

Venla Roth

# Defining Human Trafficking and Identifying Its Victims

A Study on the Impact and  
Future Challenges of International,  
European and Finnish Legal Responses  
to Prostitution-Related Trafficking in  
Human Beings

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*Edited by*  
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# Table of Contents

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|                   |  |           |
|-------------------|--|-----------|
| <b>Chapter I</b>  | <b>Introduction</b>  | <b>1</b>  |
| 1.                | Trafficking in Human Beings – A Topical Issue  | 1         |
| 2.                | Fundamentals About and Critique towards the Action against Trafficking in Human Beings   | 8         |
| 3.                | Research Design and Structure of the Present Study   | 15        |
| 3.1.              | Aim of the Study and Research Questions  | 15        |
| 3.2.              | Structure of the Study   | 17        |
| <br>              |  |           |
| <b>Chapter II</b> | <b>Consent and Vulnerability in Prostitution and Trafficking for the Purpose of Sexual Exploitation: Debates and Definitions</b> | <b>19</b> |
| 1.                | Introduction   | 19        |
| 2.                | Contradictory Positions on Prostitution  | 21        |
| 2.1.              | Prostitution as a Form of Gender-Based Violence: The “Sexual Domination Position”  | 21        |
| 2.2.              | Prostitution as Work: The “Sex Work Position”  | 24        |
| 2.3.              | Legal Strategies to Tackle Prostitution and Their Impact on Human Trafficking  | 29        |
| 2.3.1.            | Introduction   | 29        |
| 2.3.2.            | Case Studies: Sweden, the Netherlands and Germany  | 31        |
| 2.3.3.            | The Impact of the Political Choices for Addressing Human Trafficking   | 37        |
| 2.4.              | Concluding Observations  | 39        |
| 3.                | Developments in the International Law: From the Campaigns Against “White Slave Traffic” to the 1949 Convention and Beyond        | 42        |
| 3.1.              | Introduction   | 42        |
| 3.2.              | The Early International Instruments against White Slave Traffic  | 44        |
| 3.3.              | The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others          | 48        |
| 3.3.1.            | Introduction   | 48        |
| 3.3.2.            | The Essentials and Critique of the 1949 Convention   | 52        |
| 3.4.              | Subsequent Developments of the International Law on Prostitution and Trafficking for the Purpose of Sexual Exploitation          | 56        |
| 3.5.              | Concluding Observations  | 61        |

|   |   |     |
|---|---|-----|
| 4.  | Prostitution and Trafficking for the Purpose of Sexual Exploitation in the EU law   | 63  |
| 4.1.  | Introduction  | 63  |
| 4.2.  | The European Union and "the Common Sex Market"  | 64  |
| 5.  | The Current International Definition of Trafficking in Human Beings and Its Relation to Prostitution  | 66  |
| 5.1.  | The International Definition of Human Trafficking   | 66  |
| 5.2.  | Trafficking in Human Beings and Its Relation to Prostitution  | 69  |
| 5.3.  | Forceful Recruitment and Transportation or Coercive Circumstances?: Innocent Victims and Guilty Prostitutes   | 72  |
| 6.  | Conclusions   | 74  |
| <b>Chapter III The International Legal Framework against Human Trafficking: From the Overemphasis of Law Enforcement to the Protection of the Victim's Human Rights</b> |   | 77  |
| 1.  | Introduction  | 77  |
| 2.  | The UN Organised Crime Convention and Its Protocols on Trafficking and Smuggling  | 79  |
| 2.1.  | Introduction  | 79  |
| 2.2.  | The Drafting History of the Parent Convention and Its Protocols on Trafficking and Smuggling  | 82  |
| 2.2.1.  | The Parent Convention on Transnational Organised Crime  | 82  |
| 2.2.2.  | The Protocols on Trafficking and Smuggling  | 84  |
| 2.3.  | The Contents of the Parent Convention and its Protocols on Trafficking and Smuggling  | 87  |
| 2.3.1.  | The Contents of the Parent Convention on Transnational Organised Crime  | 87  |
| 2.3.2.  | Contents of the Trafficking Protocol  | 89  |
| 2.3.3.  | Contents of the Smuggling Protocol  | 93  |
| 2.4.  | The Dichotomy Between Trafficking and Smuggling: A Critical Analysis of the Protocols   | 95  |
| 2.4.1.  | Differences Between Trafficking and Smuggling   | 95  |
| 2.4.2.  | Similarities Between Trafficking and Smuggling  | 98  |
| 2.5.  | Concluding Observations on the UN Convention and Its Protocols  | 102 |
| 3.  | The Council of Europe Convention on the Action against Trafficking in Human Beings: Added Value for the Protection of Trafficked Persons' Human Rights? | 106 |
| 3.1.  | Introduction  | 106 |
| 3.2.  | The Background and Drafting Process of the CoE Trafficking Convention   | 109 |
| 3.3.  | Contents of the Council of Europe Convention on Trafficking   | 114 |
| 3.3.1.  | The Convention as a Human Rights Instrument   | 114 |
| 3.3.2.  | Provisions on Identification, Assistance and Protection of Trafficked Persons and the Prevention of Human Trafficking                                   | 118 |
| 3.4.  | Concluding Observations on the Council of Europe Convention on Trafficking  | 126 |

