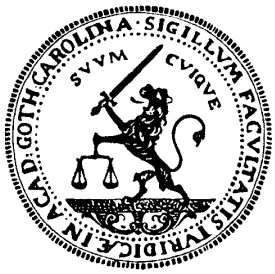

FACULTY OF LAW
University of Lund

Ulrika Lassborn Arntell

Trafficking in Women

as an International Crime

Master thesis
20 points

Supervisor:
Professor Göran Melander

International Humanitarian Law and International Criminal Law

Autumn 2002

Contents

Abstract

Title: Trafficking in Women as an International Crime

Author: Ulrika Lassborn Arntell

Supervisor: Professor Göran Melander

Purpose: The purpose of this essay is foremost to examine the international need and actual enforcement possibilities to prevent, prosecute and punish trafficking in women. Moreover the opportunity and obligation for domestic courts to prosecute trafficking as an international crime in line with international law is examined. Finally the question whether it is possible to prosecute trafficking in human beings as a crime against humanity under the Rome Statute and the applicability of the jurisprudence developed at the *ac hoc* War Crime Tribunals ICTY and ICTR.

Method: To reach the purpose of the essay legal material as well as reports from IGOs and NGOs has been carefully studied in order to get a reliable picture of trafficking in women, the extent of the problem and legal developments towards an effective prohibition.

Conclusion: The legal instruments suppressing trafficking are not sufficient, either internationally or nationally. The 2000 Trafficking Protocol is an important landmark since it provides the first uniform international definition of trafficking in human beings. Furthermore all states have jurisdiction over trafficking as an international crime according to the principle of universality. It is also important to develop state authority co-operation, efficient domestic and international legislation as well as more effective investigative and executive measures. The traffickers must be punished while the victims must be ensured individual protective measures. As a result confiscation clauses has proved to have an deterrent effect. Funds available are used for victims protection programmes.

Trafficking in human beings can be prosecuted as a crime against humanity under the Rome Statute. The ICC and national courts should be able to use jurisprudence developed at the ICTY and ICTR on enslavement and sexual enslavement when prosecuting the crime of trafficking as a crime against humanity. Although the ICC have universal jurisdiction the principle of complementarity is stressed.

Abbreviations

CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CoE	Council of Europe
CTOC	United Nations Convention against Transnational Organized Crime
ECHR	The European Convention of Human Rights
EU	The European Union
GA	United Nations General Assembly
ICC	The International Criminal Court
ICTR	The International Criminal Tribunal for Rwanda
ICTY	The International Criminal Tribunal for the former Yugoslavia
IGO	Intergovernmental Organisation
ILC	UN International Law Commission
IOM	International Organisation for Migration
NGO	Non Governmental Organisation
ODCCP	United Nations Office for Drug Control and Crime Prevention
ODHIR	Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE)
OSCE	Organization for Security and Co-operation in Europé
PCNICC	United Nations Preparatory Commission for the International Criminal Court
RPE	Rules of Procedure and Evidence
SC	United Nations Security Council

1 Introduction

1.1 Purpose and delimitation

The purpose of this essay is mainly to examine the need, and actual enforcement possibilities to prevent, prosecute and punish trafficking in human beings on an international level. The essay will further discuss the development of criminal state co-operation on prevention, prosecution and punishment of traffickers in relation to regional and universal measures against trafficking. Thereafter the possible obligation for domestic courts to prosecute trafficking as an international crime in line with international law will be examined. Finally the question whether it is possible to prosecute traffickers in human beings, as a crime against humanity will be analysed. Whether crimes against humanity are customary international law and independent of state ratification, will further be discussed in relation to jurisprudence from the ad hoc courts ICTY and ICTR.

In this essay trafficking in persons will be limited to *trafficking of women for the purpose of forced prostitution* as the International Community defines it. The essay will only discuss the criminal perspectives of the problem, and therefore just deal slightly with the human rights aspects and only in relation to the criminal aspect. Since trafficking is discussed as an international crime, domestic legislation is excluded in the essay.

1.2 Method and material

The essay is both descriptive and analytical. The descriptive part is based on reports from NGO's and IGO's in order to get a reliable picture of the phenomenon of human trafficking, the extent of the problem, how it works and whom it involves. The analytical part of the crime of trafficking in women is analysed according to the judicial method. Primarily I have used international human rights conventions as sources for the examination of the problem. I have interpreted the conventions literally, read in the context of the purpose and preamble of the convention in question. Relevant state practise is taken into account. As supplementary means of interpretation of the conventions I have used non-binding documents from NGO's and IGO's as well as opinions from scholars.

To reach the purpose of the essay I have studied current information from NGO's and IGO's. Moreover I have tried to critically evaluate existing legal sources, literature and journals, to enable a correct presentation of the problem. In order to get a reliable picture of the ICC's future function, I have analysed the Rome Statute and its preparatory work. Further I have applied relevant material and jurisprudence from the ad hoc courts, ICTY and ICTR, on the possibility to prosecute trafficking as an international

crime. Lastly, I have studied possible state obligation to investigate and prosecute international crimes, and compared it to the work of the ICC.

1.3 Disposition

The essay is divided into the following chapters:

1. Introduction	Introduction of the subject matter. Presentation of the problem and the purpose of the essay.
2. Background	Presentation of the trafficking process, its root causes, patterns and practices and legal consequences.
3. Legal sources	Presentation and analysis of relevant legal material.
4. International measures	Presentation and assessment of information from NGOs and IGOs.
5. Jurisprudence	Presentation of international jurisprudence on crimes against humanity. Discussion of possible implementation of the jurisprudence on the crime of trafficking.
6. Domestic courts	Discussion of state obligation to prosecute international crimes.
7. Conclusions	Conclusion of the results from the analytical parts of the essay. Proposals for the i) possible solutions, ii) further research/studies of the problem.

2 Trafficking in women

2.1 Definition of Trafficking in Women

For a long period of time the lack of an authoritative definition of trafficking in women has made many instances of the trafficking process unseen, unexposed and unaddressed. A uniform definition has been highly desirable for many reasons, foremost to suppress all forms of trafficking and to prosecute all actors in the trafficking chain. The recently adopted *UN Convention against Transnational Organized Crime (CTOC)* and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*[1] provides for the first universally accepted definition of trafficking in women. It was adopted by the General Assembly at its Millennium meeting in November 2000, and was opened for signatures in Palermo in December 2000. The Convention and its two additional protocols on trafficking in human beings and the smuggling of migrants, provides for the first legally binding UN instrument in the field of crime. The protocol on trafficking in human beings, provides for the first unanimous definition of trafficking in human beings. The Convention and its Protocols though must be signed and ratified by 40 countries before it enters into force.[2] The Convention has been signed by 143 but only ratified by 27 countries, while the Trafficking Protocol has 110 signatories and only 20 State Parties.[3]

Both trafficking in human beings and smuggling of persons are forms of illegal migration. Therefore it is important to separate these two from each other, although they have common elements they differ. The common definition of trafficking in women used in this essay, is the definitions in the CTOC and its protocols.[4]

The definition gaining authority through the 2000 UN Trafficking Protocol, trafficking in persons shall mean:

> "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution

[1] The United Nations Convention against Transnational Organized Crime (CTOC) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Article 3 (a), signed in Palermo in November 2000.
[2] CTOC Article 38.
[3] http://www.odccp.org/odccp/crime_cicp_signatures.html, December 1st, 2002.
[4] Aronowitz, Alexis A, *Smuggling and trafficking in human beings; the phenomenon, the markets that drive it and the organisations that promote it*, 2001, p. 163-167.

> of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."[5]

The common criteria for trafficking in persons are: i) transportation of a person, either within a country or across national borders, ii) through coercion, deception or some other form of illicit influence, and iii) with the purpose of exploitation of the victim in some form.[6]

While smuggling in persons constitute a crime against the state, trafficking is first and foremost a crime against the victims.[7] There are mainly four elements that differentiate smuggling from trafficking: first of all smuggled persons always travel voluntarily, trafficked persons can either travel voluntarily or have been coerced or kidnapped; secondly trafficked persons are used and exploited over a long period of time; thirdly an interdependency occurs between the trafficked person and organised crime groups; lastly trafficked persons are eligible for further networking, i.e. recruitment for criminal purposes.

One could also talk about *smuggled persons* in relation to *trafficked victims* to understand the difference in these two ways of illegal migration. The distinction between smuggled persons and trafficked victims can only be determined after the arrival in the destination country. First then it is possible to see if the person is free to walk from the smuggler or placed in a situation where she is exploited. A smuggled migrant is easily transformed to a situation of trafficking where initial consent is invalidated through the use of deception or coercion. It is first at this stage that the smuggled person becomes a trafficked victim.[8]

2.2 The Root Causes of Trafficking in Women

The root causes of migration and trafficking overlap to a great extent. The causative factors of human trafficking are political and economical as well as social and legal. Usually the victims of trafficking are the most disadvantaged group of persons in their own countries, poor job skills or little chance of successful employment at home. The victims are often members of the weaker social groups in the society, i.e. women and children. The primary causative factor is the lack of rights provided for these groups. Persons fleeing war zones or political or racial persecution may be better educated, but as soon they choose the service of illicit channels to

[5] Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 3 (a), 2000.
[6] Swedish Ministry of Foreign Affairs, *Trafficking in Women and Children in Asia and Europe, a background presentation of the problems involved and the initiatives taken*, 2001, p. 6.
[7] OSCE Conference Report, *Europe Against Trafficking In Persons*, 2001, p. 99.
[8] Aronowitz Alexis A, *Smuggling and trafficking in human beings; the phenomenon, the markets that drive it and the organisations that promote it*, 2001, p. 165-167.

enter a country, they are put into a situation of total dependence which may result in major human right abuses.[9]

To illustrate the problem, one can mention the Balkans where a pattern can be seen, namely when the international community started to move into the conflict areas. A few weeks after humanitarian help organisations and UN peacekeeping forces arrived in Bosnia, 40 bars or brothels were opened around the UN area.[10] If this shows that individuals of UN Member States working for peace, whether its in democracy programs, peace keeping- or other aid programs are contributing to the trafficking process as demanders in the trafficking and prostitution market, I do not know. Under any circumstances it definitely shows that the suppression of trafficking is not treated with priority in the aftermath of armed conflicts. As the Chief of Police in Serbia once stated: "Prostitution is the oldest profession in the world. How can we stop it now?"[11] Authorities seem to use such a phrase as an excuse for inaction on sex crimes.

Women who refuse to co-operate with the traffickers are often beaten and sexually assaulted in order to break down their self-esteem. They are warned that if they go to the police they will be arrested for illegal immigration or prostitution, and that the police are corrupted. The women, who often has experienced such corrupt state authorities, believe the threats which hinder them from coming forward. This pattern is not only referable to former Yugoslavia, but to all countries where trafficking in human beings exists, whether it is a country of origin, -transit or -destination.[12]

There are many underlying factors that contribute to the phenomenon of trafficking. These are for example poverty, migration, lack of education, political change and economic regression, globalisation, the demand for sex-related services organised crime and trafficking networks. Women and children are the groups most vulnerable to trafficking given their limited resources and low status in society. The women who become victims of trafficking are usually from low-income families without any education. Women from ethnic minority groups also seem to be at high risk, and the overall age of trafficked persons is falling dramatically. As a consequence of restrictive migration policies in many countries regular migration has declined and illegal migration has increased. This trend has affected both trafficking and smuggling in persons.[13]

---

[9] Ibid, p. 167.
[10] Quote: Zillén Eva, Kvinna till Kvinna, UPF Seminar, 2002.
[11] Kate Holt, *Captive Market*, 2001, p.49.
[12] BRÅ Rapport, *Organiserad brottslighet-lösa maskor eller fasta nätverk*, 2002, p. 28-30.
[13] Swedish Ministry of Foreign Affairs, *Trafficking in Women and Children in Asia and Europe, a background presentation of the problems involved and the initiatives taken*, 2001, p. 6-7 and 13.

