery is a norm of *customary* international law, an obligation *erga omnes*<sup>438</sup> and a *jus cogens*<sup>439</sup> norm. However, their link is not clear in international law and

---

<sup>434</sup> *Ibid.*, at p. 17; L.E. v Greece, at para. 77

<sup>435</sup> Many scholars mentioned in the present work define trafficking in human beings as a form of modern slavery, also in the titles of their studies, for example Jansson, Kara, Scarpa. We saw that the first one to call trafficking a form of slavery was Nina Boyle in 1932 (see *infra* note 96 in chapter 1), but nowadays it is quite normal to find modern slavery as a synonym of trafficking in human beings, also in the work of NGOs such as Anti-Slavery International, in the glossary of State institution of regional institutions like the US State Department or the European Union itself. The Explanatory Report to the CoE Trafficking Convention recognises that trafficking is a modern form of slavery at paragraph 3 (see CoE Trafficking Convention Explanatory Report, at para. 3).

<sup>436</sup> Gallagher, *The International Law of Human Trafficking*, p. 177

<sup>437</sup> *Ibid.*, p. 331

<sup>438</sup> A norm could be considered as an obligation *erga omnes* when it is addressed to the international community as a whole. Obligations *erga omnes* are *jus cogens* customary law (see *infra* note 385) about fundamental human rights, self-determination of people, prohibition of the use of the force etc, that prevail, considering the law of treaties. Many sentences by the International Court of Justice highlighted obligations *erga omnes*, namely *Barcelona Traction Case* of 1970 (prohibition of aggression, obligations to respect self-determination of people, prohibition of slavery, genocide and apartheid), *Timor Est Case* in 2006 (self-determination of people). See Conforti, B., *Diritto Internazionale – X Edizione*, 2014, Editoriale scientifica, Napoli, p. 426

<sup>439</sup> In International Law, we can find a definition of *jus cogens* rule in article 53 of the Vienna Convention on the Law of Treaties of 1969, that reads: “a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted

the association of the two concepts is not so taken for granted.

The definition of slavery is found in the 1926 Slavery Convention<sup>440</sup> and it reads at article 1 that “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>441</sup> Slave trade is defined in the same article as

all 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 slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.<sup>442</sup>

Numerous activists tried to expand the definition of slavery to include also human trafficking. However, this expansion was not correct observing draft documents of negotiations. International law recognised slavery only when the right of ownership is exercised.<sup>443</sup> The 1956 Supplementary Convention<sup>444</sup> did not expand the definition, but introduced the term *practices similar to slavery* including debt bondage, serfdom, servile forms of marriage and exploitation of children.<sup>445</sup> The status of *person of servile status* is introduced in article 7 to

---

and which can be modified only by a subsequent norm of general international law having the same character” (See Vienna Convention on the Law of Treaties, at art. 53). As Marella and Carreau argue, the Vienna Convention does not give us a specific definition of what is the concept around jus cogens. However, it confers to jus cogens a specific legal regime. A jus cogens rule is peremptory: every rule in international law makes an obligation (except for the case of soft law), but a jus cogens rule has more importance. In fact, it is forbidden to disregard it and it poses a limit in the freedom to conclude treaties of States. A jus cogens norm could nullify a treaty or a disposition of a treaty (see article 64 of the Vienna Convention on the Laws of Treaties). However, not all the norms in international law can be classified as jus cogens. A jus cogens rule should be recognised as absolute, mandatory and binding, even if it shares a common point with customary law, that is to say the presence of an opinion juris. A jus cogens law is recognised by the international community as a whole, but also this point is not clear. There is no clear example of a jus cogens rule in international law, even if some of them are formally recognised, namely the prohibition of the use of the force, the prohibition of slave trade, of piracy, of genocide or the crimes against humanity recognised in the Rome Statute of the International Criminal Court at art. 7, namely slavery, homicide, extermination, deportation of civil population, torture, forced prostitution and pregnancy and rape. For further information see Carreau D., and Marella F., *Diritto Internazionale*, 2016, Giuffrè Editore, Milano, at pp. 64-69.

<sup>440</sup> Convention to Suppress the Slave Trade and Slavery, 60 LNTS 254, done Sept., 25th, 1926, entered into force Mar., 9th, 1927, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-3&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-3&chapter=18&lang=en) consulted the 21st April 2017

<sup>441</sup> *Ibid.*, at art. 1 (a)

<sup>442</sup> *Ibid.*, at art.1 (b)

<sup>443</sup> Gallagher, *The International Law of Human Trafficking*, pp. 180-181.

<sup>444</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 UNTS 3, done Apr., 1st, 1957, entered into force Apr. 30th, 1957, available at [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=en) consulted the 21st April 2017

<sup>445</sup> *Ibid.*, at art. 1

identify victims of practices similar to slavery.<sup>446</sup> Manfred Nowak asserts that *servitude* was introduced in article 4 of the ICCPR to comprehend all concepts not narrowly restricted to slavery (also human trafficking), including the slavery-like practices cited in the 1956 Supplementary Slavery Convention and in the 1949 Trafficking Convention.<sup>447</sup>

In the 2000 Palermo Protocol definition, slavery, servitude and practices similar to slavery are considered possible purposes of human trafficking.<sup>448</sup> However, one can assume that, if we intend trafficking as modern slavery, the exercise the power of ownership over a person is inexistent, but there is the control over him or her.<sup>449</sup> Despite this fact, there were situations in which trafficking has been recognised in the same provision as slavery. The CoE Trafficking Convention of 2005 recognised in the preamble that “trafficking can lead to slavery”.<sup>450</sup> The crucial role is that of the ECtHR of Strasbourg, which recognised human trafficking as a violation of article 4 in the case *Siliadin v. France* and above all in the case *Rantsev v. Cyprus and Russia*. It stated that trafficking can be associated with slave trade and slavery as it treats people like commodities, and it is nothing but its modern form<sup>451</sup>, assuming that the European Convention of Human Rights is a *living instrument*, which has to be interpreted according to present days.<sup>452</sup>

At the European Union level, article 5 of the Charter of Fundamental Rights of the European Union prohibits trafficking in the same provision as slavery, as we saw in the previous chapter.<sup>453</sup>

A brief recall should be done to the International Criminal Court (ICC) Statute<sup>454</sup>, signed in Rome. It recognised slavery as a crime against humanity at article 7, adopting the definition of 1926 Slavery Convention, but specifying that “Enslavement means the 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

---

<sup>446</sup> *Ibid.*, at art. 7 (b)

<sup>447</sup> Scarpa, *Trafficking in Human Beings: Modern Slavery* p. 87 and Nowak, M. “Human Rights” contained in *Human Rights Concepts and Standards* edited by Symonides, J., 2000, UNESCO Publishing, p. 81

<sup>448</sup> UN Trafficking Protocol, at art. 3 (a)

<sup>449</sup> Hathaway, J.C., *The Human Rights Quagmire of Human Trafficking*, p.17

<sup>450</sup> CoE Trafficking Convention, at Preamble

<sup>451</sup> *Rantsev v. Cyprus and Russia*, at para. 281

<sup>452</sup> *Ibid.*, at para. 277. See *infra* chapter 1, paragraph 3.2

<sup>453</sup> See *infra* chapter 1, paragraph 3.3

<sup>454</sup> Rome Statute of the International Criminal Court, done July, 17th, 1998, entered into force July, 1st, 2002, (hereinafter ICC Statute) available at [https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg\\_no=XVIII-10&chapter=18&lang=en](https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg_no=XVIII-10&chapter=18&lang=en) consulted the 21st April 2017

children;”<sup>455</sup>

As Gallagher reports, in the Travaux Préparatoires to the Statute it is understood that the drafters attempted a soft expansion of the concept of slavery, including practices that can lead to slavery, like trafficking<sup>456</sup>, but trafficking has not still recognised as a crime against humanity like slavery. Only the future jurisprudence of the ICC will maybe answer this controversial issue.<sup>457</sup> It is a link between two concepts still in evolution and always changing, with a great number of points in common and a great number of differences not only in international law theory, but also in the actions put in place in practice.

## **2. Women and trafficking**

Women are at the centre of the present work. Observing data in the introductory part of the present work, it has been demonstrated that they are the majority among trafficking victims and they are mostly involved in sexual exploitation.<sup>458</sup> The present section will deal with the issue of gender-based discrimination and violence against women intrinsic to sex trafficking, but presenting also a case situation in which women were victims, and then decided to become traffickers and exploiters themselves: it is the case of Nigerian Madames.

### **2.1 Trafficking as a form of violence against women**

According to data provided in the introduction, women and girls represent the majority of trafficking victims worldwide and they are exploited especially for prostitution. We recalled that *push factors*, such as female poverty, female migrations and gender inequality or discrimination foster sex trafficking of women from poor areas of the world to rich destination countries or regions.

During the whole process of sex trafficking, women and girls could suffer many physical and psychological abuses, directly or indirectly perpetrated by traffickers. As we saw in the introductory chapter of the present study, women can be sold, deceived or forced at a certain point of the process of trafficking. They could be beaten, sexually abused both

---

<sup>455</sup> *Ibid.*, at art. 7 para 2(c). Emphasis added.

<sup>456</sup> Gallagher, *The International Law of Human Trafficking*, p. 185

<sup>457</sup> *Ibid.*, p. 216

<sup>458</sup> See *infra* Introduction, paragraph 2

during the journey and during the exploitative situation. They are forced to work many hours per day and have a great number of clients. Moreover, they could suffer serious violations of fundamental human rights.<sup>459</sup> Many stories and testimonies of victims report how women are kept under constant psychological pressure and fear due to the debt they have to extinguish the fear to be discovered by the immigration authorities due to their lack of documents - that sometimes are seized by exploiters - or their illegal entry in the country of destination. In the case of Nigerian prostitution, women are constantly under the pressure of *voodoo practices* and the fear that if they disobey or break the bond, their families or even themselves will be harmed. There are some cases in which victims trying to escape from their exploiters, have been killed as a warning to others.<sup>460</sup>

Women victims of trafficking are exposed to diseases and poor health conditions.<sup>461</sup> One of the greatest danger is represented by the AIDS/HIV infection<sup>462</sup>, syphilis and other venereal illnesses. Exposure and vulnerability to these diseases is mainly due to the high number of clients and their widespread requests of unprotected sex that they are willing to pay more, poor hygiene conditions as well as the use of drugs. In fact, some women are forced to take drugs to withstand the fiercest rhythms of work. Some women get pregnant and they are forced to resort to clandestine abortion: having an interview with an Italian social worker, she told me that many women victims of trafficking resort to a drug called Cytotec, which can give serious complications such as internal haemorrhages, endangering the woman's life.<sup>463</sup> Women can suffer also numerous discriminations by the part of anti-trafficking policies implemented by States: in fact, some States adopted some provisions aimed at protecting women from trafficking and limiting their freedom of movement. Violations of women rights have been registered also in anti-trafficking raids and measures, where women were deceived, and forcibly transported in shelters where they could not exit or repatriated.<sup>464</sup> Discrimination can occur also in families and communities that could stigmatise a woman

---

<sup>459</sup> See *infra* Introduction, paragraph 2.2

<sup>460</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, p. 59

<sup>461</sup> *Ibid.*, p. 55

<sup>462</sup> According to the definition given by the Centre for Diseases Control and Prevention (CDC) of Atlanta, HIV is “a virus spread through certain body fluids that attacks the body’s immune system [...] This damage to the immune system makes it harder and harder for the body to fight off infections and some other diseases. Opportunistic infections or cancers take advantage of a very weak immune system and signal that the person has AIDS”. The disease can be transmitted through sexual acts with HIV positive subjects and infected blood transfusions. Available at <https://www.cdc.gov/hiv/basics/whatishiv.html> consulted the 20th of April 2017

<sup>463</sup> Interview with an Italian social worker of the “unità di strada” (road unit), Verona, 19th of April 2017.

<sup>464</sup> Hudgins, A. M., *Problematizing the discourse – sex trafficking policy and ethnography*, contained in O’Toole, L., Schiffman, J.R., Kiter Edwards, M.L., *Gender Violence – Interdisciplinary Perspectives (2nd Edition)*, 2007, New York University Press, New York, p. 412

who was trafficked for sexual exploitation. This could lead to a situation of re-trafficking or social exclusion.

All these aspects can cause trauma and cause the need for physical and psychological support to women. Considering these serious violations of women's rights as consequences of trafficking, we can assert that human trafficking is both the product and the cause of gender-based discrimination, inequality, and violence that affects women disproportionately.<sup>465</sup>

Sex trafficking is a form of violence against women for three reasons: first, women are subjected to men, both traffickers and clients, even if we will see with the case of Nigerian Madames, that it is not the general pattern. Second, women's intimacy is commercialised, as they are forced to have many sexual acts with clients, objectifying and dehumanising women's bodies and nullifying the intimate relationship of love and affection between two people. Also, this operation of commodification of women's bodies brings the exploiter to believe he (but also, she) owns it, doing whatever he or she wants.<sup>466</sup> Third, as we said in the introduction, women are increasingly migrating to support families (feminization of migrations) through remittances and they may fall in the trap of trafficking for sexual exploitation.<sup>467</sup> Trafficking in women is gendered as it is the product of social beliefs that see women vulnerable and subjected to men's will.

Long before the signature of the Palermo Protocol, trafficking in women was included in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 at article 6.<sup>468</sup> Even if the provision is vague with regards the obligations of States and the measures to be taken, it has been an important step forward.

To understand the meaning of terms like gender-based violence, we should recall the General Recommendation n. 19 of 1992<sup>469</sup> of the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee).<sup>470</sup> Gender-based

---

<sup>465</sup> Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, p. 57; Rutchi, L.C., *Fear, Fraud and Frank Complexities the influence of gender on human trafficking*, contained in Burke, M.C., *Human Trafficking - Interdisciplinary perspectives*, 2013, Routledge, New York, p. 89

<sup>466</sup> Rutchi, L.C., *Fear, Fraud and Frank Complexities the influence of gender on human trafficking*, pp. 96-97  
<sup>467</sup> *Ibid.*, pp.90-91

<sup>468</sup> See *infra* Chapter 1, paragraph 2

<sup>469</sup> UN Committee on the Elimination of Discrimination against Women, *General Recommendation n° 19: Violence against Women*, 1992, United Nations website, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>, consulted the 20th of April 2017

<sup>470</sup> The United Nations Committee on the Elimination of Discrimination against Women (hereinafter CEDAW



violence is included in article 1<sup>471</sup>, which defines discrimination against women as “violence that is directed against a woman because she is a woman or that affects women disproportionately”.<sup>472</sup> Moreover, it is constituted by physical, psychological, or sexual violence, threats, coercion and deprivation of liberty and it is a serious danger for the woman’s enjoyment of her human rights and fundamental freedoms established by international human rights law.<sup>473</sup> With regards to article 6, the CEDAW Committee recognised trafficking of women for sexual exploitation as a form of violence against them, also in its new forms such as sex tourism, forced domestic labour and arranged marriages. The Committee stated that all forms of trafficking in women are “incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse”.<sup>474</sup> The Committee recognised poverty and unemployment as some of the causes fostering women trafficking for prostitution. It stated that prostitutes are more likely to suffer for abuses and violence due to their status of social exclusion, marginalisation and in some countries, their illegal presence. States are called to provide equal protection to them<sup>475</sup>, regardless the acts of violence are perpetrated by public or private subjects<sup>476</sup>. The same definition of gender-based violence has been adopted the year after in the Declaration on Violence Against Women<sup>477</sup>, adopted by the United Nations General Assembly in 1993. The Declaration is very important because it was adopted by consensus, which gives more strength to the issue as it became crucial in the global human rights debate, above all because it is a soft law instrument without any binding power. Even if there is no specific mention to sex trafficking, what is important is the recall of the State’s role in the fight against violence against women, which are again called to adopt measures

---

Committee) is the Control Body of the CEDAW Convention, established at article 17. Its function is to monitor the implementation of the Convention. It is composed by twenty-three experts selected among candidates proposed by each State Party to the Convention.

<sup>471</sup> CEDAW Convention, at art. 1 states: “the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. (See CEDAW Convention, at art. 1)

<sup>472</sup> CEDAW General Recommendation n. 19, para. 6

<sup>473</sup> *Ibid.*, at paras. 6 and 7. Among the human rights violated, the CEDAW Committee lists: the right to life, the right not to be subjected to cruel, inhuman, or degrading treatment, the right to equal protection under the law, the right to liberty and security of person, the right to equality in the family, the right to the highest standard attainable of physical and mental health and favourable working conditions.

<sup>474</sup> *Ibid.*, at para.14

<sup>475</sup> *Ibid.*, at paras. 14 and 15

<sup>476</sup> *Ibid.*, at para 24. See *infra* chapter 2, paragraph 1.2

<sup>477</sup> United Nations General Assembly, *Declaration on the Elimination of Violence against Women*, UN Doc. A/48/104,85th Plenary Meeting, Dec., 20th, 1993, available at <http://www.un.org/documents/ga/res/48/a48r104.htm> consulted the 20th of April 2017.

against public and private acts of violence.<sup>478</sup> In the 90s, the growing concern with trafficking of women is underlined also by important World Conferences and the documents and actions correlated, like the Fourth World Conference on Women held in China in 1995, that gave power for the Beijing Platform for Action. Trafficking in persons is among one of the strategic objectives (“Eliminate trafficking in women and assist victims of violence due to prostitution and trafficking”), recognising it as a form of violence against women and underlining the importance of the assistance, the rehabilitation and social reintegration of victims and the need for preventing measures to root causes of trafficking in women, and among them discrimination.<sup>479</sup>

In the last few years, trafficking and the correlated violence against women entered in the objectives of the United Nations political agenda, such as the Sustainable Development Goals launched in 2016. It is a system of seventeen goals to tackle in the next fifteen years (from 2015 to 2030) that deal with inequality, poverty, discrimination, democracy, and human rights. Goal number five, entitled *Gender equality and women's empowerment*, has as one of its main target is the fight against women trafficking as a form of violence against women. This underlines the importance that trafficking of women and violence at the international level.<sup>480</sup>

Looking at the Council of Europe and the European Union developments, one can do important considerations. From the part of the Council of Europe, the 2005 Trafficking Convention was the first one to add in the preamble a gender-based way of carrying anti-trafficking initiatives. The more recent *Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention)<sup>481</sup> of 2011 is a legally binding instrument against gender-based violence, considered a violation of human rights. It includes the CoE Trafficking Convention in the preamble, setting some measures of protection and assistance of victims of gender-based violence, that can be applied for some trafficking victims. In fact, article 3 of the Istanbul Convention defines violence

---

<sup>478</sup> *Ibid.*, at art. 4 (c)

<sup>479</sup> *Ibid.*, at chapter IV, Strategic Objective D.3, para. 130 and Scarpa, *Trafficking in Human Beings: Modern Slavery*, p. 95

<sup>480</sup> Information available at United Nations Website, Sustainable Development Goals, Goals, Goal 5, Goal 5 Targets, at <http://www.un.org/sustainabledevelopment/gender-equality/>, consulted the 20th of April 2017

<sup>481</sup> Council of Europe, *Convention on preventing and combating violence against women and domestic violence*, ETS 210, done May, 11st, 2011, entered into force Aug., 1st, 2014. Italy is part of the Convention, from the 1st of August 2014. (hereinafter Istanbul Convention), Information available at [http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p\\_auth=bwUwjlg9](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p_auth=bwUwjlg9) consulted the 20th of April 2017

against women as:

a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>482</sup>

Even if trafficking and prostitution are not directly mentioned in the Convention, it can be applied to those victims who suffered abuses and violence by the part of clients and exploiters independently by the process of trafficking. The abuses should be committed in the territory of the State parties to the Convention, so that the violence occurred in the process of transportation do not count for the application of the Convention. So, some provisions of protection, assistance and prevention should be applied to victims of sex trafficking in a complementary way.<sup>483</sup> The Istanbul Convention is silent regarding this issue because every State has its own way to regulate prostitution.

The Istanbul Convention gives clear definitions of discrimination and gender-based violence, recalling the international definitions provided by the CEDAW Committee.<sup>484</sup> The anti-discrimination clause provided by article 4 is more complete than the other described in this chapter, including migrant women status in the list.<sup>485</sup> Finally, in the Explanatory Report to the Convention is reported that trafficking is a form of gender violence and it is included in the list of acts used to persecute women.<sup>486</sup>

Along with a human-right oriented approach, awareness about gender issues in dealing with human trafficking entered in the European Union discourse and legislation with the 2011 Directive and the 2012-2016 EU Strategies. Important is the position of the European Parliament in its Resolution of 2014<sup>487</sup>, which defined sex trafficking as a women's

---

<sup>482</sup> Istanbul Convention, at art. 3(a)

<sup>483</sup> De Vido, S., *Donne, violenza e diritto internazionale*, pp. 223-224

<sup>484</sup> Istanbul Convention, at art. 3

<sup>485</sup> Istanbul Convention, at art. 4(3) reads: "The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status." (See Istanbul Convention, at art. 4(3))

<sup>486</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, ETS 210, para. 310, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a> consulted the 20th of April 2017

<sup>487</sup> European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact

issue and a form of violence against women, above all perpetrated by clients and misogynist views of prostitutes, that are vulnerable above many aspects, as mentioned below.

In 2006, the Special Rapporteur on trafficking in persons especially women and children Sigma Huda stated in her report that sex trafficking is a relevant form of violence against women because they are women.<sup>488</sup> Considering sex trafficking this way should affect heavily the way with which we regard at the phenomenon and how we decide to fight it. It has been internationally recognised. However, some perpetrators are women changing their role from victims to oppressors for new recruits, both in countries of origin and in those of destination as we will see in next section.

## **2.2 Women as traffickers: the Nigerian Madame**

Observing data available on the phenomenon of sex trafficking, it is clear that many traffickers, recruiters and exploiters are male. Although this trend, there are some models of exploitation that present an interesting peculiarity: the presence of women not as victims but as part of the organised crime network. We saw that some criminal organised groups are led by women or they have minor roles inside the network. In the present section, we will present the peculiar case of the Nigerian model of exploitation of prostitution with the figure of the *Madame* or *Maman*.

Many scholars dealing with the Nigerian model of sex trafficking (especially those from Italy where Nigerian prostitution model is widely spread) tried to explain this unique figure, a blend between a boss, a protector and a spiritual leader, trying to understand its internal hierarchical scale and its role.

The Madame is an adult woman whose role can be defined as multisector: in fact, she is in charge with the recruitment of new girls in the country of origin (Nigeria) as *sponsor*, that is to say anticipating the money of the trip and finally, she could be at the head of a prostitute living unit in the country of destination, by managing profits of the victims.<sup>489</sup> One

---

on gender equality, (2013/2103(INI)) at paras 11 and 13

<sup>488</sup> Economic and Social Council, *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda*, Feb., 20th, 2006, 62th Session, E/CN.4/2006/62, par. 63 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/109/64/PDF/G0610964.pdf?OpenElement> consulted the 13th of May 2017

<sup>489</sup> Carchedi, F., *La Criminalità transnazionale nigeriana: alcuni aspetti strutturali*, in *Mafie Straniere in Italia - come operano, come si contrastano* edited by Becucci, S. and Carchedi, F., 2016, Franco Angeli, Milan, p. 34

can say that the Madame is the point of connection between the high levels, characterized by the heads of the criminal organisation and the lowest levels, characterized by trafficking victims. Madames are crucial in the Nigerian human trafficking system: the great number of functions they exercise makes them essential for the effectiveness of the trafficking process. They are in charge of the managing of resources, of the obedience of girls and of the organisation of travels and recruitment.

Their unique characteristic is that before becoming Madames, they were trafficking victims too. This means there is a kind of prostitution career which keeps the victims of trafficking locked in that world even if they extinguished their debt. Many victims remain in the criminal network, becoming exploiters of new women.<sup>490</sup>

At the beginning of the trafficking process, Madame are crucial to convince new women to accept to travel towards the country of destination. When Madames return to Nigeria, they are seen as successful people, who made money and come back to give this opportunity to other women as well. After the woman recruited has accepted the fake job offered her abroad, the Madame pays for the whole victim's journey. To seal a covenant on the return of the Madame's money, the latter uses *voodoo* and *juju* magic rituals made on the victim. These rituals take place before the beginning of the journey, and they consist in magic or religious practices that bind the victim's spirit to the obligation of repay the debt, without telling the police anything about the contract, their Madame and the whole organisation. Rituals generally take place with the Madame as the officiant and with ceremonies of haircut or pubic hair cut of the victim or taking her menstrual blood. This type of ritual is very strong to convince victims not to escape or report everything to law enforcement agents. S., the former victim of trafficking I interviewed, told me that the voodoo ritual is a propitiatory rite of good luck to the spirits of the voodoo belief: Nigerian people consider it as a tribunal with legal authority. If you do not pay back the debt you engaged to return, the voodoo spirit will kill you and your family.<sup>491</sup> Women from Nigeria are often not properly educated at school, so they feel the voodoo bond with the Madame in a very strong way. Moreover, at the moment of the voodoo ritual, they are threatened to have their relatives and parents hurt if they try to escape from their condition.<sup>492</sup> There are numerous reports of young Nigerian women who

---

<sup>490</sup> Bernadotti, A., and Carchedi, F., L'immigrazione nigeriana in Italia, in *Schiavitù emergenti: la tratta, lo sfruttamento delle donne nigeriane sul litorale domitio*, p. 51

<sup>491</sup> Interview with a former victim of trafficking for sexual exploitation, now cultural mediator, Verona, 10<sup>th</sup> June 2017 (called S.). The story of S. is found in Chapter 4, paragraph 4 of the present study.

<sup>492</sup> Kara, *Sex Trafficking - inside the business of modern slavery*, pp. 90-91

were asked by social workers or police officers to tell them about their condition or their debt and have fallen into a state of trance in order not to reveal any information.<sup>493</sup> The debt amounts to about fifty thousand euros, but it can increase due to continued sanctions and fines by the Madame, the costs for food, clothing, housing and the rent of the corner in the streets where they work (called, “joint”).<sup>494</sup>

In the country of destination, the word Madame is used to generally indicate all women involved in the criminal organisation. In reality, there are different grades in the hierarchical scale of Madame. At the lower rank of the scale we can find the *petit madame* or *petit maman*, that is still engaged in sex work but she benefits of major liberties, like keeping money she earns, managing drug dealing and even exploiting some other girls. We can have superior grades of the Madame scale, like the Madame Boss or the Grand Madame, protected by a group of men, sometimes part of the criminal Nigerian cults, called *Maman Boys*. They are the ones who are engaged in subjugating and punishing violently the girls who do not obey the Madame. The Grand Madame is on top of the hierarchy, just below the bosses of the criminal organisation. She is in charge of the voodoo and juju rituals, giving herself the priestly status of *Mama Loa* (voodoo priestess) and she is hugely respected inside the Nigerian criminal network.<sup>495</sup> Madames are respected and feared by the girls, who see them as guardians, exploiters and “older sisters” because they share the same experience as prostitutes.

To conclude, women are not just victims in the trafficking process, they could be also offenders. Sometimes women pass from a status of victims to that of perpetrator because they think they do not deserve any better and they are blocked in that world. In a way, this is a failure of the protection and assistance system, and also of the whole anti-trafficking system, because it is not able to give an alternative to victims, leaving them in that condition.

---

<sup>493</sup> *Ibid.*, p. 91

<sup>494</sup> *Ibid.*

<sup>495</sup> Carchedi, F., *La Criminalità transnazionale nigeriana: alcuni aspetti strutturali*, pp. 46-47

### 3. Negotiating the Palermo Protocol: the feminist NGOs role in the debate on prostitution and human rights

The negotiations of the Transnational Organized Crime Convention and the UN Trafficking Protocol registered an unusual high participation of NGOs and the civil society.<sup>496</sup> It was an unusual event as these non-state actors are not interested in conventions and treaties regarding criminal justice or organised crime. Despite this fact, during the Palermo Protocol negotiation process, States delegations were highly influenced by the lobbying activities of NGOs through the submissions of documents, interventions or informal meetings between them. An informal coalition of intergovernmental organisations (IGOs) formed the Inter Agency Group during negotiations and it still works in the present days. It is composed by the UN High Commissioner for Human Rights (OHCHR), the UN Children's Fund (UNICEF), the International Organisation for Migration (IOM) and the UN High Commissioner for Refugees (UNHCR).<sup>497</sup> The commitment of these different agencies expressed the interest for protecting human rights of women, children, migrants and refugees.

Non-state actors in the negotiation process were particularly interested in influencing the drafting process of the definition of trafficking, especially regarding the debate on prostitution, the references to other international human rights law treaties, the anti-discrimination clause, and a human rights approach to trafficking.<sup>498</sup> Concerning the debate on prostitution, it was not new at national and international level.<sup>499</sup> At the moment of the negotiations, two opposing American feminist factions were present, the Human Rights Caucus and the Coalition Against Trafficking in Persons (CATW). It is worth to notice that governments delegates were mostly male while NGOs representatives were female.<sup>500</sup> The moral issue of great concern in the discussions of the two factions debate was prostitution of

---

<sup>496</sup> Gallagher, *The International Law of Human Trafficking*, p. 71

<sup>497</sup> *Ibid.*

<sup>498</sup> *Ibid.*, at p. 72

<sup>499</sup> Debates about prostitution animated throughout the XX century, especially in feminist environments. As we will see, there are two points of view about the issue: abolitionism and the other tolerant. As we saw in the first chapter, the first trafficking conventions and those for the abolition of "white slavery" where reasoning in an abolitionist lens, affirming that prostitutes cannot be able to save themselves as they were victims. For example, 1949 New York Convention about trafficking and exploitation of prostitution of others adopted this abolitionist view, stating that it would punish any person who with the deception and violence commits another person to exploitation of prostitution, even if this person consents. 1949 Convention is still in force, but it received few ratification due to different views of States about prostitution, that want to regulate it by themselves. Moreover, the 1949 Trafficking Convention did not give us a definition of trafficking, instead focused on an abolitionist view of prostitution. Moreover, trafficking was seen in that document (and in those previously produced) as an exclusive women issue, seen as victims to protect.

