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OSCE Human Dimension Seminar

RULE OF LAW FRAMEWORK FOR COMBATING TRAFFICKING IN HUMAN BEINGS



CONSOLIDATED SUMMARY

Warsaw, 14–16 May 2012

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OVERVIEW

The OSCE Human Dimension Seminar on the Rule of Law Framework for Combating Trafficking in Human Beings (Warsaw, 14-16 May 2012) provided an opportunity for representatives of the participating States, experts and civil society actors to review the role of an effective rule of law framework in the fight against human trafficking. Taking OSCE commitments as a starting point for discussion, participants examined the extent to which these commitments are being implemented and the challenges that affect their implementation. In doing so, participants were called upon to consider whether their anti-trafficking law and practice is in compliance with human rights, rule of law and internationally agreed standards on combating human trafficking. The Seminar also offered participants an opportunity to examine four key issues in detail: effective domestic legislative frameworks; appropriate institutional frameworks for effective trafficking investigation, prosecution and adjudication; the victim in the criminal justice process; and, issues of accountability, accessibility and justice in the context of prevention of trafficking. Seminar participants from all branches of government, including law enforcement, the Prosecutor's Office, the judiciary, legal practitioners and civil society, as well as from academia and from the UN bodies and other international organizations – shared their experiences, proposed solutions and made recommendations to help address existing challenges and gaps. The discussions during the three days of the Seminar were aided by the expertise and insights of the keynote speaker as well as the introducers and moderators of the four working groups.

This Human Dimension Seminar was the first human dimension event which put anti-trafficking action squarely into the framework of the rule of law, highlighting that the rule of law framework applied to all three key areas of anti-trafficking action equally: protection, prosecution, and prevention. In the opening plenary session, participants set the framework for discussions by recalling the key elements of the concept of the rule of law: the principles of legality, including a transparent, accountable and democratic process for enacting laws; legal certainty; prohibition of arbitrariness; access to justice before independent and impartial courts; respect for human rights; and non-discrimination and equality before the law. In this context it should be noted that already the 2010 OSCE Human Dimension Seminar on Strengthening Judicial Independence and Public Access to Justice had highlighted the crucial importance of criminal and civil legal aid, including of victims, for the realization of human rights (see consolidated summary, page 5 at www.osce.org/odihr/70836). Also, trafficked persons' access to justice and effective remedies, including compensation, has received attention during human dimension events, such as the Human Dimension Implementation Meetings.

Many speakers highlighted the complexity of anti-trafficking investigations and prosecutions and noted challenges and gaps in law and practice that need to be addressed. Equally much remained to be done in relation to victim identification and assistance, as well as victims' access to justice and effective remedies. It was noted by numerous participants that National Referral Mechanisms were a valuable tool to protect the rights of victims and make prosecutions more effective. Partnerships between the state and civil society were highlighted as crucial for comprehensive victim identification and protection, as well as for effective anti-trafficking action. Discussions during the Seminar also highlighted the need to ensure that victims of crime, and thus also victims of human trafficking, have an adequate standing in

criminal proceedings, that their voices are heard, and that their rights are enshrined in law and implemented in practice. The Seminar was a valuable opportunity to highlight the need to tackle corruption in the context of human trafficking and ensure that state officials act with due diligence when investigating crimes, prosecuting perpetrators and protecting victims. The preventive effect of successful prosecutions was also highlighted; as was the need to embrace preventive strategies that focus on empowering and protecting the rights of those that are most vulnerable, such as women, migrant workers, national minorities and those working in precarious sectors of work or the informal economy.

The Seminar was not mandated to produce a negotiated text. The main conclusions and recommendations of the Seminar are included in Section II of this Summary. Recommendations put forward by delegations of OSCE participating States and Partners for Co-operation, intergovernmental organizations, and NGOs are wide-ranging and addressed to various actors, including OSCE institutions and field operations, governments, parliaments, justice system professionals, civil society and the media. Seminar conclusions and recommendations have no official status and are not based on consensus; however, they should serve as useful indicators for the OSCE in setting priorities and planning its programmes aimed at the rule of law and the fight against human trafficking. Documents from the Seminar are available at www.osce.org/event/hds_2012.

I. CONCLUSIONS AND KEY RECOMMENDATIONS

The 2012 Human Dimension Seminar was opened by Ambassador Janez Lenarčič, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Ambassador Lenarčič addressed the opening plenary session (see Annex II), underlining that strategies and policies to combat human trafficking will only be successful if they are governed by the principles of rule of law and centered on the protection of the rights of the victims to access justice and regain their human dignity. The ODIHR Director emphasized that the Seminar was a valuable opportunity to exchange good practices across the OSCE region. He focused attention of the participants on several specific areas, which were further discussed during the Seminar. The Director highlighted the importance of strengthening the rule of law framework and adopting a human rights and victim-centered approach in the fight against human trafficking at all stages of anti-trafficking action, including the return of victims. He emphasized that victims of all forms of trafficking including labour and sexual exploitation, forced begging, organ trafficking, forced marriages, and domestic servitude should have their right of access to justice ensured through criminal, civil and administrative proceedings. Finally, Ambassador Lenarčič also encouraged the participants to focus their discussion on the ways to prevent trafficking in human beings. He identified three main categories of factors that cause trafficking and contribute to its prevalence: factors that increase vulnerability of potential victims and victims, factors that create the demand for trafficking, and factors that allow for impunity of the perpetrators.

ODIHR First Deputy Director Douglas Wake closed the meeting, expressing appreciation to all participants for their constructive expert contributions to the Seminar. He thanked in particular the speakers, state and civil society representatives from the capitals and

international organizations for discussing a wide range of key issues in an atmosphere of sincerity and openness. He also thanked the Irish Chairmanship for the choice of the Seminar topic, but noted that it was chosen and approved at a very late date, thus negatively affecting the planning process and number of participants at the Seminar in comparison to recent years. Mr. Wake also called on participating States to demonstrate their commitment to making future Human Dimension Seminars a success by attending and sending experts from capitals to participate. He also called on the participating States to continue their efforts to strengthen the rule of law framework for preventing trafficking in human beings, prosecuting the perpetrators and protecting the victims. He encouraged the building of partnerships between countries of origin and destination and among state authorities and civil society organizations. Moreover, he pledged that ODIHR would continue providing assistance to participating States in the areas discussed throughout the Seminar. The following conclusions and key recommendations emerged from the plenary and working group sessions.

Conclusions

A strong legal framework in all areas of anti-trafficking action – protection, prosecution and prevention - is of fundamental importance in the fight against human trafficking throughout the OSCE region. In many participating States, challenges remain to be overcome in order to develop such a framework and to realize the guarantees proclaimed in domestic laws and OSCE commitments.

A robust legislative anti-trafficking framework based on human rights and the rule of law should be properly implemented. The key challenge across the OSCE region is not the lack of a legal basis for the fight against human trafficking but the lack of implementation of existing provisions. Although all forms of trafficking in human beings are criminalized in most OSCE countries, the number of investigations and prosecutions remains very low, and very few traffickers are convicted.

Significant difficulties still exist in identification of victims of trafficking. Capacity building is needed for frontline authorities, including labour inspectors, social workers, police, border guards, and prosecutors. Specialized units within police and prosecution services could help to improve investigation and prosecution. The States should adopt 'zero tolerance' policies towards corruption of state officials in general, as well as in cases involving trafficking in human beings.

The human rights-based and victim-centered approach to combating trafficking in human beings allows for effective protection of trafficking victims. Victim assistance and rights protection are an obligation of the State. Measures to combat trafficking in human beings should not adversely affect the rights of victims. The participation of victims in the criminal justice process needs to be ensured in order to allow for effective prosecution, as well as to enable the victims to access justice and effective remedies. It was stressed that the rule of law and justice go beyond criminal justice and include civil and administrative proceedings through which victims can also claim their rights, including compensation and unpaid wages. States need to provide access to legal assistance, including legal counseling and legal representation. Immigration relief is crucial for foreign victims to be able to claim their rights and access justice. States need to ensure that victims do not face prosecution and punishment for the

offences they committed as a consequence of being trafficked. Also, special protection is needed for victim witnesses in criminal proceedings.

The principal obligation to protect the rights of victims, to investigate and prosecute with due diligence and to prevent human trafficking rests with States. However, civil society organizations also have a very important role to play in identifying victims and assisting them. Partnerships and effective co-operation between States and civil society are crucial in the fight against trafficking in human beings. Such partnerships also ensure effective protection of the rights of trafficked persons. A National Referral Mechanism (NRM) should be inclusive and allow for effective co-operation between State authorities and civil society.

Both countries of origin and countries of destination should pay due attention to prevention of human trafficking. Measures to prevent human trafficking should include but not be limited to outreach and assistance to vulnerable groups such as women, children, migrants and national minorities. Preventive measures should include labour rights protection, regulation of labour and employment conditions, protection of migrants' rights and development of opportunities for safe migration.

Key recommendations

To the participating States:

- Implement OSCE commitments and international standards related to combating human trafficking, including: the United Nations Convention against Transnational Organized Crime, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Council of Europe Convention on Action Against Trafficking in Human Beings; and other applicable human rights, refugee, and labour standards;
- Establish a strong rule of law framework as a basis for combating trafficking in human beings;
- Ensure updated and broad interpretation of the definition of human trafficking provided in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children;
- Ensure due diligence in investigation and prosecution and 'zero tolerance' of corruption;
- Establish monitoring mechanisms on the national level to oversee the work of national stakeholders involved in all the stages of combating human trafficking and to monitor the impact of anti-trafficking measures to ensure that they do not adversely affect established rights;
- Provide regular and specialized training to state officials;
- Establish inclusive National Referral Mechanisms (NRM) which will ensure partnership and co-operation between civil society and the State, between public and private sectors;
- Establish effective co-operation between countries of origin and countries of destination in anti-trafficking action;
- Adopt a human rights-based and victim-centred approach in developing anti-trafficking policies, strategies and actions;
- Ensure that victims of trafficking are involved in the criminal justice process, as well as in the formulation of programmes aimed at protection of their rights;

- Implement measures to ensure respect for fair trial standards and due process safeguards during criminal proceedings as well as appropriate sentencing;
- Ensure that protection and assistance to the victims, including immigration relief, depend on the objective needs of the victims and not on their willingness to testify or otherwise co-operate with the authorities;
- Expand efforts to ensure that identified victims of trafficking are not prosecuted and penalized for offences committed as a consequence of being trafficked;
- Guarantee provision of legal assistance to the victims of trafficking through establishing and supporting national and international networks of lawyers specialized in victims' protection;
- Guarantee victims' right to compensation and consider the creation of victim compensation funds from the confiscated assets obtained by perpetrators as the result of human trafficking;
- Expand efforts to investigate possible financial crimes connected to human trafficking, such as money laundering and tax evasion, alongside the investigation of trafficking in human beings;
- Address the root causes of trafficking including poverty, unemployment, discrimination and social exclusion and disadvantages, as well as the demand for goods and services produced by trafficked persons;
- Expand the efforts to identify potential trafficking victims among vulnerable populations, as well as in specific industries such as domestic service, agriculture, construction, fishing, and hospitality, and provide victim identification training for law enforcement agencies and labour market regulators;
- Undertake special measures to ensure prevention of trafficking in children, as well as protection and assistance to child victims of trafficking;
- Undertake measures to ensure safe and voluntary return for victims of trafficking with full respect for due process and the principle of *non-refoulement*.
- Ensure reintegration and social inclusion of victims of trafficking upon return to prevent re-trafficking.

To the OSCE, its institutions, and field operations:

- Consider inviting to its anti-trafficking events representatives from countries outside of the OSCE area, which are countries of destination for trafficked persons, in order to enhance protection of persons trafficked from OSCE countries;
- Continue facilitating partnerships between the various anti-trafficking actors and to support OSCE human dimension events as well as other international and national forums for exchange of experience and expertise;
- Continue supporting capacity building for the anti-trafficking stakeholders, both from the state and from civil society;
- Continue supporting the establishment of an OSCE-wide network of lawyers for trafficked persons.

To the NGOs, international organizations, and other actors:

- Establish networks and build coalitions to protect the rights of victims of trafficking;
- Work with State actors to increase the effectiveness of the fight against human trafficking.

II. AGENDA AND ORGANIZATIONAL ASPECTS

The Seminar on the Rule of Law Framework for Combating Trafficking in Human Beings was organized in Warsaw on 14 – 16 May 2012 by ODIHR in co-operation with the Irish Chairmanship of the OSCE in accordance with PC Decisions No. 1034 of 22 March 2012 and No. 1038 of 19 April 2012. This was the 28th event in a series of specialized Human Dimension Seminars organized by ODIHR further to the decisions of the CSCE Follow-up Meetings in Helsinki in 1992 and in Budapest in 1994. The previous Human Dimension Seminars were devoted to: Tolerance (November 1992); Migration, including Refugees and Displaced Persons (April 1993); Case Studies on National Minorities Issues: Positive Results (May 1993); Free Media (November 1993); Migrant Workers (March 1994); Local Democracy (May 1994); Roma in the CSCE Region (September 1994); Building Blocks for Civic Society: Freedom of Association and NGOs (April 1995); Drafting of Human Rights Legislation (September 1995); Rule of Law (November /December 1995); Constitutional, Legal and Administrative Aspects of the Freedom of Religion (April 1996); Administration and Observation of Elections (April 1997); Promotion of Women's Participation in Society (October 1997); Ombudsman and National Human Rights Protection Institutions (May 1998); Human Rights: the Role of Field Missions (April 1999); Children and Armed Conflict (May 2000); Election Processes (May 2001); Judicial Systems and Human Rights (April 2002); Participation of Women in Public and Economic Life (May 2003); Democratic Institutions and Democratic Governance (May 2004); Migration and Integration (May 2005); Upholding the Rule of Law in Criminal Justice Systems (May 2006); Effective Participation and Representation in Democratic Societies (May 2007); Constitutional Justice (May 2008); Strengthening the Rule of Law in the OSCE Area, with a special focus on the effective administration of justice (May 2009); Strengthening Judicial Independence and Public Access to Justice (May 2010); Role of Political Parties in the Political Process (May 2011). The Annotated Agenda of the Seminar is supplied in Annex I. The Seminar was opened on Monday 14 May 2012 at 10:00 and closed on Wednesday 16 May 2012 at 17:00. All plenary and working group sessions were open to all participants. The closing plenary session in the afternoon of 16 May focused on practical recommendations emerging from the four working groups. The plenary and working group sessions took place in accordance with the Work Programme. Ambassador Janez Lenarčič, Director of ODIHR, chaired the opening plenary session and Douglas Wake, ODIHR First Deputy Director, chaired the closing plenary session of the Seminar. The Rules of Procedure of the OSCE and the modalities for OSCE meetings on human dimension issues (PC.DEC/476) were followed, *mutatis mutandis*, at the Seminar. The guidelines for organizing OSCE meetings (PC.DEC/762) were also taken into account. Discussions were interpreted into all six working languages of the OSCE.¹

¹ According to paragraph IV.1(B)1. of the OSCE Rules of Procedure (MC.DOC/1/06), working languages of the OSCE are English, French, German, Italian, Russian, and Spanish.

