
A Human Rights-based approach to addressing trafficking

by

*Youla Haddadin**

Human trafficking is a crime and a violation of human rights. The Principles and Guidelines of Human Rights and Human Trafficking represent the human rights-based approach to addressing human trafficking. In this lecture, I will walk you through this approach in order to see how human rights are applied in the fight against human trafficking.

The UN Office on Drugs and Crime (UNODC) is the main organisation working on the repressive approach to human trafficking as a transnational organised crime. The UNODC releases a global report every two years, looking at the situation of human trafficking all around the world. It documents trends, not the total number of cases, as it is difficult to get an accurate total number of victims of trafficking. The latest UNODC report¹ registers that 51% of victims all around the world are women; this is a trend that could tell us a lot about the situation of trafficking in human beings globally and how it is a gendered crime regarding the victims. 21% are men, a percentage that has increased by 2% in the last two years. So, even if most victims are women and young girls, we are witnessing an increase even in male victims of trafficking. Regarding children, another category that is massively influenced by the human trafficking phenomenon, 8% are boys and girls are registered at 20%.

Regarding the types of trafficking, the UNODC report underlines that 38% of trafficking victims are involved in forced labour, a phenomenon which has increased compared to two years ago, when it was recorded at 34%. This increase also explains why the percentage of men trafficked has increased, as mentioned above, because in most cases men are the most preferred target of this type of trafficking, according to trends.

* This is a transcription of a lecture delivered on 15 May 2017 at Venice International University, Venice, Italy. Youla Haddadin is an Advisor on Human Trafficking at the Office of the United Nations High Commissioner for Human Rights.

¹ United Nations Office on Drugs and Crime (UNODC). 2016. Global Report on Trafficking in Persons 2016. New York: United Nations Publications.

54% of people are sexually exploited and here it is necessary to highlight an important issue: when we talk about sexual exploitation in fact we are not using the most correct and accurate term referring to trafficking, because in the definition we will see later it is reported the wording “exploitation of the prostitution of others”. Sexual exploitation is an act of violence against women, children, and also men, but it is not merely linked to the phenomenon of human trafficking. There could be a situation of sexual exploitation of a person, without a situation of trafficking. We will return on it later when we will talk about the definition of trafficking.

Other forms of trafficking correspond to 8% of the total cases around the world according to the report. Other forms of trafficking in human beings are, for example, the selling of children, forced marriages, forced begging, all street crimes linked to exploitation, removal of organs and using children as soldiers. There exists shocking data about human trafficking for the removal of organs. Two years ago, the percentage was 1% of the total amount of trafficking situations; now it has risen to 3%. This is a very worrying situation, and it is important to understand as the causes can be traced to conflicts around the world, the condition of unrest of people who flee from these conflicts, the situations in refugee camps, etc.

The international legal framework on human trafficking

Here I would like to provide a very quick overview of the international legal framework around the issue of trafficking, which is actually rather complex. When we talk about trafficking, it is important to understand what trafficking is, because as we saw above, the types of trafficking are very diverse and at the international level even scholars are debating about what is trafficking and what is not. It is an extremely complicated issue.

Of course, some of the major international conventions to which we have to refer are the Slavery Convention, which was adopted in 1926, and its supplementary Convention of 1956². At the beginning of the 20th century, international conventions³ on this issue started talking about a specific topic related to trafficking in women known as *white slavery*, which referred to trafficking in white women for sexual exploitation or for using them for prostitution. A few years later, things

² Reference here is to the following two international conventions: Convention to Suppress the Slave Trade and Slavery, 60 LNTS 254, adopted 25 September 1926, entry into force 9 March 1927, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave trade, and institutions and practices similar to slavery, 226 UNTS 3, adopted by the United Nations Conference of Plenipotentiaries with Resolution 608 (XXI) of the Economic and Social Council 7 September 1956, entry into force 30 April 1957.

