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# **COMBATING HUMAN TRAFFICKING IN EUROPE**

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**Master Thesis**

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## ABRIVIATIONS:

BiH	Bosnia and Herzegovina
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEE	Central and Eastern European States
CFSP	Common Foreign and Security Policy
CoE	Council of Europe
Doc.	Document
EAW	European Arrest Warrant
eds.	Edition
EP	European Parliament
ETS	European Treaty Series
EU	European Union
EUFOR	EU Force
EUPM	EU Police Mission
GAATW	Global Alliance against Traffic in Women
IOM	International Organization for Migration
JHA	Justice and Home Affairs
LNTS	League of Nations Treaty Series
NGO	Non-Governmental Organization
No.	Number
OJ	Official Journal
OSCE	Organization for Security and Cooperation in Europe
ODIHR	OSCE Office of Democratic Institutions and Human Rights
pp.	Page

Res.	Resolution
Supp.	Supplementary
TEU	Treaty on European Union
UN	United Nations
UN/GA	UN General Assembly
UN/GAOR	UN General Assembly Official Records
UNHCHR	Office of the United Nations High Commissioner for Human Rights
UNHCR	UN Refugee Agency
UNICEF	UN Children's Fund
UNIS	UN Information Service
UNTS	United Nations Treaty Series
UNCTOC	United Nations Convention on Transnational Organized Crime (UN Protocol)
Vol.	Volume

## INTRODUCTION:

Trafficking in human beings is a modern form of slavery which ends up with the exploitation of physical and psychological well beings of persons. Mainly because of socio-economic difficulties, people either by deceit or by their own wills are forced into slavery like practices of the traffickers including sexual exploitation, cheap labor, servitude and removal of organs.

Every year hundreds of thousands of children, women and men are trafficked within and across countries.<sup>1</sup> The continuously rising estimated numbers indicate that yearly about 2.000.000 people suffer in the hands of human traffickers.<sup>2</sup>

Even though various economic and social causes of human trafficking can be listed, the main reason with the difficulty in halting the problem is the global demand for cheap labor. Unfortunately, various studies provide that awareness raising campaigns against use of labor of the victims in large fail to decrease this demand, in particular the demand for sexually exploited young women and girls. As Asli Kayhan, researcher of the “Raising Public Awareness about Women Trafficking in Turkey” Project emphasizes, “most clients know that the women are slaves and don’t care.”<sup>3</sup> Therefore, the phenomenon shall be studied in detail and effective programs to decrease the demand shall be developed accordingly.

Whereas the contemporary form of slavery substitutes the demand, it provides the world’s third biggest revenue source for the traffickers after smuggling of armaments and drugs.<sup>4</sup> Europol

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<sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime, GA Res. 55/25, Annex II 55 GAOR Supp. (no.49), UN Doc.A/45/49, Vol.1, 2001.

<sup>2</sup> Polat Sinan, “The Role of the Security Forces in the Combating of Trafficking in Trabzon,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.126.

<sup>3</sup> Kayhan Asli, “Project Report,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.11.

<sup>4</sup> Aita Judy, “Efforts to Combat Human Trafficking Increasing, US Official Says,” at: <http://uninfo.state.gov/gi/Archive/2004/Mar/05-608037.html> (accessed on 14.02.2007)

estimates that trafficking in persons turns over “several billion dollars” annually;<sup>5</sup> clear figures cannot be provided due to the ongoing clandestine nature of this phenomenon.

Human trafficking, with its “several billion dollars” annual profit and with no costs evolves as a criminal act controlled by transnational criminal industry.<sup>6</sup> On the other hand, as trafficking in persons is the third biggest revenue source of organized crime after trafficking of drugs and weapons,<sup>7</sup> the profit made via human trafficking has been canalized to other illegal acts of the criminal syndicates, which endanger global security.

Human trafficking at present is a form of organized crime that has significant links with different illicit acts of organized criminal syndicates. It is widely complex and by which hardly a country is immune from. Most traffickers still operate with impunity; victims of trafficking are re-trafficked due to the insufficient protection and assistance provided; if not, they are victimized again and again.<sup>8</sup>

#### i. HUMAN TRAFFICKING IN EUROPE:

The end of the Cold War and the fall of the Soviet Union led to major developments within Europe. The introduction of a market economy in the former communist countries provided

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<sup>5</sup> United Nations Office on Drugs and Crime, see at:

[http://www.unodc.org/unodc/trafficking\\_victim\\_consent.html#facts](http://www.unodc.org/unodc/trafficking_victim_consent.html#facts) (accessed on 12.02.2007).

<sup>6</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime, GA Res. 55/25, Annex II 55 GAOR Supp. (no.49), UN Doc.A/45/49, Vol.1, 2001.

<sup>7</sup> See UNICEF, UNHCHR and OSCE/ODIHR, “Trafficking in Human Beings in Southeastern Europe,” 2002, pp.13 at <http://www.unhchr.ch/women/trafficking.pdf>. (accessed on 17.12.2004)

<sup>8</sup> Moskof Hercules, “Trafficking in Persons as a Major Human Security Threat in South Eastern Europe: Non Governmental Organisations, International Organisations and International Cooperation,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.136.

both Eastern and Western European countries with new opportunities to establish trade relations. The number of joint enterprises grew rapidly together with the modes of cross border transactions.

Besides great advantages of the re-unification of Eastern Europe to West, opening up of the Central and Eastern Europe and “economic globalization foster[ed] both migration and transnational crime.”<sup>9</sup> While technological innovations and improvements made it possible to establish close ties between criminals and criminal groups from various parts of the continent, means of transportation and cross border transactions facilitated the commission of crimes across borders<sup>10</sup> of Eastern European countries to the Member States of the Union as well as migratory flows due to economic disparities.

The enlargement of the European Union with the involvement of Central and Eastern European states on May 1, 2004 further complicated and fueled the trans-border criminal activity within the Union since the criminal justice systems of several new member countries have been particularly vulnerable to criminal activities. The new states founded after the fall of communism lacked an effectively functioning democratic system at the period of economic transition. Proper criminal legislation did not exist and law enforcement systems had to be developed. Furthermore, during the reconstruction of these nation states, increase in unemployment and lack of socio-economic security contributed to illegal activities

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<sup>9</sup> Narlı Nilüfer, “The Human Trafficking Process: Causes, Actors, Mechanisms and Victim Profile,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.56.

<sup>10</sup> Williams Philip, “Transnational Criminal Organisations and International Security”, in Passas Nikos, Transnational Crime, Dartmouth, Aldershot, 1999, pp.31-48.



undertaken by the criminals and organized criminal syndicates both within and outside of these countries<sup>11</sup>.

With the membership of several Central and Eastern European states, the new frontier of the EU included many additional organized criminal groups and established criminal activities in these countries. Moreover, due to the abolishment of internal borders among the Member States with the Schengen system, the transnational criminal activity was facilitated for the organized syndicates that have already established within the members of the Union<sup>12</sup>.

Even though many Eastern European countries have not yet been members to the EU and the Schengen acquis provides stricter border controls on the Union's outer borders, it is not difficult for organized criminal syndicates in non-member states that have contacts within Member States to cross harder borders<sup>13</sup> of the European Union and to act with impunity within the frontierless Union. Besides, crime syndicates are often advanced by corrupt government officials from both sides of the border.<sup>14</sup> Therefore, they efficiently utilize their connections to obtain legal visas, legal or forged birth certificates and passports that facilitate human trafficking.

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<sup>11</sup> Castells Manuel, *The Information Age, Volume III: End of Millennium*, Blackwell, Cambridge, 1998, pp.168-170. Shelley L.I., "Post-Soviet Organised Crime, Implication for Economic, Social and Political Development", in Passas Nikos, *Transnational Crime*, Dartmouth, Aldershot, 1999, pp. 163-180.

<sup>12</sup> In addition, less strict Schengen visa regimes are imposed on Bulgarian citizens (since 2001) and Romanian citizens (since 2002) allowing them to enter the borders of the EU without any restrictions. This visa regime also has significant implications on the migration flows from Moldova as many Moldavian citizens hold Romanian passports. UNICEF, UNOHCHR, OSCE/ODIHR, "Trafficking in Human Beings in South Eastern Europe", 2003 available at [http://www.osce.org/documents/odihr/2003/12/1645\\_en.pdf](http://www.osce.org/documents/odihr/2003/12/1645_en.pdf). (accessed on 29.11.2004)

<sup>13</sup> Hard borders create extra demand for organized cross border-crime. For a further discussion on the point, see Hailbronner Kay, *Immigration and Asylum Law and Policy of the European Union*, Kluwer Law International, The Hague, 2000, pp.163.

<sup>14</sup> Government corruption is among the major obstacles in combating trafficking in persons. Indeed, "the scale of government corruption relating to trafficking in persons can range from localized to endemic." For further information, see US Department of State, "Trafficking in Persons Report", June 2004, pp.9 at <http://www.state.gov/g/tip/rls/tiprpt/2004/>. (accessed on 08.12.2004)

Consequently, a significant proportion of trafficking in persons within Europe mainly takes place from developing Central and Eastern European countries to developed Western Europe. The richness of the Western European countries and the demand in these developed countries have been pull factors maintaining the trafficking in persons from east to west in Europe. Furthermore, the male demand for sex labor of “white slaves” consists of a strong pull factor in Western Europe.<sup>15</sup>

Particularly the feminization of poverty, which is the disproportionate effect of poverty and unemployment on women comparing to men, as a push factor in transition countries, made women in Central and Eastern European countries more vulnerable to human trafficking. Feminization of poverty in countries of origin is among the main causes of trafficking in women and girls. Women are exposed to the stress of unstable economies of the developing world more than men are. Women’s risk of poverty is indeed very high as a result of the lack of access to secondary education due to their sex in many countries, limiting their employment opportunities.<sup>16</sup>

## ii. A EUROPEAN RESPONSE TO HUMAN TRAFFICKING:

Fortunately, realizing socio-economic side-effects of trafficking in persons in late 1990s and the impossibility of controlling trafficking practices purely at checkpoints with the mechanisms established by the Schengen acquis, the European Union and various international organizations active in the (larger) European sphere alarmed states to take necessary action for combating trafficking in human beings.

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<sup>15</sup> Kayhan Asli, pp.11.

<sup>16</sup> It is estimated that 70 per cent of 1,300 billion poor persons worldwide are women. See Firmo-Fontan Victoria, “Responses to Sexual Slavery: From the Balkans to Afghanistan,” *The Political Economy of New Slavery*, Palgrave, London, 2003, pp.2.

The European Union, the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE) are the main international organizations that have focused on human trafficking emphasizing the phenomenon as among the priorities of Europe.

The EU has grasped human trafficking as an issue to be covered by cooperating in criminal matters and policing within its third pillar; Police and Judicial Cooperation in Criminal Matters (former Justice and Home Affairs). The main purpose of the Council of Europe is the protection of human rights, democracy and rule of law; hence CoE focuses on the protection of the victims of human trafficking. On the other hand, the OSCE is active in the field of early warning, conflict prevention, crises management and post conflict prevention. Therefore the OSCE focuses on human trafficking from a viewpoint of global security.

Dealing with a trans-border crime requires concrete action plans<sup>17</sup> with appropriate legislative measures at the European level. A well-defined European legislation shall fill in the national systems' gaps. The fight against criminal groups operating across borders can only be effective when intensified cooperation in criminal matters within the European Union, and between the EU Member States and non-member Eastern European countries take place. Therefore, cooperation between the EU, CoE and OSCE has been crucial for the fight against human trafficking.

The European Union, the Council of Europe and the OSCE have been collaborating to fight against trafficking; hence this paper aims to analyze this cooperative action focusing on policy documents and legal instruments developed by all three. As the policy documents guided the

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<sup>17</sup> Report of the Secretary General on the implementation of General Assembly Resolution 49/150 on the Naples Political Declaration and the Global Action against Organized Transnational Crime, A/50/433, 18 September 1995.

legal instruments, the study will concentrate on policy papers before focusing on the legal developments.

One of the main complaints in several policy documents agreed on at the European level had been the lack of a comprehensive definition of human trafficking.<sup>18</sup> A single definition of trafficking in persons did not exist until recently due to the disagreements at the international community. Other main complaints of the European policy documents have been the inefficiency of the criminalization of human trafficking in Europe, of the cooperation in criminal matters, and on the protection to and assistance for the victims of trafficking.

Not surprisingly, European states lacked adequate legal instruments for years mainly because of the inexistence of an overall human trafficking definition. Indeed, a concrete definition on human trafficking made it easier for Europe to develop its anti-trafficking legislation. Even though it is still an ongoing process, Europe has succeeded up to a level in its legal fight against human trafficking right after the term was comprehensively defined in 2000 by the UN Protocol.

The European Union has been pressuring on the Member States and non-member European countries to approximate their criminal laws and to improve cooperation to combat trafficking. As a matter of fact, various instruments on jurisdiction, mutual legal assistance, extradition, transfer of criminal proceedings and transfer of enforcement of foreign judgments have been developed forming the legal framework to prosecute traffickers in EU Member States. Unfortunately, there is no European authority that has the power to initiate and enforce minimum standards against transnational crime as there is no such international body.

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<sup>18</sup> Rijken Conny, Trafficking in Persons: Prosecution from a European Perspective, Asser Press, The Hague, 2003, pp. 5-7.

Still, the European state practice provides a rapidly developing combating strategy that covers the efficient use of the EU legal instruments.<sup>19</sup> This study is therefore conducted to analyze the implementation of the European policy documents and the legal instruments to eliminate human trafficking in Europe, focusing on European state practice on the prosecution of the act and the protection provided to the victims of the phenomenon.

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<sup>19</sup> Rijken Conny, Trafficking in Persons: Prosecution from a European Perspective, Asser Press, The Hague, 2003, pp. 8-17.

## CHAPTER I:

### DEFINING HUMAN TRAFFICKING:

It took years before the international community came up with a comprehensive definition of trafficking in persons. The process had been slow and consequently late because of the lack of accurate and reliable data on the scope of the problem. Until the adoption of “the first international definition<sup>20</sup>” of the term, different interpretations of human trafficking evolved and were used by countries, and national and international organizations. While some of these interpretations only focused on prostitution, others included various forms of forced labor. Whereas, many studies focused on the transport of people between countries, trafficking within borders was generally ignored.

This Chapter will analyze the evolvement of the UN and the EU definitions of trafficking in persons emphasizing the different interpretations of the term. It is significant to explore interpretations given by various international actors and the institutions of the European Union since variances in definitions have contributed to the construction of a comprehensive definition given by the international community, which was later adopted by the EU.

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<sup>20</sup> Ann Jordan defines the definition given by the 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children as the first international definition of human trafficking. See Jordan D. Ann, “Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings”, in Masika Rachel, Gender, Trafficking and Slavery, Oxfam, Oxford, 2002, pp.32.