III. PARTICIPATION

The Seminar was attended by 153 participants, among them 95 representatives of 42 OSCE participating States,² 5 participants of 5 Mediterranean Partners for Co-operation (Algeria, Egypt, Mongolia, Thailand, and Tunisia) and 10 representatives of international organizations (Council of Europe (CoE)-Group of Experts on Action against Trafficking in Human Beings (GRETA); Council of Europe Office in Warsaw; Frontex-European Agency for the Management of Operational Cooperation at the External Borders; International Organization for Migration, Poland; Office of the United Nations High Commissioner for Human Rights; Regional Cooperation Council; UNICRI - United Nations Interregional Crime and Justice Research Institute).

The Seminar was also attended by 13 representatives from 9 OSCE field operations (Centre in Bishkek, Mission to Bosnia and Herzegovina, Mission in Kosovo, Mission to Moldova, Mission to Serbia, Mission to Skopje, Project Co-ordinator in Ukraine, Project Co-ordinator in Uzbekistan, Office in Yerevan). 28 representatives of 23 NGOs³ took part in the Seminar.

IV. SUMMARY OF THE PROCEEDINGS

Ambassador Janez Lenarčič, Director of ODIHR, opened the seminar by highlighting the importance of a strong rule of law framework for protecting the rights and dignity of individuals and ensuring due diligence on the part of States. He called for better reporting and monitoring of human trafficking by States, improved information and legal assistance for victims, and better systems to enable trafficked persons to exit abusive conditions and seek and obtain effective remedies. Ambassador Lenarčič recalled specific tools developed by ODIHR as guidance for state and civil society actors, including the 2008 ODIHR study on *Compensation for Trafficked and Exploited Person in the OSCE Region* and the development of a *Guide on Human Rights in the Return of Trafficked Persons*. Welcoming remarks were made by Deputy Head of the Permanent Mission of Ireland to the OSCE, **Ms. Martina Feeney**, on behalf of the Irish Chairmanship of the OSCE, and **Ms. Grażyna Maria Bernatowicz**, Under-Secretary of State, Ministry of Foreign Affairs of Poland. The OSCE Chairmanship representative highlighted the fundamental importance of the rule of law for an effective fight against trafficking in human beings, in particular: the principles of legality, including a transparent, accountable and democratic process for enacting laws; legal certainty; prohibition of arbitrariness; access to justice before independent and impartial courts; respect for human rights; and non-discrimination and equality before the law. She also underlined the vital role of State and civil society co-operation in victims' protection, stressed the importance of effective National Referral Mechanisms (NRM) and praised ODIHR for its active role in assisting States in enhancing their NRM.

² This number includes experts from Ministries of Justice, Ministries of Interior and Security Services, Ministries of Foreign Affairs, diplomatic missions, Ministries of Social Affairs, Prosecutor's Offices, and judiciary of the participating States.

³ This number includes civil society representatives, advocates, research and academic institutions among others.

The keynote address was delivered by **Ms. Maria Grazia Giammarinaro**, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings. She stressed that the rule of law is a multifaceted concept which extends beyond the legal framework and the criminal justice system and includes a host of normative, historical and cultural factors that can ideally work together to mutually reinforce a democratic and fair society.

Ms. Giammarinaro underlined that, although prosecution and punishment form an essential part of the action to prevent and combat trafficking, law enforcement and criminal justice responses remain weak. She noted that the definition of the crime of human trafficking contained in the UN Palermo Protocol⁴ is rarely applied: States tend instead to apply punishment for lesser offences, which do not reflect the gravity of the crime and do not protect the rights of the victims of trafficking. States often interpret the UN Protocol narrowly and fail to take into account the modern context and changing patterns of human trafficking. Such narrow interpretation complicates investigation and reduces significantly the number of identified trafficking cases. Although transfer and receipt of persons still involves trafficking, subjecting victims to extreme violence and deprivation of freedom of movement is becoming increasingly rare. In some cases, an evident link between the entry to the country and subsequent victimization can be traced; in other cases, victims are subject to more subtle forms of coercion, such as withholding of wages; moreover, there is no need to restrict the movement of a person who has no viable alternative but to stay with the exploiter. These changes in *modus operandi* of human trafficking need to be taken into account by the States in their legislation and when they interpret the Palermo Protocol.

The Special Representative further focused on the rights of victims and their participation in the criminal justice response to human trafficking. She referred to several sources, which form the basis for a human rights-centered approach to anti-trafficking action. The Council of Europe Convention on Action against Trafficking in Human Beings includes minimum standards of protection and assistance to victims regardless of their willingness to co-operate with the authorities. The 2003 OSCE Action Plan and OSCE commitments clearly reflect the human rights approach. The 2011 EU Directive on Trafficking in Human Beings confirms the rights of victims at trial. Recent judgments of the European Court of Human Rights in the cases of *Siliadin*⁵ and *Rantsev*⁶ affirm the right of victims to effective investigation, which must be impartial, quick, effective and adequate. Ms. Giammarinaro stressed that victims' participation in the criminal justice process is not guaranteed in many States, noting that victims often suffer secondary victimization during the course of their participation in the process. She also drew attention to the punishment of victims for actions directly resulting from their victimization. The Special Representative underlined that victims of trafficking should, with the help of state-funded legal assistance where needed, be able to participate in legal proceedings and claim through criminal and civil remedies compensation for the damage and harm suffered. States should ensure that anti-trafficking legislation and policy does not have an adverse impact on the rights and dignity of trafficked persons.

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations

⁵ *Siliadin v. France*, 73316/01, Council of Europe: European Court of Human Rights, 26 July 2005

⁶ *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010

Noting the need for more effective anti-trafficking action, Ms. Maria Grazia Giammarinaro also stressed the importance of co-ordination and consistency between the framework on trafficking in human beings and complementary legal frameworks in the areas of migration, asylum, the labour market, gender and child protection.

After the opening plenary session of the Seminar, discussions took place in four consecutive working groups. The following reports are prepared on the basis of notes taken by ODIHR staff and presentations of the rapporteurs, who summarized the working group discussions at the closing plenary session. These reports cannot exhaustively convey the details of the working group discussions but rather aim to identify their common salient points. The recommendations from the working groups were not formally adopted by the Seminar participants and do not necessarily reflect the views of any participating State.

The Seminar also provided for an informal side-event, a “Women Power Lunch” entitled “Political Leadership: Who Can Speak for the Victims of Trafficking?” The side event was organized jointly by ODIHR’s Gender team and its Anti-Trafficking Unit. It brought together state officials, representatives of international and civil society organizations, anti-trafficking experts, and gender equality activists to discuss roles and responsibilities of those in political leadership in advocating the rights of victims. The schedule and description provided by the organizers of the side event is available at: <http://www.osce.org/odihr/90390>.

Working Group I

The primacy of human rights and the rule of law – Establishing domestic legislative framework compliant with OSCE commitments and international standards: Key challenges to implementation

Moderator: **Ms. Klara Skrivankova**
Trafficking Programme Coordinator at Anti-Slavery International, member of the EU Group of Experts on Trafficking in Human Beings

Introducers: **Ms. Lidiya Drozdova**
Deputy Minister for Social Policy, Ukraine

Mr. Gil Arias-Fernandez
Deputy Executive Director at the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)

Rapporteur: **Ms. Tatiana Kleymenova**
Russian Federation

The discussion in Working Group I was primarily centered on strengthening the legislative framework for combating trafficking in human beings in all areas – prosecution, protection and prevention, and challenges to its implementation. The moderator, Ms. Klara Skrivankova, underscored the importance of the rule of law concept, relating it to the principle of equality before the law and to the issue of access to justice. The first introducer, Ms. Lidiya Drozdova,

highlighted a number of legislative measures adopted in Ukraine that aimed to make various services – including shelter, legal aid and medical care – available to trafficked persons. The second introducer, Mr. Gil Arias-Fernandez, pointed out that trafficking in human beings constituted not only a grave human rights violation but also a serious crime. Combating trafficking requires the co-ordinated efforts of all stakeholders and should aim to address root causes as well as to prosecute perpetrators and protect the rights of victims. Mr. Arias-Fernandez also stressed the need to enhance prosecution of the perpetrators and victim identification and noted that prevention of irregular migration should not jeopardize the rights of victims of trafficking.

Participants agreed that a comprehensive approach and co-ordinated efforts were crucial to addressing trafficking in human beings. Many participating States elaborated on their anti-trafficking efforts and presented specific measures aimed at implementation of their commitments. Such measures include criminalization of all forms of trafficking, including forced labour, sexual exploitation and organ trafficking, establishment of specialized law enforcement units and crisis centers, implementation of national action plans and strategies, and awareness-raising campaigns. NGOs made a valuable contribution by sharing their experiences in assisting victims, including hot-lines, legal aid and psychological counseling.

Nevertheless, as stressed by some participants, despite adoption of appropriate legislative frameworks, significant deficiencies in the implementation of these frameworks remain. Specifically, participants highlighted the need to enhance co-operation between law enforcement authorities of countries of origin, transit and destination. It was mentioned that human trafficking cases are often characterized by a lack of accountability on the one hand, and a lack of access to rights on the other. It was agreed that the role of the victim in criminal proceedings should be enhanced and that protection and assistance to the victim should be regarded not as a favour, but as an obligation of the State.

Some speakers underscored the importance of addressing root causes of trafficking, including poverty, unemployment, social disadvantages, and limited access to education. It was also pointed out that co-operation was needed to manage irregular migration as well as to find appropriate solutions to overcome migrants' potentially limited knowledge of the culture, customs, language and laws of future countries of destination.

Several participants emphasized the importance of a child-sensitive and human rights approach to all aspects of anti-trafficking policies and actions, including *non-refoulement*, recovery period and immigration relief. Human rights-based approach to the return of victims of trafficking was also discussed, stressing that immigration policy considerations should not prevail over protecting the rights of the victims.

Challenges in implementation of the non-prosecution and non-criminalization clause for the offences that victims of trafficking were forced to commit were discussed. One participating State shared its experiences in expunging criminal records for status-related offences of victims of trafficking who were consequently identified as such.

The work of the OSCE in assisting countries in their anti-trafficking efforts was commended. Participants mentioned with appreciation ODIHR activities in the areas of building-up a National Referral Mechanism (NRM), compensation to victims of trafficking, facilitation of

the establishment of an international network of pro bono lawyers specialized in trafficking cases, and development of a Guide to Human Rights in the Return of Trafficked Persons.

A number of recommendations to participating States and OSCE emerged from the debate. They can be summarized as follows:

To the participating States:

- Implement OSCE commitments and international standards related to combating human trafficking;
- Enhance co-operation between law-enforcement agencies in countries of origin, transit and destination, including regular exchange of information on trafficking networks, joint anti-money laundering actions and timely responses to mutual legal assistance requests;
- Expand efforts to identify potential trafficking victims among vulnerable populations, as well as in specific industries such as domestic service, agriculture, construction, fishing, and hospitality, and provide victim identification training for law enforcement agencies and labour market regulators;
- Increase co-operation between the private and public sectors to engage in business practices that rid supply chains of human trafficking, and consider incorporation of 'zero-tolerance' policies in government procurement of goods and services;
- Expand efforts to ensure that identified victims of human trafficking are not prosecuted or penalized for being involved in unlawful activities to the extent that they have been compelled to do so;
- Ensure that appropriate and effective referral mechanisms are in place between authorities involved in anti-trafficking activities and those responsible for granting of international protection;
- Consider making available explicit forms of immigration relief for trafficking victims, regardless of their past legal status;
- Offer comprehensive services to trafficking victims, including safe shelter without restrictions on autonomy, and taking into account gender and age-appropriate measures;
- Consider offering trafficking victims the right to work for the duration of criminal trials and consider de-linking the right to residence and the obligation to testify in trial, substituting more flexible means of victim co-operation with the criminal justice system;
- Increase the incorporation of anti-trafficking efforts into existing structures dealing with children, such as child protection services, education, victim services, immigration courts, runaway/homeless youth, and juvenile justice programs;
- In the context of diplomatic immunity, consider adopting codes of conduct for diplomatic and consular personnel aimed at preventing violations of domestic workers' rights, and advise domestic workers on their rights.

To the OSCE, its institutions, and field operations:

- Organize trainings for lawyers who work with victims of trafficking so that they are able to inform victims of their rights.

Working Group II

Criminalization, punishment and redress - Effective investigation, prosecution and adjudication of trafficking: Establishing an appropriate institutional framework

Moderator: **Ms. Kristiina Kangaspunta**
Deputy Director of the United Nations Interregional Crime and Justice Research Institute (UNICRI)

Introducers: **Mr. Noel J. Clarke**
Detective Superintendent at the Human Trafficking Investigation and Coordination Unit, An Garda Síochána, Ireland

Ms. Corinne Dettmeijer-Vermeulen
Dutch National Rapporteur on Trafficking in Human Beings

Rapporteur: **Mr. Hendrik Roggen**
Belgium

The moderator of the second working session, Ms. Kristiina Kangaspunta, set the scene for the debate by highlighting some of the major challenges in the fight against trafficking in human beings, such as: the need for effective co-operation between the wide range of actors involved nationally and internationally; identification of victims; use of confiscated assets for the benefit of victims of trafficking; and the need to train professionals, combat corruption and establish a well co-ordinated National Referral Mechanism (NRM). Ms. Kangaspunta underlined that actions should be geared towards maximizing the risks for traffickers and minimizing their potential profits, and noted that the criminal justice response should not undermine the rights of victims.

The first introducer, Mr. Noel J. Clarke, gave an overview of how Ireland is implementing its relatively new legislative framework adopted in 2008, which focuses on the victim and on co-operation with civil society. Mr. Clarke stressed that there are no one-size-fits-all solutions; every trafficking case is different and therefore customized approaches are key. One of the good practices shared by Mr. Clarke was participation of care workers, support workers or a legal representative of the trafficking victims during the interview of a victim with law enforcement, which proved beneficial to the investigative process.