<sup>500</sup> Ditmore, M., *The negotiations on the UN Protocol on Trafficking in Persons*, 2003, Nemesis, n° 4, p.80

women and their *agency or choice*. Agency is intended as the capacity of a woman to decide to migrate and that her decisions could lead her to engage in a sex work of any kind, fostering the debate on whether trafficking should be identified according to final purpose or by the means used.<sup>501</sup> Visions were different, preventing from finding a common point on the issue and allowing drafters to concentrate more on the repressive approach of the Protocol rather than the protection of human rights one.<sup>502</sup>

The Human Rights Caucus was a coalition of human rights and anti-trafficking activists and sex workers' rights assemblies. Among them one could find the International Human Rights Law Group (IHR LG) and the Global Alliance Against Trafficking in Women (GAATW). Summarising their position, they lobbied for a broader and comprehensive definition of trafficking in persons to cover all forms of exploitation and all genders. Moreover, they wanted to make a distinction between forced sexual exploitation and *sex work*, which is voluntary and without all that means and actions that leads to forced prostitution. According to supporters of this vision, sex workers should have more guarantees in laws and protections. Furthermore, they wanted to include human rights guarantees and assistance measures for trafficked persons, regardless their intention to denounce or to testify against their exploiters. Another important scope of the Caucus was to include an anti-discrimination clause for trafficked persons.<sup>503</sup>

The second coalition of feminist NGOs is the Coalition Against Trafficking in Persons (CATW) which included the European Women's Lobby (EWL) and the International Abolitionist Federation (IAF). Their main assumption was that prostitution is a violation of human rights of women and it should be abolished and prosecuted. However, they were focused on the prosecution of exploiters and clients rather than women involved in prostitution. They believed that there is no consent in such an activity as no adult would agree in engage itself in prostitution, wanting to include sex work in the definition of trafficking. So, in their opinion the distinction between forced and voluntary prostitution is meaningless.<sup>504</sup> The CATW supported the vision of the woman as victim like in 1949 Trafficking Convention, while the Caucus focused more in using the term *trafficked persons* rather than *trafficked victims*, recognising women's agency, denying their passivity and

---

<sup>501</sup> *Ibid.* at p. 82

<sup>502</sup> *Ibid.*

<sup>503</sup> *Ibid.*, p. 81

<sup>504</sup> *Ibid.*



claiming the protection of their fundamental human rights as human beings and not simply as women, to be protected like children and able to reach self-determination. In fact, women can be trafficked as they fall in the trap of traffickers who take advantage of their willingness to migrate for economic reasons, as we already said. So, the focus of the Caucus was on the means and not on the purpose of trafficking.

Their common points were the recognition that prostitutes (forced or not) could be victims of violence and abuses by the part of clients, exploiters and in some cases by the law enforcement officials and that they should not be criminalised for being prostitutes and treated “as persons”.<sup>505</sup> In spite of this meeting point of ideas, the two coalitions did not reach an agreement between their two different visions, leading the definition of trafficking in the Palermo Protocol to become a solution of compromise. Also, their competition contributed to a less consideration of human rights aspects of trafficking, rendering protection and assistance provisions just optional and not imperative like those referring to prosecution of the organised crime, as we already said in chapter one.<sup>506</sup> The lack of collaboration between them led States to give more importance to the repressive approach, even if the optional protection measures were included thanks to the Inter Agency Group aforementioned. Moreover, the issue of prostitution is treated in different ways according to different countries, distinguishing from those who tolerate it and those who criminalise it.

Recently, strong position against prostitution related to trafficking has been taken both at international and regional level. In her 2006 report the Special Rapporteur on trafficking in persons Ms Sigma Huda affirmed that “prostitution as actually practised in the world usually does satisfy the elements of trafficking”<sup>507</sup>, affirming that it involves abuse of power and vulnerability. The Special Rapporteur continued assuming that in her experience prostitution linked to trafficking is more practices than *sex work* as intended as voluntary prostitution.

The European Parliament took a strong position against prostitution. It stated in a Resolution, that is non-legally binding for the European Union, that prostitution is linked to

---

<sup>505</sup> De Vido, S., *Donne, violenza e diritto internazionale*, p. 216; Anthony, J., Prostitution as a Choice, contained in O’Toole, L., Schiffman, J.R., Kiter Edwards, M.L., *Gender Violence – Interdisciplinary Perspectives (2nd Edition)*, 2007, New York University Press, New York, p. 417

<sup>506</sup> Hathaway, J.C., *The Human Rights Quagmire of Human Trafficking*, p. 46

<sup>507</sup> Economic and Social Council, Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda, Feb., 20th, 2006, 62th Session, E/CN.4/2006/62, par. 42 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/109/64/PDF/G0610964.pdf?OpenElement> consulted the 13th of May 2017

gender inequality and the status of women and men in a society and in considering their sexuality.<sup>508</sup> It defined also it as a violation of fundamental rights and human dignity and a form of slavery, aligning with what the European Court of Human Rights established in the judgement *Rantsev v. Cyprus and Russia*.<sup>509</sup> In fact, prostitution is said to create a market treating people like merchandise or “objects” at service of clients (the majority of which is male).<sup>510</sup> This market fosters trafficking of women and children.<sup>511</sup> Not to mention that prostitution could suggest a “degrading image of women”.<sup>512</sup>

The position of the European Parliament is strong against any form of tolerance of prostitution, affirming that “the normalisation of prostitution has an impact on violence against women; [...] men buying sex were more likely to commit sexually coercive acts against women and other acts of violence against women, and often presented misogynist attitudes”.<sup>513</sup> The European Parliament recognised also that prostitutes are vulnerable to abuses, violence and diseases, economic disadvantages, psychological and emotional problems, and social exclusion. The same position is restated in another European Parliament Resolution of 2016, that sees the intimate connection between trafficking and prostitution and asks to take provisions against demand.<sup>514</sup> Moreover, the current European Anti-Trafficking Coordinator is the former President of the European Women’s Lobby, mentioned above.

The position of the European Parliament has a significant importance in a region in which one can find different opinions and approaches to the issue of prostitution.<sup>515</sup> At the international level is even more difficult try to harmonise visions. It is also difficult to find a common solution, as negotiations of the Palermo Protocol demonstrated.

---

<sup>508</sup> European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality, (2013/2103(INI)), para. E

<sup>509</sup> *Ibid.*, para. B

<sup>510</sup> *Ibid.*, paras. I and K

<sup>511</sup> *Ibid.*, para. O

<sup>512</sup> *Ibid.*, para. 10

<sup>513</sup> *Ibid.*, para. 13

<sup>514</sup> European Parliament resolution of 5 July 2016 on the fight against trafficking in human beings in the EU’s external relations (2015/2340(INI)), at para. 28

<sup>515</sup> There are four different approaches to prostitution in the European Union: criminalisation of prostitution of one of its aspects, like exploitation, the consideration of prostitution as an illegal activity, criminalising prostitutes, tolerance, and regulation of sex activities and the “Swedish model”, such as to put sanction on the demand side of the phenomenon (clients). For example, in Italy prostitution is not criminalised. However, the exploitation and the favouring of prostitution are crimes punished by the criminal code (see *infra* chapter one). As we will see in the case study in chapter four, some municipalities put sanctions on clients and prostitutes, like in Verona (Veneto).

Recently, Amnesty International lined up with sex workers defending their human rights through a policy that turned-on discussions and debates, as Amnesty International position has been heavily criticised by advocates of abolitionism, human rights lawyers and activists, by stating that:

Sex work (which must be between adults and consensual in order to be considered sex work) is distinct from human trafficking. The conflation of human trafficking with sex work can result in broad and over-reaching initiatives that seek to eradicate all commercial sex as a means to end trafficking. Such approaches work in practice to violate sex workers' human rights, and in general can make sex workers and people who have been trafficked more vulnerable to violence and harm. Additionally, there is a lack of evidence to suggest that such approaches are successful in addressing trafficking (in terms of preventing, identifying, and protecting victims and supporting prosecution of perpetrators).<sup>516</sup>

It is widely accepted that a non-criminalisation of prostitution must be implemented worldwide. However, the debate is still continuing even between the two blocs of NGOs aforementioned, that still operate in the present days. They are still concerned with issuing reports, statements, and studies on the issue, debating and influencing the ongoing evolution in the fight against trafficking in human beings, especially with regards to women, without finding an international coherence.

#### **4. Conclusion**

Analysis and considerations about human rights, gender violence and the issue of prostitution are functional to the next step of the present work, that is to say a comparative analysis of the protection and assistance measures provided by different legal instruments from the international level to the Italian one.

It is also useful to comprehend the increase in the commitment to a victim-based approach rather than falling on mere criminal law and repressive provisions. All these aspects, from non-discrimination based on gender, to positive obligations appointed to States with regards all human beings present under their jurisdiction, to violations of human and

---

<sup>516</sup> Amnesty International, *Policy On State Obligations To Respect, Protect And Fulfil The Human Rights Of Sex Workers*, May, 26<sup>th</sup>, 2016, POL 30/4062/2016, p. 17

women's rights should be considered in the actions to prevent, protect, and in the repression of trafficking in women for sexual exploitation. The debate on prostitution is still occupying our lives: the civil society, States and NGOs are still divided between the criminalisation and the tolerance, trying to support their claim about what kind of approach could help sex trafficking to be reduced and prevented.

Victims nowadays are at the centre of anti-trafficking policies, so the reflection and consideration of their human rights must be highlighted and protected in order to achieve the best practices in the field of assistance and support, from the identification to the reintegration in society. Moreover, the consideration of victims' human rights is useful for better implement the comprehensive approach to fight against trafficking in human beings.

## **CHAPTER 3: PREVENTIVE AND PROTECTIVE MEASURES IN THE LEGISLATIVE INSTRUMENTS**

### **1. Measures of prevention and protection in International, European and Italian law**

This chapter will present a comparative analysis of preventive and supportive measures for victims provided by legislative bodies and some instruments of soft law at international, European, and Italian level. We will observe their common points and their level of obligations according to the different levels of legislation. The legal instruments analysed are the UN Trafficking Protocol, the CoE Trafficking Convention, the European Directives 2011/36 (human trafficking directive), 2004/81 (about the reflection period and the residency permit) and 2012/29 (status of victims of a crime) and the Italian National Anti-Trafficking Plan. The present study will focus more on the 2002 Recommended Principles and Guidelines rather than other soft law instruments as it was the first one to introduce complete provisions for the protection and assistance to victims on the basis of a human rights-based approach.

Throughout the years, these provisions entered in the legislative bodies as essential to respect and promote trafficked persons' rights and give them the appropriate assistance, even if they decide not to collaborate immediately with the judicial authority. This is the core assumption of a human-rights based approach. States accepted to recognise that human trafficking is a serious problem with a consistent political importance, not only regarding their borders or their control of criminal activities, but also concerning the care of victims as they are essential for investigations and to arrest actors involved in the organised crime. However, some of these provisions are still controversial for many reasons. First, not all legislative bodies consider them as obligations for States, because States agreed in keeping them as optional, as they are more concerned about repression of trafficking as a crime. Secondly, they pose some difficulties to States in implementing them because of the lack of money, time and deployment of human resources.

Among the provisions analysed, a description of the status of victims, housing, medical care, counselling and information provisions, the access to education and employment, the reflection period and the residency permit issue, the provision of funds and compensation for victims of trafficking, the repatriation and the recognition of the refugee status in the cases it is provided. Other issues analysed will be the prevention strategies, the gender approach, the role of non-state actors and the monitoring systems.

## 1.1 The status of victim

At the core of a victim-oriented approach to victims of human trafficking there are a correct identification process, her/his non-criminalisation, the protection during and after the prosecution actions of traffickers and exploiters and regardless her/his collaboration with the judicial authority and the prohibition of her/his detention when she/he is identified. Victims must be recognised to start their process of rehabilitation and protection and to fully enjoy their rights. If they are not identified, they will not have access to the rights and services they are entitled to.<sup>517</sup> However, this is complicated and time-consuming, leaving a great margin of error and failure, and because every State could use its proper legislation, without following a common one and, sometimes, without committing themselves to human rights obligations.<sup>518</sup> This proves to be still a weakness of the chain of protection and assistance for victims of human trafficking, together with other factors, like fear, distrust, the perception of not feeling victims and the subjection to exploiters.

### *a) In International Law*

Concerning identification and immediate recognition of the rights of victims, all revolves around what the legislative bodies mean by the status of victim itself. The first observation to make is that neither the Palermo Protocol nor the Organized Crime Convention mention in their provisions a definition of victim and a procedure for the identification. As we observed, their focus is on the repressive measures to the crime, leaving all the protection and assistance provisions optional.<sup>519</sup> The Protocol is also silent concerning the non-criminalisation, the protection of the victims before, during and after the prosecution actions

---

<sup>517</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking - Commentary*, 2010, United Nations Publications, p. 73

<sup>518</sup> McAdam, M., *Who's who at the border? A rights-based approach to identifying human trafficking at international borders*, 2013, *Anti-Trafficking Review*, Issue 2, pp. 33-49, p. 42

<sup>519</sup> The only international instruments linked to the Palermo Protocol that give us an insight into the status of victim and the identification is the UNODC Model Law (United Nations Office on Drugs and Crime, *Model Law on Trafficking in Persons*, UN Sales n. E.09.V.11, 2008, available at [https://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf) (hereinafter UNODC Model Law), issued to complete the Palermo Protocol with some provisions that could be common to all the legislations, without being legally binding for those States who ratified the Organised Crime Convention and the Protocols. It suggests to implement guidelines for officials to better identify victims of trafficking, such as a list of indicators to use and to be updated periodically, the right to a "reflection period" to receive immediate assistance and decide whether they want to cooperate with authorities or not. According to the Model Law, authorities should establish two steps of evaluation in order to identify the victim, the first superficial and the second more detailed about the case of the victim identified (at article 18). Identification should be carried on involving not only State actors but also non-state actors and NGOs in charge with the assistance and care of victims of human trafficking, cooperating among them.

and on immediate support and assistance regardless the collaboration with justice. Article 6 of the Palermo Protocol only concerns protection of victims' personal data, privacy, and identity.<sup>520</sup> This proves the limits of the Palermo Protocol.

Contrary to the tendency of the Palermo Protocol, the 2002 Recommended Principles and Guidelines for Human Rights and Human Trafficking provide a complete framework regarding identification of victims in guideline number two.<sup>521</sup> It suggests a system of procedures and general rules to provide to State authorities, border police, law enforcement agents and all those concerned in order to identify correctly those who have been trafficked, without confusing them with irregular or smuggled migrants.<sup>522</sup> These subjects need to be trained and prepared in order to apply properly the procedures.<sup>523</sup> As trafficking is mostly a transnational phenomenon, cooperation among judicial authorities of different countries is provided in the 2002 Recommended Principles and Guidelines.<sup>524</sup> Finally, the issue of identification is strictly connected with other important provisions regarding the status of victim in guideline number two: trafficking victims must not be detained in prison or in migrant shelters and they must not be condemned for breaking immigration laws.<sup>525</sup> The same concepts are restated in guideline number three (“Ensuring an adequate legal framework”), where the prohibition of detention of victims, even for crimes they committed while they were exploited is recalled. Moreover, trafficking victims has not to be forced to collaborate with the police if they would like to enjoy protection and assistance. Everyone who is identified as trafficking victims has the right to immediate assistance and support. Victims' choice to collaborate is voluntary and if they decide to collaborate in prosecuting traffickers they should be protected as witnesses and assisted before, during and after the legal action.<sup>526</sup>

#### *b) In Regional Law*

Regarding the European situation, the Convention of the Council of Europe against Trafficking has a victim-oriented approach. It gives a definition of victim at article 4<sup>527</sup>, as

---

<sup>520</sup> UN Trafficking Protocol, at art. 6

<sup>521</sup> 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking, at p. 4 (Guideline 2).

<sup>522</sup> *Ibid.*

<sup>523</sup> *Ibid.*, at p. 2

<sup>524</sup> *Ibid.*, at p. 3

<sup>525</sup> *Ibid.*, at p. 5-6

<sup>526</sup> *Ibid.*, at pp. 6-7

<sup>527</sup> CoE Trafficking Convention at art. 4 reads: “Victim shall mean any natural person who is subject to trafficking in human beings as defined in this article”. (See CoE Trafficking Convention, at art. 4)

we recalled in the first chapter. The Convention dedicates an entire article to the issue of identification, such as article 10, which states that each State party should train officials and authorities to recognise victims of trafficking (above all, minors) and collaborate one another, in order to allow victims to receive proper care and support. This training should be given highlighting the importance of human rights.<sup>528</sup> Judicial authorities and law enforcement agents should cooperate also with non-state organisations, especially when women and children are involved.<sup>529</sup> The identification should be complete and the alleged victim has the right to receive assistance and support even in that transition period.<sup>530</sup> The CoE Trafficking Convention provides measures for the protection of identity and data of the identified victim and his/her family<sup>531</sup>, even more if she/he collaborates with justice and become witnesses in a process against a trafficker or a criminal organisation. Protection in this case is provided to victims, their families and relatives, collaborators and witnesses.<sup>532</sup> Protection should be ensured also in collaboration with other States parties through bilateral or multilateral agreements. Protection and assistance to victims are given regardless of their willingness to collaborate with justice.<sup>533</sup> Victims should not be punished or prosecuted for illegal acts committed because they were forced by traffickers (like drug dealing).<sup>534</sup> The CoE Convention is in line with the Recommended Principles and Guidelines and, as we have already observed, oriented towards human rights protection. It is a legally binding instrument, but only for the Council of Europe members which ratified it.

European Union law introduced these provisions in the 2011 Directive, in Directive 2012/29 about the rights of victims of crime, perfecting them with the 2012-2016 Strategy against human trafficking. Victims of crime are defined in Directive 2012/29/EU at article 2, paragraph (i) as “a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence”.<sup>535</sup>

---

<sup>528</sup> CoE Trafficking Convention at art. 29(3)

<sup>529</sup> *Ibid.*, at art. 10(1)

<sup>530</sup> *Ibid.*, at art. 10(2)

<sup>531</sup> *Ibid.*, at art. 11. In this case, another Council of Europe Convention has to be applied, that is to say the Convention for The Protection of Individuals with regard to Automatic Processing of Personal Data, Jan., 28th, 1981, entry into force Oct., 1st, 1985, ETS n. 108

<sup>532</sup> *Ibid.*, at art. 28

<sup>533</sup> *Ibid.*, at art. 12(6)

<sup>534</sup> *Ibid.*, at art. 26

<sup>535</sup> Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, 2012/29/EU, 14th November 2012, OJ L 315/57, (hereinafter Directive 2012/29), at art. 2(i). Article 2 protects also those family members of the person whose death was caused by a criminal offence. Among criminal offences we could find terrorism, trafficking in human beings, violence, gender-based violence.



Directive 2011/36 dedicates great attention to provisions related to the status of victim. It safeguards the rights of victims of trafficking in human beings by granting them proper identification that all member States should develop, establishing a cooperation between officials and other organisations, including NGOs.<sup>536</sup> The EU Strategy towards the eradication of trafficking in human beings 2012-2016 dedicated action number 2 to the issue of the identification of victims. In 2014 the European Commission issued some guidelines<sup>537</sup> to improve identification and balance Member States strategies, based on the indicators issued in 2009 by the ILO in collaboration with the European Commission itself.<sup>538</sup> According to the Commission's guidelines, Member State should fix some indicators in a reference document for border guards and consulate officers as they are key actors, above all in detecting victims while they are travelling together with traffickers. Competent authorities should be trained in order to recognise victims or potential victims, especially among vulnerable people like women and children. The Commission engaged in funding some projects by Member States of collaboration between IGOs, NGOs and official authorities to develop common guidelines to better identify and inform victims about their rights and to grant them protection. Directive 2012/29 also guarantees special protection systems to particular categories of victims, including trafficked victims, after an individual assessment in order to establish the severity of the crime and the degree of protection of the victim, paying attention to minors and those who suffered serious harm or traumas.<sup>539</sup> The 2011 Trafficking Directive guarantees to victim other protection measures, invoking the CoE

---

<sup>536</sup> Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, 2011/36/EU, 5th April 2011, OJ L 101/1, (hereinafter Directive 2011/36), at art. 11(4)

<sup>537</sup> European Commission (DG Home Affairs), Guideline for the identification of victims of trafficking in human beings, 2013, Publication Office of the European Union, Luxembourg, available at [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/thb-victims-identification/thb\\_identification\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/thb-victims-identification/thb_identification_en.pdf) consulted the 17th of May 2017

<sup>538</sup> International Labour Organization and the European Commission, Operational indicators of trafficking in human beings, 2009, available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_105023.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf) consulted the 17th of May 2017. The six indicators cover all aspects of trafficking such as recruitment (deceptive, coercive, or by abuse of vulnerability), exploitation, level of vulnerability, coercion and conditions of works. Each one of them have sub-indicators considered according to their level of strength (strong, medium or weak indicator). ILO and the European Commission indicated also how to use them: in the presence of a potential victim, competent authorities should evaluate each one of the six indicators separately paying attention if the suspected victim has two strong indicators, or one strong and one medium, three medium indicators or two medium indicators and one weak. This method was used for the first time to combat trafficking from East Europe in 2008. From 2009 it is available in Western Europe also. The indicators are especially focused on: adults trafficked for forced labour, adults trafficked for sexual exploitation, children trafficked for labour exploitation and children trafficked for sexual exploitation.

<sup>539</sup> Directive 2012/29, at art. 22 and Directive 2011/36, at art. 12(3)

Trafficking Convention. As of 2012, the Trafficking Directives is applied in synergy with the aforementioned Directive 2012/29, protecting victims of crime (and replacing the previous Council Framework Directive 2001/220/JHA of 15 March 2001). The two Directives guarantees the principle of non-punishment and non-prosecution of victims of trafficking<sup>540</sup>, together with the guarantee to have access to information, protection, and assistance before, during and after the criminal proceedings against traffickers if the victim decides to act as witness.<sup>541</sup> Witnesses are granted with the right to have their privacy and that of their relatives respected and protected<sup>542</sup>, as not to face retaliations, intimidations or second victimisation.<sup>543</sup> Also in European Union Law, victims who do not want to collaborate with justice are entitled to enjoy every kind of support and assistance service.<sup>544</sup> Victims should also refuse to receive assistance and protection. Immediate support and assistance are granted also to suspected victims.<sup>545</sup> In the case of trafficking in human beings, those operating in the support and assistance national mechanism should consider special conditions of victims, like health issues, pregnancy for women, disabilities, psychological traumas, and disorders.<sup>546</sup>

*b) In Italian Law*

Italy implemented the Directives mentioned and the CoE Convention with the laws reported in the first chapter. The new Italian strategy for protection of victims of human trafficking is included in the National Anti-Trafficking Plan<sup>547</sup> (Piano Nazionale Anti Tratta), which considers the provisions at article 13 of law 228/2003 and article 18 of Legislative

---

<sup>540</sup> *Ibid.*, at art. 8. The same provision is stated in the introductory part of the same Directive, which invites Member States not to prosecute victims of human trafficking who broke immigration and criminal laws because they were compelled to (Directive 2011/36, paragraph 14).

<sup>541</sup> *Ibid.*, at art. 11(1). The Directive specifies in this provision that victims should be protected before, during and after the criminal proceedings to enjoy all the rights which were guaranteed (at the time) by the Council Framework Directive 2001/220/JHA. Now that it has been replaced by Directive 2012/29, it is reasonable to think that victims of human trafficking are entitled to enjoy all the rights set by these Directive. In fact, article 18 of Directive 2012/29 ensure protection by Member States of the victim and family members, also physical protection when necessary.

<sup>542</sup> Directive 2012/29, at art. 21 and paragraph 68 of introduction. Personal data are protected implementing Council Framework Decision 2008/977/JHA of 27th of November 2008 and the Council of Europe Convention of 28th May 1981 or the Protection of Individuals about Automatic Processing of Personal Data.

<sup>543</sup> Directive 2011/36, at art. 12(4) and Directive 2012/29, at art. 18, 19, 20. Among these provisions: avoiding insistence by the part of police authorities and repeating interviews to victims during the whole criminal proceeding, avoiding contact between the victim and the perpetrator, avoiding the victim to give testimony of facts in open Court, and avoiding questioning about victims' private life.

<sup>544</sup> *Ibid.*, at art. 11(3); Directive 2012/29, at art. 8(5)

<sup>545</sup> *Ibid.*, at art. 11(2); Directive 2012/29, at art. 22(3)(4)(5).

<sup>546</sup> Directive 2011/36, at art. 11(7)

<sup>547</sup> Council of Ministers of the Italian Republic (Consiglio dei Ministri delle Repubblica Italiana), Piano Nazionale d'azione contro la tratta e il grave sfruttamento 2016-2018. (hereinafter National Anti-Trafficking Plan)

Decree Turco-Napolitano n. 286/1998, united in the single programme in May 2016. The protection and assistance to victims of human trafficking is one of the main directions of the National Plan.

The Italian strategy consists in intervening in a *proactive* way, which means to identify and help to seek assistance those people who are potential victims or victims of exploitation through a joint work of road units, family counselling systems, centres for women victims of violence, first aid wards in hospitals, and law enforcement agents.<sup>548</sup> Also, the Anti-Trafficking Free Helpline (Numero Verde) helps to identify victims of trafficking through calls from victims, from the police or private organisations or from citizens. The National Plan indicates some mechanisms of identification through indicators<sup>549</sup> that would help competent authorities to help victims. Identification may occur in different moments: once they arrive in Italy, when they submit the application for asylum and international protection, in reception centres for migrants, and during the interview with the Territorial Commission for the refugee status. Indicators are different according to the different type of exploitation and they are the starting point for the evaluation case-by-case.<sup>550</sup> Indicators should be kept updated according also to the local reality and taking into account the situation of the *demand* that became crucial in the whole trafficking discourse. Also, typical migrant routes have to be checked, favouring the collaboration between the judicial authority, law enforcements agents, and NGOs. The level of vulnerability is another important indicator in the identification process. For this reason, the personnel should be well skilled and prepared in order to establish a trust relationship with the subject and it has to be placed in mutual collaboration with other actors involved in the National Plan.<sup>551</sup>

---

<sup>548</sup> *Ibid.*, p. 33

<sup>549</sup> These indicators are presented in the Department of Equal Opportunities of the Italian Council of Ministers, Annex 2 to the National Anti-Trafficking Plan, 2016, available at <http://www.pariopportunita.gov.it/media/2874/allegato-2-linee-guida-rapida-identificazione.pdf> and consulted the 17th of May 2017. The indicators refer to where the victim could be found (on the street, in hotels and bars, in reception centres etc.), who can identify the victim (law enforcement agents, border agents, immigration services, hospital personnel, the Territorial Commissions for the examination of the refugee status application, NGOs, Embassies and Consulates, judicial authorities, trade unions etc.). There should be two identification processes. A first evaluation which should be informal and superficial (screening) is carried by informing the suspected victim of her/his rights, even in a language she/he understands and giving her/him immediate assistance. Competent authorities should collect information about the suspected victim, if she/he is wounded or traumatised, if she/he has some diseases, her/his status (irregular migrant, examination of documents etc), her/his working conditions etc. A second evaluation, more formal, is carried after the consensus of the victim after the reflection period (see *infra* chapter 3, paragraph 1.2).

<sup>550</sup> *Ibid.*, at p. 36 (Scheda 2: Protezione e assistenza delle persone trafficate – meccanismi di rapida identificazione delle vittime).

<sup>551</sup> As we will see in the case study presented in the fourth chapter, the chosen approach is the multi-agency

The identification process must consider the respect of all fundamental human rights and the respect of human dignity, as the National Anti-Trafficking Plan adopts a human right based approach. Moreover, Italy implemented in its legislation all the guarantees for victims, like the non-prosecution and detention of victims of trafficking for crimes that they were forced to commit, the right to protection before, during and after criminal proceedings if they decide to act like witnesses. The protection and assistance is not conditional to the willingness of the victim to collaborate with justice, a right already guaranteed in Italy since the approval in 1998 of article 18 of the Legislative Decree 286/1998.<sup>552</sup> Victims can choose not to use the immediate support and assistance services or to enter in the programme of protection and assistance provided by the National Anti-Trafficking Plan, in application of article 13 of Law 228/2003 and article 18 of Legislative Decree 286/1998.

## **1.2 The reflection period and the residency permit**

Victims must have the right to a reflection period to decide whether or not collaborate with justice in order to prosecute traffickers or whether or not enter in a protection programme. During this period, victims or alleged ones are entitled with immediate support and assistance and cannot be expelled or repatriated in their countries of origin. Trafficked persons should receive information about their rights and the assistance system entitled to them (psychological, medical, legal) and it should be given in a language they can understand. The role of an interpreter or a cultural-linguistic mediator is crucial in this sense. If the victim would like to collaborate and participate in protection and support programmes, she/he is entitled with a residency permit to stay in the country of destination for a limited period of time.

### *a) In International Law*

The Palermo Protocol makes no reference to the reflection period, but it gives a short provision about residency permits at article 7, stating that States could adopt legislative or other measures to allow victims to stay in their territories for a limited period of time or for

---

one. Different actors involved in different actions should cooperate at every level to better fight human trafficking and, mostly, assist victims immediately and if they decide to undertake all the way to rehabilitation or if they decide to denounce their exploiters by acting as witnesses.