2.3 Common Patterns and Practices of the Trafficking Process in Europe

Trafficking in human beings, *modern day slavery*, includes all actions along the trafficking chain, from the initial recruitment or abduction of the trafficked person to the exploitation of the victim's person or labour.[14] Most of the trafficking routes go from rural to urban areas and from poorer to wealthier regions. Trafficking is also common within a country's borders between different regions. Different countries or regions serve for different purposes in the trafficking chain, either as origin-, transit- or destination countries. People move away from areas affected by armed conflict, environmental disaster or plain lack of wealth. There are generally three different types of operations in which women are trafficked, firstly through organised international trafficking networks, secondly through local trafficking rings and thirdly through occasional traffickers. In Europe the organised international trafficking networks dominate. The main destination countries in Europe for trafficked women are the countries in Western Europe, while the main countries of origin are the countries in Central, Eastern and South-eastern Europe.[15]

2.4 The Legal Consequences for Victims of Trafficking

The legal consequences for the victim of trafficking depend on the legislation both in the country of destination and in the country of origin. In a majority of destination countries trafficking is primarily seen as illegal migration. Prostitution also turns out to be a criminal act where it is not only illegal to exploit prostitutes, but also to be a prostitute. Since trafficked persons only in exceptional cases have travel documents or residence permits, the national law enforcement authorities often focus on the trafficked victim rather than on the perpetrator. It is not unusual that trafficked women find themselves in a state of lawlessness. Since they often are illegal migrants, they are unprotected by the national laws and social safety nets. The victim of crime, the abducted women, usually get arrested and deported, while the traffickers go unpunished and easily continue with their criminal activities. Many victims who have returned home are put in a vulnerable situation since their own families often reject them for what they have done. They are therefore easily targeted for further exploitation i.e. re-trafficking. One could argue that since they are unprotected by the authorities both in the country of destination and origin they are persecuted by the government and should therefore gain refugee status. A state

[14] OSCE Review Conference, *Trafficking in human beings: implications for the OSCE*, 1999.

[15] Swedish Ministry of Foreign Affairs, *Trafficking in Women and Children in Asia and Europe, a background presentation of the problems involved and the initiatives taken*, 2001, p. 14 and 22.

obligation occurs since states are bound by international law to protect refugees.[16]

2.5 Trafficking as an International Crime

This essay focus on trafficking in women only as an international crime. International crimes shall be prosecuted by domestic courts if the crime is committed within the State's territory. Since trafficking in human beings often cross national borders, it is hard to define what is a crime within a states territory and what is not.

The principle of universality gives all states jurisdiction over international crimes or so called worldcrimes. International crimes are crimes that according to international conventions shall constitute crimes in the whole international community. There are two different forms of international crimes, firstly where the crime is accepted by universal jurisdiction with a state obligation to prosecute those crimes, secondly where international accepted courts have jurisdiction over the crimes, i.e. ICC, ICTY and ICTR. The concept of universal jurisdiction enable a state to punish certain crimes, wherever and by whoever they have been committed, without any requited connection to territory, nationality or special state interest.

The Rome Statute only enable the ICC to work as a complementary court in relation to national courts. It is important that all national legal means have been exhausted before a case is brought to the ICC. Trafficking in human beings is an international crime that is accepted by universal jurisdiction. Therefore the result will be that domestic courts have universal jurisdiction when it comes to the crime of trafficking in human beings, while the ICC only have complementary jurisdiction over the crime of trafficking.

Trafficking in women for sexual exploitation constitute an international crime under both the Rome Statute and the CTOC Trafficking Protocol. The national states will be obliged to prosecute trafficking in women as an international crime first after the two international instruments have been accepted by the international community and gained universal jurisdiction. The Rome Statute entered into force on July 1st, 2002, while the CTOC and its Protocols yet need further ratification.[17]

[16] Ibid, p. 11-12.
[17] Peter Malanczuk, *Akehurst´s Modern Introduction to International Law*, 1998, p. 109-117.

3 Legal sources

International law relating to trafficking in women has an extensive history. It is characterised by a long list of ineffective legal instruments that date back as far as to 1904, when the first binding international legal instrument was adopted.[18] The legal development of the crime of trafficking has since then found expression in several conventions or declarations, but not until November 2000 was a universe definition adopted. After the I and II World Wars, significant anti-trafficking and anti-slavery conventions were adopted where the 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others[19], has been the sole international treaty on trafficking until November 2000. Despite the lack of a coherent definition of trafficking in women, increasingly international instruments[20], have included proscriptions on trafficking, where it is stressed that State Parties should take all appropriate measures to suppress all forms of trafficking. States have a duty under international law to prevent and investigate violations of human rights, to take appropriate actions, and to afford remedies and reparation to those affected. This chapter is limited to the legal international instruments important for the development towards an efficient Convention suppressing trafficking in women.

3.1 Trafficking in Women

3.1.1 The Trafficking Convention of 1949

The procedure towards international legal framework against trafficking started in 1904 and resulted in several international conventions. In 1949 the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of others*[21] was adopted.[22] This was "the first international agreement to conceive trafficking in a gender-neutral terms,

[18] Commission on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women*, 2000, para. 18.
[19] United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949.
[20] For example; The Convention on the Elimination of All Forms of Discrimination against Women; The Declaration on the Elimination of Violence against Women and the Rome Statute, and; The Rome Statute of the International Criminal Court.
[21] United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949.
[22] The 1949 Convention was adopted after consolidation of four earlier quite inefficient International Conventions, namely; The International Agreement for the Suppression of White Slave Traffic (1904), as amended by the Protocol of 1948; The International Convention for the Suppression of the White Slave Traffic (1910), as amended by the Protocol of International Convention for the Suppression of Traffic in Women and Children (1921) and the Protocol of 1947; and The 1933 International Convention for the Suppression of the Traffic in Women of Full Age.

and to consider the problem of exploitative prostitution as a matter of international law, rather than strictly an issue of domestic jurisdiction."[23] In accordance with article 1, the Convention recommends punishment for procurement, enticement or leading away another person for prostitution, even with the person's consent. Convention parties are required to adopt preventive measures, including supervision of employment agencies, and to provide temporary care for trafficked persons and assistance with repatriation costs if no funds are available. The lack of efficiency depend on the fact that the treaty required a link between trafficking and prostitution, and therefore excludes vast numbers of women from its protection, i.e. victims of trafficking for the purpose of forced labour or forced marriage. Today there is evident documentation that shows trafficking is undertaken for many purposes, including but not limited to prostitution.

The 1949 Convention allows States to punish women who have been subjected to international trafficking by sanctioning their expulsion. State Parties are also called upon to repatriate persons who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. In the latter part, trafficked women who do not have legal residence in the country, are likely to be deported. In the process of deportation, the trafficked women may be subjected to detention, either protective or punitive, and/or forced rehabilitation.[24]

The 1949 Convention has proved ineffective firstly in protecting the rights of trafficked women and secondly combating trafficking. Further it has weak enforcement mechanisms, although it requires state parties to report annually in regard to the implementation of the Convention provisions at the national level. Since there has never been any international body established to monitor the implementation and enforcement of the treaty, not even half of the 69 State Parties have filed an annual report.[25]

3.1.2 Slavery Conventions

Article 6 of the 1926 UN Slavery Convention[26] obliges State parties to completely abolish slavery and slavery-like conditions in all forms. The definition of slavery in the 1926 convention is as follows:

> "Slavery is the status or condition of a person, over whom any or all of the powers, attaching to right of ownership are exercised."[27]

---

[23] Fehér, Lenke, *International Efforts Against Trafficking in Human Beings*, 2000, p. 184.
[24] 1949 Trafficking Convention, article 19(2).
[25] Commission on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women*, 2000, para. 18-26.
[26] The United Nations Slavery Convention, 1926.
[27] Ibid, article 1, para. 1.

This definition of slavery is very limited and does not cover all forms of violations. It has been questioned what is meant by the phrase "slavery and the slave trade in all their forms" since the answer cannot be found in any preparatory work.

In 1956, the UN Supplementary Convention of the Abolition of Slavery, the Slave Trade, and Substitutions and Practices Similar to Slavery[28], was adopted. This supplementary convention covers a wider range of slavery practices and aims to eliminate slavery-like conditions and abolition, abandonment of debt bondage.[29]

3.1.3 The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons of 2000

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, (the Trafficking Protocol), was adopted under the UN Convention Against Transnational Organized Crime (CTOC), on November 15th, 2000. The Trafficking Protocol provides the first unanimous definition of trafficking in a legally binding international instrument.

Under the Trafficking Protocol the state parties shall firstly criminalise trafficking offences, this includes the following acts: organising, directing, aiding and abetting, facilitating or counseling the commission of an offence, secondly it shall provide assistance and protection for victims, and thirdly seek to prevent trafficking.

Even if neither the Convention nor the Protocol have yet entered into force, it is claimed that the Protocol constitute customary international law, since a majority of states have signed both the Convention and the Trafficking Protocol. The Convention Parties signatures shows a majority intention in implementing the Trafficking Protocol. All provisions in the CTOC are also applicable to the Trafficking Protocol due to a *mutatis mutandis* clause. The main provisions in the convention concerning co-operation in law enforcement, including those on extradition and mutual legal assistance between states, are therefore equally applicable to the protocol as well.[30]

3.2 Crimes Against Humanity

Crimes against humanity is a relatively new form of international crime. The first concrete formulation of crimes against humanity is contained in the Nuremberg Charter, although its origin can be traced to much earlier times.

---

[28] Adopted September 7th 1956, entered into force April 30th 1957.
[29] Fehér, Lenke, *International Efforts Against Trafficking in Human Beings*, 2000, p. 184-189.
[30] Murphy, Sean D, *International Trafficking in Persons, Especially Women and Children*, 2001, p. 407-408.

Article 6(c) of the 1945 Charter of the International Tribunal for the Prosecution of the Major War Criminals of the European Theatre, (the Charter)[31], was the first international instrument to define crimes against humanity. The Charter, appended to the London Agreement[32] of August 8 1945 defines crimes against humanity as:

> "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."[33]

Ever since World War II crimes against humanity has evolved to a distinct category of international crimes, but unlike other international crimes it has never become the subject of a specialised convention. Going back to 1945 the legalisation and the significance of crimes against humanity has developed through different conventions, where the most recent and comprehensive definition of crimes against humanity is to be found in article 7 of the Rome Statute.[34]

In the Rome Statute, adopted in 1998, there is no required link between crimes against humanity and war or an armed conflict. The specific contents included in article 7 are far more detailed and cover a much wider range of human depredations than had heretofore been included in any prior formulation. The specific contents in all formulations of crimes against humanity from 1945 to 1998 reflect the existence of similar crimes which are contained in almost all legal systems in the world. The recognition of crimes against humanity constitutes an integral part of international criminal law. Malekian stress that "the obligations governing crimes against humanity are part of the body *of jus cogens* and aim at the protection of the international population from inhumane and unjust activities of governments at home and abroad."[35] Consequently, one can say that the specific contents of crimes against humanity embody general principles of law recognised in almost all legal systems in the world. This is sufficient to establish the legal validity of crimes against humanity, to satisfy the principles of legality required in the major criminal justice systems of the world.[36]

---

[31] Charter of the International Tribunal for the Prosecution of the Major War Criminals of the European Theatre, 1945.
[32] Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Charter of the International Military Tribunal, August 8th 1945, 59 Stat. 1544, 82 U.N.T.S. 279.
[33] Ibid, Article 6 c.
[34] Bassiouni, M. Cherif, *Crimes Against Humanity*, 1999, p. 521.
[35] Malekian, Farhad, *International Criminal Law: The Legal and Critical Analysis of International Crimes*, 1991, p. 285.
[36] Bassiouni, M. Cherif, *Crimes Against Humanity*, 1999, p. 571.