The second introducer, Ms. Corinne Dettmeijer-Vermeulen, highlighted the importance of international instruments, international monitoring and rulings by international courts such as the European Court of Human Rights, which help shape judgments at the national level. In order to increase the consistency in the application of the law, research and analysis of national court judgments is necessary. Sharing of information via legal databases should be promoted. Ms. Dettmeijer-Vermeulen stressed the importance of quality data on victims of trafficking and of specialized legal education on human trafficking. She also reiterated the importance of co-operation between the stakeholders in the anti-trafficking process within the country and internationally, including the co-operation between labour inspectors and other institutions besides law-enforcement and immigration authorities.

A large number of interventions stressed the importance of special training for those involved in the judicial process, such as judges and prosecutors. A better insight into what trafficking in human beings is and how it functions will lead to better implementation of anti-trafficking legislation. It was stated that training should also focus on how to treat victims and promote understanding of their various cultural backgrounds. It was suggested that, through appropriate training, a group of specialized prosecutors could be created. The use of expert testimonies was highlighted as another way to better inform judges. The high turnover of staff in state institutions was identified as a challenge to achieving a durable impact of training efforts.

Many participants stressed the need for victim protection during the investigation and judicial proceedings. While it was acknowledged that victim testimonies are of key importance to prosecute trafficking cases, it was also highlighted that special investigation techniques should be used more often to build up a case. The idea was expressed that reduced dependence on victim testimonies would put a lesser burden on the victim and reduce his or her exposure, thereby increasing his or her safety.

A number of participants also stressed that prosecution should involve a range of measures to hold perpetrators liable, including in cases where there is insufficient evidence to substantiate a charge of human trafficking. Investigations may address breaches of labour law, tax law or health and safety regulations. On the other hand it was stressed that if non-trafficking provisions are used to prosecute traffickers, due attention should be given to the victims, to avoid that they should lose their rights to effective redress.

Many participants mentioned that the confiscation of assets is an important tool in the fight against trafficking. Investigations should focus on the financial side of trafficking networks from an early stage. Confiscating the assets of traffickers was seen as a complementary measure to prison sentences and as a possible source of funding for compensation to the victims.

A few delegations touched upon the theme of extradition of traffickers. As trafficking in human beings is often a transnational crime it was stressed that co-operation is needed on this complex matter that touches upon many parts of the law. The main aim should be the irreversibility of responsibility and effective punishment of traffickers.

Specific recommendations developed in the course of the Working Group II included:

To the participating States:

- Establish a functional National Referral Mechanisms (NRM) and optimize the victim identification process;
- Undertake sustained research into various aspects of trafficking in human beings and make use of qualitative data in order to ensure correct interpretation of official statistics;
- Provide specialized training for all relevant actors, including judges, prosecutors, law enforcement officials and labour inspectors,
 - to raise awareness about trafficking so as to improve identification,
 - to facilitate formation of a group of specialized prosecutors,
 - to promote understanding of the rights of victims;

- Ensure that identification of victims is followed-up with due regard to their wellbeing;
- Consider as a good practice the use of expert evidence in court hearings;
- Facilitate fostering close relationships between prosecutors and the victims during the investigation by ensuring that victims can testify safely and effectively;
- Prioritize prosecution of trafficking cases;
- Promote use by prosecutors of all the tools available to them, including labour law and tax law provisions, as well as health and safety regulations;
- Conduct financial investigations in human trafficking cases alongside criminal investigations in order to strengthen prosecutions, increase chances of restitution for victims, and address related crimes including money laundering, smuggling and tax evasion;
- Establish measures to maximize risks for perpetrators including through punishment and seizure of assets;
- Develop an international agreement to address the conditions for victim and witness protection;
- Develop special investigation techniques to collect adequate evidence in cases of trafficking in human beings;
- Set up mechanisms for inter-State co-operation in the fight against trafficking in human beings;
- Apply relevant judgments of international courts, such as the European Court of Human Rights, in national courts.

To the OSCE, its institutions, and field operations:

- Invite countries of destination situated outside of the OSCE area to participate in future events in order to promote ongoing co-operation between anti-trafficking practitioners.

To the NGOs, international organizations, and other actors:

- Increase national as well as international co-operation between victim support providers and criminal justice agencies in the process of investigating crimes and providing support to victims;
- Develop a Master studies curriculum on human trafficking for students of law.

Working Group III

The victim in the criminal justice process: A focus on justice and human rights

Moderator: **Ms. Marieke van Doorninck**
La Strada International, representing also COMP.ACT, the European Action on Compensation for Trafficked Persons

Introducers: **Mr. Sergey Vinokurov**
Senior Researcher, Academy of the Prosecutor General's Office of the Russian Federation

Ms. Agnieszka Fryszman
Partner at law firm Cohen Milstein, United States of America

Rapporteur: **Ms. Odile Robert**
 Switzerland

The moderator, Ms. Marieke van Doorninck, mentioned the importance of the focus on justice and human rights and the obligation to protect the rights of victims. She noted the progress made on victims' rights, suggesting that an integrated approach to trafficking now prevailed. States must give priority to human rights-based anti-trafficking measures that do not negatively affect the rights of victims. While international standards – including those contained in the Council of Europe Convention on Action Against Trafficking in Human Beings – clearly stipulate victims' rights, implementation of these standards remains a challenge. Persistent obstacles include the non-identification of victims as well as the lack of effective support systems involving legal aid and access to effective remedies. The challenge is to make sure that justice systems and victim protection go hand in hand. State authorities and justice professionals often believe that with the prosecution of the perpetrator, the rights of victims are satisfied and justice done. Ms. Van Doorninck highlighted the need to enhance effective access to compensation, guaranteeing victims' access to justice and effective remedies.

The first introducer, Mr. Sergey Vinokurov noted that the standing and role given to victims in criminal proceedings in many countries remains unsatisfactory. Traditionally, attention is focused on the relation between the State and the defendant in criminal proceedings rather than on the victim. Victims' rights protection is part and parcel of the rule of law, and the rights of victims in the justice system need to be strengthened in law and practice to fulfill the States' obligations towards the victims. This would also help to overcome the current prevailing misconception of victims' rights protection and victim assistance as acts of mercy or noble charity, rather than as an obligation of the State. The State, first and foremost, is obliged to protect the safety and security of the persons on its territory; in case it does not perform this obligation and such safety and security is infringed, it is obliged to remedy the situation of the victims and compensate them for the damage suffered. Key measures needed to provide victims with access to justice include: free legal assistance to victims; procedures that allow victims to actively participate in the proceedings and for their opinion to be heard and considered when taking decisions relevant to them, including on safety and protection measures; effective access to compensation, including state compensation in cases where compensation is not available from the perpetrator; and special measures for child victims. States should ensure that confiscated assets acquired through trafficking in human beings are being used for victim compensation. Mr. Vinokurov also underlined the importance of the work of civil society actors in assisting and protecting the rights of victims, but stated that it could not and should not replace the responsibility of States in this context.

The second introducer, Ms. Agnieszka Fryszman, made four key recommendations:

1. It is important to build transnational networks of attorneys and non-governmental organizations to assist victims of trafficking. ODIHR has already begun this effort and it deserves support;
2. More needs to be done to address basic civil procedure hurdles that prevent victims, even when the laws are in place, from being able to bring their traffickers to court;
3. Survivors of trafficking need adequate immigration relief, for themselves and often for their children, so that they can effectively participate in criminal, civil and

administrative proceedings; in addition, the victim's immigration status should be inadmissible in civil cases; and

4. Restitution and collecting damages from the perpetrators must be a priority, or the survivors are easily re-victimized because they are destitute, in debt, and still suffering. States should enable victims to seek restitution themselves, and provide some incentive for private lawyers to take up cases pro bono.

In the discussion, a number of delegations and civil society actors shared good practice of assistance to victim and rights protection throughout the rehabilitation and judicial process. Participants, including representatives of civil society, noted the lack of adequate state funding for victim assistance and gaps in the assistance and protection provided to victims during criminal proceedings. The role of victims in the judicial process needs to be strengthened, victims should be adequately informed about their rights and be provided with assistance in claiming them in a language that they understand, and they should be empowered to testify. State authorities need to work hard to gain the trust of victims. In this context, it was recommended to include the treatment of victims of crime and due diligence in human trafficking investigations into the performance evaluation and career promotion of law enforcement and investigation officers. This could help reveal and address shortcomings and also motivate professionals to perform better.

Discussions also highlighted the essential role of civil society in ensuring that States fulfill their obligation to protect the rights of victims, investigate and prosecute with due diligence and prevent human trafficking. An independent and strong civil society could facilitate identification of victims and address challenges in the fight against human trafficking. It was noted that monitoring of State actions by civil society is crucial to enhancing implementation and bringing about improvements in law and practice. The role of the mass media in raising awareness about the issue of human trafficking, identifying cases of human trafficking and adequately portraying victims' rights issues was stressed. The importance of training for journalists and other media actors so that their work did not negatively affect the rights of the victims involved was also mentioned.

Specific recommendations included:

To the participating States:

- Develop and implement measures on preventing trafficking in human beings;
- Institutionalize co-operation among state authorities and justice system actors to ensure effective protection, prosecution and prevention measures;
- Establish multidisciplinary task forces, composed of state and civil society actors, such as law enforcement, prosecutors, labour inspectors, social services, non-governmental organizations, community-based and religious organizations as well as trade unions;
- Invite civil society organizations and coalitions to develop and monitor solutions for challenges in the implementation of anti-trafficking standards;
- Consider including due diligence in human trafficking investigations as an indicator for evaluating professional performance of law enforcement and investigation officers;
- Ensure adequate immigration relief for victims of trafficking;
- Take concrete measures to inform victims of trafficking about their rights and the judicial process;

- Make available adequate state funding for victim assistance and victims' rights protection;
- Ensure special protection measures and support for child victims;
- Enhance opportunities for victims to participate in criminal, civil and administrative proceedings;
- Ensure that victims do not face prosecution solely because they have been trafficked and consider making the victims' immigration status inadmissible in civil cases;
- Enhance access to compensation, including through the establishment of state compensation mechanisms;
- Ensure that criminal assets and profits are investigated and confiscated in human trafficking prosecutions and made available as a source of justice and redress for victims;
- Regularly assess the work of law enforcement and justice officials with regard to due diligence in investigation and prosecuting trafficking cases and protecting the rights of the victims;
- Engage authorities responsible for labour issues in developing and implementing anti-trafficking policies and measures;
- Put in place legal and safe migration channels and work possibilities across countries and ensure respect for labour rights;
- Support the OSCE-wide network of lawyers initiated by ODIHR;
- Support the establishment of international (regional) hotlines for victims of trafficking;
- Ensure the safety and security of those involved in victim assistance;
- Invite civil society organizations and human rights institutions to work with prosecutors to enhance investigations into human trafficking, labour exploitation and abuse, including within the military.

To the OSCE, its institutions, and field operations:

- Continue facilitating partnerships between the various anti-trafficking actors;
- Continue supporting international and national forums for exchange of experience and expertise, including the Human Dimension Seminar;
- Support capacity building for the various anti-trafficking stakeholders, both from the state and from civil society;
- Work with civil society and the media in the fight against trafficking;
- Continue supporting the OSCE-wide network of lawyers for trafficked persons.

To the NGOs, international organizations, and other actors:

- Establish networks and build coalitions to protect the rights of the victims of trafficking;
- Continue monitoring by media and civil society actors;
- Work with state actors and justice system professionals to effectively fight human trafficking.

Working Group IV

Issues of Accountability, accessibility and justice: Preventing all forms of trafficking in human beings

Moderator: **Ms. Cindy Dyer**

Vice President of the Vital Voices Global Partnership

Introducers: **Mr. Nicolas Le Coz**
President of the Council of Europe Group of Experts on Action against
Trafficking in Human Beings (GRETA)

Ms. Maria Ghervas
Judge at Botanica District Court of Chisinau municipality, trainer/lecturer at
the National Institute of Justice, Moldova

Rapporteur: **Mr. Paul Welsh**
United Kingdom

The moderator, Ms. Cindy Dyer, introduced the final working group as a forum for sharing ideas and suggestions on: fair trial standards and due process safeguards; prosecution and appropriate sentencing in trafficking cases; prevention of trafficking in human beings through eradicating the root causes of human trafficking and addressing factors that increase the vulnerability of groups and individuals to being trafficked; and application of methods of awareness-raising among vulnerable groups. Ms. Dyer provided several examples of good practice in the area of prevention of human trafficking: for example, in one US state, a legislative requirement placed an obligation on businesses offering adult entertainment to charge additional tax on clients, and direct the proceeds to support victims of trafficking. Ms. Dyer also emphasized the importance of addressing violence against women as well as violence in the family and in the community as factors contributing to increased vulnerability to trafficking. Drawing on the experience of her NGO, Ms. Dyer stressed the role of women leaders in the community in supporting and empowering victims of trafficking.

The first introducer, Mr. Nicolas Le Coz, summarized some of the key challenges in tackling human trafficking. These included the primordial importance of co-ordination of anti-trafficking action at the national level, particularly in view of the large number of national actors involved; the need for a particular focus on the most vulnerable members of society including children, women, persons on low incomes, migrants and asylum seekers; and the need to tackle corruption as a contributing factor that allows trafficking to exist. In this respect, promoting high moral standards and establishing decent salaries for government employees were suggested as ways of addressing the problem. Mr. Le Coz also emphasized the importance of awareness-raising, including through information campaigns and academic research as means of highlighting the importance of the topic of human trafficking in society. Finally, Mr. Le Coz highlighted the essential role of monitoring of national anti-trafficking frameworks by independent national rapporteurs who can identify deficiencies in national practice and provide recommendations to States.

The second introducer, Ms. Maria Ghervas, spoke about the transnational nature of trafficking and of its impact on national and regional stability. Poor economic and employment opportunities were cited as contributing factors to the crime of human trafficking. The introducer spoke of the importance of strong legal frameworks and victim identification efforts as well as a multi-agency approach to victim support, which includes civil sector organizations and the Church. National rapporteurs were mentioned as a helpful and independent information-collecting mechanism.

The participants agreed on the need for effective national co-ordination and a multi-stakeholder approach to include all actors such as national and regional governments, law-enforcement agencies and civil society organizations. Efficient sharing of information between all the stakeholders was mentioned as an essential element of such co-operation. Governments of participating States in which the Church plays an important social role should also co-operate with the Church in anti-trafficking action.

