

***THE WORST FACE
OF THE WORLD:
TRAFFICKING IN MINORS***

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1. General Outlook on Trafficking in Human Beings as a Modern Form of Slavery

Trafficking in human beings is a serious violation of human rights involving the recruitment, transportation, transfer, harbouring and receipt of persons for the purpose of exploitation. The exact number of people trafficked annually through international borders is unknown. According to the International Organization for Migration (IOM), this is especially due to the illegal nature of the phenomenon, the lack of anti-trafficking legislation in many countries of the world, the reluctance of the victims to denounce their traffickers and the low priority given by Governments to research activities and data collection in this field.¹ Recent estimates outline that every year approximately 600.000 - 800.000 people, most of whom are women and children, are trafficked across international borders, generating huge profits for organised criminal groups of traffickers.² The U.S. Department of State recognises also that the figure regarding internal trafficking may be even higher. As regards in particular children, the United Nations considers that every year 1.2 million are trafficked both internally and across international borders.³

Research on the issue has demonstrated that the new slave trade is related to extreme poverty, lack of access to resources, unemployment and poor education. However, it has also to be considered that trafficking in human beings affects especially women and children because of their marginalisation in society and the feminisation of poverty. With regard to children trafficked for prostitution, Kelly concludes that girls and young women under the age of 18, constitute 10-30% of the total figure of trafficked women.⁴ Globalisation of labour and markets and increasing obstacles to legal migrations are enhancing human trafficking as well. Finally, the new slave trade flourishes in transition countries and in post conflict situations.⁵

The phenomenon has started to flourish in the last decades of the XX century; initially the impression was that trafficking routes flourished between poor and rich countries, from the South to the North and from the East to the West of the world. This assumption was not totally correct because, as underlined by IOM, the phenomenon exhibits growing complexity with

¹ International Organization for Migration, "New IOM Figures on the Global Scale of Trafficking", 23 *Trafficking in Migrants Quarterly Bulletin* (2001) 1, available at http://www.iom.int/documents/publication/en/tm_23.pdf.

² United States Department of State, *Trafficking in Persons Report*, June 2004, Washington, available at <http://www.state.gov/documents/organization/34158.pdf>, at 6.

³ United Nations, Special Session for Children, *Experts share strategies to stop child trafficking*, New York, 2002, available at <http://www.unicef.org/specialsession/activities/child-trafficking.htm>.

⁴ Kelly, "Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe", 11 *IOM Migration Research Series*, Geneva: IOM, 2002, at 22, available at http://www.iom.int/documents/publication/en/mrs_11_2002.pdf

⁵ *Ibid.*, at 24.

many States in Africa, Asia and Central and Eastern Europe becoming both countries of origin and destination of trafficking in human beings.⁶

As Arlacchi, Director of the United Nations Office for Drug Control and Crime Prevention (UNODC), stated in a speech, trafficking in persons is the form of organised crime that is growing fastest because it is less risky than drug or arms trafficking and it guarantees greater profits.⁷ In its *2004 European Union Organised Crime Report*, EUROPOL estimates that the earnings of the modern “human trade” are between 8.5 and 12 billion Euros per year, making it a very lucrative activity for traffickers.⁸

2. Child trafficking: current situation, causes and consequences

Children are trafficked all around the world for a variety of purposes; surely the most common one is the sexual exploitation of young girls and even boys. However, children are also trafficked to be subjected to various forms of labour exploitation, for debt bondage, to be involved in criminal activities, for begging and to be involved in armed conflicts. Child girls are trafficked for forced marriages and for domestic works as well. As emphasised by M. Dottridge the forms of exploitation to which children are subjected after having been trafficked depends on their age and gender.⁹

The root cause of child trafficking is surely poverty; in many countries of the world children may be abducted by the traffickers, or sold by their parents, who are not able to feed the whole family, or who consent to the child going away with a relative or a known person promising to find her/him a good job. Thus, a part from any further action to fight against this horrible phenomenon, the first step is surely to adopt anti-poverty actions and programmes finalised at the education – of boys, but more than all, of girls - and at the introduction of women in the labour market.

Sometimes, young adolescents may be deceived by the traffickers and they may decide by themselves to follow him/her abroad. When they are very young their documents are falsified and they are presented at the border as the children of the trafficker(s). In the case of adolescents, the falsified documents necessary to pass through an international border may

⁶ *Supra note 1*, at 1.

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

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

⁹ Dottridge M., *Kids as Commodities? Child Trafficking and What to do about it*, Lausanne: International Federation Terre des Hommes, May 2004, at 23.

hide their nationality and age. These documents may be obtained by paying bribes to police or diplomatic officials.¹⁰

Human trafficking consequences on victims are generally devastating: they may include the damage of their physical or mental health, death and, in the case of sexual exploitation, the exposure to sexually transmitted diseases (STDs), including HIV/AIDS, pregnancy and reproductive illnesses.¹¹ Trafficked children also suffer the denial of their basic human rights, listed by the 1989 *Convention on the Rights of the Child* (CRC).¹²

3. Regional Trends in Child Trafficking

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

“No region is immune to this evil trade. From Asia to Eastern Europe, from Latin America to Africa, traffickers recruit victims, who, like commodities are smuggled across borders, sold and then exploited under the threat of violence”.¹³

It is not very easy to provide clear data on child trafficking; this is due to the fact that the phenomenon started to be fully analysed only recently and also that many studies have been dedicated to trafficking in women for sexual exploitation. Furthermore, in many cases States do not collect separately data on women and children trafficked for “sexual slavery”.

However, information has been collected on child trafficking routes and on the most common forms of exploitation. Thus, a brief summary of child trafficking in Europe, Asia, the Middle East, America and Asia follows.

¹⁰ For an in depth study on the relationship between trafficking and corruption in South Eastern Europe see: Council of Europe – Programme against Corruption and Organised Crime in South-Eastern Europe (PACO), “*Trafficking in Human Beings and Corruption*”, Report on the Regional Seminar, Portoroz – Slovenia 19-22 June 2002, available at http://www.coe.int/T/E/Legal_affairs/Legal_cooperation/Combating_economic_crime/Programme_OCTOPUS/2003/Paco_netw_trafficking.pdf.

¹¹ International Labour Organization, *Child Trafficking and Action to Eliminate it*, Geneva: ILO Publications, 2002, XII.

