

EUROPE'S FIGHT

E u r o p e ' s F i g h t

AGAINST

A g a i n s t

HUMAN TRAFFICKING

H u m a n T r a f f i c k i n g

Stefano BERTOZZI



The French Institute for International Relations (Ifri) is France's first centre for independent research, information, and debates on today's most important international issues. Founded in 1979 by Thierry de Montbrial, Ifri is an officially recognized organization (1901 law). It is not beholden to any administrative authority, independently chooses its projects, and regularly publishes its works.

Ifri brings together, through studies and debates and in an interdisciplinary manner, political and economic decision-makers, researchers and experts from the global level.

With its Brussels branch (Ifri Brussels), Ifri is one of the rare French think-tanks that is at the heart of European debates.

© ALL RIGHTS RESERVED – IFRI – PARIS, 2009
ISBN 978-2-86592-574-2

Ifri
27, rue de la Procession
75740 Paris Cedex 15 - France
TÉL.: 33 (0)1 40 61 60 00
FAX: 33 (0) 1 40 61 60 60
E-MAIL: lfri@ifri.org

Ifri Bruxelles
rue Marie-Thérèse, 21
B-1000 Bruxelles - Belgique
TÉL.: 32 (2)238 51 10
FAX: 32 (2)238 51 15
E-MAIL: info.bruxelles@ifri.org

Site Internet: lfri.org

Contents

ABSTRACT	3
INTRODUCTION	4
THE ISSUE OF TERMINOLOGY: AN EXAMPLE	6
FROM DUBLIN TO TAMPERE: EUROPE'S FIGHT STARTED TO TAKE SHAPE	8
FROM 2000 TO 2002: EUROPE POOLS ITS FORCES.....	11
Migration and development: a credible alternative to irregular migration	12
Fighting illegal employment: Europe's directive.....	16
Europe deals with the "structural nature" of human trafficking.....	18
EUROPE'S LEGAL INSTRUMENTS	21
A new Framework Decision to prevent and fight human trafficking	25
Europe's two additional legal arrows	28
SECURING PRACTICAL COOPERATION INSIDE AND OUTSIDE THE EU	31
Frontex.....	31
Europol	36
Interpol.....	41
United Nations Office on Drugs and Crime.....	44
CHALLENGES TO BE ADDRESSED.....	49
Europe's policy options to counter human trafficking	49
Migration trends and the global recession	53
APPENDIX	57
Interviews with the author	57
References.....	58

Abstract

This article endeavours to take stock of the progress made thus far in shaping Europe's response to the contemptible practice of trafficking in human beings and to highlight the objectives for the future. Trafficking in human beings is both a grave violation of human rights and a serious crime against an individual's dignity and freedom, where people are reduced to mere commodities to be put on sale to the highest bidder. Victims of trafficking have to live for the rest of their lives with this deep-seated scar, which will linger on for many years. Careful consideration is therefore given to identifying and protecting victims and to prosecuting offenders, who are both buyers and sellers of human flesh. This study also attempts to show that Europe's initial response to human trafficking was somehow lopsided, leaning more towards coercive measures than to protecting the victims themselves. It also contains proposals designed to secure more effective cooperation between the Commission, the Member States, the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), Europol, the Council of Europe and Interpol, and to help Europe take a leading role in the fight against human trafficking, which will help consolidate its position in the international arena and thus raise its external profile.

Stefano Bertozzi is a member of the Bureau of European Policy Advisers at the European Commission. The ideas contained in this article are entirely those of the author and do not necessarily reflect the views of the European Commission.

Introduction

Although a much improved telecommunications and transport infrastructure has widened the scope for undertaking illicit activities worldwide,¹ human trafficking is not a result of today's more interdependent world. Its origins go back to the beginning of the Roman Empire, where the availability of slaves was abundant and specific legal norms justified the use of slaves, who were treated like animals.² Today's unscrupulous thugs are aware that a growing number of people are ready to pay substantial amounts of money in the hope of finding a good job somewhere in the developed world. Unmet demand for low-skilled and unskilled workers, increasingly tight border controls, stringent migration policies, and the poor results of expensive development strategies have already thrown too many irregular migrants into the clutches of criminal groups.

Although the crime of trafficking tends to be confused with the practice of human smuggling, these two offences have distinct features.³ The table below highlights the main characteristics of human smuggling and trafficking in human beings in an attempt to make a clearer distinction between the two. The following indicators are based on empirical evidence and do not necessarily reflect the legal definition of human smuggling and trafficking. It should also be underlined that some of the operational indicators below coincide with those developed by a Delphi survey undertaken by the International Labour Organisation and the European Commission.⁴

¹ In Europe, criminal organisations can also take advantage of the four freedoms enshrined in the EU Treaties: free movement of people, money, goods and services.

² William D. Phillips points out in his book, for example, that the Byzantine Emperor Justinian, who inherited the practice of slavery, codified its use: "*slaves are in the power of their masters.....owners have the power of life and death over their slaves*". Contrary to the current form of slavery of trafficked persons, law the legal ownership of slaves was a defining feature under the Roman, as owners had the right to protect their own "goods". For more information, see Phillips, W.D. "*Slavery from Roman times to the early transatlantic trade*", Manchester University Press, Manchester, 1985.

³ It is worth recalling that Article 5(3) of the EU Charter of Fundamental Rights states the following: "Trafficking in human beings is prohibited."

⁴ Commission internal draft document: "Operational indicators on trafficking in human beings: Results from a Delphi survey implemented by the ILO and the European Commission", March 2009. The Delphi method, which was developed in the 1950s, is used to reach consensus on the indicators on human trafficking developed by a group of experts.

	Human Smuggling	Human Trafficking
<u>Who</u>	Migrants seeking a better life Ready to pay for the service Looking for jobs in the underground economy Migration chosen as the best option	Victims usually deceived by false promises Victims have no knowledge of future exploitation Primarily women and children Organs are also traded
<u>Type</u>	Form of irregular migration	Human rights violation Contemptible form of crime against humankind
<u>How</u>	Across borders Undocumented entry Run by organised criminal groups Corrupt officials often involved	Both within and across national borders Often documented entry Forgery of documents, including visa Debt bondage and violence are increasingly used Harsh exploitation Run by ruthless thugs Corrupt officials often involved
<u>Main route of entry</u>	By land, by sea and by air	By air and by land
<u>If caught</u>	Tend to lodge asylum claims Refuse to reveal their country of origin High risk of absconding	Victims need protection Severe penalty for offenders
<u>Offenders</u>	Smugglers and, under certain circumstances, migrants	Traffickers only
<u>Costs</u>	Limited investment in infrastructure and transportation	High investment in documents, infrastructure and transportation
<u>Profit</u>	One-off profit before departure for the country of destination	Medium-term profits upon arrival in the country of destination

The methodology used in this study, which attempts to assess the progress made thus far in shaping Europe's response to human trafficking, is based on research and interviews carried out during my official visits to Europol, Frontex and Interpol.

The issue of terminology: an example

It does not take a great leap of the imagination to realise that the challenges facing Europe's law enforcement and migration authorities are much more complex than the ones described from an academic point of view. The rationale behind this statement is that current migration flows are mixed and that capturing the reality is a very demanding exercise. For example, migrants arriving on the shores of a given EU country are not readily identified as asylum seekers, irregular migrants and smugglers. Thus, while it is simpler to distinguish the appropriate responses to human trafficking from asylum on paper, it is far more difficult to do so in the midst of a crisis, where humanitarian considerations tend to prevail over other concerns. Migration is about people who rarely fit into unbending academic categories, although these categories help policy-makers and practitioners understand the evolving nature of migration flows and the attendant challenges more clearly.

To complicate still further our understanding of the threat posed by the smuggling of and trafficking in human beings, it is sufficient to look at the language used by the media as they trumpet the dismantling of criminal groups engaged in human smuggling, which is not unambiguous for the layman. The joint press release issued by Europol and Eurojust⁵ on 31 January 2008 is a case in point. The title "*Eurojust and Europol assisted in dismantling a trafficking in human beings network*" is actually misleading, as you expect to read about atrocities inflicted on the exploited.⁶ Contrary to what you might expect from the title, the Greensea operation was geared towards dismantling Turkish and Chinese networks engaged in human and drug smuggling and money laundering. A simple comparison of the features defining the crime of trafficking in human beings demonstrates that these illicit activities are not directly associated with human trafficking. These two criminal networks transported irregular migrants who had voluntarily paid up to €28,000 each to try to enter the United Kingdom and were willing to travel, undocumented, both below the deck of a boat and hidden in the back

⁵ Established in 2002, Eurojust is responsible for fighting serious crime through closer judicial cooperation within the European Union.

⁶ It is also available on the internet at:
http://eurojust.europa.eu/press_releases/2008/31-01-2008.htm

of a lorry. This group of migrants were neither hoodwinked nor coerced,⁷ as a large amount of money was paid upfront in return for the possibility of finding a better paid job in the United Kingdom. These migrants acted perfectly rationally. In deciding to go down that route, they pitted the immediate economic and social outlays against the potential benefit of working in the United Kingdom, which also included sending remittances home.⁸ In other words, these people based their decisions on a careful cost-benefit analysis. In the case of the Chinese communities, it could even be said that this decision was taken not by single individuals, but by their families as well. It might also be argued that increased economic interdependence has greatly helped to collect the data needed to feed this cost-benefit analysis. For example, in today's world it is much easier to be aware of the earning differentials and greater economic opportunities that exist in most industrialised countries, which need more capital and labour to drive socioeconomic growth. For the time being, less developed countries are left with the less rewarding side of the international migration equation, which calls for a sustainable supply of labour. Moreover, even though these criminal networks showed total disdain for human lives and dignity, at the time of the arrest it cannot be taken for granted that they intended to exploit this group of migrants once they had arrived in their country of destination. Nor did they have any plans to provide these migrants either with a safe haven or with fake paperwork. Despite the remarkable success of this operation, Europol, Eurojust and all the other national authorities involved did not in fact dismantle two networks of human traffickers, as these networks did not intend to sell these people to the highest bidder. This brilliant operation simply shut down one instance of the dirty business of human smuggling and brought to justice dangerous criminals.

This example shows how tricky terminology can be. To Europe's citizens, human smuggling and trafficking in human beings mean the same thing. A more careful look, however, shows that, while human smugglers are ruthless "service providers", human traffickers are the merciless jailers of their victims. These people are deprived of their freedom and dignity, and treated as chattels to be bought and traded around the world. The fight against human trafficking calls for a more focussed and balanced approach, based on both coercive measures and programmes designed to protect and assist the victims of trafficking. A balance is therefore needed between repressive measures and a benevolent look towards victims to ensure that the scales do not tip in favour of one of these two factors.

⁷ Interpol officials told me, however, that there had been cases in which women had been abused during their journey to the final destination.

⁸ The same line of reasoning can be found in Zhang, S.X. "*Smuggling and trafficking in human beings: all roads lead to America*", Praeger Publishers, Westport, Connecticut, 2007.

From Dublin to Tampere: Europe's fight started to take shape

In an effort to fight organised crime with renewed resolve, Europe's leaders, gathered in Dublin,⁹ stressed that it was important to hatch "a *comprehensive Action Plan containing specific recommendations, including realistic timetables for carrying out the work*". To this end, a high-level group on organised crime was established. The resulting report, which was first examined by the Justice and Home Affairs Council in April 1997,¹⁰ identified six main courses of action: (1) effectively implementing instruments already adopted; (2) cultivating practical cooperation and, where necessary, approximating or harmonising legislation; (3) improving judicial cooperation by bringing it to a level comparable to that of police cooperation; (4) enhancing the role of Europol; (5) securing closer cooperation with third countries and international organisations; and (6) further developing instruments of prevention. This Action Plan, with its repressive and preventive tools and its support for the work carried out at national level, set out the way Europe intended to deter the activities of criminal organisations, including trafficking in human beings. During the April session, for example, the JHA Council made it clear that "*limiting, if not eliminating, their opportunities to transform the fruits of their illicit activities into licit financial spheres is of crucial importance. This should be done not only with a view to shielding society from criminal influence but also to denying criminal organisations the opportunity to profit from their crimes*".¹¹ At the base of this political initiative was the deep-seated conviction that closer cooperation between Member States and third countries, together with a new set of measures and tools, could be the solution to stamping out the growing threat thrown up by illicit activities and criminal organisations. Moreover, the crime rate resulting from illicit activities was already perceived by Europe's citizens as an area of major concern.¹²

⁹ Dublin European Council of 13 and 14 December 1996, Conclusions of the Presidency.

¹⁰ The Amsterdam European Council formally adopted this Action Plan on 16 June 1997.

¹¹ 2002 Justice and Home Affairs Council, No 7568/97, 28.4.1997.

¹² See Eurobarometer on public safety entitled "*Key findings of the first survey on public safety among the residents of the European Union*", 21 and 22 November 1996. This survey, conducted by the State University of Leiden (Netherlands) is available on Ec.europa.eu/.

The EU's battle against organised crime was further highlighted by the Cardiff European Council, which called for implementation of "*the provisions contained in the Treaty of Amsterdam on an area of freedom and security and justice*" and for Member States to work together "*to tackle the ever greater dangers posed by cross-border crime*".¹³ The entry into force of the Amsterdam Treaty¹⁴ gave Member States a common platform on which to approximate laws and penalties in the area of justice and criminal matters and to cultivate practical cooperation between the competent authorities. The 1998 Vienna Action Plan¹⁵ gave shape to this request made by this European Council. The Vienna Plan amalgamated all the components of Europe's approach, which centred on the prevention, repression and prosecution of offenders. Particular attention was paid to striking the right balance between measures permitting the freedom of movement of people and those cultivating police and judicial cooperation in an attempt to counter organised crime. For example, the Plan contained a reference to Article 2 of the Treaty on European Union,¹⁶ which included the following objective: "*to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border control, asylum, immigration and the prevention and combating of crime.*" In other words, this Plan required the EU Member States to develop a coherent strategy based on a results-orientated approach, more streamlined procedures for practical cooperation and communication, and increased solidarity. Furthermore, while recognising the differences in Europe's judicial systems, the Vienna Plan highlighted the urgent need to identify priorities, set deadlines and develop common strategies and responses across Europe if threats such as terrorism, trafficking in human beings, organised crime and corruption were to be tackled with any degree of success.

The fight against trafficking in human beings also held a prominent place among the "Tampere milestones".¹⁷ Europe's continued focus on these issues should come as no surprise, not only because the EU is "*founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States*",¹⁸ but also because the exploitation of people reduces human beings to mere

¹³ Cardiff European Council of 15 and 16 June 1998, Conclusions of the Presidency, point 37.

¹⁴ The Treaty of Amsterdam was signed on 2 October 1997 and entered into force on 1 May 1999.

¹⁵ Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, OJC 19, 23.1.1999.

¹⁶ The Treaty on European Union was signed in Maastricht on 7 February 1992 and entered into force on 1 November 1993

¹⁷ Tampere European Council of 15 and 16 October 1999, Conclusions of the Presidency.