## 1.1. HISTORICAL DEVELOPMENT OF THE TERM:

The 1904 International Agreement for the Suppression of the White Slave Trade is the first legal international instrument combating trafficking in women.<sup>21</sup> The agreement bans the persuasion of and/or procurement of women and girls for purposes of prostitution in another country. The aim of the 1904 agreement is to prosecute traffickers that act internationally and that spread prostitution between countries.<sup>22</sup>

A later effort to punish traffickers is the signature of the International Convention for the Suppression of the White Slave Traffic in 1910. The significance of this international legal instrument is its emphasis on trafficking within one country. The aim of the 1910 agreement is to prosecute traffickers that spread prostitution within a country.<sup>23</sup>

The League of Nations drafted the 1933 International Convention for the Suppression of the Traffic in Women of Full Age to complement 1904 and 1910 international agreements.<sup>24</sup> This convention bans transportation of a woman into another country for the purpose of prostitution irrespective of whether she has given her consent or not. It is significant to underline that the 1933 agreement put an emphasis on the act of trafficking; consequently it defined prostitution with consent also as a form of exploitation.

Focusing on 1904, 1910 and 1933 international agreements, it is crucial to recognize that three elements of the current definition of human trafficking; the coercive element,

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<sup>21</sup> International Agreement for the Suppression of the White Slave Trade, 18 May 1904, 35 Stat. 426, 1 League of Nations Treaty Series (LNTS) 83.

<sup>22</sup> Farrior Stephanie, "The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential", in *Harvard Human Rights Journal*, Vol. 10, Issue Spring, 1997, pp.216.

<sup>23</sup> International Convention for the Suppression of the White Slave Trade, 4 May 1910, III LNTS 278.

<sup>24</sup> International Convention for the Suppression of the Traffic in Women of Full Age, 11 October 1933, 150 LNTS 431.

transportation within a country and transportation across borders elements of the definition were provided by the League of Nations.

The first convention of the United Nations considering human trafficking is the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.<sup>25</sup> This convention absorbed an abolitionist view and aimed for the complete abolishment of prostitution, unfortunately punishing all individuals in the sex industry. Even if the treaty addressed exploitation of the victims of traffickers for the first time; focusing solely on the abolishment of prostitution, the 1949 Convention failed to clarify the term trafficking in persons. More importantly, its emphasis on the criminalization of prostitution had a negative impact on the fight against trafficking. Indeed, the 1949 convention “forced the sex industry underground and pushed women into the hands of organized criminals.”<sup>26</sup>

As the paper is going to analyze in detail in the following chapters, the act of human trafficking has been controlled by organized crime syndicates since the sex industry has been forced underground. Consequently, the underground activity ended up with linking human trafficking and prostitution with other illegal acts of organized crime syndicates such as smuggling of arms, drugs and other goods.

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<sup>25</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, in force since 25 July 1951, 96 United Nations Treaty Series (UNTS) 271.

<sup>26</sup> Jordan D. Ann, “Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings”, in Masika Rachel, Gender, Trafficking and Slavery, Oxfam, Oxford, 2002, pp.36.



To sum up, one can conclude that the international conventions adopted until 1950s included phases of recruitment and transportation within a country and across borders as well as exploitative and coercive elements of human trafficking to their attempt to define human trafficking. However, the international community, mainly focusing on prostitution, ignored addressing other forms of trafficking. Trafficking into forced labor, slavery and servitude were not discussed at all. Hence, until the adoption of a new international instrument in 2000, which solely focused on the development of a comprehensive definition on human trafficking, various interpretations of the term had evolved.

## 1.2. THE DISCUSSION ON THE ELEMENTS OF HUMAN TRAFFICKING:

Both national and international civil and governmental organizations' attempts to clarify human trafficking provided additional elements of the act. Consequent to the definitions provided at different spheres, the international community developed a comprehensive definition of the term in 2000. Therefore, it is important to study various definitions given by different organizations to be able to understand the UN's definition.

The United Nations adopted the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which entered into force in 1957. Significantly, the supplementary convention linked slavery like practices and forced labor to human trafficking. As the convention exemplified slavery like practices as debt bondage, serfdom, forced and early marriage and child labor, it linked these practices to human trafficking.

According to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, forced labor and slavery like practices can be defined as:

“The extraction of work or services from any person or the appropriation of the legal identity and/or physical person of any person by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.<sup>27</sup>”

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<sup>27</sup> For a further information on slavery like practices see Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 UNTS, entered into force on 30 April 1957; Herzfeld Beth, “Slavery and Gender: Women’s Double Exploitation”, in Masika Rachel, Gender, Trafficking and Slavery, Oxfam, Oxford, 2002.

The international community focused on human trafficking again in the 1981 Convention on the Elimination of All Forms of Discrimination against Women<sup>28</sup> (CEDAW), however similar to the pre-1950s' international instruments, it solely focused on prostitution. However, the CEDAW Committee that was formed to monitor this treaty recognized the need to include other forms of forced labor to the Convention. Hence, the CEDAW Committee enacted a general recommendation to the convention. Accordingly, the Paragraph 14 of the General Recommendation 19 stressed sex tourism, domestic labor and arranged marriages as other forms of sexual exploitation<sup>29</sup>. The importance of this recommendation has been its inclusion of different forms of sex labor within the definition of human trafficking.

Global Alliance against Traffic in Women (GAATW), a coalition of non governmental actors active in the fight against trafficking in women pulled the attention of the community referring to two different phases of human trafficking: recruitment and transportation. The definition provided by GAATW and that was consequently used by many other NGOs, defined trafficking in persons as follows:

“All acts involved in the recruitment and/or transportation of a person within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion.<sup>30</sup>”

According to the above definition given by GAATW, the term human trafficking refers to the recruitment and transport phase of the phenomenon. The distinction between the transportation phase and the exploitative phase stressed by GAATW shows that the two may occur independent to each other. Significantly, GAATW's emphasis on recruiting a person

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<sup>28</sup> Convention on the Elimination of All Forms of Discrimination against Women, GA Res. 34/180 34 UN General Assembly Official Records (GAOR) Supp. (no.46) at 193, UN Doc. Entered into force on 3 September 1981.

<sup>29</sup> CEDAW Committee General Recommendation no.19 (1992) on Violence against Women.

<sup>30</sup> Rijken Conny, Trafficking in Persons: Prosecution from a European Perspective, Asser Press, The Hague, 2003, pp. 61-63.

into unwanted labor without transporting him/her guided the 2000 UN definition to a great level on this concern.

International Organization for Migration (IOM), an inter-governmental organization active in fight against trafficking defined the problem as “any illicit transporting of migrant women and/or trade in them for economic and personal gain.<sup>31</sup>” According to IOM, trafficking occurred when an international border was crossed, a trafficker was involved, payment was undertaken and the entry and/or stay in the country of destination were illegal<sup>32</sup>.

It is important to analyze the definition provided by IOM not because it renewed the definition on human trafficking but because it failed in distinguishing human trafficking from smuggling. Indeed, this mistake guided the international community to grasp a comprehensive definition which distinguished the two. Hence, as the 2000 UN definition does, it is significant to differentiate smuggling from human trafficking. Otherwise, it will be very difficult to implement an efficient legal framework and concrete action plans against trafficking in persons. Indeed, if trafficking in persons is confused with illegal immigration, states may deny assistance to and protection for the victim of trafficking due to the fact that smuggling lacks the exploitation element of trafficking<sup>33</sup>.

The UN Secretary General in his report to the General Assembly in 1995 described the difference between human trafficking and smuggling emphasizing the exploitation element of trafficking. According to the report, “a distinction could be made in terms of the purpose for

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<sup>31</sup> IOM, Trafficking in Women to Italy for Sexual Exploitation, Migration Information Programme, Geneva, 1996.

<sup>32</sup> IOM, “Trafficking of Women to the European Union: Characteristics, Trends and Policy Issues,” Conference on Trafficking in Women for Sexual Exploitation, Vienna, June 1996.

<sup>33</sup> Rijken Conny, Trafficking in Persons: Prosecution from a European Perspective, Asser Press, The Hague, 2003, pp. 73.

which borders are crossed and whether movement occurs through the instrumentality of another person.<sup>34</sup>” In line with the report, various UN agencies such as the UN Center for International Crime Prevention and the UN Interregional Crime and Justice Research Institute<sup>35</sup> differentiate trafficking in persons with the exploitative purpose of traffickers<sup>36</sup>.

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<sup>34</sup> UN, “Report of the Secretary General, Traffic in Women and Girls”, A/50/369, 24 August 1995, para.17.

<sup>35</sup> UN Center for International Crime Prevention and the UN Interregional Crime and Justice Research Institute, “Global Programme against Trafficking in Human Beings: An Outline for Action”, Vienna, Press Release SOC/CP/210, 11 March 1999. See also Twomey Patrick, “Europe’s Other Market: Trafficking in People”, *European Journal of Migration and Law*, Vol. 2, 2000, pp.6-7; Obokata Tom, “‘Trafficking’ and ‘Smuggling’ of Human Beings in Europe: Protection of Individual Rights or States’ Interests?” *The Durham Research Postgraduate Conference*, July 2001.

<sup>36</sup> Besides, it is significant to know that many irregular migrants of smuggling find themselves to be the victims of traffickers.

### 1.3. THE DEFINITION IN THE 2000 UN TRAFFICKING PROTOCOL:

The definitions provided in previous parts and many more guided the international community to adopt a comprehensive definition on human trafficking in 2000.

The Trafficking Protocol<sup>37</sup> to the United Nations Convention on Transnational Organized Crime (UNTOC), realizing the value of a comprehensive definition of human trafficking, provided the following definition in its Article 3:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harboring 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 given or receiving 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

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 [these] means.”

It is significant to underline that UNTOC consists of three documents –the Trafficking Protocol, relevant provisions of the Convention against Transnational Organized Crime<sup>38</sup> and the Interpretative Notes to the Protocol<sup>39</sup>. These three parts of the Convention link human trafficking to organized crime. This link enables the criminalization of the international human trafficking. More significantly, it grasps the attention of the international community

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<sup>37</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime, GA Res. 55/25, Annex II 55 GAOR Supp. (no.49) at 60, UN Doc.A/45/49, Vol.1, 2001.

<sup>38</sup> See the United Nations Convention against Transnational Organized Crime and its Protocols at the website of United Nations Office on Drugs and Crime: [http://www.odccp.org/crime\\_cicp\\_convention.html](http://www.odccp.org/crime_cicp_convention.html). (accessed on 17.12.2004)

<sup>39</sup> See the Interpretative Notes for the Official Records of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols, the website of United Nations Office on Drugs and Crime: [http://www.odccp.org/crime\\_cicp\\_convention\\_documents.html](http://www.odccp.org/crime_cicp_convention_documents.html). (accessed on 17.12.2004)

to the canalization of the profit made by the organized syndicates via human trafficking to other illicit acts that endanger global security.

On the other hand, this definition of the Trafficking Protocol does not limit human trafficking with cross-border transportation of the victims. Even if the Protocol is an annex to the UNCTOC that covers crimes that are transnational in nature, the absence of the term ‘international’ is significant to grasp the phenomenon in its entirety as many trafficked persons do not cross borders of their countries. Significantly, such approach enables the criminalization of trafficking within borders, which indeed is a higher percentage of human trafficking that takes place in Europe as well as in other parts of the world.

Focusing on the exploitation phase of human trafficking, it is crucial to recognize that the definition covers ‘all’ forms<sup>40</sup> of human trafficking. Definitions given by different international organizations that are quoted above specifically focused on prostitution and gender related trafficking since the international lobby is mainly conducted by the women’s rights platforms. Yet, it was equally important to comprehend non-gender based forms as well as the removal of organs.

One shall realize that the international community defines recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation as child trafficking even though none of the methods, threat, use of force or other forms of coercion defined in the Protocol is used for the exploitation of persons under 18 years of age.

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<sup>40</sup> Even if it is generally considered that all forms of trafficking are emphasized in the Protocol, one should not keep in mind that new forms can be defined in later instruments. In addition, even though the Protocol does not define the forms of trafficking, definitions of slavery, forced labor, forced services and servitude can be found in various human rights documents as the Slavery Convention; the Supplemental Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery and the International Labor Organization Convention No. 29 Concerning Forced Labor.

The first internationally accepted definition of trafficking comprehends various elements of human trafficking discussed by different actors and forms of the phenomenon. Besides, the definition leads the way for both the prosecution of traffickers and protection of the victims of trafficking in persons. Having an internationally agreed upon definition of this Protocol allows states, national and international organizations to have a same frame of reference in combating trafficking. This, for sure, makes it easier to analyze facts and cases of human trafficking and contributes states to establish a data against traffickers.

Still, it is important not to miss out that the definition provided in the year of 2000 might miss out new forms and elements of the phenomenon that can occur in near future. An already existing example to such new forms of human trafficking can be grooming. Grooming is a term used to define solicitation of persons for sexual purposes including sexually explicit posing, the use of sexually explicit language as well as arranging a meeting for the purpose to commit sexual exploitation by means of a computer system or not.<sup>41</sup>

#### 1.4. THE EUROPEAN UNION DEFINITION ON HUMAN TRAFFICKING:

Similar to the discussions in the international arena, the European Union came across to variances in definitions used by EU institutions combating human trafficking. In 2002, with an aim of eliminating such divergences, the EU harmonized the definition of trafficking with the Council Framework Decision on Combating Trafficking in Human Beings<sup>42</sup> as a first step towards establishing a single legal framework in its fight against the problem.

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<sup>41</sup> Grooming has been discussed as a new offence during the drafting process of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Abuse. The draft convention will be finalized at the end of 2007. The researcher of this paper is a member of the Expert Group that formulates this CoE Convention. See at: [www.coe.int/childprotection](http://www.coe.int/childprotection) (accessed on 13.02.2007)

<sup>42</sup> Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings, 2002/629/JHA, Official Journal L 203, 01.08.2002.



According to the definition in the Council Framework Decision, “each Member State shall take the necessary measures to ensure that the following acts are punishable:

The recruitment, transportation, transfer, harboring, subsequent reception of a person, including exchange or transfer of control over that person, where:

- (a) use is made of coercion, force or threat, including abduction, or
- (b) use is made of deceit or fraud, or
- (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or
- (d) payments or benefits are given or received to achieve the consent of a person having control over another person

for the purpose of exploitation of that person’s labor or services, including at least forced or compulsory labor or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.”

After a through analysis of the EU definition on human trafficking, its correspondence to the definition given by the Trafficking Protocol to the UNCTOC can be observed. Besides, the preamble of the Council Framework Decision emphasizes the guidance of the Trafficking Protocol to the formulation of a harmonized EU definition of trafficking in persons.

Comparing the definitions of both the UN as well as the EU, it is obviously proper to conclude that the minimum standards of the international community have been increased by the European Union and the elements of the criminal prohibition have been further defined. For instance, Article c of this definition criminalizes the abuse of one’s own authority to support human trafficking. Unfortunately, many state personnel, specifically those who work at the borders, have been involved in human trafficking. Hence, criminalization of abuse of power has been significant in Europe’s fight against trafficking in persons.

The definition provided by the Council Framework Decision left out the removal of organs as a form of trafficking in human beings. This can be observed as a failure to comprehend already defined forms of trafficking as successfully as the Trafficking Protocol of the United Nations does. Besides, even though the illicit acts of the organ mafia does not grasp political, civil and academic attention as much as the sexual exploitation of persons, removal of organs might constitute comparable level of danger to human security in the near future.