¹² A/RES/44/25 of 20 November 1989.

¹³ United Nations, Press Release: “*Secretary-General calls human trafficking ‘one of the greatest human rights violations’ of today*”, message to the International Summit on Human Trafficking, Child Abuse, Labour and Slavery held at Abuja, Nigeria, 2-4 August 2002, available at: <http://www.unhchr.ch>.

3.1 Europe

Trafficking in persons within Europe mostly revolves around the provision of commercial sexual services, has expanded in recent years.¹⁴ In the Seventies and Eighties trafficking victims smuggled to Western Europe were predominantly Latin American and Asian women and girls. At the beginning of the Nineties, with the fall of the Berlin Wall, women and young girls from Central and Eastern Europe largely replaced them on Western European markets.¹⁵ Figures provided by the European Commission in 2001 suggest that 120.000 women and girls may be trafficked within and into Europe each year.¹⁶

Young boys are mainly trafficked to Europe from the Balkan States – and in particular from Albania - to beg in the streets; in some cases they have to work in sweatshops or restaurants. Very young girls, mostly from Africa and Asia, may be trafficked to work as illegal domestics.

Trafficking victims arrive to Europe not only from the former Soviet Union and the Eastern European countries but also from some African countries, namely Ghana, Nigeria and Morocco, Latin American countries, such as Brazil, Colombia and the Dominican Republic and South East Asian countries, including the Philippines and Thailand.¹⁷

3.2 Asia

According to estimates, the majority of trafficking victims are smuggled within and into Asia and the Pacific; IOM estimates that 225.000 women and children are trafficked annually from South-East Asia.¹⁸ Sex tourism, which is widespread in Thailand, Cambodia, and the Philippines, creates a huge demand for women and child prostitutes.¹⁹

After the Tsunami disaster at the end of 2004 there has been an alarm on child trafficking in the area; many newspapers have highlighted the disappearance of children and have raised the problem of an increase in child trafficking in the area. Child trafficking was

¹⁴ EUROPOL, *Crime Assessment – Trafficking of Human Beings into the European Union*, EUROPOL, 2002 available at: http://www.europol.eu.int/index.asp?page=publ_crimeassessmentTHB.

¹⁵ Kartusch, *Reference Guide for Anti-Trafficking Legislative Review*, Vienna: Ludwig Boltzmann Institute of Human Rights, 2001, at 7, available at http://www.univie.ac.at/bim/download/REFERENCE_GUIDE.pdf.

¹⁶ European Commission, *8th March, 2001, International Women's Day - Combating the inhuman trade*, available at http://europa.eu.int/comm/justice_home/news/womanday_en.htm.

¹⁷ Miko, *Trafficking in Women and Children: The U.S. and International Response*, Washington: Congressional Research Service Report, 2003, at 6, available at <http://www.usembassy.it/pdf/other/RL30545.pdf>.

¹⁸ Derks, *Combating Trafficking in South-East Asia*, 2 IOM Migration Research Series, Geneva: IOM, 2000, at 16, at http://www.iom.int/documents/publication/en/mrs_2_2000.pdf.

¹⁹ *Supra* note 17, at 4.

widely spread before the Tsunami disaster in that area and traffickers have surely tried to take advantage of the situation, which has obviously rendered children more vulnerable.²⁰

Human trafficking in South East Asia is not only connected with the demand of the sex industry; women and children are also trafficked for sweatshop labour, marriages and street begging. Throughout the Mekong region, which includes Cambodia, Laos, Myanmar, Thailand and Vietnam, child begging has recently increased. The number of children - mostly from Cambodia - trafficked to Thailand to be exploited for street begging has more than doubled since 1997; there has also been an increase in the number of children mutilated in order to bring more money to their traffickers.

As well as internal trafficking, South Asian and Pacific countries experience widespread trafficking across borders too. India, which is the major destination country, receives around 5.000 to 7.000 women annually from Nepal and an estimated 300.000 Bangladeshi children work in Indian brothels.²¹ Moreover, the belief that having sex with a virgin may protect from infectious diseases, has the effect of creating a huge demand of very young girls. In some cases in India, girls as young as 8 years old are sexually exploited.²² Indian children are trafficked both internally and across international borders to be sold on the illegal adoption market.²³ Finally, Australia and New Zealand are destination countries for women and children trafficked from Asia for their exploitation in the sex sector.²⁴

3.3 The Middle East

The Middle East is a region of destination for trafficking in children. According to IOM, South Asian women are trafficked to the Middle East and Gulf States as domestic maids, while children, especially from Bangladesh, India and Pakistan are trafficked to the United Arab Emirates to act as camel jockeys for camel races.²⁵ These races may be very dangerous and children can be injured or even die falling from camels.²⁶

²⁰ For more information see: John Taylor, *Child trafficking concerns add to tsunami woes*, ABCNews Online, 4 January 2005, available at <http://www.abc.net.au/news/newsitems/200501/s1276276.htm>; John Aglionby, *Criminals may be trafficking orphans – Police begins investigations*, The Guardian, 5 January 2005, available at <http://www.guardian.co.uk/tsunami/story/0,15671,1383489,00.html>.

²¹ *Supra* note 17, at 3.

²² Terre des Hommes, *India: between religious prostitution and Slavery*, Stop Child Trafficking Campaign, available at: http://www.stopchildtrafficking.org/site/uploads/media/english/InBrief_India.pdf.

²³ The Protection Project, *Human Rights Report on Trafficking in Persons, Especially Women and Children*, Washington: John Hopkins University, 2nd edn, 2002, at 248.

²⁴ *Ibid.*, at 24 and 392.

²⁵ *Supra* note 1, at 2-3.

²⁶ For a more comprehensive study on child camel jockeys from Pakistan see: Mohammed Anwar, *Child Trafficking for Camel Races: A Perspective from Pakistan*, Centre for Research and Social Development (CRSD), 2004, available at <http://www.enut.ee/>.