3.2.1 No need for a war nexus

Article 6(c) in the Nuremberg Charter provided for a war nexus in relation to crimes against humanity. This war connecting link was required in order to satisfy the minimum requirements of the principle of legality in most domestic legal systems. Some post Nuremberg Charter developments have suggested that the connection with war should no longer be a requirement for crimes against humanity. The 1950 ILC report on the Nuremberg principles presumed that the war connecting link in crimes against humanity no longer should be required. After the ILC report some decades passed by before the issue of a war connecting link arose again. First in 1993 when the SC adopted the Statute of the ICTY which contains a definition of crimes against humanity the discussion of a war nexus to crimes against humanity continued. Due to the uncertainty of the legally binding nature of the ILC report the ICTY Statute ended up requiring some connection between crimes against humanity and an armed conflict, whether it is internal or international. The ICTR Statute on the other hand does not reefer to a war connecting link nor does it include a link to an armed conflict, since there was no war during the Rwanda genocide acts. [37]

As stated above the first time the issue of a war connecting link was discussed, since the 1950s, was in 1993 when the Security Council adopted the ICTY Statute. Due to the uncertainty of the legally binding nature of the ILC report, the Security Council adopted the Secretary Generals formulation of, namely that there should be some connection between crimes against humanity and a conflict of an international or internal character in the territory of the former Yugoslavia.[38] The acting of the SC resulted in that article 5 avoided any possible challenges to its legality since it maintained the requirement of a link with an armed conflict either internal or international.

In 1994 the SC also adopted the ICTR Statute where article 3 defines crimes against humanity. In this article there is no reference to a war connecting link nor does it include a link to an armed conflict as in ICTY article 5. (The reason that all atrocities occurred within the territory of Rwanda, which remained one state during the whole conflict unlike the break-up in former Yugoslavia into four states).

When the ICC Rome Statute was adopted in 1998 the formulation of crimes against humanity does not contain any war connecting link. Since the ICC provisions are prospective there is no question therefore as to the legal validity of its contents with respect to the principles of legality. The ILC report was never embodied in any treaty not even in a GA resolution.

[37] Gardam, Judith G. and Jarvis, Michelle J*, Women, Armed Conflict and International Law*, 2001, p. 79.
[38] Report of Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808, 1993.

Consequently it is very difficult to attribute any binding legal effect to that report, under international law, unless one can claim that the report constitute customary international law. Most scholars seem to have accepted that position, that no war connecting link is necessary, according to Bassiouni.[39]

Bassiouni stresses that, even if there are and have been different positions since 1950 as to whether crimes against humanity contains a requirement of a war connecting link, "there is enough evidence of customary international law […] and the 'writings of the most distinguished publicists' to support the proposition that 'crimes against humanity' do not need the war-connecting link."[40] Bring states that after "a long progression of treaty language seems at last to have caught up with what must have been customary law for some time, i.e. the norm that the concept of crimes against humanity is just as applicable in peace time as in war time."[41] Furthermore Bassiouni claimes that it is important to point out that the removal of the war connecting link does not in any way displace the jurisdictional policy requirement which distinguishes crimes against humanity as an international category of crime, from otherwise ordinary domestic crimes.[42]

3.2.2 The Statute of the ICTY

The ICTY was established by the Security Council, acting under Chapter VII of the UN Charter, to have the power prosecute persons responsible for serious violations of International Humanitarian Law, committed in the territory of the former Yugoslavia since 1991.[43] Under article 5 crimes against humanity are prohibited. Article 5 reads as follows:

> "The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population;
> (a) murder;
> (b) extermination;
> (c) enslavement;
> (d) deportation;
> (e) imprisonment;
> (f) torture;
> (g) rape;
> (h) persecutions on political, racial and religious grounds;
> (i) other inhumane acts."

Even if the ICTY Statute does require a link between crimes against humanity and an armed conflict, the Appeals Chamber has ruled that it is a

[39] Bassiouni, M. Cherif, *Crimes Against Humanity*, 1999, p. 573.
[40] Ibid.
[41] Bring, Ove, *International Criminal Law in Historical Perspective*, 2001, p. 33.
[42] Bassiouni, M. Cherif, *Crimes Against Humanity*, 1999, p. 574.
[43] ICTY Statute, article 1.

settled rule of customary international law that crimes against humanity do not require a connection to any conflict at all. But however, since the statute governs, concerning ICTY cases, an armed conflict, internal or international, is a required element under article 5.[44]

3.2.3 The Statute of the ICTR

The ICTR was, like the ICTY, established by the Security Council, acting under Chapter VII of the UN Charter. The Tribunal was established to have the power to prosecute persons responsible for genocide and other serious violations of International Humanitarian Law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December 1994.[45] Article 3 reads as follows:

> "The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, racial or religious grounds:
> a) Murder;
> b) Extermination;
> c) Enslavement;
> d) Deportation;
> e) Imprisonment;
> f) Torture;
> g) Rape;
> h) Persecution on political, racial and religious grounds;
> i) Other inhumane acts."

The ICTY and ICTR differ in the sense that article 3 of the ICTR there is no need for a nexus to the existence of an armed conflict.

3.2.4 The Rome Statute of the ICC

The ICC will, in contrast to the ad hoc tribunals, operate as an enduring judicial body to "enhance the suppression and prosecution of crimes of international concern."[46] The ICC can exercise jurisdiction if either the state of nationality of the accused or the state in whose territory the crimes were committed accepts this. These principles of jurisdiction, found in article 12 of the Rome Statute, are the most firmly established in international law. In particular, the territorial principle is the primary jurisdictional link accepted in all domestic legal systems. They are further confirmed in many universal conventions, such as the genocide and torture convention.[47]

---

[44] Prosecutor v. Tadic, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1-AR72, 2 October 1995, para. 141.
[45] ICTR Statute, article 1.
[46] Rome Statute, preamble.
[47] Bring, Ove, *International Criminal Law in Historical Perspective*, 2001, p. 34.

Crimes against humanity are prohibited under article 7 of the Rome Statute. Article 7 reads as follows:

> "1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
> […]
> (c) Enslavement;
> […]
> (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
> […]
> 2. For the purpose of paragraph 1:
> […]
> (c) "Enslavement" 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;
> […]
> 3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above."

The article includes the crime of trafficking in persons under article 7(1) c (crime against humanity of enslavement) and article 7 (1) (g)-2 (crimes against humanity of sexual slavery). Article 7 does not mention any nexus to armed conflicts, neither internal nor international. The Statute thus confirms that crimes against humanity are as applicable to peacetime as they are to wartime.[48] The formulation of crimes against humanity under the Rome Statute provides neither for a connection to war nor to armed conflict. The criteria used in the ICTR Statute "widespread or systematic" attack upon a civilian population is also used under the Rome Statute. It does however require that such an attack be the result of a policy in article 7(2). Article 7 is the most detailed formulation and with the widest range of human depredations, with its specific contents, in relation to any prior formulations.[49]

The definition of enslavement in the Rome Statute signifies the modern approach of linking trafficking to slavery-like practices. Some scholars argue that the Rome Statute can be seen as international customary law even if it just recently entered into force, and is applicable to the crime of trafficking in persons. (This will further be discussed under Chapter 5.4)

[48] Meron, Theodor, *Crimes under the jurisdiction of the International Criminal Court*, 1999, p. 49.
[49] Bassiouni, M. Cherif, *Crimes Against Humanity*, 1999, p. 571.

4 International Measures to Combate Trafficking in Women

Despite the lack of a coherent definition of trafficking in women just until recently, increasingly international instruments have included proscriptions of trafficking in their work. Trafficking has been on conference agendas for a long time, but this has not contributed to the development of a clear definition of trafficking itself, until November 2000. For example the GA, ECOSOC, the Commission on Human Rights and the Commission on the Status of Women have all passed resolutions on trafficking over the passed years.[50] None of these resolutions, however, have ever defined trafficking as such.

This chapter is limited to international and regional efforts to combat and suppress trafficking in women. Only few international instruments, IGOs and NGOs will be presented, since the essay is limited to the criminalisation of trafficking in women. The first two sub-chapters, 4.1 and 4.2, are presented as to give a background of the UN work against discrimination of women. Chapters 4.3-4.5 describe and analyse the recent work within the EU, IOM and the Council of Europe. Lastly the OSCE and its work within Europe is presented.

4.1 CEDAW

The *Convention on Elimination of all forms of Discrimination Against Women (CEDAW)* was adopted in 1979. According to article 6 all forms of trafficking and prostitution against women is suppressed. The provision does not require a link between trafficking and prostitution. Article 6 of the convention expressly obligates all state parties to *"take all measures, including legislation, to suppress the traffic in women and exploitation of prostitution of women."* There was debates during the drafting period as to whether article 6 should call for state parties to combat prostitution per se or merely the exploitation of prostitution. However after the final conventional text one can come to the conclusion that it does fail to provide a definition of trafficking or, for that matter, to constituent elements of "exploitation of prostitution."

In 1981, the Commission of Women defined *violence against women* in the Declaration on the Elimination of Violence against Women. According to

[50] Some of the resolutions included are: GA Res. 50/167 of 22 Dec 1995; ECOSOC Res. 1998/20 of 28 July 1998; Commission on Human Rights Res. 1998/30 of 17 April 1998 and 1999/40 of 26 April 1999; Commission on the Status of Women Res. 39/6 of 29 March 1995 and 40/4 of 22 March 1996.

the declaration violence against women shall be understood to encompass, but not be limited to:

> "(b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution."

The *General Recommendation No. 19* of the Committee of the Elimination of Discrimination against Women goes further than both the convention and declaration by defining the parameters of the exploitation of prostitution. According to the general recommendation no. 19:

> "poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages […]. These practices […] put women at special risk of violence and abuse."[51]

This statement address the importance to counteract trafficking in women for sexual purposes on all possible levels.

4.2 The 1995 Beijing Conference on Women

The Fourth World Conference on Women, *Action for Equality, Development and Peace,* was held in Beijing in 1995, also called the Beijing Conference. The Beijing Declaration and the Platform for Action, the so-called agenda for the conference, proclaim the need to deal with violence against women on an international level. The term violence against women means:

> "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life".[52]

Further it includes, but not limited to:

> "physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution".[53]

[51] Commission on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women*, 2000, para. 27-30.
[52] The Fourth World Conference on Women, *Platform for Actions*, 1995, p. 51.
[53] Ibid, p. 52.

The effective suppression of trafficking in women for the sex trade has been a matter of international concern for a long period of time. The Beijing Conference action plan, stresses the importance of the implementation of the 1949 Convention for the Suppression of trafficking in persons and the exploitation of the prostitution of others, and also the importance of strengthening and reviewing other relevant international instruments. The use of women in international prostitution and trafficking networks has become a major focus of international organised crime.[54]

Relevant actions that must be taken by all member states of the international community, to eliminate trafficking in women are; firstly; that the states shall consider the ratification and enforcement of international conventions on trafficking in persons and on slavery. Secondly that the states shall take appropriate measures to address the root factors of trafficking, including external factors that encourage trafficking in women in order to eliminate trafficking in women, including strengthening the existing legislation to protect the victims and prosecute and punish the perpetrators. Lastly, but not less importantly, the states shall take steps towards co-operation and concrete actions to eliminate all forms of national, regional or international networks in trafficking.[55]

4.3 The European Union

The European Union has made several efforts and documents to deal with the problem of human trafficking. The European Union has been actively engaged since 1996 in developing a comprehensive approach towards the prevention of and the fight against trafficking in human beings.

The STOP programme[56] was adopted by the Council in 1996 establishing an incentive and exchange programme for persons responsible for combating trade in human beings in Europe. This, the first common approach against trafficking, was followed up by a second phase of the programme in 2001, called the STOP-II programme.[57] The STOP programme has helped increase awareness within the EU and enhance co-operation between state authorities responsible for combating trafficking in persons. The EU's objectives in combating trade in human beings are attained more effectively at the European level than by the individual Member States as a result of exchange of experience and the cumulative impact of the actions taken.[58]

The Treaty of Amsterdam requires co-operation in police and judicial matters in criminal cases, to combat organised crime more effectively. Article 29, 31 and 34, provides for police and judicial co-operation in

[54] Ibid, p. 53.
[55] Ibid, p. 58.
[56] The Stop Programme, Council Joint Action 96/700/JHA, 29 November 1996.
[57] The Stop Programme-II, Council Decision 2001/514/JHA, 28 June 2001.
[58] Ibid, para. 6.

criminal matters. In these provisions the aim of combating trafficking in persons shall be achieved through closer co-operation between police forces, judicial authorities and approximation of rules on criminal matters. The EUROPOL also has a significant role in the prevention and fight against international organised crime, for example trafficking in women. The EUROPOL is facilitating the exchange of information, promoting crime analysis and harmonising investigative techniques.