<sup>552</sup> Italy was one of the first countries in Europe to make support and assistance unconditional and article 18 became a role model to many countries in European Union and in the world.

a long period of time. According to article 7, the residency permit is issued to allow victims to enjoy all the services of assistance enlisted in article 6<sup>553</sup>. Moreover, States should implement these provisions considering humanitarian and philanthropic factors.<sup>554</sup>

Neither the 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking address directly the reflection period but they provide the possibility to enjoy a temporary residency permit for the all length of the criminal proceeding for those who decide to collaborate voluntarily.<sup>555</sup> However, in the 2010 Commentary to the Recommended Principles and Guidelines, it is specified that trafficking victims are granted with a *reflection and recovery period* with immediate support in order to make them decide to collaborate or not. They are granted with a temporary residency permit, which expires once the criminal proceedings of traffickers are concluded. Also, residency permits for social-humanitarian reasons (asylum, re-trafficking, non-refoulement) could be issued.<sup>556</sup>

#### *b) In Regional Law*

The CoE Trafficking Convention registered a great step forward in granting a legal status to victims of trafficking and it dedicates detailed provisions to the recovery and reflection period and the residency permit. Article 13 reads that States should provide in their domestic law at least thirty days of reflection period for trafficking alleged victims to allow them to choose to escape from traffickers and decide to cooperate with judicial authorities. In this period, trafficked persons cannot be expelled from the country.<sup>557</sup> Article 14 instead deals with the residency permit, establishing two situations in which it can be issued: if the authorities consider the remaining in the State's territory of the alleged victim necessary due to her/his situation or if the authorities decide the remaining of the victim necessary for

---

<sup>553</sup> UN Trafficking Protocol, at art. 7, See *infra* paragraph 1.3 of the present chapter

<sup>554</sup> *Ibid.*, at art. 7(2)

<sup>555</sup> 2002 Recommended Principles and Guidelines, at p. 7 (Guideline 4) and p. 11 (Guideline 9)

<sup>556</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking - Commentary*, 2010, United Nations Publications, at p. 159

<sup>557</sup> CoE Trafficking Convention, at art. 13(1). In the same article, it is specified that during the reflection period, suspected victims can enjoy assistance and protection measures of article 12 of the Convention (para. 2). States can abstain to grant the reflection period if it is claimed improperly or if reasons of public order do not allow it (para. 3). Despite of being the first Convention to have a specification about the amount of time of the reflection period, the provision was criticised by a Joint Statement by Anti-Slavery International and Amnesty International in 2004. They asked for a reflection period of at least ninety days (3 months), allowing victims to receive proper assistance and support, all information and to decide properly if collaborate or not. For further information see Amnesty International and Anti-Slavery International, *Council of Europe: Recommendations to Strengthen December 2004 Draft European Convention against Trafficking*, January 2005, IOR 61/001/2005, p. 11.

investigations and prosecution proceedings of traffickers.<sup>558</sup> The residency permit can be withdrawn or renewed according to domestic laws of the State.<sup>559</sup> Finally, States should take into account that a victim of trafficking has held this kind of residency permit if she/he asks for another kind of permit to stay in the country.<sup>560</sup> Moreover, the issuing of this residency permit is without prejudice to the right to seek and obtain asylum.<sup>561</sup>

The European Union did more improvements in this sense. The Council of European Union adopted in 2004 a Directive specific to residency permits to victims of human trafficking (Directive 2004/81/EC).<sup>562</sup> The aim of the Directive is to harmonise the domestic provisions of Member States of the Union with regards to the reflection period and the issuing of residency permits. The reflection period is recognised at article 6 to those third-country nationals who want to escape a situation of exploitation and need to decide if cooperate with authorities or not. The Directive does not fix a duration of the reflection period, leaving the decision to Member States.<sup>563</sup> During the reflection period, States should guarantee to the third-country national immediate assistance provided at article 7 of the same Directive.<sup>564</sup> The residency permit is regulated at article 8, which asserts that it is issued after the reflection period when the third-country national interrupts all contacts with traffickers and exploiters and she/he decides to collaborate with justice for the length of the criminal proceedings.<sup>565</sup> The duration of the residency permit is six months at least and can be renewed if necessary.<sup>566</sup> Article 13 and article 14 refer respectively to the non-renewal of the residency permit and the withdrawal. In the first case, the residency permit is not renewed if the conditions provided by article 8 are not present anymore or if the criminal proceeding ceases.<sup>567</sup> The residency permit can be revoked at any time if the conditions are not present anymore and if the victim

---

<sup>558</sup> CoE Trafficking Convention, at art. 14(1). Paragraph 2 instead deals with the residency permit for children, that should be issued and renewed following the best interest of the minor.

<sup>559</sup> CoE Trafficking Convention, at art. 14(3)

<sup>560</sup> *Ibid.*, at art. 14(4)

<sup>561</sup> *Ibid.*, at art.14(5). This provision is in line with that of article 40(4) which states that the measures contained in the Convention do not affect any other international law, international humanitarian law or international human rights law provisions, included the 1951 Refugee Convention.

<sup>562</sup> Council Directive on the residency permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, 29th of April 2004, 2004/81/EC, OJ L 261/19. The Directive is recalled also by the trafficking Directive 2011/36/EU at article 11(6) among the assistance and support provisions for victims.

<sup>563</sup> *Ibid.*, at art. 6(1)

<sup>564</sup> *Ibid.*, at art. 6(2). Article 7 refers to the treatment before the issue of the residency permit and comprehend medical, psychological, legal assistance.

<sup>565</sup> *Ibid.*, at art. 8(1)

<sup>566</sup> *Ibid.*, at art. 8(3)

<sup>567</sup> *Ibid.*, at art. 13(1). When the residency permit expires, States should apply domestic laws about immigration and non-nationals.

has voluntarily still contact with perpetrators and traffickers and decides to stop the cooperation with law enforcement agents, or if this cooperation is counterfeit, or to protect national security and interests, or if the judicial authorities decide to stop criminal proceedings.<sup>568</sup>

c) *In Italian Law*

Concerning Italian national law, the duration of the reflection period is three months renewable for other three months according to victims' necessities.<sup>569</sup> Moreover, the provision about the issue of a residency permit for third-country national's victims of exploitation and trafficking has existed since 1998. In fact, the Legislative Decree 286/1998 at article 18 gives the conditions for third-country nationals to obtain the residency permit for social protection.<sup>570</sup> When it has been verified that a third-country national is victims of trafficking and severe exploitation, the Police Commissioner<sup>571</sup> could communicate to the Public Prosecutor<sup>572</sup> to release a special residency permit to allow the victim to escape from the exploitation and join a protection and assistance programme. The residency permit could be asked also by the social services or an NGO who takes care of the victim (through the so-called *canale sociale*). The duration is six months and it can be renewed for other six months, or for the time needed according to criminal proceedings.<sup>573</sup> The victim is recognised to be crucial for the good pace of investigations.<sup>574</sup> The victim is entrusted to social workers and is allowed to receive assistance and all care services provided by them and regulated in the successive Law 228/2003 at article 13.<sup>575</sup> The residency permit can be revoked if the victim's programme is interrupted, or if the victim's behaviour is not appropriate with the scope of the residency permit issue, or when the conditions justifying the release cease.<sup>576</sup> The residency permit can be converted for matters of study or work in order to allow the third-country national to continue the programme.<sup>577</sup>

The Italian National Anti-Trafficking Plan adopted in 2016 unified the programmes,

---

<sup>568</sup> *Ibid.*, at art. 14

<sup>569</sup> Interview with an Italian social worker in the field of inclusion and assistance to victims of human trafficking, Verona, done 31st March 2017

<sup>570</sup> D. Lgs. 286/1998, at art. 18

<sup>571</sup> Translation of the Italian "Questore", chief of a city police headquarters

<sup>572</sup> Translation of the Italian "Procuratore della Repubblica", which is an Italian judicial authority

<sup>573</sup> D. Lgs. 286/1998 at art. 18(4)

<sup>574</sup> *Ibid.*, at article 18(1)(2)

<sup>575</sup> *Ibid.*, at article 18(5). See *infra* chapter 3, paragraphs 1.3 and 1.4

<sup>576</sup> *Ibid.*, at article 18(4)

<sup>577</sup> *Ibid.*, at article 18(5)

including provisions of article 18 and regulating the recognition of a reflection period of three months in order to decide what path choose, the judicial or the social one, following the so called *double track*<sup>578</sup> system, that is to say the possibility to obtain the residency permit and the assistance regardless the collaboration with justice and the guarantee of a process of rehabilitation and reintegration in the society.<sup>579</sup>

Even if last year the common programme has been approved, article 18 of the Legislative Decree remains the crucial provision on this subject, working in cooperation with article 13 of Law 228/2003, because the residency permit allows the victim to face a social reintegration path that goes beyond first aid and protection. It should consider the victim's dignity and fundamental rights and the protection of the him/her against further harm of re-victimisation.

### **1.3 Protection and support: housing, medical care, psychological, legal assistance**

Victims that want to escape from their exploiters and finally manage to do so are vulnerable and in need of protection and, sometimes, psychological, or physical treatments because of the possible abuses or violence they encountered during the exploitation. This is true especially for women victims of sex trafficking, that suffer several discriminations and violence. Some of them could ask for special help because they could be pregnant or injured.

As norms adopted a victim-oriented approach, provisions about housing, medical care, psychological, legal and consular assistance, information and translation have become very important and they were recognised as a crucial set of responsibilities appointed to States.<sup>580</sup> Above all, this is because victims of trafficking are also victims of a serious crime and victims of human rights violations. In this sense, the identification process and the reflection period play a pivotal role in giving victims the adequate protection both immediately (even if they are not fully identified as trafficking victims) and after the issue of the residency permit and their consent to participate in a protection programme or in the prosecution trial of their traffickers as witnesses.

---

<sup>578</sup> Translation of Italian "doppio binario"

<sup>579</sup> National Anti-Trafficking Plan, p. 29 and p. t40

<sup>580</sup> Gallagher, *The International Law of Human Trafficking*, at p. 297



*a) In International Law*

At the time of the Palermo Protocol, as we recalled many times in the present work, protection and assistance measures were considered as optional and included in only one article without examine them in depth. Article 6 only *invites* States to *consider* providing psychological, physical and social rehabilitation, also recurring to cooperation between State institutions and private associations of the third sector. In particular, among these provisions we find housing, legal information and counselling, medical and material assistance, psychological support and access to education and employment.<sup>581</sup> States *shall* consider issues of gender, age and special needs of victims in implementing the provisions listed above.<sup>582</sup> Moreover, the same article provides that States should make an effort to take care of physical safety of victims in their territory.<sup>583</sup>

Of different notice are the Recommended Principles and Guidelines of 2002, that dedicate an entire guideline to the issue of protection and assistance to victims of human trafficking, following the commitment to a human rights-based approach. Guideline number six reads that States should provide, in cooperation with NGOs and associations, shelters to trafficking victims even if they do not want to cooperate with justice. They should not be detained in prisons or other detention centres.<sup>584</sup> They should receive immediate medical treatments<sup>585</sup> and legal counselling, they should have access to their embassies and consulates if they are non-citizens of the State of destination<sup>586</sup>, to psychological help, and all the provisions aimed at preventing intimidation or re-victimisation situations.<sup>587</sup>

*b) In Regional Law*

The CoE Trafficking Convention provides general obligations and minimum standards<sup>588</sup> in order to “assist victims in their physical, psychological and social recovery”<sup>589</sup>

---

<sup>581</sup> UN Trafficking Protocol, at art. 6(3). For the access to employment and studies, see *infra* chapter 3, paragraph 1.4

<sup>582</sup> *Ibid.*, at art. 6(4)

<sup>583</sup> *Ibid.*, at art. 6(5)

<sup>584</sup> 2002 Recommended Principles and Guidelines, at pag. 8 (Guideline 6)

<sup>585</sup> The Recommended Principles and Guidelines establish that HIV/AIDS test should not be mandatory. The same is stated in the CoE Trafficking Convention as specified in the Explanatory Report at paragraph 171, where it is stated that only consensual HIV tests shall be considered licit.

<sup>586</sup> This provision does not apply to trafficked asylum seekers, as the 2002 Recommended Principles and Guidelines state.

<sup>587</sup> 2002 Recommended Principles and Guidelines, at p. 9 (Guideline 6)

<sup>588</sup> CoE Trafficking Convention Explanatory Report, at para. 151

<sup>589</sup> CoE Trafficking Convention, at art. 12(1)

at article 12. It includes measures such as safe and secret accommodation to feel secure from traffickers<sup>590</sup>, psychological and material<sup>591</sup> aid, medical support especially in cases of emergency, legal advice to understand and know their rights as victims of crime supported with translation when it is needed.<sup>592</sup> As aforementioned, all these supportive services should not be conditional to the collaboration of the victim with the judicial proceedings.<sup>593</sup> Moreover, all the assistance provisions provided by States have to take into account special needs or special status of victims, according to paragraph 7 of article 12.<sup>594</sup>

The European Union Directive 2011/36 introduces measures of assistance and protection to victims of trafficking at article 11, granting on a “consensual and informed basis”<sup>595</sup> all the provisions contained in article 12 of the CoE Trafficking Convention.<sup>596</sup> The principle of non-conditionality<sup>597</sup> and the granting of assistance also to alleged victims<sup>598</sup> is restated in article 11, also with the special care of particular categories of victims, such as pregnant women, psychological damaged or traumatised victims, and those with disabilities or health problems.<sup>599</sup> Also Directive 2004/81 establishes protection measures to third-country nationals referring to the issuing of the residency permit. It grants minimum standard assistance services before the issuing of the residency permit at article 7<sup>600</sup>, and after at article 9.<sup>601</sup> The right to protection entitled to victims of crime and extended to their families is

---

<sup>590</sup> The Explanatory Report to the Convention specifies that such shelters should be safe, their address kept secret to protect victims from retaliation or harm, and to control visitors from outside. (See CoE Trafficking Convention Explanatory Report, at para. 154)

<sup>591</sup> Here material refers to help-in-kind, like clothing or food, not financial help. (CoE Trafficking Convention Explanatory Report, at para. 156)

<sup>592</sup> *Ibid.*, The Explanatory Report to the CoE Trafficking Convention goes further, stating that these measures contained in article 2 paragraph 1 and 2 should be granted also to those without residency permit, that is to say, when authorities have the suspect that a subject is a victim of human trafficking, granting her/him immediate assistance and support. For those who have been identified correctly according to article 10 of the same Convention and received their residency permit, the all provisions of article 12 apply (CoE Trafficking Convention Explanatory Report, at para. 147).

<sup>593</sup> CoE Trafficking Convention, at art. 12(6)

<sup>594</sup> *Ibid.*, at art. 12(7)

<sup>595</sup> Directive 2011/36, at art. 11

<sup>596</sup> *Ibid.*, at art. 11(5). The provisions mentioned are accommodation, material and psychological assistance, counselling, information, and translation services.

<sup>597</sup> *Ibid.*, at art. 11(3). The paragraph specifies that assistance is not made conditional on cooperation from the part of the victim but without prejudice to Directive 2004/81 and the domestic law of each Member State of the European Union.

<sup>598</sup> *Ibid.*, at art. 11(2)

<sup>599</sup> *Ibid.*, at art. 11(7)

<sup>600</sup> Directive 2004/81, at art. 7. Among the provisions, we find counselling, translation, medical care, legal aid and psychological assistance.

<sup>601</sup> *Ibid.* Those in possession of the residency permit and that are in need are entitled to receive the same services listed in article 7, with particular attention to those in special need (pregnant women, children, disabled, victims of sexual violence etc.

reaffirmed also in Directive 2012/29,<sup>602</sup> at articles 7 (the right to interpretation and translation)<sup>603</sup>, article 8 (right to access victim support services) and article 9 (support from victims support services)<sup>604</sup>, and article 13 (right to legal aid).<sup>605</sup>

*a) In Italian Law*

Italian domestic law contains measures of protection and assistance to victims of human trafficking at article 13 of Law 228/2003, which constitutes a special programme of assistance to victims that grants temporary accommodation, food, and medical care.<sup>606</sup> Article 13 was assimilated in the *single programme of emergence, assistance and social integration* of 2016, but it remains a crucial reference for those operating in this field. The National Anti-Trafficking Plan specifies actions and strategies, especially referring to accommodation for victims (first reception, second reception, shelters for child victims, social housing, co-housing).<sup>607</sup> Accommodation for adults should be differentiated according to different targets and needs, implementing and organising the already existing system of reception.<sup>608</sup> All the other services are provided according to the aforementioned article 13 by State institutions, hospitals, private associations, NGOs, road units and family counselling centres. The access to all the assistance services after the identification are allowed only after the issuing of the residency permit established by article 18, as stated in paragraph 1.2 of the present chapter.

#### **1.4 Access to education and employment**

Granting access to education and employment to victims of trafficking who stay in the destination country could be considered as the first step towards their rehabilitation and their social integration. Moreover, the importance of survivors of human trafficking is

---

<sup>602</sup> Directive 2012/29, at art. 18 reads: “[...]Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. [...]”. (See Directive 2012/29, at art. 18)

<sup>603</sup> *Ibid.*, at art. 7. It refers also to translation and interpretation during criminal proceedings.

<sup>604</sup> *Ibid.*, at art. 8 and 9. Assistance services should be free of charge and extended also to the families of the victims. Minimum services that should be provided are specified in article 9 of the same directive, such as appropriate information for victims, emotional and psychological support, any pieces of advice needed also about compensation, actions to prevent retaliation, re trafficking or intimidation, shelters, and targeted support for victims with special needs, such as victims of sexual violence or gender-based violence, providing counselling and support to overcome the trauma.

<sup>605</sup> *Ibid.*, at art. 13.

<sup>606</sup> Law 228/2003, at art. 13(1)

<sup>607</sup> National Anti-Trafficking Plan, at p.40

<sup>608</sup> *Ibid.*, at p. 43

crucial, as they can serve as useful testimony to prevention strategies or they can help other victims through the process of rehabilitation offering counselling, information, and translation services.

*a) In International Law*

The Palermo Protocol includes also the access to employment and education among the provisions of article 6, which are included in the optional provisions that States should endeavour to provide in collaboration with NGOs and the civil society.<sup>609</sup>

The Recommended Principles and Guidelines provide the access to education and employment to victims who decide to return to their country of origin, provided in partnership with NGOs.<sup>610</sup> However, the Recommended Principles and Guidelines evaluate the role of survivors explicitly in guideline number three (“Research, analysis, evaluation and dissemination”) as crucial to implement and create anti-trafficking strategies.<sup>611</sup> It is implicitly understandable that the same survivors had access to protection, assistance and also education and employment.

*b) In Regional Law*

The Council of Europe Trafficking Convention instead, specifies at article 12, paragraph 4 that the access to employment and education is provided only to those legally resident in the territory of the State.<sup>612</sup> This means that only those holding a residency permit are entitled to attend courses or work trainings and enter in the labour market. However, the Convention does not set a real right to have access to education and employment, leaving the decision to States.<sup>613</sup>

The European Union regulates the access to work and education for victims of human trafficking in Directive 2004/81. Article 11 affirms that States should regulate rules to give the possibility to residency permit possessors to have access to the labour market and the education system that is limited to the period of the residency permit.<sup>614</sup> Member States and the third sector should provide access to programmes of employment or education with the

---

<sup>609</sup> UN Trafficking Protocol, at art. 6(1)(d)

<sup>610</sup> 2002 Recommended Principles and Guidelines, at p.9 (Guideline 6)

<sup>611</sup> *Ibid.*, at p. 6

<sup>612</sup> CoE Trafficking Convention, at art. 12(4)

<sup>613</sup> CoE Trafficking Convention Explanatory Report, at para. 166

<sup>614</sup> Directive 2004/81, at art. 11. Conditions and procedures should be determined according to domestic law authorities.

purpose of “recovery of a normal social life”.<sup>615</sup>

*a) In Italian Law*

The Italian legislation provides at article 18 of the Legislative Decree 286/1998 the access to education and work as one of the benefit of the residency permit regulated in the same article. The residency permit as regulated by article 18 can be extended or renewed for the entire duration of the educational course or the business relationship.<sup>616</sup> The National Anti-Trafficking Plan goes further, indicating an entire set of actions under the protection directives aimed at fostering social inclusion (*inclusione sociale*) of trafficking victims also through employment and education. In fact, the actions aim at improving the entry in the labour market of those who benefit of a second level assistance (those with the residency permit), giving opportunities of empowerment of former trafficking victims. The purpose is the social reintegration and the creation of autonomy of the person, giving her/him the opportunity to self-determine. The Plan establishes that the cooperation between trade unions, social services, third sector associations and other private actors is crucial and in line with the multi-agency approach of the Plan. Regarding women victims of trafficking, the National Plan establishes some training courses for them, also for those women with children and that need support.<sup>617</sup>

## **1.5 Funds and compensation for victims**

As victims of serious crime and human rights violations, victims of trafficking in human beings should have the right for a remedy (especially, compensation) according to international human rights law. In fact, numerous human rights treaties and declarations establish the right for a legal remedy to victims by the State if the violation has been committed in its territory.<sup>618</sup> However, this right for trafficking victims is still a debated topic, even if there is a general recognition in many trafficking conventions and domestic laws of many States.

The Universal Declaration of Human Rights expresses the right for a remedy for

---

<sup>615</sup> *Ibid.*, at art. 12(1). The issue and the renewal of the residency permit should be made conditional to the participation to these programmes.

<sup>616</sup> D. Lgs. 286/1998, at art. 18(5)

<sup>617</sup> National Anti-Trafficking Plan, at p. 42

<sup>618</sup> Gallagher, *The International Law of Human Trafficking*, p. 355

human rights violations at article 8.<sup>619</sup> Other human rights treaties, such as the International Covenant on Civil and Political Rights at article 2<sup>620</sup>, the Convention on the Elimination of All Forms of Racial Discrimination at article 6<sup>621</sup>, the Convention Against Torture at article 14<sup>622</sup> and the European Convention on Human Rights at article 13<sup>623</sup>, recognise the right to an effective remedy for human rights violations. Also, the Statute of the International Criminal Court recognises to victims the rights of remedies and reparations, often obtained by prosecuted offenders.<sup>624</sup> Numerous other international instruments recognise to victims this right, namely the 1985 *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*<sup>625</sup>, and the 2005 *Basic Principles and Guidelines on the Right to a Remedy and Repatriation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.<sup>626</sup>

---

<sup>619</sup> Universal Declaration of Human Rights, adopted by UNGA Res. 217A (III), UN Doc. A/810 at 71, Dec., 10th, 1948, and Eide, Asbjorn, *The Universal Declaration of Human rights: a commentary*, 1992, Scandinavian University Press, Oslo, at art. 8: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

<sup>620</sup> International Covenant on Civil and Political Rights, at art. 2(3)(a) reads: “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;” (See ICCPR, at art. 2 (3)(a))

<sup>621</sup> The Convention on the Elimination of All Forms of Racial Discrimination, at art. 6 reads: “States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination”. (See United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, done Dec., 21<sup>st</sup>, 1965, entered into force Jan, 4<sup>th</sup>, 1969, 660 UNTS 195, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), at art. 6, available at <http://www.refworld.org/docid/3ae6b3940.html>, consulted 18<sup>th</sup> June 2017

<sup>622</sup> The Convention Against Torture, Inhuman and Degrading Punishment, at art. 14 reads: “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation”. (See United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, done Dec., 10<sup>th</sup>, 1984, entered into force June, 26<sup>th</sup>, 1987, 1465 UNTS 85, at art. 14, available at <http://www.refworld.org/docid/3ae6b3a94.html>, consulted 19<sup>th</sup> June 2017

<sup>623</sup> European Convention on Human Rights, at art. 13 reads: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” (See ECHR, at art. 13)

<sup>624</sup> ICC Statute, at art. 73 and 75

<sup>625</sup> UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Nov. 29th, 1985, UN Doc. A/40/53, available at [http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.29\\_declaration%20victims%20crime%20and%20abuse%20of%20power.pdf](http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.29_declaration%20victims%20crime%20and%20abuse%20of%20power.pdf) and consulted the 22nd May 2017, at paragraph 4 states that victims has the right to redress. At paragraph 8 victims, their families and dependants have the right to restitution which may include: “the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights”.

<sup>626</sup> UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Repatriation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Dec. 16th, 2005, UN Doc. A/RES/60/147, at paragraph 7 establishes the right to remedies

Reparations and remedies are provided also by many instruments linked to violence against women and mentioned in the previous chapter, such as the UN Declaration on Violence Against Women, the CEDAW General Recommendation n. 19 and the Beijing Platform for Action. Analysing the instruments against trafficking in persons, the issue of redress and compensation is treated differently according to different legislations.

*a) In International Law*

At the international level, the Trafficking Protocol provides States to make sure that their domestic law systems contain measures for compensation of victims at article 6, paragraph 6.<sup>627</sup> Even if it is one of the few not optional victim's support measures, it does not establish a real obligation on States to provide compensation for victims of trafficking.<sup>628</sup> A similar provision is established at article 25 of the Organized Crime Convention<sup>629</sup>, which the Trafficking Protocol supports. However, the Protocol does not give specific provisions about the source of this compensation. In the Legislative Guide supporting the interpretation of the Protocol, it is stated that States should follow three general options to implement in their national laws to fulfil the Protocol's requirements, such as measures allowing victims to denounce offenders "under statutory or common-law torts for civil damages"<sup>630</sup>; measures for Courts to impose offenders to provide for compensation; establish funds or programmes to compensate victims.<sup>631</sup>

The Recommended Principles and Guidelines instead are very clear in providing solutions in order to give access to remedies to victims of human trafficking. In Guideline nine, it is stated that victims have the right to remedies and these should be civil, administrative or criminal in nature. Victims have the right to have information and legal assistance to obtain compensation and make sure that victims remain in the country safely for the total length of the criminal proceeding in order to obtain compensation.<sup>632</sup> Moreover,

---

to victims of gross violation of human rights and serious violations of international humanitarian law. At paragraph 9 establishes that reparation should be proportional to the gravity of the crime suffered by the victim, and that the State should provide reparation to victims in case of its violations or omissions. In cases State is not responsible for the crime, it should enforce the responsible to provide remedies for the victim and, in case, to compensate. Moreover, the State should constitute a special fund for victims in order to do so.

<sup>627</sup> UN Trafficking Protocol, at art. 6(6)

<sup>628</sup> Gallagher, *The International Law of Human Trafficking*, p. 362

<sup>629</sup> Organized Crime Convention, at art. 25(2) reads: "Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention." (See Organized Crime Convention, at art. 25(2))

<sup>630</sup> UNODC Legislative Guide, at para. 60

<sup>631</sup> *Ibid.*

<sup>632</sup> 2002 Recommended Principles and Guidelines, Guideline 9

guideline four establishes that offenders' assets should be confiscated and used to compensate victims, financing a special fund dedicated to them.<sup>633</sup> Finally, the *Global Plan of Action to Combat Trafficking in Persons*<sup>634</sup>, launched by the UN General Assembly in 2010, establishes a special fund for victims, that is voluntary "to provide humanitarian, legal and financial aid to victims of trafficking in persons through established channels of assistance, such as governmental, intergovernmental and non-governmental organizations".<sup>635</sup>

*b) In Regional Law*

The CoE Trafficking Convention regulates more detailed provisions about compensation at article 15. At paragraph 3 it is affirmed that States should provide for the right of victims of trafficking to obtain a compensation from their offenders.<sup>636</sup> In the Explanatory Report to the Convention, it is specified that the compensation should be monetary and should cover material damages, such as the costs for medical treatments for victims, and non-material, referring to moral damages. Moreover, victims should make a claim against the offenders and they are entitled to address to civil courts with proper authority to obtain the compensation.<sup>637</sup> The Convention suggests at paragraph 4 of article 15 the establishment of a fund, of programmes or measures to compensate victims, using also assets seized to traffickers and offenders<sup>638</sup>.

The European Union follows the provisions of the CoE Trafficking Convention at article 17 of Directive 2011/36. It provides Member States to make sure that victims of trafficking have access to adequate compensation.<sup>639</sup> In the preamble of the Directive, it is specified that perpetrators' assets should be confiscated in order to support victims' protection and assistance programmes and funds for compensation.<sup>640</sup> Article 16 of Directive 2012/29 about the rights of victims of crime establishes the right to decision on compensation

---

<sup>633</sup> *Ibid.*, Guideline 4

<sup>634</sup> UN General Assembly, *Global Plan of Action to Combat Trafficking in Persons*, Aug., 12nd, 2010, UN Doc. A/RES/64/293, available at [https://www.unodc.org/documents/human-trafficking/United\\_Nations\\_Global\\_Plan\\_of\\_Action\\_to\\_Combat\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/United_Nations_Global_Plan_of_Action_to_Combat_Trafficking_in_Persons.pdf) consulted the 22nd May 2017

<sup>635</sup> *Ibid.*, at para. 38. The fund is managed by the United Nations Office of Drugs and Crime (UNODC) and compensate the United Nations Crime Prevention and Criminal Justice Fund. The fund is managed also by a group of trustee experts on human trafficking and equally and geographically distributed according to decisions of the UN Secretary General, Member States and the Executive Director of the UNODC.

<sup>636</sup> CoE Trafficking Convention, at art. 15(3)

<sup>637</sup> CoE Trafficking Convention Explanatory Report, at para. 197

<sup>638</sup> CoE Trafficking Convention, at art. 15(4)

<sup>639</sup> Directive 2011/36, at art. 17

<sup>640</sup> *Ibid.*, at preamble para. 13



from the offender in the course of criminal proceedings.<sup>641</sup> Member States are encouraged to make sure that victims obtain from offenders a compensation in a reasonable time, promoting measures to make sure that perpetrators provide for it in an acceptable way. Relevant in European Union law about compensation for trafficking victims is Directive 2004/80/EC.<sup>642</sup> It provides important provisions with regards to the right to compensation of victims of cross-border crimes and encourages the creation of a *compensation scheme* for each Member State, attempting to create a coordination among different national compensation schemes because of the transnationality of crimes involved.

*c) In Italian Law*

In the Italian legislation compensation entered in the action of social protection after the transposition of Anti-Trafficking Directive 2011/36 with the Legislative Decree 24/2014 at article 6.<sup>643</sup> The provision aims at changing that of article 12 of Law 228/2003 about the establishment of an anti-trafficking fund. Previously the fund was settled only with the purpose of financing programmes of assistance and protection to victims, including the issue of the residency permit according to article 18 of Legislative Decree 286/1998. With the transposition of the Directive 2011/36 in the Italian domestic legislation, the fund serves also as compensation to victims. According to article 6, each victim has the right to receive 1500 €, unless the fund is exhausted.<sup>644</sup> Victims has to apply to accede to compensation according to rules established in article 6. Victims should submit their request to the Presidency of the Italian Council of Ministers within five years by the passing of the judgement of conviction that recognised the right to compensation to the victim. If after sixty days, the victim has not received any acceptance communication about her/his application, she/he can may take action against the Presidency of the Council of Ministers in order to obtain the compensation that is right to her/him.