¹⁸ Article 6(1) of the Treaty on European Union.

commodities to be traded around the world. For the first time, the European Council included the fight against human trafficking in its strategy, targeting the management of migration flows, and in particular the thorny issue of irregular immigration. In other words, the Council considered human trafficking to be one of the ramifications of irregular immigration. One explanation could be that in 1999 Europe's leadership took the view that trafficking in human beings often entailed the irregular crossing of the EU's borders, the exploitation of people and foreign criminal organisations making huge profits by using violence against human beings. To beef up its anti-crime tools, the Tampere Council pushed for *"the adoption of legislation foreseeing severe sanctions against this serious crime. The Council is invited to adopt by the end of 2000, on the basis of a proposal by the Commission, legislation to this end. Member States, together with Europol, should direct their efforts to detecting and dismantling the criminal networks involved."* and the provision of assistance to third countries in order *"to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings"*.¹⁹ On the strength of these considerations, therefore, the Tampere European Council devised a four-pronged approach to combating trafficking in human beings. The first step was to identify and destroy the networks of human traffickers and the way they operate as part of a comprehensive strategy against the rising tide of irregular immigration. The second was to protect the victims of trafficking. The third was increased cooperation with third countries designed to build up capacity and encourage the voluntary return of victims to their countries of origin. The fourth was the creation of joint teams to counter human trafficking and drug and weapons smuggling in a spirit of enhanced cooperation between the law enforcement authorities of the Member States.²⁰ This European Council therefore started to look at human trafficking as an integral part of Europe's fight against irregular immigration. This focus, however, did not prevent the Council from devising a balanced strategy, which included repressive measures, such as tighter border controls and more rigorous migration policies, coupled with the protection of and assistance to the victims of trafficking.²¹

¹⁹ Point 26 of the Tampere Presidency Conclusions.

²⁰ Point 48 of the Tampere Presidency Conclusions stated the following: "Without prejudice to the broader areas envisaged in the Treaty of Amsterdam and in the Vienna Action Plan, the European Council considers that, with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime (money laundering, corruption, Euro counterfeiting), drugs trafficking, trafficking in human beings, particularly exploitation of women, sexual exploitation of children, high tech crime and environmental crime".

²¹ For a counterargument maintaining that the EU's approach towards the fight against human trafficking is unbalanced, misguided and ineffective, see Berman, J. and Friesendorf, C. "Coercive governance as crime control: EU foreign policy and the fight against human trafficking", *European Foreign Affairs Review*, 13, 2008, pp.189-209.

From 2000 to 2002: Europe pools its forces

In response to the request made by the Vienna European Council in December 1998²² and as a result of implementation of the Amsterdam Treaty, a more comprehensive European strategy was devised to fight "*the ever-changing face of organised crime*".²³ This new policy included eleven components, ranging from the collection and analysis of data on organised crime and improving the effectiveness of legislation to the implementation of practical measures to combat the innumerable forms of criminal activities. This political initiative generated renewed political momentum. It brought to the surface the need for closer practical cooperation between the competent authorities of the Member States and for more law enforcement measures to help prevent the rise in organised criminal groups operating both within and across Europe's borders. Appalled by the untimely deaths of fifty-eight Chinese irregular migrants who were found suffocated in the back of a container lorry while trying to enter the United Kingdom,²⁴ the European Council in Santa Maria de Feira on 19 and 20 June 2000 "*expressed its shock at the tragic deaths of 58 foreign nationals arriving in the United Kingdom. It condemned the criminal acts of those who profit from such traffic in human beings and committed the European Union to intensified cooperation to defeat such cross-border crime, which has caused so many other deaths across Europe. It called on the incoming French Presidency and the Commission to take forward urgently the Tampere conclusions in this area, in particular close cooperation between Member States and Europol in detecting and dismantling the*

²² Point 89 of the conclusions of the Vienna European Council of 11 and 12 December 1998 stated the following: "The European Council examined the report on the implementation of the Action Plan on the fight against organised crime endorsed at its meeting in Amsterdam. Aware that significant progress has been achieved, it underlines that additional work still needs to be undertaken, especially as regards rapid ratification of the relevant Conventions by Member States. Building on the Action Plan, it calls for a strengthening of EU action against organised crime in the light of the new possibilities opened by the Amsterdam Treaty. It also welcomes the elaboration of a comprehensive strategy for the prevention of organised crime and calls for concrete measures to be taken as a follow-up to that strategy".

²³ The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium, OJ C 124, 3.5.2000.

²⁴ The irregular entry of these fifty-eight Chinese nationals was organised by an Amsterdam-based criminal network engaged in human smuggling from Iran to the United Kingdom.

criminal networks involved in this trafficking and by adopting severe sanctions against those involved in this serious and despicable crime".²⁵ Once again, the terminology used to describe the dismantling of a criminal network engaged in human smuggling can be misleading. This tragedy²⁶ involved a group of Chinese people. They had paid a substantial amount of money upfront to seek entry to the United Kingdom in the legitimate hope of a better life and had weighed up all the odds of irregular migration against future benefits.²⁷ These people contacted this criminal network of their own accord, and the network then settled all the practical and logistical arrangements for them in return for substantial amounts of money. There was no coercion and, most probably, no false promises of well-paid jobs waiting for them. Nor were there any other features of human trafficking, such as the provision of safe havens in the country of destination. In this case, repressive measures²⁸ should be the main components of Europe's strategy if criminal groups of this kind operating within and across international borders are to be dismantled and brought to justice. It is therefore vital to distinguish trafficking in human beings from human smuggling, as this distinction implies different policy responses from the EU Member States. In practical terms, in the case of human trafficking, Member States need to punish traffickers severely and provide protection and assistance to victims (two-pronged balanced approach), while for human smuggling their approach should mainly focus on a comprehensive set of preventive and law enforcement measures and criminal justice tools both at national and at European level (single-pronged repressive approach). In the real world of today, however, it is not easy to identify these two phenomena, as migrants can first be asked to pay a part of the price to cross Europe's borders irregularly only to find that the jobs they have been craving are run by criminal groups that will exploit them through debt bondage.

Migration and development: a credible alternative to irregular migration

To avert the recurrence of human tragedies of this kind, Europe should provide potential migrants with more information, in particular

²⁵ Point 52 of the Conclusions of the Presidency.

²⁶ For which I feel the deepest of sympathy.

²⁷ It is true that for other nationalities the concept of "irregular migration" is not common knowledge. Many undocumented migrants continue to believe that it is possible to move to Europe freely and that the documents needed to stay can be obtained upon arrival.

²⁸ The measures can include enhanced technological equipment to patrol borders, increased cooperation between national law enforcement and judicial authorities, including data sharing and enforcing judicial decisions across the European Union, and direct involvement of third countries in the fight against human smuggling.

via specific campaigns in countries of origin and transit. On 18 May 2009, for example, Italy and Egypt established an informal joint working group.²⁹ Its aim is to deal with the growing phenomenon of unaccompanied minors from Egypt to Italy.³⁰ The agreed strategy, which will be implemented in the coming months, has three main prongs. First, information campaigns to provide minors and, more generally, migrants with more details about the risks of irregular migration. Second, measures to fund vocational training courses for young Egyptians, in particular in areas where migration pressure is high. This could open up work opportunities for safe, legal migration. Third, activities geared to making the social inclusion of minors who voluntarily return to Egypt smoother. Europe and its Member States should generate more occasions to put its message across to local communities in third countries, with the noble aim of informing people and ultimately saving lives. Europe can no longer tolerate seeing young people from less developed countries lose their lives in the vain attempt to reach Europe's land and maritime borders. These campaigns should be structured around a single main message: there are credible alternatives to irregular immigration, which can end in loss of life. While it is true that migrants are rational actors, their behaviour will gradually change if new incentives are put in place. In other words, potential migrants will start to think twice about putting their lives at risk by undertaking long journeys under cramped and arduous conditions. They will be more inclined to go for the benefits of credible alternatives to irregular migration. Alternatives can take the form, for example, of vocational and language training targeting economic sectors that are growing in a given third country, such as tourism, leather products and rural development, of opportunities for legal migration,³¹ be it permanent, seasonal and circular, of funding for viable business plans drawn up by local young people, of study visits, and of remunerated traineeships in a European company to gain work experience. To generate broad consensus around this initiative and to be more credible in the eyes of third-country nationals, this new strategy should be balanced and implemented within a realistic timeframe. It should be made clear that legal migration is only beneficial if both parties, namely, the country of origin and the country of destination, reach agreement on how to manage migration flows together and to maximise mutual benefits. From a more practical point of view, Europe could embark on this

²⁹ The new Egyptian Ministry for Family and Population Affairs is the official counterpart of the Italian Ministry of Welfare. It is important to underline that these informal discussions between Egypt and Italy could lead to a more formal and structured framework, including a memorandum of understanding.

³⁰ Some 15 per cent of the 1 300 unaccompanied minors or so who are currently in Italy are from Egypt.

³¹ Europe and the Member States need to work hard to simplify and standardise entry procedures so that potential immigrants will know exactly what type of administrative procedures they must follow to gain access to Europe's labour market.

strategy by airing these campaigns through local radios³² and, where possible, broadcasting interviews on local television channels with parents who have already lost one or more members of their family. Equally important would be to showcase positive experiences enjoyed through alternatives to irregular migration in villages, local communities and families, to show that a person can make a living without having to risk his/her life. People from the less developed world have long been promised that their living standards would improve as a result of development policies. This promise has only partially come true and, particularly in some areas of Sub-Saharan Africa, the catching-up process has not been as fast as many experts had thought. These paltry results have dashed the hopes of millions of people, causing frustration and growing resentment. This says a great deal about the ineffectiveness of international development policy. It really is high time that development aid reached those sections of the population most in need. We cannot continue to close our eyes to reality and allow development aid, i.e. European taxpayers' money, to continue to flow into foreign accounts. In other words, part of migratory pressure is the result of years and years of ineffective development policy that has brought millions of people to the point of despair and, in an effort to safeguard their families against famine and conflict, to embark on perilous journeys to Europe. These families see migration as a sort of high-premium insurance policy, which is worth subscribing to in the event that the socioeconomic conditions of the third countries they live in start to deteriorate to the point of no return. These people therefore need to see that things do happen and that leaving their countries is no longer the only way of providing for their families and securing a brighter future for their children. Europe needs to persuade these people, who are increasingly reluctant to put their destiny in the capable hands of the international community and their own governments, that they can place their trust in this new set of measures, which would have to be tailor-made, as the specific issues facing people in third countries cannot be bundled together. Working with the unremitting support of the Member States, local governments in third countries and the external delegations, Europe has to present an opposing voice to the ruthless criminal organisations that take full advantage of ignorance and desperation to entice migrants to pay high prices for journeys that can be life-threatening and even fatal. These campaigns should also highlight the appalling experiences suffered by victims of trafficking and show the slavery-like conditions that vulnerable people, especially women and children, are forced to endure.³³

³² In several less developed countries, local radios are the most powerful communication tools.

³³ This does not mean that smuggled people are not subject to harsh treatment during their journeys. It simply means that smuggled people give their consent to being transported to another country in the hope of finding decent jobs and that they are ready to travel under difficult conditions. Point 23 of the Tampere Presidency

As time goes by, potential migrants will realise that risking their lives is simply not worth it, as there are credible alternatives to be grasped, which could open up new economic opportunities. Europe and the Member States need to invest substantial human and financial resources in this new undertaking if this strategy is to become a success story. Europe's budget mid-term review offers a unique opportunity to come up with a new "migration fund" for this vast array of activities and programmes. Patience, clearly defined projects, high investment with medium-term return, complex negotiations with third countries and timely implementation do not always gain strong currency among government leaders, who need to "deliver the goods" nationally within a short period of time. Migration issues, however, call for the combination of all these things, as hasty and piecemeal solutions seldom yield the desired results. Europe's leadership cannot dismiss the challenge of migration by limiting their efforts to step up border controls and reinforce law enforcement authorities. Migration is part and parcel of today's world and it has to be handled with the care it deserves in order to turn it into an opportunity for countries of destination, countries of origin and migrants alike. Income differentials among the world's economies will remain or even widen in the future, as will the demand for jobs in the underground economy. Without new incentives, migrants are likely to continue to hide under the decks of rickety boats, in the backs of container lorries and in the holds of aircraft in an attempt to cross Europe's borders irregularly. This strategy is not a panacea and will certainly not change criminal groups from ruthless thugs into law-abiding citizens. The main objective of this strategy is to establish incentives to help a rising number of young people living under desperate conditions in developing countries to consider new ways of shaping their futures and to fully understand the risks of irregular migration. Bringing about this change in behaviour through the delivery of credible alternatives and reliable information could also see far less loss of life, as migrants made aware of these alternatives will become increasingly reluctant to pay exorbitant prices for treacherous journeys. Criminals will see their profits dwindle as a result of diminishing irregular migration flows. Fewer irregular migrants could also mean savings in terms of sea and land police patrols, as there would be less need for stringent and extended controls to stymie the flow of people irregularly crossing land borders and the arrival of unseaworthy, overloaded boats carrying people driven both by desperation and famine, and by dreams of a better life. All too often these dreams end in death.

Conclusions states the following: "...*The rights of the victims of such activities shall be secured with special emphasis on the problems of women and children*".

Fighting illegal employment: Europe's directive

What I have tried to illustrate so far is the first component of Europe's new strategy against human smuggling. The second component, which is equally crucial, largely depends on the genuine willingness of Member States to come to grips with the issue of illegal employment, which is a powerful driving force behind irregular immigration. In other words, Member States, with the support of trade unions and employers' associations, need to commit themselves to tackling this problem by imposing penalties on employers who offer illegal employment to non-EU citizens unlawfully living in Europe. This would tie in not only with the proposal the Commission tabled in May 2007,³⁴ but also with the assumption that European companies intend to compete on the international markets on the basis of technological and productivity advancements. If European companies continue to recruit illegally staying third-country nationals, their obvious intention is, I fear, to beat their world competitors on the sole basis of price, which will lead to a race to the bottom on wages and to more outsourcing towards less developed countries (i.e. fewer jobs available in Europe's labour markets in the future).³⁵ My fears are based on three main points. First, although twenty-six of the twenty-seven EU Member States³⁶ already have employer sanctions and preventive measures in place to deal with illegal employment of third-country nationals, the inspection rate in Europe is spectacularly low³⁷ and so is the risk of discovery for the company owner and the third-country national. This gives credence to my previous assumption that migrants are rational actors. Since it is quite easy to find illegal work,³⁸ this means that "investing in human smugglers" will definitely pay off once migrants arrive on Europe's shores. Today an irregular migrant arrives in Europe and has to wait a while before being released. At this point, thanks to the flourishing black economy, the irregular migrant can take up clandestine work and start sending money home, which is the real aim of his/her journey. In other words, once irregular migrants are in Europe, almost everything will be plain sailing.

Second, the content of the position paper drafted by Business Europe, Europe's association of employers, and the enlightening

³⁴ Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals, COM(2007) 249 final, Brussels, 16.5.2007.

³⁵ Job opportunities in Europe would also be reduced as a result of technological innovation, as has already happened in the past.

³⁶ No information available on Cyprus.

³⁷ The effectiveness of national measures depends to a very high degree on efforts and resources made available for enforcement.

