



# Evolution and Strengthening in the Fight against Trafficking in Human Beings in International and EU Law

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# 1. The phenomenon of trafficking in the international law

- The phenomenon of trafficking in human beings found their roots in ancient times
- the first international sources on the subject referred to **trafficking of white women** and then of **children for the purpose of sexual exploitation**, as well as **slavery, servitude** and **forced or compulsory labour**.

See:

- **The 1904 International Agreement for the Suppression of the White Slave Traffic**
- **The 1920 International Convention for the Suppression of the Traffic in Women and Children**
- **The 1933 International Convention for the Suppression of the Traffic in Women of Full Age**
- **Repressive approach**

- The **1949 International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others** obliged States parties to punish those who, to gratify passions others:
  - 1) Procure, lure or kidnap, in order to send her to prostitution, another person also with the consent of this.
  - 2) Exploit the prostitution of another person, even with the consent of this
- The 1949 Convention introduced also **some provisions relating to the protection of victims (articles 16, 17 and 19)**
- The **1929 Slavery Convention**: Article 1 (2) “The slave trade includes all acts involved in the **capture, acquisition or disposal of a person** with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view **to selling or exchanging** him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”
- The **1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery**

- The **1948 Universal Declaration of Human Rights** : “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (article 4)
- The **1966 International Covenant on Civil and Political Rights** provides for the right to be free from slavery or servitude, as well as forced and compulsory labor (article 8)
- The **1979 Convention on the Elimination of All Forms of Discrimination against Women** in Article 6 obliges States parties to adopt: "All appropriate measures, including legislation, to **suppress all forms of traffic in women and exploitation of prostitution of women**"

- The 1979 Convention, **although limited to women:**
  - cracks down **trafficking in all its forms and not only for the purpose of sexual exploitation;**
  - **establishes a Committee for the elimination of discrimination against women;**
  - This Committee adopted a broad interpretation of article 6, extending its scope to: "In addition to established forms of trafficking ... new forms of sexual exploitation, such as **sex tourism, the recruitment of domestic labor from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals**" (Recommendation No. 1930).
- **The 1989 Convention on the Rights of the Child:** "All appropriate national, bilateral and multilateral measures to prevent the abduction of, **the sale of or traffic in children for any purpose or in any form**" (Article 35)
- Here the reference to a broad definition of trafficking is more explicit

Some common aspects:

- Many of the Conventions expressly oblige States to configure **trafficking as a crime and to punish the perpetrators;**
- **the adoption of measures for the exchange of information in the course of investigations;**
- **the extraditability of the guilty;**
- **the principle of *aut dedere aut iudicare* (article 9 of the 1949 Convention: “In States where the extradition of nationals is not permitted by law, nationals who have returned to their own State after the commission abroad of any of the offences referred to in articles 1 and 2 of the present Convention shall be prosecuted in and punished by the courts of their own State”).**

Nevertheless, the **punishment of the guilty still remains essentially a state matter**

- **The 1998 Statute of the International Criminal Court (ICC)**
- **The crime of trafficking of human beings has been included in the crimes against humanity**, falling within the notion of "enslavement", as provided in letter c) of the second paragraph of article 7. Pursuant to this article, a reduction in slavery means:  
"The exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children"
- The recognition of trafficking as a possible form of reduction into slavery.

Nevertheless,

- The ICC may exercise its jurisdiction **if States are Parties to the Statute or have accepted the jurisdiction of the Court;**
- The jurisdiction concerns **"acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack"** that is generally required for all crimes against humanity (article 7, par. 1).



- **The 1999 ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour**
- According to Article 3, for the purposes of this Convention, the term the worst forms of child labour comprises:
  - (a) all forms of slavery or practices similar to slavery, such as **the sale and trafficking of children**, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
  - (b) the use, procuring or offering of a child for prostitution, for the production of **pornography or for pornographic performances**;
  - (c) the use, procuring or offering of **a child for illicit activities**, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
  - (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

- **The 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**
- Pursuant to article 2, “**sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration**”
- **Article 3 contains a minimum list of acts** that States Parties undertake to make criminally punishable, whether they have been carried out by an individual or an organized group, within the same State or not.

These acts include:

- i) offering, delivering or accepting, by whatever means, a child for the purpose of:
  - a) Sexual exploitation of the child;
  - b) Transfer of organs of the child for profit;
  - c) Engagement of the child in forced labor;
- ii. Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
  - b) Offering, obtaining, procuring or providing a child for child prostitution.