It was concluded that the States should conduct awareness-raising campaigns involving the mass media in order to educate society and prevent vulnerable groups – including orphans, runaway children, impoverished persons, and women from gender-discriminating communities – from becoming victims of human trafficking. It was suggested that the experience of trafficked persons could be shared (with their consent) with the aim of awareness-raising. At the same time, the importance of State protection and assistance mechanisms for victim self-identification was stressed. Some participants noted that victims should be presented with choices about the care plans available to them. Where possible, assistance provided to the victims should include medical and psychological advice; information about available legal services; provision of safe accommodation; vocational training - including in those industries in which the victims had originally thought they would be working in; and, assistance in finding employment.

Co-operation between public and private sectors was mentioned as an area where the partnership opportunities have to be explored for prevention of trafficking in human beings. An experience of one participating State was shared on adopting a code of conduct for hotels, travel agencies, and recruitment agencies, all of which are obliged to provide to their clients information on trafficking in human beings, possible exploitation and abuse. It was suggested that efforts should be made to license and regulate activities in industries where abuse and exploitation of workers occur most often. This would help to ensure workers' rights, fair wages and decent living conditions. Training of airline staff in identifying potential victims of trafficking was mentioned as a measure in prevention of human trafficking.

Specific recommendations included:

To the participating States

- Ensure co-ordinated anti-trafficking action at the national level, as well as co-ordination of activities of all the stakeholders involved in combating human trafficking;
- Focus protection and preventive measures on the most vulnerable groups in society, including women, children, undocumented migrants, asylum seekers, among others. The 'best interest of the child' principle should guide interventions to address the special vulnerabilities and needs of children.
- Ensure robust standards to guard against and prevent corruption as a root cause of human trafficking, including by applying due diligence in eradicating public sector involvement in trafficking and ensuring adequate remuneration for law enforcement and other state officials;
- Encourage research in order to analyze and improve systems for combating human trafficking;

- Encourage media and awareness campaigns to attract the attention of society to human trafficking issues;
- Ensure transparent national monitoring systems and accountable national reporting;
- Monitor the impact of anti-trafficking measures to ensure that they do not adversely affect the rights of victims;
- Involve trafficking victims in the development of support activities and in raising awareness of human trafficking;
- Ensure labour protection and provision of safe migration opportunities as a measure to prevent trafficking;
- Address violence against women and all forms of discrimination in preventive activities.

To the OSCE, its institutions, and field operations:

- Revise and update the ODIHR National Referral Mechanism publication as a valuable tool for governments and civil society organizations.

ANNEX I: ANNOTATED AGENDA

I. Introduction

Human Dimension Seminars are organized by the OSCE/ODIHR pursuant to the CSCE Summit decisions in Helsinki (1992) and Budapest (1994). The 2012 Human Dimension Seminar is devoted to the *Rule of law framework for combating trafficking in human beings* in accordance with PC Decisions No. 1034 of 22 March 2012 and No. 1038 of 19 April 2012.

OSCE commitments on the rule of law, as well as on trafficking in human beings, are numerous and longstanding. In the 1990 Copenhagen Document participating States agreed that “the rule of law does not mean merely a formal legality [...], but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression”. This notion of justice – repeatedly reinforced by participating States - includes human rights compliance of the laws and their application: a commitment to the principle of the rule of law and equal protection under the law for all, based on respect for human rights and effective, accessible and just legal systems (Bonn 1990) and to ensure that everyone will enjoy recourse to effective remedies, national or international, against any violation of his rights (Paris 1990). Furthermore, legislation should be formulated and adopted as a result of an open process reflecting the will of the people and adopted at the end of a public procedure, and regulations published and accessible to everyone (Copenhagen Document 1990, 5.8 and Moscow Document 1991, 18.1). In Helsinki in 2008 the participating States decided to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law.

The concept of rule of law and its elements are fundamental for a successful fight against human trafficking. A number of anti-trafficking commitments also attempt to reflect this, including numerous commitments confirming victims’ rights to effective remedies and access to justice (MC. DEC 8/07 and 5/08).

In practice, however, there are still significant challenges related to the rule of law framework for combating trafficking in human beings. Key issues in this context are: the criminalization of human trafficking in line with the international definition (including all forms of human trafficking) and clarity about its elements and their interpretation; liability of legal persons and all actors involved in the trafficking chain, including recruitment agencies, contractors and sub-contractors; legal provisions guaranteeing victims’ rights protection and assistance, including protection for their families; multi-agency approaches to victim identification and rights protection; adequate investigation, prosecution and sanctioning of human trafficking cases; witness protection, as well as protection for other collaborators with the justice process; international co-operation; due process in all return and removal proceedings and ensuring safe return; access to justice and effective remedies, including the possibility to obtain fair and appropriate compensation for damage suffered; special measures for children; and the protection of migrants’ rights, labour rights and victims’ rights as inherent elements of an effective fight against human trafficking. Only in very rare cases do States provide victims with adequate residence status and legal assistance to claim their rights and access remedies in criminal, civil or administrative proceedings.

The right to effective remedies, including full information about available remedies, and access to justice are basic principles of the rule of law and human rights. However, practice shows that access to justice and effective remedies are not yet a reality for trafficked persons. In many countries, key pre-conditions for effective access to justice are not in place or not accessible themselves: interpretation, information on rights, residence status and assistance, including legal assistance, to claim rights and pursue (often lengthy) court and administrative proceedings. Victims without a regular immigration status are often legally or practically barred from accessing justice and claiming their rights, including compensation.

General challenges to the rule of law, such as corruption and lack of a victims' rights culture, add to the trafficking-specific obstacles and also need to be addressed.

The 2012 Human Dimension Seminar will address some of the key issues related to the rule of law framework relevant in the fight against human trafficking, namely: 1) the primacy of human rights and the rule of law; 2) criminalization, punishment and redress; 3) the victim in the criminal justice process; and 4) issues of accountability, accessibility and justice. All these elements form part of the foundation for preventing and combating trafficking in human beings in the OSCE area.

II. Aims

In Helsinki in 2008, participating States, decided, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law (MC.DEC No. 7/08, para 4).

In line with these goals, the Human Dimension Seminar aims to serve as a platform for exchanging good practices between the participating States on the issues related to the rule of law framework in the fight against human trafficking. It will also provide an opportunity to discuss how monitoring efforts and reform processes could benefit from such exchanges of good practices. The discussions will be structured in four Working Groups as outlined in the Work Plan below.

III. Participation

Representatives of the OSCE participating States, OSCE institutions and field operations, inter-governmental and non-governmental organizations will take part in the Seminar.

Participation of experts on the rule of law, human trafficking, victims' rights and their access to justice and effective remedies will be particularly encouraged. In this regard, participating States are requested to publicise the Seminar within expert communities and in academic circles focused on human trafficking, the rule of law and access to justice and to include in their delegations, wherever possible, experts on related issues.

The Mediterranean Partners for Co-operation and the Partners for Co-operation are invited to attend and share their views and ideas on the rule of law framework for combating human trafficking.

All participants are encouraged to submit in advance written interventions outlining proposals regarding the subject of the Seminar, which will be distributed to the delegates. Participants are also encouraged to make brief oral interventions during the Seminar. While prepared interventions are welcomed during the Plenary session, free-flowing discussion and exchanges are encouraged during the Working Group sessions.

IV. Organization

The Seminar venue is the “Novotel Warszawa Centrum” Hotel in Warsaw, ul. Marszałkowska 94/98.

The Seminar will open on Monday, 14 May 2012, at 10 a.m. It will close on Wednesday, 16 May 2012, at 6 p.m.

All plenary sessions and working group sessions will be open to all participants. The plenary and working group sessions will take place according to the Work Programme below.

Four working group sessions will be held consecutively. They will focus on the following topics:

1. The primacy of human rights and the rule of law
2. Criminalization, punishment and redress
3. The victim in the criminal justice process
4. Issues of accountability, accessibility and justice.

The closing plenary session, scheduled for the afternoon of 16 May 2012, will focus on practical suggestions and recommendations for addressing the issues discussed during the working group sessions.

A representative of the ODIHR will chair the plenary sessions.

The Rules of Procedure of the OSCE and the modalities for OSCE meetings on human dimension issues (Permanent Council Decision No. 476) will be followed, *mutatis mutandis*, at the Seminar. Also, the guidelines for organizing OSCE meetings (Permanent Council Decision No. 762) will be taken into account.

Discussions during the Plenary and Working Group sessions will be interpreted from and into the six working languages of the OSCE.

Registration will be possible during the Seminar days from 8:00 until 16:30.

By prior arrangement with the OSCE/ODIHR, facilities may be made available for participants to hold side events at the Seminar venue. A table for display/distribution of publications by participating organizations and institutions will also be available.

WORK PROGRAMME

Working hours: 10 a.m. – 1 p.m. and 3 – 6 p.m.

	Monday 14 May 2012	Tuesday 15 May 2012	Wednesday 16 May 2012
Morning	Opening plenary	Working group II	Working group IV
Afternoon	Working group I	Working group III	Closing plenary

V. WORK PLAN

14 May 2012, Monday

10:00-13:00 Opening Plenary Session

Welcome and introduction from the Seminar Chair

Ambassador Janez Lenarčič
Director of the OSCE/ODIHR

Welcoming Remarks

Ms. Grażyna Maria Bernatowicz
Under-Secretary of State
Ministry of Foreign Affairs
Republic of Poland

Ms. Martina Feeney
Deputy Head of the Permanent Mission of Ireland to the OSCE

Keynote Speaker:

Dr. Maria Grazia Giammarinaro
OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Statements from Delegations

**15:00-18:00 Working group I: The primacy of human rights and the rule of law –
Establishing domestic legislative framework compliant with OSCE commitments and
international standards: Key challenges to implementation**

Moderator: **Ms. Klara Skrivankova**
Trafficking Programme Coordinator at Anti-Slavery International,
member of the EU Group of Experts on Trafficking in Human Beings

Introducers: **Ms. Lidiya Drozdova**
Deputy Minister for Social Affairs, Ukraine

Mr. Gil Arias-Fernandez

Deputy Executive Director at the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)

Rapporteur:

Ms. Tatiana Kleymenova
Russian Federation

A strong legal framework in all areas of anti-trafficking action – prosecution, protection and prevention - is of fundamental importance in the fight against human trafficking. In the Charter for European Security (Istanbul 1999) participating States committed to “promote the adoption or strengthening of legislation to hold accountable persons responsible for these acts and strengthen the protection of victims” (Charter European Security, III. Para 24). The OSCE Action Plan to Combat Trafficking in Human Beings (OSCE Action Plan), adopted in 2003, suggests numerous legislative measures to effectively address human trafficking and to ensure the domestic legislative framework is compliant with OSCE commitments and international standards (see for example OSCE Action Plan II., III.1, IV.2.2, 3.2, 3.3, 5. and V. 2., 6. 8. and 10). Recent OSCE commitments have confirmed and complemented these, highlighting the need to enhance relevant legislative frameworks and their implementation. Model laws have been drafted to facilitate the development of strong and effective national legal frameworks related to human trafficking, including the adequate criminalization and sanctioning of trafficking and victim protection provisions. These include the UNODC Model Law against Trafficking in Persons (developed by UNODC in 2009) and the Commonwealth of Independent States Model Laws on Combating Trafficking in Human Beings and on Providing Assistance to the Victims of Trafficking in Human Beings (both adopted by the CIS Inter-parliamentary Assembly in 2008).

OSCE commitments establish that legislative measures, including efforts to combat human trafficking, need to be human rights-based and respect the rule of law (see for example MC.DECs 8/07 and 5/08) The Action Plan recommends that participating States ensure that laws and other measures adopted for preventing and combating human trafficking “do not have an adverse impact on the rights and dignity of persons, including their freedom of movement” (IV. 5.2.) and do not affect the right of all persons, including victims of trafficking, to seek and enjoy asylum and be protected by the principle of *non-refoulement*, which prevents States to return a person to a place where she or he would face further persecution and abuse (V. 9.1.). The return of trafficked persons cannot violate their right to a due process. Return that is not voluntary effectively amounts to an expulsion from a State and arbitrary expulsion is prohibited in international human rights law.

The National Referral Mechanism (see ODIHR Handbook on National Referral Mechanisms, 2004), like the Council of Europe Convention on Action against Trafficking in Human Beings, emphasizes identification as part of a process of assistance and protection. This in turn requires a reflection delay/temporary residency – where immigration status is an issue – to prevent expulsion and possible reprisals from traffickers or re-trafficking and to allow the person to make an informed decision about his or her options such as whether to assist with criminal proceedings, pursue compensation claims or enter a social assistance programme. Once there are grounds to believe that a person is a victim, he or she should benefit from a recovery and reflection period during which time assistance is provided, and such assistance should not

depend on the person's willingness to assist in criminal investigations (see MC.DEC 2/03, para 8; MC.DEC 14/06, para 6(f); MC.DEC 8/07, paras 2 and 3; MC.DEC 5/08, para 5).

A rule of law and human rights-based approach to trafficking in human beings and an essential element of the obligation to protect the rights of victims is also that victims of trafficking do not face prosecution solely because they have been trafficked and are not penalized for their involvement in unlawful activities to the extent that they have been compelled to do so. In other words, victims of trafficking should not be prosecuted or punished, including for criminal or administrative offences they committed as a consequence or as a cause of being trafficked. OSCE participating States committed themselves to ensure that the requirement of non-prosecution and non-punishment of victims of trafficking is implemented on the national level (see MC.DEC 1/2000, para 9; MC.DEC 8/07, para 10).

Participating States committed themselves to protect the rights of the victims of trafficking and to cooperate with civil society and other actors to ensure assistance and rights protection. This obligation also includes that victims and their families have access to assistance, as well as effective complaint procedures and assistance to claim these rights (OSCE Action Plan, V. 4. and MC.DEC 8/07 paras 5 and 11, MC.DEC 5/09 para 6).

Questions to be addressed in this session could include: How have existing OSCE commitments, the OSCE Action Plan on Combating Trafficking in Human Beings and existing Model Laws on Human Trafficking helped to shape national legal frameworks? Which procedures are in place at the national level to ensure that anti-trafficking measures are compliant with the rule of law and human rights (including judicial review and appeal mechanisms)? Which guidance exists for practitioners at the national level to ensure effective implementation of anti-trafficking legislation, and in which areas is more guidance needed? What case law and jurisprudence has been developed at the national level in relation to human trafficking cases and related offences, in particular with regard to the interpretation of the elements of the crime? How are participating States implementing the principle of non-prosecution/punishment of trafficked persons and which challenges do they face in this context?