³⁸ This problem is compounded by the absence of an effective repatriation policy both at national and at European level.

exchange of views I had with a representative of this organisation in October 2007.³⁹ On that occasion, this representative first challenged the legal basis of the Commission's proposal and then voiced Business Europe's concern regarding compliance with the principles of subsidiarity and proportionality. He went on to say that Business Europe could not support the idea that employers should also check the validity of residence permit of would-be workers and that it was firmly against the proposal of back payments made by employers to illegal employees. Finally, he fiercely criticised one of the sanctioning mechanisms provided for by the proposed Directive whereby employers who are found guilty of recruiting illegal third-country nationals could be excluded from public contracts and, under certain circumstances, penalised by temporary or permanent closure of their companies.⁴⁰ It follows that Business Europe is clearly less concerned about respect for the rule of law and fair competition among European enterprises,⁴¹ or about the exploitation of people.⁴²

Finally, if my fears were to be substantiated, Europe's socioeconomic future would be bleak, as would be the living standards of many low-skilled and unskilled workers who would have to accept lower salaries in return for their jobs. This would lead to a drastic reduction in domestic consumption, which is one of the main components of economic growth. Europe and its strong industrial fabric should take pride in the higher quality of its products, in the innovative services it can provide and in the educational attainments of students, be they undergraduate or graduate. Many European companies would be doomed if they chose to place all their eggs in the price competition basket. The cost structure and the abundant supply of labour in several emerging economies give them a significant comparative edge over European companies in terms of price competition. European companies therefore need to engage these fast-rising countries in other market segments where their know-how, including unrivalled managerial skills, and their ability to create added value are likely to prevail. This means that Europe would need to focus the lion's share of its future investment in research and development, infrastructure and education if it intends to maintain and improve its economic standing in the future. These are the essential components of Europe's competitive strategy,⁴³ which was devised and approved by the Lisbon European Council back in March 2000 and is still far from achieving its results. I should stop this digression here, as the challenges facing European companies do not fall within the scope of this article.

³⁹ The seminar was entitled "The dilemmas of a Common EU immigration policy" and took place at the Centre for European Policy Studies on 29 October 2007.

⁴⁰ Articles 8(b) and 8(d) of the Directive of May 2007.

⁴¹ To be fair, I have to concede that the representative in question briefly mentioned the fact that the exploitation of migrants could distort competition among companies.

⁴² Article 14 of the Directive provides third-country nationals with the possibility of lodging claims against their employers "directly or through designated third parties."

⁴³ This is more generally known as the "Lisbon Strategy".

Thanks to the efforts of the French government, which held the EU Presidency from July to December 2008, negotiations between the European Parliament,⁴⁴ the Council and the Commission on the "illegal employment directive" were completed.⁴⁵ This is a major achievement in the fight against irregular migration, as potential migrants will start to realise the risk of being caught while working in the underground economy is no longer worth taking and that the best way of moving to Europe for work is through legal channels.⁴⁶ To attract more highly skilled professionals, for example, Europe has adopted a specific directive,⁴⁷ which, although substantially amended since the original proposal tabled by the Commission in October 2007, will usher in a new era where Member States and Europe can join forces to offer potential highly skilled migrants clearer, faster and more streamlined procedures.⁴⁸

Europe deals with the "structural nature" of human trafficking

In response to the request made by the European Council in Tampere, on 21 December 2000 the Commission tabled a communication setting out the main components of Europe's strategy against human trafficking, together with two proposals for framework decisions.⁴⁹ For the first time, the Commission considered "*trafficking in*

⁴⁴ The Rapporteur is Mr Claudio Fava, Italian member of the European Socialist Group.

⁴⁵ On 21 January 2009, the compromise hammered out by the Rapporteur Claudio Fava and the Council Presidency was approved by a large majority in parliamentary committee. The agreed text was debated at the Strasbourg plenary session on 3 February 2009 and put to the vote on 4 February. On 19 February, the European Parliament adopted the legislative resolution on first reading by 552 votes to 105, with 34 abstentions. At the time of writing, the Council has not yet adopted the directive formally. Member States will have two years from publication in the Official Journal of the European Union to incorporate the provisions into national law.

⁴⁶ Transposition of the directive and its subsequent implementation will be the future challenges. It is important to underline that this directive will not yield the desired results unless Member States increase work inspections on their territories and enforce penalties against employers offering jobs to unlawfully staying third-country nationals.

⁴⁷ Council Directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, COM(2007) 637 final, Brussels, 23.10.2007.

⁴⁸ To ensure rapid adoption of the "highly skilled directive", the Commission accepted that the entry and residence measures conceived at European level be complementary to those that each Member State uses at national level. This means that the level of harmonisation that this legal instrument can achieve might be less than satisfactory, as Member States can continue to decide, when admitting highly skilled migrants onto their territory, whether to apply their own national procedures or to opt for those established at European level.

⁴⁹ Communication "*Combating trafficking in human beings and combating the sexual exploitation of children and child pornography*", COM(2001) 854 final/2, Brussels,

human beings... not only an episodic phenomenon, affecting a few individuals, but of structural nature with extensive implications on the social, economic and organisational fabric of our societies". This "structural" dimension therefore called for a well-conceived and comprehensive response if Europe intended to curtail human trafficking. The Commission then put forward two proposals for framework decisions, which included common definitions⁵⁰ of the problem and were designed to approximate national criminal laws and sanctions,⁵¹ provide protection of victims in judicial proceedings and secure increased judicial and law-enforcement cooperation between Member States.

In one of its conclusions, the Tampere Council called on the Commission to undertake a mid-term review to assess the achievement rate towards the objectives set out in its far-reaching programme. The Laeken European Council of December 2001 took stock of the progress made thus far and looked at whether additional measures were needed to consolidate and, where possible, improve the results. Point 42 of the Presidency conclusions reads as follows: *"Better management of the Union's external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings. The European Council asks the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created. It asks the Council and the Member States to take steps to set up a common visa identification system and to examine the possibility of setting up common consular offices"*. Again, in Laeken, the European Council considered the control of Europe's external borders as one of the most effective "weapons" to be used to stamp out the scourge of terrorism, human smuggling and trafficking in human beings. The fact that human smuggling and trafficking in human beings were put together could prompt a reader to believe that the protection of and assistance to the victims of trafficking was not a serious concern and that Europe's approach was somewhat lopsided towards repressive measures. Europe's migration and border authorities should be trained to use specific tools to tackle these two different offences, thereby providing the victims of trafficking with the assistance they need. This training

22.1.2001. In this context, it is worth recalling what Article 35 of the Treaty of Maastricht as revised by the Treaty of Amsterdam states: *"The Court of Justice of the European Communities shall have jurisdiction, subject to the conditions laid down in this article, to give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established under this title and on the validity and interpretation of the measures implementing them"*.

⁵⁰ The definitions adopted in the Framework Decision mirror the United Nations Protocol "To prevent, suppress and punish trafficking in persons, especially women and children", supplementing the United Nations Convention against transnational organised crime, which was adopted on 15 November 2000 and entered into force on 25 December 2003.

⁵¹ Effective, proportionate and dissuasive.

should already be provided in police academies and in border guard schools upon recruitment.

At the initiative of the European Commission, a conference was held in Brussels from 18 to 20 September 2002 which focused on how to improve Europe's fight against human trafficking.⁵² This event, which built on previous initiatives, brought together a large number of stakeholders who had the opportunity to assess the headway that had been made thus far. It also identifies a number of practical measures to cultivate police and judicial cooperation at national, European and international level and to provide assistance to victims, thereby making the international fight against human trafficking more balanced and effective. For example, the annex to this Declaration contained nineteen ways of securing increased cooperation between all stakeholders. There was a proposal to establish an expert group to provide strategic advice to the European Commission and to help make Europe's fight against human trafficking more focused and consistent. This also includes more structured dialogue with third countries and a call for greater flexibility, as both the nature and the scale of the challenge posed by international organised groups change with time.⁵³

⁵² The full text of the Brussels Declaration on preventing and combating trafficking in human beings is also available on the internet at:
http://ec.europa.eu/justice_home/news/information_dossiers/conference_trafficking/index_en.htm

⁵³ The expert group was set up in August 2003. It is composed of government officials, representatives of international organisations and non-governmental organisations, and academic experts.

Europe's legal instruments

The Council Framework Decision of 19 July 2002 on combating trafficking in human beings⁵⁴ is Europe's main legal instrument. It complements other measures⁵⁵ by introducing sanctions against perpetrators of this crime. It is worth mentioning that this instrument was negotiated and approved under the third pillar procedure, which calls for unanimity in the Council.⁵⁶ By taking account of the recommendations of the European Parliament, this Framework Decision provides the European Union with a new cooperation tool and takes practical steps to protect victims via "*a comprehensive approach*". The definition of trafficking in human beings, which is contained in Article 1, relates to "*the purposes of labour exploitation or sexual exploitation*". Effective, proportionate and dissuasive penalties⁵⁷ must be enforced to punish any criminal abuse that deprives a person of his/her fundamental rights. Article 1 also provides for what constitutes "*exploitation*" within the remit of this Framework Decision, notably the use of coercion, force or threat, including abduction; the use of deceit or fraud; the abuse of authority or influence or the exercise of pressure; and the offer of payments and benefits "*to achieve the consent*

⁵⁴ OJ L 203, 1.8.2002. This Framework Decision repeals Joint Action 97/154/JHA and applies to Gibraltar.

⁵⁵ In this context, reference is made to Council Joint Action 96/700/JHA of 29 November 1996 establishing an incentive and exchange programme for persons responsible for combating trade in human beings and sexual exploitation of children, OJ L 322, 12.12.1996.

⁵⁶ The area of police and judicial cooperation in criminal matters falls within the third pillar of the European Union (Title VI of the EU Treaty). This means that the right of initiative is shared between the Commission and the Member States, the European Parliament has a consultative role and the procedure involves intergovernmental cooperation. Once the Treaty of Lisbon is ratified, the existing pillar structure will be abolished. This means that police and judicial cooperation in criminal matters will involve co-decision between the European Parliament and the Council.

⁵⁷ Article 3 establishes that "an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty that is not less than eight years". The term of eight years of imprisonment is important, as it enables the Commission to apply other legislative instruments that have already been adopted to secure police and judicial cooperation. These include Joint Action 98/699/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime and Joint Action 98/733/JHA on making it a criminal offence to participate in a criminal organisation. The Framework Decision, however, limits the circumstances where a custodial sentence can apply: (1) the life of victims has been "endangered"; (2) the victim was "particularly vulnerable"; (3) "the use of serious violence"; and (4) "the offence has been committed within the framework of a criminal organisation".

of a person".⁵⁸ Article 4 establishes criminal and civil liability of natural and legal persons⁵⁹ who "*can be held liable for an offence [.....] committed for their benefit by any person, acting either individually or a part of the organ of the legal person*". Penalties against legal persons include "*criminal or non-criminal fines*" and specific sanctions, notably a temporary or definitive ban on commercial activities, a judicial winding-up measure and the exclusion from public benefits. This Framework Decision also provides for the issue of jurisdiction to avert a situation where an offender of human trafficking is not prosecuted and punished as a result of a conflict of jurisdiction between Member States. More specifically, Article 6 establishes three criteria to determine when a Member State has jurisdiction over a given offence: (1) the offence has occurred on its territory; (2) "*the offender is one of its nationals*"; and (3) "*the offence is committed for the benefit of a legal person established in the territory of that Member State*". Careful consideration should be given to the second criterion, as it enables a given Member State that refuses to extradite its own nationals to bring the perpetrator to justice even if the offence was committed outside its national borders. Article 7 deals with the delicate issue of victim support. It provides for a clear separation between the undertaking of investigations into human trafficking crimes and the readiness of victims to report and accuse the perpetrators, "*at least in cases where Article 6(1) applies*".⁶⁰ In practice, however, several Member States grant special assistance and residence permits only to those victims who "*have shown a clear intention to cooperate*" during investigations and judicial proceedings.⁶¹ Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of action to facilitate irregular migration was the first to provide for "*a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities*".⁶² This important directive, while setting out norms which continue to be relevant in today's fight against human trafficking, should also be revised in certain aspects in order to keep abreast of developments. In other words, it should be updated, just as the Framework Decision of 19 July 2002 was in March 2009.

⁵⁸ In other words, in the cases of labour and sexual exploitation covered in this Framework Decision, having obtained the consent of victims will not reduce penalties on human traffickers.

⁵⁹ Article 4(4) specifies that legal persons are "any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations".

⁶⁰ Article 6(1) states the following: "The offence is committed in whole or in part within its (Member State) territory".

⁶¹ Article 8 of Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. OJ L 261, 6.8.2004.

⁶² Article 6, OJ L 261, 6.8.2004.

The Council of Europe⁶³ Convention on Action against Trafficking in human beings (CETS No 197), while asserting that trafficking is a clear violation of human rights and an offence to the dignity of people, aims to protect victims, prevent trafficking and prosecute traffickers.⁶⁴ When it comes to the protection of victims, one of the measures provided for by this Convention is that victims should not be treated as irregular migrants or, even worse, as criminals. They should be granted physical and psychological assistance, residence permits and support to help them reintegrate into society, including access to education for their children,⁶⁵ regardless of their willingness to cooperate with national authorities in bringing traffickers to justice. Victims should also be entitled to *"a recovery and reflection period of 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her"*.⁶⁶ Furthermore, the Convention provides for the possibility of renewing the residence permit if the personal situation of the victim so requires and if the victim needs to cooperate in the criminal investigation and take part in judicial proceedings. This means that the Council of Europe Convention provides victims of trafficking with a more comprehensive protection system, which is based on the safeguard of their rights. Examples are the provision of safety measures for victims during judicial proceedings, measures to ensure compensation of victims, which could be funded by confiscated assets,⁶⁷ and the possibility of excluding them from any penalty if their unlawful

⁶³ The Council of Europe is an intergovernmental organisation founded in May 1949. In spite of its limited human and financial resources, this international body strives to ensure respect for human rights, foster pluralistic democracy and uphold the pre-eminence of the rule of law in its forty-seven Member States.

⁶⁴ This Convention was signed on 16 May 2005 and entered into force on 1 February 2008. The purpose of this Convention is covered in Article 1, which states the following: "(a) to prevent and combat trafficking in human beings, while guaranteeing gender equality; (b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution; and (c) to promote international cooperation on action against trafficking in human beings". The Convention also has a monitoring mechanism, which consists of a technical body, composed of independent experts (GRETA), and a more political body, composed of representatives of Member States that are party to the Convention (the Committee of the Parties). While GRETA is responsible for monitoring implementation of the Convention, the Committee of the Parties makes recommendations on the basis of the reports and conclusions of GRETA. Finally, the Convention, which entered into force on 1 February 2008, attempts to cultivate cooperation between all stakeholders, including national and public authorities, trade unions, non-governmental organisations and civil society. It is available on Conventions.coe.int/.

⁶⁵ Article 12 of the Council of Europe Convention.

⁶⁶ Article 13 of the Council of Europe Convention.

⁶⁷ Articles 15(4) and 23(3) of the Council of Europe Convention.

behaviour has been the direct result of trafficking. It should be added that the scope of this Convention covers all forms of trafficking, "*whether national or transnational, whether or not connected with organised crime*"⁶⁸ and the definition of trafficking, as contained in Article 4, applies to whoever the victim and whatever the form of exploitation might be, including "*the removal of organs*".⁶⁹ The Framework Decision of 19 July 2002, on the other hand, provides for limitations where children are victims of human trafficking.⁷⁰ For example, Article 7(3) of the Framework Decision states that Member States must "*take the measures possible to ensure appropriate assistance for his or her family*". This means that special assistance is given to children who have been victims of trafficking only in situations involving coercion and deceit.⁷¹

After almost seven years of implementation of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings, the results can be considered less than satisfactory. On the one hand, certain articles contained in the Framework Decision are unclear and thus no real obligations are imposed on the Member States. This includes breaks in the logical classification of obligations. On the other hand, Member States have been less than painstaking in their implementation of the Framework Decision. Some Member States decided to apply existing national legislation rather

⁶⁸ Article 2 of the Council of Europe Convention.