---

<sup>641</sup> Directive 2012/29, at art. 16

<sup>642</sup> Council Directive 2004/80/EC relating to compensation to crime victims, of 29th of April 2004, OJ L 261/15 available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0015:0018:en:PDF> consulted the 22nd May 2017

<sup>643</sup> D. Lgs. 24/2014 at art. 6

<sup>644</sup> *Ibid.*, at art. 6(1)

## 1.6 Repatriation

Repatriation of victims of human trafficking from the country of destination to their country of origin is a high controversial issue. It is strictly linked with that of identification, as if the victim is not properly identified, she/he could be forcibly repatriated because she/he is confused with an illegal migrant. The collaboration of the country of origin is crucial also to help authorities of the country of destination to not commit mistakes. However, the accepted standard of all trafficking treaties, policy instruments and laws is that of safe and voluntary return, trying to avoid expulsions by the part of States of victims of human trafficking, as it is seen as a violation of the right to remain, the prohibition of inhuman and degrading treatment, as victims can be re-trafficked or suffer stigmatisation and criminalisation, and consequently a violation of the principle of non-refoulement.

### *a) In International Law*

The UN Trafficking Protocol addresses the issue of repatriation at article 8.<sup>645</sup> It recommends the country of origin to facilitate and accept the return of its national who has been trafficked abroad in a reasonable time.<sup>646</sup> The repatriation shall be conducted according to the safety of the victim and it should be voluntary.<sup>647</sup> The country of origin should verify that the identified victim is its national or someone who has the right to remain in that country, and it should issue travel documents to facilitate the repatriation process.<sup>648</sup> Finally, the repatriation of trafficked persons should be without prejudice of provisions of domestic law of States<sup>649</sup> and of bilateral or multilateral agreements between governments about this issue.<sup>650</sup>

The Recommended Principles and Guidelines instead provide tutelage against arbitrary deportation of victims of trafficking that is dangerous for her/him and her/his family,

---

<sup>645</sup> According to the Travaux Préparatoires of the Protocol, in the first draft the Government of Argentina identified repatriation as primary scope of the Protocol to be indicated in Article 1 as it follows: “To ensure the prompt return of children or women victims of trafficking to their country of habitual residence;” (See Gallagher, *The International Law of Human Trafficking*, p. 339 note 4 and Travaux Préparatoires, p. 331)

<sup>646</sup> Trafficking Protocol at art. 8(1)

<sup>647</sup> Trafficking Protocol at art. 8(2). According to Interpretative Notes, this provision is not seen as an obligation appointed to States. (see Travaux Préparatoires, p. 388). Regarding the concept of safety, the Trafficking Protocol does not indicate the legislation to implement this provision. (see UNODC Legislative Guide, at para. 61).

<sup>648</sup> UN Trafficking Protocol at art. 8(3) and 8(4). The right to remain in the country is given with what the Protocol calls “permanent residence” that is indicated by the Interpretative Notes has to be referred to a long-term permit but not with indeterminate time. (Travaux Préparatoires, p. 388)

<sup>649</sup> UN Trafficking Protocol at art. 8(5)

<sup>650</sup> *Ibid.*, at art. 8(6)

calling upon States to take the responsibility for a safe and voluntary return to countries of origin of trafficked persons.<sup>651</sup> In fact, Principle eleven states that:

Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.<sup>652</sup>

States are highly encouraged to cooperate and settle formal agreements also with regards to repatriation.<sup>653</sup>

*b) In Regional Law*

The CoE Trafficking Convention has its provision about safe and voluntary repatriation at article 16. The Explanatory Report specifies that this article has been partly inspired by the aforementioned article 8 of the Trafficking Protocol.<sup>654</sup> The country of origin has the obligation to facilitate the return of the trafficked victim, while the destination country shall respect the will of the victim to return home. Both of them have to respect the person's "rights, safety and dignity".<sup>655</sup> The CoE Trafficking Convention goes further with respect to the Trafficking Protocol, encouraging State Parties to adopt measures to establish repatriation programmes in synergy with national and international institutions and NGOs in order to avoid re-trafficking, stigmatisation in the country of origin, favouring social reintegration also through education and labour.<sup>656</sup> Moreover, States should cooperate to provide information of assistance structures or services in the country where victims are repatriated, like law enforcement, NGOs, legal consultants, social workers etc.<sup>657</sup>

Directive 2011/36 does not contain any specific measures regulating safe and voluntary return of victims, unless providing provisions implementing measures of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally

---

<sup>651</sup> 2002 Recommended Principles and Guidelines, Guideline 4.6

<sup>652</sup> *Ibid.*, at Principle 11. The same is provided in Guideline 6.7, where alternatives to repatriation are the possibility to have a residency permit in the country of destination or the resettlement in a third country according to the needs of the trafficked person.

<sup>653</sup> *Ibid.*, at Guideline 11.4

<sup>654</sup> CoE Trafficking Convention Explanatory Report, at para. 200

<sup>655</sup> CoE Trafficking Convention, at art. 16(1) (2)

<sup>656</sup> *Ibid.*, at art. 16(5)

<sup>657</sup> *Ibid.*, at art. 16(6)

staying third-country nationals.<sup>658</sup> The Directive leaves from seven to thirty days to leave voluntarily the country, even if this period shall be extended according to special needs of the third-country national.<sup>659</sup> Article 11, which regulates the entry ban, specifies that victims of human trafficking in possession with the residency permit according to Directive 2004/81/EC cannot receive an entry ban by a Member State because of their particular situation of humanitarian protection that does not represent a threat to national security.<sup>660</sup> Finally, article 9 provides the possibility to postpone or suspend the removal of the third-country national when there is a violation of the non-refoulement principle, lack of identification, or physical or mental capacity of the third-country national.<sup>661</sup> For the purpose of assisting voluntary return actions by Member States fostering their cooperation, a Return Fund for the period 2008/2013 was established in 2007 with Decision 575/2007/EC.<sup>662</sup> For the period 2014-2020 a new fund, the Asylum, Migration and Integration Fund (AMIF), was established with Regulation 516/2014 and repealing previous Decision 575/2007/EC.<sup>663</sup>

### c) *In Italian Law*

The Italian National Anti-Trafficking Plan follows, in cases of trafficking victims, the line of the Assisted Voluntary Return<sup>664</sup>, that has existed for more than ten years and it is financed through public (and European) funds. The actions for the period 2008-2013 were financed through the European Return Fund mentioned above. For the period 2014-2020 the

---

<sup>658</sup> Directive of the European Parliament and the Council 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, Dec., 24th, 2008, OJ L 348/98, (hereinafter Directive 2008/115), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF> and consulted the 23rd May 2017. Article 3 defines return as: “‘return’ means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced - to: his or her country of origin, or a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted” (see Directive 2008/115, at art. 3).

<sup>659</sup> Directive 2008/115, at art. 7(1) (2)

<sup>660</sup> *Ibid.*, at art. 11(3)

<sup>661</sup> *Ibid.*, at art. 9

<sup>662</sup> Decision 575/2007/EC of the European Parliament and of the Council establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme ‘Solidarity and Management of Migration Flows’, May, 23rd, 2007, entered into force June, 6th, 2007, OJ L 144/45, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007D0575&from=EN> consulted the 23rd May 2017

<sup>663</sup> Regulation No 516/2014 of the European Parliament and of the Council establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, Apr., 16th, 2014, entered into force May, 20th, 2014, OJ L 150/168, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0516&from=EN> consulted the 23rd May 2017

<sup>664</sup> Translation of Italian “Ritorno Volontario Assistito”.

Assisted Voluntary Return is supported by a National Programme financed with AMIF.<sup>665</sup> The Assisted Voluntary Return is the possibility to return to the country of origin for those migrants who do not want to stay in Italy and want to leave voluntarily and spontaneously. Trafficking victims are entitled with this right and those who possess a residency permit according to article 18 of Legislative Decree 286/1998 and do not want to stay in Italy should renounce to it in order to leave the country. Repatriation movements should be monitored in order to avoid re-trafficking, also working with the multi-agency and integrated approach between institutions and non-state actors.<sup>666</sup>

## 1.7 The recognition of the refugee status

### a) *In International Law*

The most important asylum and international protection legal instruments recognised at all levels is the Convention relating to the Status of Refugee of 1951 and its Protocol of 1967.<sup>667</sup> At article 1A (2) a refugee is anybody who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>668</sup>

According to this provision, the elements that should be present in order to obtain the refugee status are the fear of persecution, the agents of persecution, the lack of protection by the State of origin and the place and the reasons for the persecution. The main aim of this section is to analyse if victims of trafficking are entitled with the international protection for refugee status, or if trafficking constitutes the basis for the claim for asylum and in what cases.

---

<sup>665</sup> The responsible for this National Programme is the Civil Liberties and Immigration Department and the Ministry of Home Affairs in Italy.

<sup>666</sup> National Anti-Trafficking Plan, at p. 44 (under directive Protection and Assistance to Trafficked Persons)

<sup>667</sup> Convention Relating to the Status of Refugees, 189 UNTS 137, July, 28<sup>th</sup>, 1951, entered into force Apr., 22<sup>nd</sup>, 1954 as amended by the Protocol Relating to the Status of Refugees, 606 UNTS 267, done Jan. 31<sup>st</sup>, 1967, entered into force Oct. 4<sup>th</sup>, 1967 (hereinafter Refugee Convention), available at <http://www.unhcr.org/3b66c2aa10>

<sup>668</sup> Refugee Convention, at art. 1A (2)

In the case of trafficking in human beings, most of the international and regional instruments recognise the 1951 Refugee Convention. Article 14 of the Palermo Protocol (the saving clause) affirms that none of its provisions will affect the rights and obligation of the Refugee Convention and of its Protocol and the principle of non-refoulment, where they are applicable.<sup>669</sup> The possibility to have access to the refugee status is implicitly provided also at article 7, in which States are encouraged to adopt measures and legislations to allow victims of trafficking to remain in the country for a short or a long period.<sup>670</sup> However, this provision does not constitute an obligation to States, not even specifying which kind of measures States should adopt.

Also, the Recommended Principles and Guidelines against Human Trafficking provide the possibility for a trafficking victim to have recognised the right to seek and obtain asylum, where the law provides for it.<sup>671</sup>

*b) In Regional Law*

The same provision of article 14 of the Palermo Protocol is contained in article 40 of the CoE Trafficking Convention.<sup>672</sup> The Explanatory Report to the Convention makes an important clarification about the possibility for a trafficked person to obtain the refugee status, stating that:

The fact of being a victim of trafficking in human beings cannot preclude the right to seek and enjoy asylum and Parties shall ensure that victims of trafficking have appropriate access to fair and efficient asylum procedures. Parties shall also take whatever steps are necessary to ensure full respect for the principle of non-refoulment.<sup>673</sup>

The European Union Directive 2011/36 affirms, as the Trafficking Protocol and the CoE Trafficking Convention, that its provisions are without prejudice of the 1951 Refugee Convention and its Protocol<sup>674</sup>, that States should provide information to trafficked victims on how to obtain the refugee status according to European and national regulation on the

---

<sup>669</sup> UN Trafficking Protocol, at art. 14(2)

<sup>670</sup> *Ibid.*, at art. 7 (1)

<sup>671</sup> 2002 Recommended Principles and Guidelines, at Guideline 2.7: “Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulment is respected and upheld at all times” (See 2002 Recommended Principles and Guidelines, at Guideline 2.7)

<sup>672</sup> CoE Trafficking Convention, at art. 40 (4)

<sup>673</sup> CoE Trafficking Convention Explanatory Report, at para. 377

<sup>674</sup> Directive 2011/36, at preamble (10)

matter.<sup>675</sup> In particular, at the European level, legislation concerning third-country nationals who seeks asylum are regulated by three Directives which are part of the Common European Asylum System (CEAS)<sup>676</sup>, namely Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons eligible for subsidiary protection, repealing the previous Directive 2004/83/EC of 29 April 2004<sup>677</sup>, Directive 2013/33/EU laying down standards for the reception of applicants for international protection, repealing Council Directive 2003/9/EC of 27 January 2003<sup>678</sup> and Directive 2013/32/EU on common procedures for granting and withdrawing international protection and repealing Council Directive 2005/85/EC of 1 December 2005<sup>679</sup>.

Important for our analysis about women victims of sex trafficking is the fact that the CoE Istanbul Convention recognises the gender-based asylum claim at article 60, assuming that violence against women is a form of persecution within the meaning of the Refugee Convention and a form of serious harm granting subsidiary protection.<sup>680</sup> Moreover, it recognises the non-refoulement principle at article 61.<sup>681</sup>

### *c) In Italian Law*

The Italian international protection legislation for asylum seekers adapted to the provisions of the 1951 Geneva Convention<sup>682</sup>, and the European legislation<sup>683</sup>. Italy is

---

<sup>675</sup> *Ibid.*, at art. 11 (6)

<sup>676</sup> There also two Regulation part of the Common European Asylum System, which are Regulation n. 604/2013, better known as Dublin Regulation III establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and Regulation n. 603/2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013, better known as EURODAC Regulation.

<sup>677</sup> Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, Dec., 13rd, 2011, entered into force Dec., 12nd, 2011, OJ L 337/9, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF> consulted the 25<sup>th</sup> May 2017

<sup>678</sup> Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection, of June, 26<sup>th</sup>, 2013, entered into force June, 29<sup>th</sup>, 2013, OJ L180/96, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>, consulted 25<sup>th</sup> May 2017

<sup>679</sup> Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, June, 26<sup>th</sup>, 2013, entered into force June, 29<sup>th</sup>, 2013, OJ L 180/60, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en> consulted 25<sup>th</sup> May 2017

<sup>680</sup> Istanbul Convention, at art. 60 (1)

<sup>681</sup> *Ibid.*, at art. 61 (1)

<sup>682</sup> The Italian Constitution has integrated the right to seek and obtain asylum at article 10 (3). Italy ratified the 1951 Convention in 1954 (adopted in the Italian system with the Law n. 722 of Jul., 24<sup>th</sup>, 1954, appeared in the Official Journal n. 196 of Aug., 27<sup>th</sup>, 1954), and acceded to its Protocol in 1972.

<sup>683</sup> Italy transposed Directive 2011/95 with Legislative Decree n. 18 of 21<sup>st</sup> February 2014 (amending the

particularly affected by the phenomenon of asylum seekers reaching its shores because of its geographical position in the middle of the Mediterranean Sea and the closeness of Libyan Coasts where migrants coming from the African Continent start their crossing of the Mediterranean Sea. As we will see in the case study, many victims of trafficking present in the analysed territory arrive through this migration route and many of them apply for asylum immediately in order to stay in Italy, because organised crime networks tell them to do so. In the Italian National Anti-Trafficking, the role of Territorial Commissions<sup>684</sup> for the evaluation of asylum claims, of reception centres for asylum seekers and volunteers of the third sector is very important, especially in the identification process of victims of trafficking arrived by the sea.

*d) Is it possible for a trafficking victim to claim asylum and obtain the refugee status?*

In the light of aforementioned international, regional and national legislations about right to seek asylum and refugee status, one could ask in what cases a trafficked person is entitled with the refugee status and if trafficking does constitute a basis to claim asylum in a country. For this purpose, the Office of the United Nations High Commissioner for Refugees (UNHCR) committed itself in encouraging States to ensure to trafficking victims the right to claim for asylum<sup>685</sup> and issued in 2006 the *Guidelines on International Protection regarding the application of article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked* (UNHCR Trafficking Guidelines hereinafter).<sup>686</sup> It is a not legally binding instrument that do not modify obligations set in the 1951 Convention and in the 1967 Protocol but it helps States to better understand and interpret the provisions of these two international treaties with new

---

Legislative Decree 251 of 19<sup>th</sup> November 2007 transposing Council Directive 2004/83/EC); Directives 2013/33/EU and 2013/32/EU with Legislative Decree n. 142 of 18<sup>th</sup> August 2015 (amending previous Legislative Decree n. 140 of 30<sup>th</sup> May 2005 transposing Council Directive 2003/9/EC and Legislative Decree n. 25 of 28<sup>th</sup> January 2008 and its modifications through Legislative Decree n. 159 of 3<sup>rd</sup> October 2008 transposing Directive 2005/85/EC).

<sup>684</sup> The Territorial Commissions are an organ entitled to evaluate asylum claims by asylum seekers in Italy. They are composed by four members: two members of the Ministry of Home Affairs, one representative of the local authority and a member of the UNHCR. Information available at Italian Ministry of Home Affairs website at <http://www.interno.gov.it/it/temi/immigrazione-e-asilo/protezione-internazionale/commissioni-territoriali-riconoscimento-protezione-internazionale> , consulted 14<sup>th</sup> June 2017

<sup>685</sup> United Nations Office of the High Commissioner for Refugees, *Agenda for Protection*, UN Doc. A/AC96/965/ Add. 1, June, 26<sup>th</sup>, 2002, at Goal 2, Objective 2.

<sup>686</sup> United Nations Office of the High Commissioner for Refugees (UNHCR), *Guidelines on International Protection regarding the application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, Apr., 7<sup>th</sup>, 2006, HCR/GIP/06/07 (UNHCR Trafficking Guidelines)



trends in policies, jurisprudence and approaches to serious human rights violations.<sup>687</sup> In this case, UNHCR's work concerning trafficking has two purposes: on the one hand *preventive*, ensuring that refugees, asylum-seekers, stateless persons, and internally displaced persons do not fall in the trafficking process. As we saw in the introduction of the present work, refugees can resume to trafficking and smuggling channels to escape from their country of origin and find themselves exploited by traffickers, also in refugee camps. The second purpose, *protective*, regards victims of trafficking that claim for the refugee status and international protection.<sup>688</sup>

Trafficked persons can claim the refugee status if they meet the aforementioned elements of article 1A (2).<sup>689</sup> The evaluation of trafficked persons who claim for asylum should be conducted case-by-case by authorities of the State in which the applicant claims asylum.<sup>690</sup> The fear of persecution in the country of origin could come from the fear of being re-trafficked, being victims, together with their families, from retaliation by traffickers in case they decide to collaborate with law enforcement agents or being exposed to discrimination or stigmatisation by their own families or the communities, especially in cases of sex trafficking of women that are ostracised because they were prostitutes.<sup>691</sup> Generally speaking, victims of trafficking suffered serious violations of human rights connected to their exploitation, and they can be considered as a form of persecution.<sup>692</sup>

As we already mentioned numerous times in the present work, trafficking in human beings is a crime committed by private entities and non-state actors. Some organs of the State, such as border police or law enforcement agents can be involved in the process of trafficking because corrupted by traffickers, but one could assert that they acted as individuals and not as institutional parts of the State. So, States are scarcely involved directly in the process of trafficking.<sup>693</sup> However, States can be considered responsible for persecutions perpetrated by non-state actors because they failed to protect victims or potential ones, to prevent, and respond effectively to trafficking in human beings, meeting the international obligations set

---

<sup>687</sup> Piotrowicz, R., *The UNHCR's Guidelines on Human Trafficking*, 2008, 20 International Journal of Refugee Law 242, pp. 242-252, Oxford University Press, at p. 252

<sup>688</sup> *Ibid.*, at p. 245; UNHCR Trafficking Guidelines, at para. 5

<sup>689</sup> UNHCR Trafficking Guidelines, at para. 6

<sup>690</sup> *Ibid.*, at 14

<sup>691</sup> *Ibid.*, at 17-18

<sup>692</sup> *Ibid.*, at 15

<sup>693</sup> Piotrowicz, R., *The UNHCR's Guidelines on Human Trafficking*, at pp. 246-247

by the treaties. It means that they fail to fulfil their positive obligations.<sup>694</sup>

To obtain the refugee status, the applicant should prove that there is a *causal link* between the fear of persecution and one of the grounds indicated in the Convention (race, religion, nationality, membership of a particular social group, political opinion). It means that the subject is persecuted for being part of one of the categories indicated by the Convention.<sup>695</sup> In the case of trafficking, this is complex to demonstrate, as most traffickers have only profit as only interest in trafficking business, so they see all humans as commodities with a commercial value. This is not ground to obtain the refugee status.<sup>696</sup> However, there are some cases in which subjects from a particular ethnic group or religious minority are trafficked and persecuted, especially during armed conflicts, without the State doing something to protect them.<sup>697</sup> This is the case, for example of internal trafficking for sexual slavery, e.g. the Yazidi Women sold and trafficked for the purpose of sex slavery by the Islamic State of Iraq and Syria (Daesh).<sup>698</sup> Trafficked persons could claim the refugee status on the basis of membership of a social group, sharing common features and perceived as a group by society.<sup>699</sup> As the present work concerns women trafficked for sexual exploitation, it is important to underline that the Trafficking Guidelines recognise trafficking as a form of gender-violence and, as a consequence, of persecution.<sup>700</sup> However, women could be considered as a social group because they share characteristics and they are considered different by men. Concerning trafficking, we said that women could fall in a trafficking situation because of their social and economic vulnerability.<sup>701</sup> As we said, women involved in sex trafficking risk to be re-trafficked because of the possible lack of social protection or because of the discrimination or stigma by their families or communities of

---

<sup>694</sup> UNHCR Trafficking Guidelines, at paras. 21-22-23. See *infra* Chapter 2, paragraph 1.2

<sup>695</sup> *Ibid.*, at p. 29; Piotrowicz, *The UNHCR's Guidelines on Human Trafficking*, at p. 248

<sup>696</sup> UNHCR Trafficking Guidelines, at para. 31

<sup>697</sup> Piotrowicz, *The UNHCR's Guidelines on Human Trafficking*, at p. 249; UNHCR Trafficking Guidelines, at para. 32

<sup>698</sup> For further information about the condition as sex slaves of Yazidi women under the regime of terror of Daesh, see De Vido, S., *Protecting Yazidi Cultural Heritage Through Women: An International Law Analysis*, 2017, *Journal of Cultural Heritage* [forthcoming].

<sup>699</sup> UNHCR Trafficking Guidelines, at para. 37

<sup>700</sup> *Ibid.*, at para. 19. Another document issued in 2002 by UNHCR talks about “gender-related persecution”, that does not have a legal value, but it is now widely recognised. Application for gender-related persecution does not mean that a woman can obtain the refugee status because she is a woman, but because she suffered - and fear to suffer again in her country of origin - gender-related violence such as sexual assault, genital mutilations, punishments, domestic violence and so on.” (UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, May, 7th, 2002, HCR/GIP/02/01, [Gender Guidelines], at paras. 1-3-4-9)

<sup>701</sup> UNHCR Trafficking Guidelines, at para. 38; Gender Guidelines, at para. 30; Piotrowicz, *The UNHCR's Guidelines on Human Trafficking*, at p. 250.

origin. As we saw, the gender-based asylum claim is supported also by the CoE Istanbul Convention against violence against women, recognising gender violence as an act of persecution under article 1(A) 2 of the 1951 Refugee Convention.<sup>702</sup>

Finally, the UNHCR Trafficking Guidelines consider also *former victims of trafficking* as a social group. They share the common characteristic to have been trafficked, to have suffered violence and exploitation. Society does recognise them as former trafficked persons. However, the identification of this particular social group refers to a past experience and an evaluation case by case is necessary to verify if there is a substantive possibility of persecution in the State of origin.<sup>703</sup>

To conclude, trafficking victims can apply to obtain the refugee status, but not all of them may fulfil the conditions set by the 1951 Refugee Convention. Besides, the issue of being trafficked does not constitute a sufficient element to claim asylum according to international law. An evaluation case by case of each trafficking victim's claim is needed.

## 1.8 Prevention strategies

Prevention of trafficking of human beings is one of the main purposes of all the legal instruments analysed. All countries, both those usually of origin and those of destination, have specific obligations in order to prevent trafficking addressing specific strategies and actions. In fact, prevention has become a positive obligation for States, as stated in the judgements of the ECtHR, especially that of *Rantsev v. Cyprus and Russia*.

### *a) In International Law*

Prevention is one of its the main purposes expressed in article 2<sup>704</sup> of the Palermo Protocol but we can find specific measures referring to prevention in article 9, where it is affirmed that State Parties should settle *comprehensive* strategies and actions to prevent trafficking and protect victims in order to prevent re-trafficking, especially women and children. All the provisions of article 9 are mandatory for States.<sup>705</sup> The strategies suggested

---

<sup>702</sup> Istanbul Convention, at art. 60 (1)

<sup>703</sup> UNHCR Trafficking Guidelines, at para. 39; Piotrowicz, *The UNHCR's Guidelines on Human Trafficking*, at p. 250

<sup>704</sup> UN Trafficking Protocol, at art. 2. Provisions for prevention and fight to organised crime are found also in the Organized Crime Convention, at art. 31

<sup>705</sup> As stated in the UNODC Legislative Guide at para. 74: "All of these obligations are *mandatory*, requiring States parties to adopt or strengthen measures, but only in the sense that some action on each point must be taken. The Protocol does not specify in detail the exact actions required, leaving States parties some flexibility

by the Palermo Protocol involve also NGOs, associations of the civil society together with State institutions and they imply research, information, mass media, and socio-economic campaigns.<sup>706</sup> State parties' cooperation is very important to address root causes of trafficking that we listed in the introduction of the present work, such as poverty, unemployment, or the lack of equal opportunities. States are encouraged to conclude bilateral or multilateral agreements to eradicate these problems that are accepted as structural causes and foster vulnerability of subjects such as women and children.<sup>707</sup> An important action of prevention of trafficking is also the discouragement of demand which favours trafficking and exploitation in the countries of destination. This is particularly true in the case of sex trafficking, in which the demand of cheap sexual services stokes the displacement of young women looking for a brighter future. The Palermo Protocol suggests countries to discourage demand through social and educational campaigns and bilateral and multilateral cooperation.<sup>708</sup> Officials and law enforcement agents should be trained to prevent trafficking in human beings, also in order to eradicate it, to prosecute traffickers and to protect victims.<sup>709</sup>

The Recommended Principles and Guidelines on Human Rights and Human Trafficking took an important step towards prevention of trafficking in persons, studying measures to implement especially in the countries of origin. Prevention is done mostly addressing demand as a “root cause”<sup>710</sup>, poverty and inequality<sup>711</sup> and corruption of the public sector.<sup>712</sup> States should study effective strategies and measures to discourage them. Women and children should have access to education and labour, in order to empower themselves avoiding vulnerability to trafficking. Information campaigns should be conducted in order to inform about the risks of migration, especially irregular one, for particular categories of people. States should study strategies to increase the possibility of a non-exploitative migration for labour, avoiding people to fall in the trafficking network. Moreover, law enforcement agents and officials should be trained to prevent trafficking and arrest traffickers as a preventive measure.<sup>713</sup>

---

to apply the measures that they think are most likely to be effective”. (See UNODC Legislative Guide, at para. 74.

<sup>706</sup> UN Trafficking Protocol, at art. 9(1) (2) (3)

<sup>707</sup> UN Trafficking Protocol, at art. 9(4)

<sup>708</sup> *Ibid.*, at art. 9(5)

<sup>709</sup> *Ibid.*, at art. 10(2)

<sup>710</sup> 2002 Recommended Principles and Guidelines, Principle 4.

<sup>711</sup> *Ibid.*, at Principle 5

<sup>712</sup> *Ibid.*, at Principle 6

<sup>713</sup> *Ibid.*, at Guideline 7

*b) In Regional Law*

Prevention is also one of the main purposes of the CoE Trafficking Convention, stated clearly in the scope of the Convention at article 1. Preventive measures are contained in Chapter II of the Convention, especially in articles 5 and 6. The CoE Trafficking Convention promotes a human-rights based and a gender-sensitive approach also in implementing prevention policies.<sup>714</sup> Coordination among different actors is crucial to prevent trafficking in human beings according to the Council of Europe Trafficking Convention.<sup>715</sup> Research, information and socio-educational campaigns are pivotal in the prevention strategies that States should implement both for beneficiaries like vulnerable subjects and for professionals that could enter into contact with victims of trafficking, according to the Convention.<sup>716</sup> States should promote regular channel of migration providing information about the legal opportunities and to discourage the act of resuming to traffickers as the only way to migrate.<sup>717</sup> Also for the CoE Trafficking Convention addressing demand to prevent people to be trafficked is crucial. Article 6 lists a series of minimum measures that States could implement in their legislation in order to discourage demand, namely research on best strategies and measures, raising awareness campaigns also through the media and civil society associations, information campaigns made by the public sector and policy makers, educational campaigns in schools to avoid discrimination on the basis of sex to foster the importance of gender equality and of human rights.<sup>718</sup> According to the Explanatory Report to the Convention, discouraging demand is one of the positive obligations to States.<sup>719</sup> The main aim is to dissuade people to resort to, for example, sexual services provided by women victims of trafficking.<sup>720</sup> For this reason, article 19 addresses the criminalisation of those who use services of a victim of trafficking, knowing that she/he is exploited.<sup>721</sup> In the case of

---

<sup>714</sup> CoE Trafficking Convention, at art. 5 (3)

<sup>715</sup> *Ibid.*, at art. 5(1). The Explanatory Report states that coordination in prevention of trafficking in persons is crucial because of its complexity. So, the multi-agency approach is the one required to better respond to the phenomenon. (See CoE Trafficking Convention Explanatory Report, at para. 102)

<sup>716</sup> *Ibid.*, at art. 5 (2). These strategies are said to be “short-term”, while socio-economic measures require more time to be implemented (long-term). In order to fight trafficking, we need both of them, especially to tackle root causes such as unemployment, poverty and gender inequalities. (See CoE Trafficking Convention Explanatory Report, at para. 103)

<sup>717</sup> *Ibid.*, at art. 5 (4) and See CoE Trafficking Convention Explanatory Report, at para. 105. In the Explanatory Report is specified that drafters had in mind visa or immigration mostly, but not exclusively.