15 May 2012, Tuesday

10:00-13:00 Working Group II: Criminalization, punishment and redress – Effective investigation, prosecution and adjudication of trafficking: Establishing an appropriate institutional framework

Moderator:

Ms. Kristiina Kangaspunta

Deputy Director of the United Nations Interregional Crime and Justice Research Institute (UNICRI)

Introducers:

Mr. Noel J. Clarke

Detective Superintendent at the Human Trafficking Investigation and Coordination Unit, An Garda Síochána, Ireland

Ms. Corinne Dettmeijer-Vermeulen

Dutch National Rapporteur on Trafficking in Human Beings

Rapporteur: **Mr. Hendrik Roggen**
Belgium

The OSCE Action Plan and recent OSCE commitments recommend the establishment of National Referral Mechanisms, a co-operative framework within which participating States fulfill their obligations to protect and promote the human rights of the victims in strategic partnership with civil society (OSCE Action Plan V. 3 and MC.DEC 14/06, para 2.). National Referral Mechanisms are frameworks for cooperation between state actors and civil society that allow for the effective protection of the rights of the victims and, as a consequence, also increase the chances for the successful prosecution of the perpetrators. Practice shows that where trafficked persons are given the opportunity, in an environment of trust and protection, to come forward and denounce exploitation to the authorities, they are far more likely to provide valuable evidence and testimony. Participating States have acknowledged this in the 2008 MC Decision on enhancing criminal justice responses to trafficking in human beings through a comprehensive approach, calling adequate assistance and enhanced victim identification “prerequisites for an effective criminal justice response, including the prosecution of traffickers”.

Participating States should ensure that all state actors likely to encounter trafficked persons are aware of their role and responsibility to identify and protect them. The Handbook on National Referral Mechanisms, developed by ODIHR in 2004, outlines basic principles and good practice in relation to National Referral Mechanisms (NRMs). These include multi-disciplinary groups - which crucially include civil society – which work together to develop anti-trafficking responses, as well as institutionalized cooperation, for example, between civil society and law enforcement in victim identification and assistance. Establishing NRMs can help ensure a comprehensive, integrated and pro-active system of support targeted at and accessible to all trafficked persons through their referral to relevant assistance services and protection. NRMs also facilitate the conclusion of cooperation agreements between service providers and law enforcement defining roles and responsibilities in multi-agency identification and referral; and include provisions in relation to the entitlements of presumed victims and identified victims (such as protection from detention and deportation, protection from further harm/re-trafficking, reflection delay, residence status, access to support services and safe return). This session will consider standards and good practices in co-operation between victim support providers and criminal justice actors.

Participating States also committed themselves to adequately identify, prosecute and sanction traffickers, including through the use of special investigatory measures, financial investigations and asset seizure and confiscation (MC.DEC 14/06, para 6; MC.DEC 5/08 paras 1, 8, 11 and 12). This working session will discuss challenges and good practices in relation to anti-trafficking investigations and prosecutions, including those outlined in the OSR’s Occasional Paper ‘A Summary of Challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region’ (2007) and ODIHR’s Study on Compensation for Trafficked and Exploited Persons in the OSCE Region (2008). The working session will also consider different models for developing a specialist response capacity within investigatory and prosecutorial functions. In this context, also the application of the multi-agency approach to

investigations and prosecutions will be discussed, including the possibility of deploying specialized mixed teams of investigators-prosecutors in cases of THB.

OSCE commitments also call for increased cooperation between national law enforcement and prosecution agencies with relevant international bodies, including Interpol and Europol, and with their counterparts of other participating States. This includes ensuring mutual legal assistance and judicial cooperation between States in investigation and the judicial processes, through common prosecution methodologies and joint investigations (MC.DEC No. 5/08, paras 3 and 11).

Questions to be addressed in this session could include: Which institutional framework exists at the national and local level to effectively develop and implement anti-trafficking strategies and measures? Where have NRMs been established, and have they been helpful in ensuring victim assistance and enhancing effective prosecution of the perpetrators in trafficking cases? Which State and civil society partners are included in NRMs and what is their role in victim identification and assistance? What are the biggest challenges in implementing effective National Referral Mechanism and what measures should be taken to overcome these challenges? How have institutional frameworks been adapted to deal with cases of all forms of trafficking, including of trafficking for labour exploitation in particular?

15:00-18:00 Working Group III: The victim in the criminal justice process: A focus on justice and human rights

Moderator: **Ms. Marieke van Doorninck**
La Strada International, representing also COMP.ACT, the European Action on Compensation for Trafficked Persons

Introducers: **Mr. Sergey Vinokurov**
Senior Researcher, Academy of the Prosecutor General's Office of the Russian Federation

Ms. Agnieszka Fryszman
Partner at law firm Cohen Milstein, United States of America

Rapporteur: **Ms. Odile Robert**
Switzerland

Criminal justice responses to human trafficking should be aimed at both ending the impunity of traffickers and securing justice for the victims. Victims of human trafficking are still sometimes reluctant and unwilling to assist in criminal investigations for fear of retribution, harm to themselves and their families or distrust in law enforcement agencies and the justice system. Participating States must take steps to ensure that criminal proceedings are sensitive to the needs of trafficked persons as both victims of crime and victims of human rights violations, that proceedings do not cause further harm to the victims, and that effective measures are in place to protect victims from intimidation and retaliation and ensure their security (UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 6; Council of Europe Convention on Action against Trafficking in Human

Beings, Art. 28; and UN Convention on Transnational Organized Crime, Art. 24). This requires effective rights protection from the first contact with the authorities, with special attention to the needs of children and victim witnesses.

The human rights-based approach to combating trafficking also requires that those who assist victims, including civil society organizations and lawyers, are able to work in safe environment. In the 2006 Brussels Declaration on Criminal Justice Systems States acknowledged that “lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards” and agreed to “take all necessary measures to respect, protect and promote the freedom of exercise of the profession of lawyer”. Participating States also committed to ensure that civil society organizations are not penalized or criminalized for providing assistance to victims of trafficking (MC.DEC 8/07, para 9).

Effective victims’ rights protection will be enhanced through institutionalized co-operation between victims’ organizations and support networks, as well as the investigation and prosecution authorities, as supported by the framework of the National Referral Mechanism. As practice shows, unconditional assistance is crucial for the recovery of victims and for their ability to take an informed decision on whether to cooperate in criminal proceedings. In accordance with a human rights-based approach to trafficking, assistance should not be conditional on the willingness or ability of a victim to cooperate with law enforcement or act as a witness in criminal proceedings. Where victims choose to cooperate with law enforcement or/and testify in legal proceedings, assistance should not be discontinued simply because the proceedings end or because victims’ collaboration is no longer necessary for other reasons (MC.DEC 5/08, para 6 and Council of Europe Convention on Action against Trafficking in Human Beings, Art. 12; EU Directive 2011/36/EU, para 18).

The OSCE Action Plan encourages participating States not to rely exclusively on victim testimonies and to explore alternative investigative strategies to reduce the need for victims to testify in court. OSCE commitments also urge participating States that have not yet done so to ensure that investigations into or prosecution of human trafficking shall not be dependent upon a report or accusation by a victim (MC.DEC 5/08, para 8). Where victims step forward and submit complaints about their exploiters to the law enforcement authorities, participating States – both the country of origin and the country of destination – need to ensure that these reports are investigated and prosecuted with due diligence. This obligation to investigate and prosecute with due diligence also includes the obligation to adequately identify victims of trafficking. Practice has shown that due to a lack of due diligence victims have not been protected or in some cases have been prosecuted as traffickers.

Participating States have also adopted specific commitments in relation to access to effective remedies and justice for victims of human trafficking (MC.DECs 8/07 and 5/08). They have committed themselves: to ensuring that victims have access to justice (MC.DEC 8/07, paras 1, 7 and 11), including access, without undue delay, to counseling regarding their legal rights and the services available to them, in a language that they can understand (MC.DEC 5/08, para 6); to consider elaborating or strengthening their legislation that offers victims the possibility of obtaining compensation for damages suffered, including wages owed to them; and to ensure effective complaint procedures, where individuals can report in a confidential manner circumstances that might be indicative of a situation of trafficking. Finally, in the OSCE Action Plan participating States agreed to consider measures to allow confiscated assets to be

used to supplement government funding for programmes that address the needs of victims of trafficking in human beings and to compensate victims (MC.DEC 2/03, Annex III.1.5).

During the session, particular attention will be given to key victims rights' issues following the findings of the ODIHR 2008 study on Compensation for Trafficked and Exploited Persons in the OSCE Region, as well as raised by the June 2011 Report of the United Nations Special Rapporteur on Trafficking in Persons. The report focused on the right to an effective remedy for trafficked persons, and contained the Special Rapporteur's proposed Draft Basic Principles on the right to an effective remedy for trafficked persons.

Questions to be addressed in this session could include: Which rights do victims of crime, and trafficking victims in particular, enjoy in relation to criminal proceedings, and are these rights enshrined in laws or policy documents? Is it possible for victims of trafficking for the purpose of sexual and labour exploitation to claim compensation for moral and material damages during criminal proceedings? How can victims of trafficking without regular immigration status effectively claim their rights, in criminal, civil and administrative proceedings? What steps can be taken to ensure that assistance, including legal assistance, is available to victims who want to participate in criminal proceedings? What good practices and challenges can be noted in the context of implementing witness protection measures for victims of trafficking who act as witnesses and testify against their exploiters? Where public legal aid system are in place, are victims of crime, including trafficking victims, eligible for receiving legal aid in criminal and civil proceedings? How can criminal justice professionals - police, prosecutors and judges – be trained to ensure that they treat victims of trafficking with sensitivity and respect for their dignity? Where can victims who have had their rights violated by a criminal justice professional file a complaint about this?

16 May 2012, Wednesday

**10:00-13:00 Working Group IV: Issues of accountability, accessibility and justice:
Preventing all forms of trafficking in human beings**

Moderator: **Ms. Cindy Dyer**
Vice President of the Vital Voices Global Partnership

Introducers: **Mr. Nicolas Le Coz**
President of the Council of Europe Group of Experts on Action
against Trafficking in Human Beings (GRETA)

Ms. Maria Ghervas
Judge at Botanica District Court of Chisinau municipality,
trainer/lecturer at the National Institute of Justice, Moldova

Rapporteur: **Mr. Paul Welsh**
United Kingdom

OSCE participating States have committed to prevent trafficking in human beings. Effective prevention also requires addressing the root causes of trafficking and factors that contribute to

the vulnerability of groups and individuals to being trafficked, which underlies human trafficking. This includes unjust and discriminatory migration regimes; trade policies that exacerbate inequalities within and between countries; discrimination and violence against vulnerable groups, including women, children, migrants and minorities; and demand for cheap and unprotected labour. In the 2002 Porto Declaration on Trafficking in Human Beings, participating States recognized “the need to address root causes of trafficking and to reduce the economic and social inequalities and disadvantages [...] which may be exploited by organized criminal networks for their profit.” Participating States also recognized that the creation of job opportunities, the protection of labour rights and the provision of safe migration opportunities are essential parts of strategies to prevent human trafficking (OSCE Action Plan and MC.DEC 14/06, paras 4 and 6(b)). They have committed to reducing the invisibility of exploitation and ensuring that minimum labour standards are reflected in their labour laws and that these labour laws are enforced. (MC.DEC 8/07, paras 14, 15 and 17).

An effective rule of law framework is necessary to prevent human trafficking. Prevention can include a wide range of measures – from providing vulnerable groups, such as migrants, women and minorities with fair and equal migration and job opportunities to strengthening the criminal justice response in order to end impunity and deter future trafficking-related crimes. During the session participants will consider and discuss strategies and measures that prevent trafficking and related exploitation, such as providing job opportunities, raising awareness about exploitation and human trafficking and how to prevent it, empowering vulnerable communities, including minorities, to claim their rights and access justice; cooperation with private business to monitor supply chains and capacity building of the various State and civil society actors that come across trafficked persons or persons vulnerable to being trafficked; and effective reintegration measures to prevent re-trafficking. The session will also draw from the work of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, and in particular from the outcomes of the 2011 *Alliance against Trafficking in Persons* conference “Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice” (20-21 June 2011) and her 2011 Annual Report, “An Agenda for Prevention”.

Effective prevention of human trafficking also requires combating corruption. Participating States have committed to “adopting such legislative and other measures to establish as criminal offences acts of active or passive corruption of public officials, as referred to in Articles 8 and 9 of the United Nations Convention against Transnational Organized Crime” and to “targeting corruption of local law enforcement as a matter of priority, and ensuring that appropriate disciplinary and criminal proceedings are undertaken against law enforcement authorities found to be engaged in corrupt practices related to trafficking in human beings” (OSCE Action Plan, III. 1.7, 2.9). In line with MC.DEC 7/08 on Further Strengthening the Rule of Law in the OSCE Area Decision this session will provide a valuable forum for participating States to share information and best practices with regard to the fight against corruption, with particular focus on lessons learned relevant to human trafficking cases.

A human rights-based response to trafficking requires that measures to combat human trafficking do not affect the human rights or dignity of any person adversely. This principle and legal obligation extends to individuals who are suspected or convicted of trafficking offences. In practice, often a failure to properly identify victims of trafficking leads to their prosecution as perpetrators, which often does not comply with fair trial standards. The international standards and rules governing the administration of justice guarantee to all

persons the right to receive a fair and public hearing by a competent, independent and impartial tribunal established by law (International Covenant on Civil and Political Rights, Art. 14; European Convention on Human Rights, Art. 6). Oversight mechanisms should be put in place to ensure that a fair trial takes place in accordance with international standards, as well as to ensure the transparency of the entire investigation, prosecution and judicial proceedings.

It is of critical importance to monitor the impact of anti-trafficking measures to ensure that they do not adversely affect established rights. In this context National Referral Mechanisms can also help improve national legislation, policies and procedures through their capacity building measures, as well as in-built review and monitoring systems and by setting benchmarks to check whether goals are met (OSCE Action Plan, VI, 1. and MC.DEC 15/06, para 3). Independent National Rapporteurs or equivalent mechanisms represented a valuable reporting and monitoring mechanism for States to assess the impact of anti-trafficking measures and make recommendations for addressing challenges and gaps (see OSCE Action Plan, VI, 1. and EU Trafficking Directive 2011/36, Art. 27).