- **Article 4 establishes additional connection criteria for the jurisdiction**
- Article 5 considers the offences of article 3 as **extraditable offences**
- Article 8 provides **a list of specific measures for the protection of victims during criminal proceedings**
- For the first time, repressive measures **have been supplemented with "positive" measures**

## 2. The Turning Point of the Palermo Convention

- **With the** Resolution n° 55/25 of 15 November 2000, General Assembly adopted:
  - I. **The 2000 United Nations Convention against Transnational Organized Crime** (the so-called **Palermo Convention, Annex 1**) with two Protocols:
  - II. **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**, supplementing the United Nations Convention against Transnational Organized Crime (Annex II);
  - III. **Protocol against the Smuggling of Migrants by Land, Sea and Air**, supplementing the United Nations Convention against Transnational Organized Crime (Annex III).

- The purpose of the Palermo Convention is **to promote cooperation to prevent and combat transnational organized crime more effectively** (article 1).
- **“organized criminal group”** (Article 2, paragraph a): “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”
- the definition of transnational nature of the offence (article 3, paragraph 2): **"An offence is transnational in nature if:**
  - a) It is committed in more than one State;
  - b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
  - c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
  - d) It is committed in one State but has substantial effects in another State“.

- This is obviously a very broad definition
- Pursuant to letter c), also an offense entirely carried out within the borders of the same State can be transnational **if a criminal organization that operates abroad is involved in its realization**
- Similarly, pursuant the provision of letter d), the use of the coordination mechanisms provided for by the Convention allows investigating a crime of trafficking, which although purely internal, generates substantial effects in other countries, as often happens, for example, **if the victim is a foreigner**

## The 1<sup>st</sup> Protocol (i.e. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children)

- **Purposes** : (a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives (article 2)
- **an exhaustive definition of “Trafficking in persons”**: “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (article 3)
- **an entire section dedicated to the protection of victims**, although according to measures adopted by states at our discretion (Section II, articles 6, 7 and 8)
- **status of the refugee**: victims of trafficking may be granted this status, and therefore, in particular, the right not to be repatriated, where they have reason to fear being persecuted time at home (article 14)

## The relationship between the Convention and the 1<sup>st</sup> Protocol

- This Protocol supplements the United Nations Convention against Transnational Organized Crime and is **interpreted together** with the Convention. The provisions of the Convention apply, mutatis mutandis, to this Protocol unless **otherwise provided herein**.
- This Protocol shall apply, **except as otherwise stated herein**, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences (article 4).



## The 2<sup>nd</sup> Protocol (i.e. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children)

- **the first universal instrument that addresses all aspects of smuggling of migrants and other related issues**
- Operating at a transnational level, these criminal groups "**offer the service**" to cross illegally the borders of another State or of several States
- **trafficking of migrants (so-called smuggling):** the offender performs a function similar of an agency that offers services completely disinterested in the future of persons transported; thus a "commercial" relationship is established
- **trafficking in human beings (so-called trafficking):** there is no stipulation between the criminal and the victim and the fate of the "goods" has a fundamental importance for the trafficker, since the real gains derive from their future employment (prostitution, illegal work, child pornography, etc.)

- **there are significant differences between trafficking of migrants and trafficking in persons**
- **trafficking of migrants (or smuggling)** is sanctioned in Italian legal order by article 12 paragraph 3 and following paragraphs of Legislative Decree 286/1998
- **trafficking in persons** is sanctioned by articles 600, 601 and 602 of the criminal code in the various slavery reduction conducts, trafficking in human beings and the slave trade

### 3. A look at the European Sources

- **Article 4 of the European Convention on Human Rights – Prohibition of slavery and forced labour**
- [https://www.echr.coe.int/Documents/Guide\\_Art\\_4\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_4_ENG.pdf)
- **The 2005 Convention on Action against Trafficking in Human Beings (Warsaw Convention), which establishes:**
  - **a comprehensive treaty** focusing on the protection of victims and the safeguarding of their rights as well as on preventing trafficking and prosecuting those responsible for it;
  - **an effective and independent monitoring mechanism**
- **The 2007 Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (The Lanzarote Convention)**

## 4. The fight against trafficking in human beings in the EU legal order

- The fight against trafficking in human beings is formally included within **the Maastricht Treaty in the context of the so-called Third pillar dedicated to Justice and Home Affairs (JHA)**
- Because of the communitarisation of visa, asylum and immigration matters, **the Amsterdam Treaty renamed the third pillar as Provisions on police and judicial cooperation in criminal matters**
- According to Article 29 TEU: “.. the Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing **common action among the Member States in the fields of police and judicial cooperation in criminal matters ...**” **by preventing and combating** crime, organized or otherwise, in particular terrorism, **trafficking in persons** and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, **through:**
  - **closer cooperation between police forces**, customs authorities and other competent authorities in the Member States, both directly and through the **European Police Office (Europol)**;
  - **closer cooperation between judicial and other competent authorities** of the Member;
  - **approximation, where necessary, of rules on criminal matters** in the Member States, but in accordance with article 31 TEU.