There are several very important European Parliament resolutions, i.e. the Resolution on the Exploitation of Prostitution and the Trafficking in Human Beings (1989) or the Resolution on Trade in Women (1993), addressing the problem of trafficking. Furthermore a European Conference on Trafficking in Women for the Purpose of Sexual Exploitation was held in Vienna in 1996. It resulted in a communication of the European Commission on Trafficking in Women for sexual purposes.

In October 1999 during the Tampere Council meeting specific proposals were made for future developments in the field of justice and home affairs.[59] The European Council particular wished the EU to increase all forms of co-operation between member state's law enforcement authorities, including co-operation with and through EUROPOL.[60] It was further stressed that efforts should be made to agree on common definitions, incriminations and sanctions on a limited numbers of sectors of particular relevance, among these, trafficking in human beings particularly sexual exploitation of women and children.[61]

In the *Proposal for a Council framework Decision on combating trafficking in human beings*[62] the Commission presents the positive achievements through co-operation between the Member States. The Commission emphasis the signification of developing an efficient judicial and law enforcement co-operation. This is a difficult task due to existing discrepancies and divergences in the Member States. The aim of the proposal is to achieve commonly adopted definitions, incriminations and sanctions in the Member States' penal legislation. The Commission further stresses the importance of providing a common approach on criminal law and a further developed law enforcement and judicial co-operation.[63] Article 2 of the proposal states that Member States have an obligation to ensure that trafficking in human beings for the purpose of sexual exploitation is punishable. They must also ensure that instigation of, aiding, abetting and attempt to commit trafficking offences is punishable according to Article 3. Offenders shall further be punished by effective, proportionate and

[59] Tampere European Council, Presidency Conclusions, 1999.
[60] Ibid, para 40-50.
[61] Ibid, para 48.
[62] Communication from the Commission to the Council and the European Parliament, *Combating trafficking in human beings and combating sexual exploitation of children and child pornography*, 2000.
[63] Ibid, p. 4-5.

dissuasive penalties. The Commission states that possible penalties for traffickers should reflect the seriousness of the crime and have a strong deterrent effect.[64] The Swedish Parliament has approved the EU *Proposal for a Council framework Decision on combating trafficking in human beings.* The next step in this legal process is the adoption of the proposal by the Council. Thereafter the Member States have two years to implement the Council Framework.[65]

In a recent Commission discussion paper[66] it was stressed that victims prepared to witness against traffickers in judicial proceedings should be granted a temporary permit of stay. The situation has so far proved to be very unsatisfactory, since fear of repatriation prevents victims from co-operating with state authorities. From the point of combating trafficking, this is very damaging as many cases may never come to court without the evidence provided by the victims.[67]

4.4 IOM

The International Organization for Migration, IOM, provides assistance and protection to victims of trafficking and guidance for IOM field missions and its Member States with a view to preventing trafficking in persons. The IOM implements a Global Assistance Programme to create a fast case-by-case assistance to women and child victims of trafficking outside their countries of origin for an immediate protection and support.[68]

The IOM and the EU are organising the *Conference on Prevention of and Fighting aganist Trafficking in Human Beings with Particular Focus on Enhancing Co-operation in the Process to Enlarge the European Union* in September 2002. The aim of the conference is "to broaden the participation of governments and experts responsible for preventing and combating trafficking in human beings in the EU Member States, candidate countries and relevant third countries."[69] Furthermore the Conference is a part of the EU efforts to enhance a comprehensive approach against trafficking especially in relation to the future enlargement of the EU.

The Conference is based upon the work against trafficking undertaken by the EU STOP I Programme. During the Conference recommendations are supposed to be adopted for the future implementation of the STOP II

---

[64] Ibid, p. 10.
[65] Prop 2001/02:99 and 2001/02:JuU28.
[66] European Commission Discussion Paper, *Short-term permit to stay granted to victims of trafficking or smuggling who cooperate in the fight against smugglers and traffickers,* 2001.
[67] Ibid, p. 2.
[68] Swedish Ministry of Foreign Affairs, *Trafficking in Women and Children in Asia and Europe: A background presentation of the problems involved and the initiatives taken*, 2001, p. 35.
[69] IOM, *Trafficking In Migrants*, 2002.

Programme. Along with IOM and the EU institutions, government officials, members of the national parliaments, Council of Europe and UN agencies will attend the Conference. The Conference will focus on legislative actions, law enforcement and judicial co-operation in criminal matters. Moreover co-operation between domestic judicial and law enforcement bodies and private transnational companies and NGOs. Lastly the protection of fundamental human rights and assistance to victims of trafficking, including re-establishment of human dignity as well as return and re-integration experiences.[70]

4.5 Council of Europe

The most important human rights document in Europe is *the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*.[71] The Convention does not contain any provisions prohibiting trafficking in persons. However, the provisions against slavery, servitude and compulsory labour[72] as well as the provisions suppressing torture, inhuman or degrading treatment or punishment[73] are regarded as applicable, in case of trafficking in women and forced prostitution.[74]

The Council of Europe addresses trafficking both directly and indirectly through a number of committees and programmes. Their work against trafficking in human beings for the purpose of sexual exploitation has been ongoing since 1997.[75] In Recommendation 1467 (2000)[76] the Parliament Assembly strongly condemns human trafficking, which is a violation of fundamental human rights. They urge that by increased co-operation between member states and with countries of origin, to be able to effectively combat human trafficking. It is also stressed that the root causes of trafficking have to be taken more seriously.[77] In Recommendation No. R(2000) 11 of the Committee of Ministers, on Action against Trafficking in Human Beings for the purpose of Sexual Exploitation, it was stressed that trafficking is "often linked to organised crime in as much as such lucrative

[70] Ibid.
[71] The European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950.
[72] ECHR, Article 4.
[73] ECHR, Article 3.
[74] Fehér, Lenke, *International Efforts Against Trafficking in Human Beings*, 2000, p. 190.
[75] For example: Recommendation 1211 (1993) on clandestine migration: traffickers and employers of clandestine migrants, Recommendation 1325 (1997) on the traffic in women and forced prostitution in Council of Europe member states, Recommendation 1449 (2000) on clandestine migration from the south of the Mediterranean into Europe and Recommendation 1467 (2000) on clandestine immigration and the fight against traffickers. (The 1993 Recommendation concerns trafficking for the purpose of forced labour).
[76] Recommendation 1467 (2000) on clandestine immigration and the fight against traffickers, 2000.
[77] Ibid, para. 5 and 8.

practices are used by organised criminal groups as a basis for financing and expanding their other activities."[78]

Trafficking in women has become a highly profitable business for organised crime, exploiting poverty and vulnerability amongst women. The Committee on Equal Opportunities for Women and Men, calls it a modern form of slavery which should be treated as a crime against humanity. The Parliamentary Assembly urges member states to make trafficking in women a criminal offence in national law. The Parliamentary Assembly also suggests using part of confiscated profits to assist victims. Measures urgently requested include free telephone help-lines, protection for women who agree to testify, granting temporary residence permits, setting up shelters and bringing in a right to compensation. Lastly the Parliamentary Assembly recommends that the Committee of Ministers establish a European observatory on trafficking in women and children and draft a convention which focuses on the protection of victims.[79]

4.6 OSCE

The OSCE has raised the issue of trafficking in persons at various times since the early 1990s. OSCE estimate that hundreds of thousands of women, children and men are trafficked to or from OSCE states into conditions of slavery each year. According to the OSCE the problem of human trafficking is particularly acute in areas of conflict, frozen conflict or post-conflict, either of international or internal character. The current legislation in the OSCE states have proven to be inadequate to prevent and suppress trafficking, but most importantly the failure to treat trafficking as a real human rights issue.[80] The number of actions taken by the OSCE against trafficking in human beings are long, and the list of actions presented in this report is far from complete.

The 1991 *Moscow Document* specifically address trafficking in human beings, more precise, it only refers to trafficking in women. It is stated that:

> "[t]he participating States will […] seek to eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women including by ensuring adequate legal prohibitions against such acts and other appropriate measures."[81]

[78] Recommendation No. R(2000) 11 of the Committee of Ministers to member States on Action against Trafficking in Human Beings for the purpose of Sexual Exploitation, 2000, preamble para.1.
[79] http://assembly.coe.int and http://press.coe.int/cp/2002/029a(2002).htm , date: January 21st 2002.
[80] OSCE, *Anti-Trafficking Guidelines*, p. 2-3.
[81] OSCE, The Moscow Document, 1991, para. 40.7.

The OSCE states have also agreed to comply with *the Convention on Elimination of all forms of Discrimination Against Women (CEDAW)* to effectively implement the obligations in other international instruments in which they are parties.[82]

In November 1999 the OSCE states agreed to the Charter for European Security to *"undertake measures to eliminate all forms of discrimination against women, and to end violence against women and children as well a sexual exploitation and all forms of trafficking in human beings. In order to prevent such crimes we will, among other means, promote the adoption or strengthening of legislation to hold accountable persons responsible for these acts and strengthen the protection of victims."* [83]

In November 2000 the OSCE adopted a Decision on "Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings." The OSCE Member States agreed, among other things, to undertake necessary measures to criminalise trafficking in human beings at the national level.

OSCE has together with the International Organisation for Migration (IOM) been the most important contributors in the war against human trafficking in the Balkan region, e.i. by drafting a domestic regulation prohibiting trafficking in human beings in Kosovo, signed on 12 January 2001. This domestic regulation criminalises trafficking and related offences, including holding a person's identity documents, and provides a full defence for those giving reasonable evidence that they have been exploited by traffickers. Extensive confiscation clauses, aimed at the profits of the traffickers, are included in the regulation, where a portion of any funds confiscated should be available for victims and victim protection. The OSCE will provide training for affected state authorities in the Balkan i.e. judges, prosecutors and the police, on the content and application of the regulation. The long-term aim is to start to build capacity to co-ordinate and implement anti-trafficking measures. What is further essential is that the right to freedom of movement, will be balanced with any efforts to restrict the movements of traffickers.[84]

4.6.1 The Berlin Conference "Europe Against Trafficking in Persons" 2001

The OSCE *Office for Democratic Institutions and Human Rights (ODIHR)* organised the international conference "Europe against Trafficking in persons" 2001.[85] The conference focused mainly on what the so-called

[82] Ibid, para. 40.2.
[83] OSCE Supplementary Human Dimension Meeting, *Trafficking in Human Beings*, 2000, p. 1.
[84] *Mission in Kosovo, Role of OSCE in the action against Trafficking*, www.osce.org/kosovo/publications/pdf/trafficking_factsheet_eng.pdf , June 7th 2001.
[85] The conference was held on the 15-16 October 2001, in Berlin.

destination countries can do to address different forms of slavery, i.e. how states can ensure victims protection, as was as more efficient and better co-ordinated measures to combat organised trafficking networks. The conference further aimed to develop new recommendations for a better and more efficient legal framework to address trafficking and enhanced co-ordinated measures to fight against organised trafficking networks.[86]

The OSCE work against trafficking in human beings is concentrated to three different elements, firstly prevention, secondly prosecution of the traffickers and thirdly protection of the victims. OSCE focus on the importance to develop prevention programmes in countries of origin to combat poverty, inequality, discrimination and violation against women. In countries of destination they claim that the rights of the victims often are ignored and that state actors usually violate fundamental human right norms. States must therefore be as observant in their efforts to address complicity and corruption, as they are in protecting their national borders. Furthermore victim protection and assistance must be developed to respond to the real crisis that exist in many OSCE countries. It is also of great importance that OSCE state parties ratify relevant international documents related to trafficking in persons.[87]

The Berlin Conference Prosecution Working Group proclaim that the structures of international law enforcement co-operation have to be improved. They requested that the UN Trafficking Protocol became the guideline for an international approach to attack the problem of trafficking in human beings. Furthermore the Prosecution Working Group inquiry that the EUROPOL should be given new mandate to enable them to create dedicated working groups tackling the problem on a European level, with referral to that "national level initiatives can only work if there is international co-operation because trafficking is an international problem that calls for an international solution."[88]

[86] *Conference "Europe Against Trafficking in Persons" to open in Berlin*, Media Advisory, 12 October 2001, www.osce.org/news
[87] OSCE Conference Report, *Europe Against Trafficking In Persons*, 2001, p.5.
[88] Ibid, p. 95.