Questions to be addressed in this session could include: What strategies and measures have been taken to prevent human trafficking, with particular focus on protecting migrant and workers rights? Similarly, what measures have been taken to address factors that increase vulnerability to trafficking, such as tackling discrimination against women, migrants and minorities? What good practices exist to empower vulnerable groups and communities, including through enhancing their access to the job market and through measures to strengthen legal migration, particularly for women and minorities? Which institutions/bodies are monitoring the implementation of anti-trafficking strategies and measures and how is their impact being measured? Where have any anti-corruption measures been taken in the context of human trafficking cases? Which lessons learned and good practice from other areas could be used in human trafficking cases in this context? How is it possible to involve the private sector in prevention of human trafficking? What oversight mechanisms exist to ensure that fair trial standards are upheld, particularly in cases of human trafficking?

15:00-18:00 Closing Plenary Session

Rapporteurs' summaries from the Working Groups

Statements from Delegations

Closing Remarks

Mr. Douglas Wake

First Deputy Director of the OSCE/ODIHR

Closing of the Seminar

ANNEX II: OPENING AND CLOSING REMARKS

OPENING REMARKS

Ambassador Janez Lenarčič

Director of the Office for Democratic Institutions and Human Rights

Excellencies,
Distinguished guests,
Ladies and Gentlemen,

Good morning and a very warm welcome to everyone at the 2012 Human Dimension Seminar on the rule of law framework for combating trafficking in human beings.

It is my pleasure to open this Seminar on trafficking in human beings and to welcome the Under-Secretary of State of the Republic of Poland, Ms. Grazyna Maria Bernatowicz and the Deputy Head of the Permanent Mission of Ireland to the OSCE, Ms. Martina Feeney. I am also very pleased to welcome my colleague - the Special Representative and Co-ordinator for Combating Trafficking in Human Beings – Ms. Maria Grazia Giammarinaro, who kindly agreed to deliver the keynote address at this event.

I am delighted that we have a large number of participants here from across the OSCE region and from our Partners for Cooperation, including many distinguished experts on combating human trafficking and representatives of NGOs and State officials. I am confident that during the Seminar - together - we will be able to take at least a small step forward in bringing about a change in the lives of millions of victims of human trafficking.

I would first like to express my appreciation to the Irish OSCE Chairmanship for having proposed this topic and for promoting this Seminar. This is an opportunity to exchange good practices on how to fight and how to end the trade of people for profit through exploitation and abuse. As - by now - we know with certainty that in a society that is not adequately governed by the rule of law, human beings will be traded as goods and treated as commodities, caught up in the chain of exploitation and abuse, from which they cannot escape and with little hope that justice would ever be done.

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So first and foremost, our focus should be on justice and human rights.

It is of fundamental importance in the global fight against trafficking that we strengthen the rule of law in each and every country across the OSCE region. Strategies and policies to combat human trafficking will only be successful if they are governed by the principles of rule of law and centered on the protection of the rights of the victims to access justice and regain their human dignity.

The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) continues to actively promote an approach that recognizes trafficking as, first and foremost, a violation of human rights. ODIHR has been among the most active within the OSCE region and beyond in seeking a response to trafficking that is based on law and human rights. A human rights approach to human trafficking means placing the victim at the centre of our consideration and our response.

In that context, the National Referral Mechanism (NRM), a framework that was developed by ODIHR in 2004, has become a useful tool to assist States and other stakeholders, including civil society, in developing functioning systems for protection of the rights of the victims of trafficking.

Trafficking is a violation of human rights, as it represents the failure of states to act with due diligence in effectively preventing the crime, protecting the victims and prosecuting the perpetrators. It therefore follows that a strong rule of law framework is fundamental to a rights-based approach.

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Secondly, our focus should be on the victim in the justice process.

Justice for human trafficking is not served without justice for the victims. And justice for victims goes beyond criminal justice. Victims need to be able to claim their rights and access justice – and this includes criminal, but also civil and administrative proceedings - even if they are irregular migrants.

In the experience of ODIHR, what we have observed in the OSCE region is that State responses to trafficking are still largely influenced by policies to combat organized crime or control immigration. Protection of victims' rights is often of secondary importance and is sometimes absent from both policy and practical responses to trafficking. Difficulties in identifying trafficked persons leading to their continued invisibility are experienced in many States.

A 2010 opinion by the European Commission Expert Group on Human Trafficking found that EU member states are not investigating human trafficking cases because other crimes are easier, less expensive and more practical to prosecute.

The same year, not a single EU member state provided statistics on the number of cases and prosecutions involving human trafficking, according to Eurojust. Consequently, Eurojust is pushing that States are obliged to report and better monitor human trafficking. Such obligation apparently already exists for terrorism, why does it not apply to human trafficking as well?

There is also lack of understanding and knowledge among officials and civil society alike, about the nature and manifestations of trafficking for labour exploitation, in particular. At the

same time insufficient information and legal assistance limits individual access to justice and undermines their recovery.

The need to focus on addressing trafficking for labour exploitation, does not mean we ignore other forms of trafficking that have been largely ignored in the past and also demand our urgent attention. These include: forced begging, organ trafficking, forced marriages, domestic servitude and other slavery-like practices.

Trafficked persons also experience violations of their human rights in their return to countries of origin. Systems are still lacking for trafficked persons to exit abusive conditions and claim their status as victims of trafficking, seek and obtain effective remedies, including compensation payments or unpaid wages.

Supporting trafficked and exploited persons' access to justice and rights is one of the main objectives of the ODIHR's Anti-Trafficking Programme. Trafficked persons may suffer serious moral and material injuries and losses through their exploitation, yet few ever receive compensation for this harm. In 2008 ODIHR published a study on *Compensation for Trafficked and Exploited Persons in the OSCE Region*, which highlighted many of the difficulties in law and practice that victims face in making successful claims for compensation. The study has served as guidance for civil society organizations, international organizations and state actors in many OSCE countries in developing concrete action to enhance trafficked persons' access to justice and remedies, including compensation.

In this context it is vital for our success in combating trafficking to emphasize the importance of ensuring that return of those exploited and vulnerable is safe and human rights-based. ODIHR's working on developing a *Guide on Human Rights in the Return of Trafficked Persons*, which will be published later this year. It will provide needed guidance and assistance to participating States, civil society and justice officials on how better to protect the rights of the victims of trafficking and vulnerable individuals before, during and after their return.

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Ladies and Gentlemen,

My third point here today is that it is paramount that we understand, analyze and address the *causes* of trafficking. This is the only way we can be successful in preventing trafficking from happening in the first place.

All participants in the justice process – from civil society and lawmakers to law enforcers, prosecutors, judges and lawyers, have to understand the complex factors that cause trafficking and force vulnerable individuals into situations of perpetual abuse. However, this is not as simple as it sounds. The causes of trafficking are complex and not yet fully understood – or indeed agreed upon.

Leaving aside some room for disagreement, three distinct causative factors can be identified:

First: factors that increase vulnerability of victims and potential victims;

Second: factors that create or sustain demand for the goods and services produced by

trafficked persons;

Third: Factors that create or sustain an environment within which traffickers can operate with impunity.

Consequently prevention efforts need to address these factors by focusing on fighting corruption; mainstreaming of anti-trafficking approaches in development policies, as a means of addressing vulnerability; helping businesses clean up their supply chain; addressing the particular vulnerabilities of minorities – and even further, minority women; reducing demand and punishing businesses that recruited trafficked labour, etc.

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Ladies and Gentlemen,

In closing, allow me to give a special welcome to the moderators and introducers who accepted our invitation – thank you for taking up these important roles. As always, we look forward to the lively and enriching debate, to the productive exchange of ideas, good practices, and critical reflections.

Thank you.

KEYNOTE ADDRESS

Dr. Maria Grazia Giammarinaro

OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Excellencies,
Ladies and Gentlemen, Colleagues,

Let me start by thanking Ambassador Lenarčič, the Anti-Trafficking Unit of ODIHR as well as the Irish Chairmanship for inviting me to address you today. I am really delighted to see such a rich and interesting agenda for the next three days, focusing on such an integral issue as the rule of law.

The rule of law is of course a multifaceted concept which extends beyond the legal framework or the criminal justice system and includes a host of normative, historical and cultural factors which can ideally work together to mutually reinforce a democratic and fair society. Thus my remarks today will take as a starting point the cornerstone of the international law on trafficking in human beings, the Palermo Protocol, and examine the full context in which it is being considered, interpreted and applied. These social, cultural and historical contexts are in a way as important as the legal provisions themselves because of the real impact they have on the kind of justice being delivered to victims. Human rights and the rights of victims are at the very centre of the OSCE approach to combating trafficking, and I will also reiterate some important principles with regards to victim participation and protection in the criminal justice process.

The nature of the challenge

Prosecution and punishment form an essential part of the action to prevent and combat trafficking. Unfortunately, the law enforcement and criminal justice response is still very weak. Too often, trafficking cases, especially for labour exploitation, are not qualified as such; criminal networks are not disrupted; perpetrators go unpunished; and victims are not identified nor redressed.

This is evidenced in the extremely low rate of investigations and convictions across the world for human trafficking charges.⁷ The limited data available, for example the 3,619 trafficking convictions recorded globally in 2010 by the U.S. *Trafficking in Persons Report*,⁸ are not at all commensurate with the ILO minimum estimates of 12.3 million in forced labour worldwide, out of which at least several hundreds of thousands are trafficked into or within the OSCE region. The modest results of anti-trafficking action are even more disappointing, taking into account that trafficking in human beings is mostly a business of organized crime and an inexhaustible source of illicit profits which are linked to and fuel other organized criminal activities, including drug trafficking and money laundering, thrive on corruption and enable organized crime to acquire political influence, and therefore severely undermine the rule of law, and economic and democratic development. To give you a sense of the scale of these

⁷ United States Department of State, *Trafficking in Persons Report* (Washington, 2011): includes the following figures for 2010: 6,017 prosecutions globally for trafficking in persons and 3,619 convictions.

⁸ U.S. Department of State, *Trafficking in Persons Report*, 10th Edition (June 2010).

illicit profits, the ILO estimates indicate at least USD 32 billion annually. Trafficking profits are constantly reinvested in all kinds of other criminal activities, as well as laundered and infiltrated into legitimate economic sectors.⁹

Against this background, the crime of trafficking in human beings, which has been introduced in the penal codes of most countries in compliance with the U.N. Palermo Protocol, is rarely applied. Rather, we are faced with mounting cases of document fraud, prostitution, smuggling and other lesser offences which fail to capture the full spectrum of criminality at stake as well as the gravity of the impact. The consequences are very serious. Not only do traffickers and the organized criminal networks behind them remain unpunished, but trafficked persons also do not receive assistance and support, and do not have access to legal remedies, including the payback of wages and compensation. On the contrary, they are very often treated as criminals and immediately deported.

Why is this? Do the difficulties in implementation derive from the Palermo Protocol? For example, law enforcement, prosecutors and judges often argue that the crime is too difficult to prove, and that the definition is not broad enough to comprise all the multifaceted forms of trafficking.

Therefore, the crucial question is: to what extent is the Palermo Protocol still useful to counteract trafficking?

My answer is: the Palermo Protocol is a valid and useful tool to combat trafficking, provided that it is interpreted and implemented correctly. I will argue that the reason for the difficulties lie not in the Protocol itself, but in the cultural background of practitioners, in a sort of cultural lens through which the provisions in the Protocol – and especially the definition – are interpreted and implemented. Unfortunately such a lens, instead of highlighting their vision, very often makes practitioners completely blind. Therefore, part of the problem concerns not the legal framework, but rather the culture of prosecutors and judges who handle trafficking cases.

Issues relating to the interpretation of the definition

What are the challenges in practice, concerning the interpretation of the definition of trafficking provided by the Palermo Protocol?

One challenge is related to the so-called “transfer paradigm”. In other words, practitioners tend to think that a case of trafficking exists only when there is the transfer of the person. Border crossing is not necessarily a component of the crime. Still, many think that the victim must have been transferred from one country to another or at least from one place to another, in order to identify a case of trafficking.

This interpretation does not allow to identify a trafficking case when there is no obvious

⁹ Shelley, L., *Human Trafficking: A Global Perspective* (Cambridge University Press: New York, 2010); Council of Europe (CoE), European Committee on Crime Problems (CDPC) and Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), *Proceeds from Trafficking in Human Beings and Illegal Migration/Human Smuggling* (2005).

connection between a first phase in which the migrant worker has entered the destination country autonomously, and the second phase, in which the worker has been victimized and exploited in the country of destination. Furthermore, this interpretation does not necessarily cover the situation in which the worker has been smuggled by a criminal group, and another criminal group has subsequently placed the same person in a certain job and exploited her or him in slavery-like conditions. In practice, because the link between the two criminal groups cannot be easily proved, the first part of the trafficking chain is usually ignored, and only a minor violation of labour laws is found. As a consequence, the worker is deprived of the assistance to which she or he is entitled as a victim of trafficking, and the only result of the institutional response is her or his deportation.

Therefore, this interpretation clearly fails to strengthen anti-trafficking action. As a matter of fact, it only tackles cases in which one single criminal group runs the entire trafficking chain from recruitment to final exploitation. However, this *modus operandi* is no longer widespread, and rather constitutes an exception. As mentioned above, what we are increasingly confronted with are highly specialized networks that are mobile and operate across national boundaries. Therefore the real challenge is to identify the whole criminal network running a trafficking process.

From a legal point of view, and as a judge, I am convinced that the narrow interpretation of the Palermo Protocol which is still predominant in courtrooms is not correct.

The so-called “transfer paradigm” is not at all consistent with an updated interpretation of the definition. The movement of the person is not necessarily required by the definition. Article 3 of the Protocol, when it lists the acts which form part of the definition of trafficking, also includes the terms “harbouring” and “receipt”. The latter – “receipt” – is considered by the ILO Expert Group as comprising “receiving persons into employment or for the purpose of employment, including forced labour”.¹⁰

According to the above mentioned interpretation of the term “receipt”, endorsed by ILO experts, unscrupulous or criminal employers who use trafficked persons and knowingly exploit them in forced labour, and the intermediaries who facilitate the placement of workers in a certain employment, are criminally liable, regardless of whether the person has been transferred or not. Importantly, this interpretation covers all cases of trafficking in human beings in which the migrant worker has crossed the border voluntarily and autonomously, although paying a high fee, and has subsequently been exploited and victimized when she or he is in the destination country. On the specific issue of receipt, it may also be necessary for governments and parliaments to review the implementing legislation on trafficking in human beings to ensure that it is appropriately included in the national law. The focus should be clearly on the exploitation of the victim and not the transfer.

