

Claudio Formisano/Valiant Richey

From Policy to Practice – Tackling Human Trafficking in Large-Scale Movements of Migrants and Refugees

Introduction

B. was a Nigerian girl aged just over 18 years old when we met her in a shelter run by a southern Italian NGO that provides assistance and social reintegration for victims of human trafficking. She had been brought to Italy under the false promise of a job. Her traffickers turned the assurance of a better life into a nightmare of sexual exploitation.

B. is not the only one. It is a sad reality that increasingly large numbers of migrants, after having survived a perilous and often life-threatening journey, simply disappear from asylum and reception centres into the hands of traffickers seeking to exploit them for a variety of purposes, such as sexual exploitation, forced labour, and sham marriages. A study by the International Organization for Migration (IOM) concluded that more than 80 per cent of the Nigerian women arriving by boat in Italy are trafficked into prostitution across Europe.¹ Salvatore Vella, Deputy Chief Prosecutor in Agrigento, Sicily, lamented the fact that many asylum and reception centres were actually acting as “a sort of warehouse where girls are temporarily stocked [...] before being picked up by mobsters”.²

Since the onset of the 2015 surge in migrants and refugees in and around the OSCE region, the Office of the OSCE Special Representative and Coordinator for Combating Trafficking in Human Beings (OSR/CTHB) has focused on the perilous risks of human trafficking in mixed migratory flows. Capitalizing on its comprehensive methodology, the OSR/CTHB invested in research, policy, and pioneering capacity-building programmes to help national authorities to better recognize and counter the trafficking of asylum seekers and migrants across the OSCE region.

1 Cf. International Organization for Migration, UN Migration Agency issues Report on Arrivals of Sexually Exploited Migrants, Chiefly from Nigeria, 21 July 2017, at: <https://www.iom.int/news/un-migration-agency-issues-report-arrivals-sexually-exploited-migrants-chiefly-nigeria>.

2 Trafficking of Nigerian women into prostitution in Europe ‘at crisis level’, The Guardian, 8 August 2016 (corrected on 9 August 2016), at: <https://www.theguardian.com/global-development/2016/aug/08/trafficking-of-nigerian-women-into-prostitution-in-europe-at-crisis-level>.

Background

There is an internationally binding definition of human trafficking that is, to various degrees, largely transposed into domestic legal frameworks. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Trafficking in Persons Protocol), provides the following definition of trafficking in persons:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.³

Three elements are thus considered instrumental to the crime of trafficking: (a) a process or an action (recruitment, transportation, transfer, harbouring or receipt of persons); (b) a particular “means” by which that action is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve consent of a person having control over another person); (c) for a particular “purpose” of exploitation, regardless of what type (e.g. sexual exploitation, forced labour, or forced begging). When the victim is a child, the “means” element is not required; it follows that any act committed for an exploitative purpose is sufficient to establish the trafficking of a child as an offence.

Human trafficking in and around the OSCE region increases as a consequence of crisis situations such as large-scale conflict, displacement, or humanitarian emergencies. Traffickers, from cross-border organized crime syndicates to a wide array of intermediaries and individual perpetrators, thrive on trafficked persons’ lack of meaningful alternatives in terms of economic opportunities, poverty, and access to health and education. Even though the forms of exploitation that may occur along migratory routes also occur in other contexts, people on the move are often more likely to suffer such exploitation due to their heightened vulnerability.

3 United Nations Human Rights Office of the High Commissioner, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 3(a), 15 November 2000, at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>.

From Research to Practical Assistance: Objectives, Tools, and Methods

The Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSR/CTHB) was created in 2006 through the OSCE Ministerial Council (MC) Decision No. 03/06. By establishing an OSCE Special Representative, the 57 OSCE participating States entrusted the Organization with a powerful voice to advance the anti-trafficking agenda at the regional and international levels. As part of the OSCE Secretariat, the OSR/CTHB's activities address the full spectrum of anti-trafficking work, including programmes to enhance protection and prevention mechanisms for victims, hold perpetrators accountable, and build partnerships among stakeholders.

As the OSR/CTHB's activities are conceived in response to the trafficking and migration nexus as part of a broader anti-trafficking strategy, and for the OSR/CTHB, the *how* of the Office's work forms the basis of *what* the Office does, it is important to lay out how the Office performs its work generally before discussing its engagement on migration specifically. In its almost 15 years of existence, the OSR/CTHB has successfully formed a coherent methodology for its work. A sound working methodology, especially when dealing with the complexity of human trafficking, ensures that activities are not undertaken in a vacuum without considering their impact or relevance.