|   |  |     |
|---|--|-----|
| 4.  | Comparison of the UN Trafficking Protocol and the CoE Trafficking Convention   | 128 |
| 5.  | Other Relevant International Legal Instruments against Trafficking in Human Beings   | 132 |
| 6.  | Conclusions  | 151 |
| <b>Chapter IV Anti-Trafficking Strategies and Activities in Finland: Current Achievements and Future Challenges</b> |  | 155 |
| 1.  | Introduction   | 155 |
| 2.  | The Legal Framework of Action against Trafficking in Human Beings  | 157 |
| 2.1.  | Introduction   | 157 |
| 2.2.  | The Current Situation of Prostitution, Pandering and Human Trafficking in Finland  | 161 |
| 2.3.  | The Criminalisation of Trafficking and Other Amendments to the Penal Code  | 167 |
| 2.3.1.  | Introduction: Historical Background  | 167 |
| 2.3.2.  | The Novel Penal Provisions on Human Trafficking and Pandering  | 171 |
| 2.3.3.  | Similarities and Differences Between Human Trafficking and Pandering   | 175 |
| 2.4.  | Criminalisation of the Exploitation of a Person Subjected to Sex Trade   | 179 |
| 2.4.1.  | Introduction   | 179 |
| 2.4.2.  | The Legislative Process: From a General Criminalisation to a Limited Prohibition   | 180 |
| 2.4.3.  | Enforcement of the Novel Penal Provision   | 182 |
| 2.4.4.  | The Continuing Ideological Debates on the Nature of Prostitution and Its Potential Impacts on Victim Identification  | 184 |
| 2.5.  | The Aliens Act: Trafficked Victims' Right to Reside in Finland   | 186 |
| 2.5.1.  | Introduction: The Residence Permit Directive   | 186 |
| 2.5.2.  | The Reflection Period  | 189 |
| 2.5.3.  | The Residence Permit   | 193 |
| 2.5.4.  | Concluding Observations  | 197 |
| 2.6.  | The Act on the Integration of Immigrants and Reception of Asylum Seekers: The Official System of Victim Assistance   | 200 |
| 2.7.  | The National Plans of Action and the National Rapporteur on Trafficking in Human Beings  | 206 |
| 2.8.  | Conclusions on the Legislative Framework against Trafficking in Human Beings   | 209 |
| 3.  | The Application and Interpretation of the Penal Provisions on Trafficking at the Finnish Courts of Law: The Distinction between "Innocent" and "Guilty" Victims of Sexual Exploitation | 213 |
| 3.1.  | Introduction   | 213 |
| 3.2.  | Judgments on Trafficking in Human Beings for the Purpose of Sexual Exploitation  | 214 |
| 3.3.  | Implications of the Restrictive Application and Interpretation of Law  | 220 |
| 3.4.  | Historical Developments in the Regulation of Prostitution  | 221 |
| 3.4.1.  | Introduction   | 221 |

