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## *International Trafficking in Women and Children*

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## *Approach*

- > *General Report*
  - > *First International Congress Young Penalist Section, Siracusa, 14-20 June 2001*
  - > *'Contemporary Problems International Criminal Law'*
  - > *updated for today's presentation*
- > *Siracusa conclusions and recommendations*
  - > *voted by Siracusa Congress*
  - > *presented step-by-step*
  - > *indicated in yellow*
- > *touching upon issues conference questionnaire, but*
  - > *broader*
  - > *more pre-structured*
  - > *clearly distinguishing between 'smuggling' and 'trafficking'*

## Scope

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- > *new UN and regional (EU) initiatives*
- > *not only 'international' trafficking*
- > *trafficking in 'women and children'*

## *New UN and regional (EU) initiatives*

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- > *new legal initiatives to specifically address the problem of trafficking in human beings, both at worldwide and regional level, inter alia addressing criminal law issues*
  - > *worldwide (UN): Palermo, December 2000:*
    - > *UN TOC Convention*
    - > *UN Smuggling Protocol*
    - > *UN Trafficking Protocol*
  - > *regional level*
    - > *EU: initiated December 2000*
      - > *EU Framework Decision on Trafficking*
        - > *political agreement in December 2001*
      - > *EU Framework Decision on Sexual Exploitation of Children*
        - > *full political agreement in spring 2002*
    - > *not other regional levels covered*

## Not only 'international' trafficking

- > *essential difference between 'smuggling of persons' and 'trafficking in human beings'*
  - > *smuggling*
    - > *epiphenomenon of migration issue*
    - > *intrinsically having an 'international' dimension*
  - > *trafficking*
    - > *essentially involving exploitation of a person, even when this exploitation takes place within boundaries of a single country (country of destination or transit country)*
    - > *therefore not necessarily having an 'international' dimension*

## Trafficking in 'women and children' (1)

- > *with regard to the fight against trafficking*
  - > *gender-neutral criminal law approach*
    - > *however: particular vulnerability 'women and children'*
    - > *specific attention to (criminal) status of exploitation in prostitution)*
    - > *conclusions and recommendations*
      - > *It is noted that for the sake of substantive criminal law, trafficking is a gender-neutral concept. It is recognized, however, that women are especially vulnerable to trafficking, among others as a result of the feminization of poverty, gender discrimination or lack of educational and professional opportunities in their countries of origin*

## Trafficking in 'women and children' (2)

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- > *with regard to the fight against trafficking*
  - > *age difference-based criminal law approach*
    - > *aggravating circumstances (when the victim of trafficking is a child)*
    - > *constituent elements (no deceit, abuse or coercion required where victim is a child)*
    - > *child pornography (as a form of sexual exploitation trafficking may be aimed at)*

## Background

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- > *causes of (illegal) migration*
- > *smuggling and trafficking*
- > *consequences of (illegal) migration*
- > *consequences of trafficking*
- > *conclusions and recommendations*

## Causes of (illegal) migration

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- > *causes of migration*
  - > *primary factor: disparity in wealth between different countries (N-S & E-W)*
  - > *push-factors (political, socioeconomic or ecological)*
  - > *pull-factors (demand for cheap, illicit or undeclared labour force; social insurance or assistance)*
- > *causes of illegal migration*
  - > *stricter migration policy (Western crisis solution to influx of foreigners)*
  - > *shift from legal to illegal migration*
  - > *transit migration*

## Smuggling and trafficking

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- > *smuggling*
  - > *voluntary contract between migrant and smuggler*
  - > *migrant = client*
- > *migrants increasingly victim of abuse by smugglers*
  - > *dependent and vulnerable position*
  - > *deliberate violation of the contract by the smuggler*
- > *real danger of evolvment into trafficking*
  - > *use of deceit, force or the misuse of vulnerability vis-à-vis the person concerned, with a view to attaining financial or other benefits, irrespective of the crossing of any border (often via debt bondage)*
  - > *trafficked person = victim*