3.4 America

In the American continent there are countries of origin, transit and destination. A study of the International Human Rights Law Institute (IHRLI) on Central America shows that trafficking in women and children for their commercial sexual exploitation is widespread in the region and it occurs both internally, from poorer to richer areas and across international borders. Internal trafficking is common in Guatemala, Honduras and the Dominican Republic with women and children trafficked from rural villages to the tourist destinations along the coast. At the same time, an international route flourishes northward, due to the Free Transit Agreement concluded by Nicaragua, Honduras, El Salvador and Guatemala.²⁷

Women and girls from Latin America and the Caribbean are primarily trafficked to the United States and Western Europe. Moreover, restrictions on sex tourism put in place by some Asian countries have increased the number of sex tourists travelling to Latin American countries.²⁸

As regards North America, while the United States is primarily a country of destination for human trafficking victims, Canada is both a country of transit and destination.²⁹ Between 18.000 and 20.000 people are trafficked annually to the United States from South East Asia and the former Soviet Union and end up in prostitution, or in sweatshops or in domestic labour; finally, children are kidnapped and sold on the adoption market.³⁰

3.5 Africa

IOM statistics highlight the growth of human trafficking in Africa.³¹ In this continent, poverty and the marginalisation of women, as well as war and civil strife, make women and children easy preys for human traffickers.

In West Africa child trafficking is widespread; according to the United Nations Children's Fund (UNICEF), 200.000 West and Central African minors are trafficked annually both internally and across international borders.³² Boys follow a well-known trafficking route from Benin to Gabon to work on agricultural plantations, while girls are exploited as domestic servants in other countries of the Region. Other big trafficking routes are the ones from Mali to the Côte d'Ivoire, where children are obliged to work on the cocoa fields and from Togo to

²⁷ International Human Rights Law Institute – De Paul University College of Law, *In Modern Bondage: Sex Trafficking in the Americas – Central America and the Caribbean*, (Chicago: IHRLI, 2002), available at <http://www.law.depaul.edu/ihrli>.

²⁸ *Supra* note 17, at 6-7.

²⁹ *Supra* note 24, at 580 and at 107.

³⁰ *Supra* note 17, at 7.

³¹ *Supra* note 1, at 2.

other West African countries or to Europe, where they may be economically or sexually exploited.³³

As regards specifically South Africa, police estimates reported by *Terre des Hommes* state that 28.000 children of both sexes work as prostitutes in the country and in Cape Town alone about 25% of the prostitutes are minors.³⁴

4. The International Response to Child Trafficking

Many international instruments are dealing with trafficking in human beings; the most important one is surely the *Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* adopted in Palermo in 2000. However, other treaties, such as the *Convention on the Rights of Child* and its *Protocols on the sale of children, child prostitution and child pornography* and *on the involvement of children in armed conflicts* or the *ILO 182 Worst Forms of Child Labour Convention* are dealing with trafficking in children. An international instrument that is not specifically dealing with child trafficking but that can be also very useful in the fight against this phenomenon is the *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*. Other human rights instruments may also be of help, even if they do not refer specifically to children; they are the *Universal Declaration of Human Rights*, the *International Covenants on Civil and Political Rights* and *on Economic, Social and Cultural Rights* and the *Convention on the Elimination of all Forms of Discrimination against Women*.

Finally, a brief summary of the mandate and functions of the recently elected *Special Rapporteur on Trafficking in Persons, especially Women and Children* will underline the potential of this new special mechanism created by the *Commission on Human Rights* to enhance the human rights protection of trafficking victims.³⁵

³² UNICEF, *Update on Child Trafficking*, available at <http://www.unicef.org/newsline/01nn01.htm>.

³³ *Supra* note 24, at 545.

³⁴ *Terre des Hommes, South Africa: the Trafficking of Children for Purposes of Sexual Exploitation*, Stop Child Trafficking Campaign, available at http://www.stopchildtrafficking.org/site/uploads/media/english/InBrief_SouthernAfrica.pdf.

³⁵ For more information on the new *Special Rapporteur on Trafficking in Persons, especially Women and Children* see: <http://www.ohchr.org/english/issues/trafficking/index.htm>.

4.1 The UN Trafficking Protocol

While the definition of slavery has been clearly provided by the 1926 *Slavery Convention*,³⁶ as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’,³⁷ the concept of trafficking in human beings has only recently been defined by the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (‘the UN Trafficking Protocol’).³⁸ The previous international agreement dealing with human trafficking, namely the 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (‘the 1949 Convention’), did not define the phenomenon of trafficking.³⁹

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

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

“[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a

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

³⁷ Article 1.1 of the *Slavery Convention*. As regards the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery*, it gave the definition of children involved in an institution or practice similar to slavery as being: “Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”. Even if the purpose of exploitation is clear in this definition as in the one contained in the Palermo Protocol, some differences may be underlined between the two: the former presupposes the consent of the parents or of the guardian and thus, it makes reference to specific institutions or practices (such as, for example, the exploitation of young girls as domestic maids in some African countries or of young boys for debt bondage in some Asian ones).

³⁸ A/RES/55/25 of 15 November 2000.

³⁹ 96 UNTS 271. For a detailed study on the 1949 Convention see: Marcovich, *Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 2002, available at <http://action.web.ca/home/catw/attach/Guide%20to%20UN%20Convention-singl.pdf>.

person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

The *UN Trafficking Protocol* outlines that if one of the means set forth in Article 3.(a) is used, it is irrelevant whether the person expressed his/her consent or not.⁴⁰ With regard to children, it poses an even stricter rule, which states that child trafficking is the recruitment, transportation, transfer and harbouring of a minor for the purpose of exploitation, even if none of the means set forth in Article 3.(a) are used.⁴¹ This means that any child who has been taken away from his/her house and family and transported somewhere else by an organised criminal group to be exploited is a victim of trafficking according to the *UN Trafficking Protocol*.

The *Palermo Trafficking Protocol* has been criticised for narrowing human trafficking to situations in which the following two elements are present: the activity must be carried out by organised criminal groups, and it should be transnational.⁴² In this way internal trafficking not having any “transnational element”, which is quite widespread in some countries of the world, such as India, Cambodia, Sri Lanka and Thailand, risks of being excluded from the *UN Trafficking Protocol*. This is basically due to the fact that the *United Nations Convention against Transnational Organized Crime* and the two *Additional Protocols* are aimed at creating a framework agreement to fight against transnational crime. However, the ultimate aim of these international instruments should be to guarantee a basic universal framework for all the States of the world in the fight against trafficking in persons. Furthermore, according to some international experts,⁴³ even if the *UN Trafficking Protocol* restricts trafficking in

⁴⁰ Article 3.(b) *UN Trafficking Protocol*.

⁴¹ Article 3.(c) *UN Trafficking Protocol*.