|  |  |     |
|--|--|-----|
| 3.4.2.   | The Regulation of Prostitution Before the 1990s  | 222 |
| 3.4.3.   | The Situation of Prostitution, Pandering and Trafficking at the Turn of the Millennium and the Consequent Legal Amendments                   | 225 |
| 3.4.3.1.   | The Changes in the Situation in the Field of Foreign Prostitution  | 225 |
| 3.4.3.2.   | Amendments to the Aliens Act and the Public Order Act  | 232 |
| 3.4.4.   | Concluding Observations  | 235 |
| 3.5.   | The Issue of Consent and "Voluntarily" Migrating Prostitutes   | 236 |
| 3.5.1.   | Introduction   | 236 |
| 3.5.2.   | "Voluntarily" Migrating Prostitutes and "Oral Employment Contracts"  | 237 |
| 3.5.3.   | The Liberal Notion of Free Will  | 240 |
| 3.5.4.   | Concluding Observations  | 241 |
| 3.6  | Trafficking for the Purpose of Sexual Exploitation as a Form of Gender-Based Violence  | 242 |
| 3.6.1.   | Introduction   | 242 |
| 3.6.2.   | Trafficking in Human Beings, Rape and "Behavioural Responsibility"   | 244 |
| 3.6.3.   | The Restricted Sexual Self-Determination / Sexual Autonomy of Prostitutes  | 246 |
| 3.6.4.   | Concluding Observations  | 249 |
| 3.7.   | The Discriminatory Effects of the Finnish Anti-Trafficking Strategies and Activities   | 250 |
| 3.8.   | Seeking for an Alternative: Lack of Consent, Coercive Circumstances, Vulnerability, and Unequal Power Relations                              | 255 |
| 3.8.1.   | Introduction   | 255 |
| 3.8.2.   | The Lack of Consent, not Force as a Constituent Element of Human Trafficking   | 256 |
| 3.8.3.   | Coercive Circumstances and the Protection of Vulnerability and Bodily Integrity  | 264 |
| 3.8.3.1.   | Introduction   | 264 |
| 3.8.3.2.   | Coercive Circumstances and Financial Control in Prostitution   | 265 |
| 3.8.3.3.   | Vulnerability, Bodily Integrity and Human Dignity  | 270 |
| 3.8.4.   | A Way Forward: A Model of Interpretation to Deconstruct the False Distinction between "Innocent" and "Guilty" Victims of Sexual Exploitation | 275 |
| 4.   | Conclusions  | 281 |
| <b>Chapter V Conclusions and Recommendations</b> |  | 287 |
| 1.   | Introductory Remarks: "Invisible" Victims  | 287 |
| 2.   | Deserving Victims and Conditional Assistance   | 289 |
| 3.   | The Ambiguous Definition of Human Trafficking and the Restrictive Application and Interpretation of Criminal Law Provisions                  | 295 |
| 4.   | Final Remarks  | 301 |
| <b>Bibliography</b>                              |  | 303 |
| <b>Index</b>                                     |  | 353 |

## 1.      Trafficking in Human Beings – A Topical Issue

Over the last two decades, trafficking in human beings, often called “a contemporary form of slavery”,<sup>1</sup> has become a major international concern. Trafficking in human beings and related issues, such as prostitution, irregular migration and transnational organised crime, have been subjected to an intense political discussion and ambitious legal regulation on international, regional and national levels. International organisations, governments and civil societies have increasingly focused on trafficking, and on the measures to prevent trafficking, protect trafficked persons, prosecute perpetrators and strengthen the cross-border cooperation against human trafficking. Thanks to many awareness-raising campaigns as well as the wide interest of the media, trafficking in human beings has not remained an unknown phenomenon to the general public, either.

Women, men and children are trafficked for the purposes of sexual exploitation and forced labour as well as for the commercial marriage market, the selling of organs and for adoption. Western Europe is a region of destination for victims of trafficking from Central and South Eastern Europe as well as from the countries belonging to the Commonwealth of Independent States (CIS).<sup>2</sup> According to many international studies, women and girls trafficked for the purposes of sexual exploitation constitute the majority of the identified victims of human trafficking.<sup>3</sup> Yet, more and more evidence has been found of labour or economic exploitation.<sup>4</sup> This form of

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1 UNHCHR 1991: *Fact Sheet No. 14: Contemporary Forms of Slavery*. See also, Reports of the Working Group on Contemporary Forms of Slavery, UN Docs. E/CN.4/Sub.2/1995/28/Add.1 (13 June 1995), E/CN.4/Sub.2/1999/17 (20 July 1999), and E/CN.4/Sub.2/2001/30 (16 July 2001).

2 UNODC 2006: *Trafficking in Persons: Global Patterns*, 90–95.

3 UNODC 2006: *Trafficking in Persons: Global Patterns*, 33. See also, ILO 2005: *A global alliance against forced labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 10–15.