## *Consequences of (illegal) migration*

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- > *uncontrolled migration movements bring along serious problems for the countries involved*
  - > *for sending countries*
    - > *possible loss of human and intellectual potential*
    - > *brain drain*
  - > *for receiving countries*
    - > *negative implications for labour market & competitive position*
    - > *growing presence of (organised) crime*
    - > *social tension, racism and xenophobia*

## *Consequences of trafficking*

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- > *devastating for the migrant/victim*
  - > *subjected to systematic physical and psychological abuse*
- > *infringement upon most fundamental human rights (recognized at international level)*

## Conclusions and recommendations (1)

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- › *It is recognized that migration arises primarily from the disparity in wealth between developed and less developed countries. Consequently, citizens from these less developed countries are more vulnerable to become victims of smuggling and trafficking. The restriction on legal migration creates a market for services that facilitate illegal migration and thus increases the risk for people to be trafficked. Therefore, legal possibilities of immigration should be organized by countries of destination and receiving countries. In setting legal criteria for legal forms of migration, receiving countries should create neutral guidelines that are applied in a non-discriminatory fashion for all migrants, regardless of the migrants' race, religion, gender, political affiliation, social class, economic resources and educational privilege.*

## Conclusions and recommendations (2)

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- › *It is recognized that trafficking in persons is an infringement upon fundamental human rights (such as human dignity, a person's right to freedom, slavery, servitude and forced labour), as they have been embedded in international law and that the effects of trafficking are devastating for the victims.*

## *Need for structural & integrated strategies*

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- > *structural strategies*
- > *short-term integrated strategies*
- > *conclusions and recommendations*
  - > *It is recognized that there is a need for multidisciplinary (legal and non-legal), structural and short-term integrated strategies to combat trafficking in persons*

## *Structural strategies (1)*

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- > *development cooperation (primary prevention)*
  - > *change depending on rationally organised development cooperation and strong political pressure*
- > *collection and exchange of information*
  - > *pooling information among countries of origin, transit and destination = essential first step in filling information gap*
  - > *UN Trafficking & Smuggling Protocol: necessity to collect and exchange information (Art. 10)*
  - > *EU: CIREFI/early warning system + Europol*
  - > *IOM*
  - > *additional empirical research needed*
    - > *all regions (e.g. De Paul project)*

## Structural strategies (2)

- > *information to countries of origin and transit (secondary prevention)*
  - > *dissemination of correct information by informative programs/information campaigns*
  - > *relating to (lack of) opportunities to immigrate in the West*
  - > *raising awareness about possible consequences of ill-considered migration (expulsion; abuse by smugglers, leading to situation of trafficking)*
  - > *channels: distribution of posters and leaflets, broadcasting of television and radio clips, display of videos with testimonies of victims in schools, training/informing specific target groups, financial support for creation and development NGO's active in preventing trafficking*

## Structural strategies (3)

- > *conclusions and recommendations (1)*
  - > *Structural strategies to prevent trafficking include emphasis on promoting cooperation development aimed at enhancing economic opportunities in less developed countries, the pooling of information among countries of origin, transit and destination, dissemination of correct information to countries of origin and transit by informative programs or information campaigns relating to the actual opportunities in terms of residence and living and working conditions and the risk of being abused by smugglers and traffickers*

## Structural strategies (4)

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- > *conclusions and recommendations (2)*
  - > *In the context of the pooling of information among countries of origin, transit and destination, the importance is stressed of setting up organized, binding ways to systematically gather and exchange reliable and comparable data and statistics relating to migration, smuggling and trafficking. The important work already done in this context by various organizations such as IOM, ILO, Interpol, CIREFI and Europol is recognized*

## Short-term strategies (1)

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- > *need for an integrated, multidisciplinary, approach*
  - > *national + international level*
  - > *repression (danger for reverse effect of mere repression) + prevention + victim support*
  - > *multidisciplinarity, also in legal approach*
    - > *immigration and asylum law*
    - > *labour and social security law*
    - > *criminal law*

## Short-term strategies (2)

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- > **conclusions and recommendations**
  - > Short-term strategies should reflect an integrated, multidisciplinary, approach, both at national and international level, taking into account the differences of regional manifestations of trafficking in persons. Such an approach should not only focus on criminal law, but needs to include a preventive dimension, aimed by the means of administrative law, including immigration and asylum law, and labour and social security law