## CHAPTER II:

### THE LEGAL FRAMEWORK TO CRIMINALIZE HUMAN TRAFFICKING:

The EU human trafficking definition does not specifically underline the transnational character of the phenomenon because many trafficked persons do not cross borders of originating countries. However, trafficking in persons is commonly perceived as a cross-border irregular movement by most of the Member States due to numerous flows of persons via “identified trafficking and smuggling routes from Central and Eastern European region to the European Union.<sup>43</sup>”

The investigation and the prosecution of a crime where there is the involvement of more than one state necessitate the application of international instruments along side to the domestic laws. As a matter of fact, legal cooperation beyond national borders and/or the frontier of the EU, shall aggravate an effective combating against human trafficking.

Keeping the European Union’s international legal responsibility in mind, before concentrating on relevant European policy documents and legal instruments, this study will first analyze the provisions of UNCTOC and the Trafficking Protocol to UNCTOC. It will then focus on current EU, the Council of Europe and OSCE instruments and will question the effectiveness of combating and the prosecution of trafficking in Europe in the following Chapter.

#### 2.1. UN RESPONSE TO HUMAN TRAFFICKING:<sup>44</sup>

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<sup>43</sup> Demir J.S. Shearee, “The Trafficking of Women for Sexual Exploitation: a Gender-based and Well-founded Fear of Prosecution”, New Issues on Refugee Research, Working Paper No.80, UNHCR, March 2003, pp.8.

<sup>44</sup> The international community has used the terminology of ‘transnational crime’ only referring to drugs, arms and human trafficking. Even if questioning the preference of the UN to conclude a Convention specifically emphasizing this term is not an aim of this study, it would be interesting to ask whether the roots of such attempt rely on the ignorance of the international community to cover the phenomenon as an area of *international*

The Trafficking Protocol to UNCTOC is primarily a law enforcing instrument which applies to the “prevention, investigation and prosecution” of trafficking in persons. Consequently, signatories of the document including the members of the EU and the neighboring European countries shall adopt international legal standards of criminalization of trafficking and cooperation for information sharing and extradition of suspected traffickers making necessary legal arrangements in the domestic legislation.

For the prevention of the phenomenon, Article 5 of the Trafficking Protocol obliges Governments to criminalize trafficking in persons. With the purpose, “each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol, when committed intentionally.”

Besides, as the EU definition on human trafficking provides, the Convention on Transnational Organized Crime with its Article 12 requires the investigation and the prosecution of state officials at all levels, including foreign public officials and international civil servants that have connections to the corruptive practice.

UNCTOC calls for states to establish mechanisms, which shall uncover human trafficking. In specific, Article 9 stresses the importance of research and publicizing the facts of trafficking through mass media campaigns.

In addition, Article 10 calls states to exchange the information gathered with other participant states by their law enforcement, immigration or other relevant authorities. According to the

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criminal justice. I owe this insight to Olympia Bekou, University of Nottingham Law School, referring to her analysis of the UN usage of the term in UNCTOC at the course on the Foundations of International Criminal Justice on 29.11.2004.

Protocol, the information to be shared is mainly associated to border crossings of traffickers and the victims of human trafficking focusing on fake travel documents and routes, means and methods used by traffickers and their links to others and to organized groups.

Additional to sharing knowledge and information, the UNCTOC calls states to cooperate in their fight against human trafficking. In particular, Article 11/6 emphasizes the importance of “strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.”

This instrument is a protocol to the UN Convention against organized crime, therefore focusing mainly on the prevention of the crime; it leaves out protection to victims of human trafficking. The Trafficking Protocol merely encourages states to guard fundamental freedoms and rights of trafficked persons.

In line with the Trafficking Protocol to UNCTOC, prevention, investigation and prosecution of trafficking in persons have also been the major concerns of the Member States of the European Union for almost the last two decades. Though, the process of establishing a European legal framework for the criminalization of trafficking has specifically been speeded up after the adoption of the Protocol in 2000.

## 2.2. EUROPEAN RESPONSE TO HUMAN TRAFFICKING:

Even if waves of trafficking in women and girls from East Asia and Latin America to the West Europe occurred before the opening up of the communist bloc,<sup>45</sup> the increased replacement of Central and Eastern Europeans in European brothels in 1990s alarmed EU to take an action against this tendency in its neighboring area. Fortunately, further realizing socio-economic side-effects of trafficking in persons and the inefficiencies of European mechanisms in controlling irregular migratory flows, the Union urged Member States to take necessary action in combating human trafficking at an extended region both within its established frontiers and in the Central and Eastern Europe.

In addition, one of the main articles in Justice and Home Affairs covering the 3<sup>rd</sup> pillar of the EU of the 1992 Maastricht Treaty, Article K/3 called for action to combat trafficking in human beings. For this reason, the European Union has been collaborating with Council of Europe and the Organization for Security and Cooperation in Europe in its fight against human trafficking.

### 2.2.1. EUROPEAN POLICY DOCUMENTS TO COMBAT HUMAN TRAFFICKING:

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<sup>45</sup> The geographic origins of the women and girls trafficked into Western Europe has altered over three decades. During the 1970s, the women trafficked into the brothels of West Europe were primarily from East Asia, especially from Thailand and the Philippines. The roots of this wave of trafficking were the organized prostitution around United States military bases in Vietnam and the Clark and Subic basis in the Philippines. The 1980s witnessed an entry of women and girls trafficked into Europe from Latin America and the Caribbean, especially from Dominican Republic, Brazil and Colombia, but also Ecuador and Chile. For fuller discussions on trafficking routes before the end of Cold War, see Leidholdt Dorchen, "Sexual Trafficking of Women in Europe: A Human Rights Crisis for the European Union," in *Sexual Politics and the European Union*, ed. Elman R. Amy, Berghahn Books, Oxford, 1996; Smartt Ursula, "Human Trafficking: Simply a European Problem?," *European Journal of Crime, Criminal Law and Criminal Justice*, Vol.11/2, 2003.

The first aim of the European community was to uncover human trafficking in Europe. The lack of knowledge on and limited publicity of the problem had a negative effect on the European attempt to establish an anti-trafficking legislation. Hence, research, exchanges of information among Member States and with European organizations as well as awareness-raising projects clarified the problem more. As the facts and the elements of human trafficking were analyzed and the awareness of the public increased, Europe began to establish policy documents which guided the EU legal instruments to criminalize the phenomenon.

The policy documents adopted at the European level have developed goals, targets and strategies with an aim of combating trafficking in persons. These political instruments have focused on the phenomenon from several perspectives examining the elements of trafficking and the related problems including the protection of the victims.

It is important to remind that excluding the joint actions, policy documents are not legally binding; besides all of them lack direct effect.<sup>46</sup> Still, this paper finds it significant to analyze the European policy instruments to visualize the strong desire to tackle human trafficking in Europe as well as the steps taken towards an anti-trafficking legislation in the European Union.

#### 2.2.1.1. EUROPEAN UNION POLICY DOCUMENTS TO COMBAT TRAFFICKING:

##### i. Policy Documents Adopted by the European Parliament:

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<sup>46</sup> Cullen, Monar and Myers emphasize the potential of joint actions having legally binding force. See Cullen David, Monar Jörg and Myers Philip, Cooperation in Justice and Home Affairs: An Evaluation of the Third Pillar in Practice, European Interuniversity Press, Brussels, 1994, pp.43.

The European Parliament (EP) has long focused on trafficking in women through its regularly enacted resolutions.<sup>47</sup> Back in 1986, the Parliament passed a resolution specifically addressing industrialized sex trade in Europe. The Resolution on Violence against Women urged member states “to adopt a declaration on Community measures to combat trafficking in women with alternative income opportunities and include the prosecution of those who traffic in women.<sup>48</sup>” It also called on Member States “to ban all establishments catering to sex tourism and the advertising thereof illegal.<sup>49</sup>” Moreover, the Resolution emphasized the necessity of decriminalization of prostitution, the improvement in the training of police officers dealing with victims of sexual crimes and reintegration of trafficked women into society.

The Parliament further developed its approach on traffic in women with the 1989 Resolution on the Exploitation of Prostitution and the Traffic in Human Beings. Urging the development of “a genuine common policy” of the Union in order to combat trafficking, EP stressed that “the practice of prostitution involves the violation of certain fundamental human rights and freedoms, especially the rights to privacy, liberty and the integrity of the human person.<sup>50</sup>” Emphasizing the pattern of trafficking in persons from poor countries to wealthy European states, the Resolution recommended legalizing the residence terms of the trafficked women for them not to be re-victimized.

In the Resolution on Trade in Women of 1993, Parliament of the European Union introduced Europol (the European police force) as an appropriate organization to combat against

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<sup>47</sup> Official Journal (OJ) C 176, 11.7.1986, pp.73-83; OJC 120, 14.4.1989, pp.352-355; OJC 268, 4.10.1993, pp.141-142; OJC 032, 5.2.1996, pp.88-93; OJC 304, 6.10.1997, pp.55-59.

<sup>48</sup> OJ C 176/80, 11.7.1986.

<sup>49</sup> OJ C 176/81, 11.7.1986.

<sup>50</sup> OJ C 120/352, 14.4.1989.



trafficking in women. Furthermore, the idea of witness protection was developed with a legal right to residence and protection to trafficked women during and after legal proceedings.<sup>51</sup>

The European Parliament underlining the lack of a clear definition of the phenomenon, proposed a clarification of the term “trafficking in human beings” with the adoption of the 1996 Resolution. In addition, indicating trafficking in persons as a preferred area of activity of international organized criminal syndicates, the Resolution stressed the need for police and judicial cooperation between Member States.<sup>52</sup>

All of the above listed Resolutions of the European Parliament, pointing to different facts about the phenomenon and deficiencies in combating against it, guided the Union, the Member States and national and international organizations in Europe at the process of grasping a comprehensive European definition of human trafficking, developing socio-economic initiatives around Europe and establishing a European legal framework.

When all of the instruments developed by the European Parliament are analyzed and carefully compared with current anti-legislation and programmes in Europe, significant links can be observed in between.

## ii. Policy Documents Adopted by the European Commission:

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<sup>51</sup> Rijken Conny, p.93.

<sup>52</sup> Ibid.

The European Commission, processing from the analysis developed by the European Parliament, aimed at the provocation of a comprehensive discussion on human trafficking in the European Union Member States.<sup>53</sup>

In 1996, with the Document on Trafficking in Women for Sexual Exploitation,<sup>54</sup> the Commission recommended cooperation in combating trafficking with third countries. Poverty in countries of origin and the feminization of poverty<sup>55</sup> as being the primal cause of trafficking in women, it was advised that the cooperation with originating countries should focus on the strengthening of the position of women in these countries and on the reintegration of the victims of trafficking to their societies. Similar concerns were re-emphasized aiming to keep the phenomenon high on the political agenda with the 1998 Document on New Strategies to Combat Trafficking in Women.<sup>56</sup>

For the effective implementation of this strategy to empower especially women against human trafficking, European Commission financially supported various projects within Europe. One of the examples to the anti-projects funded directly by the Representation of the European Commission to Turkey has been the project titled “Raising Public Awareness about Woman Trafficking in Turkey: Anti-Trafficking Fora and Creation of a Civil Society Network.” The Project that was implemented in Turkey by Medecins du Monde – Greece in partnership with the International Blue Crescent Relief and Development Foundation – Turkey aimed at empowering research on trafficking of woman in Turkey. Within the framework of the Project, two symposiums were organized in Istanbul and in Trabzon with the participation of members of UN bodies, as well as representatives of Ministries of Foreign

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<sup>53</sup> Rijken Conny, Trafficking in Persons: Prosecution from a European Perspective, Asser Press, The Hague, 2003, pp. 94-95.

<sup>54</sup> European Commission, COM (1996) 567, 20.11.1996.

<sup>55</sup> Firmo-Fontan Victoria, pp.2.

<sup>56</sup> European Commission, COM (1998) 726, 09.12.1998.

Affairs, national security forces, NGOs, lawyers, academics and journalists from Turkey and Greece. The report of this project, “Trafficking in Women: A Major Human Rights Violation” is published by Beyaz Gemi in June 2005.<sup>57</sup>

### iii. Policy Documents Adopted by the Council Of EU:

The Council of EU has adopted a number of joint actions covering improved judicial and police cooperation between Member States to combat against human trafficking.<sup>58</sup> Article 14 of the Treaty on European Union (TEU) defines joint actions to “address specific situations where operational action by the Union is deemed to be required.” With respect to legal effects of joint actions, the TEU emphasizes that they are binding on the Member States’ national positions and national actions; however, they lack direct applicability. Therefore, individuals cannot claim rights or obligations following joint actions that not enforceable on domestic laws of the EU Member States.<sup>59</sup>

The Joint Action that was adopted by the Justice and Home Affairs Council in 1996 had significant effects on the extension of the Europol Drugs Unit mandate over trafficking in persons.<sup>60</sup> Pointing out the involvement of international organized syndicates in trafficking in human beings besides drug trafficking, the Joint Action authorized Europol Drugs Unit to

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<sup>57</sup> International Blue Crescent and Medecins du Monde-Greece, “Trafficking in Women: A Major Human Rights Violation,” Istanbul, 2005.

<sup>58</sup> Joint Actions that cover improved judicial and police cooperation between Member States, including legal assistance in criminal matters and policing are 96/277/JHA, OJL 105, 27.04.1996; 96/700/JHA, OJL 322, 12.12.1996; 96/48/JHA, OJL 342, 31.12.1996; 97/154/JHA, OJL O63, 04.03.1997; 97/827/JHA, OJL 344, 15.12.1997; 98/245/JHA, OJL 99, 31.03.1998; 98/427/JHA, OJL 191, 07.07.1998; 98/428/JHA, OJL 191, 07.07.1998; 98/733/JHA, OJL 351, 29.12.1998. The instrument of Joint Action has no longer been used since the Treaty of Amsterdam.

<sup>59</sup> Eeckhout Piet, External Relations of the European Union, OUP, 2004, pp. 399-402.

<sup>60</sup> Joint Action 96/748/JHA of 16 December 1996 was adopted by the Council of Europe on the basis of Article K3 of the TEU and was published in the Official Journal L 342 of 31.12.1996.

function as a non-operational team for the exchange and analysis of information in the areas of human trafficking. Since then, Europol has been active in the fight against human trafficking.

The 1997 Joint Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children<sup>61</sup> is a significant effort of the Council as it has adjusted different definitions of human trafficking in one document and envisaged the minimum standards of criminal law in Member States. This attempt of criminalizing trafficking and sexual exploitation was stressed as the “first step [of the EU] towards harmonizing the legislation.”<sup>62</sup>

According to the above listed Joint Actions, Member States shall review their domestic laws and prosecute suspects of trafficking by ‘effective, proportionate and dissuasive criminal penalties.’<sup>63</sup> In addition, states shall develop adequate systems for investigating the problem and effective prosecution of the offences and they shall cooperate with other Member States and non-governmental organizations on information sharing, mutual legal assistance in investigations and judicial processes and witness protection.

It is important to emphasize here that following the adoption of the 1997 Joint Action, the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation<sup>64</sup> was enacted where Member States affirmed their commitment to maximize cooperation to combat trafficking in persons.