4 The term “labour exploitation” is used for example by the European Commission, whereas the ILO uses the term “economic exploitation”. This study uses both terms as distinguished from sexual exploitation.



exploitation includes, for example, bonded labour, forced domestic work, or forced labour in agriculture and in remote rural areas.<sup>5</sup> In fact, it has been suggested that trafficking in women for the purpose of sexual exploitation may only be the “tip of the iceberg”.<sup>6</sup> However, women and girls are still believed to constitute the majority of forced labourers for both commercial sexual exploitation and labour or economic exploitation.<sup>7</sup>

The first contemporary research reports specifically on trafficking in human beings were released in the early 1990s by the Human Rights Watch, an independent organisation dedicated to defending and protecting human rights. The reports focus on trafficking in women between Burma and Thailand (1993) and between Nepal and India (1995), highlighting the link between gender-based human rights violations and trafficking in women, as well as stressing the significance of corruption and the complicity of state officials in human trafficking.<sup>8</sup>

During the 1990s, trafficking was recognised as a problem affecting Europe, as well. The collapse of the communist regimes and the violent conflicts in the area of former Yugoslavia led to massive migratory flows to Western Europe, contributing to the development of Central and Eastern European countries becoming a region of origin and Western Europe a region of destination.<sup>9</sup> In 1995, the International Organisation for Migration (IOM) published a report examining trafficking from Central and Eastern Europe to Western Europe, and a little later two reports on trafficking for the purpose of sexual exploitation, specifically to Austria and Italy.<sup>10</sup> The IOM sought to highlight the necessity of international co-operation when combating irregular immigration and transnational organised crime as necessary means in order to reduce trafficking in human beings. Soon, there emerged publications about the connections between trafficking in human beings, smuggling of migrants and transnational organised crime. Migrant trafficking, as it was first called, was described as “a multi-billion dollar business for criminal organisations”.<sup>11</sup>

It has been noted that most analyses of international trafficking in human beings have focused on the role of organised crime groups in the supply and delivery of women across borders and into local sex markets.<sup>12</sup> The growth and increased

5 See e.g. Malpani 2006; ILO 2005: *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement*; Tyuryukanova 2005; Cyrus 2005.

6 Andrees and van der Linden 2005, 12.

7 ILO 2005: *A global alliance against forced labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 10–15.

8 Human Rights Watch 1993: *A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand*; Human Rights Watch 1995: *Rape for Profit: Trafficking of Nepali Girls and Women to India's Brothels*.

9 See also, Goodey 2002.

10 IOM 1995: *Trafficking and Prostitution: The Growing Exploitation of Migrant Women from Central and Eastern Europe*; IOM 1996: *Trafficking in Women to Austria for Sexual Exploitation*; IOM 1996: *Trafficking in Women to Italy for Sexual Exploitation*.

11 Savona et al. 1996.

12 Taylor and Jamieson 1999.

involvement of transnational organized crime in trafficking in human beings has undoubtedly contributed to the fact that the problem of human trafficking has been put on political and legal agendas at the international, regional and national levels. Currently, the United Nations ranks trafficking in human beings among the top three revenue sources of organized crime, after trafficking in illegal narcotics and small arms. Trafficking in human beings has been estimated to produce a profit of 8.5-12 billion Euros annually to the organisers.<sup>13</sup> There is no clear indication that the proceeds from trafficking activities necessarily flow to other types of organised crime.<sup>14</sup>

The organised crime groups involved in trafficking in human beings share a number of important similarities, but there are distinctions based on structure and the extent to which the groups rely on human trafficking activities and are involved in other criminal activities. While some criminal groups are hierarchically structured, other groups consist of a limited number of individuals forming a relatively tight and structured core group, surrounded by a loose network of "associates".<sup>15</sup> At a global level, the largest number of reported references to traffickers is to the nationals of Asian countries followed by Central and South Eastern Europe and Western Europe. The majority of arrested traffickers are nationals of the trafficked persons' countries of destination.<sup>16</sup>

Yet, there are studies that question the involvement of organised crime in human trafficking by stating that organised crime is neither self-evident nor always substantial in trafficking. Although there is evidence that in some instances, in certain parts of the world, organised crime is heavily involved in human trafficking, it is possible that trafficking is not entirely or even largely a problem related to organised crime.<sup>17</sup> Trafficking in human beings is also carried out by entities other than organised crime groups, such as small or loose networks,<sup>18</sup> acquaintances, neighbours or relatives of victims,<sup>19</sup> members of peacekeeping missions and the police forces of inter-governmental organisations,<sup>20</sup> private enterprises and subcontractors<sup>21</sup> or families (domestic workers) as well as job recruitment or marriage agencies (mail-order

13 Europol 2004: *2004 European Union Organised Crime Report*.

14 De Jonge 2005, 24.

15 UNODC 2002: *Results of a Pilot Study of Forty Selected Organized Crime Groups in Sixteen Countries*.

16 UNODC 2006: *Trafficking in Persons: Global Patterns*, 34 and 71-75.

17 Sanghera 2005.

18 UNODC 2006: *Trafficking in Persons: Global Patterns*, 34 and 71-75; De Jonge 2005, 23-24.

19 See e.g. Siron and Van Baeveghem 1999, 29; Human Rights Watch 2001: *Owed Justice. Thai Women Trafficked into Debt Bondage in Japan*.