## Immigration and asylum law

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- > prevention of abuses/diversions of the immigration legislation of the countries of destination
- > coordinated at international/regional level
- > usually strict enough
  - > especially after 11 September 2001
- > **conclusions and recommendations**
  - > If specific legislation is passed to allow victims of trafficking to remain in a country's territory, this should not preclude their right to apply for asylum in accordance with the 1951 Geneva Convention and the 1967 Protocol to the Status of Refugees and the principle of non-refoulement

## Labour and social security law (1)

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- > *more control on illegal employment by social inspection*
  - > *especially in prostitution sector*
- > *changes in labour/social security legislation*
  - > *with a view to clearer description of victims' rights*
- > *additional problem for victims employed and exploited in sex industry = UN 1950 Trafficking Convention*
  - > *prostitution, though in itself not punishable, is not being recognised as a proper profession, and therefore only tolerated in practice, whereas guaranteeing a better social status for prostitutes (and, as a result, protection against exploitation) implies regulating/recognizing their profession*
    - > *UN Trafficking Protocol only targets exploitation of another (adult) person's prostitution against her/his will*
    - > *remarkable decision ECJ November 2001 !!!*

## Labour and social security law (2)

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- > *conclusions and recommendations*
  - > *Working conditions and the legal status of employees reflected in the ILO legal instruments should be monitored and enforced, respectively through enhanced social inspection and legislation in order to prevent victimisation*

## Criminal law

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- > *traditional IAPL distinction*
  - > *general principles of criminal law*
  - > *substantive criminal law*
  - > *procedural criminal law*
  - > *international criminal law*
- > *conclusions and recommendations*
  - > *The conclusions and recommendations on criminal law issues are in regard to general principles of criminal law, substantive criminal law, procedural criminal law and international criminal law, in line with the IAPL tradition*

## General principles of criminal law (1)

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- > *penal law = ultima ratio*
  - > *no substitute for structural changes*
- > *liability legal persons*
  - > *important to provide that legal persons can be held liable of (facilitating) smuggling/trafficking (commercial carriers, travel agencies, or - at least for some countries - brothels)*
    - > *UN Trafficking and Smuggling Protocols: criminal, civil or administrative liability*
    - > *EU Framework Decisions on Trafficking and Sexual Exploitation of Children: criminal or non-criminal fines, exclusion from entitlement to public benefits or aid, or the temporary or permanent disqualification from the practice of commercial activities*
    - > *national implementation!*

## General principles of criminal law (2)

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- > *conclusions and recommendations*
  - > As for general principles of criminal law, it is emphasized that criminal law should remain the *ultima ratio*
  - > The importance is stressed of introducing and enforcing criminal, civil or administrative liability for legal persons for (facilitating) smuggling or trafficking in persons (note by discussant: placed at the end of the conclusions and recommendations)

## Substantive criminal law

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- > *distinction between aspects relating to*
  - > *incriminations*
    - > *apart from core offences*
      - > *trafficking and smuggling (1)*
      - > *attention given to related offences, such as*
        - > *facilitating offences, carrier liability and money laundering (2)*
        - > *prostitution (3)*
        - > *child pornography (4)*
    - > *sanctions*

## Trafficking and smuggling (1)

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- > *critically important in the area of substantive criminal law to clearly distinguish between*
  - > *smuggling of persons*
  - > *trafficking in persons*
    - > *only the latter presupposing the use of deceit, the abuse of power or the exercise of coercion by the trafficker*
- > *overview of criminal law definitions of smuggling and/or trafficking as they have been inserted in legal instruments or otherwise discussed at various international cooperation levels (UN, IOM, Group of Budapest, Council of Europe, EU, Schengen)*