<sup>718</sup> *Ibid.*, at art. 6. the fact that the drafters to the Convention decided to dedicate one article to the issue of demand underlines the importance of this issue in the prevention of trafficking. (See CoE Trafficking Convention Explanatory Report, at para. 108)

<sup>719</sup> See CoE Trafficking Convention Explanatory Report, at para. 108

<sup>720</sup> *Ibid.*, at para 109

<sup>721</sup> CoE Trafficking Convention, at art. 19

trafficking for sexual exploitation, we are referring to clients.<sup>722</sup>

As reported in Directive 2011/36, the European Union is “committed to the prevention of and fight against trafficking in human beings”.<sup>723</sup> Perfectly in line with the previous legislative instruments, the Union made prevention of trafficking one of its main commitments, trying to establish minimum common rules for all Member States.<sup>724</sup> Article 18 of Directive 2011/36 recalls the CoE Trafficking Convention provisions for prevention, addressing demand as catalyst of the phenomenon of exploitation through education and training.<sup>725</sup> To raise awareness is one of the principal strategies of the EU: the Directive aims at promoting information campaigns, research and programmes, especially through the Internet, in order to prevent and reduce factors of vulnerability of victims of trafficking. The collaboration with the society as a whole and the civil society, NGOs and associations here is fundamental.<sup>726</sup> The same is stated also by Directive 2012/29 that appeals for the collaboration with the third sector to raise awareness on the rights of victims to reduce victimisation and negative impacts of serious crimes.<sup>727</sup> Like the CoE Trafficking Convention, the Directive 2011/36 invites Member States to take actions to criminalise those who buy services of exploited victims of trafficking and that are aware of this fact.<sup>728</sup> The EU commitment is recalled also in the strategy 2012-2016 as one of the main priorities. Among the most important actions, the strategy was concerned in understanding and discouraging demand through campaigns and initiatives addressing potential clients, and the research on the phenomenon funded by the European Commission.<sup>729</sup> The EU engaged in a great number of anti-trafficking programmes through raising awareness at all levels (internationally, nationally and locally). The European Commission engaged itself in launching a series of EU campaigns to raise awareness especially for traditionally vulnerable targets, such as women and children, ethnic minorities (e.g. Roma people), and other categories at risk through funds of the Home Affairs section. As already mentioned in article 18 of the EU Directive, the Internet and social networks became crucial for the EU raising

---

<sup>722</sup> See CoE Trafficking Convention Explanatory Report, at para. 232 reads: “The client of a prostitute who knew full well that the prostitute had been trafficked could likewise be treated as having committed a criminal offence under Article 19”. (See CoE Trafficking Convention Explanatory Report, at para. 232)

<sup>723</sup> Directive 2011/36, at preamble, para. 4

<sup>724</sup> *Ibid.*, at art.1

<sup>725</sup> *Ibid.*, at art. 18 (1)

<sup>726</sup> *Ibid.*, at art 18(2)

<sup>727</sup> Directive 2012/29, at art. 26 (2)

<sup>728</sup> *Ibid.*, at art. 18 (4)

<sup>729</sup> 2012-2016 European Union Strategy, Priority B, Action 1

awareness campaigns in order to reach as many people as possible.<sup>730</sup>

*c) In Italian Law*

In the Italian legislation, measures for prevention were found in Law 228/2003 at art. 14, where the Ministry of Foreign Affairs engaged to cooperate with third countries that are usually countries of origin, in order to organise international meetings and campaigns to discuss all problems and human rights violations that concern trafficking in human beings.<sup>731</sup>

The new National Anti-Trafficking Plan expands the actions for prevention<sup>732</sup>, adopting a multidisciplinary approach in order to address push and pull factors, such as root causes and consequences of human trafficking, and reduce negative effects on the countries of origin, transit and destination. The National Plan envisages to adopt different approaches and strategies: from those with more repressive features, conducted by the law enforcement agents or the judicial authorities, to raising awareness and information campaigns and research, conducted by the social workers or the private sector. However, the National Plan distinguish clearly between *prevention* and *information*. While the first is more difficult to carry, and it involves a specific targeted group in order to eradicate the problem, the second one is more widespread and can have a minor impact in the fight against the phenomenon, but it is equally important to make it known to everybody.<sup>733</sup> The main prevention policy Italy is adopting is addressed to the collaboration with migrant communities and associations. As we saw, trafficking is strictly linked with migration, that is a structural phenomenon in Italy, so the collaboration with migrant communities could be a useful exchange of knowledge and best practices to better know all aspects involved in trafficking.<sup>734</sup> Prevention should also be pursued both in countries of origin and destination through a more involved support campaigns to migrant workers, informing potential vulnerable targets of risks involving migration (especially irregular one) and trafficking networks.

The National Plan encourages a better collaboration with international and regional authorities dealing with trafficking in human beings, in order to implement all the strategies of prevention, repression and protection.<sup>735</sup> The main action in the Italian legislative

---

<sup>730</sup> *Ibid.*, at Action 3

<sup>731</sup> Law 228/2003, at art. 14 (1)

<sup>732</sup> The National Anti-Trafficking Plan recognises that prevention did not develop the same way as protection concerning trafficking in human beings.

<sup>733</sup> National Anti-Trafficking Plan, p. 21

<sup>734</sup> *Ibid.*

<sup>735</sup> *Ibid.*, p. 22

framework is the establishments a National Referral Mechanism<sup>736</sup> useful for all the operators.

Finally, the communication and the exchange of information should be done actively assuming a gender-sensitive approach, avoiding discrimination on the basis of sex and nationality, sharing legality values in universities, schools, among men, women and children of every age and social background, addressing clients to discourage demand, involving operators of airports, railway stations and naval ports to recognise trafficking victims in case they meet them, the promotion of the Anti-Trafficking Free Helpline and all the anti-trafficking strategies and services in order to make the problem known by everybody, to change approach and be more sensitive to the phenomenon.

## **1.9 Gender-based approach**

The gender-based approach of provisions against trafficking became crucial as legislative steps were taken. Human trafficking, especially for sexual exploitation, has been recognised as a gender-based discrimination<sup>737</sup>, so gender-sensitive provisions to be implemented in the protection and prevention system are required. States' must take care of the fact that most victims are women, young girls, or children. So, specific provisions in order to tackle with this issue in an appropriate way should be implemented.

### *a) In International Law*

In the Palermo Protocol the issue of gender is not widely developed. The only provision that put gender in place is article 6, in which State Parties are required to consider gender, age and special needs of victims in providing protection and assistance measures established in the same article and listed in the previous sections of the present chapter.<sup>738</sup> Furthermore, article 10, as part of the measures of prevention against trafficking in persons, suggests a gender-sensitive consideration in the process of training of law enforcement agents, border police and other official that could deal with trafficking victims.<sup>739</sup>

As promoters of a human rights-based approach, the Recommended Principles and

---

<sup>736</sup> In Italian, Meccanismo Nazionale di Referral - MNR. It is the set of rules and best practices that cover all aspects of intervention in trafficking in human beings useful for operators.

<sup>737</sup> See *infra* Chapter 2, paragraph 2.1

<sup>738</sup> UN Trafficking Protocol, at art. 6(4)

<sup>739</sup> *Ibid.*, at art. 10(2)



Guidelines suggest to do not apply gender-based discrimination in anti-trafficking measures in Guideline one, regarding protection of victims and their human rights, as they could be counterproductive and threaten the liberties and the fundamental rights of persons subjected to these provisions.<sup>740</sup> There have been cases in some countries in which passports and documents to travel were seized to women as an anti-trafficking measure. This action limits the liberty of movement of women, that it is an established fundamental right.<sup>741</sup>

*b) In Regional Law*

A great step further was made by the CoE Trafficking Convention, that put gender equality<sup>742</sup> and gender sensitivity at the centre of its provisions. In the preamble, the Convention asserts that non-discrimination and gender equality has to be taken into account in actions and initiatives against trafficking in human beings.<sup>743</sup> Gender mainstreaming<sup>744</sup>, linked to the need of a human rights-based approach, is recalled in the whole text of the Convention, like in article 5 and 6 talking about prevention measures<sup>745</sup> and in the title of chapter III of the Convention, dedicated to protection and promotion of victims' rights, guaranteeing gender equality. Additionally, article 17 is dedicated to gender equality and the link with protection measures for victims, especially women, stating that: "Each Party shall [...] aim to promote gender equality and use gender mainstreaming in the development, implementation, and assessment of the measures."<sup>746</sup>

---

<sup>740</sup> 2002 Recommended Principles and Guidelines, Guideline 1

<sup>741</sup> Global Alliance Against Traffic in Women (GAATW), *Beyond borders: exploring links between trafficking and gender*, 2010, GAATW Working Paper Series 2010, Bangkok, at p. 9 available at [http://www.gaatw.org/publications/WP\\_on\\_Gender.pdf](http://www.gaatw.org/publications/WP_on_Gender.pdf), consulted 14<sup>th</sup> June 2017

<sup>742</sup> The Explanatory Report to the CoE Trafficking Convention defines gender equality as: "Gender equality means an equal visibility, empowerment and participation of both sexes in all spheres of public and private life. Gender equality is the opposite of gender inequality, not of gender difference." (See CoE Trafficking Convention Explanatory Report, at para. 54).

<sup>743</sup> CoE Trafficking Convention, at preamble. The same concept is repeated in article 1 paragraph 1(a) and (b). Gender equality is at the centre of preventive and protection strategies that are one of the purposes of the Convention.

<sup>744</sup> The issue of gender equality and gender mainstreaming is crucial in the action of promotion of human rights of the Council of Europe. In fact, in 1998 the Council of Europe Steering Committee for Equality between Women and Men issued a report about gender mainstreaming, giving the following definition: "Gender mainstreaming is the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policymaking". The concept dates back in 1985, after the UN Third World Conference on Women in Nairobi, in reference to the role of women in the development process. The concept was recalled also in the Beijing Platform for Action in 1995. The same year the Council of Europe established a group of experts about gender mainstreaming, that agreed in the aforementioned definition. (See Council of Europe Steering Committee for Equality between Women and Men, *Gender Mainstreaming: conceptual framework, methodology and presentation of good practices*, 1998, Strasbourg, at p. 12).

<sup>745</sup> CoE Trafficking Convention, at articles 5 and 6

<sup>746</sup> *Ibid.*, at articles 17. The Explanatory Report adds at paragraph 208: "Trafficking in human beings, when it

The European Union implemented the issue of gender equality in the provisions against trafficking and the protection of victims for the first time in Directive 2011/36. In the preamble, it is stated that the Directive “recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate.”<sup>747</sup>

Member States are encouraged to adopt a gender-sensitive approach in implementing preventive policies, protection measures and training of officials. The same vision has been adopted also by the 2012-2016 European Union Strategy against Trafficking in Persons, especially for preventive information campaigns against trafficking, that should be gender-sensitive and conducted by Member States.<sup>748</sup> The gender perspective is present in all strategies of the European Union against trafficking, from protection of victims to cooperation of key actors, to a better knowledge of the phenomenon through a study of the gender dimension in the process of trafficking, financed by the European Commission.<sup>749</sup>

*c) In Italian Law*

The new sensitivity to gender issues related to trafficking in human beings entered also in the Italian legislation with the new National Anti-Trafficking Plan. In fact, it put gender among the general principles and working methods of the Plan, recalling the European Anti-Trafficking Directive 2011/36 and the 2012-2016 EU Strategy.<sup>750</sup> According to the Italian Anti-Trafficking Plan, a gender perspective allows institutions to implement measures that take into account and fight gender inequalities, integrating gender specificity. Preventive measures should consider the vulnerability of women to trafficking, but at the same time

---

is carried out for the purposes of sexual exploitation, mainly concerns women, although women can be trafficked for other purposes” (See Coe Trafficking Convention Explanatory Report, at para. 208) and moreover at paragraph 210, “The main aim of Article 17 is to draw the attention to the fact that women, according to existing data, are the main target group of trafficking in human beings and to the fact that women, who are susceptible to being victims, are often marginalised even before becoming victims of trafficking and find themselves victims of poverty and unemployment more often than men. Therefore, measures to protect and promote the rights of women victims of trafficking must take into account this double marginalisation, as women and as victims. In short, these measures must take into account the social reality to which they apply, mainly that society is composed of women and men and that their needs are not always the same.” (See Coe Trafficking Convention Explanatory Report, at para. 210).

<sup>747</sup> Directive 2011/36, at preamble

<sup>748</sup> 2012-2016 EU Strategy, at p. 8. The European Commission is in charge of analyse different preventive campaigns of States and develop a common EU guidance for future prevention strategies against trafficking in persons.

<sup>749</sup> *Ibid.*, at p. 13

<sup>750</sup> National Anti-Trafficking Plan, at pp. 3-4

empowering them, avoiding provisions that could limit their self-determination and liberty. A gender perspective also should help to recognise and avoid structural factors and root causes that lead to trafficking. Especially in the preventive campaigns, the National Plan is deeply concerned in improving a gender mainstreaming education and sensitivity in schools, universities, information campaigns in general, avoiding the stereotypes and women discrimination. These actions should be taken in collaboration with all the actors involved in the Plan, enhancing the multi-agency cooperation and strategies.<sup>751</sup>

### **1.9 Role of associations, non-governmental organisations (NGOs) and civil society**

Associations, non-governmental organisations (NGOs) and the civil society play a crucial role in the protective actions for trafficking victims and in the preventive strategies set in the legislative instruments here analysed. They are explicitly recalled in all the provisions concerning protection, assistance and prevention, also in specific articles dedicated to them. The collaboration of this kind of non-state actors is part of the integrated and multi-agency approach against trafficking now widely recognised, especially for their work in defence of the human rights of people trafficked.

#### *a) In International Law*

The Palermo Protocol recalls the special role of associations, NGOs and of the civil society at article 6<sup>752</sup> and article 9<sup>753</sup>, respectively the protection and recovery of victims and the prevention against trafficking. The cooperation between the State and the third sector is highly recommended as, as stated in the Legislative Guide to the Protocol with regards to protection of victims, this kind of non-state actors are crucial and should be independent by the State's control to improve the trust of victims with regards to the assistance dedicated to them.<sup>754</sup> The same is for the settlement of prevention strategies, according to article 9.<sup>755</sup>

The Recommended Principles and Guidelines underline the importance and the

---

<sup>751</sup> *Ibid.*

<sup>752</sup> UN Trafficking Protocol, at art. 6(3).

<sup>753</sup> *Ibid.*, at art. 9 (3)

<sup>754</sup> UNODC Legislative Guide, at para. 63 reads: "Generally, the value of shelters, counselling and other services offered by non-governmental organizations in this area is that victims will approach them rather than State-based agencies in such cases, and the viability of such services in this role depends on their being as independent as possible from the State and in ensuring that this is known to potential victims." (See UNODC Legislative Guide, at para. 63).

<sup>755</sup> UN Trafficking Protocol, at art. 9

fundamental presence of associations, non-governmental organisations and the civil society in all principles and guidelines. They should participate in monitoring and evaluation systems for measure the human rights impact of trafficking<sup>756</sup>, in the training of law enforcement agents<sup>757</sup>, in protection and assistance to victims<sup>758</sup>, in preventive strategies<sup>759</sup> and in cooperation between States and regions.<sup>760</sup>

*b) In Regional Law*

The CoE Trafficking Convention dedicates an entire article to the cooperation with the civil society. Article 35 encourages States and all their organs to collaborate with associations, NGOs, and the civil society to achieve the purposes of the Convention.<sup>761</sup> The Explanatory Report suggests the settings of round tables, meetings, conclusion of memoranda of understanding and partnerships between State organs and members of the civil society.<sup>762</sup> Apart being crucial in the operations of protection and prevention, the civil society is important also for the monitoring system set by the Convention, the Group of Experts on Action Against Trafficking in Human Beings (GRETA), that could submit request to national associations and NGOs during its country visits.<sup>763</sup>

Also, Directive 2011/36 of the European Union confirms the important role of civil society organisations in the context of anti-trafficking policies. In the preamble, the Directive encourages States to work closely with them, recognising their important role in policy making, in raising awareness campaigns and information, training and education programmes, as well in monitoring and evaluating activities.<sup>764</sup> They are mentioned also in prevention and monitoring provisions.<sup>765</sup> Associations and NGOs are also mentioned in the Council Directive 2004/81 about residency permit, in provisions regarding access to assistance programmes dedicated to third-country nationals holding the residency permit.<sup>766</sup>

---

<sup>756</sup> 2002 Recommended Principles and Guidelines, Guideline 1.7 and 5.2

<sup>757</sup> *Ibid.*, at Guideline 3.7

<sup>758</sup> *Ibid.*, at Guideline 6

<sup>759</sup> *Ibid.*, at Guideline 7

<sup>760</sup> *Ibid.*, at Guideline 11.12

<sup>761</sup> CoE Trafficking Convention, at art. 35

<sup>762</sup> CoE Trafficking Convention Explanatory Report, at paras. 352-353

<sup>763</sup> CoE Trafficking Convention, at art. 38 (3)

<sup>764</sup> Directive 2011/36, at preamble (6). The same is stated in Directive 2012/29, at preamble (62) (63)

<sup>765</sup> *Ibid.*, at art. 18 (2) and 19

<sup>766</sup> Directive 2004/81, at art. 12(1)

### *c) In Italian Law*

The Italian National Anti-Trafficking Plan strongly involves the civil society in all its provisions, considering them both strategic actors and *stakeholders*.<sup>767</sup> A strategic partnership with NGOs and the civil society is one of the strength of the national plan, that follows a comprehensive and multi-agency approach, avoiding the one-dimension logic of interventions against trafficking.<sup>768</sup> Participation of the civil society in one of the main principles of the National Referral Mechanism.<sup>769</sup> The civil society is crucial also in the monitoring strategies of the Plan as their contribution is important in a horizontal subsidiarity logic between States and the third sector in order to monitor and evaluate the phenomenon of trafficking in the Italian territory.<sup>770</sup>

## **2. Monitoring Systems**

### **2.1 The Conference of Parties of the Organised Crime Convention**

In order to control the implementation of Conventions or legislations by States, some monitoring systems has been settled. The Palermo Protocol does not provide for a monitoring systems, even if in the Organized Crime Convention, a Conference of Parties (COP) has been established in order to advocate and monitor the ability of States to fight the organised crime. The COP should help States in cooperation measures among each other through the exchange of information, good practices and techniques, through cooperation with NGOs and IGOs, reviewing the implementation of strategies and issuing recommendations. Moreover, each State party to the Convention should give to the COP information regarding its programmes, plans, actions and legislative measures.<sup>771</sup> However, the COP is not specific to the issue of trafficking. In fact, only elements concerning the Trafficking Protocol that fall under the provisions of the Organized Crime Convention can be taken into consideration by the COP.<sup>772</sup> The first COP was in 2004, followed by other seven sessions (in 2005, 2006, 2008, 2010, 2012, 2014 and the last one last year in 2016). During the 2008 COP, it has been expressed the will to establish and effective mechanism to check the implementation of the Convention

---

<sup>767</sup> National Anti-Trafficking Plan, at p. 7

<sup>768</sup> *Ibid.*, at p. 34

<sup>769</sup> *Ibid.*, at p. 38

<sup>770</sup> *Ibid.*, at p. 47

<sup>771</sup> Organized Crime Convention, at art. 32

<sup>772</sup> Gallagher, *The International Law of Human Trafficking*, at p. 467

and strengthen the review procedure. The same will have been expressed in the following COP's sessions even if it remains a non-independent system and not so focused on trafficking in persons.

## **2.2 The Special Rapporteur for trafficking in persons, especially women and children**

The United Nations, under the Office of the High Commissioner for Human Rights (OHCHR), established in 2004 through its decision 2004/110 a Special Rapporteur for trafficking in persons, especially women and children for a three-year period.<sup>773</sup> The Special Rapporteur should focus on the human rights aspects of human trafficking. The mandate of the Special Rapporteur has been extended and it still operates today. The present Special Rapporteur is an Italian judge, Ms. Maria Grazia Giammarinaro, appointed in 2014.<sup>774</sup> The task of the Special Rapporteur is to submit annual reports on different topics concerning trafficking, to send recommendations to States and to visit countries and collect information by victims, NGOs and other institutions. The Special Rapporteur on trafficking collaborates closely with another Special Rapporteur, that on violence against women, underlining what we assumed above, that trafficking is a form of violence against women. Moreover, the Special Rapporteur has to work closely also with the United Nations bodies and regional organisations (like the European Union). The protection of victims and the monitoring of the respect of their human rights are the main objectives of the Special Rapporteur.

## **2.3 GRETA - Group of Experts on Action against Trafficking in human beings**

Maybe the most remarkable and effective monitoring system is the one of the CoE Trafficking Convention. It is composed by two bodies, the Group of Experts on Action against Trafficking in human beings (GRETA) and the Committee of Parties and it is regulated in the Convention itself at articles 36, 37 and 38.<sup>775</sup>

---

<sup>773</sup> United Nations Office of the High Commissioner for Human Rights, Decision 2004/110, Special Rapporteur on trafficking in persons, especially women and children, 55th meeting, Apr., 19th, 2004

<sup>774</sup> United Nations Office of the High Commissioner for Human Rights, Special Rapporteur on trafficking in persons, especially women and children section, available at <http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx> consulted the 4th of May 2017. There were two other Special Rapporteurs for trafficking, one from Nigeria and the other from Bangladesh. They have been always women.

<sup>775</sup> CoE Trafficking Convention, at artt. 36, 37 and 38

The most important body for monitoring the implementation of Convention is the GRETA regulated in article 36.<sup>776</sup> GRETA is composed by a number of ten up to fifteen members, balanced by gender and geographical origin among Council of Europe nationalities. They have a four-year mandate, extensible once, and they are elected by the Committee of Parties<sup>777</sup>, following standards of impartiality and independency of the candidates, they should represent the legal system of their country and their competence in human rights and human trafficking counteraction.<sup>778</sup> The first meeting of GRETA was in 2009, one year after the entry into force of the Convention.<sup>779</sup> It is chaired by a President and two Vice Presidents, elected among its members. The two official languages of work are English and French.<sup>780</sup>

GRETA conducts evaluations on members of the Convention using three main tools and according to their internal rules of procedures: a questionnaire submitted to countries, a visit to countries and the consultation of NGOs and the civil society. The evaluation is divided in rounds decided by GRETA itself of the duration of at least four years.<sup>781</sup> For each round GRETA prepares a questionnaire about the implementation of each article of the Convention, focusing on gender equality, victims' rights and prevention strategies. It is submitted to State parties and, more specifically, to a chosen contact person for each State. The questionnaire is public and State Parties should answer properly in the time limit set by GRETA. GRETA can request to State parties additional or urgent information, in case the questionnaire results incomplete or not clear or in case it receives information of a particular difficult or worrisome situation.<sup>782</sup> GRETA can decide to submit the questionnaire also to NGOs and the civil

---

<sup>776</sup> Ibid., at art. 36

<sup>777</sup> The Committee of Parties is composed by representative of the Committee of Ministers (see *infra* Chapter 1, paragraph 3.1) of the Council of Europe and of the State Parties to the Convention examined not member of the Council of Europe. It is gathered by the Secretary General of the Council of Europe and one third of the Parties of the Convention. (See CoE Trafficking Convention, at art. 37)

<sup>778</sup> CoE Trafficking Convention, at art. 36 (1) (2) (3)

<sup>779</sup> Planitzer, J., *GRETA's First Years of Work: Review of the monitoring of implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, 2012, Anti Trafficking Review, Issue 1 June 2012, p. 32

<sup>780</sup> Group of Experts on Action against Trafficking in Human Beings (GRETA), *Internal Rules of Procedure of the Group of Experts on Action against Trafficking in Human Beings (GRETA)*, 2009, Strasbourg, available at <https://rm.coe.int/16805a983d>, consulted the 28th May 2017, at pp. 4-5 (hereinafter GRETA Rules of Procedure)

<sup>781</sup> Group of Experts on Action against Trafficking in Human Beings (GRETA), *Rules of procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties*, adopted on 17 June 2009 and amended on 21 November 2014, entry into force in 2015, Strasbourg, available at <https://rm.coe.int/native/16805a983c>, consulted the 28th May 2017, Rule 2, at p. 3 (hereinafter GRETA Evaluation Procedures)

<sup>782</sup> GRETA Evaluation Procedures, at Rule 5 and 6, p. 4

society involved in actions against trafficking in persons and they should answer in the time limit set by GRETA itself.<sup>783</sup>

After having received written answers through the questionnaires, GRETA commits itself in country visits if necessary in order to complete the information it has about the country situation. The delegation of GRETA informs the country of its visit without asking any permission.<sup>784</sup> All it is organised with the cooperation of the contact person above mentioned. During visits, GRETA could decide to gather information also by NGOs, national independent experts, and civil society representatives. After the visit, the delegation must inform GRETA of what it found.<sup>785</sup>

Then, GRETA drafts a report about the country, including its findings during the visit about the implementation of the Convention in that country, together with suggestions to solve the problems it is facing, if there are any. The draft report is sent to the State party concerned for comments that will be considered in the final report by GRETA.<sup>786</sup>

The final report is adopted together with the conclusions on measures implemented and submitted to the Committee of Parties and the State concerned. The report and the conclusions are public.<sup>787</sup> Also the Committee of Parties could submit recommendations to the State concerned on the measures to be implemented and it could cooperate with the State to support a proper implementation of the Convention.<sup>788</sup>

GRETA publishes general and countries reports, additionally to extraordinary reports on specific situations. It is a unique monitoring system about actions on human trafficking, involving States' authorities, professionals, NGOs, and the civil society. It follows a comprehensive and a human right based approach, according to Convention's provisions and vocation.

---

<sup>783</sup> *Ibid.*, at Rule 8, p. 5

<sup>784</sup> Planitzer, *GRETA's First Years of Work: Review of the monitoring of implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, at p. 34

<sup>785</sup> GRETA Evaluation Procedures, at Rule 9

<sup>786</sup> CoE Trafficking Convention, at art. 38 (5)

<sup>787</sup> *Ibid.*, at art. 38 (6)

<sup>788</sup> *Ibid.*, at art. 38 (7)



## 2.4 EU Mechanism of evaluation and monitoring

The European Union establishes its evaluation and monitoring system of the European policies at articles 19 and 20 of Directive 2011/36<sup>789</sup>. Article 19 provides States to establish national rapporteurs on trafficking or equivalent mechanism in order to evaluate the different trends in trafficking, the different anti-trafficking policies of States through statistics and data collection, with the help also of the civil society and NGOs.<sup>790</sup> Article 20 provides States to coordinate their actions through the work of an Anti-Trafficking Coordinator, who is in charge of all information gathered from States' communications and help the European Commission to issue a report every two years on the European situation, checking also the correct implementation of the EU Strategy 2012-2016.<sup>791</sup> The figure of the Anti-Trafficking Coordinator was initially envisaged in the Stockholm Programme in 2009 by the Council of the European Union.<sup>792</sup> The present Anti-Trafficking Coordinator is Ms. Myria Vassiliadou, whose mandate was extended in November 2015 for four years starting from the 1st of March 2016.<sup>793</sup> The European Union monitoring system of National Rapporteurs established by Directive 2011/36 works in synergy with already existing monitoring mechanism in Europe, such as GRETA and the Europol.<sup>794</sup>

## 2.5 The Italian National Anti-Trafficking Plan monitoring system

At a national level, the National Rapporteur for the European Union representative of the Italian Republic is the Department for the Equal Opportunities of the Italian Government. However, the new National Anti-Trafficking Plan establishes different levels in the monitoring system, following article 7 (2) of Legislative Decree 24/2014<sup>795</sup>: the central coordination is in charge of the Control Room and of the Department for the Equal Opportunities, together with groups composed by public sector operators, NGOs, IGOs, trade

---

<sup>789</sup> Directive 2011/36, at artt. 19 and 20

<sup>790</sup> *Ibid.*, at art. 19

<sup>791</sup> *Ibid.*, at art. 20

<sup>792</sup> Council of the European Union, The Stockholm Programme – An open and secure Europe serving and protecting the citizens, 17024/09, Dec., 2nd, 2009, Brussels, available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the\\_stockholm\\_programme\\_-\\_an\\_open\\_and\\_secure\\_europe\\_en\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_stockholm_programme_-_an_open_and_secure_europe_en_1.pdf), consulted the 28th May 2017, p. 45

<sup>793</sup> Information available in European Commission website, Together against trafficking in human beings, Myria Vassiliadou - EU Anti Trafficking Coordinator, available at [https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator\\_en](https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en), consulted 28th May 2017.

<sup>794</sup> 2012-2016 European Union Strategy, p. 15

<sup>795</sup> D. Lgs. 24/2014, at art. 7 (2)

unions, universities etc. in different Italian regions, autonomous provinces, local realities and municipalities. So, the structure follows two principles, that of *vertical subsidiarity*, between the State, Regions, and local realities and that of *horizontal subsidiarity*, between the State and the civil society.

Groups will be divided according to the different strategies: prevention, protection, repression of the crime and cooperation. They will share information about their findings, problems, and interventions in order to delineate new strategies for the future. All data will be gathered in a *data warehouse* in order to have information about the features of the phenomenon, the type of victims, the type of exploitation, the type of routes victims follow to come to Italy, type of traffickers, other crimes involved in the business of trafficking in Italy, the analysis of international reports etc.

All data should be elaborated and organised in the new database called SIRIT (*Sistema Informatizzato per la raccolta di informazioni sulla tratta - Digitised System for the collection of data about trafficking*).<sup>796</sup> All data should be provided and compared by the different subjects involved, both institutional and private. The subjects indicated by the plan to carry monitoring actions are the Anti-Trafficking Free Helpline (Numero Verde), private associations, road units, local observatories, police and the judicial authority, social workers, the reception structures for migrants and asylum seekers, hospitals, border agents, the national statistical office (ISTAT). The main aim of the monitoring system in Italy is to analyse data to improve future strategies and to know better the phenomenon in order to contrast it better and help victims, as well as elaborate preventive strategies. Every year an annual report on human trafficking will be issued with quantitative and qualitative data about the phenomenon.<sup>797</sup>

---

<sup>796</sup> Translation in English by the author.