At the highest level, the OSR/CTHB serves to help participating States implement the OSCE commitments against trafficking, in particular those contained in the OSCE Action Plan to Combat Trafficking in Human Beings.⁴ More specifically, the OSR/CTHB pursues three primary targets:

- *Raising general awareness* of, and drawing political attention to countering trafficking in human beings in all its forms, including through representing the OSCE at the highest political and diplomatic level;
- *Ensuring co-ordination of all OSCE work* in combating trafficking in human beings across all three OSCE dimensions, OSCE structures, and OSCE field operations, as well as vis-à-vis external partners;
- *Identifying and elevating promising practices* in addressing the crime, by making them accessible and implementable across countries and regions.

To accomplish these objectives, the OSR/CTHB has a number of tools at its disposal:

- *High-level dialogue with government leaders and national authorities*, which is conducted, *inter alia*, through country visits, whose primary aim

4 Adopted by OSCE, Permanent Council, Decision No. 557, OSCE Action Plan to Combat Trafficking in Human Beings, PC.DEC/557, 24 July 2003, available at: <https://www.osce.org/actionplan>, and endorsed by OSCE, Ministerial Council, Maastricht 2003, Decision No. 2/03, Combating Trafficking in Human Beings, MC.DEC/2/03, 2 December 2003, available at: <https://www.osce.org/odihr/23866>.

is to learn about best practices and opportunities for participating States; as well as by the regular exchange of expertise with national coordinators and rapporteurs on trafficking in persons in the OSCE area and beyond;

- *Targeted research into emerging patterns of human trafficking* to provide informed policy guidance (trafficking is an ever-evolving crime that features diverse forms of exploitation, and traffickers develop different modus operandi that become all the more sophisticated over time);
- *Workshops, training courses, and regional events* with the two-pronged objectives of, on the one hand, obtaining expert input via round tables and seminars (including through specialized anti-trafficking and cyber-crime law enforcement units, NGOs, and the private sector); and, on the other hand, promoting the implementation of new tools and piloting them on the ground;
- *The Alliance against Trafficking in Persons*⁵ and its expert meetings as a multidisciplinary forum for exchange and expert consultation with governments, private sector, academia, and the civil society, as well as the OSR/CTHB's membership in the United Nations Inter-agency Co-ordination Group against Trafficking in Persons (ICAT), a policy forum mandated by the UN to strengthen collaborative and cooperative anti-trafficking work within the international community.

These goals and tools are at the heart of the OSR/CTHB's methodology: Upon identifying a specific issue of concern – for example, technology as both a liability and an asset in combating human trafficking or trafficking for forced criminality – the OSR/CTHB's approach moves from research to technical assistance; or, in other words, from policy to practice. First, by studying new trends in trafficking at the national and regional level, the OSR/CTHB concentrates on understanding them through research. Second, the office strives to develop sound policy recommendations and guidelines to address them. Finally, it helps communicate this information at the ground level with an array of technical assistance and capacity-building activities, so that it can be put into practice.

Given its partnership-oriented, focused, and innovative vision, the OSR/CTHB promotes inclusive and multi-pronged responses to tackle persistent and emerging forms of human trafficking. The ultimate goal is building sustainable anti-trafficking frameworks based on human rights principles that can be adequately and effectively implemented.

In response to the exceptional large-scale movement of migrants and refugees that erupted in 2015, the OSR/CTHB's toolbox was once again able to prove its relevance in articulating meaningful responses to the inherent risks of trafficking of migrants and refugees.

5 For more information, see: OSCE, Alliance against Trafficking in Persons, at: <https://www.osce.org/secretariat/107221>.

Human Trafficking in the Context of Migration

In 2015, Frontex, the European Union's external border agency, calculated more than 1.8 million illegal entries, associated with an estimated one million individuals – more than 4.5 times the total number of arrivals for 2014, according to the UN High Commissioner for Refugees (UNHCR). To put this figure into perspective: It corresponds to the entire population of Vienna. Although migration figures in Europe drastically abated after the peak of arrivals in Europe registered in the following two years, the European Statistical Office (Eurostat) still recorded over three million first-time asylum applicants between 2015 and 2017, and 649,855 in the year 2017 alone.⁶

Human trafficking often intersects with the issue of migration. Although the crime can occur domestically, i.e. within the boundaries of a country, nearly half of all documented trafficked persons are foreign migrants, predominantly ending up in situations of prostitution and forced labour. The crossing of a border may result from lack of meaningful socio-economic alternatives, reasonable options for survival, or distress caused by humanitarian crises. Many individuals are forced or deceived into embarking on an exploitative journey; others may be exploited along their way as a result of their inherent vulnerability, and deprived of basic protections and rights (as in the recent examples of migrants *en route* to and in Libya). In other instances, refugee camps populated by asylum seekers in countries of registration are a common source of recruitment for traffickers.⁷