⁶⁹ "Trafficking in human beings shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

⁷⁰ In keeping with Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, children are considered "*particularly vulnerable*" victims (OJ L 82, 22.3.2001). In this context, it is worth noting that child is defined as any person below eighteen years of age. This definition is contained in Article 1 of the United Nations Convention on the Rights of the Child, which entered into force on 2 September 1990. Moreover, Article 12(2) of the same Convention states the following: "*For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law*".

⁷¹ A further source of inspiration can be drawn from Article 19 of the United Nations Convention on the Rights of the Child, which states the following: "*(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. (2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement*".

than enacting new, specific legislation to transpose the norms of the Framework Decision. Others implement it by way of non-legally binding guidelines to courts, police and prosecutors.

A new Framework Decision to prevent and fight human trafficking

Against this background, on 25 March 2009 the Commission tabled a proposal for a new Framework Decision⁷² to extend the scope, add articles, clarify obligations and greatly enhance the protection of victims.⁷³ The first, most visible difference between these two Framework Decisions is the title. In the new proposal, prevention, fight against human trafficking and protection of victims are put on an equal footing. Once adopted, this legislative act will make the future Commission strategy more balanced and effective in coping with the different aspects of human trafficking. Article 1 is far more comprehensive than the "old Article 1", as it encompasses all forms of human trafficking, including removal of organs. It also stipulates that, when a child is the victim of trafficking, penalties must be enforced regardless of the circumstances and forms of exploitation. As for penalties (Article 3), the Commission proposal provides for more severe punishment with "*a maximum term of imprisonment of at least six years*"⁷⁴ and, under aggravating circumstances, with "*terms of imprisonment with a maximum penalty of not less than twelve years*".⁷⁵ On the protection of victims, the proposed Article 6 provides for the possibility "*of not prosecuting or imposing penalties on victims of trafficking in human beings*", as they were forced to engage in illicit activities. The new Article 9 makes it clear that cooperation of victims in criminal proceedings is no longer considered to be an indispensable condition to undertake and continue investigations and provides for enhanced protection of victims during criminal proceedings. The proposed Article 10 ensures that victims receive adequate assistance "*before, during and after criminal proceedings*", while Article 11 introduces special protective measures for children.⁷⁶ On prevention,

⁷² Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims repealing Framework Decision 2002/629/JHA, COM(2009) 136 final, Brussels, 25.3.2009.

⁷³ Once approved, this new Framework Decision will repeal Framework Decision 2002/629/JHA of 19 July 2002.

⁷⁴ The "old" Article 3(1) stipulates that "Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition."

⁷⁵ The "old" Article 3(2) provides for "a maximum penalty that is not less than eight years."

⁷⁶ Explicit reference is made to Articles 14 and 15 of the proposed Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Council Framework Decision 2004/68/JHA of 22

Article 12 of the proposed Framework Decision stipulates that "*each Member State shall seek to discourage the demand that fosters all forms of exploitation*", that training of law enforcement officials must be stepped up and that "*the use of services which are the object of exploitation*" should be seen as a criminal offence. Subparagraph 3 of Article 12 attempts to deal with the demand side of human trafficking, as the language used is more prudent. Member States "*shall consider taking measures*" and customers of services of this kind should be aware that these people have been trafficked and forced to perform illicit activities. In other words, the proposed legislative text only mildly deals with the issue of the demand for human trafficking, which in turn is the driving force behind the sinister business of human flesh. One explanation could be that the combat against human trafficking is often linked to the fight against sexual exploitation and prostitution, which remains under national jurisdiction. In other words, each Member State has its own way of tackling this issue on the demand side. Article 13 provides for a monitoring mechanism, which includes the establishment of "*National Rapporteurs*" and measures to check on the implementation of the Framework Decision.⁷⁷ The last point that I would like to make is that this proposed Framework Decision partly draws on the specific norms of the Council of Europe Convention. This is clear added value, as bringing those Council of Europe norms into the EU *acquis* will make them legally binding. In so doing, the Commission has averted any technical and legal problems that may arise as a result of the Community's accession to this Convention.⁷⁸ Acceding to the Council of Europe Convention will send out a strong political message and emphasise the importance Europe attaches to the fight against human trafficking. At first sight, the reasons for acceding to the Council of Europe Convention look more compelling and numerous than for not doing so.⁷⁹ There is no stark

December 2003 on combating the sexual exploitation of children and child pornography, OJ L 13, 20.1.2004. The Commission tabled this proposal in March 2009. COM(2009), Brussels, 135 final, 25.3.2009.

⁷⁷ On the issue of jurisdiction and coordination of prosecution, the Commission proposals clarifies many issues, thereby making cooperation between Member States easier and more effective. In this context, it is worth underlining that human trafficking is one of the crimes for which surrender procedures are possible pursuant to a European arrest warrant. For more information, see Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States, OJ L 190, 18.7.2002.

⁷⁸ Article 42(4) of the Council of Europe Convention provides for the possibility of the Community joining this Convention. It is worth noting that the European Parliament would look very favourably on this possibility, as confirmed by a growing number of parliamentary questions on this issue.

⁷⁹ One example could be the length of the reflection period for victims of trafficking. While the Council of Europe Convention specifies "at least 30 days", Article 6 of Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, which simply refers to "*a reflection period*" without specifying the length. Other issues could relate to the monitoring mechanisms. Some EU officials contend that the decisions and recommendations of GRETA, the independent body of experts responsible for monitoring implementation of the Council of Europe Convention,

contrast between the provisions contained in the Convention and those covered by Council Directive 2004/81/EC, although the Convention has higher standards on the protection of victims.⁸⁰ Other provisions are almost identical. Moreover, as soon as all EU Member States have ratified the Council of Europe Convention,⁸¹ any technical problems would be resolved, as EU Member States would be subject to the provisions contained in the Convention, including its monitoring mechanisms. In other words, acceding to the Council of Europe Convention is a political decision and thus Europe's leaders have to look at the wisdom or otherwise of doing so. It would be politically wise for Europe to form a united front against traffickers and smugglers of human beings and organs. Europe should be in a position to take all the steps it needs to prevent trafficking and smuggling of human beings and any forms of abuse and provide remedies where people get hurt and abuse occurs. By taking this decision, Europe will consolidate and improve the protection of victims of trafficking, while sharpening its tools against any violation of human rights and dignity, not to mention complying with one of the recommendations contained in the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings.⁸² This plan, which was a direct consequence of the Hague Programme,⁸³ helped the Member States *"to prevent and fight trafficking in human beings, committed for the purpose of all forms of exploitation and to the protection, support and rehabilitation of its victims"* through a more comprehensive and integrated approach. This called for more coordination between the Member States and the Commission in an effort to understand and eradicate, where possible, the root causes of human trafficking and *"factors in countries of destination facilitating human trafficking and related forms of exploitation"*. This EU Plan also encouraged the Member States to exchange information and experience to help identify victims of human trafficking and patterns of criminal activities more rapidly. At present, the EU Plan, which *"will be reviewed, revised and updated regularly"*, is subject to an in-depth analysis by *"the Group of Experts*

could encroach on the internal evaluation of EC legislation by passing judgement on how EU Member States have complied with EC legislation. In other words, a non-EU body can assess whether EU Member States have correctly implemented EC legislation. It should be remembered, however, that GRETA is not a judicial body and thus its recommendations will not interfere with decisions of the European Court of Justice. Moreover, the Council of Europe and the Commission, in particular in the light of the Memorandum of Understanding, can establish a joint body.

⁸⁰ This will no longer be the case once the proposed Framework Decision of 25 March 2009 enters into force.

⁸¹ At the time of writing, only twelve of the twenty-seven EU Member States have already ratified the Council of Europe Convention.

⁸² For more information, see OJ C 311, 9.12.2005.

⁸³ "With a view to the development of common standards, best practices and mechanisms to prevent and combat trafficking in human beings, the European Council invites the Council and the Commission to develop a plan in 2005", The Hague Programme, OJ C 53, 3.3.2005. It must be said that the fight against human trafficking does not have a prominent place in the Hague Programme, as it is mentioned merely twice.

on Trafficking in Human Beings".⁸⁴ These twenty-one independent experts, who are appointed for a three-year renewable period, have different backgrounds and professional experiences and will provide the Council and the Commission with a fresh analysis on the EU Plan with the sole aim of improving its effectiveness in the fight against human trafficking. The final result of this analysis is expected by the end of 2009.⁸⁵

Europe's two additional legal arrows

Europe's legislative bow has two additional arrows. The first is Council Directive⁸⁶ 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, and the second is Council Framework Decision⁸⁷ of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.⁸⁸ Building on the Tampere Presidency conclusions,⁸⁹ these two legislative instruments were negotiated in parallel, as the aim of the directive is to define the offences to be sanctioned under the Framework Decision, which in turn attempts to harmonise the penalties to punish the smuggling of irregular migrants. This was due to the fact that, while unauthorised entry falls within the first pillar, penal sanctions are part of the third pillar structure of the European Union (police and judicial cooperation in criminal matters - Title VI of the EU Treaty). Once approved, the Lisbon Treaty will do away with the current pillar structure of the European Union and police and judicial cooperation will be subject to the co-decision procedure. Trafficking in human beings will fall within the remit of Chapter II "*Policies on border checks, asylum and*

⁸⁴ Commission Decision on "The appointment of members of the Group of Experts on Trafficking in Human Beings", OJ L 194/12, 23.7.2008.

⁸⁵ The Commission has already started to evaluate and monitor the EU Plan. For more information, see Commission working document entitled *Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, COM(2008) 657 final, Brussels, 17.10.2008. In this working document, the Commission highlighted that some measures of the EU Plan had not yet been implemented and that the protection of victims was uneven across the EU.

⁸⁶ This Directive has been adopted under Article 63(3)(b) of the EC Treaty, which provides for measures on "*illegal immigration and illegal residence, including repatriation of illegal residents*".

⁸⁷ This Framework Decision was the result of a French initiative.

⁸⁸ OJ L 328, 5.12.2002.

⁸⁹ Point 3 of the Tampere Milestones, as contained in the Presidency Conclusions of the Tampere European Council, which was held on 15 and 16 October 1999. ".....*This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes.....*". This European Council also stressed the need to improve Europe's fight against trafficking in human beings by approximating the rules of criminal law in the Member States.

immigration".⁹⁰ These two, complementary legislative instruments were also the institutional response to the mounting pressure for departure from less developed countries and to the call from Europe's citizens for more restrictive measures in the area of migration management. Measures of this kind have driven thousands of migrants into the hands of criminal organisations capable of ensuring their arrival in a given EU country via irregular means. Article 1 of the Directive provides for "appropriate sanctions" on: (a) "any person⁹¹ who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State"; (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State". In other words, Article 1(b) covers the situation where an employer asks a migrant to be paid in return for a false work contract, which would then allow the migrant to obtain a regular residence permit. In this case, the pursuit of "financial gain" is therefore required for imposing penalties. The motive of "financial gain" is not covered in Article 1(a), as Member States considered that it was enough to punish the offence of facilitating the entry and transit of non-nationals. Article 1(2), however, provides for an exception, namely, the possibility for a Member State not to impose penalties on people found guilty of facilitating unauthorised entry and transit.⁹² The aim is to allow Member States "to provide humanitarian assistance to the person concerned". This exception is particularly important, as it enables nongovernmental and church organisations, for example, to provide humanitarian assistance to irregular migrants entering and transiting without infringing any legal norm.

Article 1 of the Council Framework Decision provides for "effective, proportionate and dissuasive criminal penalties, which may entail extradition". These penalties "where appropriate, may be accompanied by the following measures: (a) confiscation of the means of transport used to commit the offence; (b) a prohibition of practising directly or through an intermediary the occupational activity in the exercise of which the offence was committed; and (c) deportation". Where the offence was part of an activity of a criminal organisation and committed for financial gain or it has put the life of the victim in danger, then Member States will punish the perpetrators with a custodial sentence of not less than eight years.⁹³ Although both instruments give protection to victims, there are no provisions on access to refugee laws. Since the two legislative acts deal with the issue of facilitating unauthorised entry, it is quite possible that genui-

⁹⁰ Article 63a(2)(d) "combating trafficking in persons, in particular women and children". OJ C 306, 17.12.2007.

⁹¹ Article 2 of Council Directive specifies that sanctions are "applicable to any person who is the instigator of, an accomplice in, or attempts to commit an infringement as referred to in Article 1(1)a or (b)".

⁹² This is usually applied to accompanying spouses and children.

⁹³ Article 1(3) of Council Framework Decision.

ne asylum seekers will attempt to use criminal networks to enter a given EU country, where they can then lodge their asylum claims.⁹⁴ Should these two instruments be revised in the future,⁹⁵ it would be advisable to allow irregular migrants to lodge asylum claims. National authorities would then have the time and opportunity to assess the merits of each individual case and to reject any if unfounded. This would also be in line with the Schengen Border Code,⁹⁶ which provides for "the application of special provisions concerning the right of asylum and to international protection" even in cases where a third-country national does not meet the entry requirements "for stays not exceeding three months per six-month period".⁹⁷ Furthermore, Member States are obliged to "ensure that the border guards are specialised and properly trained professionals. Member States shall encourage border guards to learn languages, in particular those necessary for the carrying-out of their tasks"⁹⁸ and to "provide for training on the rules for border control and on fundamental rights. In that regard, account shall be taken of the common training standards as established and further developed by the Agency (Frontex)".⁹⁹ In this context, it is worth underlining that the Frontex Agency and the United Nations High Commissioner for Refugees (UNHCR) exchanged letters¹⁰⁰ on how to provide good training on border guards on the right to asylum and international protection. EU border guards undertaking the specific training programme offered by Frontex¹⁰¹ now have a part entirely dedicated to this important issue.¹⁰²

⁹⁴ Asylum claims must be lodged on the territory of an EU Member State.

⁹⁵ In Case C-176/03, the European Court of Justice asked for these two legislative acts to be made into a single directive.

⁹⁶ See Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Border Code), OJ L 105/1, 13.4.2006. More specifically, Article 13(1) - Refusal of entry – states the following: "A third-country national who does not fulfil all the entry conditions laid down in Article 5(1) and does not belong to the categories of persons referred to in Article 5(4) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas".

⁹⁷ Article 5 of the Schengen Border Code.

⁹⁸ Article 15(1) of the Schengen Border Code.

⁹⁹ Article 16(4) of the Schengen Border Code.

¹⁰⁰ The signing ceremony took place on 17 June 2008.

¹⁰¹ Entitled "*Common Core Curriculum*", this training programme was put together as the result of the Seville European Council of 21 and 22 June 2002. Point 32 of the Presidency Conclusions states the following: "...*establishment of a common core curriculum for border guard training*". The first Common Core Curriculum project was carried out by Austria and Sweden and the final report was adopted on 8 May 2003 (FRONT 38, COMIX 232; 8285/2/03, REV 2). At the time of writing, more than 300 border guards from Schengen countries have undertaken this specific training course.

¹⁰² Specific training on human smuggling and trafficking is already provided for all EU border guards taking part in the seminars and courses organised by Frontex.

Securing practical cooperation inside and outside the EU

This part of the study includes the findings and interviews carried out during my visits to Frontex, Europol and Interpol that are fully engaged in the fight against human trafficking. It also contains a study of the specific activities put together by UNODC to combat human trafficking.