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<sup>61</sup> Joint Action 97/154/JHA of 24 February 1997 was adopted by the Council of Europe on the basis of Article K3 of the TEU and was published in the Official Journal L 63 of 04.03.1997.

<sup>62</sup> Rijken Conny, Trafficking in Persons: Prosecution from a European Perspective, Asser Press, The Hague, 2003, pp. 96.

<sup>63</sup> Hailbronner Kay, Immigration and Asylum Law and Policy of the European Union, Kluwer Law International, The Hague, 2000, pp. 168.

<sup>64</sup> The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, The Hague, 26.04.1997.

In addition to the adoption of numerous Joint Actions, the Council of EU adopted the Brussels Declaration to combat trafficking in persons. The final outcome of the European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21<sup>st</sup> Century, the Brussels Declaration<sup>65</sup> envisaged a comprehensive and coordinated European approach to the fight against trafficking.

The Brussels Declaration contains examples of good practices including joint work of competent authorities on research, awareness raising initiatives and trainings. It recommends the setting up of joint investigative teams for the development of legislative provisions with adequate penalties. Besides police and judicial cooperation, it pays particular attention to victim protection and assistance and proposes the establishment of an Expert Group on Trafficking in Human Beings.<sup>66</sup>

#### iv. Policy Documents Adopted by the European Council:

Even if the European Council expressed its concern on trafficking in persons before, it made its first attempt in 1999 to develop an area secure from trafficking in persons with the Presidential Conclusions in Tampere.<sup>67</sup> In order to prevent traffickers from using gaps in the

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<sup>65</sup> See Brussels Declaration on Preventing and Combating Trafficking in Human Beings, Doc.7800/03 and the Agenda of the Conference at the Justice and Home Affairs website of the European Commission: [http://europa.eu.int/comm/justice\\_home/news/information\\_dossiers/conference\\_trafficking/index\\_en.htm](http://europa.eu.int/comm/justice_home/news/information_dossiers/conference_trafficking/index_en.htm). (accessed on 17.12.2004)

<sup>66</sup> The European Commission adopted the Decision of Setting Up a Consultative Group. This consultant group of the Commission is known as the Experts Group on Trafficking in Human Beings. For the further information, see the Commission Decision of Setting Up a Consultative Group, Official Journal L 79, 26.03.2003.

<sup>67</sup> Presidency Conclusions of the Tampere European Council, 15/16.10.1999.

legal systems of the Member States, the Tampere Presidential Conclusions underlined the need of harmonizing the legal approach to human trafficking.

Accordingly, each form of human trafficking had to be prevented through publicizing the facts and via closer cooperation with the countries of origin and transit. Legislation to penalize trafficking and economic exploitation of immigrants had to be enacted in each Member State's legislation. Furthermore, legal cooperation between the Member States, especially the mutual recognition of legal decisions and access to the courts and relevant authorities in all Member States had to be improved. In addition, the Presidential Conclusions called Member States to establish closer cooperation with Europol to dismantle criminal networks of trafficking and joint investigative teams in which Europol could participate.<sup>68</sup>

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<sup>68</sup> European Council, Tampere Presidency Conclusions, General Secretary, SI (1999) 800, Brussels, 15-16 October 1999.

## 2.2.1.2. CoE POLICY DOCUMENTS TO COMBAT HUMAN TRAFFICKING:

Council of Europe,<sup>69</sup> with its significant number of Member States, is an important actor in the field of combating human trafficking in Europe. CoE, the eldest international political institution in Europe,<sup>70</sup> has mainly placed trafficking in persons as a priority on its agenda by the second half of 1990 focusing on the issue from human rights point of view.

In 1997, the Council of Europe established a Multi-Sectoral Group on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation under the authority of the Steering Committee for Equality between Women and Men. This group prepared a draft recommendation identifying the priority fields of action and the methods of cooperation to be established with other competent international organizations and non-state actors.<sup>71</sup>

With the Recommendation adopted in 1997,<sup>72</sup> the Council of Europe, underlining the ‘dramatic increase’ in human trafficking, called for an urgent action against the problem. Significantly, the 1997 Recommendation emphasized the need for a European convention on trafficking in women that would be open for the signature of non-Member States as well.

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<sup>69</sup> The current 46 Member States of the Council of Europe are Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom. (CoE has membership application from Belarus and Montenegro; and Canada, Japan, Mexico, the Holy Sea and the United States reserve observer status in the CoE.) See at: [www.coe.int](http://www.coe.int)

<sup>70</sup> Council of Europe is established in 1949.

<sup>71</sup> Council of Europe, Human Rights – Equality between Women and Men, Subordinate Bodies the CDEG, see at: [www.coe.int/t/e/human\\_rights/equality/11\\_equality\\_committee/Subordinate%20bodies.asp](http://www.coe.int/t/e/human_rights/equality/11_equality_committee/Subordinate%20bodies.asp) (accessed on 12.02.2007).

<sup>72</sup> Council of Europe Parliamentary Assembly Recommendation 1325 on Traffic in Women and Forced Prostitution in Council of Europe Member States, 23.04.1997.

In 2000, the CoE's Multi-Sectoral Group recommended its Member States to review their legislation and practice with regard to trafficking in persons adopting the Recommendation on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation.<sup>73</sup> This Recommendation categorically identified the necessary legislative developments for a comprehensive fight against trafficking in persons. Accordingly, combating trafficking shall be covered by all areas of “prevention; assistance to and protection of victims; penal legislation and judicial co-operation; measures for co-ordination and co-operation.”

The 2000 Recommendation of the Council of Europe constituted the basis of the European Convention on Trafficking of Human Beings that is finalized in 2005. This Convention that aims to enhance the fight against human trafficking providing protection, assistance and various benefits to the victims of the crime will be analyzed in detail under the European Legal Instruments to Criminalize Human Trafficking Heading in the following chapter.

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<sup>73</sup> Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on Action Against Trafficking in Human Beings for the Purpose of Sexual Exploitation, 19 May 2000.



### 2.2.1.3. OSCE POLICY DOCUMENTS TO COMBAT TRAFFICKING:

The Organization for Security and Cooperation is a European organization with no legally enforcing capacity. Still, with its comparatively larger number of Member States,<sup>74</sup> the OSCE stands as an institution with an effective role of developing soft law, in which many cases that is transferred into legislation either by nation states or by the European Union. Consequently, it is significant to analyze “the largest regional security organization in the world,<sup>75</sup>” which indeed has been one of the first European organizations to raise the issue of trafficking in persons as one of the major problems of Europe.

Trafficking ‘particularly in women’ being a priority of OSCE since the early 1990s, was first aimed to be eradicated with the 1991 Moscow Document.<sup>76</sup> According to Paragraph 40/7 of this document, participating states ensured to “seek to eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women including by ensuring adequate legal prohibitions against such acts and other appropriate measures.” Although one shall admit that no state still has achieved these ambitious goals, it is significant to emphasize the inspiration of this instrument whereas international focus on human trafficking mainly began at the second half of 1990s.

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<sup>74</sup> The current 55 Member States of OSCE are Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, The former Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom, United States of America, Uzbekistan. See at: [www.osce.org/about/13131.html](http://www.osce.org/about/13131.html) (accessed on 12.02.2007)

<sup>75</sup> OSCE, see at [www.osce.org/about/19298.html](http://www.osce.org/about/19298.html) (accessed on 12.02.2007)

<sup>76</sup> Conference on Security and Cooperation in Europe, Third Conference on the Human Dimension of the OSCE, Moscow, 10 September – 15 October 1991.

In 1996, with the Stockholm Declaration, the OSCE Parliamentary Assembly underlined the link between trafficking, economic transition and the problem of organized crime within and beyond borders of OSCE Member States. Furthermore, during the Ministerial Council in 1998, OSCE identified trafficking in persons “as one of the new risks and challenges to security.”<sup>77</sup>

In 1999, the OSCE published “Trafficking in Human Beings: Implications for the OSCE.” The document, pointing the accelerated human trafficking from Central and Eastern European countries to the west, analyses the patterns and practices and the underlying roots of the phenomenon. Additionally, it underlines the inadequate domestic laws of the Member States to criminalize trafficking in persons due to the attempt of prosecuting the victims of the phenomenon. Stressing the date of publishing, the document has served as a guideline to increase knowledge on human trafficking in Europe.

The OSCE Office of Democratic Institutions and Human Rights, ODIHR following up this background paper, developed a wide range of initiatives in Southeastern Europe<sup>78</sup> with the aim of combating trafficking in persons. Addressing human trafficking in this region was particularly suitable for OSCE actions since the organization had the institutions which have been operating both at the political level and with the other international organizations working in Central and Eastern Europe. The projects established in the region cover areas of civil society assistance (specifically the support for women’s NGOs), police training

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<sup>77</sup> Seventh Meeting of the Ministerial Council of OSCE, Oslo Ministerial Declaration, December 1998.

<sup>78</sup> Proposed Action Plan of ODIHR emphasized the necessity to pay special attention to the situation in Southeastern Europe. See ODIHR Proposed Action Plan 2000 for Activities to Combat Trafficking in Human Beings, November 1999.

(particularly in Kosovo), anti-corruption and anti-crime initiatives, human rights monitoring, judicial reform, and legislative assistance.<sup>79</sup>

Being active in the field, the OSCE developed the Final Report of the Supplementary Human Dimension Meeting on Trafficking in Human Beings in 2000 reporting “the most urgent and complex human rights violations that take place throughout the whole OSCE territory.”<sup>80</sup> With the document, OSCE has urged all countries of origin, transit and destination to take more active role in the fight against human trafficking, specifically in areas of providing legal protection and rehabilitation to the victims.

Furthermore, OSCE has developed Anti-Trafficking Guidelines to assist Member States and NGOs in their fight against human trafficking. These guidelines include strategies on monitoring, reporting and coordination; awareness raising and training; and concrete actions for fieldworkers such as legal assistance to the victims and the facilitation of shelter and translation services.<sup>81</sup>

Supplementing these guidelines, the OSCE developed an action plan to fight against human trafficking in 2003.<sup>82</sup> This action plan facilitates the successful implementation of the participating states’ ‘commitments’ on prevention of human trafficking, protection of the victims of the act and prosecution of traffickers.

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<sup>79</sup> OSCE, “Trafficking in Human Beings: Implications for the OSCE,” OSCE Office of Democratic Institutions and Human Rights (ODIHR) Background Paper 1999/3, Review Conference, September 1999.

<sup>80</sup> Rijken Conny, *Trafficking in Persons: Prosecution from a European Perspective*, Asser Press, The Hague, 2003, pp.105.

<sup>81</sup> See OSCE Anti-Trafficking Guidelines at [http://www.osce.org/documents/odihr/2001/06/1563\\_en.pdf](http://www.osce.org/documents/odihr/2001/06/1563_en.pdf) (accessed on 03.12.2004)

<sup>82</sup> Organization for Security and Co-operation in Europe, PC.DEC/557, 24 July 2003.

For years, the OSCE has been the leading European actor in the fight against human trafficking. Having a large membership of 55 participants, the OSCE covers a greater Europe including states of origin, transit and destination. Several non-member Eastern European Countries of the EU and Council of Europe are indeed included in the list of participating states of OSCE. Since OSCE has long been actively operating in these countries, it has built a huge network at the political and civil society levels. Consequently, Europe benefits from OSCE's structures established in its fight trafficking in persons.

#### 2.2.1.4. HUMAN TRAFFICKING AND THE SECURITY VIEWPOINT:

As it is already emphasized, trafficking in human beings is highly profitable for the organized criminal syndicates. Most of the transnationally operating criminal groups transfer the capital made via human trafficking to their other illegal activities. These activities that endanger global security include trafficking of weapons,<sup>83</sup> smuggling of goods and drugs, and illegal arms trades aiding global terrorism.<sup>84</sup> Activities of the organized syndicates and terrorist groups are perceived to pose threat to the collective security system as the “inevitable consequence of the activities of organisations deny the state its legitima[te power].<sup>85”</sup>

The security point of view stressed by the OSCE has increasingly developed as a priority in the security agenda of Europe. Still this issue must be further analyzed by the policy and law makers of Europe. Europe shall develop well thought programmes and instruments which are sensitive to human security as well as fundamental freedoms.

Considering the European Unions’ emphasis on the fight against terrorism in Article 1/43 of the failed EU Constitution in mind, trafficking in persons shall also be covered in line with the aims to be achieved at the 2<sup>nd</sup> pillar, European Common Foreign and Security Policy of the European Union<sup>86</sup> due to the strong link between modes of trafficking and terrorism. Still, Europe must find the leading way not to restrict fundamental human rights of the being and respect human dignity.

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<sup>83</sup> For instance, see: UN Doc.S/RES/1589(2005), 24 March 2005. The SC Resolution determines the situation in Afghanistan as a ‘threat to international peace and security’ referring to the mobilisation of arms and drugs in the country.

<sup>84</sup> UN Doc. S/RES/1624 (2005), 14 Sept. 2005; UN Doc. S/RES/1617 (2005), 29 July 2005; UN Doc. S/RES/1566 (2004), 8 Oct. 2004; etc.

<sup>85</sup> Williams Phil and Savona U. Ernesto (eds.), p.vii.

<sup>86</sup> The 2<sup>nd</sup> pillar covers the Common Foreign and Security Policy (CFSP) of the EU.

In parallel, the EU's High Representative Javier Solana's highly constructive security strategy document, "A Secure Europe in a Better World" of 2003 also stresses terrorism and organized crime among key threats to Europe. Accordingly, the European Union must establish a multilateral security and defence policy in accordance to the demands of global peace.

With a purpose to halt these new threats, the Secretary-General of the United Nations set the theme for the 60<sup>th</sup> annual meeting of the Organization as 'Focus 2005: Responding to Global Challenges.' In response to these 'less direct and apocalyptic' threats to the peace,<sup>87</sup> the Secretariat called its Members to establish "a new and broader understanding of what collective security means."<sup>88</sup> Furthermore, Kofi Annan invited states to ratify 23 UN Conventions including the UN Protocol against Human Trafficking at his Millennium Development speech to the United Nations General Assembly.<sup>89</sup> Indeed, the Trafficking Protocol that was pointed as a significant instrument for the protection of human and global security was widely ratified.<sup>90</sup>

#### 2.2.1.5. IMPACT OF THE EUROPEAN POLICY DOCUMENTS ON THE PROCESS:

The policy documents developed by major European actors show the significant desire for a European input in the fight against trafficking in persons. However, unless the goals provided

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<sup>87</sup> Williams Phil and Savona U. Ernesto (eds.), The United Nations and Transnational Organized Crime, Frank Cass, London, 1996, p.vii.

<sup>88</sup> Kohona\_Palitha, "Press Briefing by Office of Legal Affairs to Launch Booklet on Treaties Responding to Global Challenges," United Nations Information Service at: [www.unis.unvienna.org/unis/index.html](http://www.unis.unvienna.org/unis/index.html)

<sup>89</sup> Karacan Aytac, "Definition of Trafficking – The Human Rights Violations Involved in the Trafficking Process," in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.52.