- According to Article 31 TEU **common action on judicial cooperation in criminal matters included:**
  - a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to **proceedings and the enforcement of decisions;**
  - b) facilitating **extradition between Member States;**
  - c) ensuring **compatibility in rules applicable in the Member States**, as may be necessary to improve such cooperation;
  - d) preventing **conflicts of jurisdiction** between Member States;
  - e) progressively adopting measures **establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.**
- Trafficking in persons was not included among the letter e).

- Nevertheless, Article 29 led to **the adoption of some common actions**, such as:
- 96/700/JHA: Joint Action of 29 November 1996 adopted by the Council establishing **an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children** (Official Journal L 322 , 12/12/1996 P. 0007 – 0010)
- 97/154/JHA: Joint Action of 24 February 1997 adopted by the Council concerning action to **combat trafficking in human beings and sexual exploitation of children** (OJ L 63, 4.3.1997, p. 2–6) which defined “trafficking”, as any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of a Member State, with a view to sexual exploitation or abuse” (article 1)

## Resolution of the European Parliament of 19 May 2000 on the communication from the Commission to the Council and the European Parliament 'For further actions in the fight against trafficking in women' (COM(1998) 726 - C5-0123/1999 - 1999/2125(COS) ) Date :19-05-2000 P5\_TA(2000)0248

1. **Condemns trafficking in women and children as an intolerable violation of fundamental human rights and consequently as a criminal act** and stresses that such violations take place increasingly and repeatedly on EU territory;
2. Welcomes the Commission communication which confirms the commitment to keep high on **the Union's political agenda the fight against trafficking in women and children**, and expects practical actions/initiatives;
3. Points to the **links between trafficking in persons, migration and asylum policies**; calls on the Commission to analyse the extent to which immigration laws and practices in the EU contribute to trafficking and calls for a specific approach to trafficking in women beyond irregular migration issues;
4. Urges the **Commission to take full advantage of all the possibilities afforded by Articles 30, 31 and 34 of the Treaty on European Union to combat trafficking in human beings for the purposes of sexual exploitation**;

5. **Calls on the IGC to insert in the Treaty a clear legal basis for combating all forms of violence against women, including trafficking in women, at the same time as integrating police and judicial cooperation into the Community pillar in order to achieve greater legislative coherence and stronger democratic controls;**
  
6. **Recommends a common EU policy focused on a legal framework, on law enforcement, on measures to combat and punish offenders, on prevention and on protection of and support for victims;**
  
7. **Believes that a clear and harmonised definition of trafficking is a pre-condition for effectively countering trafficking in women and that such definition should cover all slavery-like practices besides forced prostitution and sexual exploitation, e.g. forced labour and forced marriage;**



- **2002/629/JHA: Council Framework Decision of 19 July 2002 on combating trafficking in human beings (This is no longer in force)**
- human trafficking in terms of **sexual exploitation and labour exploitation**
- a **framework of measures** to be adopted at European level, such as criminalisation, the severity and nature of punishments and prosecution as well as protection of and assistance to victims
- “(7) It is necessary that the serious criminal offence of trafficking in human beings be addressed not only through individual action by each Member State but **by a comprehensive approach in which the definition of constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, forms an integral part**
- (8) It is necessary to introduce sanctions on perpetrators sufficiently severe to **allow for trafficking in human beings”**
- Another examples are: **2004/68/JHA: Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography** and **2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (no longer in force)**

## 4.1. The novelties of the Lisbon Treaty

- Article 79, par. 1, TFEU: «1. **The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.**
- 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall **adopt measures** in the following areas:
  - (d) **combating trafficking in persons, in particular women and children.**

- According to **article 83 TFEU** (which replaced article 31 TEU): 1. The European Parliament and the Council may, by means of **directives** adopted in accordance with the ordinary legislative procedure, establish **minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting** from the nature or impact of such offences or from a special need to combat them on a common basis.
- **These areas of crime are the following:** terrorism, **trafficking in human beings and sexual exploitation of women and children**, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.
- **Trafficking in human beings is now included among the particularly serious form of organised crime.**
- It is **highly lucrative form of transnational organised crime, with links to immigration policy (Article 79).**
- It is included in the **judicial cooperation on criminal matters** and as such, the EU institutions can adopt **procedural (article 82 TFEU), as well as substantial rules in the fight against this crime (article 83 TFEU).**

- **Article 5 of the EU Charter of Fundamental - Rights Prohibition of slavery and forced labour**
  1. No one shall be held in slavery or servitude
  2. No one shall be required to perform forced or compulsory labour
  3. **Trafficking in human beings is prohibited**
- According to the Explanation on article 5: **“Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks...”**