20 See e.g. Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, UN Doc. E/CN.4/2001/73 (23 January 2001), paras. 59 and 60.

21 See e.g. Cyrus 2005; See e.g. Coster van Voorhout 2007.

brides).<sup>22</sup> It may also be that the extent of involvement by organised crime depends on the end purpose of trafficking and may vary between countries and regions. In Finland, for example, it seems that organised crime groups are more often involved in pandering operations and trafficking for the purpose of sexual exploitation than in trafficking for the purpose of labour/economic exploitation or related exploitation of migrant workers. Also, in the Netherlands persons trafficked for the purpose of labour/economic exploitation are mainly hired directly by individual employers rather than recruited and transported by organised crime groups.<sup>23</sup>

The estimates of the scale of this “underside of globalisation”,<sup>24</sup> provided by official government sources as well as international and non-governmental organisations, differ considerably, from less than 500,000 to 4,000,000 persons annually worldwide.<sup>25</sup> The United Nations Population Fund (UNFPA) suggests that between 700,000 and 2 million women are trafficked across international borders annually.<sup>26</sup> The IOM estimates that the global number of trafficked persons is 700,000 per year.<sup>27</sup> According to the United States Department of State 2007 Trafficking in Persons Report, 800,000 people are trafficked across international borders every year. This number does not include those millions of victims who are believed to be trafficked within their own national borders.<sup>28</sup> The European Police Office (Europol) considers that persons trafficked into and within the European Union can be counted in hundreds of thousands.<sup>29</sup> The International Labour Organisation (ILO) estimates that the number of persons in forced labour at a given time as a result of human trafficking is 2.45 million. The total number of forced labourers is estimated to reach at least 12.3 million people globally.<sup>30</sup> The United Nations Office on Drugs and Crime (UNODC) provides much smaller figures amounting only to few hundred victims per country annually. This estimate is based on recorded cases of trafficking.<sup>31</sup> Despite the variation in numbers, it may be concluded that trafficking in human beings is a serious problem that presumably concerns almost every country in the world.

22 See e.g. Ruggiero 1997.

23 See also, Coster van Voorhout 2007.

24 ILO 2001: *Stopping Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 47.

25 UNESCO Trafficking Project 2004: *Data Comparison Sheet #1: Worldwide Trafficking Estimates by Organizations*.

26 UNFPA 2007: “Trafficking in Human Misery”.

27 The IOM developed a Counter-Trafficking Module (CTM) database which is based on information obtained from victims of trafficking assisted by the IOM. See more on, IOM: *Human Trafficking: IOM's Response*.

28 U.S. Department of State 2007: *Trafficking in Persons Report 2007*.

29 Europol 2007: *Trafficking in Human Beings in the European Union: Europol Perspective*.

30 In industrialized countries, transition countries and the Middle East and North Africa region human trafficking accounts for more than 75 per cent of the forced labour. ILO 2005: *A global alliance against forced labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*.

31 UNODC 2006: *Trafficking in Persons: Global Patterns*.

Providing accurate estimates of the scale of trafficking in human beings is difficult due to the illegal and clandestine nature of the problem, as well as the problems involved in detecting and documenting trafficking cases. Despite the increased research on trafficking in human beings, the information not only on the actual number of trafficked persons but also on trafficking routes, the types of exploitation or profiles of the victims and offenders is very limited.<sup>32</sup> The statistics on the subject vary widely and are frequently unreliable, rarely indicating the methods by which the statistical data were gathered. The ambiguous definition of trafficking adds to this problem. Regardless of the abstract agreement on the basic terms being used, the lack of a coherent understanding on issues such as will, consent and choice in concrete cases makes it difficult to draw the legal boundaries between trafficking and related phenomena.<sup>33</sup> In addition, weak legislation and lack of adequate victim assistance and protection are believed to lower the number of reported trafficking cases.<sup>34</sup>

Consequently, any analysis of the magnitude of human trafficking is inevitably based on estimates. It may, thus, be concluded that the enormous interest and concern for trafficking in human beings is running ahead of the theoretical understanding and factual evidence. The lack of reliable and validated data on trafficking significantly hampers the counter trafficking efforts and may cause unintended side-effects.<sup>35</sup> Although the development and implementation of counter trafficking efforts have been granted hundreds of millions of US dollars,<sup>36</sup> surprisingly little attention has been paid to the importance of the evaluation and assessment of anti-trafficking work and its (human rights) impact on trafficked persons and other affected groups of people, such as (foreign) prostitutes, migrant workers, undocumented migrants and asylum seekers.