³ International Agreement for the Suppression of the White Slave Traffic, 1 LNTS 83, signed May 1904, entry into force July 1905, revised December 1948 (30 UNTS 23); International Convention for the Suppression of White Slave Traffic, 9 LNTS 278, signed May 1910, entry into force June 1912, amended by Protocol approved by the General Assembly in December 1948, 30 UNTS 23.

started to change with the entry into force of international conventions which used directly the term “trafficking” even referring only to women and children⁴.

However, the most important piece of legislation at the international level regulating trafficking is the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially women and children, or the Palermo Protocol⁵. It is a supplementary protocol added to the UN Convention against Transnational Organised Crime⁶, which was adopted in 2000. Together with the Palermo Protocol, the UN Convention against Transnational Organised Crime counts another two protocols, the Protocol against the Smuggling of Migrants by Land, Sea and Air⁷, and the Protocol Against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition⁸. It is really important to clarify the difference between smuggling and trafficking: the first refers to a breach in immigration laws of a State and it is defined by its Protocol in article 3 as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”. Trafficking, instead, is a crime against the human being and a violation of human rights and dignity of a person and we shall see the definition provided by the Palermo Protocol later in this lecture.

For what concerns a regulation about human trafficking for forced labour, we have some important conventions adopted by the International Labour Organisation (ILO) of which one of the most important ones is ILO Forced Labour Convention of 1930⁹ and its newly Protocol of 2014 to the Forced Labour Convention¹⁰,

⁴ League of Nations, International Convention for the Suppression of Traffic in Women and Children, September 1921, Geneva (9 LNTS 415) and amended by the Protocol signed at Lake Success, November 1947 (53 UNTS 13); League of Nations, International Convention for the Suppression of Traffic in Women of Full Age, October 1933, (150 LNTS 431), amended by the Protocol Signed at Lake Success, November 1947 (53 UNTS 13); United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 UNTS 271, signed December 1949, entry into force July 1951.

⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Crime, November 2000, GA Res. 55/25, Annex II UN GAOR, 55th Sess., entry into force December 2003.

⁶ United Nations Convention against Transnational Organized Crime and the Protocols thereto, 2225 UNTS 209, November 2000, entry into force September 2003 (Organized Crime Convention).

⁷ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, signed 15 November 2000, GA Res. 55/25, Annex III, UNGAOR, 55th Session, Supp. No 49, at 62, UN Doc. A/45/49 (Vol. I) (2001), entry into force 28 January 2004.

⁸ Protocol Against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition supplementing the United Nations Convention Against Transnational Organized Crime, GA Res. 255, 15 November 2000, UN Doc. A/RES/55/255 (2001), signed 31 May 2001, entry into force 3 July 2005.

⁹ ILO, Forced Labour Convention, 1930 (No. 29), Convention concerning Forced or Compulsory Labour, adopted 28 June 1930, entry into force 1 May 1932.

which is very important because it highlights the issue of compensation for victims, a topic which a lot of international conventions do not touch when it comes to talk about human trafficking.

When it comes to human rights, we must consider also the International Convention on the Protection of all Migrants' Workers and Members of their Families¹¹ other specific treaties, like Convention on the Elimination of Any Form of Discrimination Against Women¹² (CEDAW), Convention on the Rights of the Child¹³ (CRC) and its two optional Protocols: the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography¹⁴ and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict¹⁵. We also have to take into account the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour¹⁶, which refers to the use of children under the age of 18 in forced labour. When it comes to specific groups like migrants and refugees, the Convention Relating to the Status of Refugees of 1951¹⁷ is the most important convention related to those groups of people.

When we discuss international law on human trafficking, there are other sources to take into account, which are called “soft law” sources. We should consider all the General Assembly Resolutions on the matter and the United Nations Security Council (UNSC) Resolutions. For example, most recently the Security Council has been very active in addressing issues of trafficking, especially in situations of armed conflict¹⁸. However, I personally think that a situation of human trafficking in armed conflict is more related to slavery rather than trafficking, but I recognise

¹⁰ ILO, Protocol of 2014 to the Forced Labour Convention, 1930, Protocol of 2014 to the Forced Labour Convention, 1930 adopted 11 June 2014, entry into force 9 November 2016.