Frontex

To provide the reader with a better idea of how Europe needs to advance in its fight against human trafficking, it is important to learn more about Frontex¹⁰³'s strategic approach to this fight. This includes collecting and analysing data on cross-border crimes, developing victim profiling and setting up and carrying out operations bringing together border guards from Schengen countries to counter human smuggling and trafficking. Ilkka Laitinen, the Executive Director, intends to develop Frontex's capacity to help requesting Member States to deal with unforeseen, difficult situations and how to go about deepening cooperation with other organisations.¹⁰⁴ He is also convinced that human traffickers have developed an ever-evolving *modus operandi*, using a very effective information system. This enables criminal groups to open up new "smuggling routes" as soon as they realise that the old ones are being properly policed by EU measures. He took pride in underlining that many Frontex operations have saved many lives from being lost at sea. Finally, Ilkka Laitinen feels that the Agency's patrols would be significantly enhanced if

¹⁰³ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). For more information on Frontex, see Carrera, S. "The EU Border Management Strategy: FRONTEX and the Challenges of Irregular Immigration in the Canary Islands", Centre for European Policy Studies, Working Document No 261, 22.3.2007 and Bertozzi, S. "Schengen: Achievements and Challenges in Managing an Area Encompassing 3.6 million km²", Centre for European Policy Studies, Working Document No 284, 7.2.2008.

¹⁰⁴ It is worth noting that Frontex has already concluded specific cooperation agreements with Europol and Interpol.

Frontex had its own equipment, including vessels, helicopters and surveillance aircraft.¹⁰⁵

On smuggling and trafficking in human beings, the figures on arrivals on Lampedusa, Lampedusa and Linosa¹⁰⁶ are a good example of what well-trained border guards can do to make the life of perpetrators more difficult. Between 16 October and 26 November 2008, 5 021 third-country nationals arrived on the shores of these Italian islands: 4 102 male, 545 female and 374 minors.¹⁰⁷ Of the 545 females, 373 were young and they were all from Nigeria. This example shows how crucial the work on profiling arrivals is. As soon as EU border guards detect a suspicious flow of irregular migrants, they should report it to the police authorities.¹⁰⁸

This short analysis bears witness to the fact that well trained EU border guards can make a difference in identifying trends and patterns of irregular migration to Europe. Obviously, profiling the EU's external borders is only part of Frontex's comprehensive strategy to counter human smuggling and trafficking.¹⁰⁹ Another major tool at the Agency's disposal is its well developed risk analysis capacity. Lest Frontex's best kept secrets become known, it can only be said that Frontex's risk assessment is based on first-hand information fed by a network of officials, and on monthly indicators designed to assess pressure at the EU's external borders, with the particular focus on Europe's entry points, irregular border crossings, numbers of refusal at entry, the use of forged documents and asylum applications. Risk assessment analysis also draws on other available sources, which can help Frontex examine possible changes in Europe's security environment and in the main triggers of irregular migration.

¹⁰⁵ Interview with the author.

¹⁰⁶ The three Pelagie islands are located in the Mediterranean between Malta and Tunisia.

¹⁰⁷ The top three nationalities: Tunisian, Nigerian and Eritrean. Of the 374 minors, 209 of them came from Egypt. In the course of this Frontex operation, 29 facilitators were arrested and brought to justice.

¹⁰⁸ In this specific case, it was quite easy to identify a common denominator: young ladies from Nigeria who were very likely to be sexually exploited by criminal organisations involved in the trafficking of women. The same pattern is also discernible in the statistical data collected on arrivals on the three islands over a longer period, namely, from 1 January to 26 November 2008. The number of total arrivals was 27 861: 22 394 male, 3 337 female and 2 130 minors. Of the 3 337 females, 1 680 were young and from Nigeria.¹⁰⁸ The statistics for Italy as a whole for the period from 1 January to 26 November 2008 reveal that the three Pelagie islands bore the brunt of irregular migration by sea. In this period, total arrivals in Italy amounted to 33 496 undocumented migrants,¹⁰⁸ 27 861 of them landed on the shores of one of three islands or 83 per cent of the total. Given the limited reception capacity of the Lampedusa centre for irregular migrants and of the available territory, it comes as no surprise that the population living on these islands have decided to take to the streets to protest vehemently against irregular migrants and the Italian authorities, who were seen as ineffective in dealing with their specific problems.

¹⁰⁹ Another prong of Frontex's strategy is to interview irregular migrants in an effort to learn more about migration routes and future trends in irregular migration.

On 25 and 26 November 2008, Frontex organised a two-day meeting on trafficking in human beings, which brought together thirty-eight experts from the Member States and international institutions, notably Europol, Eurojust, the International Centre for Migration Policy Development (ICMPD),¹¹⁰ the International Organisation for Migration (IOM), Interpol,¹¹¹ the United Nations High Commissioner for Refugees (UNHCR), and the United Nations Office on Drugs and Crime (UNODC).¹¹² This meeting, which is part of the Frontex's project to combat trafficking in human beings,¹¹³ built on the outcome of previous workshops and focused both on the current trends in Europe and on the possibility of involving the European Border Guard Authorities (BGAs) more in this fight. The underlying reason for these meetings was therefore to discuss how Frontex can help Europe and the Member States to fight human trafficking and smuggling by collecting data, exchanging good practices and countries' experiences, profiling victims and human traffickers, and providing specific training for Europe's border guards. It was also agreed that enhanced cooperation between stakeholders and specialised bodies would be crucial if Europe wanted to increase its chances of success vis-à-vis human traffickers and smugglers.¹¹⁴ According to the latest available information, current trends in human trafficking reveal a growing and worrying development in the trafficking of minors, especially for the purpose of forced labour in the EU, and the more active involvement of women¹¹⁵ in the recruitment and exploitation of would-be victims. Furthermore, the criminal networks engaged in human trafficking into and within the EU have become increasingly

¹¹⁰ The International Centre for Migration Policy Development was established in 1993. The aim of this organisation is "to promote innovative, comprehensive and sustainable migration policies and to function as a service exchange mechanism for governments and organisations". It enjoys United Nations observer status and has eleven Member States (Austria, Bulgaria, Croatia, the Czech Republic, Hungary, Poland, Portugal, Slovakia, Slovenia, Sweden and Switzerland). Its headquarters are in Vienna.

¹¹¹ Interpol is the world's largest international police organisation, with 187 Member States. The following is a quotation from Interpol's website (<http://www.interpol.int/public/icpo/default.asp>): "Interpol is the world's largest international police organization, with 187 member countries. Created in 1923, it facilitates cross-border police co-operation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat international crime. INTERPOL aims to facilitate international police co-operation even where diplomatic relations do not exist between particular countries. Action is taken within the limits of existing laws in different countries and in the spirit of the Universal Declaration of Human Rights".

¹¹² UNODC is a specialised UN Agency, which aims to fight transnational organised crimes, including terrorism, drugs and human trafficking. As the UNODC Strategy 2008-2011 put it, it is "the UN's centre for the fight against "uncivil society"". New York, 2008.

¹¹³ This Frontex project started in September 2008.

¹¹⁴ For example, closer cooperation can be very productive in gathering, processing and exchanging critical information, defining the role of each stakeholder, and laying the foundations for a more comprehensive and effective approach to the fight against human trafficking across Europe.

¹¹⁵ Sometimes, these women are former victims.

sophisticated in their techniques for smuggling and controlling their victims. It is clear that Europe's border guards can play a vital role in identifying potential victims at the EU's external borders, as they are the first authorities who can intervene to prevent human smuggling and trafficking. This is a difficult task, which calls for specific training and support teams at the borders. One idea could therefore be to establish border support teams (BSTs) at the EU's external borders, composed of well-trained border guards, national experts, sociologists and representatives from nongovernmental organisations engaged in the fight against human trafficking, who could interview potential victims and traffickers in a second-line inspection. Setting up border teams of this kind would have added value, especially in the likely event that the victims are women and children. While these teams can be readily deployed at air borders, the situation can be more complicated for land and maritime borders. The analyses undertaken by the Frontex Risk Analysis Unit can provide part of the solution. This Unit, which continuously monitors the situation at the EU's external borders, can assess at any given point in time what border crossings, be they land, sea and air, are more likely to become the "entry gates" for irregular migrants and human smugglers. This can limit the range of "areas of intervention" for the deployment of border support teams, by targeting the EU's most critical borders. A further idea would be to give Europe's border guards a plasticised card defining the difference between human trafficking and human smuggling and the main indicators of these two different offences.¹¹⁶ Thus, the role of Frontex is vital not only for providing training to border guards to hone their skills in identifying and dealing with victims and traffickers, but also for exchanging good practices across Europe, especially with regard to the identification and protection of victims. Europe's border guards need to become the first refuge for potential victims and the first, solid wall against human smugglers.

Border crossings, however, do not start at the EU's external borders. It is therefore equally important to monitor the situation at EU consulates where visas are granted.¹¹⁷ Frontex can take a leading role in tracking the patterns of visas issued to enter Europe,¹¹⁸ in promoting information campaigns through consulates and embassies to make would-be victims aware of the types of subterfuge used by traffickers to dupe victims, and in profiling victims by country of origin¹¹⁹ for the purpose of refusing entry visas. To be successful, this strategy calls for closer cooperation between Frontex and the Member States and for a constant exchange of information to enable

¹¹⁶ A card of this kind has already been issued to US immigration and customs enforcement officers.

¹¹⁷ It is important to underline that EU Member States need to provide the European Commission with detailed statistical information on visas.

¹¹⁸ This would also help EU Member States to identify migrants who outstay their visas, which is a growing phenomenon.

¹¹⁹ This means that Frontex needs to carry out tailored risk analyses on victims of trafficking, which are based on certain nationalities and ethnic groups.

Frontex to update its database and thus establish indicators and profiles of potential victims. Frontex could also be called on to fashion specific awareness campaigns on human trafficking for staff working in consulates and other training courses, including interviewing techniques, which can be useful during meetings with applicants.

Against this background, Frontex can play a prominent role in Europe's fight against human smuggling. It can enhance and target border checks at the EU's external borders, help Member States' consulates to become more aware of the challenges thrown up by human trafficking and smuggling, develop and update an information system on victims and perpetrators, undertake specific risk analyses, provide expert advice and training and cooperate more actively with all stakeholders. This will gradually transform the EU's external borders and Member States' consulates into more solid barriers against criminal groups engaged in the practice of smuggling human beings, while improving the protection of potential victims.

What I have tried to describe in the previous paragraphs is an integral part of Europe's migration policy, which hinges on the Global Approach.¹²⁰ This Approach includes the need to enhance Europe's ability to manage its external borders more efficiently and in full compliance with the Schengen *acquis*. Since 1995, the EU has shared responsibility for maintaining an area without internal border controls, an area which now covers 24 countries. Europe has every right to be proud of this unique and historic accomplishment.¹²¹ Frontex will therefore have a key role to play in the development of the concept of "e-borders".¹²² Europe needs an innovative, forward-looking approach to border management simply because its current border controls are obsolete and unable to cope with the challenges posed by globalisation. Without new tools, current border checks can do little against the lucrative trafficking in human beings.¹²³ Innovative and effective border controls have to strike a difficult balance between ensuring the free movement of a growing number of people across

¹²⁰ For more information, see Bertozzi S. "Europe's migration policy: a comprehensive international strategy or a pressing domestic need?", *Centre for international relations and development studies (CIDOB)*, Migration Document No 16, May 2008.

¹²¹ For more information, see Bertozzi S. "Schengen: achievements and challenges in managing an area encompassing 3.6 million km²", *Centre for European Policy Studies*, Working Document No 284, February 2008.

¹²² For more information, see Commission Communication on "*Report on the evaluation and future development of the Frontex Agency*", COM(2008) 67 final, Brussels, 13.2.2008 and Commission Communication on "*Preparing the next steps in border management in the European Union*", COM(2008) 69 final, Brussels, 13.2.2008. The first communication focuses on a review of the tasks of Frontex, while the second contains an innovative set of measures that Europe needs to implement to bring its border management strategy into the 21st century.

¹²³ Organised crime groups are getting better and better at by-passing border controls to traffic human beings into the European Union. At the same time, migratory pressure remains high, especially at the southern maritime border of the EU. This is partly due to the deepening of the current global economic slump.

borders and guaranteeing greater security for Europe's citizens. Border controls therefore have to focus more on potential challenges, and be flexible enough to adapt to unexpected circumstances and easy to operate by border guards. The tools currently employed at the EU's external borders are neither sufficient to detect everyone who uses irregular means of trying to reach Europe nor capable of identifying overstayers, i.e. people who entered the Schengen area legally, but have overstayed the maximum authorised period. Moreover, everybody is subject to the same checks, thereby penalising *bona fide* travellers. New technology will give border guards the possibility of checking each individual and provide automated border checks at the border crossing points. Looking ahead to the longer term, the Commission will be able to put together an overarching plan on border management, built around a highly technical integrated surveillance architecture which will help to modernise checks at the EU's external borders and make them more efficient and more capable of responding to future challenges. Frontex will have a key role to play in this ambitious strategy.

Europol

Mikael Blomqvist Jensen, deputy head of the Crimes Against Persons Unit and group leader for irregular migration, and Steve Harvey, group leader for the fight against human trafficking,¹²⁴ are the two officials at Europol¹²⁵ who can give the reader greater insight into how Europol acts in its fight against human trafficking. This includes Europol cooperation with other EU bodies and international organisations (e.g. Frontex, Interpol, IOM, UNODC), analysis of the main routes of entry used by human traffickers and smugglers, how to raise public awareness on human trafficking, ways of improving the protection of victims, improved cooperation between Europol and national police forces, and the Mediterranean Transit Migration Project,¹²⁶ to name but a few.

¹²⁴ Four Europol officials are engaged in the fight against human trafficking, while there are five to curb irregular migration flows. Seven analysts and three seconded national experts help these nine officials in supporting activities and investigations undertaken by the Member States to fight these crimes.

¹²⁵ The European Police Office was created to foster police cooperation between Member States in an effort to prevent and counter threats such as terrorism, drug trafficking, money counterfeiting and other forms of international organised crime. Established on the basis of the Maastricht Treaty and the Europol Convention, which entered into force on 1 October 1998, Europol began its activities in July 1999. Should the Czech Government lift its scrutiny reserve by the end of 2009, Europol is set to become an EU Agency as from 1 January 2010.

¹²⁶ "Mediterranean Transit Migration Dialogue, towards a comprehensive response to mixed migration flows" Office for Official Publications of the European Communities, 2008. This project has been implemented by the International Centre for Migration

On the fight against human trafficking, Europol considers that it is of paramount importance for EU Member States to develop a more pro-active approach, which includes well-trained specialists and the setting-up of dedicated investigation units. Current investigations heavily depend on the willingness of victims to take part in judiciary proceedings against perpetrators and are often undertaken by police officers who have not received adequate training.¹²⁷ In addition to these shortcomings, the collection and exchanges of information and experience is limited between EU Member States. All this significantly hinders the ability of national police forces and Europol to keep regular and up-to-date information flows and to understand how and when a given organised gang plans to traffic human beings and organs from one country to another. Given the scale and the transnational nature of this criminal offence, it is therefore vital for information to be gathered and disseminated to help Europol carry out its intelligence and threat assessment analyses, which in many cases have been instrumental in arresting and bringing perpetrators to justice. The IcoNet instrument, which is a secure web-based information and coordination network,¹²⁸ aims to provide a platform for the exchange of strategic, tactical and operational information on irregular migratory routes and movements and on human trafficking and the use of counterfeit travel documents and visas.¹²⁹ This instrument was also meant to be used to secure practical cooperation among immigration liaison officers (ILOs) posted abroad by the Member States.¹³⁰ In other words, IcoNet enables Member States to transmit confidential early warning messages on irregular migration and facilitator networks and changes in migratory routes and methods used by human smugglers. Up to now, Member States have not made extensive use of this instrument, which is not user-friendly and does not have harmonised templates. This means that IcoNet contains scarce information, as Member States find it difficult to feed and operate this information system. Another reason is that the ILOs posted abroad by the Member States do not share information among themselves; this is partly due to the absence of a more solid coordination platform. Under these circumstances, the current use of IcoNet is limited. To address these issues, one idea would be to create templates to harmonise the information to be gathered and disseminated via IcoNet, including on joint return flights, so as to

Policy Development (ICMPD), Europol and Frontex in cooperation with the United Nations High Commissioner for Refugees (UNHCR).