<sup>90</sup> UN Trafficking Protocol has 117 signatories among which 111 are parties to the instrument. Turkey signed the Protocol on 13 December 2000 and ratified it on 25 March 2003. See at: [http://www.unodc.org/unodc/crime\\_cicp\\_signatories\\_trafficking.html](http://www.unodc.org/unodc/crime_cicp_signatories_trafficking.html) (accessed on 14.02.2007)

in the above listed policy documents are transformed into concrete action plans and to a well established legal framework, the fight against human trafficking will fail.

Comparing policy documents with legislative instruments, there had been a long lasting hesitance of the European States to adopt far-reaching legal provisions against human trafficking. For the most, states tended to deny revision of their domestic laws specifically on protection of the victims of trafficking. Where as broad protection and assistance were recommended in non-binding policy documents, aforementioned temporary residence status and witness protection programmes lacked in legal instruments.

As a matter of fact, as it was highlighted by the European Commission, because the policy statements were not adequately translated into penal legislation; divergent legal systems in several Member States and applicant countries and the lack of cooperation between judicial authorities benefited human traffickers to operate with impunity.<sup>91</sup>

However, a significant European Convention was adopted by the member countries of the Council of Europe in 2005. This recent instrument provided a legal base within the EU as well as a treaty of Public International Law. The paper will analyze the EU anti-trafficking legal framework before focusing on the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

Council of Europe, with its significant number of Member States, is an important actor in the field of combating human trafficking in Europe. As the Joint NGO Statement on the draft European Constitution suggests, if the Council succeeds in the entry into force of this

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<sup>91</sup> Report on the Communication from the Commission to the Council and the European Parliament for Further Action on the Fight against Trafficking in Women, 02.05.2000, Final A5-0127/2000.

comprehensive Convention, it will “fill a significant gap, as today there are no international treaties on trafficking that comprehensively address states’ obligations to respect and protect the rights of trafficked persons.”<sup>92</sup>

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<sup>92</sup> See “Joint NGO Statement on the Draft European Convention against Trafficking in Human Beings”, 27.09.2004 at <http://news.amnesty.org/index/ENGEUR0127092004> and “The Draft European Convention against Trafficking in Human Beings must be Strengthened”, 27.09.2004 at <http://news.amnesty.org/index/ENGIOR300222004>. (accessed on 03.12.2004).



## 2.2.2. EUROPEAN LEGAL INSTRUMENTS TO CRIMINALIZE TRAFFICKING:

Criminal law is one of the fields that remained almost completely within the national sovereignty; the EU legislation has not extended its supremacy over criminal issues much. Even if many attempts have been made to improve cooperation in criminal matters both within the European Union, cooperation has only been achieved at the preliminary stage in this field. Therefore, in contrast to the European Community – the first pillar, the powers of the EU institutions have been relatively restricted in the third pillar.

When EC drafted the Single European Act, with a General Declaration,<sup>93</sup> it highlighted the competence concerning areas such as police cooperation and immigration of the third pillar should remain with Member States.<sup>94</sup> Therefore, the main decision-making body in the third pillar and consequently on criminalizing trafficking in persons has been the Council of EU, the institution that represents the Member States that hesitate for strong cooperation.

In the third pillar of Police and Judicial Cooperation in Criminal Matters Council of EU uses legally binding common positions, framework decisions, decisions and conventions; the instruments<sup>95</sup> introduced by the Treaty of Amsterdam. Except for the conventions, the instruments of the third pillar lack direct effect, for the reason these instruments must be supplemented by implementing measures.

### 2.2.2.1. COUNCIL FRAMEWORK DECISION ON COMBATting TRAFFICKING IN HUMAN BEINGS:

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<sup>93</sup> European Communities, General Declaration, SEA, Appendix X, 1986.

<sup>94</sup> Treaty of Amsterdam re-classified issues of immigration and smuggling within the competence of the first pillar.

<sup>95</sup> Common strategies, joint actions, common positions and information and consultation instruments of the Treaty of EU are replaced with new legally binding instruments of the third pillar of Treaty of Amsterdam.

Council of EU used only a framework decision for the purpose of approximating domestic criminal laws of the Member States that prosecute trafficking in persons. The Framework Decision on Combating Trafficking in Human Beings<sup>96</sup> was adopted to complement the policy documents combating trafficking in human beings.

Harmonizing the definition on trafficking in human beings in Europe, the Framework Decision identifies the act to be prosecuted as “any form of recruitment, transportation, transfer or harboring of a person who has been deprived of his/her fundamental rights. Thus, all criminal conduct which abuses the physical or mental vulnerability of a person will be punishable.”

Articles 4 and 5 of the Framework Decision introduce the liability of and sanctions on legal persons. This is the first attempt of the Council to penalize legal as well as natural persons with regard to trafficking in persons. According to the document, penalties on legal persons will cover “criminal or non-criminal fines and specific sanctions such as a temporary or definitive ban on commercial activities, a judicial dissolution measure or the exclusion from public benefits or advantages.”

With the instrument, Council sets a standard for the penalties that shall be provided by national legislations. Accordingly, the maximum penalties shall not be less than eight years of imprisonment. States may impose a custodial sentence only when a victim's life has been endangered, a victim is under the age of 18 and/or a crime is committed within the framework of a criminal organization.<sup>97</sup>

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<sup>96</sup> Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings, Official Journal L 203 of 01.08.2002.

<sup>97</sup> Joint Action 98/733/JHA defines a criminal organization as a structured association established over a period of time, of more than two persons, acting in concert with the view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum

Furthermore, underlying the significance of the prosecution of all crimes, the Framework Decision lays emphasis on the active personality principle to eliminate conflicts of jurisdiction. Consequently, having jurisdiction at a case where the offender is a national of a Member State, with this principle the State can prosecute its nationals for offences committed outside its territory. The principle is specifically introduced to tackle the problem that arises when a state refuses to extradite another state's nationals.

Even if the Framework Decision succeeded in its emphasis on the necessity of criminalizing all acts of trafficking in human beings, it failed to refer to the necessity of establishing cooperation to combat trafficking or to any action aiming to diminish the causes of trafficking. Moreover, it fell short of introducing adequate legal protection of and assistance to the victims of traffickers.<sup>98</sup> The instrument only provides protection to witnesses during judicial proceedings as the 2001 Council Framework on the Standing of Victims in Criminal Proceedings does.<sup>99</sup>

#### 2.2.2.2. PROPOSAL FOR A COUNCIL DIRECTIVE ON SHORT TERM RESIDENCE

PERMIT:

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of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities. See Joint Action 98/733/JHA of 21 December 1998 on Making it a Criminal Offence to Participate in a Criminal Organization in the Member States of the European Union, Official Journal L 351 of 29.12.1998.

<sup>98</sup> See United Nations High Commissioner for Human Rights (UNHCHR), "Observations by the UNHCHR and UNHCR on the Proposal for a EU Council Framework Decision on Combating Trafficking in Human Beings", 2001 at <http://www.stranieriinitalia.com/briguglio/immigrazione-e-asilo/2001/luglio/hcr-hchr-traffico.html>. (accessed on 17.12.2004)

<sup>99</sup> Council Framework Decision 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings, Official Journal L 82 of 22.03.2001.

After the analysis on the Council Framework Decision, it is significant to put an emphasis on the Proposal for a Council Directive on the Short Term Residence Permit.<sup>100</sup> This Proposal attempts to fill in the gap of the Framework Decision for an adequate protection to and assistance for victims of trafficking in persons.

The Treaty of Amsterdam transferred issues of visas, asylum and immigration from the third pillar to the first due to their direct link with free movement of persons. Consequently, the Proposal for a Council Directive on Short Term Residence Permit connects trafficking in persons to the first pillar, which is the European Communities pillar of the EU.

The proposal aims combating irregular immigration by introducing a residence permit for the victims of illegal immigration and trafficking in persons who consent to cooperate with the competent authorities against suspects. Offering a 30 day 'reflection period' and six months renewable residence permit for the victims that consent to witnessing, the proposal intends to encourage victims of trafficking to cooperate with the competent authorities.

The victim may not be expelled from the country during the 30 days reflection period. Meanwhile, the state shall provide free legal and language assistance and the victim shall have access to housing, medical and psychological care. However, even if the victim agrees to cooperate during this period, s/he needs to acquire the approval of the authorities responsible for the investigation and prosecution to be able to attain the short-term residence permit. The competent authorities must conclude that the victim's presence as a witness is useful for the case since s/he genuinely severed considerable links with the suspects. If a renewable six

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<sup>100</sup> Proposal for a Council Directive on Short Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration of Trafficking in Human Beings who Cooperate with Competent Authorities, COM(2002) 71 Final, Brussels, 11.02.2002.

months residence permit is provided by the state, the victim obtains an access to the labor market, vocational training and education.

The proposed directive thus strengthens the instruments developed for combating human trafficking by introducing a residence permits for trafficked persons. However, the trafficking in persons is grasped by an approach that emphasizes the phenomenon as part of illegal immigration, which might sustain tightly controlled immigration laws in destination countries that in fact facilitate trafficking.<sup>101</sup> Other than that, for the short term residence to be provided, the document emphasizes the fulfillment of strict criteria.

The proposed directive totally ignores protection to and assistance for the victims who are not willing or able to provide sufficient information on suspects and persons who have not (yet) been victims of trafficking. In addition, the victims who do cooperate will only be granted temporary residence permits; they cannot settle in the country. A permanent residence permit should be provided for the victims when returning back to home country is not safe. What's more, "states should be required to ensure third-country protection" in situations when "remaining in a country of destination or origin is not a safe and viable option."<sup>102</sup>

Above all, this document that was developed back in 2002 still lies down only as a proposal.

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<sup>101</sup> Morrison John, Croslan Beth, "Trafficking and Smuggling of Refugees: The End Game in European Asylum Policy?", *New Issues in Refugee Research*, Working Paper no.39, April 2001. See UNHCR website for the article at <http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=search>. (accessed on 07.12.2004)

<sup>102</sup> "Joint NGO Statement on the Draft European Convention against Trafficking in Human Beings", 27.09.2004.

### 2.2.2.3. EUROPEAN CONVENTIONS AIMING TO ESTABLISH COOPERATION IN CRIMINAL MATTERS:

The Council Framework Decision on Combating Trafficking in Human Beings is the sole legal third pillar instrument criminalizing trafficking in persons. Having already analyzed the failure of its support for cooperation, it is significant to study relevant European conventions in criminal matters as complementary instruments to establish international cooperation in the fight against human trafficking.

#### i European Conventions on Mutual Assistance in Criminal Matters:

The Council of Europe Convention on Mutual Assistance in Criminal Matters, with its 43 ratifications<sup>103</sup> has been an important legal instrument that facilitates cooperation in criminal matters. The 1959 Convention aims the contracting states to grant widest mutual assistance in criminal matters for the purpose of obtaining evidence including transfer of related articles, records or documents. With a letter of request, a judicial authority of one country may give mandate to a foreign judicial authority to perform in its place for actions such as hearing of witnesses, experts or accused persons. In accordance to the Convention, the assistance may be refused in cases of political or fiscal offences<sup>104</sup> or if the requested state is of the opinion that assistance will violate its sovereignty or public order.

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<sup>103</sup> European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 20.04.1959, ETS no.030. The convention has been signed by 3 states that have not ratified it.

<sup>104</sup> With the adoption of 1978 Additional Protocol to the Convention, refusals on grounds of fiscal offences are ignored. See Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 17.03.1978, ETS no.099.

An additional protocol to the 1959 Convention was adopted in 2001 “to improve states’ ability to react to cross-border crime in the light of political and social developments and technological developments throughout the world.<sup>105</sup>” To this end, the protocol has introduced use of video and audio communication, cross-border observations, controlled delivery, covert investigations and joint investigation teams as instruments to be used for mutual assistance.

The EU integrated the 1959 Convention as the Council of EU adopted the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. The 2000 Convention<sup>106</sup> aims at eliminating the conflict that arises due to the principle of proportionality<sup>107</sup> while strengthening judicial cooperation among EU Member States. With the purpose, the document suggests the establishment of joint investigation teams which shall be established by mutual agreements of the competent authorities for a specific purpose and a limited time to carry out criminal investigations in one or more of the Member States involved.

## ii. European Conventions on Extradition and European Arrest Warrant:

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<sup>105</sup> Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 08.11.2001., ETS no.182. The protocol that entered into force in February 1, 2004 has been ratified by 9 states and signed by 20 states that have not ratified it.

<sup>106</sup> Convention on Mutual Assistance Between the Member States of the European Union, Brussels, 22.05.2000, 7846/1/00 Rev 1, Official Journal 197, 12.07.2000.

<sup>107</sup> “A principle of the European Union ensuring that a legislative measure is introduced at EU level only when it is appropriate to have a measure at that level, and that when local legislation is all that is needed, this will be encouraged.” Find this definition in Martin A. Elizabeth, Oxford Dictionary of Law, Oxford University Pres, Oxford, pp.389.

The Council of Europe Convention that has 45 ratifications<sup>108</sup> obliges contracting states to extradite which is “the surrender by one state to another of a person accused of committing an offence in the latter.”<sup>109</sup> According to the 1957 Convention, double criminality is the rule in extradition procedures; therefore the crime for which extradition is sought must be an act punishable by deprivation of liberty or under detention order for a period of at least one year in both the requesting state and the state to which the fugitive has fled.

Articles 3, 4 and 5 of the Convention underlines that extradition may not be granted in cases of political offences, offences under military law or when a requested state has substantial ground to believe that extradition is being requested for the purpose of prosecuting a person on account of his race, religion, nationality or political opinion or when there is possibility of the implementation of death penalty. In addition, extradition may be refused when an application is realized at a period when the requested state has already begun a procedure against the suspect. Also extradition cannot be granted if a final judgment has been delivered against the person claimed in respect of the offences for which extradition is requested.

The 1957 Convention has been supplemented by the Convention on Simplified Extradition Procedure between Member States of the European Union.<sup>110</sup> The Council of EU adopted the 1995 Convention to diminish the long phases of formal procedures of extradition laid down in the 1957 Convention. Consequently, the 1995 Convention was adopted allowing quicker extradition with consents of the suspect and the requested state.

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<sup>108</sup> European Convention on Extradition, Paris, 13.12.1957, ETS no.024. The convention has been signed by 2 states that have not ratified it.

<sup>109</sup> Martin A. Elizabeth, Oxford Dictionary of Law, Oxford University Press, Oxford, pp.194.

<sup>110</sup> Convention on Simplified Extradition Procedure Between Member States of the European Union, Official Journal C 78, 30.03.1995.



Furthermore, the Council of EU adopted in 1996 a Convention Relating to Extradition between the Member States of the European Union<sup>111</sup> to overcome the difficulties in extradition that arise due to the requirement of double criminality. Though, divergences among different criminal codes relating to conspiracy and association of the Member State eliminated extradition.<sup>112</sup> While the instrument reaffirmed the requirement for double criminality for extradition, Article 3 introduced an exception to this requirement. Consequently, when an act is classified in a requesting state as a conspiracy or association to commit offences, punishment of such act in the requested state does not emerge as a prerequisite for extradition.