5 International Jurisprudence

Trafficking in women is not enumerated as a crime either under the ICTY Statute[89] or the ICTR Statute[90]. The crime of trafficking has though been discussed in relation to crimes against humanity, mainly as enslavement, sexual enslavement and sexual violence during armed conflicts. The ICTY and ICTR jurisprudence on enslavement, sexual enslavement and sexual violence as a crime against humanity is quite limited. Most of these crimes fall under other provisions in the Statute, i.e. war crimes. The cases presented under this Chapter are illustrating the evidentiary problems and the issue of victims protection in relation to sexual crimes under the ICTY and ICTR Statutes.

Under 5.1 the Rules of Procedure and Evidence is presented primarily in order to understand the evidentiary and protective measures in cases dealing with sexual assault. This is necessary since similar protective measures have been discussed in relation to *victims and witnesses protection* under several international and regional instruments. Secondly relevant case law from the ICTY and ICTR, concerning enslavement, sexual enslavement and sexual violence will be presented and analysed with emphasis on future equal application to trafficking in women as an international crime. Lastly the future work of the ICC is analysed in the light of the Rome Statute and its preparatory work.

5.1 Rules of Procedure and Evidence in ICTY and ICTR

The judges of the two ad hoc Tribunals drafted the Rules of Procedure and Evidence (RPE), in accordance with the ICTY and ICTR Statutes.[91] The RPE in the two ad hoc tribunals correspond regarding the rules of evidence in the case of sexual assault. Rule 96, which is gender neutral, reads as follows:

> "(i) no corroboration of the victim's testimony shall be required;
> (ii) consent shall not be allowed as a defence if the victim

[89] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, which was established Pursuant to the Security Council Resolution 827, May 25th 1993, S/RES/827, (1993).
[90] The International Tribunal for the Prosecution of Persons Responsible for Genocide or Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 of January 1994 and 31 of December 1994, (Res. 995).
[91] ICTY Statute, article 15 and ICTR Statute, article 14.

(a) has been subjected to or threatened with or has had the reason to fear violence, duress, detention or psychological oppression, or
(b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;

(iii) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;
(iv) prior sexual conduct of the victim shall not be admitted in evidence."[92]

The first time the ICTY considered Rule 96(iv) was in the case of Delalic.[93] Two issues were examined, firstly the purpose of Rule 96(iv) and its relationship to other provisions of the RPE, and secondly the meaning of the term "prior sexual conduct." The Chamber held that evidence has to be relevant and have probative value to be admissible.

Rule 96(iv) specifically states that evidence concerning prior sexual conduct of the victim is inadmissible. The Delalic Trial Chamber continued to describe the purpose of Sub-rule 96(iv). The prime objective is to "adequately protect the victims from harassment, embarrassment and humiliation by the presentation of evidence which relates to past sexual conduct."[94] According to the Chamber the rule seeks to prevent situations where the admission of certain evidence may lead to confusion of the issue, and therefore offending the fairness of the proceedings. When Rule 96(iv) was adopted regard was given to the fact that in cases of sexual assaults, evidence concerning the victim's prior sexual conduct mainly serves to call the reputation of the victim into question. Moreover it was considered that the value of such information in trials of this nature was nullified by the potential danger of causing further distress and emotional distress to the witness. The Chamber concluded that Rule 96(iv) makes a victim's prior sexual history irrelevant.[95]

The use of the broad term "sexual assault" in Rule 96 clearly shows the intent of the Tribunals to prosecute not only rapes, but also other types of sexual assaults. Accordingly the crime of sexual assault has been interpreted to be an umbrella term that refers to a range of prohibited types of sexual conduct or acts. Although the term itself has no precedent in international law there should be pointed out "that sexual assaults under international conventional and customary law may consist, among other acts, of forcible sexual penetration, indecent assault, enforced prostitution, sexual mutilation, forced impregnation, and forced maternity."[96]

---

[92] ICTY Rules of Procedure and Evidence, Rule 96 and ICTR Rules of Procedure and Evidence, Rule 96.
[93] Prosecutor v Delalic et. al., *Decision on the Prosecution's Motion for the Redaction of the Public Record*, IT-96-21-T, 5 June 1997.
[94] Ibid, para. 48.
[95] Ibid, para. 48.
[96] Viseur Sellers, Particia and Okuizumi, Kaoru, *Intentional Prosecution of Sexual Assaults*, 1997, p. 53.

5.2 ICTY and ICTR Jurisprudence

5.2.1 Crimes Against Humanity

Crimes against humanity in article 3 of the ICTR Statute (also applicable to article 5 of the ICTY Statute, the ICTY Statute though requires an internal or international conflict) can be broken down into four essential elements, namely:

> "i) the act must be inhumane in nature and character, causing great suffering, or serious injury to body or to mental or physical health;
> ii) the act must be committed as part of a widespread or systematic attack;
> iii) the act must be committed against members of the civilian population;
> iv) the act must be committed on one or more discriminatory grounds, namely, national, political, ethnic, racial or religious grounds."[97]

In the second element, either widespread or systematic, the trial chamber defines the first alternative, *widespread* as "massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims"[98]. They further defined *systematic* as "thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources"[99]. What is important to note is that the trial chamber finds that there is no requirement that this policy must be adopted formally as the policy of a state, but there must be some kind of preconceived plan or policy. The requisite attack was defined as a "unlawful act of the kind enumerated in Article 3(a) to (I) of the Statute, like murder, extermination, enslavement etc. an attack may also be non violent in nature, for example apartheid, if orchestrated on a massive scale or in a systematic manner."[100]

The third element, the civilian population, shall be interpreted to mean people who are not taking any active part in the hostilities, including members of the armed forces who laid down their arms. The fourth and last element means that the offence must be committed any of the above stated grounds. Inhumane acts committed against persons not falling within any of these categories, could still constitute crimes against humanity if the perpetrator had the intent to commit the attack on / towards one of the grounds mentioned in article 3 of the ICTR Statute.[101] The category of acts enumerated under article 3 of the Statute, set out to constitute crimes against humanity, is not exhaustive. Importantly the Trial Chamber stressed that "any act which is inhumane in nature and character may constitute a crime against humanity, provided the other elements are met."[102] This is evident

[97] The Prosecutor v. Akayesu, Judgement, ICTR-96-4-T, 2 September 1998, para. 578.
[98] Ibid, para. 580.
[99] Ibid, para. 580.
[100] Ibid, para. 581.
[101] Ibid, para. 583-584.
[102] Ibid, para. 585.

from article 3, paragraph (i) that covers all other inhumane acts not stipulated in (a) to (h). The trial chamber continuos discussion of rape as a crime against humanity is not important here.

5.2.2 Intent to Prosecute Sexual Enslavement under the ICTY

Rape and other acts of sexual assaults have in all times been committed in times of armed conflict. The ICTY has emphasised a high priority to sex-related crimes and to prosecute the perpetrators thereof. The Tribunals specific intent marks a significant and positive development for international humanitarian law, since this has traditionally been given only little attention in the international community.[103]

Cases of interest in relation to trafficking in women are the charges of enslavement and sexual enslavement as a crime against humanity under the ICTY Statute.[104] In order to analyse the possibilities of using the jurisprudence from the two ad hoc courts when prosecuting trafficking in women, jurisprudence on enslavement and sexual enslavement will be presented. As far as it is necessary and relevant for the crime of trafficking in women case law of sexual assaults will also be discussed.

5.2.2.1 The Prosecutor v. Kunarac

The charges of enslavement as a crime against humanity in case the *Prosecutor v. Kunarac*[105] concerns labour enslavement rather than sexual enslavement. However, the Trial Chamber discusses sexual enslavement in the judgement. The ICTY Statute does not provide for any definition of enslavement. Hence to determine what constituted enslavement as a crime against humanity under customary international law at the time of the indictment, the Kunarac Trial Chamber referred to various international humanitarian and human rights sources. Among these, they referred to article 6 of the 1979 CEDAW, which obligates States to suppress "all forms of traffic in women and the exploitation of prostitution of women." Unlike the 1949 Traffic Convention, CEDAW does not require a link to be established between trafficking and prostitution. [106]

The Kunarac Trial Chamber concluded that "enslavement as a crime against humanity in customary international law consist[s] of the exercise of any or all of the powers attaching to the right of ownership over a person."[107] Thus the Chamber found that the *actus reus* of enslavement is "the exercise of any

[103] Viseur Sellers, Particia and Okuizumi, Kaoru, *Intentional Prosecution of Sexual Assaults*, 1997, p. 46-47.
[104] Ibid, p. 57.
[105] Prosecutor v. Kunarac, Judgement, IT-96-23-T & IT-96-23/1-T, 22 February 2001.
[106] Ibid, para. 515-536.
[107] Ibid, para. 539.

or all of the powers attaching to the right of ownership over a person. The *mens rea* of the violation consists in the intentional exercise of such powers."[108]

The Kunarac Trial Chamber held that under its definition of enslavement, indications of elements of control and ownership include the:

(a) restriction or control of an individual's autonomy,
(b) freedom of choice or freedom of movement,
(c) accruing of some gain to the perpetrator,
(d) absence of consent or free will of the victim, which often is "rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim's position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions"[109],
(e) exploitation, "the extraction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking"[110].

The Trial Chamber agreed to the factors, put forward by the Prosecutor, to be taken into account when determining whether enslavement has been committed or not. These factors are:

(a) the control of someone's movement,
(b) the control of physical environment,
(c) psychological control,
(d) measures taken to prevent or deter escape,
(e) force, threat of force or coercion,
(f) duration,
(g) assertion of exclusivity,
(h) subjection to cruel treatment and abuse,
(i) control of sexuality, and
(j) forced labour.

The Trial Chamber concluded that the mere ability to "buy, sell, trade or inherit a person or his or her labours or services" is insufficient to qualify as enslavement, but such actions actually occurring could be a relevant factor.[111]

5.2.3 Intent to Prosecute Sexual Violence under the ICTR

There are mainly three ICTR cases that deals with sexual violence as a crime against humanity. The Akayesu Trial Chamber judgement has evolved jurisprudence which has been applied by both the Rutaganda and Musema

[108] Ibid, para. 540.
[109] Ibid, para. 542.
[110] Ibid, para. 542.
[111] Ibid, para. 543.

Trial Chambers. The findings of the Akayesu Trial Chamber will be discussed below.

5.2.3.1 The Prosecutor v. Akayesu

Firstly crimes against humanity will be analysed in accordance with the interpretation of the ICTR. The Prosecutor v. Akayesu[112] is the ICTR leading case on sexual violence as a crime against humanity. The Akayesu Trial Chamber analyse the historical background and development on crimes against humanity. Furthermore sexual violence was defined and put in relation to other sexual crimes under international law and the ICTR Statute.

The Akayesu Trial Chamber defined sexual violence "any act of a sexual nature which is committed on a person under circumstances which are coercive."[113] They further stress the importance that sexual violence is broader than rape and includes such crimes as sexual molestation, forced marriage, and forced abortion as well as the gender related crimes explicitly listed in the ICC Statute as war crimes and crimes against humanity, namely "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization"[114] and other similar forms of violence. They emphasised that sexual violence does not necessarily need to include physical contact, as an example they stated forced public nudity as punishable.

5.2.4 Legal Effect of ICTY and ICTR Jurisprudence

The first time the Trial Chamber addressed the issue of its character as an international court was in the Kupreskić Judgement.[115] The Chamber held that the ICTY is an international court, a ruling for which it gave three main reasons. Firstly, pursuant to the SC Resolution 827[116], where the SC decided to establish an international tribunal for the sole purpose of prosecuting individuals responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia. Secondly, the international character of the ICTY is reflected in its structure and functioning and the status, privileges and immunities of the International Tribunal granted under Article 30 of the Statute. Thirdly, the ICTY is called upon to apply international law to establish whether serious violation of international humanitarian law have been committed. This last obligation steams from the

[112] The Prosecutor v. Akayesu, Judgement, ICTR-96-4-T, 2 September 1998.
[113] Ibid, para 688, and Prosecutor v. Musema, Judgement, ICTR-96-13-T, 27 January 2000.
[114] The Prosecutor v. Akayesu, Judgement, ICTR-96-4-T, 2 September 1998, para. 688.
[115] Prosecutor v. Kupreskic et. al., Judgement, IT-95-16-T, 14 January 2000.
[116] S/RES/827, 1993.