¹²⁷ Training is also important for prosecutors and judges, who need to have specific knowledge of the cases of human trafficking to punish perpetrators severely, while safeguarding the rights of victims.

¹²⁸ Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services, OJ L 083, 1.4.2005.

¹²⁹ It is not possible to exchange personal data of illegal migrants or facilitators via IcoNet.

¹³⁰ Council Regulation EC No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network, OJ L 64, 2.3.2004. The Commission intends to table a proposal amending this Regulation by the end of 2009.

encourage Member States and ILOs to make regular use and to increase the level of security of IcoNet, which cannot currently upload EU-restricted documents. A further proposal would be to do away with the practice of one ILO per country and to have ILOs representing two or more countries. EU delegations in countries where irregular migration pressure is high and the scourge of human trafficking is on the rise could also act as a "focal point" where ILOs meet to share information and experience. Europol's main strengths stem from its expertise in and knowledge of organised crime and from its analytical and threat assessments skills, which are crucial to supporting investigations and operations against offenders. If the information networks that were established to collect and share strategic and intelligence information do not ensure this flow of information, Europol's analytical ability will clearly be thwarted for want of critical data, in particular with regard to the third countries where irregular migration and human trafficking are on the increase. This is a weakness that needs to be addressed swiftly if Europe wants to tap its full potential against human traffickers and smugglers.

Europol also has an information system that stores and makes crime-related data available to the Member States.¹³¹ Europol and the Member States upload data, which include offence information, suspects or convicts, means that were used to commit a given crime, suspected membership of a criminal organisation, multimedia¹³² and contact details.¹³³ This information system has a distinct advantage: law enforcement personnel in Greece can upload data in Greek, which the other Member States can read in their own languages. This means that this system of Europol works with a given set of words, which are translated automatically in twenty-three languages, thereby enabling law enforcement authorities across the European Union to access information in their own language. Mikael Jensen made no secret of the fact that, with the dismantling of Europe's internal borders, information is crucial. He added that, while organised crime moved fast across Europe, EU citizens needed to overcome language, cultural and professional barriers.¹³⁴

On data collection, the importance needs to be stressed of the EU-funded project on developing guidelines for the collection of data on trafficking in human beings, including comparable indicators.¹³⁵

¹³¹ This information system came on stream in April 2005.

¹³² For example, DNA, fingerprints and pictures.

¹³³ In Belgium, Denmark, France, Germany, the Netherlands and Sweden, the uploading of data is automatic. By the end of summer 2009, Italy, Spain and the United Kingdom will also automatically upload data. For the time being, all the other Member States will continue to upload data manually.

¹³⁴ Interview with the author

¹³⁵ This project started on 1 November 2007 and is being implemented by the Austrian Federal Ministry of the Interior in close cooperation with the International Organisation for Migration. Other partners include the Belgian Federal Police, Europol and the International Centre for Migration Policy Development, the Italian

These will address the issue of obtaining comparable and reliable data in the area of human trafficking. To this end, the project has three primary goals: (1) to improve collection, comparison and sharing of data on human trafficking by establishing new mechanisms; (2) to enhance the capacity building of national authorities; and (3) to devise standard guidelines for data gathering, including the development of comparable indicators. The ultimate objective of this project, which ended on 30 April 2009, is to lay the foundations for a common system of data collection on human trafficking across the EU.

Equally important is the establishment of a clear anti-trafficking legislative framework. Recent evidence shows that traffickers are more likely to carry out their illicit activities in a country that does not have appropriate legislation in place. For example, legislative norms should provide for a well-designed witness protection programme, financial investigations, including asset seizure and confiscation, the setting-up of a dedicated national centre on human trafficking, run by an appointed coordinator, and the possibility of imposing sanctions on the customers of trafficked women and children. In the absence of those norms, human trafficking is set to thrive even more in the future.

Europol officials also pointed out that investigations into travel document forgery had sometimes led to human trafficking, as counterfeit documents are generally given to victims of trafficking in order to secrete them across borders. Europol's internal information system makes links of this kind possible. At the end of any work day, all data from a given investigation are entered and stored in Europol's information system, which automatically matches entries. It is therefore possible for the name of a person known for human trafficking to be linked with the name of another person who is involved in two investigations: one on counterfeit travel documents, possibly used by a group of terrorists, and the other on forged documents, given to victims of trafficking.¹³⁶ Since these two crimes are dealt with by two separate departments in Europol, the information system helps Europol officials to keep abreast of any investigation developments across the wide spectrum of Europol's activities.

A further aspect we discussed was training. In Europe, a large number of law enforcement officers have not yet received specialised training in the challenges posed by human trafficking. There are neither "contact points" for victims nor any specific expertise in how to profile and thus identify potential victims, thereby missing

Ministry of the Interior, the Ministry of Justice and Law Enforcement of Hungary, the Police of Luxembourg, and the Swedish Ministry of Justice.

¹³⁶ On 3 February 2009, the Spanish police arrested thirteen people involved in passport forgery, drug trafficking and smuggling of people who were suspected of supplying counterfeit documents to international terrorist groups. *International Herald Tribune*, 3 February 2009. In 2007, the Quarterly Journal issued a special issue on the link between terrorism and trafficking (The Quarterly Journal, Connections, Vol. VI, No 1, spring 2007).

opportunities to save potential victims from traffickers. As Steve Harvey put it: "*While police officers have developed a default reflex when they face weapon and drug traffic offences, this reflex is yet to come when they deal with potential victims of trafficking*".¹³⁷ This means that more training needs to be given to law enforcement personnel in order to turn human trafficking into a "default reflex" across Europe. Training should also be provided to soldiers engaged in peace-keeping operations during which human trafficking tends to grow exponentially.¹³⁸

Raising public awareness is also vital to fighting human trafficking. Both persons interviewed stressed that it was important to place the right emphasis on spotlighting cases of victims of trafficking. The media need to spare no effort in highlighting the appalling experiences and the slavery-like conditions of victims of trafficking, especially women and children. If the media use the "same tone" for cases of undocumented migrants and human trafficking, then Europe's citizens will find it difficult to distinguish between these two different situations. Steve Harvey raised an interesting point when he said that Europe had spent more money on raising public awareness in third countries than in the EU. This has led to a situation where people and police officers in third countries have become more familiar with the challenges posed by human trafficking than Europe's citizens and police officers. Steve Harvey then gave me an example of a successful campaign on human trafficking entitled "The Blue Blindfold Campaign", which was devised and run by the United Kingdom Human Trafficking Centre.¹³⁹

On the operational side, Europol is engaged in a wide array of activities.¹⁴⁰ For example, Europol is working with the United Nations Office on Drugs and Crime (UNODC)¹⁴¹ on a project to counter human smuggling from North and West Africa via capacity building in the judicial systems. With the assistance of the International Centre for Migration Policy Development (ICMPD)¹⁴² and Frontex, Europol is running an ambitious, EU-funded programme designed to bring Arab and European countries together in an effort to manage mixed

¹³⁷ Interviews with the author.

¹³⁸ For a compelling account of the main challenges concerning peace-keeping operations and human trafficking, see Mendelson, S. E. "*Barracks and brothels: peacekeepers and human trafficking in the Balkans*", Centre for Strategic and International Studies Report, Washington DC, February 2005. It is also available on the internet: http://www.csis.org/media/csis/pubs/0502_barracksbrothels.pdf

¹³⁹ Belgium, the Netherlands and Sweden also have specialised national centres dedicated to the fight against human trafficking.

¹⁴⁰ It is worth recalling that Frontex and Europol signed a strategic agreement on 28 March 2008 in Warsaw to step up cooperation, especially in sharing strategic and technical information.

¹⁴¹ Europol and the UNODC signed an agreement for cultivating practical cooperation, which entered into force on 16 March 2004.

¹⁴² See footnote No 108

migration flows more effectively.¹⁴³ This joint undertaking aims to track down irregular African and Mediterranean migration routes, to assess the nature of irregular migration flows in Africa and the Mediterranean region, to provide EU Member States and partners with an "MTM I-map", which is an interactive, easy to operate online tool designed to give national authorities a comprehensive overview of the current migration situation, both locally and regionally, and to develop guidelines and share good practices on countering irregular migration flows. In November 2008, sixty-five people engaged in human smuggling were arrested in Hungary, Italy, Poland, Portugal, Slovakia and Spain at the end of an investigation undertaken by Europol and Eurojust.¹⁴⁴

In its relentless fight against human smuggling and trafficking, Europe can count on the commitment, expertise and technical support of Europol staff. This body, which complements the work of Frontex, provides Europe and the Member States with invaluable investigation skills, a wealth of strategic and intelligence information, including analytical and threat assessments, and operational support, which has proved to be of tremendous value in a number of criminal investigations. Moreover, Europol's repressive approach towards human smugglers and traffickers does not prevent it from paying particular attention to the delicate issue of victim protection, which is always taken into account during investigations. This is borne out by the fact that over the years Europol has demonstrated that it knows how and when to use its strength.

Interpol

Given its broad geographical scope and consolidated expertise, the General Secretariat of Interpol¹⁴⁵ is an important stakeholder in Europe's fight human smuggling and trafficking. To this end, it is crucial to gain new insight into the operations. The primary task of Interpol is to help the police and law enforcement agencies in its Member countries to prevent crime and conduct criminal investigations effectively. In particular, Interpol facilitates cross-border police cooperation and supports government authorities and intergovernmental organisations engaged in preventing or combating crime. As

¹⁴³ The programme is entitled "Mediterranean Transit Migration (MTM) Dialogue". See footnote No 124

¹⁴⁴ Thanks to this operation, called "Operation Trufas", a people-smuggling network has been dismantled. 3 500 irregular migrants from Moldova and Ukraine seemed to have been smuggled across Europe. Each irregular migrant is believed to have paid some €3 000.

¹⁴⁵ The General Secretariat is located in Lyon, France. In addition to a representative office at the United Nations Headquarters in New York, the General Secretariat currently operates six sub-regional bureaux in Argentina, Ivory Coast, El Salvador, Kenya, Thailand and Zimbabwe.

regards the fight against human trafficking, Interpol has a dedicated Sub-Directorate working in its General Secretariat to provide support and training for national law enforcement bodies and other designated partners.¹⁴⁶ This Sub-Directorate also carries out strategic analytical studies to gather factual information to support law enforcement in international investigations. These studies are regionally focused and are increasingly geared towards operations. When it comes to staff, I have to admit that I was surprised to learn that there is only a single seconded national police officer who works full-time on the fight against human trafficking. This in no way means that the ability of Interpol to counter human trafficking and smuggling is thwarted by limited human resources. The point I am trying to make is that, as human trafficking has grown in both size and complexity, it would be politically wise to beef up this Interpol Sub-Directorate to tap its full potential. Interpol provides technical and operational assistance to law enforcement officials engaged in the fight against organised crime, including fugitives, public safety and terrorism, drugs, trafficking in human beings, financial and high-tech crime and corruption. Interpol also has a specialist working group on trafficking in human beings, which meets annually.

On information systems, Interpol has developed and maintains a range of global databases covering strategic and intelligence information,¹⁴⁷ including a secure global communications system for the law enforcement community called "I-24/7", to which all Member States are connected. It provides police around the world with a common platform on which to share crucial information about criminals and their illicit activities. As regards the fight against human trafficking, in 2006 Interpol set up the Human Smuggling and Trafficking Message, which provides police with a standard format for easy exchange of information, thereby facilitating police cooperation and the reporting of these crimes to Interpol. The Message is accessible to all authorised users in the Member States via Interpol's "I-24/7" global communications system. There is also a command and co-ordination centre, which operates out of Interpol's General Secretariat 24 hours a day, seven days a week. Another resource which can facilitate investigations and help catch traffickers and child sex offenders is Interpol's system of International Notices, of which the most widely known is the Interpol "Red Notice", which seeks the arrest or provisional arrest of wanted persons with a view to extradition. However, three other Notices are of particular importance for cases dealing with human trafficking and crimes against child-

¹⁴⁶ Trafficking in children for sexual exploitation is also included, as a growing number of child sex offenders are travelling outside their countries of origin to abuse children. To this end, Interpol has undertaken specific projects targeting the travel routes of child sex offenders in an effort to bring these criminals to justice.

¹⁴⁷ More specifically, names, fingerprints, photographs, DNA profiles of individuals under investigation or wanted for arrest. In addition, there are data on stolen and lost identification and travel documents, stolen vehicles and works of art and illicit weapons linked to criminal cases.

ren.¹⁴⁸ In other words, Interpol acts as the world's clearinghouse for intelligence on traffickers, which is stored in its databases. This enables Interpol officials to make international links in investigations worldwide.

To combat trafficking in children for sexual exploitation,¹⁴⁹ which is an abuse that is on the rise, Interpol has a special tool called Child Abuse Image Database (ICAID), which was established in 2001. The ICAID provides an unparalleled means for national law enforcement agencies to exchange international criminal intelligence on online child abuse material. The database contains hundreds of thousands of images of child sexual abuse submitted by the Member States.¹⁵⁰ Interpol is currently working in close cooperation with the United Nations Office on Drugs and Crime (UNODC) to finalise the planning stages of a new project called "Childhood", which aims to improve law enforcement capacity to combat trafficking in children for sexual exploitation in South-east Asia.¹⁵¹

Interpol also has special units in the Member States, called national central bureaus (NCBs) and sub-regional bureaus (SRBs). Through its global network of NCBs, Interpol can collect first-hand data on human trafficking. For example, at present Interpol officials are engaged in collecting data on trafficking in women for sexual exploitation. This analytical project, which is called "Red Routes", attempts to put together information on human trafficking from Eastern Europe. The objectives are to get an overview of who is trafficked, how the victims are drawn into the trafficking process and where they are trafficked to. In other words, this project seeks to answer two fundamental questions in the fight against human trafficking: the recruitment process, where former victims are increasingly involved, and the financial gains. Without women to traffic and with no financial gain, criminal activities will be gradually reduced. The report also tries to assess the structure and *modus operandi* of trafficking organisations. While further intelligence is needed, preliminary results reveal that, despite law enforcement intervention in destination and source countries, Eastern European human trafficking networks continue to exist and flourish.

¹⁴⁸ These include the "Green Notice", which provides police with warnings and criminal intelligence about persons, the "Blue notice", which is issued to locate persons and collect information, and the "Yellow Notice", which is used to find missing persons.

¹⁴⁹ Interpol is a partner in the Virtual Global Taskforce (VGT), which is an international alliance of law enforcement agencies that work in partnership to protect children from sexual exploitation.

¹⁵⁰ The images are then examined by Interpol officials working on human trafficking in an effort to understand where the abuse took place and see whether the images are taken in locations already used for other victims. Images of abuse can trigger new investigations or help ongoing investigations to rescue victims of child abuse. For example, if a particular country is identified, then Interpol sends these images to the national police authorities of that country to alert the authorities of cases of child abuse.