There are two requirements of the exception in the 1996 Convention. The act must be punishable with a maximum custodial sentence of at least 12 months and the conspiracy or the association must be among the serious crimes of terrorist offences and “any other serious offence in the field of drug trafficking and other forms of crime against individual freedoms or creating a collective danger.” Unfortunately, the document does not specifically emphasize trafficking in persons as a serious crime in addition to drug trafficking.

Recently, the European Union established a new mechanism; the European Arrest Warrant<sup>113</sup> (EAW) “to replace the extradition system.” EAW, for the purpose of eliminating deadlocks that arise by the complex and slow extradition procedures, replaces the political and administrative phase of the old extradition system with a comprehensive judicial mechanism.

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<sup>111</sup> Convention Relating to Extradition Between Member States of the European Union, Official Journal C 131, 23.10.1996.

<sup>112</sup> Explanatory Report of the Convention Relating to Extradition Between Member States of the European Union, Official Journal C 191, 23.06.1997.

<sup>113</sup> Council Framework Decision of 13.06.2002 on the European Arrest Warrant and the Surrender Procedures Between the Member States, Official Journal L 190, 18.07.2002.

EAW which has replaced all other extradition instruments as in the 1<sup>st</sup> of July 2004 requires each national judicial authority of EU Member States to recognize the requests for the arrest and extradition of a person made by the judicial authority of another Member State with a minimum of formalities, eliminating the requirement of the principle of double criminality as well. Besides, in Article 17 EAW introduces an absolute time-limit of 90 days between the arrest and the decision to be taken on the surrender of a person when a person does not consent to extradition. If he does, the judicial authority has to take a decision within 10 days after.

The Framework Decision lists crimes that are applicable to European Arrest Warrant. Significantly, trafficking in persons is amongst the crimes listed within the framework of EAW.

### iii. European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime:

The Council of Europe Convention that has 47 ratifications<sup>114</sup> aims “to facilitate international cooperation as regards investigative assistance, search, seizure and confiscation of the proceeds from all types of criminality, especially serious crimes, and in particular drug offences, arms dealing, terrorist offences, trafficking in children and young women and other offences which generate large profits.<sup>115</sup>”

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<sup>114</sup> European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 08.12.1990, ETS no.141.

<sup>115</sup> See Council of Europe web-site for Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime at <http://conventions.coe.int/treaty/en/Reports/Html/141.htm>. (accessed on 05.12.2004)

According to the instrument, participating states are obliged to adopt necessary legislative measures for the confiscation of tools used during the proceedings of a crime. For the purpose, measures to be established must make bank, financial or commercial records available and can be seized. Special investigative techniques such as monitoring orders (judicial order to a financial institution to provide information about transactions), observation, interception of telecommunications, access to computer systems and orders to produce specific documents are exemplified in Article 4 of the Convention.

While bank secrecy cannot be raised to refuse the application of the Convention, refusal is allowed on the grounds listed in Article 18. Consequently, in a case where assistance would be a violation of the fundamental principles of the legal system, the sovereignty, security, public order of the requested state, the request can be declined.

#### iv. European Convention on the Transfer of Sentenced Persons:

The Council of Europe Convention that has 55 ratifications<sup>116</sup> puts emphasis on the transfer of a sentenced person to another state with the consent of the prisoner. The main aim of transferring a convict is to facilitate the social rehabilitation of the prisoner at his home country, removing the side-effects of language barriers and cultural differences in a foreign country's prison.

1997 Additional Protocol<sup>117</sup> to the Convention introduced the transfer of nationals. Under certain circumstances, a state may be requested to transfer its own nationals. This situation

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<sup>116</sup> European Convention on the Transfer of Sentenced Persons, Strasbourg, 2.04.1983, ETS no. 112. There are 2 signatory states that have not ratified the Convention.

<sup>117</sup> Additional Protocol to the European Convention on the Transfer of Sentenced Persons, Strasbourg, 18.12.1997, ETS no.167.

may arise when a sentenced person flees to his own state, but has to serve his penalty in the sentencing state.

#### v. Police and Judicial Cooperation under the Schengen Convention:

Title III of the 1990 Schengen Convention abolishes checks at internal borders of the Member States to create a single market in European Union. The Title that concerns police and security covers aforementioned European Conventions aiming to establish European cooperation in criminal matters.

Articles from 48 to 53 of the Convention concern mutual assistance in criminal matters supplementing the 1959 European Convention on Mutual Assistance in Criminal Matters. Articles from 59 to 66 contain provisions on extradition supplementing the 1957 European Convention on Extradition. Articles from 67 to 69 include provisions on the transfer of the execution of criminal judgments supplementing the 1983 European Convention on the Transfer of Sentenced Persons.

This brief selection of conventions to improve cooperation in criminal matters between European states have been discussed in addition to the Council Framework Decision and the Proposed Directive in combating trafficking in persons because of the fact that the Schengen Convention refers to these legally binding instruments.

#### 2.2.2.4. CoE CONVENTION ON TRAFFICKING IN HUMAN BEINGS

The latest international legal development in fight against human trafficking has been the Council of Europe Convention on Action against Trafficking in Human Beings. The Convention which was finalized and opened for signature on 16 - 17 May 2005 was formulated with an aim “to strengthen and supplement the [UN] Protocol put[ting] particular stress on the human rights perspective of trafficking, gender equality and protection of victims.”<sup>118</sup>,

The 2000 CoE Recommendation had significant impacts on European fight against trafficking in persons; the European Convention on trafficking in human beings of the Council of Europe is based on the Recommendation No R (2000) 11 of the Committee of Ministers. The CoE Convention will be legally binding within the EU, in its neighboring countries as well as non-member signatories as a treaty of Public International Law<sup>119</sup> as soon as 10 countries (8 CoE Member States and 2 Non-Member States) will ratify the Convention. Up to date, among 46 Member States of the CoE 30 signed and 4 of them ratified the Convention. In addition, a non-Member State, Montenegro signed it. Turkey has not signed the Convention yet.<sup>120</sup>

The CoE Convention is highly appreciated by Human Rights NGOs and states are encouraged to ratify it as soon as possible. Mary Cunneen, Director of Anti-Slavery International describes the value of this Convention as follows: “This Convention is a critical step forward

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<sup>118</sup> Önen Aysen, “Definition of Trafficking/The Human Rights Violations Involved in the Trafficking Process,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.48.

<sup>119</sup> Similarly, EU Conventions that are adopted on the basis of Article 34/2/d of EU Treaty derive their legality from Public International Law as well.

<sup>120</sup> Council of Europe, See at: <http://conventions.coe.int/Treaty/Commun/Cherchesig.asp?NT=197&CM=1&DF=1&CL=ENG>. (accessed on 13.02.2007)

in protecting trafficked people's rights. It is the first international treaty specifically designed to provide minimum standards for such protection. Through the adoption of the Convention, the Council of Europe demonstrates official recognition of the need for governments to provide protection and support to all trafficked people.<sup>121</sup>”

Reaffirming the definition given by the UN Trafficking Protocol, the CoE Convention stresses difficulties in combating the human trafficking without challenging long-term causes of the problem. Besides, the Convention provides gender equality, international cooperation and setting up a monitoring mechanism in Article 1 as its purpose and method to halt human trafficking.

The 2005 Convention provides awareness-raising campaigns, sex education programmes at schools, with particular emphasis on equality between genders and on human rights and special trainings for all persons who might get into contact with victims of trafficking as tools to improve women's conditions in countries of origin and to take action against the demand element of trafficking that is observed in Article 4.

Article 28 of the Convention requires states to enact domestic laws to ensure the protection of the rights and assistance to victims and Article 10 requires that the legally defined identification procedure of victims are undertaken by trained and qualified authorities.

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<sup>121</sup> Amnesty International and Anti-Slavery International, “Amnesty International and Anti-Slavery International Call on European States to Ratify the Council of Europe Convention against Trafficking,” 2005, see at: <http://www.antislavery.org/archive/press/pressrelease2005maycoe.htm> (accessed on 13.02.2007)

According to the CoE Convention, states shall ensure that people who are reasonably believed to have been trafficked are not involuntarily removed until the identification process has been completed and they are offered assistance and protection.

With the purpose of providing minimum 30 days renewable stay in the country, enhanced protection to victims, the instrument obliges states to provide safe and secure housing; psychological and emergency medical assistance, interpretation and translation services, information about their rights, including to compensation at minimum; such assistance may not be conditioned on their willingness to act as a witness in any proceedings against those responsible for their trafficking.

The 2005 Convention further encourages states to provide protection to victims including physical protection, relocation, identity change and assistance in obtaining jobs. In addition, a child victim will be granted subject to ‘special protection.’

This Convention established “an independent and effective” monitoring mechanism and a body of experts called GRETA.

### 2.3. AN EVALUATION OF THE EUROPEAN RESPONSE TO HUMAN TRAFFICKING:

European legal framework focuses on the criminalization of trafficking in human beings in line with the Trafficking Protocol to the UNCTOC. Still, the effect of legal instruments in criminal matters with regards to the prosecution of persons suspected of trafficking others is

limited.<sup>122</sup> First of all, the Council Framework Decision of 2002 is the only legally enforceable instrument that specifically introduces provisions on criminalizing the act. As emphasized before, framework decisions oblige states to take adequate measures for the implementation of the aims of such instruments, though; they are not directly applicable in Member States of the EU.

Recent Council of EU Conventions developing mutual assistance in criminal matters and extradition and the introduction of the European Arrest Warrant seem to indicate a willingness to establish cooperation in criminal matters. However, to be able to intensify a comprehensive cooperation against human trafficking in Europe, such cooperation must include non-member (Eastern) European states as well. Therefore, Council of Europe shall facilitate such cooperating among its larger group of participant states.

While policy documents developed reflect European organizations' good intentions in granting protection to and assistance for the victims of trafficking, unfortunately, legally binding instruments do not comply with such intentions. Proposed Council Directive of 2002 illustrates that the EU Member States comprehend human trafficking as part of illegal immigration. Though, trafficked persons must not be subjects of the immigration laws that are used to punish undocumented immigrants.<sup>123</sup> Furthermore, such an approach totally ignores victims of trafficking within borders. In addition, the short term residence that is introduced by the proposed document may not be provided to trafficked persons because they are the victims of the phenomenon, but because they might consent to testify.

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<sup>122</sup> Rijken Conny, Trafficking in Persons: Prosecution from a European Perspective, Asser Press, The Hague, 2003, pp.152.

<sup>123</sup> Jordan D. Ann, "Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings", in Masika Rachel, Gender, Trafficking and Slavery, Oxfam, Oxford, 2002, pp.34.



However, residence permits must not be used as rewards for witnessing against suspects of trafficking.<sup>124</sup>

European Convention on Trafficking in Human Beings offers fundamental freedoms as well as high level of protection to and assistance for the victims of human trafficking. However, states still hesitate to sign and ratify such obligations, benefiting traffickers and organized crime.

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<sup>124</sup> Elaine Pearson, “Half-Hearted Protection: What Does Victim Protection Really Mean for Victims of Trafficking In Persons?”, in Masika Rachel, Gender, Trafficking and Slavery, Oxfam, Oxford, 2002, pp.57.

## CHAPTER III:

### THE EUROPEAN STATE PRACTICE AGAINST HUMAN TRAFFICKING:

After examining the European input on the recently developing legal framework to tackle trafficking in persons, there is the necessity to analyze European state practice against the phenomenon. Even if the European Union increases its authority on Police and Judicial Cooperation in Criminal Matters, the third pillar is not yet a supranational organization as the EC is. The state control over the third pillar is indicated by the dominance of the Council of the EU in decision making in criminal matters. Additionally, the 2002 Council Framework Decision appropriates the domestic legislation; however, there is no instrument to harmonize the fight against human trafficking in the European Union. Therefore, it is crucial to focus on the European state practice and assess both the EU Member States' and non-member European states' compliance with the minimum standards to eliminate trafficking in persons.

### 3.1. EUROPEAN STATES' COMPLIANCE WITH THE TRAFFICKING PROTOCOL:

The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children to the UNCTOC is signed, however, not ratified by each European state. In fact, the United Kingdom, Germany, Italy, Greece, Switzerland, Luxembourg, Czech Republic, Hungary, Iceland and the Former Yugoslav Republic of Macedonia have not ratified the Trafficking Protocol of the United Nations.

Significantly, the 2004 US Government Trafficking in Persons Report<sup>125</sup> lists the United Kingdom, Germany, Italy, Czech Republic and the Former Yugoslav Republic of Macedonia among the 'Tier 1' countries which fully comply with the minimum standards in combating human trafficking. Consequently, it is an open question whether the ratification of the Protocol is unnecessary for an effective fight against trafficking?

Many European states which have not ratified the Trafficking Protocol have progressive national anti-trafficking legislations. National criminal codes of the United Kingdom, Germany, Greece, Switzerland and Czech Republic contain provisions that prosecute trafficking in persons for sexual exploitation; yet, other forms of human trafficking outlined in the Protocol are missing. Besides, including Italy to the above listed countries, many EU Member States' domestic legislations focus on trafficking in persons as part of illegal immigration, ignoring trafficking within borders. As a matter of fact internal trafficking is a major problem also in Western Europe as well as the cross-border trafficking in persons.

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<sup>125</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.40.

Interestingly, the Former Yugoslav Republic of Macedonia is the only non-member Eastern European state among the signatories that have not ratified the Protocol. The European Union has indeed been encouraging and/or pressuring Eastern European countries to ratify the Protocol via accession, association and partnership agreements but not its Member States to do so.

### 3.2. EUROPEAN STATES' COMPLIANCE WITH THE EU INSTRUMENTS:

The first thing that grasps one's attention who analyzes national criminal codes is the period during which major developments on anti-trafficking legislations were acquired. Indeed, after the adoption of the Council Framework Decision and the proposed Directive in 2002, European states' focus on the fight against human trafficking has significantly strengthened. Indeed, many states ratified the Trafficking Protocol to the UNCTOC and passed national anti-trafficking legislations in 2002 and 2003.

Given that the awareness on the fight against trafficking in persons deliberately increased by emphasis of the EU, Council of Europe and OSCE on the phenomenon; there is no European country listed among the states which do not comply with the minimum standards against trafficking.<sup>126</sup>

Nonetheless, there are significant varieties among national anti-trafficking codes in Europe. Therefore, it is crucial to assess the gap that occurs at the European level to eliminate trafficking in persons. With this purpose, the study will be constructed exemplifying specific trafficking related problems and key legislative achievements in criminal matters, and the strategies developed to assist victims of trafficking and to establish cooperation in Europe.

Austrian, Belgian, Dutch, Italian and Czech Republican practices and domestic legislations will be provided as good examples for the fight against human trafficking. On the other hand, the paper will analyze the legal and practical framework in Greek Administration of

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<sup>126</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.40.

Southern Greek Administration of Southern Cyprus, Bosnia and Herzegovina, Kosovo and Russia to draw attention to the points that shall be improved. Finally, the fight against human trafficking will be analyzed in detail.