¹¹ International Convention on the Protection of all Migrants' Workers and Members of their Families, 2220 UNTS 3, adopted 18 December 1990, entry into force 1 July 2003.

¹² Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13, adopted December 1979, entry into force September 1981.

¹³ Convention on the Rights of the Child, 1577 UNTS 3, adopted 20 November 1989, entry into force 2 September 1990.

¹⁴ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, GA Res. 54/263, adopted 25 May 2000, entry into force 18 January 2002.

¹⁵ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2173 UNTS 222, adopted 25 May 2000, entry into force 12 February 2002.

¹⁶ ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (n. 182), adopted 17 June 1999, entry into force 19 November 2000.

¹⁷ Convention Relating to the Status of Refugees, 189 UNTS 137, adopted 28 July 1951, entry into force 22 April 1954 as amended by the Protocol Relating to the Status of Refugees, 606 UNTS 267, adopted 31 January 1967, entry into force 4 October 1967.

¹⁸ For example, see UN Security Council resolution 2331 (2016) on trafficking in persons in armed conflicts, 20 December 2016, S/RES/2331 (2016); UN Security Council, Security Council resolution 2388 (2017) on trafficking in persons in armed conflicts, 21 November 2017, S/RES/2388 (2017).

that it is a step forward in the UNSC, which is the main political body of the United Nations. It is important that such an international body of States engages in addressing these issues.

Human trafficking was addressed also by several international Courts: for example, the International Criminal Court or the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia. These Courts examined some of the issues associated to trafficking. It is important to understand that these issues were not situations of trafficking by themselves, but they were associated to it. It is also necessary to understand the legal bases when we talk about trafficking as a crime and as a human rights violation.

Among the aforementioned soft law instruments, here I shall discuss the Recommended Principles and Guidelines on Human Rights and Human Trafficking. They were developed by the Office of the High Commissioner for Human Rights (OHCHR), and a Commentary was drafted, which explains step-by-step every principle and guideline. So, although the Recommended Principles and Guidelines are not legally binding to States, they serve as guidance on how to deal with certain issues and certain elements of trafficking and deal with it as a violation of human rights, as it has been widely accepted by the Member States.

I can proudly say that two-thirds of the UN Member States currently apply a human rights-based approach because it has proved to be very detailed, even in comparison of the sole application of the criminal approach in combating trafficking as a crime. The human rights-based approach has helped to complete the effort in these Member States.

Today I will also clarify some of the concepts within this instrument, so you can better understand the issue of human trafficking when we refer to state obligations. In my experience as a practitioner, and after all my work with Member States, in every country I visit for work I register a lack of perception of feelings of responsibility because the Member States themselves have not perpetrated the crime of human trafficking. We keep reminding them that their responsibilities stem from international law. States have the responsibility to **respect**, which means that they must refrain from taking any action that might lead to violating the rights of individuals. Member States need also to **protect**, which means that they need to take any action necessary to prevent the parties, in our case the traffickers, from violating the rights of all individuals. This is a positive step. Moreover, they have a responsibility to **fulfil**, which means they need to take actions to ensure human rights are respected. In the context of trafficking this fulfilling of the obligation is very important because it strengthens the position when we talk about remedies for victims of trafficking. States are responsible because they are the States, there is not any question in that. When the party who violated the fundamental rights is not able or we do not know its identity, the State has an obligation to remedy this violation.