Women, children, and young adults are particularly at risk of being coerced into complying with the demands of those promising them safe passage to a better life. With regard to migrant children, the European Migrant Smuggling Centre (EMSC) estimated in January 2016 that over 10,000 migrant children were unaccounted for. According to Věra Jourová, the European Commissioner for Justice, Consumers, and Gender Equality, they run a high risk of being trafficked and exploited by criminal gangs. At the 17th Alliance against Trafficking in Persons Conference in 2017, speakers emphasized that crises in and beyond the OSCE region dramatically heighten vulnerability to human trafficking, with numerous children representing soft targets for criminal networks and individual traffickers. Once again, in the 2018 Supplementary Human Dimension Meeting, on 28-29 May in Vienna, entitled “Child Trafficking: From Prevention to Protection”, experts underlined the need to ensure the protection of all unaccompanied minors with prompt identification and immediate assistance, taking into account their specific needs and the best interests of the child. These recommendations were highlighted in the adoption of OSCE Ministerial Council Decision 6/2018 in Milan,

6 Cf., Asylum in the EU Member States, 650,000 first-time asylum seekers registered in 2017, eurostat newsrelease 47/2018, 20 March 2018, at: <https://ec.europa.eu/eurostat/documents/2995521/8754388/3-20032018-AP-EN.pdf/50c2b5a5-3e6a-4732-82d0-1caf244549e3>.

7 Cf. Siddharth Kara, *Modern Slavery. A Global Perspective*, Columbia University press, 2017, pp. 30-31.

where OSCE participating States noted with concern the large numbers of unaccompanied children vulnerable to human trafficking in recent years.⁸

All too often in times of crisis, profiteers emerge who seek to exploit the misery and vulnerability of others. Traffickers prey on individuals desperately lacking in security and opportunity, using threats and deception to control them for profit. With the tightening of immigration policies, migration routes are now often longer, more expensive and life-threatening. Furthermore, limitations on opportunities for legal migration have inadvertently aided both human smugglers and human traffickers.

For many, human trafficking is so common in migration flows that the terms *human smuggling* and *human trafficking* have become blurred. Yet, as pointed out repeatedly by international organizations and practitioners in the field, they are separate crimes. Smuggling always involves the crossing of an international border and individuals who pay a smuggler to gain entry into a state do so voluntarily, at least in principle. Human trafficking involves some form of coercion, physical or psychological, for the purpose of exploiting the victim, as laid out in the trafficking definition in Article 3 of the UN Protocol. Unlike smuggling, it may very well occur within national borders too.⁹

Although in theory the relationship between smuggler and migrant ends once the individual has crossed into another country, there is considerable evidence that smugglers exploit illegal migrants after arrival through threats and demands for additional fees. Human trafficking is thus often a direct consequence of human smuggling among mixed migration flows.

Asylum may also be linked with human trafficking. While not all victims of trafficking are refugees, depending on the circumstances, some victims of trafficking may qualify for refugee status under the 1951 Refugee Convention or regional refugee instruments. Article 1A(2) of the Refugee Convention defines a refugee as any person who, “[...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country”.¹⁰ The UNHCR’s Guidelines on International Protection No. 7, which are intended to provide guidance on the application of Article 1A(2) to victims or potential victims of trafficking, set out when the 1951 Convention refugee definition applies to victims of trafficking and persons at risk of being trafficked. According to the Guidelines, victims of trafficking or persons who

8 Organization for Security and Co-operation in Europe, Ministerial Council, Milan 2018, Decision No. 6/18, Strengthening Efforts to Prevent and Combat Child Trafficking, Including of Unaccompanied Minors, MC.DEC/6/18, 7 December 2018, at: <https://www.osce.org/chairmanship/406745>.

9 For more information on the nexus between trafficking and smuggling, cf. Madina Jarbussynova, An Inextricable Link, *Security Community* 3/2016, pp. 28-30, at: <https://www.osce.org/magazine/285641>.