## 4.2. The Anti-Trafficking Directive and Other Complementary Directives

**2002/629/JHA: Council Framework Decision (replaced by →)**

**Directive 2011/36/EU** of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

- **binding legislation** to prevent trafficking, to prosecute criminals effectively and better to protect the victims
- the new crime of trafficking in human beings seems to **cover all the hypotheses**

## Complementary Directives

- **2004/68/JHA: Council Framework Decision (replaced by →)**
- **2001/220/JHA: Council Framework Decision (replaced by →)**
- **Directive 2011/93/EU** of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA
- **Directive 2012/29/EU** of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Some other legislation relating to the trafficking in human beings:

- **Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence**
  - **assisting irregular migration**
  - appropriate penalties against those who attempt, instigate or commit the infringement of assisting irregular migration procedures
  - punishment assisting irregular migration for financial gain no matter whether a criminal organisation is involved or not
- **Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals**
  - cooperation among Member States to tackle illegal immigration
  - measures against illegal employment should be intensified at Member State and EU level

- **Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims**
  - national scheme in place which guarantees appropriate compensation to victims of crime, including victims of human trafficking
  - easily accessible compensation
  - Creation of national systems for cooperation between relevant national authorities



## 5. Interoperability between EU information systems

**Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816**

- **Interoperability between EU information systems**, namely the Entry/Exit System (EES), the Visa Information System (VIS), the European Travel Information and Authorisation System (ETIAS), Eurodac, the Schengen Information System (SIS), and the European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN) should be established in order for these EU information systems and their data **to supplement each other while respecting the fundamental rights of individuals, in particular the right to protection of personal data**

- Establishment of a **European search portal (ESP)**, a **shared biometric matching service (shared BMS)**, a **common identity repository (CIR)** and a **multiple-identity detector (MID)** as interoperability components
  
- **Purposes:** With a view to improving the effectiveness and efficiency of **checks at the external borders**, to contributing to prevention and combating **illegal immigration** and to contributing to a **high level of security** within the area of freedom, security and justice of the Union, including the maintenance of public security and public policy and safeguarding security in the territories of the Member States, to improving **the implementation of the common visa policy**, to assisting in **the examination of applications for international protection**, to contributing to the prevention, detection and investigation of **terrorist offences and other serious criminal offences**, to **facilitating the identification of unknown persons who are unable to identify themselves or unidentified human remains in the case of a natural disaster, accident or terrorist attack**, in order to maintain public trust in the Union migration and asylum system, Union security measures and Union capabilities to manage the external border

## 6. The implementation in the Italian Legislation and the Adoption of Precautionary Tools

- Pursuant to the **Law 11 August 2003, n. 228**, articles already relating to the reduction into slavery were rewritten (articles 600, 601 and 602 c.p.)
- **The Law 2 July 2010, no. 108:**
  - **ratified the Council of Europe Convention on the fight against trafficking in human beings of 2005** (the so-called Warsaw Convention), consequently adapting the internal order
  - introduced a new article in the criminal code, entitled **Aggravating circumstances (art. 602-ter)**. This article has also been modified by **the Law 1<sup>st</sup> October 2012, no. 172 of ratification of the Lanzarote Convention**
- **The Legislative Decree 4 March 2014, no. 24** implemented the Directive 2011/36/EU

## Precautionary tools adopted by the Italian law

- establishment of the **Fund for anti-trafficking measures** at the Presidency of the Council of Ministers
- **the financing of assistance and social integration programs in favor of victims of crimes as well as the other purposes of social protection provided for by article 18 of the consolidated text of the provisions concerning the immigration regulations and rules on the condition of the foreigner**
- **the establishment of a special assistance program for the victims of the offenses of reduction or maintenance in slavery or servitude (art. 600 of the criminal code) and trafficking in persons (art. 601), in order to ensure, on a temporary basis, adequate conditions of accommodation, food and health care**
- the provision of **special cooperation policies towards the countries affected by the crimes**, to be implemented by the Ministry of Foreign Affairs
- **The Department for Equal Opportunities of the Presidency of the Council of Ministers** is the body responsible for carrying out the indicated competences

## 7. Conclusions

- The discipline of human trafficking is mainly the **result of the implementation of EU, as well as international conventions**
- **Trafficking in human beings is therefore a complex phenomenon**, given that the displacement, deception and exploitation of victims is hidden in the processes of illegal immigration, as well as in other criminal circuits, such as the unprotected labor market
- Often **trafficking and smuggling tend to merge**
- In fact, persons initially requesting only the service of illegal immigration into a State, later become victims of trafficking and the subject of exploitation