Some history

The discussions for a new international instrument concerning trafficking and human rights started in the year 2000. As Office of the United Nations High Com-

missioner for Human Rights (OHCHR), we were thinking about how to make States to respect our guidelines, because if they do not express their consent to be bound by a legal instrument, nothing can be done. Our office is not an entity that creates binding international law. Therefore, we annexed the Recommended Principles and Guidelines on Human Rights and Human Trafficking to a report submitted by the High Commissioner of that time, Mary Robinson, to the Social and Economic Council at the United Nations. It became part of an official Resolution and it was recommended in several subsequent General Assembly resolutions and Human Rights Council Resolutions to the extent that as OHCHR we have been asked to promote the Recommended Principles and Guidelines on Human Rights and Human Trafficking and to assist Member States in building capacities to be able to apply a human rights-based approach when addressing human trafficking.

The recommended principles

The Commentary was developed in the year 2010 and it has become a very important source of information about the human rights-based approach. The Recommended Principles and Guidelines on Human Rights and Human Trafficking comprise principles which are declined in several guidelines. The following are the basic principles:

Primacy of human rights means that human rights should be at the centre of any action Member States or any other stakeholder take in order to combat human trafficking. I will give an example: in previous years, States used to detain people involved in prostitution where prostitution or sex work is illegal. They took everyone involved and arrested them and prosecuted the girls, caught guilty of practicing prostitution, without even looking at the specific cases. Some of them turned out to be victims of human trafficking. So, this is what we mean by a human rights-based approach: we put a primacy of human rights on any action.

Prevention means that we need to prevent trafficking in the first place. This is the best way to combat trafficking. Therefore, prevention is mainly focused on addressing the demand, that is to say that we need to look at the reasons that generate demand for the services provided by those victims. If we address the demand and the root causes and the contributing factors, we will be able to combat trafficking. However, I would not say I am pessimistic because I am not, but we need to continue working on that because the phenomenon is increasing. It means that Member States are not really addressing the real issues or the root causes that are causing people to fall in the hands of traffickers. Hence, prevention is crucial.

Protection and assistance to victims is very important because when individuals become victims of trafficking, what we need to do is to rescue them, and to provide them with protection and assistance. Some of them might need medical services, they might need counselling, they are traumatised, they are hungry in some cases, so we need to take immediate action to provide those people in need with protection and assistance.

Criminalisation, prosecution and redress that is to say that each member State need to establish trafficking and associated acts as crimes in their national criminal codes and laws.

When we refer to a human rights-based approach, what does this mean from a legal standpoint? The human rights-based approach refers to a way of dealing with an issue. We have a human rights-based approach to almost everything we work on; all our world is a human rights-based approach. We apply it to humanitarian actions, to end poverty, to all issues we are tackling today; we use the same methodology in all issues, even in human trafficking. At a normative level it is based on international law, and more specifically on human rights law and standards, and, operationally, it is directed towards protecting and promoting human rights. This means that the first thing we look at are not the perpetrators/the traffickers, but the victims, as this approach is designed for them. Of course, we need to provide guarantees for a fair trial for all people who have committed violations and crimes, but this is not our focus in a human rights-based approach for victims. We put victims at the centre of our action so that we ensure that trafficking is not reduced to a problem of movement of people or confused with smuggling as we have seen before. Human trafficking is often confused with smuggling, by governments, Member States and even at the level of the United Nations. So, whenever they talk about the incidents in the Mediterranean, they immediately jump to the conclusion and they talk about human trafficking without even looking closer at the issue. But this is more about smuggling and not human trafficking. It is true that some cases of smuggling ended up to becoming trafficking, but not all cases.

We do not want this crime to be reduced to an organised crime or a public order matter. Otherwise, where are the victims? I will try to put it in simple words with an example. Practically, when we look at the case of trafficking, we need to analyse all the violations that occur through the trafficking cycle. We look at the violations, what happened to the victims, whether they were deprived of liberty, whether they were tortured, whether they were imprisoned. Whatever violation happens during the trafficking cycle we need to look at it at every little stage, we need to discover each specific violation, and we need to provide remedies for the victim for each one of them.