10 Convention Relating to the Status of Refugees, Article 1A(2), in: UNHCR, *Convention and Protocol Relating to the Status of Refugees*, pp. 13-45, here: p. 14, at: <http://www.unhcr.org/3b66c2aa10>.

fear being trafficked are refugees if all elements of the refugee definition in Article 1A(2) of the Refugee Convention are satisfied, i.e. if they have a well-founded fear of persecution in their country of origin where the state is unable or unwilling to protect them.¹¹

In some instances, immigration authorities or courts may fail to identify victims of trafficking as also eligible for protection as refugees or a subsidiary or complementary protection status. To ensure that international protection as a refugee is available to victims of trafficking who need it, international practitioners strongly emphasize how asylum authorities must be able to identify links between trafficking and refugee protection needs. In turn, this form of legal protection helps reduce people's vulnerability to being trafficked in their new location. It also indicates that states have a responsibility to prevent refugees and asylum-seekers in their jurisdiction from falling victim to trafficking.¹²

As we have seen, categories as defined in international law sometimes blur before the complexities of contemporary migration. Yet, as widely pointed out in numerous debates, the way persons on the move are categorised, and how these categories are applied, are of vital importance as this may result in very different responses ranging from deportation to entitlement to international protection, assistance, and reintegration measures.¹³

Against this backdrop, the OSCE investigated the complex phenomena of human trafficking and large movements of migrants and refugees. Only when the link between the two is recognized, understood, and analysed will it be possible for governmental and non-governmental actors to better respond to them. Since the outbreak of the migration crisis, the OSR/CTHB has led the OSCE's efforts in this direction.

The OSR/CTHB's Migration Programme

Effective responses start with sound research. In line with the methodological path outlined above, the OSR/CTHB launched fact-finding visits to countries most affected by large movements of migrants and refugees from 2015 through 2017. These needs assessments took the Office through reception, identification, and transit centres across the southern Mediterranean region, in Turkey,

11 Cf. UNHCR, Guidelines on International Protection. The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/0, 7 April 2006, p. 3, point 6, and p. 6, point 13, at: <https://www.unhcr.org/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html>.

12 For more information regarding the links between trafficking and refugees, cf. Trafficking in Persons and Refugee Status, ICAT issue brief no. 3, September 2017, at: <http://icat.network/sites/default/files/publications/documents/ICAT-IB-03-V.2.pdf>.

13 Cf. Claus K. Meyer/Sebastian Boll, Editorial: Categorising Migrants: Standards, complexities, and politics, *anti-trafficking review* 11/2018, pp. 1–14, available at: <http://www.antitraffickingreview.org>.

Italy, Greece, as well as along the so-called Balkan route through Serbia, the former Yugoslav Republic of Macedonia, and Bulgaria. An in-depth, expert needs assessment was conducted in the summer of 2017 in selected first identification and reception facilities in southern Sicily, at Lampedusa, Pozzallo, Ragusa, and Catania.

Observing the situation on the ground across the OSCE region proved invaluable in witnessing the sheer scale of the challenges local authorities were facing to provide food, shelter, and accommodation for large flows of persons in distress. In refugee camps in Gaziantep, Turkey, across the island of Lesbos in Greece, and elsewhere, work is conducted by first responders in often difficult circumstances to assist and give protection to migrants and asylum seekers. Similarly, exemplary practices were collected by coming into contact with dedicated first responders whose diligent work on the ground often goes unreported.

Moreover, such informative visits enabled the OSCE to experience first-hand the progress made by authorities in identifying potential victims among mixed flows of migrants and refugees. Findings confirmed that, while considerable efforts were made and excellent practices exist at the local level, there was still potential for improving the capacity of frontline operators to screen such flows to promptly identify victims of trafficking. These findings formed the basis of the OSR/CTHB report published in January 2018 and entitled “From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows Office, a focus on First Identification and Reception Facilities Refugees and Migrants in the OSCE Region”.¹⁴ The OSR/CTHB explored all stages of a typical migrant’s journey from disembarkation towards the final determination of status, as it is often during these critical operations that victims can be identified and adequately referred for assistance.

First and foremost, the report found that a harmonized, multi-agency architecture is necessary to address the needs of trafficking victims and to mitigate the risk of human trafficking to potential victims amongst the migrant population, irrespective of their status or claims. Failure to implement this approach risks neglecting the vulnerabilities of a significant proportion of people who may very well fall prey to human trafficking practices as a result. Indeed, the presence of unidentified and unprotected victims of human trafficking allows criminal activities to flourish, adversely affecting the rule of law.

The key lies in better screening at entry points. Due to the reluctance of victims to come forward, identification must be proactive, not reactive. Adequate time and tools are vital in identifying vulnerabilities and special needs,

14 OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows*, 18 January 2018, at: <https://www.osce.org/secretariat/367061>.

particularly with persons attempting to remain invisible or undeclared. Currently, such vulnerabilities are not appropriately recognized, either because time does not permit this, or, because the appropriate tools are not in place, are not widely harmonized or, in some instances, are simply not applied. Furthermore, the mandate of all agencies involved in identification and registration procedures should embrace a strong focus on human trafficking risks at all stages of the process.