Trafficking in human beings is a part of the larger picture of international labour migration. The ILO estimates that there are 175 million migrant workers, permanent immigrants, refugees and their dependants in the world. Out of this total, some 86 million are economically active migrants and migrant workers, including refugees. Women currently constitute 49 percent of migrants worldwide and more than 50 percent in Europe.<sup>37</sup> Due to the growing gap between the living standards of the richer and the poorer parts of the globe, the number of people aspiring to migrate

32 See also, Salt 2000.

33 See also, Agustin 2006.

34 Laczko 2002.

35 See also, Salt 2000.

36 Buckland has argued that anti-trafficking work has first and foremost benefited other people and actors than the victims of trafficking, such as fund-raisers. Buckland 2008.

37 ILO 2004: *Facts on Migrant Labour 2004*. See more on the feminisation of migration e.g. in Castles and Miller 1993.

is expected to increase in the near future.<sup>38</sup> The feminization of poverty<sup>39</sup> and the discriminatory practices in the labour market increase the vulnerability of women to fall victims of human trafficking. The limited employment opportunities and increased economic marginalisation cause women to take their chances abroad.

For example, the case study on Thailand and Russia demonstrates that macro-economic policies or crises have gendered impacts. The increased female unemployment, the rapid growth of informal economy, the gender-related wage gap and the lack of social security create a favourable environment for trafficking in women.<sup>40</sup> Extreme situations, such as the displacement resulting from armed conflicts or natural disasters, as well as sudden economic or societal changes, raise the risk of being trafficked. Other factors that are likely to affect the supply of trafficking victims include, for example, the amount of corruption, the opening of borders in transition economies and a large income differential between the countries of origin and destination.<sup>41</sup> A vast majority of the trafficking victims are so-called "willing" migrants; only a small minority of victims of human trafficking is believed to have been physically forced to migrate.<sup>42</sup> It is notable that after the enlargement of the EU to include Eastern European countries, trafficking in Europe has become a severe problem within the European Union.

The supply of human trafficking has a counterpart: demand. The demand for flexible and even illegal (low-skill) labour and exotic sexual "labourers" in the destination countries promotes (irregular) migration.<sup>43</sup> Despite an increased willingness to migrate, the legal channels of labour migration, especially for other than the highly skilled, are few and for certain groups of people, such as women, they are even more restricted. Traffickers provide a link between demand and supply by selling illegal services, e.g. assistance in the crossing of international borders.<sup>44</sup> Due to their undocumented status in the country of destination, migrants are very vulnerable to exploitation and abuse.

The United Nations Special Rapporteur on the Human Rights of Migrants links the exploitation directly to the victim's undocumented status and states that it may increase the risk of human trafficking. Add to this the effects of the labour market deregularisation and informalisation especially in the low-skill sectors, such as domestic work, sub-contraction and the increased use of private employment agencies,

38 GCIM 2005: *Report on Migration in an interconnected world: New directions for action*, 12–13.

39 See more on feminisation of poverty e.g. on Chen et al. 2005. See also, ILO 2007: *Global Employment Trends for Women Brief*.

40 Lassila et al. 2005; Sassen 2002.

41 Danailova-Trainor and Belser 2006.

42 Kaye 2003.

43 See e.g. Kaye 2003; Kelly 2002.

44 ILO 2005: *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement*, 3. See also, Communication from the Commission COM(2000)757 final to the Council and the European Parliament on a Community Immigration Policy (22.11.2000), 6; Kaye 2003; Ghosh 1998.

migrants have become poorly protected. Therefore, migrants are more expendable, exploitable and vulnerable also to human trafficking and related forms of exploitation.<sup>45</sup> The creation of legal channels for labour migration and the protection of migrants' human and labour rights are often mentioned among the most effective measures to prevent trafficking in human beings. An adequate supervision of labour markets is important in order to prevent and combat the exploitation of migrant workers.