In countries where we detect a case of trafficking, we look at the violation that has taken place, we look at the obligations according to international law of the State involved, and then we will come up with what should be done to remedy to the situation. A human rights-based approach to trafficking seeks to both identify and redress all discriminatory practices and unjust distribution of power that underline trafficking.

The guidelines

Now, I will present you each guideline, adding straightforward examples and what should be done in order to be in line with a human rights-based approach. A lot of Member States like this kind of approach, as they perceive they are doing something, that they are criminalising trafficking. In fact, this has been an incentive for them to apply all the elements related to the human rights-based ap-

proach because they had already undertaken some of the actions, but they did not really know that there were missing pieces that are basically the victims, which require a closer focus by the Member States.

For the human rights-based approach the violations of human rights are both a cause and a consequence of human trafficking: people get trafficked because either they come from a discriminated group, or they are discriminated in their country, they could suffer poverty, or lack of education, opportunities, even they could want to improve their lives. These are what we call the root causes. In these situations, it is easy to become a victim of human trafficking. I give you a very clear example: women fleeing domestic violence at home do not know what to do, they decide to migrate because they do not have enough information and knowledge and they are not strong enough, they become weak and vulnerable and for this reason it is very easy for them to fall in the hands of people who might exploit them. So, this is why we think human trafficking is a cause and a consequence of violations of human rights.

In order to allow States to ensure that the measures they take do not affect the rights of people, we suggest a number of actions:

A comprehensive response

In order to be able to combat such a heinous crime as trafficking, we need a comprehensive response. Traffickers are very smart, and they change the modus operandi they apply, so we need to adapt to their changes. We always recommend an action plan, or a strategy to be adopted which has all the elements needed, included criminalisation of human trafficking. Cooperation needs to be put in place in order to have an effective and fruitful action plan or a well-implemented strategy. All stakeholders in the country need to be informed, especially NGOs or grass-root organisations because they are most probably the only ones that might come into contact with trafficking victims who, because they might be frightened, will not go to the police or law enforcement, and will instead trust this kind of organisations. So, their role in identification and, later, in providing them assistance is really important.

Monitoring mechanism

States need to establish a monitoring mechanism. Some States have established a national committee to oversee all the works. This committee might be made up of different ministries involved in the topics like justice, social services, or the police department. Other States have appointed a single rapporteur who oversees all the programmes that are implemented. In Europe, a lot of States have this single rapporteur, while other countries, as far as I know, have national committees.

Reporting to the United Nations

An important issue is the regular reporting to a United Nations Human Rights mechanism, so parties to the Convention on the Elimination of All Forms of Discrimination Against Women should report the measures they are taking to show

progress and to get good recommendations from a body of experts on what is best in terms of combating human trafficking. This would be a very useful tool.

International and regional agreements concerning extradition and migration

International, regional, sub-regional and even intranational agreements on extradition and migration are important. In a lot of parts of the world we see that there are regional mechanisms and even sub-regional ones. In Europe we have European Union Directives¹⁹ on combating human trafficking, which are adopted and implemented by all Member States. In East Asia they have the ASEAN Convention²⁰, as well as tools and agreements to combat trafficking. Also, the Commonwealth of Independent States (CIS) has its own mechanism. This is very helpful because we are talking about a transnational crime even if in most of the cases, not always, it can be perpetrated either inside the borders of a country. But as we are mostly referring to a transnational crime, agreements among States are very important because they allow them to exchange information, especially between neighbouring countries or with countries of origins and countries of destination where victims are taken.

If you look at the Global Report issued by UNODC you can see the trends, the movement of victims, where they leave from and where they go. This is interesting to observe; the report has some nice maps that show the movements and routes of trafficking. So, those agreements can help combat trafficking because you know that the victims have been trafficked from your country and the final destination is that particular region, for example Europe, so you make an agreement with Europe or the specific country where you know victims are resettled to help them. Of course, as OHCHR we are always called for technical assistance and we provide it to Member States on how to apply the principles and guidelines and how to adapt to them their national legislations and even the strategies. So, we have been involved in almost most parts of the world.