<sup>797</sup> National Anti-Trafficking Plan, at pp. 47-50

## CHAPTER 4: CASE STUDY – PROTECTION AND ASSISTANCE SYSTEM FOR TRAFFICKED WOMEN IN VERONA

### 1. General Overview on Italy

Italy is one of the most affected European countries by migration flows, especially regarding those by the sea. Among the numerous migrants that disembark to Italian coasts in Southern regions there are also trafficked or smuggled persons, or vulnerable subjects.<sup>798</sup>

In the first report issued by GRETA in 2014 about Italy, it was underlined that the principal nationality of victims of trafficking in human beings in Italy is Nigerian, followed by Rumanian and Chinese.<sup>799</sup> These three nationalities follow different way of conducting trafficking in women. Many trafficked women are sexually exploited (77.7 per cent) according to a report of the Italian Ministry of Justice.<sup>800</sup>

Data provided by the national monitoring system established by the National Anti-Trafficking Plan (SIRIT) confirm the size of trafficking for sexual exploitation in Italy. In 2016 women who has been identified as possible victims of human trafficking were the 84.8 per cent of the totality. Women who benefit of the protection by the social services are the 81.4 per cent of the total number of protected trafficked persons. The main nationalities detected are Nigerian and Rumanian. Concerning sexual exploitation, victims in protection are about the 60 per cent. Most them are adult, even if numerous minors have been identified.<sup>801</sup>

As reported by both IOM and GRETA and confirmed by the Italian Government, in 2015-2016 there was an increasing of Nigerian women disembarked and that request international protection and asylum, with a totality of 7,737 individuals. These women apply for asylum or international protection once they arrive in Italy. On the total amount of

---

<sup>798</sup> Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy - First Evaluation Round, adopted on July, 4th, 2014, published Sept., 22nd, 2014, Council of Europe, Strasbourg, p. 11, available at <https://rm.coe.int/1680631ccl> , consulted the 6th June 2017 (hereinafter GRETA Italy Evaluation 2014)

<sup>799</sup> *Ibid.*

<sup>800</sup> Ministero della Giustizia della Repubblica Italiana, Direzione Generale di Statistica e Analisi Organizzativa, *La Tratta degli Esseri Umani*, Settembre 2015, p. 8 available at <https://webstat.giustizia.it/Analisi%20e%20ricerche/Rapporto%20DgStat%20sulla%20tratta%20degli%20esseri%20umani.pdf> consulted 6th June 2017

<sup>801</sup> Data collected at the Municipality of Venice – Anti-Trafficking Observatory, 9<sup>th</sup> May 2017

Nigerian asylum applicants in 2016 (14,681 people), 27 per cent was female.<sup>802</sup> Since 2010, the IOM has collaborated with the Italian Territorial Commissions for asylum because it emerged that many asylum seekers were also trafficking victims.<sup>803</sup> In fact, it has been observed by NGOs, the civil society and operators involved in the protection and assistance to trafficking victims in Italy, that the asylum claims made by Nigerian women in Italy has become functional to the criminal organisations. The asylum claim gives the possibility to the girl to be received in the extra reception centres (in Italian, Centri di Accoglienza Straordinaria – CAS) and to have a temporary residency permit.<sup>804</sup> It has been registered that Nigerian women arrived in Italy who are trafficking victims, are more likely to exit from the reception centres at night and to be exploited as sex workers in the streets. Many of them simply disappear from the reception centres in Southern Italy and continue their journey to be exploited in Northern regions of Italy or in other European countries.<sup>805</sup>

In the case of Nigerian women from Benin City (Edo State)<sup>806</sup>, we observe a peculiar tendency in the process of trafficking and exploitation in Italy. In 2015, the IOM registered an increase in violence used in the recruitment and exploitation of women. Following the standard of the Madames (and of the voodoo rites) that recruit and pay the journey to girls, they are transported along the migratory route from Sub-Saharan Africa to Libya.<sup>807</sup> Most of these girls are sold by their families to traffickers or forced to travel to Europe and send remittances at home. All Nigerian trafficked women are in a situation of debt bondage, with a debt amounting from twenty to fifty thousand euros. However, an operator of the sector stated that debts lowered in the last period.<sup>808</sup> The promise is to work as hairdresser, waitress or shop assistant in Europe. Some of them know that they will work as prostitutes to repay

---

<sup>802</sup> Group of Experts on Action against Trafficking in Human Beings, Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Jan. 2017, Council of Europe, Strasbourg, p. 5 (hereinafter GRETA Urgent Report 2017)

<sup>803</sup> International Organization for Migration (IOM), Rapporto sulle vittime di tratta nell'ambito dei flussi migratori misti in arrivo via mare aprile 2014-ottobre 2015, 2015, p. 15, available at <http://www.italy.iom.int/sites/default/files/news-documents/RapportoAntitrattra.pdf>, consulted the 6th June 2017 (hereinafter IOM Trafficking Report)

<sup>804</sup> Interview with an Italian social worker in the field of inclusion and assistance to victims of human trafficking, Verona, done 31st March 2017

<sup>805</sup> GRETA Urgent Report 2017, paragraph 41, p. 11. If after three nights, people received in the reception centre do not return, they are expelled by the centre and they cannot return.

<sup>806</sup> The majority of detected Nigerian victims in Italy leave Nigeria from Benin City in the Edo State, that is registered as the centre of the Nigerian human trafficking business.

<sup>807</sup> IOM Trafficking Report, p. 7. The journey lasts two weeks minimum or a month maximum. The main steps of the journey are Kano, Zino, Agadez, Gatron, Sabah, Brach and Tripoli. Girls are transported by different traffickers along the journey. Usually, they are used as a “mean” to corrupt border guards, offering sexual acts to cross the borders without problems.

<sup>808</sup> Interview with N.A.Ve Project coordinator, Venice 9<sup>th</sup> of May 2017

their debt. However, there is not the perception of being exploited. On the contrary, they see their traffickers and exploiters as benefactors, because they allow them to come to Europe. This fact discourages denunciations or protection requests by the part of trafficking victims.<sup>809</sup>

In Libya, Nigerian women begin to be sexually exploited in brothels or in the connection houses, where they suffer physical violence, rape, torture, and traumas. Most of them are detained in prison, where they suffer violence by the part of law enforcement agents. The permanence in Libya turned out to be a trafficking indicator: the more a woman remained in Libya, the more she is a potential victim of trafficking for sexual exploitation. However, this is not a general pattern. The IOM registered that women with the higher debt are involved with more powerful criminal organisation, which prevent them to be sexually assaulted or harmed during the journey.<sup>810</sup>

There is an increasing number of disembarked pregnant women in Italy. This is probably due to violence they may have suffered. Many traffickers understood that pregnant women receive a special treatment in many European countries. Some women declare to have come to Italy with their boyfriend or spouse, that in reality are their traffickers.<sup>811</sup> If they come to Italy alone, they have with them an Italian telephone number (sometimes the number of the Madame in Italy) which they call once they are accommodated in a reception centre.<sup>812</sup>

As we said that many women and girls escape from reception centres to go to Northern Italy cities, the next section will deal with a more specific view on data and situations in Veneto and Verona, in the North-East of Italy.

## **2. Veneto and Verona overview**

Veneto is a region in the North-East of Italy. Seven provinces compose it: Venice, Padua, Verona, Vicenza, Rovigo, Treviso and Belluno. Veneto region is quite crucial concerning trafficking for two distinguished reasons: it is at the centre of trafficking in human beings, as both destination and transit area,<sup>813</sup> and it has always been at the forefront of

---

<sup>809</sup> IOM Trafficking Report, pp. 5-6

<sup>810</sup> *Ibid.*, p. 7

<sup>811</sup> *Ibid.*, p. 8

<sup>812</sup> *Ibid.*

<sup>813</sup> Ciconte, E. and West Project, *The trafficking flows and routes of Eastern Europe*, 2005, Morandi, Fusignano (RA), p. 271

projects for the protection and assistance of victims.<sup>814</sup> Before the approval of the National Anti-Trafficking Plan and the single programme for trafficking victims, Veneto had one project active from 2006 based on funds under article 13 for the emergence and the immediate assistance to the victim of trafficking and two projects of social inclusion and integration under article 18, one covering Verona and Padua and the other covering the rest of Veneto region.<sup>815</sup> Veneto has a regional law on trafficking in human beings and sexual exploitation (n. 41 of 16<sup>th</sup> December 1997) that provided funds for the supportive systems to prostitutes victims of trafficking.<sup>816</sup> With the new N.A.Ve Project, Veneto is one of the most active Italian regions in the country, adopting a multi-agency and human rights based approach, mostly financed by the public sector. Moreover, the city of Venice is the organisational centre of the Anti-Trafficking Free Helpline for the Department of Equal Opportunities of the Italian Government, under article 15 of the Law 241/1990.<sup>817</sup>

Data concerning street prostitution provide that Veneto region registered an increase in the presence of Nigerian sex workers and a decrease in Eastern European sex workers between 2012 and 2016. Veneto region is the first Italian region for the presence of Nigerian residents in Italy, of which Verona is the second city of the region, after Padua.<sup>818</sup>

Verona, due to geographical and economic reasons, is at the centre of criminal activities including trafficking in human beings for sexual exploitation.<sup>819</sup> In Verona's streets, there are two prostitution models: the voluntary one mostly of Eastern European girls, and the forced one, mostly Nigerian.<sup>820</sup> Verona detains one third of the total amount of street prostitution in the whole Veneto region (124 subjects up to 391 in 2016). Nigerian women are the majority, overcoming Eastern European and Western Balkans presences over the years since 2012.<sup>821</sup> Verona is the third city in Italy for the presence of prostitutes in its streets, after Rome and Milan. Most of them are in the municipal centre, with some presences in the

---

<sup>814</sup> Interview with N.A.Ve Project Coordinator, Venice, 9th of May 2017

<sup>815</sup> *Ibid.*

<sup>816</sup> Consiglio Regionale della Regione Veneto, Legge Regionale n. 41 del 16 Dicembre 1997, Abuso e Sfruttamento Sessuale: Interventi a tutela e promozione della persona, BUR n. 107/1997, available at <http://www.consiglioveneto.it/crvportal/leggi/1997/971r0041.html#Heading21>, consulted 6th June 2017

<sup>817</sup> Information available at Department of Equal Opportunities of the Italian Government website – Human Trafficking – Numero Verde, available at <http://www.pariopportunita.gov.it/contrasto-tratta-esseri-umani/numero-verde-800-290-290/> consulted 17<sup>th</sup> June 2017

<sup>818</sup> Data collected at the Municipality of Verona, 31<sup>st</sup> of March 2017

<sup>819</sup> Ciconte, E. and West Project, *The trafficking flows and routes of Eastern Europe*, p. 290

<sup>820</sup> Interview with an Italian social worker of the “unità di strada” (road unit), Verona, 19th of April 2017

<sup>821</sup> Data collected at the Municipality of Verona, 31<sup>st</sup> of March 2017

districts around the city, mostly on the Highway 11 and the Garda Lake.<sup>822</sup> The age of women and girls present in the city is decreasing and there are a great number of minors, even if this data is uncertain as they do not declare their age to law enforcement agents or social workers.<sup>823</sup> The peculiarity of Verona resides in the way law enforcement agents tackle with the issue of prostitution. Despite the presence of the Squadra Mobile Unit of the State Police for crimes against the individual, the issue of prostitution is controlled in Verona by the local police<sup>824</sup>, according to its internal regulation. Article 28ter of the Internal Rules of the Local Police provides that they can give sanctions to those who approach prostitutes in the streets, to those who discuss prices with prostitutes in the streets and even to those who dress or behave with the aim of attracting clients for sex acts in public places like streets or pavements.<sup>825</sup> So, also prostitutes are sanctioned in Verona. Clients could be punished with a sanction of 450.00 €. <sup>826</sup> However, when a situation of exploitation is verified, both State Police and the Carabinieri unit intervene, investigate and prosecute.

The municipality of Verona and the private entities that collaborate with it in the protection and assistance system are part of the N.A.Ve Project since 2016. All the operators with which I spoke to are part of the N.A.Ve network, so the following chapter will explain the project in general and the three main actions of protection and assistance to victims of sex trafficking in Verona, which are the same in the whole Veneto territory.

### **3. The N.A.Ve Project**

With the enter into force of the new National Anti-Trafficking Plan and the single programme for the protection and assistance of victims of human trafficking in 2016, also the structure of funds dedicated to actions changed. Until 2016 we had two funds, one under article 18 and the other under article 13, financing different kind of interventions. The

---

<sup>822</sup> In this area of Verona, the high presence of prostitutes is due to the great number of nightclubs and tourists' facilities, especially in Summer.

<sup>823</sup> Interview with an Italian social worker in the field of inclusion and assistance to victims of human trafficking, Verona, done 31<sup>st</sup> March 2017 and Interview with an Italian policeman of Squadra Mobile Unit – Reati contro la persona, Questura di Verona, Verona, 22<sup>nd</sup> of February 2017

<sup>824</sup> Translation of "Polizia Municipale"

<sup>825</sup> Comune di Verona, Nuovo Regolamento di Polizia Urbana, art. 28ter, available at [https://www.comune.verona.it/media/Redazione%20web/ente\\_comune/regolamenti/regolamento\\_polizia\\_urbana.pdf](https://www.comune.verona.it/media/Redazione%20web/ente_comune/regolamenti/regolamento_polizia_urbana.pdf), consulted the 10th June 2017

<sup>826</sup> Comune di Verona, Polizia Municipale website, Norme e Consigli, Sicurezza urbana e Decoro, Prostituzione su Strada, available at [http://www.poliziamunicipale.comune.verona.it/nqcontent.cfm?a\\_id=24211](http://www.poliziamunicipale.comune.verona.it/nqcontent.cfm?a_id=24211), consulted the 10th June 2017

regional law 41 of 1997 instead financed only the road units' operations. Funds under article 18 financed the integration and social inclusion actions with an obligation of co-financing by the local entity (municipalities) of the 30 per cent, while funds under article 13 covered the reflection period and the emergence of the victim with an obligation of co-financing by municipalities of the 20 per cent.

N.A.Ve is the acronym for the Italian 'Network Anti Tratta Veneto' (Anti-Trafficking Network of Veneto region) and it is the single programme of the region dedicated to the emergence and the social inclusion of trafficking victims which suffered any kind of exploitation. The project started in September 2016 and it will expire on November 2017. The new Anti-Trafficking Plan provided the total financing from the part of the Department for Equal Opportunities, but the Veneto project established the co-financing by local realities as well, even if it is no more compulsory. The main partner of the project is the Venice municipality, followed by the other six municipalities (Verona, Padua, Vicenza, Rovigo, Belluno and Treviso), the police, the judicial authority, social workers, hospitals, the private sector, the road units, the Veneto region (that for the first time enter in the project financing it), the Emilia Romagna Region and the Friuli Venezia Giulia region, the Italian finance police, trade unions, the Territorial Commission for the international protection attribution of Verona, universities of Verona and Padua and others. The project was also funded by Save The Children and the OSCE chose the Veneto region to organise a training workshop with operators with simulations of operations held in Vicenza from the 14<sup>th</sup> to the 18<sup>th</sup> of November 2016.<sup>827</sup>

The main objectives of the project are the fight against trafficking and the exploitation of persons and the protection of victims through a multi-agency cooperation among different actors, a human-rights based approach that considers the self-determination of the person involved. The multi-agency approach is functional to cover all aspects of trafficking in human beings and better intervene in identification, emergence of victims and social inclusion. The work is articulated into three multi-professional groups present in each municipality: the first contact (the road units), the crisis and evaluation unit for the emergence of the victim (the territorial operator), and the social inclusion and integration unit (the case manager – social worker). Moreover, the project has a control room which includes the Veneto region, the

---

<sup>827</sup> N.A.Ve project website, OSCE, available at <http://www.progettonave.it/index.php/osce/>, consulted the 7<sup>th</sup> June 2017



municipalities and private sector representatives in order to monitor the project and the phenomena linked to trafficking in human beings, and to propose corrective strategies to improve the project.<sup>828</sup>

The expected results of the project are: 3500 contacts with potential victims of trafficking, of which 500 estimated asylum seekers or beneficiaries of international protection, at least 300 evaluations, guaranteeing common regional standards of identification and first assistance, 125 social integration programmes, the promotion of cooperation strategies among different actors involved, the creation of a strong network to contrast trafficking in human beings, to protect victims, the guarantee to proper social protection and legal assistance to victims and potential victims and the presence 24h per day of an operator that can immediately assist the emergence of victims.<sup>829</sup> Also, the aim is to create a common strategy to all the municipalities of Veneto region. That is to say that also Verona adapted to the standards of the N.A.Ve project and its actions.

*a) First contact*<sup>830</sup>

The first contact that women working as prostitutes in the streets have is with the so-called *road units*. They are composed by a small group of people of three/four people (a coordinator, a social operator, an educator, and sometimes a cultural mediator), working for a private entity or a cooperative. They engage once or twice a week in tours during the night with their van to distribute to sex workers some prevention materials such as condoms or lubricants and to present the medical services to which sex workers are entitled for free. In fact, if sex workers desire to benefit from free and anonymous medical services, road units accompany them to specialised medical centres, providing them with a health insurance card that covers most important medical treatments. Among medical treatments requested we can find blood tests, contraception, abortions, gynaecological visits, HIV/AIDS tests.

Road units also do the monitoring work to identify victims of trafficking, especially minors and informing the law enforcement agents and social workers. They also try to establish with the girls in the streets a relationship of trust. Road units' operators are required not to be too intrusive, building the trust relationship with the sex workers gradually,

---

<sup>828</sup> Interview with N.A.Ve Project Coordinator, Venice, 9th of May 2017

<sup>829</sup> *Ibid.*

<sup>830</sup> All information in this sub-paragraph were gathered during the Interview with an Italian social worker of the "unità di strada" (road unit), Verona, 19th of April 2017 and the Interview with N.A.Ve Project Coordinator, Venice, 9th of May 2017

informing them about their rights, of the risk they may find like diseases, abortion complications and so on. The presence of the cultural mediator, especially for Nigerian prostitutes, is crucial because it makes easier the understanding between the operators and the girls, reinforcing the trust relationship. It is a long process, because also road units' operators are perceived by women engaged in sex work as part of a repressive system, especially by those who are staying illegally in Italy. Road units need to understand and adapt to the continuous changing of the phenomena of trafficking and prostitution. Road units can do an initial identification, by observing the behaviour of girls or the reaction they have in the presence of operators. After a while, it is possible that a woman could tell her story and use road units to accede to protection and assistance system for trafficking victims.

In Verona, road units have divided the city into two areas: the industrial area (with a high concentration of Nigerian prostitution) and the area of the train station and the Highway 11 (with high concentration on Eastern European girls). This helps to understand the phenomenon in the municipality of Verona and to monitor it properly. During the night the road unit exits, and it updates a database with names (also fake names), nationalities, and average age of the girls the operators encounter, and another database of medical treatments the girls ask.

Also, road units are included in the N.A.Ve project and they are the first group of work of the project, called *first contact unit*.<sup>831</sup> All Veneto road units work in a well-established group, sharing information, expertise and conducting once a month a simultaneous night tour all over the Veneto region to monitor the situation and with the aim at building a regional database. As we will see below, the cooperation and the network of this area of working is the less critical, apart from some problems linked with the relation with other areas of intervention, such as law enforcement agents, or because of the difficulty and complexity of the phenomenon.

#### *b) Crisis and Evaluation Unit*<sup>832</sup>

When a potential victim of human trafficking is found by law enforcement agents, road units or through the Anti-Trafficking Free Helpline, she/he is signalled to a territorial operator present in each municipality of the Veneto region. The territorial operator proceeds

---

<sup>831</sup> Translation by the author of Italian expression "unità di contatto".

<sup>832</sup> All the information in this sub-paragraph were gathered during the Interview with N.A.Ve Project Coordinator, Venice, 9th of May 2017

with an evaluation of the case through a first interview with also the presence of the cultural mediator responsible for the area. The evaluations must be coherent and suitable. This action is called *emergence* (in Italian, *emersione*) of the trafficking victim.

The innovation of N.A.Ve project is the presence of one territorial operator for each municipality. Before 2016 there was only one operator for the whole Veneto area, rendering operations slow and time consuming. Now, each operator is part of a centralised crisis and evaluation unit that each fifteen days meets, studying the emergence situations, and guaranteeing coherence of evaluations. Also, the crisis and evaluation unit must draw common standards of identification of victims for the whole Veneto area, establishing trafficking indicators and identifying vulnerable subjects. When the project entered into force, new territorial operators began to work and they were followed by a tutor for the first three months of operations.

When the victim emerges, she/he is brought to first reception structures (that are different from structures of the inclusion and re-integration system) for three days, the time necessary to conduct an evaluation. These structures are called in Italian ‘*punti di fuga*’, that is to say structures where victims can find a shelter and escape their traffickers before accepting to enter in a special protection programme and obtain their residency permit. The victim has also the right to the reflection period that lasts three months, in which she/he can decide to exit from the exploitation network and eventually denounce her/his exploiters. If a person decides to emerge, she/he will be taken on the responsibility of the case manager of the territory where she has emerged.

Territorial operators are also in charge of preventive strategies in the reception centres and with vulnerable subjects and potential victims of trafficking through legal assistance, information and workshops to let people know the rights they are entitled to.

*c) Reception and social inclusion*<sup>833</sup>

After the evaluation and the identification of the person as a trafficking victim, the procedure provides an interview and an eventual denunciation to law enforcement agents. The victim is transferred to a protected and secret structure. The judicial authority should release a residency permit because the victim denounced her/his traffickers and exploiters or

---

<sup>833</sup> All the information in this sub-paragraph were gathered during the Interview with an Italian social worker in the field of inclusion and assistance to victims of human trafficking, Verona, done 31<sup>st</sup> March 2017

because social workers ask the judicial authority or law enforcement agents to do it, guaranteeing that the victim wants to enter in a programme of protection and re-integration (*canale sociale*). We will see that the issuing of the residency permit is complicated due to a difficult communication between social workers and the judicial authority, creating situations of impasse.

When the victim obtains the residency permit, she/he signs a pact with social workers that provides the programme of re-integration and social inclusion she/he will benefit. The programme lasts six months, extensible of other six months in which the victim will benefit of courses of Italian language, of access to the job market through traineeships and workshops, and of the issuing of documents and of the possibility to find a house.

During this period, it is possible that the victim chooses to leave the programme voluntarily or because her/his behaviour results incompatible with the programme itself, such as the ongoing link with criminal networks. If the victim chooses to stay in the programme, she/he will stay in the structures financed by the programme or she/he will possibly reach a housing autonomy if the social workers decide the person has the qualifications to do it. During the programme of social inclusion and integration, victims are constantly followed by the social worker (case manager) appointed by the project for each municipality.

The possibility of work available to trafficking victims are in the textile industry, in supermarkets, in factories, or in hotels and restaurants. Few of them have the possibility to become cultural mediators, and this is one of the main critical points of the protection and assistance system. In fact, victims have little time to spend in studying and learning Italian and they need to quickly think about their future plans. However, data about what happens after the programme of social inclusion and re-integration are uncertain as there is not a monitoring system about it.

Abandonments are more frequent than conclusions of the programme and re-integration of the person. This situation is due to delays in the issuing of residency permits, that leave victims in a situation of stand-by for a long time in structures that are protected with some restrictions on liberties and overcrowded, and discouraging the victim who will be more inclined to leave the programme and come back to an exploitative situation because they may judge it better. As we will see in the conclusive considerations, this last part of the protection and assistance system is the most critical and problematic.

#### 4. Story of a survivor<sup>834</sup>

Some former trafficking victims who are able to follow the whole path of social inclusion, exiting from the trafficking and exploitation cycle, decide to dedicate their lives to help other girls who are in the same situations they were. This is the case of the former trafficking victim I had the chance to meet during my research for the present study, that now works as a cultural mediator with the road unit of Verona. For matter of privacy, she will be named as S.

S. was born in Benin City in the Edo State, in Southern Nigeria. She is part of the major ethnic group of the Nigerian state, the Edo, like most of Nigerian girls trafficked to Italy. She comes from an educated family: her father studied in the United Kingdom and came back to Nigeria to work. Her mother studied too, but she decided to dedicate her life to the family and the house. S. studied to become a teacher and then, she applied to University, where she studied Law. At a very young age she had seven children, but six of them were living with her mother to allow S. to continue her studies. She worked as a teacher, she studied for University's exams and she took care of her last son, who one day fell ill and died. After the death of her son, S. decided to change her life, leaving Nigeria, and leaving all suffering behind her shoulders.

One of her cousins who lived in Turin, in Northern Italy, contacted her and convinced her to come to Italy to work. She said she could manage all documents and the journey. S. obtained a fake passport, with the photo and data of a Ghanaian girl who looked like her, she travelled to Ghana, bribing the corrupted guards to cross Benin and Togo borders. She took a flight and landed in Turin, where her cousin immediately forced her to work in the streets as a prostitute. S. refused many times, but her cousin forced her, also bringing some friends at home. S. remembers that moments as sad, in which she felt lonely and empty and without a way out. She said that to work as a prostitute is not a real work. It is the worst thing a woman can handle. One night the police took her while she was in the streets and she decided to tell her story but nothing happened. She "worked" in Turin, Como, and Mestre. After three months, she decided to run away because she had not debt with any trafficker or her cousin and she did not receive the voodoo ritual, so it was easy for her to escape. She told me that

---

<sup>834</sup> All the information in this paragraph were gathered during the interview with a former victim of trafficking for sexual exploitation, now cultural mediator, Verona, 10<sup>th</sup> June 2017 (called S.)

she was lucky, because if she had a debt to repay to her Madame, she would have not survived. She was without documents, as she came to Italy before the Legislative Decree 286/1998, so it was difficult to obtain a residency permit to social protection at the time. She came to Verona, where she decided to gain some money by selling “stuff” in the streets. In the meanwhile, she married a man she knew from University in Nigeria with which she had a child. She obtained a nine-month residency permit for pregnancy, which was not renewable after the birth. She was helped by an Italian nun, who gave her the money for the rent of her apartment and for the care of the S.’ child. After a while she realised that she could not continue that life, also because her husband left her because she did not have enough money for their family. She met a Nigerian cultural mediator and a lawyer who convinced her to obtain an Italian school certificate and to enrol to a course of cultural mediation and one of medical operator. She became a cultural mediator, she obtained a residency permit for work purposes because she began to work with the road unit to help other Nigerian prostitutes.

When I asked her to describe her job and how she approaches to Nigerian trafficking victim she meets in the streets, she immediately started to tell me that the only thing she asks to women is if they received a voodoo ritual in Nigeria. She knows the entity and the power of such ritual, so the only thing she can do is to tell the girls to call their parents in Nigeria and tell them the truth. In fact, according to Nigerian spirituality, the only person who can break the bond sealed with the voodoo ritual is the mother, considered as a pivotal figure in the society. Mothers can really decide the fate of their children, even if they are adults. If parents know about the ritual their daughters did, the rehabilitation work with them is more difficult and longer.

S. tries every time to convince girls to talk with her, saying that the road unit does not work for the police. To build a relationship of trust is very difficult, she said. Girls are afraid of policemen because they have no documents with them and they perceive what they are doing as wrong. Moreover, they are constantly threatened by criminal networks and their exploiters. However, when the relation of trust is built and consolidated, girls see S. as a sort of mother, they call her “mommy” and they let her help them. She teaches them how to use a condom or lubricants, how to have a safe abortion, how to obtain the health care card for foreigners and carrying them to the hospital if they need a treatment. Sometimes she can convince them to call social workers, denounce their exploiters and begin a new life, even if it is rare and difficult.

I asked S. what should we do to change things in her opinion. She answered that things should be changed in Nigeria. Nigerian people should know that coming in Europe is not a fairy tale as they think and Nigeria should solve the structural problem it has, from corruption, to poverty, to the lack of jobs. Things should be changed also in Italy. Crimes like human trafficking and exploitation should be punished in a more severe way, in order to discourage organised crime to commit serious crimes. S. thinks that also clients should be punished more with sanctions, because they are one of the primary causes of the huge number of women trafficked, because if there is an increasing demand of prostitution, more women will be brought to Italy to please it.

The story of S. has a happy conclusion, and as she said, she was blessed and lucky. Now she is dedicating her life to other girls who are in the streets, regardless if they are exploited or not. She is doing this with sensitivity, dedication, and some difficulties. She is a human *bridge* between Italian culture and Nigerian culture, due to her experiences. Not all women who are forced to sell themselves are lucky like her. Concluding the interview, she told me that many Nigerian women she met and who were in the streets died because they tried to escape breaking the voodoo ritual and we should avoid it as much as possible.

## **5. Conclusive considerations about the case study**

Even if it refers to a little local reality, the present case study shows some interesting remarks to test the degree of efficiency of the protection and assistance system for trafficking victims in a European country, which adapted its legislation to all the international and regional conventions and laws. The N.A.Ve project and its application in the Veneto region and consequently to the municipality of Verona presents strength and weaknesses.

Among strengths, the project adopted the new vision oriented towards human rights and victims, with the purpose of establish a strong collaboration between different actors involved. At a regional level, the project is perfectly in line with the expected results: after six months from the kick-off of the project (the 21<sup>st</sup> of April 2017), they spent the 33 per cent of the time at their disposal, they were able to reach 1,062 contacts up to the expected 3500 (30.3 per cent), they conducted 134 evaluations up to 300 expected (44.6 per cent) and they included in a programme of protection 38 individuals up to 125 expected (30.4 per cent). So,

the results are perfectly coherent.<sup>835</sup> Road units are perfectly coordinated at regional level because they have worked together since a long time. The crisis and evaluation unit, after some initial difficulties due to innovations it faced, started to work efficiently thanks to an improved availability of human resources and a re-organisation of work. Also, cultural mediators are now reorganized, with only one person who deals both with emergencies and social inclusion programmes, favouring continuity for users. The cooperation between the public and the private sectors is becoming stronger, and it is reinforcing the network. There are more funds at disposal, as the project is financed one hundred per cent by the Department for Equal Opportunities, with funds also by municipalities, by the Veneto region, and other NGOs. They are trying to build a common programme of monitoring and common standards of action, to align the territories of the region perfectly.

Among weaknesses, works are not so integrated as expected. The major difficulty is between social workers and private operators on the one hand and law enforcement agents on the other hand.<sup>836</sup> As it is the local police in Verona that controls prostitution in the streets, their jurisdiction is not extended to the whole Verona territory, but it is divided in different areas. Potential victims of trafficking are not properly identified and the information are not passed to the Squadra Mobile Unit or the Carabinieri Unit, which are competent to investigate about human trafficking crimes. Also, the judicial authority needs to have all the information available to issue a residency permit or to approve investigations. This way, information is not complete, slowing the process.