Trafficking in human beings is a complex crime, and the translation of anti-trafficking law into practice is challenging. The law enforcement may confront a variety of practical challenges in their efforts to detect trafficking, identify the trafficked victims, investigate the offences and contribute to the successful prosecution of the offenders.<sup>46</sup> Firstly, trafficking victims do not often report their experiences to the law enforcement agencies, but most of them come in contact with law enforcement through indirect means, such as referrals of cases from NGOs, immigration raids or the law enforcement activity around prostitution. The least common route is for trafficking victims to approach the law enforcement officials voluntarily and directly as victims of crime. The deterrents to reporting to the authorities include the fear of reprisals from traffickers, the dominant political and social pressures that threaten undocumented migrants and prostitutes reporting abuse, the victims not perceiving themselves as "victims" of trafficking, the victims' beliefs that they have committed a crime and may be subject to arrest and imprisonment if they contact the authorities, the fear of deportation, as well as the fear of law enforcement acting in collusion with traffickers.<sup>47</sup>

Secondly, trafficking victims are often deeply traumatised. Violence and sexual abuse during the trafficking situation may have inflicted severe and enduring consequences for the physical and mental health of trafficked persons, and many victims also have prior histories of violence and sexual abuse, which further complicates the counter trafficking efforts. Some trafficking victims suffer from memory loss and are not able to recall of what happened and need sufficient time to recover after their experiences. Many victims hesitate to tell their story to complete strangers and some of them do not even want to participate in investigations due to their fear of reprisals from traffickers.<sup>48</sup>

Thirdly, many countries have only recently amended their legislation, adopted national plans of action against trafficking and taken other measures in order to prevent and combat trafficking. Training is underway, but adequate knowledge about trafficking in the law enforcement, prosecution services and judiciary is still lacking. Moreover, the police and judicial authorities should detect the entire trafficking

45 See e.g. the Report of the Experts Group on Trafficking in Human Beings (European Commission, 2004); ICHRP 2004: *Enhancing the Access to Human Rights*; Recommended Guidelines on Human Rights and Human Trafficking (UNHCHR, 20 May 2002), UN Doc. E/2002/68/Add. 1.

46 David 2007.

47 Zimmerman et al. 2003, 72.

48 Zimmerman et al. 2006, 23–40.

chain, which means that they should cooperate with the relevant authorities in the transit countries and countries of origin. Due to various reasons, the authorities seldom choose international cooperation, genuine exchange of information or co-ordination activities, unless it is strictly necessary in order to resolve the particular case. Finally, the lack of protection of either the victim/witness or his or her family in the country of origin causes problems for the police and judicial authorities, as the victim/witness may withdraw his or her testimony due to pressure from the perpetrators or their associates, or their distrust in the local authorities. The national witness protection programs are expensive, rigid and intense, and this apparently applies even more to the international protection of trafficking victims/witnesses.<sup>49</sup>

Despite the increased awareness of the phenomenon of trafficking in human beings and the related exploitation of migrant workers and migrant prostitutes, there is a large disparity between the abstract estimates of trafficking in human beings and the actual number of identified trafficking victims. For example, the Dutch National Rapporteur against Trafficking in Human Beings estimates that only five percent of victims of sexual exploitation eventually report to the police.<sup>50</sup> In Germany, it is estimated that the annual number of victims trafficked into Germany is somewhere between 2,000 and 20,000, but less than one thousand victims were registered in 2006.<sup>51</sup> Finland has been recognised as a country of transit and destination for hundreds of trafficked persons annually, but until today, the authorities and non-governmental organisations have been able to identify only some dozens of trafficking victims.

Even if the gap between the numbers of estimated and identified victims of trafficking could partly be explained by excessive estimates and other above mentioned factors, there are reasons to believe that the process of victim identification fails to work as intended. Many victims of human trafficking are probably treated as undocumented migrants, prostitutes or illegal workers, and thus become expelled from the country they are in and denied the rights that are guaranteed in the international, European and national legal instruments. The non-identification of trafficking victims has notable consequences. As a result of the low number of identified victims of trafficking, few victims receive the services and assistance provided to them by law, and relatively few cases are prosecuted and convicted as human trafficking under the domestic penal codes.

## **2. Fundamentals About and Critique towards the Action against Trafficking in Human Beings**

Although trafficking in human beings has attracted much attention during the last two decades, trafficking and counter trafficking are by no means new phenomena on the international legal arena. At the turn of the 20th century, the European states ad-

49 De Jonge 2005, 43.

50 The Research and Training Center of Polaris Project 2003, *Very Low Number of Police Reporting Trafficking* cited in UNODC 2006: *Trafficking in Persons: Global Patterns*, 44.

51 Lehti 2003.

opted several conventions to suppress the international “white slave traffic” of women and girls to the European colonies for prostitution. The term “white slave traffic” originally embodied the cross-border traffic of women if they had been coerced or deceived to being trafficked. Decades later, the international community broadened the scope of prohibited trafficking to cover also adult women who consented to the prostitution and required states parties to prohibit pandering and the keeping of brothels.