⁴² Article 4 *UN Trafficking Protocol* makes reference to offences which are “transnational in nature”. Article 3.2 of the *Convention against Transnational Organized Crime* further explain that an offence is transnational in nature when; “(a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State”.

⁴³ For example M. Dottridge (*Kids as Commodities? Child Trafficking and what to do about it*, International Federation *Terre des Hommes*, Lausanne, May 2004, at 41 – 42), says that: “As many children are trafficked by just one or two people, this could be interpreted to imply that such children are not victims of trafficking. This would be a nonsense. The definition represents a recent international consensus on what human trafficking involves”. A. Jordan (*The Annotated Guide to the Complete Trafficking Protocol*, International Human Rights Law Group, August 2002, at 14), emphasises on this issue that: “Domestic legislation should go further than the Trafficking Protocol and include all domestic and cross-border trafficking and should punish individual

persons criminalising only the transnational crime committed by an organised criminal group, States should adopt national legislation fighting against both internal and international trafficking in persons, no matter if committed by individuals or groups. Recently, *the United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children* further stated on this critical issue that she will take action not only on cases of transnational trafficking but also on internal trafficking.⁴⁴

The definition of “organised criminal group” is contained in article 2.(a) of the *Convention against Transnational Organised Crime* as being “[A] structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences [...] in order to obtain, directly or indirectly, a financial or other material benefit”. The *Ad Hoc Committee* that elaborated the *Convention on Transnational Organised Crime* and the *Protocols* underlined in the *Travaux Préparatoires* that the financial or material benefit that the traffickers wish to obtain should be interpreted broadly; two examples are presented to clarify this idea and both of them are related to child trafficking, pornography and paedophilia. Thus, according to the *Ad Hoc Committee*: “sexual gratification” of pornographers and paedophiles shall be considered as included in the “benefits” mentioned in the trafficking definition.⁴⁵ The *Travaux Préparatoires* underline also that the removal of organs from a child with the consent of a parent or of a guardian done for legitimate medical or therapeutic reasons is out of the scope of the Trafficking Protocol, while illegal adoption as defined by article 1.(d) of the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* falls within it.⁴⁶

The *UN Trafficking Protocol* contains measures designed to prevent human trafficking, to protect the victim and to prosecute the traffickers. It provides for States Parties to criminalise trafficking in human beings and to punish the attempt to commit, take part in, or organise offences related to trafficking.⁴⁷ Considering that the *Protocol* is a criminal law instrument primarily designed to punish human traffickers, the provisions dedicated to victims protection are vague and not clearly binding on States Parties.

traffickers as well as organized criminal groups. Trafficking within some countries is as serious as, or more serious than, cross-border trafficking”.

⁴⁴ Special Rapporteur on Trafficking in Persons, especially Women and Children, *Report of the Special Rapporteur on Trafficking in Persons, especially Women and Children*, E/CN.4/2005/71, 22 December 2004, paragraph 26.

⁴⁵ A/55/383/Add.1, par. 3.

⁴⁶ Article 1.(d) includes in the practices similar to slavery that States should try to abolish as soon as possible: “Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.

⁴⁷ Article 5 *UN Trafficking Protocol*.

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

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

Article 17.1 of the *UN Trafficking Protocol* provides that this treaty will come into force on the ninetieth day after the date of deposit of the 40th instrument of ratification, but not before the coming into force of the *Convention against Transnational Organized Crime*. The latter finally entered into force on 29 September 2003; States signatories are 147, while parties are 100. The *UN Trafficking Protocol* has been signed by 117 States and ratified by 80, while the *UN Smuggling Protocol* has been signed by 112 and ratified by 69 States. Having obtained 40 ratifications on 23 September 2003, the *UN Trafficking Protocol* entered into force on 25 December 2003.⁴⁸

4.2 The Convention on the Rights of the Child and its Protocols

The *Convention on the Rights of the Child*, which was adopted by the UN General Assembly in 1990, contains various measures against the illicit transfer of children abroad, their exploitation and trafficking.⁴⁹ The *Special Rapporteur on Trafficking in Persons, especially Women and Children*, has emphasised in her 2004 Report that the CRC is the main reference as regards the situation of trafficked children.⁵⁰

⁴⁸ For more information see the homepage of the United Nations Office on Drugs and Crime (UNODC) available at http://www.unodc.org/unodc/en/crime_cicp_signatures.html.

⁴⁹ For the purpose of the CRC a child is: “[E]very human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

⁵⁰ E/CN.4/2005/71, paragraph 20.

Article 11 promotes bilateral and multilateral agreements to fight against the illicit transfer and non-return of children. Articles 32, 34 and 36 emphasise that children must be protected from every form of economic, sexual or any other kind of exploitation. Moreover, the CRC also obliges State Parties to: '[T]ake all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form'.⁵¹ Thus, it is clear that, according to the CRC, children must be protected from every form of exploitation, being it a part of the trafficking process or not. Finally, article 39 recognises the right of children to physical and psychological recovery and social reintegration in case they have been subjected to, among others, any forms of exploitation or abuse.

The *Committee on the Rights of the Child* that, monitors the implementation by the States Parties of the *CRC* and of its two *Protocols*.⁵² Thus, States Parties have to submit to the Committee their first report on the progress made in the recognition of the rights granted by the Convention and the Protocols two years after their accession to the Convention or the Protocols and subsequently every five years. However, neither the CRC nor the two Protocols allows for the Committee to receive individual complaints from individuals who consider that a State Party may have committed a violation of their rights under the Convention or the Protocols.

The *Committee on the Rights of the Child* made recommendations and observations to many countries in regard to trafficking in minors. Thus, for example the Committee expressed concern at the situation of children trafficked from African countries and South Asian ones to Qatar to be involved in camel racing.⁵³ In many cases, the Committee suggested to States Parties to ratify some international conventions,⁵⁴ or to adopt some legislative measures,⁵⁵ to implement policies and programmes aimed at the recovery and rehabilitation of children and to grant basic services to children awaiting repatriation,⁵⁶ or even to conduct studies on the phenomenon to fill the gap due to the lack of information on it.⁵⁷

⁵¹ Article 35 of the CRC.

⁵² For more information on the *Committee on the Rights of the Child* see: <http://www.ohchr.org/english/bodies/crc/index.htm>.