ICTY Statute and the Report of the Secretary-General[117] approved by the SC in the resolution establishing the Tribunal.[118]

The Trial Chamber further ruled that the normative corpus of the ICTY is international law. The Trial Chamber pointed out that the Tribunal could resort to domestic law or international customary law to fill lacunae in the Statute.[119] Hence, the Chamber found that the Tribunal is international in nature and, besides Appeals Chamber decisions, it should use international judicial decisions as a subsidiary means for the determination of rules of law, in conformity with Article 38 of the ICJ Statute. Precedents of other international criminal tribunals, such as Nuremberg or Tokyo, do not bind the ICTY; neither does domestic criminal courts that have adjudicated international crimes. When evaluating the hierarchy of judicial decisions the Trial Chamber found that decisions handed down by international criminal tribunals are more persuasive than domestic courts applying international humanitarian law on the basis of national legislation.[120] The Kupreskic Trial Chamber sum up by stating the following:

> "In sum, international criminal courts such as the International Tribunal must always carefully appraise decisions of other courts before relying on their persuasive authority as to existing law. Moreover, they should apply a stricter level of scrutiny to national decisions than to international judgements, as the latter are at least based on the same *corpus* of law as that applied by international courts, whereas the former tend to apply national law, or primarily that law, or else interpret international rules through the prism of national legislation."[121]

5.2.5 The Effect of National Legislation and Case Law

In the work of the ICTY legal questions and problems arise which have never been resolved in any international forum before. The prosecutors, counsels and judges all look to domestic legislation and case law to solve questions of law that arise in the ICTY proceedings. This of course raises the question to what extent the ICTY and ICTR can apply national law.[122]

In the Tadic[123] Appeals Judgement the Chamber discussed the value of national legislation when interpreting international law. They came to the conclusion that "it should be emphasised that reference to national legislation and case law only serves to show the notion of common purpose

[117] Report of Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808, 1993.
[118] Prosecutor v. Kupreskic et. al., Judgement, IT-95-16-T, 14 January 2000, para. 539.
[119] Ibid.
[120] Ibid, para. 540-542.
[121] Ibid, para. 542.
[122] Ackerman, John E. and O'Sullivan, Eugene, *Practice and Procedure of the International Criminal Tribunal for the Former Yugoslavia: with selected materials from the International Criminal Tribunal for Rwanda*, 2000, page 517.
[123] Prosecutor v. Tadić, Judgement, IT-95-17/1-A, 15 July 1999.

upheld in international criminal law has an underpinning in many national systems. By contrast, […] national legislation and case law cannot be relied upon as a source of international principles or rules, under the doctrine of the general principles of law recognised by the nations of the world."[124]

In the Furunzija case the Trial Chamber stressed that whenever international criminal rules do not define the concept of criminal law, it is justified for the Chamber to rely upon domestic legislation subjected to the following conditions:

> "(i) unless indicated by an international rule, reference should not be made to one national legal system only, say that of common-law or that of civil-law States. Rather, international courts must draw upon the general concepts and legal institutions common to all the major legal systems of the world. This presupposes a process of identification of the common denominators in these legal systems so as to pinpoint the basic notions they share;
>
> (ii) since "international trials exhibit a number of features that differentiate them from national criminal proceedings",account must be taken of the specificity of international criminal proceedings when utilising national law notions. In this way a mechanical importation or transposition from national law into international criminal proceedings is avoided, as well as the attendant distortions of the unique traits of such proceedings."[125]

5.2.6 Applicability of the ICTY and ICTR Jurisprudence

Even if the jurisdiction of the *ad hoc* Courts is limited in area and time, its jurisprudence should be applicable to the whole international community. Security Council resolutions might be binding due to customary international law, and all states are bound by customary international law.

In the Kupreskic judgement the Trial Chamber stated that the SC had defined crimes against humanity more narrowly than is necessary under customary international law.[126] In one Tadic Appeals Chamber Decision it was ruled that it is a settled rule of customary international law that crimes against humanity do not require a connection to any conflict at all.[127] But since the ICTY Statute governs, there is a requirement of an armed conflict under article 5. The ICTY and ICTR Statues differ only in one respect in relation to the crime against humanity. The ICTY Statute requires the existence of either an internal of international armed conflict, while the ICTR Statute requires that the offence be a part of a *widespread or*

[124] Ibid, para. 225
[125] Prosecutor v. Furundzija, Judgement, IT-95-17/1-T, 10 December 1998, para. 178.
[126] Prosecutor v. Kupreskic, Judgement, IT-95-16-T, 14 January 2000, para. 545.
[127] Prosecutor v. Tadic, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1-AR72, 2 October 1995, para. 141.

systematic attack. The ICTY Statute has also been interpreted to require the latter element, even if it is only set out specifically in the ICTR Statute.[128]

The ICTY and ICTR are developing an unprecedented jurisprudence of international humanitarian law. Prior to the establishment of the of the ad hoc tribunals, the principal source of international judicial precedent remained the 50 year old decisions of the world war II tribunals. The decisions will affect the future work of the ICTY, the ICTR, the future ICC, and national courts and tribunals when deciding cases in the areas of their jurisdiction. In its work the ICTY and ICTR often interprets customary international law and domestic criminal law, to determine whether a general principle of law exists. This work is likely to have effects on the legal developments, both national and international, with regard to its interpretations of regional and universal legal instruments. As a result, future interpretations of those instruments will most likely take account of the ICTY's and ICTR's rulings. The jurisprudence of the two ad hoc courts will undoubtedly continue to grow and strongly influence the development of international humanitarian law, as well as international law in general.[129]

5.3 The Future International Criminal Court

5.3.1 Elements of Crimes of the ICC

The United Nations Preparatory Commission for the International Criminal Court (PCNICC) finalised a draft text on the elements of crime in November 2000. They point out that crimes against humanity is one of the most serious crimes in the International Community as a "whole, warrant and entail individual criminal responsibility". The crime requires conduct that is impermissible under general applicable international law, as recognised by the principal legal systems of the world. There are several subsections in the article suppressing crimes against humanity. The sections of value to this essay are: article 7(1)(c) crime against humanity of enslavement and article 7(1)(g)-2 crime against humanity of sexual slavery. Each subsection consists of three elements of crime, which will be listed below. Contrary to the last two elements, the first element is exclusive for each subsection. The last two elements will be discussed below and the first more detailed one at the time.

5.3.1.1 Requiremnts of "Widespread or systematic attack against a civilian population" and "knowledge"

[128] Ackerman, John E. and O'Sullivan, Eugene, *Practice and Procedure of the International Criminal Tribunal for the Former Yugoslavia: with selected materials from the International Criminal Tribunal for Rwanda*, 2000, page 47.
[129] Murphy, Sean D, *Developments In International Criminal Law*, 1999, p. 95-97.

The last two elements describe under what conditions the conduct must take place. They clarify the requisite "participation in" and "knowledge of" a widespread and systematic attack against a civilian population. The last element should however not be interpreted as requiring proof that the perpetrator had knowledge of the precise details of the plan or policy of the State or organisation. It should be interpreted as an intent clause, so that in case of an emerging widespread or systematic attack against a civilian population, this mental element is satisfied if the perpetrator intended to further such an attack.[130]

The condition "attack directed against a civilian population" should be understood to mean "a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organisation policy to commit such attack"[131]. The acts does nor have to constitute any military attack. What should be required with "policy to commit such attack" is that either a State or an organization "actively promote or encourage such an attack against a civilian population."[132]

5.3.1.2 Article 7(1)(c) Crime Against Humanity of Enslavement

The first element is as follows: "The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty."[133] According to the PCNICC, it is understood that such deprivation of liberty may, in some circumstances include forced labour, according to the supplement to the Slavery Convention 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.[134]

5.3.1.3 Article 7(1)(g)-2 Crime Against Humanity of Sexual Slavery

The first element is as follows: "The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty."[135] It is recognised that the commission of this crime could involve more than one perpetrator as

[130] United Nations Preparatory Commission for the International Criminal Court, PCNICC/2000/1/Add.2, 2 November 2000, p. 9.
[131] Ibid.
[132] Ibid.
[133] Ibid, p. 10.
[134] Ibid.
[135] United Nations Preparatory Commission for the International Criminal Court, Addendum, Part II, Finalized draft text of the Elements of Crimes, PCNICC/2000/1/Add.2, 2 November 2000, p. 13.

part of a common criminal purpose. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.[136]

5.3.2 Legal Effect of the Rome Statute

The Rome Statute was signed in 1998, and it will not enter into force until 60 state parties have ratified the treaty according to article 126. As a result the Rome Statute entered into force on July 1st 2002 but the problem for it to function properly will remain for quite some time. One can compare it with the two ad hoc courts where the time of the court proceedings has been fairly criticised.

In the Tadic Appeals Judgement[137] the Appeals Chamber addressed the issue of to what extent provisions of the Rome Statute are codification of customary international law or merely new provisions adopted only for the purpose of the Court. They stressed that:

> "The legal weight to be currently attributed to the provisions of the Rome Statute has been correctly set out by Trial Chamber II in *Furundzija.*[138] There the Trial Chamber pointed out that the Statute is still a non-binding international treaty, for it has not yet entered into force. Nevertheless, it already possesses significant legal value. The Statute was adopted by an overwhelming majority of the States attending the Rome Diplomatic Conference and was substantially endorsed by the Sixth Committee of the United Nations General Assembly. This shows that that text is supported by a great number of States and may be taken to express the legal position i.e. *opinio iuris* of those States. This is consistent with the view that the mode of accomplice liability under discussion is well-established in international law and is distinct from aiding and abetting.[139]

The Rome Statute is more restrictive than the Statutes of the *ad hoc* Courts. Firstly, like the ICTY and ICTR the ICC has complementary jurisdiction with that of national jurisdiction but unlike the ad hoc courts, the ICC gives primacy to national jurisdiction. Secondly the ICC is trigged by states, and not on the initiative of a prosecutor, the ICC does not have the power to investigate or prosecute ex officio, but only on the basis of a state complaint. Thirdly the complaining state must not only have ratified the Rome Statute but must also have accepted the statute in regard to the specific crime complained of.[140]

---

[136] United Nations Preparatory Commission for the International Criminal Court, PCNICC/2000/1/Add.2, 2 November 2000, p. 13.
[137] Prosecutor v. Tadić, Judgement, IT-95-17/1-A, 10 December 1998.
[138] Prosecutor v. Furundzija, Judgement, IT-95-17/1-T, 10 December 1998, para. 227.
[139] Prosecutor v. Tadić, Judgement, IT-95-17/1-A, 15 July 1999, para. 223.
[140] Cassese, Antonio, *On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law*, 1998, p. 15-16.

6 Domestic Courts

This chapter will illustrate the obligation for states to prosecute those who are suspected of having committed international crimes. Thereafter the principle of complementarity is presented to enable a discussion the effectiveness of the future ICC. Lastly a comparison between enforcement of international law in national courts and international courts is presented.

6.1 Obligation to Prosecute Trafficking as an International Crime

All states should take all measures on national, bilateral and multilateral level, to prevent the abduction of, the sale of, or traffic in human beings. There is no universally applicable multilateral convention that regulates a state's assertions of criminal jurisdiction in general. International customary law rules and principles and general principles of law must therefore regulate this. Domestic legislation, where states criminal laws are regulated, could also constitute evidence of customary international law and therefore partly regulate international jurisdictional principles.[141]

6.2 The Principle of Complementarity

The principle of complementarily is regulated in the preamble and article 1 and 17 of the Rome Statute.[142] The purpose is that the future international criminal court should only serve as a complement to the national courts. This is the result after many discussions according to the importance of state sovereignty. During the conference in Rome many states claimed that the one condition for the acceptance the establishment of a permanent international criminal court, is that the national states still retain their state sovereignty. Therefore a case cannot be tried by the ICC unless the domestic court, either, is "unwilling or unable genuinely to carry out the investigation or prosecution"[143], or if, "the case has been investigated by a State […] and the State has decided not to prosecute the person concerned."[144] In article 27 it is stated that States "shall in no case exempt a person from criminal responsibility."