¹⁹ Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, 2011/36/EU, 5th April 2011, OJ L 101/1; Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, 29 April 2004, 2004/81/EC, OJ L 261/19; Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, 2012/29/EU, 14 November 2012, OJ L 315/57; Council Directive 2004/80/EC relating to compensation to crime victims, of 29 April 2004, OJ L 261/15.

²⁰ ASEAN Convention Against Trafficking in Persons, Especially Women and Children, adopted 21 November 2015, entry into force 8 March 2016.

Identification of victims

Another important element is the identification of victims of trafficking. In a lot of cases there are victims of trafficking that are not identified at all, they are confused with smuggled people or they are misidentified. They are therefore not given the status of victim in order to be protected. As we always say, victims need to be identified as such in order to be able to be protected and receive the assistance and the justice they deserve. Some other practical steps for identification can be the training of people who are responsible for identification. If border police do not know how to identify a victim of human trafficking, if they do not know what the set indicators are, they will not be able to do it. For example, I remember that I was once travelling somewhere to deliver training in one of the countries in the Gulf region. I arrived at the airport, I handed over my passport to the lady of the security border police, and she did not even detect me, she did not make eye contact. I therefore started the training from the border: I asked her if she was going to look at me. What if I am not the person handling the passport? They need to look at people the check at passport controls, they need to be vigilant because sometimes victims of trafficking are travelling with somebody else and that somebody else holds the passport, presents it and the police border could not notice that something is wrong. So, identification is very important. Officers need to be trained about identification and we need to help them write manuals, develop indicators and other measures.

Another example, I was working two years ago with the civil aviation authorities on how to train flight attendants on victims' identification. When you board a flight, the flight attendant should be able to observe and figure out if there is something wrong. There was this famous case who took place two months ago in the US, in which a flight attendant helped identify a victim of trafficking and she saved her. She was trafficked from the East Coast to the West Coast in California. The flight attendant felt something was wrong with the girl, she was travelling with a male trafficker. The flight attendant left her a note in the restroom, so the girl went there and wrote back "I need help" on the same note the stewardess left. So, they immediately called the ground authorities in California and the police came and saved the girl and it turned out she was a victim of trafficking and arresting the trafficker. So, identification is the first step, if we cannot identify victims, we are not doing our job.

However, identification is sometimes related to success or failure. If you look at the high percentages that are increasing at the international level it can be either way. They are doing a good job, and we are identifying more victims, and therefore we are able to measure more cases. But at the same time, we are not doing our job well so, it is tricky sometimes. However, if we prepare the people who are responsible for identification and they are given the necessary skills, that would be a major step in the fight against human trafficking. Of course, we need to provide training to police and judges on how to investigate the cases, even how to ask questions to the victims or the traffickers, or others involved in the trafficking cycle.

Prohibition to get victims of human trafficking imprisoned

In order to have a human rights-based approach, one of the most important issues in investigating and identifying victims of trafficking is that we should not take them to jail. Victims of human trafficking should not be imprisoned. Member States need to provide shelters that should be safe places to remove them from the danger in which they are. States need to provide protection for victims and moreover, some of them might need to apply for asylum. Especially in cases of sexual exploitation of women, they do not want to go back to their communities of origin after their story has become public because they should be stigmatised. Therefore, we need to put in place some rules and procedures either to provide them with refugee status in the same country where they denounced the violation and trafficking they suffered or to a third country. Some victims often choose to go to a third country because they feel safer.

Research, analysis and evaluation

When it comes to research, analyses and evaluation, it is important to collect data. We need to have data about regions and cities. Sometimes the type of evaluation we are aware of helps us to understand why certain people are trafficked. For example in Africa they traffic people with albinism because of certain beliefs; their organs or their blood are used in some of the voodoo practices. We need to understand the phenomenon. We need to have numbers and statistics about what type of cases we are having, and this could tell us also about how traffickers work so we would be able to track them better. Monitoring of course is very important. States need to monitor how your policies are effective, are there any results or you need to change them in order to better combat trafficking and apply the human rights-based approach.