⁵³ CRC/C/111 (2001) 59 at paras. 320 and 321.

⁵⁴ See the Observations to Mauritania, CRC/C/111 (2001) 8 at paras. 76 and 77 or the ones to Cameroon, CRC/C/111 (2001) 71 at para. 386.

⁵⁵ See observations to the United Arab Emirates, CRC/C/118 (2002) 90 at para. 407.

⁵⁶ Observations to Gabon, CRC/C/114 (2002) 47 at para. 236.

⁵⁷ Observations to the Republic of Moldova, CRC/C/121 (2002) 89 at paras. 416 and 417.

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

4.2.1 The Optional Protocol on the Involvement of Children in Armed Conflicts

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

The *Coalition to Stop the Use of Child Soldiers* estimates that 300.000 children have been involved in armed conflicts and obliged to take directly part to the hostilities or to perform other activities in 36 conflicts around the world.⁵⁸ Child girls are around one third of the total estimate of children involved in armed conflicts and they are usually used as cooks and sexual slaves for the soldiers, even if they may be also involved in direct hostilities.⁵⁹

The *Protocol on the involvement of children in armed conflicts* does not mention trafficking in minors explicitly but the provision contained in article 4 states that: “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years”. Even if trafficking in children is not mentioned, it is clear that their recruitment by armed groups is a form of trafficking according to the definition of the *UN Trafficking Protocol*. Thus, article 4.2 imposes on States Parties to take “all feasible measures” to fight against this phenomenon, prohibiting and criminalizing it. Finally, article 6.3 provides for States Parties to assist the children involved in armed conflicts in their physical and psychological recovery and social reintegration in society, while article 7.1 obliges them to co-operate to recover and rehabilitate child victims.

The *Protocol on the involvement of children in armed conflicts* has been ratified by 72 States.⁶⁰

⁵⁸ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report*, London, May 2001, available at: <http://www.child-soldiers.org>.

⁵⁹ Coalition to Stop the Use of Child Soldiers, *Facts about Child Soldiers*, at <http://hrw.org/campaigns/crp/facts.htm>. Estimates on child girls are referred to the following countries: El Salvador, Ethiopia and Uganda.

⁶⁰ For the status of ratifications as of 9 June 2004 see: <http://www.unhchr.ch/pdf/report.pdf>.

4.2.2 The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The potential of the CRC in the fight against trafficking has been enhanced by the *Optional Protocol on the sale of children, child prostitution and child pornography* ('the Protocol on the Sale of Children'), which came into force on 18 January 2002.⁶¹ Article 3.1 of the Protocol calls on State Parties to criminalise the domestic or transnational sale of minors committed by an individual or by an organised group for the purposes of sexual exploitation, removal of organs, forced labour or illegal adoption, while Articles 8, 9 and 10 provide for victims assistance, prevention policies and international co-operation and co-ordination among States, International Organisations and NGOs. However, at 24 November 2004 only 87 instruments of ratification of this *Protocol* were delivered to the Secretariat of the United Nations.⁶²

A *Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography* has been appointed by the *Commission on Human Rights* in 1990. Every year the *Special Rapporteur* presents a report dealing specifically with a particular issue. In 1999, the Report was dealing specifically with the sale and trafficking in children. The *Special Rapporteur* emphasised in this Report that "in most cases where there is sale there is also trafficking involved".⁶³

4.3 The ILO Convention 182 on the Worst Forms of Child Labour

According to the International Labour Organization 250 million children between the age of 5 and 14 are engaged in some kind of labour.⁶⁴ The majority of them live in developing countries; approximately 61% of child workers live in Asia, 32% in Africa and 7% in Latin America. However, considering in relative terms the percentage of child workers on the total population between 5 and 14 years old, Africa has the pre-eminence, with 41% of children performing some kind of economic activity. Of the total estimate on child labour, some 120 million minors work on a full time basis, while the others combine working with going to school or other non-economic activities.⁶⁵ Of these working children, ILO estimates that approximately 180 million between 5 and 17 years old are engaged all over the world in the

⁶¹ A/RES/54/263 of 25 May 2000.

⁶² For more information see: http://www.ohchr.org/english/countries/ratification/11_c.htm#reservations.

⁶³ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Ms. Ofelia Calcetas-Santos*, 29 January 1999, E/CN.4/1999/71, at 2.

⁶⁴ ILO, *Statistics on Working Children and Hazardous Child Labour in Brief*, p. 1, available at <http://www.ilo.org/public/english/standards/ipec/simpoc/stats/child/stats.htm>.

⁶⁵ *Ibid.*, p. 2.

worst forms of labour, as described by the *ILO Convention 182 on the Worst Forms of Child Labour* (“the *ILO Convention 182*”). Of these, over 8 million are engaged in the so called *unconditional worst forms of child labour*, including: “Slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment for use in armed conflicts, prostitution and pornography, and illicit activities”.⁶⁶

The *ILO Convention 182* was adopted in June 1999 by the General Conference of the International Labour Organization; it entered into force on 19 November 2000 and it has been ratified by 152 countries.⁶⁷

Article 3 of the *ILO Convention 182* defines the worst forms of child labour,⁶⁸ as including:

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

As regards the types of work which may harm the health, safety and morals of children, the *ILO Convention 182* leaves much freedom to the States Parties, which have to make up a decision in consultation with the organisations of employers and of workers concerned. However, they have to take in full consideration *the Worst Form of Child Labour Recommendation* adopted in June 1999, stating that the types of work that expose children to

⁶⁶ International Labour Organisation, *A Future without Child Labour*, International Labour Conference, 90th Session, Report I (B), 2002, Geneva, at X.

⁶⁷ For a complete list of the States which ratified the *ILO Convention 182* see: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C182>.

⁶⁸ As stated also in the *Trafficking Protocol*, for the purpose of the *ILO Convention 182* a child is a person under the age of eighteen.

physical, psychological or sexual abuse, or the ones which are particularly dangerous,⁶⁹ or which expose children to an unhealthy environment,⁷⁰ or finally, in difficult conditions,⁷¹ have to be considered as included in the work described in article 3(d) of the *ILO Convention 182*.

Article 5, 6 and 7 of the *ILO Convention 182* provide for States Parties to eliminate the worst forms of child labour, introducing penal sanctions in their national legislation and creating a mechanism to monitor the implementation of the relevant provisions. Moreover, States Parties shall take measures to prevent child engagement in the worst forms of child labour, to provide assistance to stop child exploitation and to guarantee their rehabilitation and social integration, which may include the access to free education. Finally, they shall take in special consideration the situation of children at risk and of girls.