Among the below studied European countries, Austria, Belgium, Bosnia and Herzegovina, The Netherlands, Italy and Greek Administration of Southern Greek Administration of Southern Cyprus signed the 2005 CoE Convention; whereas Czech Republic, Turkey and Russia did not.<sup>127</sup>

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<sup>127</sup> See Council of Europe website at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=7&DF=15/12/2005&CL=ENG>. (last visited on 20.09.2006)

### 3.3. STATE PRACTICE:

#### 3.3.1. AUSTRIA:

Austria, the gateway of the European Union, has significantly suffered being for a destination and transit country primarily for persons transported from Eastern Europe, the former Soviet Union and several African countries. Therefore, the government of Austria has put particular emphasis on the European dialogue to enhance the fight against trafficking in persons and to penalize suspects of human trafficking<sup>128</sup>.

Enhancing the definition adopted by the European Union, Austrian anti-trafficking legislation defines the phenomenon covering trafficking of organs as well. Consequently, Austria is the only EU Member State that fully covers the definition given by the Trafficking Protocol. In accordance, even though many other Member States prosecute sexual exploitation and forced labor under statutes such as crimes against personal freedom, rape or human smuggling; the criminal code of the Austrian state includes provisions which specifically prosecute trafficking and trafficking-related situations.

A division of Austrian Interior Ministry's Federal Bureau of Criminal Affairs is established with the aim of combating trafficking in persons and four Austrian judges are specialized in trafficking cases<sup>129</sup>. The Bureau actively collaborates with the European Union, Interpol, OSCE and UN to initiate projects aiming to prevent trafficking in persons in Europe<sup>130</sup>.

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<sup>128</sup> US Government of State, "Trafficking in Persons Report", 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).

<sup>129</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.121-122.

<sup>130</sup> Ibid.

Furthermore, “the [Austrian] government [is] particularly strong in mounting cooperative efforts with authorities from other countries, at both national and sub-national levels, to facilitate the investigation and prosecution of trafficking cases.<sup>131</sup>” Austrian government supports other governments’ initiatives against human trafficking.

Establishing mutual assistance with the legal authorities in countries of origin, Austrian law enforcement authorities assist proceedings against suspects of trafficking in these countries. Additionally, Austrian police cooperates with the Romanian police force to combat trafficking in persons<sup>132</sup>.

Besides, Austrian government is very keen to protect the victims of trafficking. While EU foresees short term residence permit for the victims of trafficking, Austria provides both temporary and permanent residence permits to trafficked persons. Women’s shelters are established in each province and the government supports and funds civil assistance to trafficked persons, including legal support and health services. Moreover, the Austrian “government fully funds a key anti-trafficking NGO” in the country<sup>133</sup>.

### 3.3.2. BELGIUM:

Belgium is a destination and transit country for persons trafficked from Sub-Saharan Africa, Central Europe and Asia<sup>134</sup>. While Belgian anti-trafficking law penalizes both sexual and non-sexual forms of trafficking with the possibility of life imprisonment for the suspects of

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<sup>131</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.121-122.

<sup>132</sup> Ibid.

<sup>133</sup> US Government of State, Trafficking in Persons Report, 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).

<sup>134</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.125-126.



trafficking minors; the significance of the Belgian legislation depends on its system of protection.

According to the 2006 Report of the US Government, “the government of Belgium fully complies with the minimum standards for the elimination of trafficking. Belgium made appreciable progress to combat trafficking in 2005 by strengthening its anti-trafficking laws to both meet international standards and prohibit child sex tourism, as well as by improving victim protection by raising awareness of the problem.<sup>135</sup>”

As a matter of fact, the 2002 Proposed Directive on Short Term Permits is based on the Belgian model<sup>136</sup>. Similar to the directive, Belgian legislation grants a recovery period of 45 days before a victim agrees to testify. If s/he does, the government extends his temporary residence status three to six months. Significantly, Belgium may further extend the victim’s residence status to a long-term residency if his cooperation to investigate traffickers leads a conviction. Moreover, it is possible for a victim to attain permanent residence by a humanitarian visa.

### 3.3.3. THE NETHERLANDS:

The Netherlands is a destination and transit country for persons trafficked from Central and Eastern Europe, Africa, South America, East Asia and Brazil for mainly sexual exploitation

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<sup>135</sup> US Government of State, Trafficking in Persons Report, 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).

<sup>136</sup> Elaine Pearson, “Half-Hearted Protection: What Does Victim Protection Really Mean for Victims of Trafficking In Persons?”, in Masika Rachel, *Gender, Trafficking and Slavery*, Oxfam, Oxford, 2002, pp.57.

purposes. In addition, the Netherlands is a country of origin due to internal trafficking of Moroccan and Turkish immigrants<sup>137</sup>.

The Netherlands has led the international dialogue on the fight against trafficking in persons. The government puts a specific notice on eliminating human trafficking and supports further victim protection and financially assists domestic shelters. The recovery period is three months in the Netherlands. Victims who cooperate with Dutch authorities during proceedings against traffickers are allowed to hold a temporary residence permit which provides a right to work. Victims who do not agree to cooperate are repatriated voluntarily. Furthermore, the Netherlands law that provides a right to permanent residence on humanitarian grounds serves as a model to other European states.

The Netherlands legalized prostitution to acquire greater control over a transparent sex industry. There are ongoing debates on legalizing prostitution. Opposing views argue that in countries where prostitution is legalized, a larger group of non-registered women get involved in the sector. In any case, the demand for the sex industry in the Netherlands serves as a pull factor of trafficking in persons.

To be able to cope with the demand, “the government reported that strict controls and licensing requirements for brothels were employed as a means of combating trafficking.” In addition, the Dutch government initiated a national awareness raising campaign against human trafficking with the aim to halter the demand for the victims of trafficking<sup>138</sup>.

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<sup>137</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.161-162.

<sup>138</sup> US Government of State, Trafficking in Persons Report, 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).



#### 3.3.4. ITALY:

Italy is a destination and transit country for persons trafficked from North and East Africa, Eastern Europe, China and South America<sup>139</sup>. Although Italy did not ratify the Trafficking Protocol; Italy has also actively worked to grasp the EU Member States' focus on human trafficking emphasizing the significance of the problem.

During its EU Presidency, Italy proposed the 2002 Council Framework Decision on Combating Trafficking in Human Beings. Moreover, the Italian government cooperated with other European organizations and signed various bilateral treaties on legal cooperation, policing and joint border controls with countries of origin to combat trafficking.

Among others, the Memorandum of Understanding signed with Nigeria and the Project Textilia 2000 initiated with Morocco deserve special emphasis. The memorandum focuses on establishing mutual legal assistance and extradition, on intelligence sharing and on awareness raising projects in both countries with the aim of protecting victims of trafficking<sup>140</sup>. Italy, through Project Textilia 2000, funds micro projects to create new job opportunities in Khourigba, Morocco. Increasing the employment rate in a region that is highly involved in human trafficking towards Italy, the Italian government aims to prevent a main cause of the phenomenon<sup>141</sup>.

#### 3.3.5. CZECH REPUBLIC:

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<sup>139</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.149-150.

<sup>140</sup> See "Italy, Nigerian Takes Action Against Human Trafficking for Sexual Exploitation", UNIS/CP/440, 2004 at UN Information Service website: <http://www.unis.unvienna.org/unis/pressrels/2004/uniscp460.html>.

<sup>141</sup> Ibid.

Czech Republic is a country transit and destination for persons trafficked from Eastern Europe and Asia. The government specifically focuses on the prevention of human trafficking and the enhancement of victim assistance.

The government funds the NGO trainings provided for the primary and secondary school students on human trafficking and the risks of working abroad. The Foreign Ministry has initiated several projects to increase awareness among Czech counselor officers in source countries. Besides, Czech Republic signed a bilateral agreement with the Slovak Republic on joint border controls.

In addition, a UN funded victim assistance pilot program was established in 2004 within the framework of its National Strategy of Combating Trafficking in Human Beings for the Purpose of Sexual Exploitation, Czech Republic provides the victims of trafficking assistance and counseling for a recovery period of 30 days.<sup>142</sup> Currently, “the government permanently funds a victim assistance program that provides comprehensive victim protection. Victims choosing to cooperate with authorities may receive temporary-stay visas and are provided with health care, financial support, housing, additional counseling, job placement assistance for foreign victims, and vocational training for repatriated Czech victims.<sup>143</sup>”

### 3.3.6. GREEK ADMINISTRATION OF SOUTHERN GREEK ADMINISTRATION OF SOUTHERN GREEK ADMINISTRATION OF SOUTHERN CYPRUS:

Greek Administration of Southern Greek Administration of Southern Cyprus is a destination country for trafficked persons from Central and Eastern Europe, Philippines and Dominican

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<sup>142</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.134-135.

<sup>143</sup> US Government of State, Trafficking in Persons Report, 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).

Republic. Greek Administration of Southern Greek Administration of Southern Cyprus is classified among tier 2-watch list countries by the United States' report on human trafficking mainly because of its 'artistic' visas<sup>144</sup>. Indeed, Greek Administration of Southern Greek Administration of Southern Cyprus has been placed to the tier 2-watch list for the last three years. There has been no replacement in Greek Administration of Southern Greek Administration of Southern Cyprus' status because of the government's "failure to show evidence of increasing efforts to address its serious trafficking for sexual exploitation problem."<sup>145</sup>

Short term artistic visas are issued with the purpose of establishing transparency in entertainment sector. However, artistic visas that are provided for the cabarets and nightclub dancers facilitate human trafficking to the country. Cooperating with the employment agencies in source countries, traffickers deceive women and children into the sex industry in Greek Administration of Southern Greek Administration of Southern Cyprus.<sup>146</sup>

The government requires workers who enter with artistic visas to be tested for sexually transmitted diseases upon their arrival to Greek Administration of Southern Greek Administration of Southern Cyprus. In addition, the governments distribute information sheets at the ports. The Cypriot police conduct checks on cabarets and make individual interviews dancers to increase intelligence on the entertainment sector's connection to trafficking in persons<sup>147</sup>.

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<sup>144</sup> Cyprus, Switzerland and Slovenia are the European states that issue artistic visas.

<sup>145</sup> US Government of State, Trafficking in Persons Report, 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).

<sup>146</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.132-133.

<sup>147</sup> Ibid.



### 3.3.7. BOSNIA AND HERZEGOVINA:

Bosnia and Herzegovina (BiH) is a country of destination and transit for the persons trafficked from Southeastern and Eastern Europe and origin. In 2003 the US State Department re-categorized Bosnia and Herzegovina from tier three (countries doing least to combat trafficking in human beings) into tier two acknowledging improvements in law enforcement actions to combat trafficking<sup>148</sup>.

Furthermore, “the government demonstrated increased efforts to address trafficking [in 2005], particularly in the area of victim protection.” In accordance, BiH considerably increased financial assistance to the victims of human trafficking. Additionally, the government collaborated with NGOs to shelter the victims<sup>149</sup>.

International presence in Sarajevo and the close cooperation of UN Mission (UNMBiH), OSCE and EU Police Mission (EUPM) with the BiH government to combat human trafficking enhanced the development of the state criminal code<sup>150</sup> in 2003 with specific anti-trafficking provisions. The criminal code of BiH criminalizes trafficking in persons with penalties up to 10 years of imprisonment.

The cooperation in between police missions of the UN and EU and the local police forces is particularly focused on trafficking in persons since BiH has evolved as the basis of human

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<sup>148</sup> US Government of State, Trafficking in Persons Report, June 2004. pp.127-128.

<sup>149</sup> US Government of State, Trafficking in Persons Report, 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).

<sup>150</sup> In accordance with the Recommendation No R (2000) 11 and the UN Protocol, the Council of Europe initiated the LARA Project to contribute to the effective criminalization of human trafficking and the protection of victims' human rights in Southeastern Europe. With the legal assistance of the LARA team and EUPM, the state of BiH passed a new criminal procedure code.



trafficking in Southeastern Europe<sup>151</sup>. In March 2004, police raids and convictions of a group of traffickers have indeed succeeded BiH to reveal one of the largest trafficking syndicates in the region.

The European Union has dedicated its resources for the reconstruction of the Southeastern Europe and in particular of Bosnia and Herzegovina. In fact the EU pays the 40%<sup>152</sup> of the costs for this ‘security laboratory’<sup>153</sup>, in addition to the recruitment of its European Security and Defense Policy forces aiming peace and stability for the whole continent. Therefore, the European Union believes that it must succeed in constructing a well-built democracy in BiH that can fight against organized crime.<sup>154</sup>

High Representative Solana’s European Security Strategy identifies five key threats to Europe as terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure and organized crime. Bosnia and Herzegovina ‘is directly relevant to two’<sup>155</sup> of these European threats. Believing that ‘restoring good government to the Balkans, fostering democracy and enabling the authorities there to tackle organized crime is one of the most effective ways of dealing with organized crime within the EU’;<sup>156</sup> as the European policemen and troops fight against the criminal networks, they also provide the BiH authorities and the international personnel –including the civilian personnel of the EU- a secure environment for the political, economic and social rebuilding of the state.

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<sup>151</sup> European Union has utilized its assets to assist the development of the economy, democracy and the rule of law in BiH with a specific focus on the fight against human trafficking since BiH has been evolving as a crime-exporting backwater of Europe. Regretfully, heavy international personnel presence is one of the main causes of human trafficking in BiH. Evidence shows that individual members of UN police forces have involved in trafficking related offences in BiH.

<sup>152</sup> Eid A. Troy, p.19.

<sup>153</sup> Osland M Kari, p.543.

<sup>154</sup> Osland M Kari, p.545.

<sup>155</sup> Osland M. Kari, p.544.

<sup>156</sup> Javier Solana, p.6.

EUPM is mainly responsible for the establishment of sustainable local policing in BiH. The prime task of the EUFOR is though the implementation of the military provisions of the Dayton Peace Accords.<sup>157</sup> However, these tasks are conducted in cooperation specifically against organized criminal syndicates in Balkans<sup>158</sup> which are believed to be responsible for the distribution of the 90% of the heroin in Europe as well as for a third of the global human trafficking.<sup>159</sup> Besides, it is believed that these criminal networks transfer their high profits to other illegal activities such as smuggling of goods and illegal arms trade aiding international terrorism.

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<sup>157</sup> [www.euforbih.org](http://www.euforbih.org)

<sup>158</sup> NATO Parliamentary Assembly, 59<sup>th</sup> Rose-Roth seminar, "Towards Euro-Atlantic Integration: Progress and Challenges in South-East Europe," Dubrovnik, 12-14.03.2005.

<sup>159</sup> Javier Solana, p.5.

### 3.3.8. RUSSIA:

“Russia is a major source country for women trafficked globally [and internally] for the purpose of sexual exploitation.<sup>160</sup>”

“Russia is a source, transit, and destination country for men, women, and children trafficked for various purposes. It remains a significant source of women trafficked to over 50 countries for commercial sexual exploitation. In the Russian Far East, men and women are trafficked to China, Japan, and South Korea for both forced labor and sexual exploitation. Russia is also a transit and destination country for men and women trafficked from Central Asia, Eastern Europe including Ukraine, and North Korea, to Central and Western Europe and the Middle East for purposes of forced labor and sexual exploitation. Internal trafficking remains a problem in Russia; women are trafficked from rural areas to urban centers for commercial sexual exploitation, while forced labor in the maritime industry remains a concern in the Far East. Men are trafficked internally and from Central Asia for forced labor in the construction and agricultural industries. The ILO estimates that 20 percent of the five million illegal immigrants in Russia are victims of forced labor. Debt bondage is common among trafficking victims. Child sex tourism remains a concern.<sup>161</sup>”

The US report on human trafficking graded Russia among tier two-watch list countries for the last three years<sup>162</sup>. Russia fails to show good effort in fight against human trafficking. Besides, the Government of Russia does not provide adequate protection for the victims of trafficking.