In the 1970s, trafficking experienced a novel manifestation, namely the “clandestine trafficking of labour”. This phenomenon was linked to the establishment of legal barriers to labour migration following the exploitation of undocumented status and the clandestine trafficking of labour to Northern European countries. The international community sought to respond to these developments by adopting the UN Migrant Workers’ Convention in 1990 after eleven years of preparation. This respectable but poorly ratified convention seeks to prevent and eliminate clandestine movements and trafficking in migrant workers, as well as protect the human rights of migrant workers and members of their family members irrespective of their administrative status.

The most recent appearance of trafficking on the international legal agenda took place in the beginning of the 1990s, as described above. The Western governments became interested in the issue of trafficking in human beings mainly due to their concerns about the association of trafficking with increased illegal immigration and transnational organised crime. Efforts to counteract trafficking in human beings have since been made through the conclusion of international conventions and various forms of cooperation, among others, within the frameworks of the United Nations, the International Labour Organisation (ILO), the Council of Europe (CoE), the European Union (EU) and the Organisation for Security and Cooperation in Europe (OSCE).

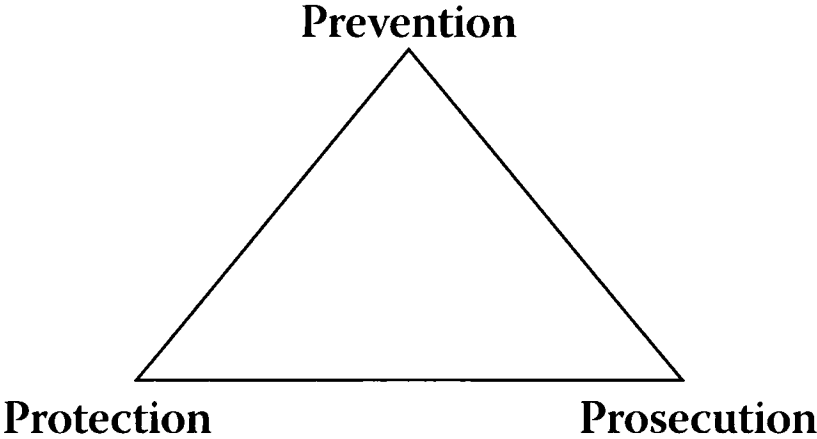
The most important counter trafficking instruments applicable in Europe<sup>52</sup> currently include the UN Trafficking Protocol, adopted by the General Assembly in 2000, the Council of Europe Convention on Action against Trafficking in Human Beings, adopted by the Council of Ministers in 2005, as well as the legislative acts of the European Union that aim to harmonise migration and criminal laws among the EU Member States. The legal responses to trafficking in human beings in the European countries are largely based on these international and regional legal instruments which require the states to take measures with a purpose to raise awareness on human trafficking among the general public, to cooperate across international borders, prevent trafficking, assist and protect trafficking victims and ensure the prosecution of traffickers.

Based on the above-mentioned international and regional legal instruments, many European states have adopted considerable legal and other measures in order

52 There are also some other regional treaties against trafficking. These include, for example, South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (adopted 5 January 2002, entered into force 15 November 2005).



to tackle trafficking in human beings. As recommended by many of these instruments, the national legal responses to trafficking in human beings are often based on the so-called “Three P Strategy”. This strategy, which consists of three basic elements, seeks to take into account the complexity of the problem. These three elements are 1) the prevention of trafficking, 2) the protection of victims and 3) the prosecution of perpetrators. Protection, prosecution and prevention should be interconnected parts of this comprehensive approach to trafficking, and there should be a balance between these three prongs. The “Three P Strategy” against human trafficking can be illustrated as a triangle as follows:



Picture 1. The Three P Strategy.

The prevention of trafficking includes e.g. measures to establish information and media campaigns in order to raise awareness on the issue, alleviate the vulnerability of potential victims of human trafficking, discourage the demand for sexual services and exploitable labour, provide training to relevant actors on the phenomenon and its counter measures and so forth. The second element, namely the protection of victims, consists, for example, of providing assistance and physical safety to the trafficking victims and witnesses as well as their family members, adopting measures that permit victims to remain in the territory of transit or the destination countries, and facilitating a safe return of the trafficking victims to the country of origin, including the prevention of re-victimisation. The measures to ensure the prosecution of perpetrators comprise the criminalising of trafficking in human beings and the ensuring of the functionality and adequacy of criminal and procedural legislation, and other measures as regards pre-trial investigations and criminal proceedings against those who have committed the crime of human trafficking. This “Three P” approach has subsequently been complemented with the “Three R” approach to emphasise that the anti-trafficking strategies and activities need to internalise the