The following article provides for Inter-State co-operation aimed at guaranteeing the respect of the provisions contained in *ILO Convention 182*, which may include the adoption of programmes designed to enhance social and economic development, to eradicate poverty and to spread child education.

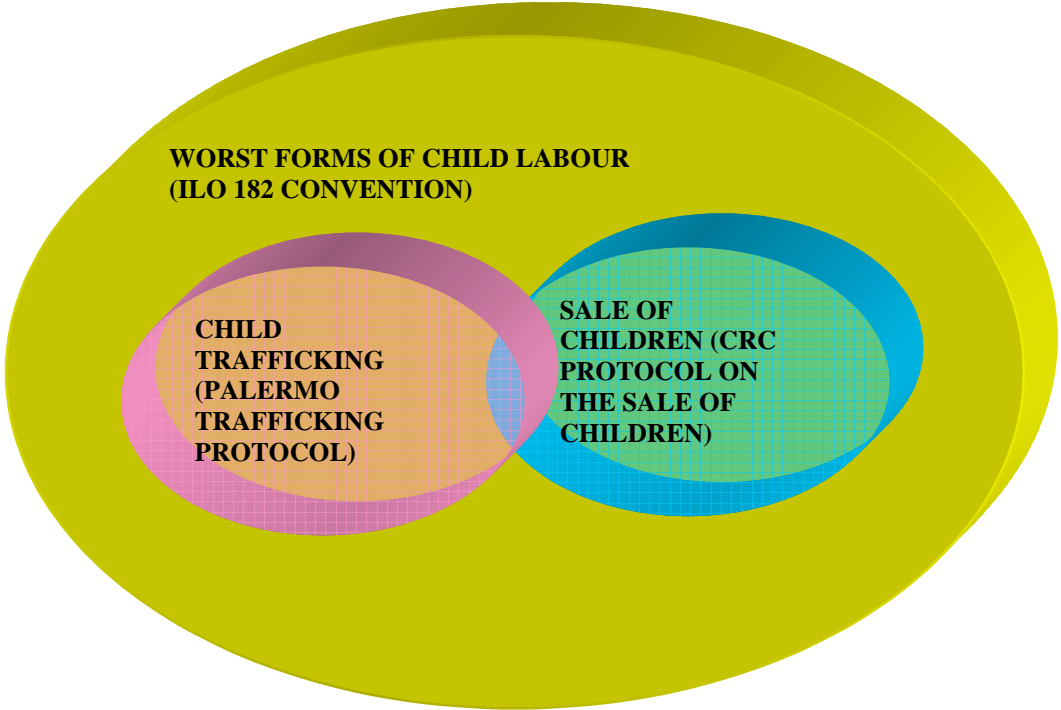
Unfortunately, the *ILO Convention 182* does not contain any complaint or reporting mechanism.

⁶⁹ The *Recommendation* includes the ones performed “underground, under water, at dangerous heights or in confined spaces”, or the ones which require the use of “dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads”.

⁷⁰ In this case the *Recommendation* make reference to the exposure of children to “hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health”.

⁷¹ They include working for long hours or during the night or being confined to the premises of the employer.

Figure 1: Links among the definitions contained in the 2000 Trafficking Protocol, the CRC Protocol on the Sale of Children, Child Prostitution and Child Pornography and the ILO 182 Worst Forms of Child Labour Convention.



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

According to the *Travaux Préparatoires*, the definition of child trafficking contained in article 3.(c) of the *Palermo Trafficking Protocol* has to be interpreted as including the possibility of a child being smuggled for illegal adoption. Moreover, as recently recognised by S. Huda, nominated in 2004 *Special Rapporteur on Trafficking in Persons, especially Women and Children*, children are trafficked for international adoptions, or for sexual or labour exploitation.⁷² Thus, a short summary on the most important international treaty dealing with international adoption may be helpful.

The *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption* was adopted on 29 May 2003 during the Hague Conference on Private International Law.⁷³ Among the aims of the Convention there is the necessity to establish a system of co-operation among States Parties to “prevent the abduction, the sale of, or traffic

⁷² E/CN.4/2005/71, paragraph 8.
⁷³ The text of the Convention may be downloaded at: <http://www.hcch.net/e/conventions/text33e.html>.

in children”.⁷⁴ For this purpose, the Convention sets out the rules and the modalities to conduct intercountry adoptions.

The Convention does not fight against child trafficking in a direct way but in an indirect one, as G. Parra-Aranguren emphasises in its *Explanatory Report on the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.⁷⁵ For this reason, as he states in the Report, the Secretary General of the Interpol expressed his strong support for the *Draft Convention on Intercountry Adoption* saying that:

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

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

4.5 Human Rights Instruments and the Prohibition of Slavery and Trafficking

Reference to the abolition of slavery and trafficking in persons may also be found in some international conventions on the protection of human rights. Article 4 of the 1948 *Universal Declaration of Human Rights*,⁷⁶ outlines the abolition of slavery and slave trade, while article 8 of the 1966 *International Covenant on Civil and Political Rights* (ICCPR) adds the prohibition of servitude and forced or compulsory labour.⁷⁷ According to Article 4.2 ICCPR, even in a situation of public emergency that threatens their existence, States Parties cannot derogate from Article 8.

The implementation of the ICCPR is monitored by the *Human Rights Committee*, which is a body of 18 independent experts. The ICCPR has the competence to examine States reports, to consider inter-state complaints,⁷⁸ and individual complaints.⁷⁹ The Human Rights Committee has made observations to many States on the need to fight against trafficking in human beings as a violation of article 8 ICCPR.

⁷⁴ Article 1.(b) of the Hague Convention.

⁷⁵ The Report can be downloaded at: <http://hcch.e-vision.nl/upload/expl33e.pdf>.

⁷⁶ A/RES/217 A (III) of 10 December 1948.

⁷⁷ 999 UNTS 171.

⁷⁸ Article 41 ICCPR.