## Trafficking and smuggling (2)

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- > *critical discussion focused around the most striking divergences between and questions concerning international definitions*
  - > *with a view to coming to a set of recommendations on the matter, which can also be used at the national level*
- > *various definitions of 'trafficking in persons' and 'smuggling of migrants' sometimes overlap*
- > *boundary between two notions not quite clear*
- > *important for to clearly distinguish between both offences*
  - > *both at EU level and in most EU Member States: acquis*
  - > *UN level: 1st time officially reflected by adoption Smuggling and Trafficking Protocols*
  - > *not in conference questionnaire?*

## Trafficking and smuggling (3)

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- > *conclusions and recommendations*
  - > *The importance is stressed in the area of substantive criminal law to clearly distinguish between smuggling of and trafficking in persons, which for the first time has been clearly reflected at UN level by the adoption in December 2000 of two separate Protocols to the UN Convention against Transnational Organized Crime*

## Trafficking (1)

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- > *international consensus to consider as criminal trafficking*
  - > *the contribution to the illegal entry or stay of a foreigner in a state, either with the use of tricks, violence or coercion, or with the abuse of one's authority or with the abuse of the vulnerable position of this foreigner, for the purpose of sexual exploitation, i.e. with profit motive, and where an organised criminal group is involved*
  - > *the same conduct, when involving a person under the age of consent - and thus irrespective of his/her consent - and where an organised criminal group is involved*

## Trafficking (2)

- > *no coherence whether 'trafficking' should be penalised if*
  - > *the purpose is exploitation in (child) pornography*
  - > *the purpose is labour exploitation*
  - > *the purpose is organ transfer or removal*
  - > *an adult victim has consented*
  - > *a minor victim having reached the legal age limit for having a (part-time) job or having sexual intercourse (which usually is below age of 18) has consented*
  - > *there is no profit motive*
  - > *no border has been crossed*
  - > *the offence is not 'transnational' in nature*
  - > *there is no involvement of an organised criminal group*
  - > *the foreigner (has) legally entered (resides in) the state*
  - > *the victim has the nationality of the state of exploitation*

## Trafficking (3)

- > *conclusions and recommendations*
  - > *It is noted that there is broad international consensus as to the definition of trafficking in persons as exemplified in Article 3 of the UN Trafficking Protocol*
  - > *The importance is stressed for countries in implementing the recent international legal instruments referred to above, to criminalize trafficking for the purpose of sexual exploitation, including exploitation in pornography, labour exploitation, organ transfer or removal and adoption, even where no organised criminal group is involved, no border is crossed, no profit motive is involved or the victim has legally entered, has legal residence in or is a national of the state where the trafficking occurs*

## Smuggling (1)

- > *penalisation is usually due only insofar as*
  - > *a profit motive is involved*
    - > *to be maintained as constituent element of smuggling offence*
    - > *contra: EU Framework Decision on facilitation of unauthorised entry, movement or residence*
    - > *the immigration legislation of a state is violated*
- > *essential also that the migrants themselves are not being incriminated*
- > *involvement of an organised criminal group (as required in the UN Smuggling Protocol)?*
- > *illegal employment of a foreigner also to be regarded as illegal migrant smuggling (Europol)?*

## Smuggling (2)

- > *conclusions and recommendations*
  - > *It is noted that there is broad international consensus as exemplified by the UN Smuggling Protocol that an essential constituent element of smuggling is that a profit motive is involved*
  - > *The importance is stressed for countries in enacting and enforcing smuggling legislation to maintain a balance between security and freedom, and therefore not to incriminate, prosecute or punish persons facilitating illegal entry, stay or residence on the basis of mere humanitarian grounds*

## Facilitating offences and money laundering

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- > *facilitating offences*
  - > *various offences facilitating smuggling or trafficking in persons, such as corruption or - as mentioned inter alia in the UN Trafficking and Smuggling Protocols - the forgery or theft of official documents (passports, visas, ...), have to be targeted as well (indirect preventive effect)*
  - > *'taking away of travel documents' to be made a punishable offence?*
- > *proceeds-orientated approach, including a maximal suppression of money laundering*