¹⁵¹ At the time of writing, the funding of this project has not yet been secured.

Interpol has also put together a specific training programme provided by international experts on the prevention of trafficking, investigation of trafficking cases, victim interviewing and victim protection, and on the prosecution of such cases before the judiciary.¹⁵² There is also a training programme dedicated to the specificities of African countries on how to counter human trafficking. This programme draws on the global expertise, good practices and tools that have been developed by experts. Interpol also supports law enforcement worldwide by offering capacity building within national police services.

With its worldwide membership, Interpol is in a good position to co-ordinate global law enforcement efforts to identify and bring human traffickers and child-sex offenders to justice. Europe and the Member States should cultivate practical cooperation in a bid to pool the human and financial resources law enforcement authorities need to make human trafficking a riskier and less profitable business.

United Nations Office on Drugs and Crime

Fostering cooperation with other international institutions is crucial if Europe wants to increase its chances of success against the appalling practices of human trafficking and smuggling. Council Decisions 2006/616/EC, 2006/617/EC,¹⁵³ 2006/618/EC and 2006/619/EC¹⁵⁴ of 24 July 2006 enabled Europe to accede to two UN Protocols, which aim to counter human smuggling and trafficking in persons and to cultivate cooperation with the countries that are party to the two UN Protocols.¹⁵⁵ For example, practical cooperation could be geared towards the discovery of the embarkation and destination points used by smugglers, migration routes, and means and methods of concealment and transportation of migrants. At the time of writing, the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime, has 112 signatories of 116 Parties, whereas the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons,

¹⁵² Interpol has recently updated its best practice guidance manual for investigators in trafficking in human beings. The guide is a comprehensive manual for investigators and prosecutors.

¹⁵³ On the conclusion, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime, which entered into force on 29 September 2003, OJ L 262, 22.9.2006.

¹⁵⁴ On the conclusion, on behalf of the European Community, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, OJ L 262, 22.9.2006.

¹⁵⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children entered into force on 25 December 2003, and the Protocol against the Smuggling of Migrants by Land, Sea and Air on 28 January 2004.

Especially Women and Children, has 117 signatories of 124 Parties. Combined, the two UN Protocols have 111 Signatories of 120 Parties.¹⁵⁶

Council Decisions 2006/616/EC and 2006/617/EC provide law enforcement authorities with the possibility of preventing and pursuing criminal acts, committed for financial and material gain, resulting from human smuggling.¹⁵⁷ This also includes prosecuting the criminals involved in "*producing a fraudulent travel or identity document and procuring, providing or possessing such a document*" and the unlawful use of a valid travel document "*by a person other than the rightful holder*". This UN Protocol also provides for specific training for law enforcement and migration officers in an effort to protect the rights of migrants more and to prevent and repress human smuggling. For example, training should cover detecting fraudulent documents and gathering criminal intelligence and procedures for identifying smuggled people. In other words, this UN Protocol endeavours to protect the rights of migrants, while providing for measures both to prosecute organised criminal groups engaged in human smuggling and to deal with the root causes of migration.¹⁵⁸

Council Decisions 2006/618/EC and 2006/619/EC were the legislative acts Europe needed to accede to this legally binding UN instrument against human trafficking, which contains an agreed definition on trafficking in persons.¹⁵⁹ A common definition has helped the Member States that are party to the UN Protocol to establish and approximate sanctions against human trafficking¹⁶⁰ and to secure practical cooperation, which is vital to investigating and prosecuting cases of human trafficking. This UN Protocol also pays special

¹⁵⁶ While a large number of countries have signed and ratified the two UN Protocols, others have decided to sign, but not to ratify them.

¹⁵⁷ For the purposes of this UN Protocol, Article 3 defines smuggling of migrants as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

¹⁵⁸ Extreme poverty, ethnic conflicts, wars, and lack of education and job opportunities are the main "push factors" of international migration movements. In his 2005 paper entitled "*Environmental Refugees: An Emergent Security Issue*", Norman Myers considered desertification and floods associated with global warming as powerful triggers of migration. For example, today over 1 billion people have no access to clean water.

¹⁵⁹ Article 3 states the following: "Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

¹⁶⁰ Article 5.

attention to respect for human rights and aims to provide assistance and protection to victims of trafficking.¹⁶¹

The policy dialogue between the UNODC and the various Commission departments has been particularly productive, as has practical cooperation. For example, in recent years the Commission has funded two UNODC projects: one on making the justice system in Algeria, Egypt, Libya, Morocco and Tunisia more effective and capable of responding to the challenges thrown up by human smuggling, the other on law enforcement capacity building to prevent and combat the smuggling of migrants in the Economic Community of Western African States (ECOWAS)¹⁶² and Mauritania.¹⁶³ These two undertakings are both part of the so-called "UNODC Impact Programme", which is also intended to cover Eastern Africa in the future. This UNODC programme provides North and West African States with technical assistance to prevent and combat the smuggling of migrants from and through Africa to Europe with the laudable aim of fostering practical cooperation between Africa and Europe and within the region.¹⁶⁴ The preliminary results of this UNODC programme reveal that lack of awareness, inadequate legislation, poor regional cooperation and weak criminal justice response to fight human smuggling are the main challenges that need to be addressed. To this end, the UNODC Impact Programme has crafted a strategy composed of six main components: (1) data collection and analysis; (2) legislative development; (3) policy development and institutional capacity building; (4) human capacity building and training;¹⁶⁵ (5) international

¹⁶¹ Articles 6 and 7. Article 8 provides for the return of the victims of human trafficking to "a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence".

¹⁶² The fifteen West African States constituting ECOWAS are as follows: Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. The UNODC has also assisted ECOWAS in drafting the anti-human trafficking action plan and lends support to the African Union Ouagadougou action plan on human trafficking, as adopted by the Ministerial Conference on Migration and Development, Tripoli, 22-23 November 2006. For more information, see http://ec.europa.eu/justice_home/doc_centre/immigration/docs/OUAGADOUGOU.pdf.

¹⁶³ Europol, Frontex and Interpol are partners in both projects, which are not yet fully implemented.

¹⁶⁴ Cooperation takes the form of operational law enforcement activity to prevent and fight criminal organisations and to assist African States in capacity building. Experience and good practices are also exchanged on a regular basis.

¹⁶⁵ In August 2008, UNODC, together with Interpol, Europol and the UK Serious Organised Crime Agency (SOCA), started to work on training modules on human smuggling targeting law enforcement officials and prosecutors. For example, a national workshop for prosecutors was organised in collaboration with the Egyptian Public Prosecution, with the participation of more than thirty-five Egyptian public prosecutors. The UNODC intends to improve its training modules with the assistance of experts and to adapt them more to the specific needs of West and North African States.

cooperation; and (6) awareness-raising campaigns.¹⁶⁶ Joint UNODC-Europol assessment missions have already been carried out in Cape Verde, Guinea-Bissau, Mali and Nigeria. According to the results of these fact-finding missions, Cape Verde has changed from a transit country to a destination country for irregular migrants from continental Africa. This is mainly due to economic growth and closer ties with the European Union.¹⁶⁷ Guinea-Bissau, on the other hand, is a transit country, which is increasingly used by criminal organisations to set sail for the Canary Islands.¹⁶⁸

More recently, the Commission has selected another UNODC-led project on "Strengthening Law Enforcement Capacity (Border Control Operations) and Criminal Justice Response to Smuggling of Migrants and Trafficking in Persons in South Africa". The Commission also takes part in the UN gift initiative,¹⁶⁹ which was launched in March 2007 with funding made available by the United Arab Emirates. This project, which is based on the UN Protocols, aims to cultivate cooperation with a number of international organisations engaged in the fight against human trafficking¹⁷⁰ and other stakeholders¹⁷¹ in a bid to pool the resources needed to develop partnerships, to raise public awareness and to combat the heinous practice of human trafficking with greater resolve.

On 12 February 2009, the UNODC put forward its "*Global Report on Trafficking in Persons*", which provides new insight. It includes information on reported cases of trafficking in persons, victims, prosecutions in a hundred and fifty-five countries, trafficking patterns and legal remedies adopted to stamp out this offence. For example, the report shows that 79% of human trafficking is related to sexual exploitation, where women and girls are the "usual victims", followed by labour exploitation, which accounts for 18%. Worldwide

¹⁶⁶ For example, a regional workshop targeting media representatives took place in November in Cairo. Its aims was to increase awareness of the fact that the smuggling of migrants is a crime and often exposes migrants to health and life-endangering situations. In February 2009, Mr Costa, the executive director of the UNODC, appointed the actress Mira Sorvino as a Goodwill Ambassador to combat human trafficking in a bid to raise public awareness.

¹⁶⁷ Restrictions on free movement to Cape Verde from the ECOWAS area are likely to encourage some criminal groups to smuggle irregular migrants to this country.

¹⁶⁸ This is due to the anti-smuggling measures put in place in other countries, namely, Senegal and Mauritania. Most of the smuggled migrants are not Guineans, but from other ECOWAS countries, as Guineans are too poor to pay for a journey to Spain.

¹⁶⁹ For more information, see <http://www.ungift.org/ungift/en/about/index.html>.

¹⁷⁰ The International Labour Organisation (ILO), the International Organisation for Migration (IOM), the UN Children's Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR) and the Organisation for Security and Co-operation in Europe (OSCE), which, in February 2009, published a new report entitled "*Efforts to combat trafficking in human beings in the OSCE area: coordination and reporting mechanism*". It is also available on the internet at: http://www.osce.org/publications/cthb/2009/02/36298_1253_en.pdf.

¹⁷¹ Governments, business, academia, civil society and the media.

trafficking in children involves 20% of victims, although in some parts of Africa this percentage is much higher.¹⁷²

To address the growing challenge posed by human trafficking and smuggling, Europe needs to foster practical cooperation with the UNODC, whose new medium-term strategy makes it a stronger and more reliable partner.¹⁷³ With its global reach, the UNODC can provide judicial and technical assistance to its Member States in areas such as capacity building, policy analysis, training, pre-eminence of the rule of law and the fight against organised crime in third countries. The UNODC has set itself these ambitious objectives, which Europe shares and should continue to support.

¹⁷² See : Unodc.org/.

¹⁷³ See Unodc.org/unodc/en/frontpage/unodc-strategy.html.

Challenges to be addressed

Europe's policy options to counter human trafficking

As Moisés Naím put it: "The trade in people is surely the most morally repugnant of all the illicit trades that flourish today... Migrants can be driven by opportunity, hope, despair, or simply the need to survive. Human traffickers prey on these impulses and, thanks to their ability to elude government-imposed obstacles, they can turn human impulses into profits".¹⁷⁴ In 2009, Europe, the Member States and Europeans should expect not only to have any form of slavery such as coerced sex and forced labour eradicated from our society but also to have any perpetrators behind bars and their assets seized and confiscated. Nobody can tolerate criminal organisations treating people, especially women and children, as commodities to be bought and traded around the world. This is not, however, the reality that is before us, as trafficking and smuggling of human beings have become global phenomena and experts fear that these two contemptible practices are on the rise. Offenders thrive in today's globalised, interdependent world, as improved communication tools enable criminal organisations to exchange information efficiently and to conclude transactions swiftly. For example, if the estimate of the profits amassed by smugglers and traffickers is anywhere near the one made by Patrick Belser in 2005, human smuggling and trafficking can be said to be highly lucrative "lines of business". In his paper "Forced labour and human trafficking: estimating the profits", P. Belser contends that global profits stemming from forced labour amount to US\$ 44.3 billion a year, of which US\$ 31.6 billion from the victims of trafficking.¹⁷⁵ According to the UNODC report entitled "*Global Report on Trafficking in Persons*", we know that forced labour accounts for 18% of human trafficking and sexual exploitation for

¹⁷⁴ Naím, M. "*Illicit*", William Heinemann, London, 2005. p. 89. This book offers a very detailed and compelling view of the power that illicit activities have acquired in recent years - power that is so irresistible and sinister that it influences government decisions in certain parts of the world.

¹⁷⁵ Belser, P. "*Forced labour and human trafficking: estimating the profits*", Working Paper No 42, International Labour Organisation, March 2005. It is also available on : digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor.

79%. If one assumes that the estimate by Patrick Belser and that the percentages of the UNODC report are correct, it follows that the profits from sexual exploitation of trafficked victims will be much higher. These are colossal profits, although any estimate should be taken with a certain amount of scepticism.

Grappling with human trafficking and smuggling therefore calls for a comprehensive strategy. It should hinge on a strong political commitment, a robust legislative framework, substantial financial and human resources, awareness-raising campaigns and enhanced cooperation between stakeholders, including third countries. Evidence shows that countries that have put together a more holistic approach to fight human trafficking, including closer cooperation between the different authorities engaged in the fight against human trafficking,¹⁷⁶ are the ones that have had the most success. To increase Europe's chances of success further, it is therefore vital to learn more about the magnitude, the nature and the root causes of these offences, both in Europe and worldwide. Data collection and analysis are still deficient and more effort is needed to give Europe and the Member States a clearer understanding of the main challenges that lie ahead, especially for government and law enforcement officials. What is striking is that the number of actual prosecutions and convictions pale into comparison with the latest available estimates of these two phenomena. In 2007 and 2008, for example, two in every five countries in the world did not report a single judicial decision on cases of human trafficking.¹⁷⁷ According to the data contained in the impact assessment accompanying the proposal for a new Framework Decision on preventing and combating trafficking in human beings and protecting victims,¹⁷⁸ in 2006, within the EU, the highest number of investigations and prosecution of cases of human trafficking were registered in Germany (353), Belgium and Bulgaria (291), Italy (214), Austria (128), Portugal (65) and the United Kingdom (54).¹⁷⁹ The difference between the perceived scale of human trafficking and the number of victims who have received assistance is even starker. For example, only nine EU Member States out of 27 have provided the Commission with accurate figures on assisted victims and these figures cover a three-year period. Italy is the EU Member State .

Against this background, it would be politically imprudent to base Europe's policy options merely on incomplete sets of data. Policy options need to be based on a clear understanding of the reasons why putting people on the market has become a highly profitable business and why so many people fall prey to these

¹⁷⁶ Border guards, customs and police officers, revenue offices, labour inspectors, prosecutors and judges, trade unions and non-governmental organisations.

¹⁷⁷ UNODC "Global Report on Trafficking in Persons". 12.2.2009

¹⁷⁸ Commission staff working document, SEC(2009) 359, Brussels, 24.3.2009.

¹⁷⁹ The total number of cases of human trafficking investigated in the EU was 195 in 2001, 453 in 2003, 1 060 in 2005 and 1 569 in 2006.

criminal groups. The mechanisms governing the supply and demand of "the market for human beings" therefore need to be better understood and examined in more detail if Europe wants to rise to the formidable challenges thrown up by human trafficking and smuggling. Europe needs to find a way of changing human trafficking from a money-spinning business to one that is high risk and less lucrative. Europe should take the same approach as in the directive providing for sanctions against employers of illegally staying third-country nationals,¹⁸⁰ which will introduce a minimum level of sanctions and increase clarity as to the nature of the offence within the European Union.¹⁸¹ At present, inspection rates are very low in Europe and so is the risk of being caught by law enforcement authorities. This directive will place an obligation on national authorities involved in the fight against illegal employment to increase resources to ensure that regular checks are conducted on a greater number of companies established on their territory. These regular checks will also have beneficial spinoff effects: when the labour inspectors are on site, they will obviously not just limit their controls to illegal employment.¹⁸² Conformity to labour and health standards, for example, will also be verified against existing legislation. As for labour exploitation of the victims of trafficking, which is rarely reported, these regular checks will make this illicit business riskier and more expensive, as the chances of being apprehended will grow accordingly. This legislative act will also require all Member States to make every effort to combat a problem that is becoming increasingly widespread and acute: a problem which is also gradually undermining some of the fundamental pillars of the European Union, namely, respect for human rights, fundamental freedoms and the rule of law.¹⁸³ The forthcoming "Stockholm programme",¹⁸⁴ will give Europe an opportunity to advance its agenda on the fight against human trafficking and this opportunity should be seized. Europe needs to send out a clear political signal stressing its real and active commitment to combating human trafficking. As I mentioned earlier, in the event that the Lisbon Treaty is approved, trafficking in human

¹⁸⁰ Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals, COM(2007) 249 final, Brussels, 16.5.2007.