Survivors' stories

Survivors and their stories of trafficking are crucial. They can be a very important source of information for us as authorities combating trafficking. For example, they can tell us why they left their homes in the first place. Some people started a migration process and they end up being victims of trafficking. Others are deceived in their home countries by a promise of a contract to go to work as waitress or in a hotel or something else, and they then fell into the trap of trafficking. All this information will help us to put necessary guidelines in place. A very good example is the one of the Philippines where they no longer send workers abroad without training and the Ministry of External Affairs must inspect the contract and the conditions of the contract in order to prevent cases of trafficking. But in other cases, some countries turn a blind eye, because those people who have been exploited or their nationals travelling abroad who are exploited sometimes send money home.

A proper national legislation against human trafficking

Countries need to criminalise and have appropriate national legislation. Some of them are really making a considerable effort while others are not. Nevertheless, we

need to criminalise trafficking in our national legislation, and we have to follow the definition of the Palermo Protocol. The crime of trafficking has 3 elements, the **action** (how), the **means** (what did they use, what are the means used in, what was the main reason), and the **purpose**, which is always exploitation. If there is no exploitation, we are talking about a different kind of crime. So, the three elements need to be there and in our legislation as States we need to criminalise trafficking and all associated acts. Dealing with children, according to the definition of the Palermo Protocol, we do not need to prove the means because a child cannot be deceived, a child is a victim of trafficking regardless of whether they consented or not. As long as we have an action and exploitation, a child cannot give consent to be trafficked. We need to penalise all practices related to trafficking like forcing people to engage in prostitution or in sex work. Sex work and prostitution are terms which are often discussed, and they are creating a lot of debate even at the international level. The Recommended Principles and Guidelines on Human Rights and Human Trafficking were very impartial; there is the terminology “exploitation of the prostitution of others”. If in a member State sex work is legal, it is fine. We are talking about the exploitation aspect of sex work. If somebody is exploiting a sex worker where sex work is legal, we address the exploitation we do not address the issue itself.

Remedies

States should provide a mechanism for remedies for victims of human trafficking. Money could be gathered by confiscating all the assets belonging to traffickers and organised crime groups. Usually these groups are engaged in other illicit activities like money laundering, drug trafficking, trafficking of organs, some of them even terrorism. Some of these groups act as big networks all around the world and they have important assets that States can confiscate through police operations. States can use those assets to compensate victims. Some Member States told our office that they did not have the means to follow all the Principles and Guidelines. The answer is that if you do your job properly, you will be able to confiscate a lot of assets and revenues generated by the crime of trafficking and you can use it to compensate victims of trafficking.

Sanctions for the perpetrators

States need to have appropriate legislation in place that criminalises and imposes sanctions on traffickers, and they should provide a proper law enforcement response that is trained, well-informed, able to undertake investigations in cases of trafficking without doing any harm. This is a very important principle: law enforcement agents must not harm the victims. They need to be aware that victims might be under threat, or intimidation, and they must be very careful when dealing with them. I have seen that from my visits and work with Member States around the world, there are those who have a special unit dealing with trafficking in the police department. This is progress, because these kinds of special units are more focused, they know to build their own capacity, they have all the means. For exam-

ple, in Jordan there is a special unit dealing with trafficking and it is proving to be very effective.

Protection and assistance

When we talk about protection and support, which are two of the main principles, we need to have norms and standards within the State that provide victims immediate protection, and we need to keep their identities secret because sometimes it is really very sensitive. Victims do not want to be exposed as being victims, and they need to be given what we call a *reflection period* to provide them with assistance and protection. These provisions should not be conditional on the cooperation with legal proceedings against their traffickers. During the reflection period, they need time to sit on their own and think about what they have been through. Then they decide whether they want to engage in a legal proceeding or not. Some of them could be frightened because traffickers are aware of their family back home, and they might cause them harm. We need to be very sensitive and very careful in dealing with the issue of victims and legal proceedings. So, States need to move victims immediately to a safe place and provide them with *permanent residency permit* (or a temporary one) to be able to receive medical assistance. If they choose to engage in the legal proceedings, they will be able to be there and to be able to file a claim for compensation and remedy.