## Carrier liability (1)

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- > *profit motive usually not required, unlike for smuggling*
- > *particularly effective way to prevent the illegal entry*
  - > *+ indirectly, to prevent smuggling and trafficking in persons*
  - > *+ reverse effect: Geneva Convention refugees prevented from getting to a country where they can seek asylum*
    - > *EU Council Directive 2001 'that obligation to impose financial penalties upon carriers would not apply if the foreigner is admitted to the territory for asylum purposes' does not exempt carriers to perform preventive checks in countries of origin or transit, resulting in proper Geneva Convention refugees to be prevented to travel to an asylum country of their choice*
    - > *not up to carriers to set up - private! - procedures for distinguishing between travellers according to the likeliness of being granted refugee status*

## Carrier liability (2)

- *conclusions and recommendations*
  - *It is stressed that carrier liability infringes upon the spirit of the 1951 Geneva Convention and that states should therefore not introduce carrier liability, so that refugees would not be prevented from travelling to seek asylum. If states nonetheless introduce carrier liability, the imposition of financial penalties upon carriers should not apply if the foreigner is admitted to the territory for asylum purposes (note by discussant: placed at the end of the conclusions and recommendations)*

## Prostitution (1)

- *1933 International Convention for the Suppression of the Traffic in Women of Full Age*
  - *prostitution stigmatised as to be morally reprehensible + adult women exempted from the right to freely agree to their exploitation in prostitution*
  - *only convention addressed in conference questionnaire*
- *1950 UN Trafficking Convention (1)*
  - *reinforced this attitude towards exploitation of prostitution*
  - *irrefutable presumption that women in prostitution could not have given their consent to such a practice*
    - *fact that the UN Trafficking Protocol only targets the exploitation of another (adult) person's prostitution against her/his will, does not affect that position, as the Protocol does not supersede the 1950 Convention*

## Prostitution (2)

- > 1950 UN Trafficking Convention (2)
  - > *ambiguous attitude towards exploitation of a person's prostitution*
    - > *reflecting a clear abolitionist (not: prohibitionist; opposed to: regulatory and decriminalisation) viewpoint*
    - > *paradoxical situation that being a prostitute is not punishable (irresponsible for his/her actions, the question whether or not he/she has consented with being a prostitute, is irrelevant), whereas all aspects related to working as a prostitute, such as advertising or renting a room for providing sexual services, are (may be intended to protect the prostitutes against exploitation by third persons, the result however being exactly the opposite)*

## Prostitution (3)

- > 1950 UN Trafficking Convention (3)
  - > *clearly maladjusted to changed attitude towards prostitution*
    - > *abolitionist tone should make way for an approach in which the non-coercive and non-abusive employment and organisation of prostitution involving sufficiently mature or non-minors is internationally decriminalised, which requires the UN Trafficking Convention to be amended or, alternatively, to be renounced by the State Parties to it*
  - > *question (similar as for trafficking for the purpose of labour or sexual exploitation)*
    - > *should a minor necessarily be considered to be under the age of consent to prostitute him/herself, where he/she has reached the legal age limit for having sexual intercourse, which usually is set below 18?*

## Prostitution (4)

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- > *legislator and law enforcement attention should be focused on a more efficient and vigorous suppression of forced or abusive exploitation of prostitution, i.e. trafficking in persons for the purpose of sexual exploitation*
- > *in addition, work should be made of the criminality that may accompany the (even non-abusive) exploitation of prostitution, such as migrant smuggling or organised crime*
- > *of course, children below a certain age must be considered not be sufficiently mature to agree to their own exploitation in prostitution*
  - > *principal question in this respect is whether a minor (below 18) is insufficiently mature per se?*

## Prostitution (5)

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- > *conclusions and recommendations (1)*
  - > *In order to enable law enforcement authorities to focus their attention on trafficking of persons for the purpose of sexual exploitation, it may be considered to be an option for some countries, respecting the fundamental principles of their own legal system and their own culture or religion, to decriminalize forms of non-coercive or non-abusive employment in or organisation of prostitution involving adults*

## Prostitution (6)

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- > *conclusions and recommendations (2)*
  - > *To the extent necessary in order for those countries to be able to decriminalize the said forms of employment in or organisation of prostitution, an amendment of the 1950 UN Trafficking Convention should be considered, respecting the fact that a significant number of YP's disagree with one or both of the previous statements; it is recognized that a significant number of YP's from some countries, based upon legal, cultural, religious and/or moral considerations as well as those YP's who view prostitution to be an inherently abusive practice, reaffirm the 1950 UN Trafficking Convention and/or oppose to decriminalization of the organisation of prostitution*