Another critical element relating to the interpretation of the definition concerns the notion of the abuse of a position of vulnerability. Although many efforts have been made, especially by international organizations, to identify valid indicators in order to distinguish a case of trafficking from a case of smuggling or illegal migration, NGOs denounce that

¹⁰ILO, Human Trafficking and Forced Labour Exploitation, Guidelines for Legislation and Law Enforcement (Geneva, 2005).

national case-law mainly requires evidence related to violence and/or total deprivation of freedom of movement. In other words, the actual implementation of the definition tends to limit the notion of trafficking to its most serious forms based on the use of extreme violence.

However, these cases of trafficking, which still exist especially in the field of sexual exploitation and can even amount to torture, are no longer widespread. On the contrary, the new *modus operandi* of traffickers is increasingly based on more subtle forms of coercion, such as psychological dependency, that can be found for example in cases of domestic servitude. Another common means of coercion, especially in the field of labour exploitation, is the withholding/non payment of wages. In this case, workers are induced to stay in their exploitative situation even when they are not paid for months, as they are afraid of losing everything if they leave.

Therefore, it is necessary to read again the definition and the *Travaux Préparatoires* of the Palermo Protocol to better understand the deep meaning of the notion of abuse of a position of vulnerability. This notion was included in the definition in the final phase of the negotiations, as a consequence of an agreement between countries of origin and countries of destination. The effort was – and still is – to strike a balance between, on the one hand, the need to keep a clear distinction between trafficking and smuggling and, on the other hand, the need to protect people who fall victim to trafficking because of their social vulnerability.

Why is the definition of trafficking usually interpreted according to narrow criteria? First of all, trafficking is often seen through the “migration lens”, that is to say an approach focused on the alleged “threat” deriving from “illegal migration”. As a consequence, the migrant worker subjected to exploitation is not seen as a presumed victim of trafficking in human beings but as an irregular migrant to be deported.

In Europe, there is a worrying trend towards criminalization of migration with increasing use of criminal sanctions or administrative detention in the area of border control and immigration.¹¹ Such a tendency is detrimental to countering trafficking, and hinders the identification and protection of trafficked persons and their access to justice. Trafficked persons are afraid of reporting the abuse suffered to the competent authorities, and believe that they have no viable option but to continue to submit to their exploiters. As a result, thousands of persons continue to have their human rights severely violated, and criminals go unpunished.

There is an additional problem, relating to something less obvious, which nevertheless prevents practitioners from correctly interpreting and implementing the definition of trafficking. I call it the “old slavery lens”, which prevents law enforcement professionals, prosecutors and judges from identifying modern-day slavery and from understanding that its features are significantly different today, even though they still amount to the control of a person over another person.

Nowadays victims of slavery-like practices, trafficking and forced labour are usually not locked up in a workplace or in an apartment or a brothel, although such extreme forms still

¹¹ Council of Europe Commissioner for Human Rights, *Criminalisation of Migration in Europe: Human Rights Implications* (2009).

exist both in the field of labour and sexual exploitation. The victim is usually put in a situation of debt bondage and/or multiple dependencies. Therefore, modern-day slavery still consists of ownership, which implies control of the exploiter over the worker; however, the situation of the person who has been subjugated is not characterized by lack of freedom of movement, but rather by the lack of viable alternatives.

Placing victims at the centre of the criminal justice response

The Palermo Protocol paved the way towards a better understanding of the protection of victims as an integral part of the struggle against trafficking. Although very late in the negotiations, victim protection was indeed included among the purposes of the Palermo Protocol. Other instruments, in particular the Council of Europe Convention on Action against Trafficking in Human Beings, went much further in the protection of the human rights of victims. This Convention is the first international human rights instrument dealing with trafficking in human beings (THB). It affirms that THB is a violation of human rights and an offence to the human dignity and integrity of the person. It also includes minimum standards for the protection of and assistance to victims regardless of their willingness to co-operate with the authorities. The 2003 OSCE Action Plan and all the OSCE commitments in this field clearly reflect a human rights-centered approach.

The case law of the European Court of Human Rights (ECHR) has established the general framework in which to place the protection of the rights of trafficking victims. In a number of innovative decisions, including notably the *Siliadin* and *Rantsev* cases, the Court has incrementally acknowledged that victims have their own right to an investigation, which must be impartial, quick, effective and adequate. This case law is particularly important because it implies that the victim should be seen as a major actor in the criminal proceedings, whose role cannot be limited to the role of a witness, and whose interests and rights cannot be entirely represented by the prosecution. The same idea of the fair trial as a confrontation between the prosecution and the defendant should become more complex, and include the victim as a co-protagonist. The rights of victims at trial have also been recently confirmed in the 2011 EU Directive on Trafficking in Human Beings. Victims' rights must be addressed with equal seriousness and given equal protection in the criminal justice process.

Despite this progress in the recognition of victims' rights, unfortunately the reality of the criminal justice experience for victims remains ambiguous. Unfortunately, victims often bear secondary victimization during their participation in the process. Worse yet is evidence of victims being punished either for actions which are a direct result of their victimization, or for their participation as low-level recruiters. This is why my Office this year will work further on the principle of non-punishment of victims which must be explicitly recognized by participating States in the legislation and policy relating to victims of trafficking.

Victims of THB should be entitled to full compensation for the harm and damages suffered. This includes for the immediate physical and psychological impacts but also the longer term consequences on their ability to earn livelihoods and achieve social inclusion. In practice, this means that victims need access to legal assistance at an early stage in order to participate in legal processes and claim reparations, both in the spheres of criminal justice and civil remedies. The ultimate goal for victims of trafficking should be social inclusion.

Making the most of complementary frameworks

I have now described to you what I see as some of the practical ways in which the legal framework on trafficking in human beings can be strengthened by addressing the cultural background of practitioners and by reinforcing the rights and role of victims in the criminal justice process. In addition, I would add that we can do a lot to strengthen the rule of law on trafficking in human beings by ensuring consistency with relevant, complementary legal frameworks – namely – international human rights law and norms on immigration, asylum, child protection, gender, and the labour market.

Needless to say, anti-trafficking policy is closely connected to migration issues. Trafficked persons often start off as migrants in search of opportunities for decent work and a better life to improve their difficult living conditions and those of their family. Evidence-based studies show how laws, policies and mechanisms established to prevent irregular migration may contribute to fuelling organized crime networks engaged in smuggling of migrants and trafficking in human beings.¹² An example of this relates to migration regulations which link the issuance of a visa or a permit to an individual employer. This policy leaves the employee at the mercy of the employer, increases the vulnerability of migrant workers, and establishes a favourable environment for abusive, exploitative or even criminal employers, who can threaten to fire them and denounce them for deportation if they do not agree to the terms of work. The fewer options available to migrants to change employer or seek support in cases of abuse or exploitative practices, the more vulnerable they are to being exploited.

The primacy of human rights in establishing a rule of law framework also requires establishing a framework that recognizes the right to seek and enjoy asylum. Though not all victims of trafficking are in need of international protection, refugees, asylum seekers and stateless persons are likely to be considerably more vulnerable for recruitment by traffickers because of growing links between smuggling rings and trafficking networks.

The implementation of effective legislative frameworks also requires appropriate co-operation mechanisms between all relevant actors, including asylum authorities, to be in place. With increased mixed migration flows of refugees, economic migrants, and victims of trafficking, it is not possible to separate victims into neat and distinct channels. In this complex migratory context, the early identification of victims and persons at risk of trafficking, and their referral to protection and assistance, require a holistic approach where the various protection regimes, temporary reflection and recovery period, residence permits for victim witnesses, asylum, humanitarian and other residence status, all complement and support each other to provide effective and comprehensive protection to victims.

The principle of *non-refoulement* is of particular importance when dealing with the return of victims, as noted in the current work of OSCE/ODIHR on the Guide to Human Rights in the Return of Trafficked Persons. In practical terms, due process in this context requires that pre-return assessments are carried out in all cases involving the return of a victim or

¹² See for example United Nations, *Human Rights of Migrants*, Report of the Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante, A/65/222 (2010).

person at risk of trafficking. In addition to considering the voluntariness and safety of return, such return assessments must be based on well-established international and regional standards, including the right not to be subjected to death, persecution, torture, cruel or other inhuman and degrading treatment or punishment.

On the particular issue of torture and its link to trafficking in human beings, my Office is in the process of finalizing new research which has previously been overlooked. The Occasional Paper aims to examine how and when trafficking in human beings can amount to torture and other forms of ill-treatment, as well as to provide the conceptual framework to understand what trafficking cases entail in terms of physical and psychological effects on trafficked persons, and the legal and clinical implications that flow from this characterization, including in terms of legal entitlements.

Labour market policies are another key area of complementarity to anti-trafficking policies. The role of recruitment agencies cannot be underestimated; reports indicate that they are often facilitating exploitative, abusive and fraudulent practices that either directly lead to trafficking or increase the vulnerability of workers to exploitation

Lastly, child protection and gender discrimination are important areas of mutual concern for trafficking victims. Child victims of trafficking are often found among vulnerable groups such as unaccompanied and separated, asylum-seeking and refugee children, and victims of ethnic/racial/national minorities. There is thus a need to continue strengthening child protection systems in line with the principle of best interest determination in each individual case. Likewise, one way of addressing women's vulnerability to trafficking is to examine gender discrimination and gender-based violence which are often critical to subjugating women in the first place. This is why our *Alliance* Conference this year – on 11-12 October – will examine the link between trafficking and discrimination on any grounds, and specifically how empowerment of vulnerable people is an important strategy for prevention.

Conclusions

To sum up the key message of my contribution, in my view it is time for States to establish tools to regularly assess the human rights impact of their anti-trafficking policies. The aim is to prevent collateral damage and maximize the impact of anti-trafficking action in terms of protection of the rights of trafficked persons.

It was already in 2002 that the OSCE participating States committed to respect the dignity and human rights of victims at all times.¹³ Then in 2003, the OSCE Action Plan further recommended that participating States ensure that laws and other measures adopted for preventing and combating human trafficking “do not have an adverse impact on the rights and dignity of persons, including their freedom of movement”. This is at the core of the OSCE human rights-based approach to anti- trafficking action. Such an approach calls for governments and parliaments to take the lead in their national jurisdictions to ensure that legislation and policy are not negatively impacting on the protection of rights of trafficked

¹³ OSCE Ministerial Council, *Declaration on Trafficking in Human Beings*, MC(10).JOUR/2 Annex 2 (Porto, 7 December 2002)

persons and other affected groups. To this end, States should establish tools to ensure for example that victims are not punished as a result of their trafficking experience, and they are protected by the principle of *non-refoulement*.

Civil society and international organizations can support States in this process; NGOs in particular can also contribute to promoting participation and empowerment of those affected by THB in the evaluation of related policies. National Referral Mechanisms can also be useful in this assessment process. Personally, I would like to pledge that with my country visits and ongoing co-operation and dialogue with participating States, I stand ready to support them in assessing the human rights impact of THB policies and enhancing their effectiveness.

The Vilnius Declaration on Combating All Forms of Human Trafficking reconfirmed the political commitment of participating States to fight against trafficking as an integral part of the OSCE's efforts towards a common and comprehensive security which includes full respect of human rights.¹⁴

This Human Dimension Seminar centered on the multifaceted concept of rule of law and on a human rights approach to anti-trafficking action is a concrete follow-up to the strategic indications of the Vilnius Declaration.

¹⁴ OSCE Ministerial Council, *Declaration on Combating all Forms of Human Trafficking*, MC.DD/27/11/Rev.1 (Vilnius, 7 December 2011).

CLOSING REMARKS

Mr. Douglas Wake

First Deputy Director of the Office for Democratic Institutions and Human Rights (ODIHR)

Excellencies,
Ladies and Gentlemen,

As we have now heard from our rapporteurs and those delegations wishing to offer final remarks, allow me also to offer a few closing reflections. I would first like to thank the rapporteurs for so comprehensively and accurately capturing our discussions over the last three days. I would also like to express my overall satisfaction with the intensity of the discussion and the high value of the contributions during this Seminar.

We have been able to discuss, in this Seminar, complex human rights issues in the context of combating trafficking in human beings. We have also been able to explore the rule of law framework and emphasize its vital role in preventing trafficking in human beings, prosecuting the perpetrators and protecting the victims. We also heard about the fundamental importance of the fourth 'P' – PARTNERSHIP - among the various state authorities, between state and civil society organizations in a country and between countries of origin and destination.

Over the last three days, participants raised and discussed a number of key questions, in an atmosphere of sincerity and openness. I will mention a few:

- What are the key elements of a rule of law and human rights framework necessary to effectively combat trafficking in human beings?
- How do States establish a robust legislative framework on combating human trafficking in compliance with human rights and internationally agreed standards?
- How can we make investigation and prosecution of human trafficking more effective, while fostering specialization of the investigatory and prosecutorial functions?
- What is the role of victims in the criminal justice process and how can it be strengthened to ensure victims do not face prosecution and punishment and can testify safely and effectively? How can other proceedings, such as civil or administrative, be used to protect victims' rights and as a source of justice and redress for the victims?
- How can States address the obstacles that victims face in claiming and receiving compensation?
- How is corruption related to human trafficking cases being addressed and how can States ensure the accountability of their officials in this context?
- How can effective rule of law contribute to the prevention of trafficking in human beings? And what more can be done to prevent trafficking through strengthening

accountability and labour protection, improving migration policies, and addressing the causes of trafficking?

Ladies and Gentlemen,

As was confirmed during the seminar, strategies and policies to combat human trafficking will only be successful if they are governed by the principles of rule of law and centered on the protection of the rights of the victims. We have heard many examples of how States attempt to enhance their legislative framework and base it on human rights and a victim-centered approach. At the same time, many gaps have been identified by participants both in law and practice.

It was emphasized by the Seminar participants that the obligation to protect the rights of the victims, to investigate and prosecute with due diligence and to prevent human trafficking lies with the State. It is the States who need to develop and implement strategies and action plans to ensure that international standards are implemented. It was, however, emphasized how important the role of civil society organizations is in identifying and assisting victims to claim their rights. In this context our Office will continue to assist participating States in establishing National Referral Mechanisms (NRMs) where they do not already exist, which are inclusive and allow for effective co-operation between State authorities and civil society.

I would like to emphasize, as was mentioned by many speakers, that the rule of law and justice go beyond criminal justice. The current lack of victims' effective access to rights and justice, including legal assistance, representation, access to compensation and effective remedies, and immigration relief in many OSCE participating States does not reflect the human rights-based and victim-centered approach that the OSCE participating States have committed themselves to implement. Victim assistance and rights protection is not a favour, but an obligation of the State. Existing shortcomings in law and practice related to victim protection need to be addressed without further delay. We also need to monitor the impact of anti-trafficking measures to ensure that they do not adversely affect established rights.