Even if the ICC only will serve as a complementary court, its jurisdiction will highly affect national legal systems. States risk the possibility that the

[141] Cameron, Iain, *The protective principle of International Criminal Jurisdiction*, 1994, p.13-14.
[142] Rome Statute, Preamble and Article 1 "…shall be complementary to national criminal jurisdictions."
[143] Rome Statute, article 17 (1) (a).
[144] Rome Statute, article 17 (1) (b).

ICC might take on prosecutions that could have been brought domestically. Is these situations the ICC might determine that national courts have not met the international standards set out in article 17 of the Rome Statute.

As a consequence Charney believe that "states will feel impelled to try persons accused of such crimes and to pursue those cases in a bona fide way."[145] Under these circumstances, Charney continues, that "we might find that few cases actually reach the ICC for prosecution"[146] meaning states probably will feel the pressure from the international community to do their best to investigate and prosecute crimes falling under the Rome Statute. This development will presumably have an affect on all states, not only state parties to the ICC.[147]

6.3 National Courts v. International Courts

International humanitarian law should be enforced in every country in the world where it is violated. This can only be ensured by a permanent international criminal court. The establishment of the two ad hoc Tribunals shall be seen as constituting an important step towards the establishment of a permanent. The establishment of a permanent criminal court would require nations to relinquish a degree of sovereignty. This would be the consequence of agreeing to be bound to surrender citizens for trial. It is mainly for this reason that there has been resistance to the establishment of such a permanent court.[148]

[145] Charney, Jonathan I, *International Criminal Law and the Role of Domestic Courts*, 2001, p. 124.
[146] Ibid.
[147] Ibid, p. 120-124.
[148] Justice Richard Goldstone, *Prosecuting War Criminals*, 1996, p. 10.

7 Conclusion

The subject matters discussed in this essay are the following:

- the need and actual enforcement possibilities to prevent, prosecute and punish trafficking in women on an international level;
- the development of state co-operation on prevention, prosecution and punishment of traffickers in relation to regional and universal measures against trafficking;
- the possible obligation for domestic courts to prosecute trafficking in women as an international crime in line with international law;
- the question whether it is possible to prosecute traffickers in women, as a crime against humanity.

Trafficking in human beings is a constantly growing phenomenon. There are estimations that this form of organised crime is as large or even larger than trafficking of drugs or weapons.[149] The absolute majority of victims of trafficking is women and children, although men also are victims of the crime.[150] The UN approximate that criminal networks gain 7 billion US dollars per year from trafficking in women.[151] Trafficking exists in both internal and international forms. The internal one is harder to discover and conquer, further it usually develops in post conflict areas when a new "state structure" is taking form, see i.e. former Yugoslavia.[152]

The need to prosecute traffickers in women in an effective way exist in nearly every country. Different links of the trafficking chain occurs in different countries, countries of origin-, countries of transit-, as well as countries of destination. The problem has to be brought up to the surface and to be discussed on a higher and more serious level. There is need for state co-operation and law enforcement.

The international legal material criminalising trafficking in human beings dates back to the early 20th century. These legal texts have not been effective

[149] No exact figures exist but there is a EU presumption that annually 500.000 women and girls are trafficked into Europe each year, while Rikspolisstyrelsen in Sweden estimate that 200-500 girls and women are trafficked to Sweden each year; *Organiserad brottslighet i Sverige*, RKP KUT Rapport 2001:13, 2000. The UN has estimated that 4 million persons are trafficked each year; *Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women*, Commission on Human Rights, 56th session, E/CN.4/2000/68, para. 72.

[150] Only 20% are men, young buys or children; *Frågor och svar om trafficking-slavhandel på 2000-talet*, www.ikik.se

[151] *Människosmuggling och offer för människohandel*, SOU 2002:69, p. 147.

[152] *Organiserad brottslighet-lösa maskor eller fasta nätverk*, BRÅ Rapport, 2002, p. 44.

enough. The adoption of the most recent document, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons*[153], will hopefully be more efficient. This is an important landmark since it provides the first uniform international definition of trafficking in human beings. This definition provides a milestone and the basis for the harmonisation of definitions in domestic law as to what constitutes trafficking. A harmonisation is important in order to prevent, prosecute and punish traffickers under both national and international legislation. Often the national legal framework to combat trafficking is quite developed. However; poorly implemented.

The European Union has had the topic, *Trafficking in human beings,* on its agenda since 1996[154], and have agreed on a common criminal approach to combat trafficking during 2001. In many EU Member States there is no such crime as *trafficking in human beings* in the national criminal code. Therefore the EU Member States have agreed upon implementing necessary measures to ensure prevention, suppression and punishment of the traffickers. Some Member States, i.e. Sweden[155], has although adopted regulations prohibiting trafficking in human beings for sexual purposes, in their domestic legislation.

As of yet there is no international instrument dealing solely for the protection of victims of trafficking, to ensure their fundamental human rights. In the Trafficking Protocol the importance to implement necessary protective measures to ensure the human rights catalogue under international instruments is stressed. In many cases victims of trafficking are seen as criminals themselves, foremost because they mostly are illegal immigrants and also the fact that they work as prostitutes in countries where prostitution is seen as a crime. Many states do not seem to acknowledge that the prostitution is forced, and one could ask if there is anything called "voluntary prostitution".

It could be argued that trafficking is to be seen as a crime against humanity. In the Rome Statute for the International Criminal Court (ICC)[156] trafficking is recognised as *a Crime Against Humanity of Enslavement and Sexual Slavery*.[157] Hypothetically the ICC and other national or international courts could use jurisprudence developed on *Crimes Against Humanity of*

[153] Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (CTOC), Article 3 (a), signed in Palermo in November 2000.
[154] When the problem became evident from the Yugoslav conflict.
[155] Brottsbalk (1962:700), The Swedish Penal Code, Chapter 4, §1a.
[156] Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, 10 November 1998. The ICC started to function on July 1st 2002.
[157] ICC Statute art. 7 (1)(c) Crime Against Humanity of Enslavement and 7(1)(g)-2 Crime Against Humanity of Sexual Slavery.

Enslavement and Sexual Slavery when prosecuting traffickers of human beings. [158]

7.1 The Need of International Measures and Co-operation Against Trafficking

The international measures to combat trafficking in women have reached considerable proportions. The work within the CEDAW, EU, IOM, Council of Europe and OSCE, tend to be quite similar, which according to me seems to prove that the majority of States in the international community are aware of the problem and the importance to combat and suppress trafficking as an international crime.

Trafficking in women is committed both across national borders and within a country. Difficulties occur since the criminal networks often include state authorities. Because of this states acting alone combating trafficking in women have a hard time preventing, prosecuting and punishing the perpetrators. Just until recently trafficking in women has been treated solely as a domestic subject matter. The result seems to be that states almost have neglected the issue of trafficking in women. If any measures have been taken, the states have focused their work against the victims rather than the criminals. The victim of crime has been arrested either for illegal immigration or prostitution and then sent back to the country of origin, without securing her evidence or protecting her human rights.

It is extremely important that trafficking in women is seen as an international crime, where state co-operation characterises the work against the crime. All national states should be obliged to prosecute and punish traffickers in women according to universal jurisdiction and also to protect the women under similar legal regulations. It shall be no profit for the traffickers to act in certain countries where the legal safety nets for the victims is lower, or where the criminal code or enforcement possibilities are to weak. The enhanced discussion of trafficking in women, during the past years, on national, regional and international levels clearly shows the demand for unanimous international measures to prevent, prosecute and punish trafficking. I believe that the Trafficking Protocol is an important instrument in the work against trafficking, since it stipulates the international standards. As many times proven before, International Conventions are almost impossible to implement universally, and they do not include any enforcement clauses. One of the major strength is that the Trafficking Protocol presents the first universe internationally accepted definition of trafficking in human beings. This is an important landmark, which will hopefully in some way standardise the work against trafficking.

[158] The jurisprudence on *Crimes Against Humanity of Enslavement and Sexual Assault* from the ad hoc criminal courts, ICTY and ICTR, will be presented in chapter 5.

What is far more efficient is the regional co-operation to combat trafficking in women. The aim within the EU is closer co-operation between police forces and judicial authorities as well as approximation of criminal rules. In the Proposal for a Council Framework the Member States are obliged to ensure that trafficking for the purpose of sexual exploitation is punishable and also that instigation of, aiding, abetting or attempt to commit trafficking offences is punishable. EUROPOL plays a significant role in the prevention and fight against international organised crime, by facilitating exchange of information, crime analysis and harmonising investigative techniques. The Commission proposal for victims' protection by granting them temporary residence permits when co-operating with state authorities could be one way of securing evidence by witness statements from the victims, and therefore enhance the actual judicial proceedings against the traffickers. To label these women as prostitutes and dismiss them, by arresting them for prostitution and illegal immigration, illustrates a disregard for the real nature of the problem. The women have no legal standing, as they are illegal immigrants. This is a very important part of the otherwise political work to protect the victims of trafficking. The victims of crime need to dare to come forward and testify. The signals to the victims as well as to the traffickers must be direct.

I believe that the work within EU will eventually succeed in the approximation of criminal rules and also in state co-operation prosecution, but what is highly important is to seriously work together with state authorities in states of transit and origin outside EU borders to enable the preventive work of human trafficking.

The OSCE, ODIHR and IOM have worked on a more local level with projects in for example Kosovo. In addition to improve legal frameworks prohibiting trafficking in women, there are regulations of extensive confiscation clauses, aimed at the profits of the traffickers, where parts of any funds confiscated should be available for the victims and victim protection programmes. According to me, such measures will have some deterrent effects on the criminal networks. Without confiscation possibilities the human trafficking market is too lucrative, even if you get caught, after serving a possible sentence the criminals still have their economic profit left.

7.2 State Obligation to Prosecute Trafficking as an International Crime

The principle of universality gives all states jurisdiction over international crimes. Since trafficking in women is an international crime under the Trafficking Protocol and the Rome Statute trafficking shall constitute a crime in the whole international community. The concept of universal jurisdiction enable a state to punish certain crimes, wherever and by whoever they have been committed, without any requited connection to territory, nationality or special state interest. State parties are obliged to

prosecute trafficking as an international crime. Since there is no enforcement clauses in neither of the instruments, one can just hope that the ”good-will” to follow the measures of the international community will impel the states to actively try crimes of international character.

One weakness of the Rome Statute could be that is does provide for universal jurisdiction but where the principle of complementarity has precedence. During the establishment of the Rome Statute state parties stressed the importance of state sovereignty. The ICC can therefore act only when national courts are *unwilling or genuinely unable to carry out the investigation or prosecution* or *if the case has been investigated but the State has decided not to prosecute the person concerned*.

The provision of universal jurisdiction in equality with the principle of complementarity would give the ICC the best solution to combat violations of the Statute. As of today the Court can only proceed when all domestic means have been exhausted or the State has showed unable to prosecute. Instead the ICC would prove more efficient if it was given the possibility to step in, ex officio, when national states actively showed unwilling or incapable to try the perpetrators of the crimes enumerated in the Rome Statute. Would this extension of universal jurisdiction to the ICC violate the principle of state sovereignty or the primacy of national jurisdiction? I believe not, since this extension of jurisdiction would only occur if and when a state party shows unwilling to follow the regulations set out in the Rome Statute.

The ultimate solution would be domestic courts implementing trafficking as an international crime, where they will prosecute and punish the perpetrators, no matter where the crime has been committed or who the perpetrator is. This would create more efficient court proceedings than an international court. But if a state omit to prosecute such criminal acts, an international court like the ICC should have the powers to indict and punish individuals ex officio, suspected to have committed an international crime, according to universal jurisdiction. Hopefully, but less likely, the jurisdiction of the ICC will extend to a universal jurisdiction in equality with the present complementary jurisdiction.