The most critical point in the project is the part of social inclusion and re-integration. The coordination between social workers and police for the issue of residency permits has become critical. Victims who can benefit from the residency permit remain stuck in structures for months waiting for it, also more than the three months established for the reflection period by the law and they cannot begin their educational or training path. This happens frequently if the residency permit is asked through the *canale sociale* because the denunciation by the part of the victim is preferred by the judicial authority.<sup>837</sup> Girls can decide to leave the programme and return in the streets, registering a failure for the system of protection and assistance. Moreover, every municipality gives a different mandate to social workers engaged in social inclusion programmes. In some municipalities, they deal only with trafficking

---

<sup>835</sup> Interview with N.A.Ve Project Coordinator, Venice, 9th of May 2017

<sup>836</sup> Interview with an Italian social worker in the field of inclusion and assistance to victims of human trafficking, Verona, done 31<sup>st</sup> March 2017

<sup>837</sup> *Ibid.*



victims, instead, in other local realities, they deal also with other categories of people, and they should dedicate to trafficking issues only few hours per week. In the case of Verona, there is only one operator, who deals with both trafficking victims and unaccompanied minors. Moreover, as we said Verona is the Veneto city with the biggest presence of prostitution and trafficking victims. So, as resources are distributed equally to all municipalities and there is only one operator in the whole territory, inefficiency is due to a lack of monetary resources for the part of social inclusion and the lack of human resources. The project coordinator defined it as a “situation of *burn out*”.<sup>838</sup>

The number of emergences of potential trafficking victims is very high, so there is a problem in finding structures for those who need to be identified or not as trafficking victims. Neutral structures for the emergence phase (three days for the evaluation) are saturated. Those who are not still identified cannot go to secret and private structures, as they are suspected to still have contacts with criminals. This would put in danger those who were identified as trafficking victims and that are facing trials as witnesses because they denounced their exploiters.<sup>839</sup>

Finally, the coordination between the same operators of different territories is difficult: everyone was used to work alone, apart from the road units that have a long story of collaboration. Changes are difficult for anybody, but the multi-agency work has not been understood fully by everybody. There is still someone working in a one dimension logic, creating a non-homogeneous way of working, even if efforts are huge and improvements with regards to the past were very important. The need for more expertise is urgent, as we will see in the conclusion remarks of the present work, to study the evolutions of the phenomenon.

---

<sup>838</sup> Interview with N.A.Ve Project Coordinator, Venice, 9th of May 2017

<sup>839</sup> *Ibid.*



## CONCLUSIONS

This work presented the existent legislations at the international, European, and domestic level set against human trafficking. Specifically referring to women victims of trafficking for sexual exploitation, our journey began with an overview of the phenomenon, trying to understand the causes and how it works, even if it is not an easy task. To write this work was an ongoing research lower and lower, attempting to draw a framework of an underground phenomenon. For this reason, in this work it has been decided to give voice to the victims, to adopt an approach oriented to them, and to bring light to their situation once they decide to break the chains and bring back control over their lives.

This dissertation analysed the first and quite young definition ever of human trafficking, the differences between the Palermo Protocol and the European legislation, namely the Council of Europe Trafficking Convention and the European Directives. We commented the repressive vs. human rights oriented approaches, as the Palermo Protocol is more committed with the repressive aspect of the fight against trafficking, even if it expresses among its scope and purposes also the protection of victims and the prevention aspect. However, the fight against human trafficking is not Janus in which we must choose one side, namely only to repress it or to take care of victims exclusively. The European experiences are more concerned with mixing the two aspects, giving birth to what we called a *comprehensive approach*. We said that it consists in approaching the problem by providing actions for all aspects of the phenomenon. Even if this work does not provide any description of how investigations and prosecutions work, important consideration was given also to law enforcement aspects, their pivotal role in facilitating the action of prevention and protection of victims. We remarked the Italian legislation, that even before the adoption of all these legal instruments had important provisions for human trafficking victims, constituting a European primacy.

Human rights law about the victims of human trafficking was highlighted. We said that States' have positive obligations regarding the protection of the victims, even if the crime is committed by non-state actors. This was also thanks to the jurisprudence of the European Court of Human Rights of Strasbourg, which posed a milestone in recognising trafficking as slavery under article 4 of the European Convention on Human Rights. The prohibition of trafficking incorporated in the same prohibition of slavery was assimilated by the European Union, as demonstrated by article 5 of the Charter of Fundamental Rights of the European

Union. Moreover, we analysed the pathway that led to define human trafficking as a form of gender violence and discrimination, and how gender-sensitivity entered in the legal instruments. We saw also that many women are also traffickers, inverting the common thought that women are only victims and cannot be criminals. As we were talking about trafficking for sexual exploitation, we recalled the harsh debate about prostitution between the two feminist coalitions of NGOs during the Palermo Protocol negotiations that is still underway today. If we do not have proper human rights provisions in the Palermo Protocol is also because these two coalitions have decided to quarrel about whether prostitution should be condemned only when forced or not, instead of find their common assumptions and lobbying together to convince States to establish more protective measures for trafficked persons. The result is that the Palermo Protocol only has one article about protection and it is not mandatory for States to respect it, but they are suggested to provide legislations to protect people.

Two years after, the Recommended Principles and Guidelines for Human Rights and Human Trafficking occurred to fill the empty space, but they are a soft law instrument, not signed by any State, but they prompted a sensitivity to human rights of trafficking victims in the following laws, as for example in Europe. During a lecture held at the Venice International University in San Servolo Island (Venice) by the UN Advisor for Human Trafficking of the OHCHR Youla Haddadin, I asked her why after seventeen years we still have no international convention about the fight against human trafficking that takes into account human rights in its provisions. She answered that States pursue their interests in negotiating international treaties and that it is easier at regional level to implement some kind of provisions as it is difficult to reach an agreement internationally.<sup>840</sup> That is proved by the CoE Trafficking Convention in the European experience, for example. Sex trafficking involves many issues: not only is a matter of criminal law, but also it includes immigration laws and border controls. It is a matter of both home and foreign affairs for States, so they need to be careful on what they decide. But, sometimes we forgot about it, it is also a matter of human beings. This is why we should look at the problem in a broader way, implementing laws that cover all these different aspects.

This work provided also a comparative analysis of provisions for trafficking victims

---

<sup>840</sup> Lecture by UN Advisor for Human Trafficking for the OHCHR, Youla Haddadin, *A Human Rights Based Approach to addressing Trafficking*, 15<sup>th</sup> May 2017, Venice International University, San Servolo Island, Venice (Italy)

in detail, in international, European and Italian legislations. It has been observed that as the international law remains vague and general, the regional and domestic laws are more specific, giving more details about what to do when it comes to deal with the protection and assistance of a trafficked person who would like to exit from the exploitative world linked to trafficking. Nevertheless, it is quite normal in international law to remain general, to act as an umbrella for the lower levels of legislations.

However, laws must be applied to the everyday reality. Laws of every level are at disposal of each one of us and cannot remain only on a mere piece of paper. I asked myself if this comprehensive approach against human trafficking really works, how these impersonal subjects listed in laws, from social workers, operators, NGOs, law enforcement agents and so on work, if their actions were similar to what is written on the paper or not. For this reason, I decided to exit from a pure academic analysis, to close books for a moment and meet people who deals everyday with this problem. I wanted to see their faces and listen to their voices answering my questions. The result was stunning.

I asked them the same question each interview: is this comprehensive approach, this network, really working? I expected to receive the same answer, the same yes or no. Instead, each one of them gave me a different answer. I felt hope in the words of some, hope to improve the efforts and to share the burden all together, I felt also rationality, and in some way, I felt frustration and disappointment. They answered just in part to my question. I spoke to operators of a little local reality, even if it is historically a city of both transit and destination of sex trafficking, but the result is exemplifying.

After this analysis, the conclusion is that the legislative apparatus is almost complete and clear. In Europe (and consequently, in Italy) we have a proper legislation, that uses the comprehensive approach aforementioned and promotes a close collaboration of the wide range of operators and actors involved in the system, both public and private. That should not impress much, as Europe in one of the most affected areas in the world by trafficking and it adapted its actions specifically to address the problem better. However, when looking at the reality of things, the situation is slightly different. Experiences are made by people who work to implement the law and sometimes their way of dealing with the problem simply detach from theory. The reasons are numerous.

As we said trafficking in human beings is a complex and always changing phenomenon: every operator in the system, from police to social workers, is not able to adapt to unexpected changes and patterns. They are trying to keep control on the evolutions

implementing different monitoring systems, but they do not have so much time at their disposal to dedicate to it. They must deal first with those victims that need protection. The lack of human resources and expertise is another problem to face and to solve: the system needs more experts in the field, people that know properly the law and support operators and law enforcement agents in their actions, people that constantly study the phenomenon, being a sort of “background” for operators who need to know every single change in patterns, habits, and phenomena. For example, N.A.Ve Project in Veneto has two Universities among its partners and that is a good starting point.

Prevention strategies should be improved. A suggestion I had both by the social worker I interviewed and the former trafficking victim, is to work with communities of origin. Things should be changed upstream first and, therefore, also downstream. Entire villages in Nigeria are now without young women because they all left to Europe to find a possibility.<sup>841</sup> The worst thing to hear during my interviews is that hopes and dreams are exploited for business. Maybe, one of the main purposes of the protection and assistance to victims of human trafficking is not paternalistic as to redeem poor and lost souls, but to give that possibility to people who fell in a perverse and terrible trap. Trafficking is fostered by causes in the countries of origin which act as push factors, and by pull factors in the countries of destination. All of these must be addressed, as in the words of former UN Secretary General Ban Ki Moon in a speech during the 2016 World Day Against Trafficking in Persons:

Human traffickers prey on the most desperate and vulnerable. To end this inhumane practice, we must do more to shield migrants and refugees -- and particularly young people, women and children -- from those who would exploit their yearnings for a better, safer and more dignified future. We must govern migration in a safe and rights-based way, create sufficient and accessible pathways for the entry of migrants and refugees, and ultimately tackle the root causes of the conflicts -- extreme poverty, environmental degradation and other crises which force people across borders, seas and deserts.<sup>842</sup>

Poverty, unemployment, corruption, gender discrimination should be tackled through the cooperation with communities in the countries of origin and those in the countries of

---

<sup>841</sup> Interview with an Italian social worker in the field of inclusion and assistance to victims of human trafficking, Verona, done 31st March 2017

<sup>842</sup> Former Secretary General Ban Ki Moon statement on United Nations World Day Against Trafficking in Persons, 30<sup>th</sup> July 2016, available at <https://www.unodc.org/endht/en/statements.html> , consulted 12nd June 2017

destination. Communities of migrants of a particular country of origin could aware their fellow people willing to leave their homeland about risks of being trafficked, or smuggled, or exploited. They should discourage people to entrust traffickers to migrate, incurring debts they must pay through the exploitation. Here, the actions of the civil society and of grassroots movements are crucial and the testimony of former trafficking victims could be pivotal, preventing them to be stigmatised or discriminated if they decide to come back.

As we said in the introduction of the present work, we can consider trafficking as an economic model where demand and supply meet. As the supply causes are difficult to discourage because they are structural, the demand become the major target of the legislations analysed as it is more easy to reach. However, in the countries of destination, the demand of sex trafficking should not be addressed only with sanctions. The inhibition of demand must come from every shade of grey. Clients must be informed and sensitised about the fact that many prostitutes they could find in the streets may have been trafficked and that their need of sex acts fosters one of the worst illicit businesses in the world. Their money fill the pockets and the bank accounts of an informal and illicit economy based on the lower consideration of a human being, regardless of the victim beings a man, a woman or a child. Clients should be aware that many women trafficked are minors. They must be aware that they are not buying a commodity or a service, but a person with her history, dreams and hopes for the future. For the majority, clients are not able to distinguish between a forced prostitute and a sex worker. They have the duty to do it and to act consequently. The client should be well informed and must be responsible of his actions and consequences because laws admit no ignorance and, most importantly, *dura lex, sed lex*.

Police cooperation between States of origin and those of destination also at international bilateral agreements level should be crucial. One of the difficulties law enforcement agents find in their job is to meet the collaboration of some States: I heard in the words of the policeman I interviewed, a great level of frustration. He said that many countries do not answer to Italian law enforcement reports about nationals caught and identified. They also do not provide information about traffickers. He said that within the European Union things changed with the new European Arrest Warrants (EAW), with which they were able to caught many traffickers from Eastern Europe, proving that a collaboration between law enforcement agents and diplomacy is efficient. However, some countries are not implementing proper legislations, so it is difficult even to carry on the repressive aspect of the fight against trafficking in human beings.

In addition, preventive activities should be intensified in the places of arrival: ports, airports, reception centres etc. We need people with expertise in the field of legal advisory, who can inform potential trafficked victims about their rights or risks they can find. These figures are provided clearly by the law; the problem is to put them in practice because of the lack of time and personnel. The lack of a firm and crystallised way to identify a victim of human trafficking makes things even more difficult. The first identification should be done immediately, like also the building of the relationship of trust between operators and potential victims. An efficient way to tackle trafficking and capture traffickers is to break the bond of fear between them and victims, giving the latter protection because they are human beings and offering them a way out. This could help also to increase the number of denunciations. At the end of last year, GRETA urgently called Italy to implement binding procedures to identify victims of trafficking among migrants and asylum-seekers in reception centres of any kind, involving also specialised NGOs, training officials and all the staff in a multi-agency effort.<sup>843</sup> The report also remarked to Italy the fact that forced returns of trafficking victims should be considered as a last resort, favouring assisted voluntary return only if the trafficking victim wants that guarantees the victim's human rights, dignity and safety.<sup>844</sup>

Another problem is the allocation of resources for the protection and assistance strategies. There are areas which are more affected by the presence of trafficked victims than others. Sometimes, these areas lack of specialised structures, such as housing facilities, training internships, courses and all that trafficking victims have the right to. More collaboration between central institutions and local realities is needed, even if, to quote the example of Italy, the new National Anti-Trafficking Plan aims at unifying all efforts under the constant monitoring of the central Government. Central authorities should be always present in checking the implementation of the National Plan, collaborating with local entities and the private sector.

Finally, there is only one thing that could help to fix all these aforementioned problems and support an almost perfect legislative system. Each one of us should be informed and aware of what trafficking in human beings really is. What we have to change is our minds. It seems like a utopian assumption, but we have to consider the fact that the problem of trafficking is real. Real human lives cross deserts, seas, mountains and borders just to be

---

<sup>843</sup> Group of Experts on Action against Trafficking in Human Beings, *Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, Jan. 2017, Council of Europe, Strasbourg, p. 19

<sup>844</sup> *Ibid.*, at p. 21



exploited in another country, real children are sexually exploited and abused in brothels or in the streets, real women are forced to sell their bodies to repay a debt incurred with traffickers, with the only fault to have looked for a better possibility in their lives. We cannot just remain sit and silent, we must know what is happening and what we have in our hands to fight against it. More information campaigns should be done in schools, in Universities, and for the society as a whole. To raise awareness means to create an informed community of people.

Moreover, despite the implementation in laws of the multi-agency cooperation, different actors involved should share experiences more. No one has to work alone, but there is the need to share all the efforts in a mutual collaboration, without put obstacles to the work of others. There are still problems between those who work in the social relief aspect of the fight against trafficking and the repressive part of the game: the burden of responsibility is on the shoulders of all, most operators should change their vision and start to collaborate. I had the chance to meet people who really put passion and dedication in their work, and recognise the entity of the problem. I met open-minded people, but unfortunately not all involved in the system are like this. They are all on the same boat, and all of them must row towards the same purpose.

So, with the advent of the United Nations internationally, the Council of Europe and the European Union regionally, we have finally the chance to work towards a common direction. Law and practice should meet and influence one another, they should not be two distinguished and distant pillars of our lives, even when it comes to trafficking in human beings. For this purpose, the example of the judgment *Rantsev v. Cyprus and Russia* of the European Court of Human Rights described in this work is illustrative. The individual who applied to the Court to obtain justice for his daughter who was trafficked for sexual exploitation purposes was a father. A father that did not have justice in its domestic judicial system and tried the application to the Strasbourg Court as last resort. He was an individual coming from real life that used the existent law to enforce his daughter's rights and the results he obtained were incredible. He let the Court call two States to the stand and he won for two reasons: States were recognised responsible for their omissions and also, the Court decided to give a turning point to the interpretation of a human rights convention which did not have any provision against trafficking. Studying the judgment for the purpose of this work, I imagined him as David against Goliath, that even if he lost his daughter in one of the worst ways, he decided to fight. And maybe, every legal expert in the field and trafficking in human beings' scholar should thank with Mr Rantsev for what he did.

It is true that States have the first responsibility to protect human rights, prevent acts that could threaten them and investigate properly when these violations occur, but as part of the human family we are all responsible, even in the context of trafficking. We have to know, we have to understand, we have to share and we have to be informed, we can contribute also working with the civil society, who is highly committed in the system against human trafficking. All of us. In my opinion, this is the true meaning of comprehensive approach. Without a true commitment by the human society as a whole, that can act pushing States to do more, there can be no solution, especially when the problem is so underground and sneaky. There are still a lot of work to do, of course. It is difficult to change minds of every single person on Earth. However, we are going towards the right direction, I personally have much hope in writing this work. The legislations I analysed have the best intentions. Though, I recognise it is difficult, time consuming and failures are always around the corner. But, when one takes a step, it must continue in that direction, always improving the legal instruments we created to deal with the problem, especially in the area of protection and assistance of trafficking victims who deserve the better life they were looking for, before being trafficked as commodities by people that do not know what humanity really is.

*Let us take this opportunity to give hope to trafficking victims, pledge to do our part and help end this terrible crime. The first step to taking action is taking this crime seriously. [...] I encourage everyone to educate themselves and help others become aware of the problem.*<sup>845</sup>

---

<sup>845</sup> United Nations Office on Drugs and Crime Executive Director Yury Fedotov statement on United Nations World Day against Trafficking in Persons, 30th July 2015, available at <https://www.unodc.org/endht/en/statements.html> consulted 13rd June 2017.

## BIBLIOGRAPHY

### BOOKS AND ARTICLES

- Annoni, A., *La tratta di donne e bambine nella recente giurisprudenza della Corte europea dei diritti dell'uomo*, 2011, *Deportate, esuli, profughe* n. 16, pp. 87-97
- Aronowitz, A., *Human Trafficking, Human Misery: the global trade in human beings*, 2009, Greenwood Publishing Group – Social Sciences, Westport (USA)
- Becucci, S. and Carchedi, F., *Mafie Straniere in Italia - come operano, come si contrastano*, 2016, Franco Angeli, Milano
- Bernardotti, A., Carchedi, F., and Ferone, B., *Schiavitù emergenti: la tratta e lo sfruttamento delle donne nigeriane sul litorale Domitio*, 2005, Ediesse, Roma
- Bianchi, B., *Nina Boyle, Che cos'è la schiavitù? Un appello alle donne (1932)*, 2017, *Deportate, esuli, profughe* n. 34/2017 [forthcoming].
- Burke, M. C., *Human Trafficking - Interdisciplinary Perspectives*, 2013, Routledge, New York
- Cameron, S. and Newman, E., *Trafficking in humans: social, cultural and political dimensions*, 2007, United Nations University Press
- Carreau, D., and Marrella, F., *Diritto Internazionale*, 2016, Giuffrè Editore, Milano
- Cassese, A., *International Law - Second Edition*, 2005, Oxford University Press, New York
- Cassese, A., *Diritto Internazionale*, 2006, Il Mulino Editore, Bologna
- Ciconte, E. and West Project, *The trafficking flows and routes of Eastern Europe*, 2005, Morandi, Fusignano (RA)
- Conforti, B., *Diritto Internazionale – X Edizione*, 2014, Editoriale scientifica, Napoli
- De Vido, S., *States' Due Diligence Obligations to Protect Women from Violence: a European Perspective in Light of the 2011 CoE Istanbul Convention*, 2014, *European Yearbook on Human Rights*
- De Vido, S., *Donne, violenza e diritto internazionale*, 2016, Mimemis Edizioni S.r.l., Milano
- De Vido, S., *Protecting Yazidi Cultural Heritage Through Women: An International Law Analysis*, 2017, *Journal of Cultural Heritage* [forthcoming].
- Ditmore, M., *The negotiations on the UN Protocol on Trafficking in Persons*, 2003, *Nemesis*, n° 4
- Eide, Asbjorn, *The Universal Declaration of Human Rights: a commentary*, 1992,

Scandinavian University Press, Oslo

Engle, L. E., *The world in motion: short essays on migration and gender*, 2004, International Organization for Migration, pp. 53-69

European Commission, *The EU rights of victims of trafficking in human beings*, 2013, Publications Office of the European Union, Luxembourg

Focarelli, C., *La Persona Umana nel Diritto Internazionale*, 2013, Il Mulino, Bologna pp. 149-153

Gallagher, A.T., *Human Rights and the new UN Protocols on Trafficking and Migrant Smuggling: a Preliminary Analysis*, in *Human Rights Quarterly* n° 23 pp. 975-1004, 2001, Johns Hopkins University Press, electronic copy available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1409831](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1409831)

Gallagher, A.T., *The International Law of Human Trafficking*, 2010, Cambridge University Press, New York

Gallagher, A. T., *Two Cheers for the Trafficking Protocol*, 2015, *Anti-Trafficking Review*, Issue 4, pp. 14-32

Geiger, R., Khan, D.E., Kotzur, M., *European Union treaties: a commentary*, 2015, C.H. BECK HART, Munchen.

Gomez Isa, F., De Feyter, K., *International Protection of Human Rights: Achievements and challenges*, 2006, University of Deusto Bilbao

Hammond, G.C. & McGlone, *Entry, Progression, Exit, and Service Provision for Survivors of Sex Trafficking: Implications for Effective Interventions*, *Global Social Welfare*, Volume 1, Issue 4, pp. 157-168

Harris, O'Boyle and Warbrick, *Law of the European Convention on Human Rights*, 2014, Oxford University Press, Oxford

Hathaway, J.C., *The Human Rights Quagmire of Human Trafficking*, *Va. J. Int'l L.* 49, n. 1, 2008, 1-59

Hughes, D. M., *Trafficking for Sexual Exploitation: The case of the Russian Federation*, IOM Migration Research Series n° 7, 2002, International Organization for Migration

Jacobs, White and Ovey, *The European Convention on Human Rights - fifth edition*, 2010, Oxford University Press, Oxford

Jacobs, White, Ovey, *The European Convention on Human Rights: sixth edition*, 2014, Oxford University Press, Oxford

Jansson Borg, D., *Modern Slavery: a comparative study of the definition of trafficking in persons*, 2015, Leiden: Brill, Boston.

Kara, S., *Sex Trafficking - inside the business of modern slavery*, 2009, Columbia University Press, New York

Kaye, M., *The migration-trafficking nexus: combating trafficking through the protection of migrants' human rights*, 2003, Anti-Slavery International, London

Kelly, E., *Journey of Jeopardy: a review of research of trafficking in women and children in Europe*, 2002, International Organisation for Migration, Geneva

Kelly, L., *Violence Against Women and Children: vision, innovation and professionalism in policing*, 2003, Council of Europe Publishing, Strasbourg

McAdam, M., *Who's who at the border? A rights-based approach to identifying human trafficking at international borders*, 2013, Anti-Trafficking Review, Issue 2, pp. 33-49

Monzini, P., *Il Mercato delle Donne*, 2002, Donzelli Editore, Roma.

Mowbray, A., *Cases and materials and commentary on the European Convention on Human Rights*, 2012, Oxford University Press, Oxford, pp. 232-244

Obokata, T., *Trafficking of human beings from a human rights perspective: towards a holistic approach*, 2006, Martinus Nijhoff Publishers, Boston

O'Toole, L., Schiffman, J.R., Kiter Edwards, M.L., *Gender Violence – Interdisciplinary Perspectives (2<sup>nd</sup> Edition)*, 2007, New York University Press, New York.

Peers et al, *The European Charter of Fundamental Rights: a commentary*, 2014, Oxford

Piotrowicz, R., *The UNHCR's Guidelines on Human Trafficking*, 2008, 20 International Journal of Refugee Law 242, pp. 242-252, Oxford University Press

Planitzer, J., *GRETA's First Years of Work: Review of the monitoring of implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, 2012, issued in Anti Trafficking Review, Issue 1 June 2012

Quirck, J., *Modern Slavery*, contained in Routledge History of Slavery, edited by Heuman, G. and Burnard, T., 2011, Routledge, Abingdon (UK)

Raymon J. G., *Guide to the New UN Trafficking Protocol. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime*, 2001, Coalition Against Trafficking in Women, North Amherst, available at <http://www.catwinternational.org/Content/Images/Article/83/attachment.pdf>

Reale, E.P., *Lo Statuto della Corte Penale Internazionale*, 1999, CEDAM, Padova.

Saul, B., Kinley, D., Mowbray, J., *The international covenant on economic, social and cultural rights: commentary, cases and materials*, 2014, Oxford University Press, Oxford

Scarpa, S., *Trafficking in Human Beings: Modern Slavery*, 2008, Oxford University Press

Shelton, D. L., *Advanced Introduction to International Human Rights Law*, 2014, Edward Elgar Publishing Limited, Cheltenham (UK)

Stoyanova, V., *Complementary Protection for Victims of Human Trafficking under the European Convention on Human Rights*, 2011, issued in Goettingen Journal of International Law 3 (2011) 2, pp. 777-817

Stoyanova, V., *L.E. v. Greece: Human Trafficking and the Scope of States' Positive Obligations under the ECHR*, 3 European Human Rights Law Review (2016), 290-230

Symonides, J., *Human Rights Concepts and Standards*, 2000, UNESCO Publishing

Tesaurò, G., *Diritto dell'Unione Europea*, Sesta Edizione, 2012, CEDAM, Padova

UNICEF, *Trafficking in human beings, especially women and children, in Africa*, 2003, Innocenti Insight – UNICEF, Florence

## **INTERNATIONAL LAW TREATIES AND JURISPRUDENCE**

International Agreement for the Suppression of the White Slave Traffic, 1 LNTS 83, done May 1904, entered into force July 1905, revised Dec. 1948 (30 UNTS 23), University of Minnesota – Human Rights Library website <http://hrlibrary.umn.edu/instree/whiteslavetraffic1904.html>

International Convention for the Suppression of White Slave Traffic, 9 LNTS 278, done May 1910, entered into force June 1912, amended by Protocol approved by the General Assembly on Dec. 1948, 30 UNTS 23, University of Minnesota – Human Rights Library website <http://hrlibrary.umn.edu/instree/whiteslavetraffic1910.html>

League Of Nations, International Convention for the Suppression of Traffic in Women and Children, Sept. 1921, Geneva (9 LNTS 415) and amended by the Protocol signed at Lake Success, Nov. 1947 (53 UNTS 13), available at the European Commission website [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/1921\\_international\\_convention\\_en\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/1921_international_convention_en_1.pdf)

Convention to Suppress the Slave Trade and Slavery, 60 LNTS 254, done Sept., 25th, 1926, entered into force Mar., 9th, 1927, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-3&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-3&chapter=18&lang=en)

International Labour Organisation (ILO), *Convention concerning Forced or Compulsory Labour* n° 29, done June, 28<sup>th</sup>, 1930, entered into force May, 1<sup>st</sup>, 1932, 39 UNTS 55, at art. 2, available at [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_346435.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_346435.pdf)

League of Nations, International Convention for the Suppression of Traffic in Women of Full Age, Oct. 1933, (150 UNTS 431), amended by the Protocol Signed at Lake Success, Nov. 1947 (53 UNTS 13), European Commission website [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/1933\\_international\\_convention\\_en\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/1933_international_convention_en_1.pdf)

United Nations, *Charter of the United Nations and Statute of the International Court of Justice*, done June, 26<sup>th</sup>, 1945, entered into force Oct., 24<sup>th</sup>, 1945, 1 UNTS XVI, available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 UNTS 271, done Dec. 1949, entered into force July, 1951 (1949 Trafficking Convention), UN Human Rights Office of the High Commissioner website <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>

Universal Declaration of Human Rights, adopted by UNGA Res. 217A (III), UN Doc. A/810 at 71, Dec., 10<sup>th</sup>, 1948

Convention Relating to the Status of Refugees, 189 UNTS 137, July, 28<sup>th</sup>, 1951, entered into force Apr., 22<sup>nd</sup>, 1954 as amended by the Protocol Relating to the Status of Refugees, 606 UNTS 267, done Jan. 31<sup>st</sup>, 1967, entered into force Oct. 4<sup>th</sup>, 1967, available at <http://www.unhcr.org/3b66c2aa10>

United Nations Supplementary Convention on the Abolition of Slavery, the Slave trade, and institutions and practices similar to slavery, 226 UNTS 3, adopted by the United Nations Conference of Plenipotentiaries with Resolution 608(XXI) of the Economic and Social Council in April, 1956, done Sept. 7<sup>th</sup>, 1956, entered into force in accordance with article 13 on April, 30<sup>th</sup>, 1957 available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>

International Covenant on Civil and Political Rights, 999, UNTS 171, done Dec., 16<sup>th</sup>, 1966, entered into force Mar., 3<sup>rd</sup>, 1976, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en)

International Covenant on Economic, social and Cultural Rights, 993 UNTS 3, done Dec., 16th, 1966, entered into force Jan., 3rd, 1976, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en)

United Nations, *Vienna Convention on the Law of Treaties*, 1155 UNTS 331, done May, 23rd, 1969, entered into force Jan., 27th, 1980, available at <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, done Dec., 21<sup>st</sup>, 1965, entered into force Jan, 4<sup>th</sup>, 1969, 660 UNTS 195, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), available at <http://www.refworld.org/docid/3ae6b3940.html>

Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13, Dec., 1979, entered into force Sept., 1981, United Nations website <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro>

United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, done Dec., 10<sup>th</sup>, 1984, entered into force June, 26<sup>th</sup>, 1987, 1465 UNTS 85, available at <http://www.refworld.org/docid/3ae6b3a94.html>

Velasquez Rodriguez Case, Judgment of July 29th, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), available at [http://hrlibrary.umn.edu/iachr/b\\_11\\_12d.htm](http://hrlibrary.umn.edu/iachr/b_11_12d.htm)

Convention on the Rights of the Child, 1577 UNTS 3, done Nov. 20, 1989, entered into force Sept. 2, 1990 (CRC) available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, GA Res. 54/263, done May 25, 2000, entered into force Jan. 18, 2002, available at <http://www.ohchr.org/Documents/ProfessionalInterest/crc-sale.pdf>

United Nations Convention against Transnational Organized Crime and the Protocols thereto, 2225 UNTS 209, Nov. 2000, entered into force Sept., 2003 (Organized Crime Convention), New York United Nations Office on Drugs and Crime website <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>



Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Crime, Nov., 2000, GA Res. 55/25, Annex II UN GAOR, 55<sup>th</sup> Sess., entered into force Dec. 2003

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, done Nov. 15, 2000, GA Res. 55/25, Annex III, UNGAOR, 55th Session, Supp. No 49, at 62, UN Doc. A/45/49 (Vol.I) (2001), entered into force Jan. 28, 2004

Protocol Against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition supplementing the United Nations Convention Against Transnational Organized Crime, GA Res. 255, Nov. 15, 2000, UN Doc. A/RES/55/255 (2001), done May 31, 2001, entered into force July 3, 2005.