I would like to re-emphasize on behalf of our Office that we remain committed to assisting participating States and civil society actors in making the fight against human trafficking more effective. This includes our efforts to facilitate the establishment of an OSCE-wide network of lawyers assisting victims of trafficking to access justice and effective remedies, to support National Referral Mechanisms, and to make trafficked persons' return safe.

In closing, let me thank each and every participant for your contribution, which made this Seminar a vibrant and vigorous discussion. I emphasize the quality of discussions, which seemed to me particularly high, but I also need to say a word about statistics as well: this year's Human Dimension Seminar was attended by 142 participants, including 90 representatives of 41 participating States along with representatives of 5 OSCE Partners for Co-operation, civil society, other OSCE structures, and other international organizations. In comparison with the overall total of 142 participants this year, the corresponding totals for the Human Dimension Seminars in 2010 and 2011 were 166 and 235.

In this context I wish to extend special thanks to all the experts from capitals who contributed to this Seminar and to those delegations and OSCE field operations which made it possible for

experts to take part. The participation of civil society representatives and victim support institutions in the Seminar enriched the discussion and brought important perspectives to the issues at hand and we thank them for that. At the same time I must note with considerable regret that the overall number of participants traveling from capitals to participate in official delegations was also considerably lower at this year's Seminar than at Human Dimension Seminars in 2010 and 2011 (38 in 2012, as contrasted with 50 in 2010 and 62 in 2011), and that such experts attended from fewer than one-third of the participating States.

We are also grateful for the support of our colleagues from within the OSCE, including the Office of the Special Representative and Co-ordinator on Combating Trafficking in Human Beings and OSCE field operations, as well as our partners from the United Nations, the Council of Europe, the European Union, and the International Organization for Migration. I would like to thank in particular the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), the United Nations Interregional Crime and Justice Research Institute (UNICRI), the European Agency for the Management of Operational Cooperation at the External Borders of the Member States (FRONTEX), and the Office of the UN High Commissioner for Human Rights (OHCHR) for their co-operation with ODIHR and for their support.

I cannot conclude my remarks without expressing my great appreciation to all the colleagues who made this event possible despite rather challenging circumstances. I have in mind the fact that participating States only began to discuss the rule of law framework for combating trafficking in persons as a possible topic of this Seminar at a rather late date, and approved the agenda only on 19 April – leaving a mere 14 working days between the adoption of the agenda and the opening of the Seminar. While this very short timeline may have contributed to the rather disappointing overall statistics that I have already cited for participation in the Seminar, I am particularly proud of the work done so efficiently and quickly by my colleagues from the Anti-Trafficking Unit of ODIHR's Human Rights Department as well as the Rule of Law Unit of our Democratization Department on the substantive preparation of the meeting. Similarly, I wish to pay tribute to the work done by all those ODIHR and other colleagues whose logistical support was essential for the smooth functioning of our seminar. Special thanks are due of course to our interpreters for ensuring that language barriers did not hinder the lively and informal dialogue among Seminar participants.

With these words I wish you a pleasant journey back home, and I declare that this 2012 OSCE Human Dimension Seminar is now closed.

Thank you!

ANNEX III: INFORMATION ABOUT THE SPEAKERS

Keynote Speaker

Ms. Maria Grazia Giammarinaro has been the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings since January 2010. She has been a judge at the Criminal Court of Rome since 1991. She served from 2006 until 2009 in the European Commission's Directorate-General for Justice, Freedom and Security in Brussels, where she was responsible for work to combat human trafficking and sexual exploitation of children, as well as for penal aspects of illegal immigration, within the unit dealing with the fight against organized crime. During this time, she co-ordinated the Group of Experts on Trafficking in Human Beings of the European Commission. From 2001 to 2006 she was a judge for preliminary investigation in the Criminal Court of Rome. Prior to that, from 1996 she was Head of the Legislative Office and Adviser to the Minister for Equal Opportunities.

WORKING GROUP I – THE PRIMACY OF HUMAN RIGHTS AND THE RULE OF LAW – ESTABLISHING DOMESTIC LEGISLATIVE FRAMEWORK COMPLIANT WITH OSCE COMMITMENTS AND INTERNATIONAL STANDARDS: KEY CHALLENGES TO IMPLEMENTATION

Moderator:

Ms. Klara Skrivankova is Trafficking Programme Coordinator at Anti-Slavery International based in the United Kingdom. She is a member of the EU Group of Experts on Trafficking in Human Beings since 2007. Ms. Skrivankova has extensive experience in anti-trafficking work within non-governmental organizations, including grass-root work with trafficked persons, policy development, advocacy, acting as expert witness in courts, research, legislative review, training for professionals and author/co-author of reports and manuals on trafficking. Ms. Skrivankova has regularly participated as an expert on anti-trafficking issues at numerous fora over the past nine years, including consultations and round-tables: nationally, at the Ministry of the Interior in the Czech Republic, the Home Office in the UK, the British Parliament, the Welsh Assembly and the German Bundestag, and internationally with the UN, OSCE, the Council of Europe and the Nigerian Human Rights Commission. Before joining Anti-Slavery International she worked as Prevention and Education Manager at La Strada Czech Republic. Ms Skrivankova holds an MA in Public and Social Policy from the Charles University in Prague.

Introducers:

Ms. Lidiya Drozdova has been a Deputy Minister of Social Policy of Ukraine since 2003. After graduating from the Chernigiv Law College in 1975, Ms. Drozdova started her career in state social protection institutions of the Donetsk region. In 1982 she graduated as a lawyer from the National Kyiv Taras Shevchenko University. In 2002 Ms. Drozdova moved to Kyiv to chair the Department of State Policy on Disabled and Elderly People in the Ministry of Labour and Social Policy of Ukraine. She is also an Honourable Social Worker of Ukraine.

Mr. Gil Arias-Fernández is the Deputy Executive Director of FRONTEX, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Mr. Fernández joined the Spanish National Police in 1975. For the next 35 years he dealt with the management of strategies in the fight against trafficking of human beings and illegal immigration as well as the management of borders at both the national and European levels. He also served as Head of the Spanish delegation in various Working Groups of the Council of the EU, including as a Chairman during Spain's Schengen Presidency, as well as its Presidency of the Council of the EU. Mr. Fernández has worked as Senior Executive Advisor for international matters in the Cabinet of the Minister of Interior of Spain. He holds several University Degrees in Law, Police Science, European Union Law & Policies.

WORKING GROUP II – CRIMINALIZATION, PUNISHMENT AND REDRESS – EFFECTIVE INVESTIGATION, PROSECUTION AND ADJUDICATION OF TRAFFICKING: ESTABLISHING AN APPROPRIATE INSTITUTIONAL FRAMEWORK

Moderator:

Ms. Kristiina Kangaspunta, Deputy Director of the United Nations Interregional Crime and Justice Research Institute (UNICRI), has been involved with international crime prevention and criminal justice work for more than 20 years. For the last 13 years, she has been working with the United Nations. Ms. Kangaspunta is currently the Deputy Director of the United Nations Interregional Crime and Justice Research Institute (UNICRI), leading the Research Programme of the Institute. UNICRI, located in Turin, Italy, is one of the United Nations research and training institutes, focusing on crime, criminal justice and security. She works with a variety of issues related to human trafficking, organized crime, corruption, terrorism and other rule of law issues. Before UNICRI, Ms. Kangaspunta worked with the United Nations Office on Drugs and Crime (UNODC) in Vienna, Austria, as the Chief of the Anti-Human Trafficking Unit. She initiated the first United Nations Global Patterns Report on Trafficking in Persons and she led the technical cooperation work to support the implementation of the Palermo Protocol. She moved to UNODC from the Ministry of Justice of Finland where she worked at the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI).

Introducers:

Mr. Noel J. Clarke is a Detective Superintendent with responsibility for the co-ordination of all human trafficking investigations within An Garda Síochána, Ireland, a position he has held since November 2008. Prior to his current position, his career in An Garda Síochána had mainly been in the area of the prevention and investigation of serious and organized crime, both as a Senior Investigating Officer and a Criminal Intelligence Analyst. Currently, Detective Superintendent Clarke represents An Garda Síochána in a wide range of domestic fora in the area of Trafficking in Human Beings including the various Working Groups established as part of the Irish response to Trafficking in Human Beings set out in the National Action Plan.

Ms. Corinne Dettmeijer, Dutch National Rapporteur on Trafficking in Human Beings, has been serving as Dutch National Rapporteur on Trafficking in Human Beings since October 2006. Before that Ms. Dettmeijer has been a judge at the district court of The Hague for many

years, since 1995 as Vice President of the court. As a judge, she handled cases in juvenile, criminal, family and migration law. She has been a member of several international professional bodies and advisory committees in the field of juvenile law. After finishing her law degree at Leiden University, she started her career as a public prosecutor in Rotterdam. Ms. Dettmeijer is a member of the Board of the Leiden University Fund and member of the Board of the Pro Juventute Foundation.

WORKING GROUP III – THE VICTIM IN THE CRIMINAL JUSTICE PROCESS: A FOCUS ON JUSTICE AND HUMAN RIGHTS

Moderator:

Ms. Marieke van Doorninck is the Advisor for Public Affairs of the International La Strada Association, based in the Netherlands. Ms. van Doorninck advises La Strada International and its eight member organizations on policy making and lobbying strategies in the field of anti-trafficking. Apart from devising lobby and PR strategies at the international level and monitoring European, EU and UN developments in trafficking and human rights issues, she has a publishing record covering issues of trafficking, emancipation, sex work and migrants' rights. The focus of her advocacy work is the promotion of the human rights-based approach to anti-trafficking policies. The primary goal is to improve the position of women and to promote their universal rights, including the right to choose to emigrate and work abroad and to be protected from violence and abuse. Next to her work for La Strada International, Ms. Marieke van Doorninck is a member of the City Council of Amsterdam, representing the Green Party and a leader of the Green group in the Council.

Introducers:

Mr. Sergey Ivanovich Vinokurov is a Senior Researcher at the Research Institute of the Academy of the Prosecutor General's Office of the Russian Federation in Moscow. Mr. Vinokurov is the lead drafter of the Commonwealth of Independent States' Model Laws on Combating Trafficking in Human Beings and on Providing Assistance to Victims of Trafficking in Human Beings, as well as of the CIS Programme on Cooperation in the fight against THB for 2011 - 2013. Mr. Vinokurov is also an Honourable Lawyer of the Russian Federation.

Ms. Agnieszka Fryszman a Partner at law firm Cohen Milstein, heads Cohen Milstein's International Human Rights and Pro Bono practice. Ms. Fryszman regularly litigates complex cases against corporate giants. She was a member of the legal team that successfully represented survivors of Nazi-era forced and slave labour against the German and Austrian companies that allegedly profited from their labour. Ms. Fryszman and colleague Matthew Handley earned the National Law Journal's 2011 Pro Bono Award for their efforts on behalf of Nepali labourers injured or killed at U.S. military bases in Iraq and Afghanistan. They obtained several judgments and significant settlements on behalf of the families. She currently represents victims of a human trafficking ring that allegedly lured men from Nepal with the promise of employment at luxury hotels, but instead trafficked them against their will to work at a U.S. military facility in Iraq. Ms. Fryszman investigated and initiated suit against military contractors, filing one of the first complaints under the recently passed Trafficking Victims

Protection Act. Her work on behalf of the former “comfort women,” women and girls trafficked into sexual slavery by the government of Japan during World War II, was recognized with the “Fierce Sister” award from the National Asian Pacific American Women’s Forum. Before joining Cohen Milstein, Ms. Fryszman was counsel to the United States House of Representatives Committee on the Judiciary, Subcommittee on Commercial and Administrative Law.

***WORKING GROUP IV – ISSUES OF ACCOUNTABILITY, ACCESSIBILITY AND JUSTICE:
PREVENTING ALL FORMS OF TRAFFICKING IN HUMAN BEINGS***

Moderator:

Ms. Cindy Dyer, Vice President of the Vital Voices Global Partnership, served as the Director of the Office on Violence Against Women at the United States Department of Justice prior to joining Vital Voices in 2008. Ms. Dyer was nominated to this position by President George W. Bush and confirmed by the United States Senate. As Director, she served as the liaison between the Department of Justice and Federal, State and International governments on crimes involving violence against women. Ms. Dyer has spoken at numerous conferences and professional training sessions before national and international audiences. She was a specialized domestic and sexual violence prosecutor for 13 years and has received numerous awards and recognition for her service to victims. Ms. Dyer served for 10 years as a member of the Public Policy Committee of the Texas Council on Family Violence and she was a weekly hotline volunteer for 9 years at a shelter for battered women and their children.

Introducers:

Mr. Nicolas Le Coz is President of the Council of Europe Group of Experts on Trafficking in Human Beings, GRETA. Mr. Le Coz has been a senior officer in the French National Gendarmerie since 2002, working in the Criminal Police Sub-Directorate (SDPJ) of the French National Gendarmerie General Directorate (DGGN) in the Ministry of the Interior, where he is responsible for matters relating to international and European criminal law and to the protection of human rights in the context of criminal police activities. A lawyer, with a Master II in International Relations and a Master II in International Public Law, he graduated from the Paris Institut des Hautes Etudes Internationales (IHEI) where he specialized in international and European human rights law. Having been legal advisor and delegate for the Dominican Republic at the UN Conference on the setting up of the International Criminal Court (ICC), Mr. Le Coz worked at the Chamber of First Instance of the International Criminal Tribunal for the former Yugoslavia (ICTY). Thereafter, he joined the office for armed conflict law in the French Ministry of Defence, where he was responsible for matters relating to international criminal law and humanitarian law. During this period, he undertook two long-term assignments, one in Kosovo and the other in Bosnia and Herzegovina as legal advisor to the Multinational South-East Division of the NATO Stabilization Force (SFOR).

Ms. Maria Ghervas has been serving as a judge in the Botanica District Court of Chisinau municipality since 1987. Currently, she also serves at a trainer/lecturer at the National Institute of Justice for the course "Examining cases of trafficking in human beings in national courts". Between 2001-2006, Ms. Ghervas was the President of this court. In 2001, Ms. Ghervas received the Honorary Diploma of the Superior Council of Magistrates. Between 2006 and

2010, Ms. Ghervas was a member of the Council of the National Institute of Justice (higher education institution for upgrading judges and prosecutors) and member of the editorial board of the National Institute of Justice Bulletin.