7.3 Trafficking as a Crime Against Humanity

Trafficking in women is enumerated as a crime against humanity under the Rome Statute. Since the ICC has still not start to function yet, I have looked at similar crimes under the ICTY and ICTR Statutes. Sexual enslavement and sexual violence are crimes enumerated under these Statutes, and are comparable to trafficking for sexual purposes since it has similar elements of crime. There is only few ICTY and ICTR cases that actually address sexual enslavement or sexual violence. I have chosen to reefer to them as they could provide as evidentiary standards when prosecuting trafficking as

an international crime. I believe that the ICTY and ICTR jurisprudence accentuate the importance of the protection of victims of sexual violence where the criminal act not necessarily have to include physical contact. A claim from the perpetrator trying to incriminate the victim, saying that she has co-operated or acted of free will, or that she has had previous sexual experience, is irrelevant according to the ICTY and ICTR jurisprudence. Article 3(b) of the Trafficking Protocol also stresses the fact that consent of the victim of trafficking is totally irrelevant.

7.4 A New Criminal Approach

The international criminal approach needed has to prevent the fact that traffickers are able to go unpunished because of lack of state co-operation or difficulty to investigate or prosecute the same. State co-operation on all levels, both preventive measures and enforcement possibilities, is a must. What is important is that all levels in the trafficking chain are criminalised, irrespective of if someone only aid or abet or just make an attempt to commit trafficking offences. All such acts must be enumerated as criminal offences equally in all states.

7.5 Proposals for Further Research or Studies

My hopes are that this presentation will stimulate to further research on a more thorough level. The character of this essay has been too broad to enable a deeper penetration of the subject matter. There is great scope to approach and refine the issues of trafficking in women as an international crime.

The essay is focused on the presumptive work of the future ICC and the jurisdictional relation to domestic courts in prosecuting trafficking as an international crime. Another interesting field of research would be the actual criminal approach towards trafficking in women as an international crime in domestic court proceedings.

8 Bibliography

8.1 Literature

Ackerman, John E. and O'Sullivan, Eugene — *Practice and Procedure of the International Criminal Tribunal for the Former Yugoslavia: with selected materials from the International Criminal Tribunal for Rwanda*, The Hague, 2000

Aronowitz, Alexis A — *Smuggling and trafficking in human beings; the phenomenon, the markets that drive it and the organisations that promote it*, European Journal on Criminal Policy and Research 9, 2001

Bassiouni, M. Cherif — *"Crimes against humanity"*, International Criminal Law, Volume I, Crimes, Second Edition, New York, 1999

Bring, Ove — *International Criminal Law in Historical Perspective*, Stockholm, 2001

Cameron, Iain, — *The protective principle of International Criminal Jurisdiction*, Dartmonth, 1994

Cassese, Antonio — *On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law*, European Journal of International Law, Volume IX, No.1, 1998

Charney, Jonathan I — *International Criminal Law and the Role of Domestic Courts*, American Journal of International Law, Volume 95, No. I, 2001

Fehér, Lenke — *International Efforts Against Trafficking in Human Beings*, Acta Juridica Hungarica, 41 Nos 3-4, Budapest, 2000

Gardam, Judith G. and Jarvis, Michelle J. — *Women, Armed Conflict and International Law*, The Hague, 2001

Goldstone, Richard — *Prosecuting War Criminals*, Occasional Paper No.10, The David Davies Memorial Institute of International Studies, 1996

Malanczuk, Peter — *Akehurst´s Modern Introduction to International Law*, 7th Revised Edition, 1998

Malekian, Farhad — *International Criminal Law: The Legal and Critical Analysis of International Crimes*, Volume I, Motala, 1991

Meron, Theodor — *Crimes under the jurisdiction of the International Criminal Court*, Reflections on the International Criminal Court, von Hebel, Lammers and Schukking, 1999

Murphy, Sean D — *Developments In International Criminal Law*, American Journal of International Law, Volume 93, 1999

Murphy, Sean D — *International Trafficking in Persons, Especially Women and Children*, American Journal of International Law, Volume 95 No. 2, 2001

Viseur Sellers, Particia and Okuizumi, Kaoru — *Intentional Prosecution of Sexual Assaults*, Transnational Law and Contemporary Problems, Volume 7, 1997

8.2 Other Materials

8.2.1 Articles

Holt, Kate — *Captive Market*, The Sunday Times Magazine, p. 44-62, February 18th 2001

Kvinna till Kvinna — *Frågor och svar om trafficking-slavhandel på 2000-talet*, August 20th 2002, available at: www.iktk.se

Media Advisory — *Conference "Europe Against Trafficking in Persons" to open in Berlin*, October 12th 2001, available at: www.osce.org/news

OSCE — *Mission in Kosovo, Role of OSCE in the action against Trafficking*, June 7th 2001, available at: www.osce.org/kosovo/publications/pdf/trafficking_factsheet_eng.pdf

8.2.2 Seminars

Zillén, Eva — Kvinna till Kvinna (NGO), UPF Seminar, University of Lund, 13 February 2002

8.3 International Documents

8.3.1 International Agreements

Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Charter of the International Military Tribunal, (The London Agreement), August 8th 1945, 59 Stat. 1544, 82 U.N.T.S. 279

The International Tribunal for the Prosecution of Persons Responsible for Genocide or Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 of January 1994 and 31 of December 1994, (Res. 995)

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, which was established Pursuant to the Security Council Resolution 827, May 25th 1993, S/RES/827, (1993)

8.3.2 International Conventions

Charter of the International Tribunal for the Prosecution of the Major War Criminals of the European Theatre, 1945

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 U.N.T.S. 271, 2 December 1949, entered into force 25 July 1951

United Nations Convention against Transnational Organized Crime, and its two additional Protocols: The Protocol to Prevent, Suppress and Punish

Trafficking in Persons, especially Women and Children, and The Protocol Against the Smuggling of Migrants by Land, Sea and Air, signed in Palermo in November 2000

United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, UN Res 317 (IV), 2 December 1949.

Slavery Convention 1926, 25 Sept. 1926, entry into force 9 March 1927; amended by Protocol UN GA Res 794 (VIII) of 23 Oct. 1953, 60 L.N.T.S. 253 and Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, 7 September 1956, entered into force 30 April 1957.

8.3.3 United Nation Official Documents

Commission on Human Rights 56th session	Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women, Economic and Social Council, E/CN.4/2000/68, 29 February 2000
Fourth World Conference on Women	Platform for Actions, Beijing, 1995
Judges of the International Criminal Tribunal for Rwanda	Rules of Procedure and Evidence, Adopted on 29 June 1995, As amended on 31 May 2001
Judges of the International Criminal Tribunal for the Former Yugoslavia	Rules of Procedure and Evidence, Adopted on 11 February 1994, As amended on 11 and 12 July 2002
Secretary General	Report of Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808, 3 May 1993

8.3.4 Official Documents from the International Criminal Court

Rome Statute of the International Criminal

Court — U.N. Doc. A/CONF.183/9, 10 November 1998

UN Preparatory Commission for the International Criminal Court, — Report of the Preparatory Commission for the International Criminal Court, Addendum, Part I, Finalized draft text of the Rules of Procedure and Evidence, PCNICC/2000/INF/3/Add.1, 2 November 2000

UN Preparatory Commission for the International Criminal Court, — Report of the Preparatory Commission for the International Criminal Court, Addendum, Part II, Finalized draft text of the Elements of Crimes, PCNICC/2000/1/Add.2, 2 November 2000.

8.4 Swedish Documents

8.4.1 Swedish Laws

The Penal Code — Brottsbalk (1962:700)

8.4.2 Swedish Official Documents

8.4.2.1 Government Bills

Prop 2001/02:99 — Sveriges antagande av rambeslut om åtgärder för att bekämpa människohandel

8.4.2.2 Swedish Public Investigations

SOU 2002:69 — Människosmuggling och offer för människohandel

8.4.2.3 Parliament Committee Reports

2001/02:JuU28 — Godkännande av rambeslut om åtgärder för att bekämpa människohandel

8.4.2.4 Other Official Documents

BRÅ Rapport — Organiserad brottslighet-lösa maskor eller fasta nätverk, 2002

RKP KUT Rapport 2001:13 — Organiserad brottslighet i Sverige, 2000

Swedish Ministry of Foreign Affairs, — Trafficking in Women and Children in Asia and Europe: A background presentation of the problems involved and the initiatives taken, Article No: UD 01.024, 2001

8.5 European Union Documents

European Commission — Combating trafficking in human beings and combating sexual exploitation of children and child pornography, Proposal for a Council Framework Decision on combating trafficking in human beings, COM(2000)854final/2, 22 January 2001

European Commission — Short-term permit to stay granted to victims of trafficking or smuggling who cooperate in the fight against smugglers and traffickers. European Commission Discussion Paper, A/2/IGE D(2001), 23 October 2001

European Council — The Stop Programme set up by Council Joint Action 96/700/JHA, 29 November 1996

European Council — The Stop Programme-II set up by Council Decision 2001/514/JHA, 28 June 2001

European Council — Presidency Conclusions, Tampere European Council, SN 200/99, 15-16 October 1999

8.6 Council of Europe Documents

Committee of Ministers — Recommendation No. R(2000) 11 of the Committee of Ministers to member States on Action against Trafficking in Human Beings for the purpose of Sexual Exploitation, adopted 19 May 2000

Parliament Assembly	European Convention for the protection of Human Rights and Fundamental Freedoms, ETS No 5, 4 November 1950
Parliament Assembly	Recommendation 1467 (2000) on clandestine immigration and the fight against traffickers, adopted 29 June 2000

8.7 Other Official Documents

IOM	Trafficking In Migrants, IOM No 25, Spring 2002
OSCE	OSCE Anti-Trafficking Guidelines, 2000, available at: http://www.osce.org/odihr/documents/guidelines/at_guidelines.pdf
OSCE	The Moscow Document, adopted in 1991
OSCE Conference Report	Europe Against Trafficking In Persons, OSCE Conference, Berlin, 15-16 October 2001
OSCE Review Conference	Trafficking in human beings: implications for the OSCE, ODHIR Background Paper 1999/3, September 1999
OSCE Supplementary Human Dimension Meeting	Trafficking in Human Beings, Vienna, General Guidelines, 19 June 2000
Signatories to the UN Convention against Transnational Crime and its Protocols	http://www.odccp.org/odccp/crime_cicp_signatures.html, December 1st, 2002.

8.8 Internet Sites

CEDAW: www.un.org/womenwatch/daw/cedaw/committ.htm
Council of Europe: www.coe.int

EU:	www.europa.eu.int
Europol:	www.europol.eu.int/home.htm
GAATW:	www.inet.co.th/org/gaatw
ICC:	www.un.org/law/icc/index.html
ICTR:	www.ictr.org
ICTY:	www.un.org/icty
ILC:	www.un.org/law/ilc/index.htm
INTERPOL:	www.interpol.int
IOM	www.iom.org
Kvinna till kvinna:	www.iktk.se
ODCCP:	www.odccp.org
OSCE:	www.osce.org
Swedish Government:	www.regeringen.se
Swedish Police:	www.polisen.se
UN:	www.un.org
UNCJIN:	www.uncjin.org

9 Table of Cases

9.1 ICTY Case Law

The Prosecutor v. Delalic	Decision on the Prosecution's Motion for the Redaction of the Public Record, IT-96-21-T, 5 June 1997
The Prosecutor v. Furundzija,	Judgement, IT-95-17/1-T, 10 December 1998
The Prosecutor v. Kunarac	Judgement, IT-96-23-T & IT-96-23/1-T, 22 February 2001
The Prosecutor v. Kupreskic	Judgement, IT-95-16-T, 14 January 2000
The Prosecutor v. Tadic	Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, 2 October 1995
The Prosecutor v. Tadic	Judgement, IT-95-17/1-A, 15 July 1999

9.2 ICTR Case Law

The Prosecutor v. Akayesu	Judgement and Sentence, ICTR-96-4-T, 2 September 1998
The Prosecutor v. Musema	Judgement and Sentence, ICTR-96-13-T, 27 January 2000