International Law Commission (ILC), Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, UN GAOR, 56th Session, Supp. N. 10, at 43, UN Doc. A/56/10, available at [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)

Rome Statute of the International Criminal Court, done July, 17th, 1998, entered into force July, 1st, 2002, available at [https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtid=sg\\_no=XVIII-10&chapter=18&lang=en](https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtid=sg_no=XVIII-10&chapter=18&lang=en)

## **INTERNATIONAL INTERPRETATIVE MATERIAL**

United Nations Office on Drugs and Crime (UNODC), *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, 2006, New York, United Nations Office on Drugs and Crime website [https://www.unodc.org/pdf/ctoccop\\_2006/04-60074\\_ebook-e.pdf](https://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf)

United Nations Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking - Commentary*, 2010, United Nations Publications, Geneva

United Nations Office on Drugs and Crime, *Model Law Against Trafficking in Persons*, 2009, United Nations Publications, New York, UNODC website [https://www.unodc.org/documents/human-trafficking/Model\\_Law\\_against\\_TIP.pdf](https://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf)

United Nations Office on Drugs and Crime, *Legislative Guide For The Implementation Of The Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime*, 2005, United Nations Publications, New York

United Nations Office on Drugs and Crime, *Issue Paper: Abuse of a Position of Vulnerability and other "Means" Within the Definition of Trafficking in Persons*, 2012, United Nations Publications, New York

United Nations Office on Drugs and Crime, *Comprehensive Strategy to Combat Trafficking in Persons and Smuggling of Migrants*, 2012, UNODC, available at [http://www.unodc.org/documents/human-trafficking/UNODC Strategy on Human Trafficking and Migrant Smuggling.pdf](http://www.unodc.org/documents/human-trafficking/UNODC_Strategy_on_Human_Trafficking_and_Migrant_Smuggling.pdf)

## **INTERNATIONAL SOFT LAW ACTS**

UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Nov. 29th, 1985, UN Doc. A/40/53, available at [http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.29\\_declaration%20victims%20crime%20and%20abuse%20of%20power.pdf](http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.29_declaration%20victims%20crime%20and%20abuse%20of%20power.pdf)

G.A. Res. 46/152, *Creation of an effective United Nations crime prevention and criminal justice programme*, UNGAOR, 46th Session, 18th Dec. 1991, available at <http://www.un.org/documents/ga/res/46/a46r152.htm>

UN Committee on the Elimination of Discrimination against Women, *General Recommendation n° 19: Violence against Women – art.6*, 1992, United Nations website, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

UN General Assembly, *Declaration on Violence Against Women*, 1993, A/RES/48/104, 85<sup>th</sup> Plenary Meeting, United Nations website, <http://www.un.org/documents/ga/res/48/a48r104.htm>

G.A. Res. 51/120, *Question of the elaboration of an international convention against organized transnational crime*, UNGAOR 51st Session, 7th of March 1997, available at <http://www.un.org/documents/ga/res/51/ares51-120.htm>

G.A. Res. 53/111, *Transnational Organized Crime*, UNGAOR, 53rd Session, 85th plen. mtg., U.N. Doc. A/RES/53/111 (1998) available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/53/111](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/53/111)

Res. 55/25, *United Nations Convention Against Transnational Organized Crime*, UNGAOR 55th Session, 2000, UN Doc A/RES/55/25 available at [https://www.unodc.org/pdf/crime/a\\_res\\_55/res5525e.pdf](https://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf)

Office of The High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

United Nations Office of the High Commissioner for Refugees (UNHCR), *Agenda for Protection*, UN Doc. A/AC96/965/ Add. 1, June, 26th, 2002, available at <http://www.unhcr.org/protect/PROTECTION/3e637b194.pdf>

United Nations Office of the High Commissioner for Refugees (UNHCR), *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, May, 7th, 2002, HCR/GIP/02/01

UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Repatriation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Dec. 16th, 2005, UN Doc. A/RES/60/147

United Nations Office of the High Commissioner for Refugees (UNHCR), *Guidelines on International Protection regarding the application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, Apr., 7<sup>th</sup>, 2006, HCR/GIP/06/07

International Labour Organization and the European Commission, *Operational indicators of trafficking in human beings*, 2009, available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_105023.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf)

UN General Assembly, *Global Plan of Action to Combat Trafficking in Persons*, Aug., 12nd, 2010, UN Doc. A/RES/64/293, available at [https://www.unodc.org/documents/human-trafficking/United\\_Nations\\_Global\\_Plan\\_of\\_Action\\_to\\_Combat\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/United_Nations_Global_Plan_of_Action_to_Combat_Trafficking_in_Persons.pdf)

## **SPECIAL RAPPORTEURS**

United Nations Office of the High Commissioner for Human Rights (OHCHR), Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on violence against women, its causes and consequences, on trafficking in women, women's migration and violence against women, UN Doc. E/CN.4/2000/68 par. 22 submitted to the Economic and Social Council of the United Nations on Feb. 29, 2000. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/113/34/PDF/G0011334.pdf?OpenElement>

United Nations Office of the High Commissioner for Human Rights (OHCHR), *Decision 2004/110, Special Rapporteur on trafficking in persons, especially women and children*, 55th meeting, Apr., 19th, 2004

Economic and Social Council, *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children*, Sigma Huda, Feb., 20th, 2006, 62th Session, E/CN.4/2006/62, par. 42 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/109/64/PDF/G0610964.pdf?OpenElement>

Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertük, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, Jan., 20th, 2006, E/CN.4/2006/61, para. 29 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement>

Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, May, 14th, 2013, A/HRC/23/49, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A\\_HRC\\_23\\_49\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A_HRC_23_49_English.pdf)

United Nations Office of the High Commissioner for Human Rights, OHCHR, *Annual Report of the Special Rapporteur on trafficking in persons, especially women and children Ms Maria Grazia Giammarinaro: due diligence and trafficking in persons*, 2015, 70th Session, A/70/260, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/260](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/260)

## **EUROPEAN LAW**

European Union, Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA, OJL203/1, Aug 1, 2002. Eur Lex website <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0629&qid=1486727803158&from=IT>

Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, 2011/36/EU, 5th April 2011, OJ L 101/1, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0036>

Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, 29th of April 2004, 2004/81/EC, OJ L 261/19, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>

Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, 2012/29/EU, 14th November 2012, OJ L 315/57, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>  
Council Directive 2004/80/EC relating to compensation to crime victims, of 29th of April 2004, OJ L 261/15 available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0015:0018:en:PDF>

Directive of the European Parliament and the Council 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, Dec., 24th, 2008, OJ L 348/98, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

Decision 575/2007/EC of the European Parliament and of the Council establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme ‘Solidarity and Management of Migration Flows’, May, 23rd, 2007, entered into force June, 6th, 2007, OJ L 144/45, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007D0575&from=EN>

Regulation No 516/2014 of the European Parliament and of the Council establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC, Apr., 16th, 2014, entered into force May, 20th, 2014, OJ L 150/168, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0516&from=EN>

Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, Dec., 13rd, 2011, entered into force Dec., 12nd, 2011, OJ L 337/9, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>

Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection, of June, 26th, 2013, entered into force June, 29th, 2013, OJ L180/96, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>

Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, June, 26th, 2013, entered into force June, 29th, 2013, OJ L 180/60, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en>

European Commission, The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, 2012, Brussels, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0286&from=IT>

## **EUROPEAN UNION TREATIES**

Single European Act - SEA, done Feb. 28th, 1986, entered into force July, 1st, 1987, OJ L 169/1

Convention implementing the Schengen Agreement of 14th of June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, done 1990, entered into force March, 26th, 1995, OJ L 239/19, available at <https://www.consilium.europa.eu/uedocs/cmsUpload/SCH.ACQUIS-EN.pdf>

The European Charter of Fundamental Rights proclaimed by the European Commission, the European Parliament, and the Council of the European Union in Dec., 18th, 2000, OJ C 364/1, entered into force Dec. 1, 2009, with the Treaty of Lisbon.

Treaty establishing the European Union (Maastricht Treaty), done Feb., 7th, 1992, entered into force Nov. 1st, 1993, OJ L 224/1.

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts (Treaty of Amsterdam), done Oct., 2nd, 1997, entered into force May, 1st, 1999, OJ C 340/1

## **EU SOFT LAW AND RECOMMENDATIONS**

Council Joint Action of the 24th of February 1997 to combat trafficking in human beings and sexual exploitation of children, 97/154/JHA, OJ L 063/2, March, 4th, 1997, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31997F0154>

Council of the European Union, The Stockholm Programme – An open and secure Europe serving and protecting the citizens, 17024/09, Dec., 2nd, 2009, Brussels, available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the\\_stockholm\\_programme\\_-\\_an\\_open\\_and\\_secure\\_europe\\_en\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_stockholm_programme_-_an_open_and_secure_europe_en_1.pdf)

European Commission (DG Home Affairs), Guideline for the identification of victims of trafficking in human beings, 2013, Publication Office of the European Union, Luxembourg, available at [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/thb-victims-identification/thb\\_identification\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/thb-victims-identification/thb_identification_en.pdf)



European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality, (2013/2103(INI))

European Parliament resolution of 5 July 2016 on the fight against trafficking in human beings in the EU's external relations (2015/2340(INI))

## **COUNCIL OF EUROPE AND EUROPEAN COURT OF HUMAN RIGHTS**

Council of Europe – European Court of Human Rights, European Convention on Human Rights as amended by Protocols Nos. 11 and 14, supplemented by Protocols 1, 4, 6, 7, 12 and 13, 1950, Rome. Council of Europe Website  
[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

Council of Europe Convention on Action Against Trafficking in Human Beings: Warsaw, 2005, Council of Europe Publishing, Strasbourg.

Council of Europe, *Explanatory Report on the Convention on Action against Trafficking in Human Beings*, ETS 197, 16.V.2005, available at  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3812>

Council of Europe, Convention on preventing and combating violence against women and domestic violence, ETS 210, done May, 11st, 2011, entered into force Aug., 1st, 2014. Italy is part of the Convention, from the 1st of August 2014. Information available at  
[http://www.coe.int/en/web/conventions/full-list/conventions/treaty/210/signatures?p\\_auth=bwUwjIg9](http://www.coe.int/en/web/conventions/full-list/conventions/treaty/210/signatures?p_auth=bwUwjIg9)

Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, ETS 210, para. 310, available at  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>

Council of Europe, Committee of Ministers, *Recommendation No R (91) 11 of the Committee of Ministers to Member States concerning sexual exploitation, pornography, and prostitution of, and trafficking in, children and young adults*, (9th of September 1991, Rec (91)11E, available at [http://www.coe.int/t/dghl/standardsetting/victims/recR\\_91\\_11e.pdf](http://www.coe.int/t/dghl/standardsetting/victims/recR_91_11e.pdf)

Council of Europe, *Final Declaration and Action Plan*, adopted Oct., 11, 1997 by the Second Summit of Heads of State and Government, Strasbourg, CM(97)169, available at  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063dced>

Council of Europe Steering Committee for Equality between Women and Men, *Gender Mainstreaming: conceptual framework, methodology and presentation of good practices*, 1998, Strasbourg, available at <http://www.unhcr.org/3c160b06a.pdf>

Council of Europe, Committee of Ministers, *Recommendation (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation*, adopted the 9th of May 2000. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804fda79&format=native>

Council of Europe, Committee of Ministers, *Recommendation (2001) 16 of the Committee of Ministers to member states on the protection of children against sexual exploitation*, adopted on the 31st of October 2001. Available at [http://www.coe.int/t/dghl/standardsetting/victims/rec\\_2001\\_16.pdf](http://www.coe.int/t/dghl/standardsetting/victims/rec_2001_16.pdf)

Council of Europe (Parliamentary Assembly) ‘*Recommendation No 1325 (1997) on Traffic in Women and Forced Prostitution in Council of Europe Member States*’ (23 April 1997) available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15359&lang=enconsulted>

Council of Europe (Parliamentary Assembly) ‘*Recommendation No 1545 (2002) on a Campaign against trafficking in women*’ (21 January 2002) available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16965&lang=en>

## **GRETA REPORTS AND DOCUMENTS**

Group of Experts on Action against Trafficking in Human Beings, 5<sup>th</sup> General Report on GRETA’s Activities covering the period from October 2014 – to December 2015, 2016, Council of Europe, Strasbourg, available at <https://rm.coe.int/1680631ccl>

Group of Experts on Action against Trafficking in Human Beings, Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Jan. 2017, Council of Europe, Strasbourg.

Group of Experts on Action against Trafficking in Human Beings (GRETA), *Internal Rules of Procedure of the Group of Experts on Action against Trafficking in Human Beings (GRETA)*, 2009, Strasbourg, available at <https://rm.coe.int/16805a983d>



Group of Experts on Action against Trafficking in Human Beings (GRETA), *Rules of procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties*, adopted on 17 June 2009 and amended on 21 November 2014, entry into force in 2015, Strasbourg, available at <https://rm.coe.int/native/16805a983c>

## EUROPEAN COURT OF HUMAN RIGHTS CASE LAW

European Court of Human Rights, *Siliadin v. France*, application n° 73316/01, 26th July 2005, available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/siliadin\\_v\\_france\\_en\\_4.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/siliadin_v_france_en_4.pdf)

European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Application no. 25965/04, 7<sup>th</sup> January 2010, available at [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/rantsev\\_vs\\_russia\\_cyprus\\_en\\_4.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/rantsev_vs_russia_cyprus_en_4.pdf)

European Court of Human Rights, *L.E. vs Greece case*, application no. 71545/12, 21<sup>st</sup> January 2014 <http://hudoc.echr.coe.int/eng?i=001-160218>

## ITALIAN LAW

De Vincentiis, D., *Testo Unico sull'immigrazione e norme sulla condizione dello straniero: D.Lgs. 25.7.1998, n. 286*, 1999, Edizioni Giuridiche Simone, Napoli.

Fiandaca G., Giarda, A. *Codice Penale e Codice di Procedura Penale - Leggi complementari XVI Edizione*, 2012, IPSOA Gruppo Wolters Kluwer, Milano

Garofoli, R., *Codice penale e delle leggi penali speciali*, contained in *Collana i Codici Superiori*, directed by Alpa, G., and Garofoli, R., 2014, Nel Diritto Editore, Roma

Consiglio Regionale della Regione Veneto, *Legge Regionale n. 41 del 16 Dicembre 1997, Abuso e Sfruttamento Sessuale: Interventi a tutela e promozione della persona*, BUR n. 107/1997, available at <http://www.consiglioveneto.it/crvportal/leggi/1997/97lr0041.html#Heading21>

L. 228/2003, *Misure contro la tratta di persone*, of Aug., 11th, 2003, published on the official journal n. 195, Aug. 23rd, 2003, available at <http://www.camera.it/parlam/leggi/032281.htm>

Note del Dipartimento per i Diritti e le Pari Opportunità e del Ministero dell'Interno on Aug., 5th, 2006, information available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=NIM:149320>

Legge del 16 marzo 2006, Ratifica ed esecuzione della Convenzione e dei Protocolli delle Nazioni Unite contro il crimine organizzato transnazionale, adottati dall'Assemblea generale il 15 novembre 2000 ed il 31 maggio 2001, Gazzetta Ufficiale Serie Generale n. 85 del 11 aprile 2006 – Suppl. Ordinario n. 91

D. Lgs. 24/2014, Attuazione della direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime, che sostituisce la decisione quadro 2002/629/GAI., of March, 4th, 2014, published on the Official Journal n. 60 of March, 13th, 2014, entered into force March, 28th, 2014, available at <http://www.gazzettaufficiale.it/eli/id/2014/03/13/14G00035/sg>

D. Lgs. 212/2015, Attuazione della direttiva 2012/29/UE del Parlamento europeo e del Consiglio, del 25 ottobre 2012, che istituisce norme minime in materia di diritti, assistenza e protezione delle vittime di reato e che sostituisce la decisione quadro 2001/220/GAI, of Dec., 15th, 2015, published on the Official Journal n. 3 of Jan., 5th, 2016, entered into force on Jan., 20th, 2016, available at <http://www.gazzettaufficiale.it/eli/id/2016/01/05/15G00221/sg>

Council of Ministers of the Italian Republic (Consiglio dei Ministri della Repubblica Italiana), Piano Nazionale d'azione contro la tratta e il grave sfruttamento 2016-2018, adopted on Feb., 26th 2016, (hereinafter Anti Trafficking National Plan), available at <http://www.pariopportunita.gov.it/media/2687/piano-nazionale-di-azione-contro-la-tratta-e-il-grave-sfruttamento-2016-2018.pdf>

Department of Equal Opportunities of the Italian Council of Ministers, Annex 2 to the National Anti-Trafficking Plan, 2016, available at <http://www.pariopportunita.gov.it/media/2874/allegato-2-linee-guida-rapida-identificazione.pdf>

Decree of 16th of May 2016 by the Prime Minister of the Italian Republic together with the Ministry of the Interior, Labour and Social Policy and Health, Single programme of emergence assistance and social inclusion, available at <http://www.pariopportunita.gov.it/media/2767/dpcm-16-maggio-2016.pdf>

Comune di Verona, *Nuovo Regolamento di Polizia Urbana*, art. 28ter, available at [https://www.comune.verona.it/media/Redazione%20web/ente\\_comune/regolamenti/regolamento\\_polizia\\_urbana.pdf](https://www.comune.verona.it/media/Redazione%20web/ente_comune/regolamenti/regolamento_polizia_urbana.pdf)

## **REPORT AND STATEMENTS**

United Nations Development Programme, *Human Development Report 2014 - Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, 2014, New York, available at <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf>

Ministero della Giustizia della Repubblica Italiana, Direzione Generale di Statistica e Analisi Organizzativa, *La Tratta degli Esseri Umani*, Settembre 2015, <https://webstat.giustizia.it/Analisi%20e%20ricerche/Rapporto%20DgStat%20sulla%20tratta%20degli%20esseri%20umani.pdf>

International Organisation for Migration (IOM), Rapporto sulle vittime di tratta nell'ambito dei flussi migratori misti in arrivo via mare aprile 2014-ottobre 2015, 2015, p. 15, available at <http://www.italy.iom.int/sites/default/files/news-documents/RapportoAntitratta.pdf>

2015 Global Migration Trends Factsheet, 2016, IOM's Global Migration Data Analysis Centre, [http://publications.iom.int/system/files/global\\_migration\\_trends\\_2015\\_factsheet.pdf](http://publications.iom.int/system/files/global_migration_trends_2015_factsheet.pdf)

United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2016*, 2016, United Nations Publications, New York, available at [https://www.unodc.org/documents/data-and-analysis/glotip/2016\\_Global\\_Report\\_on\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf)

European Commission, Report on the progress made in the fight against trafficking in human beings (2016), May, 19th 2016, Brussels, [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report\\_on\\_the\\_progress\\_made\\_in\\_the\\_fight\\_against\\_trafficking\\_in\\_human\\_beings\\_2016.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016.pdf)

United Nations Office on Drug and Crime (UNODC), Human Trafficking - people for sale factsheet, United Nations Office on Drug and Crime website [https://www.unodc.org/documents/toc/factsheets/TOC12\\_fs\\_humantrafficking\\_EN\\_HIRES.pdf](https://www.unodc.org/documents/toc/factsheets/TOC12_fs_humantrafficking_EN_HIRES.pdf)

UNICRI, *Countering trafficking and smuggling of women and unaccompanied minors in the Mediterranean: challenges, good practices and the ways forward*, 2016, UNICRI, Torino

Former Secretary General Ban Ki Moon statement on United Nations World Day Against Trafficking in Persons, 30th July 2016, available at <https://www.unodc.org/endht/en/statements.html>

United Nations Office on Drugs and Crime Executive Director Yury Fedotov statement on United Nations World Day against Trafficking in Persons, 30th July 2015, available at <https://www.unodc.org/endht/en/statements.html>

United Nations Office on Drugs and Crime Executive Director Statement on the UN World Day Against Trafficking in Persons, 30<sup>th</sup> July 2016, available at <https://www.unodc.org/endht/en/statements.html>

## NGOs DOCUMENTS AND STATEMENTS

Amnesty International, *Amnesty International's general recommendations on the draft European Convention against trafficking in human beings*, September 2004, <https://www.amnesty.org/en/documents/ior61/018/2004/en/>

Amnesty International and Anti-Slavery International, *Council of Europe: Recommendations to Strengthen December 2004 Draft European Convention against Trafficking*, January 2005, IOR 61/001/2005

Amnesty International, *Council of Europe: European Institutions must cooperate to ensure the highest standards of human rights protection*, Public Statement, issued the 11st of April 2005, Index Number IOR 30/008/2005, available at <https://www.amnesty.org/en/documents/ior30/008/2005/en/>

Global Alliance Against Traffic in Women (GAATW), *Beyond borders: exploring links between trafficking and gender*, 2010, GAATW Working Paper Series 2010, Bangkok, at p. 9 available at [http://www.gaatw.org/publications/WP\\_on\\_Gender.pdf](http://www.gaatw.org/publications/WP_on_Gender.pdf)

Amnesty International, *Policy On State Obligations To Respect, Protect And Fulfil The Human Rights Of Sex Workers*, May, 26<sup>th</sup>, 2016, POL 30/4062/2016

United Nations Office On Drugs and Crime, The Inter-Agency Coordination Group Against Trafficking in Persons, *Providing Effective Remedies for Victims of Trafficking in Persons*, January 2016, Vienna, [http://icat.network/sites/default/files/publications/documents/Ebook%20ENG\\_0.pdf](http://icat.network/sites/default/files/publications/documents/Ebook%20ENG_0.pdf)

Lecture by UN Advisor for Human Trafficking for the OHCHR, Youla Haddadin, *A Human Rights Based Approach to addressing Trafficking*, 15th May 2017, Venice International University, San Servolo Island, Venice (Italy)

## INTERVIEWS

Interview with an Italian policeman of Squadra Mobile Unit – Reati contro la persona, Questura di Verona, Verona, 22<sup>nd</sup> of February 2017

Interview with an Italian social worker in the field of inclusion and assistance to victims of human trafficking, Verona, done 31st March 2017

Interview with an Italian social worker of the “unità di strada” (road unit), Verona, 19th of April 2017

Interview with NAVe Project Coordinator, Venice, 9<sup>th</sup> of May 2017

Interview with a former victim of trafficking for sexual exploitation, now cultural mediator, Verona, 10<sup>th</sup> June 2017 (called S.)

## **WEBSITES**

Osservatorio Interventi Tratta website <http://www.osservatoriointerventitratta.it/>

UNODC Anti- Trafficking website <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuside>

Council of Europe Anti Trafficking Action <http://www.coe.int/en/web/anti-human-trafficking/home>

European Commission Website – Together Against Trafficking in Human Beings <http://ec.europa.eu/anti-trafficking/>

United Nations Website, Sustainable Development Goals, Goals, Goal 5, Goal 5 Targets, at <http://www.un.org/sustainabledevelopment/gender-equality/>

United Nations Trust Fund for Victims of Human Trafficking <https://www.unodc.org/unodc/human-trafficking-fund.html>

Dipartimento delle pari opportunità – Governo Italiano <http://www.pariopportunita.gov.it/contrasto-tratta-esseri-umani/>

United Nations Development Programme Information available at [http://www.undp.org/content/undp/en/home/operations/about\\_us.html](http://www.undp.org/content/undp/en/home/operations/about_us.html)

Human Development Index Information available at <http://hdr.undp.org/en/content/human-development-index-hdi>

International Organisation for Migration information available at <https://www.iom.int/about-iom>

Stockholm Syndrome explanation available at [https://en.oxforddictionaries.com/definition/stockholm\\_syndrome](https://en.oxforddictionaries.com/definition/stockholm_syndrome)

United Nations Interregional Crime and Justice Research Institute (UNICRI) website, Human Trafficking, available at <http://www.unric.org/en/human-trafficking>

International Labour Organisation website, Topics, Forced Labour, modern slavery and human trafficking, statistics available at <http://www.ilo.org/global/topics/forced->

[labour/statistics/lang--en/index.htm](http://labour/statistics/lang--en/index.htm)

Territorial Commissions for the recognition of the refugee status available at Italian Ministry of Home Affairs website at <http://www.interno.gov.it/it/temi/immigrazione-e-asilo/protezione-internazionale/commissioni-territoriali-riconoscimento-protezione-internazionale>

Comune di Verona, Polizia Municipale website, Norme e Consigli, Sicurezza urbana e Decoro, Prostituzione su Strada, available at [http://www.poliziamunicipale.comune.verona.it/nqcontent.cfm?a\\_id=24211](http://www.poliziamunicipale.comune.verona.it/nqcontent.cfm?a_id=24211)

N.A.Ve project website, OSCE, available at <http://www.progettonave.it/index.php/osce/>

Department of Equal Opportunities of the Italian Government website – Human Trafficking – Numero Verde, available at <http://www.pariopportunita.gov.it/contrasto-tratta-esseri-umani/numero-verde-800-290-290/>

## RINGRAZIAMENTI

Scrivere questa tesi non è stato solo un lavoro di ricerca molto approfondito tra libri, articoli, trattati di diritto internazionale e dell'Unione Europea. Questa tesi è diventata piano piano un viaggio in un mondo che conosciamo solo in superficie e che ci permettiamo di giudicare senza volerlo approfondire. Personalmente, è stato anche un viaggio indietro nel tempo, per un milione di ragioni. Questo viaggio ha avuto dei co-protagonisti fondamentali che mi sento di ringraziare sentitamente, uno ad uno.

Prima di tutto, vorrei ringraziare mia madre Lorella per tutta la passione che ha messo e per il suo entusiasmo nel sostenermi. Vorrei ringraziarla per avermi trovato tutti i contatti, per aver creduto nel mio lavoro e per non aver mai smesso di aiutarmi anche nei momenti di crisi. Grazie inoltre per essere la donna forte che è, che mi ha cresciuta quasi interamente da sola, trasmettendomi tutta la sensibilità possibile per temi così delicati, che in qualche modo sono il suo pane quotidiano.

Vorrei ringraziare mio padre Giuliano, per avermi indicato la strada silenziosamente, per aver messo le basi, per aver fatto tanto per le vittime di tratta quando lavorava come Ispettore Capo all'Ufficio Immigrazione della Questura di Verona e anche se non ci può più essere, lo ringrazio per essere stato quella guida che mi ha insegnato a non arrendermi, a perseguire gli obiettivi e non abbassare mai la testa. In un certo senso, sto seguendo la strada parallela a quella che percorreva lui.

Ringrazio inoltre tutta la mia famiglia, i miei nonni Clara e Pier Giovanni per avermi cresciuta, per essere così orgogliosi e fieri di me e sostenermi in qualsiasi scelta io faccia. I miei zii Luca e Silvia, per essere sempre presenti, per non avermi mollato un secondo e aver creduto in me. A Riccardo ed Elisa, i miei cugini, ma forse più i miei fratelli minori, due ragazzi straordinari che possono solo contribuire a rendere migliore questo mondo, tanto quanto ci sto provando io nel mio piccolo.

Un ringraziamento doveroso va a Timothy, mio compagno di vita, migliore amico, consigliere e, a detta sua, il mio tifoso numero uno. La mia colonna portante, senza la quale sarei perduta. Grazie per aver asciugato le lacrime, per il sostegno, per la sopportazione, per le ore passate a sentirmi parlare della tesi, dei consigli, del controllo sull'inglese, di non aver mai mollato e per tutta la pazienza. Sei una persona straordinaria per me e lo sarai sempre. Grazie di essere capitato nella mia vita.

Un grazie speciale ad Andrea, un amico speciale senza il quale non potrei stare da

anni. Grazie per tutto quanto, per gioire ad ogni mio successo e consolarmi per i fallimenti. Grazie per capirmi e essere una delle persone veramente importanti nella mia vita.

Grazie a Marica, una delle anime più belle che io conosca, che si interessava della mia tesi dall'altra parte del mondo, facendo coincidere i fusi orari. Sei sempre grande.

Grazie Ilaria, tu sai perché. Grazie per tutto quanto.

Ringrazio tutti coloro che ho intervistato e che hanno portato via del tempo al loro lavoro per me, persone che combattono il crimine di tratta di esseri umani ogni giorno, che aiutano le vittime, che non si arrendono mai alla frustrazione e che fanno questo lavoro mossi da vera voglia di cambiare le cose e vera voglia di aiutare. Non posso mettere i vostri nomi, ma siete le persone più volenterose che io abbia mai conosciuto. Nella speranza che questa tesi possa aiutarvi in qualche modo a rendere il vostro lavoro meno difficile, vi porterò sempre nel cuore.

Ringrazio la Professoressa Sara De Vido per averci creduto, per avermi seguita, per i suoi consigli per avermi dato preziose opportunità di arricchire il mio lavoro. Le sarò sempre riconoscente, per tutto quello che ha fatto per me. Grazie anche alla Professoressa Coin, per l'entusiasmo dimostrato quando le ho parlato della tesi e per tutto quanto.

Grazie a tutti gli altri amici che non ho nominato, quelli passati e quelli che ho incontrato negli ultimi mesi e che in poco tempo sono riusciti a fare breccia, sostenendomi moltissimo anche per questo lavoro. Grazie ai miei colleghi di Venice Diplomatic Society per aver pazientato per le mie numerose assenze a causa della tesi.

Ultime, ma non meno importanti, volevo ringraziare quelle ragazze di cui non conosco purtroppo né il nome, né la provenienza, che mentre cercavano di sopravvivere alle atrocità dello sfruttamento, della prostituzione e della violenza, hanno pregato sulla strada tutte le notti perché mio padre potesse stare meglio. Ho saputo di questo fatto solo dieci anni dopo grazie a V.Z., che ringrazio particolarmente di cuore. Vorrei ringraziarvi, chiunque siate, ovunque siate. Questo lavoro è dedicato a voi e a tutte le vittime di tratta sulla strada. La vostra umanità mi ha spinto a scrivere questo elaborato con più determinazione, sentendomi in debito per il meraviglioso gesto che avete fatto per una persona che cercava di aiutarvi ogni giorno. Non vi dimenticherò mai, anche se non avete nome. Continuerò anche per voi su questa strada, consapevole che da sola non posso cambiare il mondo, ma posso comunque fare la mia parte. Questa tesi è solo l'inizio.