As regards children, the *Human Rights Committee* made observations to Mali in 2003, emphasising the need to eradicate trafficking of Malian children to other countries of the region for forced labour.⁸⁰ In the same year, observations on child trafficking in relation to article 8 were made to Sri Lanka as well.⁸¹

Finally, the 1966 *International Covenant on Economic, Social and Cultural Rights* (ICESCR) contains a number of provisions on fair and just conditions of work, which may well apply to trafficked persons.⁸² ICESCR application by States Parties is monitored by the *Committee on Economic, Social and Cultural Rights*, which may only examine States reports.

As the *Human Rights Committee*, the *Committee on Economic, Social and Cultural Rights* has also made reference to trafficking in persons, especially women and children in its reports. In 2002 it expressed concern about trafficking in women and the sexual exploitation of children in the Czech Republic,⁸³ and in Slovakia,⁸⁴ and trafficking in children within Benin and with other countries of the region.⁸⁵

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

With regard, specifically, to women and child girls, the 1979 *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) provides at Article 6 that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.⁸⁶ The CEDAW Convention has been ratified by 179 States.⁸⁷ According to article 18 CEDAW the *Committee on the Elimination of Discrimination against Women* examines every four years or upon its requests, States Parties’ report on the legislative, administrative and judicial measures they have taken to comply with the commitments established under the *CEDAW Convention*. The *Committee on the Elimination of Discrimination against Women* may also make suggestions and recommendations to the States Parties, which are included in its annual report to the *UN General Assembly*.

⁷⁹ On the basis of the Optional Protocol to the ICCPR.

⁸⁰ ICCPR, A/58/40 vol. I (2003) 47 at para.81(17).

⁸¹ ICCPR, A/59/40 vol. I (2003) 30 at para.66(14).

⁸² A/RES/2200 A (XXI) of 16 December 1966.

⁸³ ICESCR, E/2003/22 (2002) 25 at paras. 85 and 104.

⁸⁴ ICESCR, E/2003/22 (2002) 50 at paras. 321 and 335.

⁸⁵ ICESCR, E/2003/22 (2002) 34 at paras. 172 and 191.

⁸⁶ A/RES/34/180 of 18 December 1979.

⁸⁷ For a complete list of States Parties to the CEDAW see: <http://www.un.org/womenwatch/daw/cedaw/states.htm>.

The *Committee on the Elimination of Discrimination against Women* has also expressed concern and made recommendations to States Parties on trafficking in women and young girls. In 2002 it recommended to Estonia to adopt and implement legislation on trafficking, to co-operate with other countries of origin, transit and destination of trafficking and to create social support and reintegration programmes for victims.⁸⁸ Similar concerns and recommendations have been expressed by the Committee to many other countries.

The *Optional Protocol to the CEDAW*, adopted by the *UN General Assembly* in 1999 and entered into force one year later, recognises the competence of the *Committee on the Elimination of Discrimination against Women* to receive written and non-anonymous communications submitted by or on behalf of individuals or groups of individuals, claiming the violation of one of the rights recognised by the *CEDAW*. However, according to article 3, communications may only be taken into consideration if they concern violations committed by a State that is party both to the *CEDAW* and to the *Protocol*. The communication can not be taken into consideration if all available domestic remedies have not been exhausted. Moreover, according to article 4.2, if the communication is considered admissible, the *Committee on the Elimination of Discrimination against Women* may ask for written explanation from the State Party concerned to be provided within six months and in the meantime it can also ask the State Party to adopt interim measures to avoid further damages to the person concerned. The *Optional Protocol to the CEDAW* has been signed by 76 States and ratified by 71.⁸⁹ Thus, more than 100 States have ratified the *CEDAW* but not the *Optional Protocol* that would allow individual complaints.

4.7 The Rome Statute of the International Criminal Court

The 1998 *Rome Statute of the International Criminal Court* ('the *Rome Statute*'), which came into force on 1 July 2002, has jurisdiction on the crime of genocide, the crimes against humanity, war crimes and the crime of aggression. The *Rome Statute* includes enslavement among the crimes against humanity and builds on the *Slavery Convention* definition to take specific account of trafficking in persons.⁹⁰ For the purpose of the *Rome Statute*, enslavement means: "[T]he exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children".⁹¹

⁸⁸ CEDAW, A/57/38 part I (2002) 13 at paras. 101 and 102.

⁸⁹ For the status of ratifications see: <http://www.un.org/womenwatch/daw/country/OptionalProtocoltbl.pdf>.

⁹⁰ Doc. A/CONF.183/9 of 17 July 1998.

⁹¹ Article 7(c) of the Rome Statute.

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

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

On 22 December 2004, Ms. Huda presented her first *Report on Trafficking in Persons, especially Women and Children* to the Commission on Human Rights. The Special Rapporteur clearly emphasised that trafficking in persons is mainly perceived and treated by States as a “law and order” problem, with no focus on the protection of victims’ human rights.⁹² On the contrary, Ms. Huda stated that she will perform her mandate having in mind the following two basic principles:

“(a) that the human rights of trafficked persons shall be at the centre of all efforts to combat trafficking and to protect, assist and provide redress to those affected by trafficking; and (b) that anti-trafficking measures should not adversely affect the human rights and dignity of the persons concerned”.⁹³

Moreover, she also emphasised that special attention will be devoted to the situation of trafficked children and that she will deal with this issue separately in future reports, formulating specific recommendations to States on how to better protect the human rights of the most vulnerable victims of human trafficking.⁹⁴

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

- she will undertake country visits to better understand the phenomenon and to gather information on existing programmes and policies, thus to be able to suggest some lessons learned and good practices in victims’ protection. Ms. Huda already conducted her first country visit to Bosnia-Herzegovina in February 2005;⁹⁵

⁹² Supra note 45, paragraph 56.

⁹³ *Ibid.*, paragraph 11.

⁹⁴ *Ibid.*, paragraph 58.

⁹⁵ *Ibid.*, paragraph 37.

- she will present annual reports to the *Commission on Human Rights* and specific reports on country visits and on communications sent to and received from States. Ms. Huda has already stated that she will consider devoting her future annual reports to thematic issues related to trafficking in persons;⁹⁶
- she will act on the basis of individual complaints. She may send urgent appeals to Governments whenever she receives information that the human rights of a trafficking victim may be imminently violated or are continuously violated.⁹⁷ Moreover, she may send communications to Governments to focus their attention on specific cases or on legislation, policies and practices that may have adverse effects on trafficking victims,⁹⁸ and, in case she does not receive any reply from a Government on previous communications, she may send “follow-up” letters to urge a response or to add new information on a specific case.⁹⁹

5. Soft Law Instruments dealing with Child Trafficking

Even if they are not binding on States, an analysis of some relevant soft law instruments, such as the United Nations High Commissioner for Human Rights’ *Recommended Principles and Guidelines on Human Rights and Human Trafficking* and the *UNICEF Guidelines for Protection of the Rights of Children victims of Trafficking in Southeastern Europe* follows. They clearly suggest the minimum standards that States should adopt to protect the rights of adults and children victims of trafficking in human beings.