## Child pornography (1)

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- > *overview of international definitions on the matter shows that the discussion is primarily focused around the question to what extent*
  - > *the mere possession, i.e. for personal purposes, of child pornography should be incriminated*
  - > *pseudo or virtual child pornography should be targeted as well*
  - > *pornography-related conduct should be incriminated when the 'child' that is visually depicted has reached the legal age limit for consenting to get involved in sexual activities, e.g. the age of 16 or 14*

## Child pornography (2)

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- > *conclusions and recommendations (1)*
  - > *In the context of trafficking for the purpose of exploitation of persons below the age of eighteen in pornography, it is recognized that*
    - > *the purpose of criminalizing child pornography is to prevent and punish sexual abuse of children*
    - > *the purpose of criminalizing pseudo child pornography is to protect public morals or sexual morality and to prevent child sexual abuse to become socially acceptable; countries that have criminalized or consider to criminalize pseudo-child pornography should see to make it a lesser offence than child pornography involving actual abuse of a child*

## Child pornography (3)

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- > *conclusions and recommendations (2)*
  - > *In the context of trafficking for the purpose of exploitation of persons below the age of eighteen in pornography, it is recognized that*
    - > ...
    - > *the ongoing efforts on the international level to set up an international reference database of child pornographic images to be used in the investigation and prosecution of those involved in child pornography, should be supported*
    - > *the [draft] Council of Europe Convention on Cyber-Crime, which has been negotiated together with non-European countries around the world is an authoritative document on the matter*

## Sanctions (1)

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- > *in so far as the different forms of conduct referred to above should indeed be made or remain criminal offences, dissuasive sanctions should be imposed*
- > *especially when dealing with organised crime, imposition of serious monetary penalties and confiscation of the proceeds of crime are required*
- > *there should also be scope for the closure of places or businesses where victims of trafficking in human beings have been employed against their will, for the confiscation of forged, falsified or stolen passports and other travel documents, and for the restriction or disqualification of the offender's right to exercise professions that are likely to stimulate or facilitate re-offending*

## Sanctions (2)

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- > ***conclusions and recommendations***
  - > *In the context of combating trafficking and smuggling of persons, legislation should provide for the closure of places or businesses where victims of trafficking in persons have been exploited, for the confiscation of forged, falsified or stolen passports and other travel documents, and for the restriction or disqualification of the offender's right to exercise professions that are likely to stimulate or facilitate re-offending*

## Procedural criminal law (1)

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- > importance of proper procedural status for victims of trafficking, especially when cooperating with justice
  - > rights victim during the criminal trial should be developed (free legal counsel; interpreters, separate waiting rooms)
  - > opportunity for NGO's to participate in a criminal trial and to claim damages in the name and for the sake of the victim
  - > working permit and/or financial support (contributions in medical costs or minimum allowances) for victims while staying in the country
  - > more shelters + extension medical/psychological/social care
  - > sensitizing, training, awareness raising among professionals
  - > witness protection programs to be developed/implemented
  - > important chapter on the protection of victims in UN Trafficking Protocol (Art. 6) (important Belgian impulse)

## Procedural criminal law (2)

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- > above measures only effective provided that a system of granting temporary or permanent residence permission is introduced for victims willing to cooperate with justice
  - > see Art. 7 UN Trafficking Protocol
  - > EU: draft Directive 11/02/02 on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities (binding character upon MS)
- > if not allowed to permanently stay: repatriation issue
  - > Art. 8 UN Trafficking Protocol
  - > as repatriation must preferably happen voluntarily, a reintegration premium for the victims could be considered
    - > strict conditions required in order to prevent abuse, e.g. by paying premium under NGO supervision/guidance