The report argues that such an inclusive mechanism should be regulated by formalized protocols and guidelines at both central and local levels; delegating clear roles to all actors operating in reception facilities, including medical personnel, social workers, and law enforcement agencies, with a supra coordination oversight assigned to local authorities. Cross-sectoral co-operation between prosecutor offices, immigration authorities, and specialized anti-trafficking NGOs should be legislatively formalized to become the norm.

In the spirit of developing such multi-agency co-operation, the OSR/CTHB moved into policy development and is finalizing guidelines for frontline operators to help them overcome obstacles in the identification and protection of trafficked persons. Harmonized, standard procedures can make a difference in facilitating the adoption of effective multi-agency work in combating trafficking of migrants from the early stages of first identification and migrant reception. Excellent practices exist, but they are all too often confined to a specific locality or single region. These are captured in the OSCE guidelines to be elevated and applied more widely.

Looking ahead, it will be possible to adapt the upcoming OSCE guidelines for the identification of trafficked persons within mixed migratory flows to any national context, as their underlying principles of collaborative work are universal. They will undoubtedly be used as an important tool and vehicle to train frontline responders across the OSCE. It is only by applying uniform standards of co-operation and by adopting the same anti-trafficking principles, in fact, that it will be possible to prevent victims falling between the cracks of the system.

A Pioneering Frontier of Anti-Trafficking Training: Building Multi-Agency Co-operation

Another example of the OSR/CTHB's engagement with the anti-trafficking effort in relation to migration is its ground-breaking simulation-based training programme. Thanks to the Italian government, its Carabinieri Force, and a vast number of local, regional, and international partners, the OSCE has invested in practical, hands-on technical assistance. Launched at the Center of Excellence of Stability Police Units (CoESPU) in Vicenza as an innovative training project to combat human trafficking along migration routes, the simulation-based

exercise was designed to enhance transnational responses to trafficking in human beings in a migratory context.

After a day of intense discussion of theoretical, methodological, and technical aspects of anti-trafficking action, practitioners participate in a four-day simulation exercise on the grounds of the Center. The goal of the exercise is to promote practical co-operation and joint solutions for victim identification and criminal prosecution. It highlights the role of financial investigation as a best practice for dismantling complex criminal organizations. Reality-based scripts read out by actors assure the realism of the simulations. Experts coach the participants on how best to respond to situations as they unfolded before them.

Over 300 criminal and financial investigators, prosecutors, labour inspectors, social service providers, and journalists from nearly every OSCE participating State have been trained so far on building a multi-agency approach to identify victims of sex trafficking and forced labour among migration flows. A regional exercise for Russian speaking practitioners was also delivered in Astana, Kazakhstan, in September 2018. The ability to respond swiftly with such a practical and results-oriented initiative is proof of the comparative advantage of the OSCE in this respect. Plans are already underway to offer an expansion of what is now considered a role model in anti-trafficking training to engage the OSCE Partners for Co-operation across the Mediterranean region.¹⁵

Conclusion

Within the safety of the Sicilian home which offers her temporary shelter, B. reflects on the importance of security and confidentiality as a fundamental prerequisite for migrants to come forward and denounce their traffickers. B. found the strength to do so, and collaborates with law enforcement. She also benefits from long-term assistance and social inclusion in compliance with the law. Many voices, however, go unheard, and too many stories go unreported. Wracked by memories of terrible experiences they are desperate to put behind them, other girls such as B. will only share their experiences if they feel safe, and know that their exploiters are not watching them, trying to threaten them. Proactive investigations, human-rights compliant criminal justice responses, and trauma-informed reception measures can create the necessary conditions for many trafficked migrants to help authorities identify traffickers and receive assistance.

In a quest to raise awareness of trafficking risks in migration, as well as to make these voices heard, the OSR/CTHB has visited some of the most critical migration transit and reception hubs in the OSCE region. By speaking with dozens of experts on the ground and learning where common challenges in

15 For more information, see: OSCE, Combating Human Trafficking along Migration Routes, at: <https://www.osce.org/projects/cthblix>.

combating human trafficking fundamentally lie, it put effort into providing tailored policy advice and technical assistance to national authorities to overcome some of the obstacles in the identification of victims and of perpetrators.

Despite the scale and breadth of the challenges the OSCE region is facing in this domain, thanks to the OSCE's comprehensive toolbox for advancing security and the OSR/CTHB's partnership-oriented approach, a significant contribution has been made to highlighting and mitigating the scourge of human trafficking. We owe this, first and foremost, to the many individuals such as B. who are victims of this serious crime.