5.1 The UN High Commissioner for Human Rights’ Recommendations and Guidelines on Human Trafficking

The United Nations High Commissioner for Human Rights’ *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (‘the *Recommended Principles and Guidelines*’) adopted in May 2002 are an effort to emphasise the need to protect and assist trafficking victims instead of only trying to fight against the traffickers.¹⁰⁰ While primarily addressed to States, the seventeen principles and eleven guidelines, seek to have national, regional and international actors adopt a human rights perspective for dealing with trafficking and emphasise the primacy of the human rights of trafficked persons, the need to adopt

⁹⁶ *Ibid.*, paragraph 24.

⁹⁷ *Ibid.*, paragraph 27.

⁹⁸ *Ibid.*, paragraph 28 and 29.

⁹⁹ *Ibid.*, paragraph 30.

¹⁰⁰ E/2002/68/Add.1.

strategies to prevent trafficking and to protect and assist the victims and, finally, the necessity to criminalise trafficking, to punish traffickers and to guarantee appropriate legal remedies for victims. Recommended Principle 10 and Guideline 8 deal specifically with children. The former states that:

“Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Child victims of trafficking shall be provided with appropriate assistance and protection. Full account shall be taken of their special vulnerabilities, rights and needs”.

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

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

5.2 UNICEF Guidelines for Protection of the Rights of Children victims of Trafficking in Southeastern Europe

In 2003 UNICEF developed a series of Guidelines dealing specifically with child trafficking. Having in mind the situation in Southeastern European countries, the Guidelines may, however, be broadly applied by States, International Organisations and Non Governmental Organisation in any other region of the world. The Guidelines adopt a definition of “child trafficking” broader than the one of the Palermo Protocol, considering that it has no limitations as regards the person(s) committing the crime and the transnational element is lacking. The consent is irrelevant as is the case for the *UN Trafficking Protocol*; however, the list of means that may be used to obtain the consent of a non-child victim are different from the ones enlisted in the Palermo Protocol definition of trafficking in human beings. Even if it does not have any effect on child trafficking it would have avoided any confusion to propose the Palermo internationally recognised list.

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

Following the list of rights, there are some guidelines dealing specifically with what to do to deal correctly with a case of child trafficking. The most interesting ones are: following the rapid identification of the child victim of trafficking, a guardian has to be appointed;¹⁰¹ children are entitled to have “[A]ccess to health-care, psychological support, legal assistance, social services and education”;¹⁰² the child should be placed in “safe and suitable accommodation” and not in a law enforcement detention facility;¹⁰³ they shall be granted a Temporary Humanitarian Visa.¹⁰⁴

As a general principle, children may be sent back to their country of origin but only if a member of their family or the Government of that State takes the responsibility for the child concerned.¹⁰⁵ Otherwise, if it is not possible to safely return the child to her/his country of

¹⁰¹ Guideline 3.2.

¹⁰² Guideline 3.5.1.

¹⁰³ Guideline 3.5.2.

¹⁰⁴ Guideline 3.6.

¹⁰⁵ Guidelines 3.8.2 and 3.7.

origin, the authorities of the State in which the child finds her/himself should arrange long-term care.¹⁰⁶ In cases in which the child may not return to the country of origin and she/he may also not remain in the country of destination, resettlement in a third country should be arranged.¹⁰⁷

Another important principle is contained in guideline 3.9.1, as regards the possibility for children to testify in criminal proceedings against their traffickers. Children should be granted some time to make up their decision and their protection should not in any case be conditional on their willingness to testify. On the contrary, children who testify against their traffickers should be granted special protection to guarantee their security and the one of their family, being it in the country of destination or not.¹⁰⁸

6. Concluding Remarks

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

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

¹⁰⁶ Guideline 3.8.1.

¹⁰⁷ Guideline 3.8.3.

¹⁰⁸ Guideline 3.10.

It has also to be taken into consideration that the protection of trafficked victims human rights has also been enhanced through some United Nations Human Rights Treaty Bodies, such as the *Committee on the Rights of the Child*, the *Committee on Civil and Political Rights*, the *Committee on Economic, Social and Cultural Rights* and, finally, the *Committee on the Elimination of Discrimination against Women*. This system has been improved with the recent nomination of the *Special Rapporteur on Trafficking in Persons, especially Women and Children*, who will presents annual report on specific topics related to this horrible phenomenon and who will receive communications from trafficking victims. Thus, she may bring specific situations to the attention of Governments and request them to take measures to protect the human rights of the victim concerned and to inform her. Finally, the Special Rapporteur can also send communications to States regarding their specific legislation, policies and practices in the field of human trafficking.

Furthermore, the *UN Trafficking Protocol* introduced an internationally recognised definition of trafficking in persons and of trafficking in children as well. Even if it does not really oblige States Parties to protect the human rights of trafficking victims, the *Recommended Principles and Guidelines on Human Rights and Human* filled this gap. The *Recommended Principles* are a soft law instrument, but the *Special Rapporteur on Trafficking in Persons, especially Women and Children* does not consider it a problem and she clearly stated in her 2004 Report that: “The Guidelines and their implementation must be considered within the broader framework of the Protocol and other relevant conventions and treaties”.¹⁰⁹ In so doing, she is paving the way for the creation of a new “custom” in international law. May be, in a decade or two, if many States follow this interpretation and consider the *Recommended Principles and Guidelines* as a binding act, we would assist to the creation of a international customary law, binding on all the States of the world.

Surely a big step ahead has been made in the last years to focus the attention of the international community on the need to guarantee the protection of trafficking victims’ human rights; however, some efforts still have to be made to induce States to modify their legislation, placing the human rights of trafficking victims, and especially of children, at the centre of their actions in the fight against this modern form of slavery.

¹⁰⁹ *Supra* note 45, paragraph 15.