## Procedural criminal law (3)

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- > *conclusions and recommendations (1)*
  - > *Recalling Article 6 of the UN trafficking Protocol, it is stressed that it is critically important to create a proper procedural status for the victims of trafficking in persons, especially when co-operating with justice*
  - > *The rights of the victim during the criminal trial must be developed, NGO's should be given opportunity to participate in a criminal trial and to claim damages in the name and for the sake of the victim, working permits, financial support, shelters and extension of medical, psychological and social care should be provided*

## Procedural criminal law (4)

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- > *conclusions and recommendations (2)*
  - > *Witness protection programs must be developed and implemented and there must be sensitizing, training and awareness raising among official authorities (such as police and immigration officials, prosecutors and judges) as well as social workers, doctors and lawyers*
  - > *If repatriation is desired by the victim, a reintegration premium for victims should be considered, the payment of which may be supervised by NGO's*
  - > *As addressed earlier, temporary or permanent residence permission must be provided for victims of trafficking regardless of their co-operation with justice*

## *International criminal law*

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- > *distinction between issues on*
  - > *jurisdiction*
  - > *international cooperation in criminal matters*
- > *conclusions and recommendations*
  - > *distinction between*
    - > *substantive international criminal law*
      - > *It is recalled that the Rome Statute for the ICC recognizes that trafficking in persons, in as far it constitutes enslavement, rape, sexual slavery, forced prostitution or any other form of sexual exploitation of considerable gravity, in line with the conditions set out in Article 7 of the Statute, can be regarded as a crime against humanity*
    - > *procedural international criminal law*
      - > *jurisdiction*
      - > *international cooperation in criminal matters*

## *Jurisdiction (1)*

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- > *traditionally embedded in instruments concerned*
  - > *mandatory territorial jurisdiction*
  - > *extra-territorial jurisdiction on the basis of active personality principle*
  - > *aut dedere aut judicare principle*
    - > *in some cases limited to cases where extradition has been refused solely because the person concerned is a national of the requested state*
  - > *in some cases, express mention is made of the possibility to claim jurisdiction on the basis of the passive personality principle*

## Jurisdiction (2)

- › *none of the international legal instruments calls for universal jurisdiction*
  - › *for the offences of trafficking, smuggling, sexual exploitation or child pornography*
- › *whereas in a number of cases, universal jurisdiction for the offences concerned has (recently) been introduced at national level, often even in a quite absolute way*
  - › *no requirement of traditional conditions such as: double criminality, the receipt of an official complaint from the foreign authority or victim, the presence of the foreign offender in the state's territory*
- › *mandatory extension of extra-territorial jurisdiction claims to offences committed for benefit of a legal person established in a state's territory, should be envisaged*

## Jurisdiction (3)

- › *conclusions and recommendations*
  - › *In the context of extra-territorial jurisdiction, given the truly international character of trafficking in persons touching one of the core interests of the international community, states are called upon to consider the possibility of introducing universal jurisdiction under conditions, the basic condition being the presence of the suspect on their territory. Taking into consideration that such a jurisdiction can - until now - not be considered as an obligation under international conventional law, states are urged to provide at least for extra-territorial jurisdiction for trafficking and smuggling offences committed for the benefit of legal persons established within a state's territory and by persons having permanent residence in their states. States are urged to find better methods/rules to solve conflicts of jurisdiction*

## International cooperation (1)

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- › importance of inserting provisions allowing for video (or telephone) conference hearing of victims who have returned to their country of origin in both multilateral conventions that specifically have regard to the issue of trafficking in persons and in bilateral conventions concluded with traditional sending countries
- › importance of involvement of/cooperation with/between customs authorities often overlooked
- › recourse to controlled deliveries in the fight against international trafficking and smuggling?
  - › to be evaluated in the light of the intrinsic risk in allowing an illegal consignment or transport of persons to pass out of, through or onto the territory of one or more states, without promptly intervening

## International cooperation (2)

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- › **conclusions and recommendations**
  - › It is stressed that it is important to
    - › insert provisions allowing for video (or telephone) conference hearing in order to collect evidence in trafficking cases in multi- and bilateral conventions as well as in national legislation
    - › enhance international co-operation in the context of witness protection, including the possibility of relocating victims abroad
    - › not to permit controlled deliveries of persons