Even though the central government has put effort on anti-trafficking amendment of the criminal code recently, provisions prosecuting trafficking have not been implemented yet<sup>163</sup>.

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<sup>160</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.169-170.

<sup>161</sup> US Government of State, Trafficking in Persons Report, 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).

<sup>162</sup> Ibid.

<sup>163</sup> US Government of State, Trafficking in Persons Report, June 2004, pp.169-170.

### 3.3.9. FIGHT AGAINST HUMAN TRAFFICKING IN TURKEY:

Turkey is mainly a country of destination for the trafficked persons from Eastern Europe and Caucasus for sexual exploitation and domestic service. Continues conflicts and political turmoil in neighboring regions push people in search for better life that cannot enter the European Union due to highly strict immigration controls towards Turkey.<sup>164</sup>

The main flow of persons from ex-Soviet Union region to Turkey, either by traffickers or by smugglers, began with the ‘suitcase trading.’ However, in time, “trade based arrivals became arrivals for the purpose of prostitution [;] individual arrivals were replaced by group arrivals and [] these arrivals changed to being coordinated by other individuals. The suitcase trade was replaced by body trade. The sector soon formed its sub-sectors.<sup>165</sup>”

Whereas most of the illegal immigrants voluntarily come to Turkey, “their illegal work and resident status [] make them vulnerable to exploitation.<sup>166</sup>” Most of male workers are employed in construction sector where their labor is exploited; on the other hand women are mainly forced into domestic services, and sex and entertainment industry.<sup>167</sup>

2004 Report of the US State Department used to classify Turkey among tier 2- watch list countries. Turkey was severely criticized for ‘dumping’ victims of trafficking across borders and she was specifically advised to prove that she had stopped such practices. It was indeed

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<sup>164</sup> İçduygu Ahmet, “Irregular Migration, Trafficking and Smuggling in Turkey: An Overview,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.76.

<sup>165</sup> Suiçmez Sibel, “Trafficking in Women and Women’s Rights in the Context of Trabzon,” İçduygu Ahmet, “Irregular Migration, Trafficking and Smuggling in Turkey: An Overview,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.116.

<sup>166</sup> İçduygu Ahmet, pp.77.

<sup>167</sup> İbid.

strongly underlined that the government's such expulsion policy caused re-trafficking of these deported persons.<sup>168</sup>

With its ambition to become a European Union Member State, "Turkey [recently] attach[ed] great importance to the newly emerging migration questions and their management."<sup>169</sup>

"Turkish Criminal Law has been reorganized in respect to international agreements and legal renovations have been done to stop this humanity crime."<sup>170</sup> The UN Trafficking Protocol that is ratified by Turkey has become inseparable part of the domestic law of the country according to Article 90 of the Turkish Constitution.

The new Turkish Penal Code<sup>171</sup> defines human trafficking as a crime in its Article 80; the Code outlaws removal of organs as well. Article 201/b of the previous Penal Code failed to distinguish freedom of labor and sexual exploitation; therefore, victims of human trafficking were defined as illegal sex workers and deported. Hence the deportation of the victims generally led to re-victimization. The new Penal Code differentiated two activities and focused on human trafficking and prostitution at two different articles, Article 80 and Article 227 respectively. Furthermore, Article 80 of the new Penal Code imposed heavier sentences on human trafficking raising imprisonment to 8-12 years in addition to the issued fine.

The legal reformation against human trafficking enabled the US Global Report to replace Turkey from Tier 2-watch list to the Tier 2 list in 2006. Still, the report criticizes "the Government of Turkey [to make] modest, but uneven progress in its efforts to punish

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<sup>168</sup> US Government of State, Trafficking in Persons Report, June 2004., pp.183-184.

<sup>169</sup> Ibid.

<sup>170</sup> Karacan Aytaç, pp.53.

<sup>171</sup> The new Turkish Penal Code has been valid since 1 June 2005.

trafficking crimes” due to the limited number of convictions and imprisonment of human trafficking cases in the country.<sup>172</sup>

On the contrary, considerably significant improvements have been achieved in the implementation of the anti-trafficking laws in Turkey. An Anti-Trafficking National Task Force was established in 2002 with the coordination of Ministry of Foreign Affairs. The task force works in cooperation with the International Organization for Migration, security forces and non-governmental organizations in Turkey.

Turkish Government signed a protocol with the Human Resource Development Foundation in 2003 to enhance protection for and assistance to victims, safe repatriation and the training of state officials on trafficking in persons. Within the framework of this protocol, 151 police and gendarme, and 63 judges and public prosecutors were trained in 2004 in Ankara, Antalya, Bursa, Erzurum, Istanbul and Izmir.<sup>173</sup>

Operation of 157 Emergency Help Hotline and distribution of informative cards about risks of human trafficking in Turkey to foreigners at various airports project was initiated in February 2005. Besides, 150 law enforcing authorities were trained by International Organization for Migration within the framework of this project. In addition, the project that is funded by the

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<sup>172</sup> There have been 29 trafficking convictions in 2005 and 9 imprisoned for the last 4-5 years in Turkey; others received probation or fines. US Government of State, Trafficking in Persons Report, 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).

<sup>173</sup> Ögdü Murat, “The Security Forces’ Efforts for Combating Trafficking in Human Beings,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.90.

US, coordinated by the Turkish Government and implemented by IOM aims to reach out public and raise awareness through visibility on the media.<sup>174</sup>

Turkey has improved protection for and assistance to the victims of human trafficking as well. Two shelters that are financed by local governments have been established in Istanbul and Ankara. The IOM representative Elina Siderova explains the process of rehabilitation and voluntary repatriation of victims at shelters as follows: “After the initial identification, we give the girls information about their rights and accommodate them in the shelter [where] they are provided with medical and psychological assistance and all their current needs are met. Upon arrival in their home countries IOM meets them at the airport and supports them during the re-integration process.<sup>175</sup>” The government issued 21 humanitarian visas within two years allowing victims to stay in the country.<sup>176</sup>

Although victims of human trafficking are well cared at these shelters, shelters can provide service for maximum 12 victims. That is why there is an urgent need to establish new shelters in different regions of Turkey. The necessary financial resources for the multiplication of shelters can be obtained via confiscating traffickers’ goods. Confiscation of goods for the benefit of victims is foreseen in the UN Trafficking Protocol.

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<sup>174</sup> Siderova Elina, “The Role of International Organizations: IOM Activities in the Field of Counter Trafficking in Turkey,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.96.

<sup>175</sup> Ibid.

<sup>176</sup> US Government of State, Trafficking in Persons Report, 2006. See at: [www.state.gov/g/tiprpt/2006/65988.htm](http://www.state.gov/g/tiprpt/2006/65988.htm) (last visited on 20.09.2006).

Yet, Turkey has not reformed its legislation to use money confiscated from the traffickers for the rehabilitation and compensation of the victims.<sup>177</sup> Even though Articles 128 and 248 of the Penal Code can be used for the confiscation of property in cases of trafficking of persons, if confiscation would be directly linked with human trafficking, the confiscated money could be used for the financing and multiplication of shelters.

To be able to have an efficient fight against human trafficking, Turkey has also been cooperating with the source countries. In particular, the government signed protocols for mutual assistance with Belarus, Georgia, Ukraine, Rumania and Moldova. “These protocols aim to share information between the security forces for the purpose of revealing the crime organizations and to provide cooperation for the prosecution of the traffickers and for the rehabilitation of victims,” says Elvan Haciefendioğlu from the Ministry of Foreign Affairs.<sup>178</sup> She adds that the aim of the Turkish government is to multiply the cooperative protocols in a short period of time.<sup>179</sup>

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<sup>177</sup> Elban Kemal Hasan, “National Legislation in Turkey,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.81.

<sup>178</sup> Haciefendioğlu Elvan, “Ongoing Efforts of Turkey for Combating Trafficking in Human Beings,” in Trafficking in Women: A Major Human Rights Violation, International Blue Crescent and Medecins du Monde-Greece eds., Beyaz Gemi, Istanbul, 2005, pp.84.

<sup>179</sup> *Ibid.*



### 3.4. AN EVALUATION OF THE EUROPEAN STATE PRACTICE AGAINST HUMAN TRAFFICKING:

Even if the European states' practice against human trafficking has been approximated by the last couple of years, it is far from being harmonized. Ignoring the definition given by the UN, most states grasp human trafficking as a form of irregular immigration and focus mainly on the sexual exploitation of trafficked persons.

As to the criminalization of trafficking in persons, each country's criminal code includes provisions to penalize the act. However, while most of the anti-trafficking provisions only prosecute trafficking when there is the sexual exploitation of trafficked persons, the penalties specified in different domestic legislations for the crime differ enormously. Besides, even if there is the chance to issue life imprisonment for acts such as trafficking in minors by several criminal codes; heavy penalties are hardly reviewed.

European Union Member States are increasingly cooperating with Eastern European source countries. Bilateral agreements signed in between generally focus on legal assistance, policing and cross border controls. Still, even if several projects implemented to combat the causes of the phenomenon and to provide protection for and assistance to the victims of human trafficking, such initiatives are considerably rare.

In general, it seems that although the ratio of the Western European states which ratified the 2000 Trafficking Protocol is less than those who ratified in the Central and Eastern Europe, it seems that the old members of the EU have been more successful in their fight against human trafficking. On the other hand, it seems that the European sensitivity that leads to

pressuring of non-EU states has benefited the European fight against human trafficking as it has in Turkey.

### 3.5. THE STRATEGY TO BE ESTABLISHED AGAINST HUMAN TRAFFICKING:

An effective fight against human trafficking shall comprehend all aspects of the phenomenon. While criminalizing the trafficking is an aspect of the strategy to be established, states shall not ignore the fact that trafficking in persons is a violation of human rights. Consequently, an adequate legal framework shall both criminalize the act and promote and protect human rights of the victims of human trafficking. Hence, the European Union shall develop and implement projects that are within the framework of all 3 pillars of the Union.

Anti-trafficking legislations shall comprehend the definition introduced in the 2000 Trafficking Protocol to the UNCTOC being sensitive to newly emerging offences that can be defined as human trafficking. Defining the phenomenon covering all forms of trafficking is the center of an adequate combating strategy. An instrument which fails to penalize forms of trafficking other than the sexual exploitation cannot form the legal framework for the fight against human trafficking.

Therefore, it is significant to penalize “the purpose of exploitation of that person’s labor or services, including at least forced or compulsory labor or services, slavery or practices similar to slavery” as well as “for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.”

Similarly, it is crucial not to leave out trafficking in persons within borders. Even though human trafficking is commonly perceived as a form of irregular immigration, the fact that many people are trafficked within or in between EU Member States cannot be ignored. In

addition to using a comprehensive definition on trafficking in persons, European states shall consent on whether to include trafficking of organs to the listed forms of human trafficking.

European governments shall review amendments in criminal codes and enforcement procedures. Penalties provided in domestic legislation shall be approximated according to the European Union guidelines. More importantly, states shall establish proper instruments to implement their anti-trafficking laws. Even in states where harsher sentences for trafficking exist, courts impose lighter penalties not more than 2 years in general. Differences in penal codes and the short sentences will not deter traffickers from this highly lucrative act.

Mutual assistance in legal proceedings and policing in fight against human trafficking are to be further developed; though, European multidimensional cooperation covering both the supply and the demand sides of the phenomenon to prevent human trafficking must be established as well.

On the supply side, public shall be made aware of the phenomenon by initiatives particularly addressing the methods used by traffickers to deceive people. Specifically unemployed women shall be warned about the connection between several travel agencies and human traffickers.<sup>180</sup> In addition, roots of human trafficking shall be controlled by establishing better economies, improved educational opportunities and women's rights in source countries.

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<sup>180</sup> Seeking better lives for either themselves or for their families, young women emigrate from their countries heading towards the prosperous West. Besides, even there are women that had been kidnapped, most of the trafficked women from the former Soviet Union and Eastern Europe are those that have decided to answer ads of agencies to work as waiters, hostesses or dancers in Western Europe.

Likewise, projects targeting the demand side shall also be initiated. Therefore, it is significant that the governments shall increase public awareness in destination and transit countries as well as developing effective strategies to halt the demand.

Besides all, each state shall establish adequate protection and long term rehabilitation facilities. Because of the fact that most of the victims of human trafficking are repatriated involuntarily to the country of origin without being rehabilitated, they cannot re-socialize; indeed, most of the time they are re-trafficked.

It is important to provide a long-term protection, an efficient counseling and medical support to rehabilitate the victims who have suffered from unwanted sex, imprisonment, rape and battering at the hands of traffickers and customers, infertility caused of repeated venereal disease, drug addiction, diseases like hepatitis B that accompany drug addiction and death from AIDS;<sup>181</sup> in addition to countless psychological side-effects of human trafficking.

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<sup>181</sup> Leidholdt Dorchen, "Sexual Trafficking of Women in Europe: A Human Rights Crisis for the European Union," in Sexual Politics and the European Union, ed. Elman R. Amy, Berghahn Books, Oxford, 1996, p.86.

## CONCLUSION:

Europe has entered a new period of cooperation. European states are increasingly collaborating to tackle human trafficking in Europe. Member States of the European Union allocate their resources to work together with the non-member Eastern Europe to secure the region. As a matter of fact, Europe owes this unification particularly to the cooperation among the EU, Council of Europe and OSCE with the purpose of fighting against human trafficking.

The combat against human trafficking is conducted both at the European level; within the framework of the third pillar of the European Union and at the national level. Moreover, the projects have developed against human trafficking within other pillars of the EU recently as well.

The active work of the European organizations, the Council of EU, national authorities and the NGOs constantly develop the strategy to fight against human trafficking. However, European approach is still premature to defeat the phenomenon.

The willingness to establish an enhanced European cooperation to combat human trafficking must be put into a concrete action plan. Bilateral and multi-lateral cooperation on information sharing, on mutual legal assistance and extradition, on policing and cross-border controls, on protection and assistance to be provided for the victims of trafficking must increase among the EU Member States and within whole Europe.

The European cooperation must serve to increase the knowledge on the phenomenon; must provide assistance for the countries to fully comprehend a single European definition that includes all forms of human trafficking with a harmonized terminology to be used. Furthermore, it must guide governments to establish adequate penalties to prosecute the act and must ensure that the adopted legal provisions are enforced.

The European cooperation must provide the establishment of adequate protection and assistance facilities to save victims from re-victimization. Rehabilitation of the physically and psychologically damaged trafficked persons must be ensured to comprehend an effective strategy against trafficking. Europe has to provide the assistance for the victims to gain their lives back; for them not to be vulnerable for traffickers again and again.

The European fight that has been initiated by the policy documents; is activated by the provisions laid down in the Council Framework Decision and the Convention of the CoE. Missing points of the strategy are also expressed by the political papers. Therefore, now the purpose shall be to fill in the legislative framework with the details of the European policy documents.

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