Information about victims' own right for remedy

States need to inform the victims of all their rights, what are the ways to obtain remedies in the country they were trafficked in. They need to be aware of all the options in order to make an informed decision and be able to move forward and decide what are they going to do. Some countries I have visited have shelters, with have very good services for victims; they provide them with some vocational training and they work on either sending them to a third country or, if they choose so and if they can, to their country of origin. Vocational training is really important so when they go back home, they are more likely not to be victimised again. So, the vicious circle is broken, because if you deal with the root cause then you are in a better position to protect the trafficked person from becoming a victim once again. They are also given education opportunities for this reason.

Children

We have a whole set of recommendations related to children. The most important principles when dealing with children is the best interest of the child, and suitable action. It is important to remember that some children who are victims of trafficking have been trafficked by their own relatives and parents, so in this case the best interest of the child is not to give them back to their parents, who will traffic them again and exploit them. We need to be able to decide what is the best interest of the child in that case and act accordingly.

Types of remedies

When we talked about remedies, as I said we need to provide victims with a way to obtain them. Remedies take several forms. In the case of trafficking for sexual exploitation, it is very difficult to take things back as they were because the harm has already happened to victims, but we can provide a safe return to them or resettle them in a third country. Financial compensation is a very important element; it could help them to reshape their lives, start a project; if they were subjected to psychological damages, they need to be assisted. Rehabilitation for victims of human trafficking is the heart of the human rights-based approach. So, when we talk about a human rights-based approach that means the victims need to be provided with assistance, medical services, counselling, legal assistance given by the court in order to get compensation and everything they need. Full and public satisfaction is a sort of remedy but sometimes it is confused by the rights of people in general for development in their own country. Instead, financial compensation is a legal thing: a victim can go to the courts, claim compensation for an act that violated his or her rights, he or she has some kind of guarantees of non-repetition, which include a possible safe return and investigation and prosecution of traffickers in order to break the cycle and prevent them from trafficking more people or other victims over and over.

Obligations of peacekeepers and diplomatic staff

I am sure you have heard a lot of stories and cases about peacekeepers engaged in cases of trafficking especially in the case of Bosnia and Herzegovina, twenty years ago. It happened that they were engaged in cases of trafficking, especially for sexual exploitation. Most recently there has been a case in the Central African Republic and the OHCHR carried out some investigations. Even one of the Directors in our office was fired because he did not act as he should have acted through the proper channels and start an investigation against the people who sexually abused children in Central African Republic.

Peacekeepers and diplomatic staff need to be trained in order to recognise if it is trafficking. For example, if I go back home and talk to the people in my home country about the situation of the domestic workers that are working at their homes, they do not realise they are committing a crime of trafficking if they take their passports and lock them up. Basically, this is trafficking. Some people do not realise it and you need to raise awareness about the issue so as to make sure that people understand what such a crime is in order to prevent them from engaging in acts that might lead to cases of trafficking. This is important while they are performing their duties as diplomats or as peacekeepers sent by the United Nations to help troubled communities. We do not need to add the plague of trafficking to their suffering.

Operations and coordination between States

Operations and coordination between States and regions are very important. The concept at the core of this assumption is mutual assistance. Sometimes, in cases of

trafficking, it happens in country A and you have a witness in country B, so through mutual assistance you can manage to get the testimony from persons who can testify that the crime has been perpetrated. Migration agreements among States or between two States are very important because they would help limit the cases. Clear channels for migrating are very effective in combating trafficking and, where there are no clear measures, people just go out and get victimised by whoever finds them first.