¹⁸¹ This will also be a deterrent, as companies will realise that sanctions will be applied consistently across the EU.

¹⁸² The powerful attraction of illegal work is made even more appealing by the "certainty" that immigrants will not be returned to the country from which they you have fled. For more information, see Bertozzi S. "European Pact on Migration and Asylum: a stepping stone towards common European migration policies", *Rivista Italiana di Diritto Pubblico Comunitario*, Anno XIX, Fasc., 1-2009.

¹⁸³ Article 6(1) of the Treaty of Maastricht states the following: "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States", while Article 6(4) stipulates that "the Union shall provide itself with the means necessary to attain its objectives and carry through its policies".

¹⁸⁴ This is the name of the next multi-annual programme in the area of justice, freedom and security, which will follow up on the Hague Programme.

beings will fall within the remit of Chapter II "Policies on border checks, asylum and immigration".¹⁸⁵ At first sight, the political choice of how to take the fight to irregular migration and human trafficking might give the impression that Europe intends mainly to use the same "repressive arsenal" to combat these two issues. To avert any impression of this kind, however, Europe should ensure that its approach towards victims of trafficking differs greatly from its approach to irregular migrants, who are mainly looking for jobs in Europe. Although it is true that irregular migrants can become victims of labour exploitation, as they are forced to work 20-hour shifts each day in order to repay the cost of their journeys, a distinction should be made between the policy options and the "tool box" Europe intends to use to crack down on human smugglers and traffickers and measures designed to deal with irregular migrants and victims of trafficking. For example, the latter can find themselves at the mercy of criminal organisations that confiscate their travel documents, cash and other valuables on any pretext. Placing the fight against human trafficking under the political remit of migration policies, however, has its advantages. Europe needs concerted action in the areas of visa policy, border management, passenger profiling and migration management, which include both fighting human smugglers and the unregulated arrival of undocumented migrants and providing humanitarian assistance to those in need. This balanced approach, which encompasses repressive measures and protective action towards victims of trafficking, needs to be mainstreamed into the post-Hague Programme, in an effort to consolidate Europe's migration management further, and into practical cooperation with Europol, Frontex and Interpol, and with Member States governments. Europe has to enlist all the political and practical support it needs to sharpen its "migration tools" if it wants to rise to the formidable challenge thrown up by human trafficking and smuggling, which are the most appalling features of irregular immigration. Europe needs to engage with all stakeholders, including trade unions and nongovernmental organisations, and to reach out to victims of trafficking and assist them with care and rehabilitation while gaining their trust and cooperation.¹⁸⁶ For example, the European Social Fund¹⁸⁷ supports employment and education projects to make the socioeconomic integration of victims of trafficking into the fabric of the host society easier. In other words, Europe needs to be careful when it comes to the goals it sets in the area of migration management and in the fight against human trafficking.

¹⁸⁵ Article 63a(2)(d) "combating trafficking in persons, in particular women and children", OJ C 306, 17.12.2007.

¹⁸⁶ Repatriation of victims to their countries of origin should only be considered in cases where there are no life-threatening situations for the victims or their families and relatives.

¹⁸⁷ See: [Ec.europa.eu/employment_social/esf/index_en.htm](http://ec.europa.eu/employment_social/esf/index_en.htm)

Migration trends and the global recession

The current global recession will certainly have an adverse impact on the resources the Member States make available to root out these offences to human dignity and on the availability of jobs in Europe's labour markets. Past experience tells us that, when jobs are scarce, public sentiment against migrant labour gains strength. This public sentiment has already led to reprehensible episodes of xenophobia and discrimination against foreigners, be they citizens of third countries or nationals of another EU country.¹⁸⁸ Past experience also reveals that migrants are ready to work for a pittance, as they would be even worse off in their countries of origin, where the global economic slump has ravaged industry and employment, and economic inequality is on the rise. This means that migrants will continue to arrive in Europe, despite the adverse economic climate and the sharp reduction in available jobs.¹⁸⁹ Taking the total number of irregular migrants who arrived in Sicily from 1 January to 5 March 2008 (2,205) and comparing it with the number of undocumented migrants landed in Sicily over the same period in 2009 (2,452) shows that the total number of migrants has increased while the "voyages of hope" have dropped in number. The table below draws on the latest available data of the Italian Ministry of the Interior:

1 January – 5 March 2008

No ° of boats	Men	Women	Minors*	Accompanied Minors
35	1945	140	102	18

* Unaccompanied minors who have been assisted by the Italian social services

1 January – 5 March 2009*

No ° of boats	Men	Women	Minors*	Accompanied Minors
25	1998	262	179	13

* On 11 March 2009, 332 irregular migrants, 23 of them women, arrived in the harbour of Lampedusa. On 14 and 15 March 2009, 350 more irregular migrants landed on the shores of Lampedusa and Linosa. In other words, in five days, these two Pelagie islands had to cope with an additional influx of 682 undocumented migrants, who must be added to the 2,452 who had arrived earlier (grand total of 3,134 irregular migrants in less than three months).

** Unaccompanied minors who have been assisted by the Italian social services

¹⁸⁸ In February 2009, UK workers vehemently protested against the use of foreign labour at the Lindsey oil refinery, in Lincolnshire; and Ireland witnessed similar protests when the Dell company decided to relocate to Poland.

¹⁸⁹ Work on construction and renovation in private homes, public buildings and companies, the two most lucrative businesses for migrants, is becoming increasingly rare in Europe. This is also the result of the credit crunch, which has left several investors without the liquidity they need to undertake their activities.

This example highlights migration trends in the first months of 2009. First, the current economic crisis has encouraged certain human smugglers to increase the "human load" carried by their boats to cut logistical costs. Second, the number of female migrants has grown by 87 percent and so has the number of unaccompanied minors (75 percent). As I said earlier, the families of these unaccompanied minors fear that the socioeconomic conditions of the countries they live in are bound to deteriorate further¹⁹⁰ and thus see migration as an insurance policy for them (e.g. remittances) and as a way of securing a brighter future for their children. As for female migrants, these data do not tell us whether these women have migrated to accompany other family members or they have been forced to do so.

As a result of the severe economic downturn, many migrants will be engaged in unskilled and marginal jobs with less chance of integrating into the socioeconomic fabric of the host society. Other migrants, who have been laid off, will look for jobs in the underground economy and may fall prey to unscrupulous criminal organisations that are ready and waiting to exploit them. Migrants who are close to the end of their professional careers may decide to go back to their countries of origin. Only migrants who are engaged in anticyclical sectors such as health and care for the elderly are not expected to suffer from this global economic turmoil, as population ageing is already acute in some parts of Europe.¹⁹¹ In other words, only a limited number of migrants will opt to return to their countries of origin, whilst many of them have decided to stay and vie with local workers for scarce and low-paid jobs. The British the "Centre for Cities"¹⁹² recently published a report focusing on the labour situation in Bristol and Hull in England, which highlights how fierce the competition between British workers and migrants is for the jobs on offer, including those at the lower end of the labour market. Competition of this kind also occurs in Andalusia, where unemployed Spanish workers crave for once "hard to fill" jobs in the agricultural sector.¹⁹³

As regards EU Member States, some of them will face a gradually growing financial burden as a result of the increase in migrant unemployment. The impact on public finances will be more pronounced in those EU Member States that have a large number of migrants who have settled and worked in their countries for a long

¹⁹⁰ On 8 March 2009, the World Bank issued a report on the global financial crisis showing grim growth prospects and falling exports in the less developed world. The report also reveals that private capital flows "are expected to drop from US\$ 1 trillion to US\$ 530 million in 2009 and that between 130 to 155 million people have fallen into extreme poverty".

¹⁹¹ For example, in Denmark, Sweden and the United Kingdom, over 10 per cent of migrants work in health and social services.

¹⁹² It is a British registered charity and an independent urban policy research body. The report is available on: Centreforcities.org/.

¹⁹³ International Herald Tribune, "Andalusians battling migrants for jobs they didn't want before", 16 March 2009.

time.¹⁹⁴ Against this background, Europe has a duty to take the measures it needs to help Member States to extinguish any possible flame of discrimination and xenophobia and to prevent social unrest from gripping our continent. Europe and the Member States should also resist any temptation to retreat in the face of migration's challenges, as international migration is one of this century's unavoidable issues.

A further component of Europe's strategy against human trafficking should be deeper cooperation with third countries. For example, the second Euro-African Ministerial Conference on migration and development, which took place on 25 November 2008 in Paris, made it clear that "*the combating of smuggling of migrants and trafficking in human beings must entail close international cooperation*."¹⁹⁵ International migration has created a system of interdependence where the major players are the EU Member States, the countries of transit and origin and migrants and their families. Thus, effective regulation of migration flows is in the interest of everyone. Enhanced cooperation should therefore be geared to mutually beneficial migration schemes (MBMS) that enable migrants to make a living in the host societies and receiving countries to reap the benefits in terms of economic growth. Schemes of this kind call for forward-looking policy decisions, clear and transparent norms and enforcement mechanisms to curb irregular migration flows. Europe should not simply tighten its border controls. It needs to find ways of managing migration flows more effectively in a bid to craft positive policy outcomes for host countries and migrants alike. The introduction of MBMS should aim to furnish legal migrants with more opportunities for work and integration in the host societies, and thus reduce the incentive to look for other irregular ways of entering Europe. Human mobility is a positive aspect of today's globalised world. The challenge is to make this mobility orderly and safe. The idea therefore is to put this century's Charon¹⁹⁶ out of business by reducing the demand for these so-called "*voyages of hope*" and by making access to legal migration easier and more responsive to labour market needs. With declining demand and more coordinated controls, human smugglers and traffickers will soon realise that their illicit businesses are gradually becoming less profitable, as logistical costs per migrant will increase, along with the risks of being apprehended by law enforcement authorities as a result of increased practical cooperation.

¹⁹⁴ Obviously, in those EU Member States where migration is a relatively new phenomenon, fewer migrants will be entitled to claim unemployment benefits. For more information, see Alloza, M., Bertozzi, S., Vazquez, P., Vegas, R. "*Impact of the Rise in Immigrant Unemployment on Public Finances*", Fundación de estudios de economía aplicada, working paper No 15, March 2009.

¹⁹⁵ See the final statement of the Conference, which is also available on: Eu2008.fr/webdav/site/PFUE/shared/import/1125_conference_immigration/Paris_Conference_Migration_Development_Final_statement_EN.pdf. p. 7

¹⁹⁶ In Greek mythology, Charon was the ferryman who, for a coin, was ready to carry souls across the river dividing the world of the living from the world of the dead.

Another prong of Europe's strategy should focus on awareness-raising campaigns within the EU, as pointed out by Europol officials. The decision by the then Vice-President Franco Frattini to have 18 October as the EU's anti-trafficking day embodies the Commission's genuine and lasting commitment to raising public awareness of this dreadful practice.¹⁹⁷ More events of this kind need to be shaped by the Commission in an effort to develop a truly European sentiment against this trade in human beings.

At the time of writing, when Europe's economic recession is deepening and thus adversely affecting the lives of hundreds of thousands of people across our continent, it seems somewhat naive to argue in favour of more financial and human resources to be made available to counter human trafficking and smuggling. In the short term, this financial request appears to collide with the severe economic downturn, which is shaking the pillars of Europe's single market and eroding public trust in financial institutions and markets. Europe should set its political and strategic agenda, however, for a timeframe that goes beyond this global slump, thus making it plausible, or should I say forward-looking, to voice calls of this kind. Article 6 of the Treaty of Maastricht not only lays the foundations of the EU, it also specifies in subparagraph 4 that the EU needs to "*provide itself with the means necessary to attain its objectives and carry through its policies*", which include respect for human rights, fundamental freedoms and the rule of law. Human trafficking, which is an acute and widespread form of slavery, blatantly violates human rights and the dignity of people, suppresses fundamental freedoms with coercion and clearly breaches the rule of law. Europe simply cannot afford to sit back and look on. Europe needs to act quickly by devising and implementing practical measures and legislative acts to prevent and combat human trafficking, while improving the protection of victims Europe-wide and nationally. To this end, the fundamental question is how much money Europe needs and how long does it take to improve the results of our fight against the scourge of human trafficking. Finance¹⁹⁸ cannot be an excuse in the face of such a terrible crime, which has deformed the landscape of the world we all live in.

¹⁹⁷ 18 October 2007 was the first EU anti-trafficking day, which brought together more than a hundred and fifty participants in Brussels.

¹⁹⁸ For the financial period 2007-2013, it is worth underlining that the part of the EU budget devoted to the area of justice, freedom and security accounts for a mere 1 %.

Appendix

Interviews with the author

Interpol, Lyon, 20 November 2008

Kristin Kvigne, Assistant Director, Trafficking in human beings sub-directorate

Li Josephson, Assistant Director for Europe

Susanne Nielsen, Crime Intelligence Officer, Trafficking in human beings sub-directorate

Michele Mollo, Crime Intelligence Officer, Trafficking in human beings sub-directorate

Ekaterini Giannelou, Criminal Intelligence Analyst, Criminal Analysis sub-directorate

Frontex, Warsaw, 1 December 2008

Ilkka Laitinen, Executive Director

Javier Quesada, Head of Risk Analysis Unit

Mari Kalliala, Head of Analysis and Planning

Antonio Saccone, Officer, Risk Analysis Unit

Daniele Mosconi, Coordination Officer, Operations Unit

Europol, The Hague, 12 February 2009

Mikael Jensen, Deputy Head of Unit, Crimes Against Persons Unit

Steve Harvey, Group Leader for the fight against human trafficking, Crimes Against Persons Unit

Alfredo Nunzi, Secretary to the Management Board

References

Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, OJ C 19, 23.1.1999.

Adepoju, A. "Review of research and data on human trafficking in Sub-Saharan Africa", *International Migration*, Vol. 43, 2005, pp 75-97.

Alloza, M., Bertozzi, S., Vazquez, P., Vegas, R. "Impact of the Rise in Immigrant Unemployment on Public Finances", *Fundación de estudios de economía aplicada*, working paper No 15, March 2009.

Anderson, B. and O'Connell Davidson, J. "Is trafficking in human beings demand-driven? A multi-country pilot study", *International Organisation for Migration, Migration Research Series*, No 15, 2003.

Andrees, B. and van der Linder, M.N.J. "Designing trafficking research from a labour market perspective: the ILO experience", *International Migration*, Vol. 43, 2005, pp 55-73.

Ballesteros, A. "Trafficking in human beings and international peacekeeping missions: the 2004 Nato THB policy", *The Quarterly Journal*, Fall 2007, pp. 121-139.

Belser, P. "Forced labour and human trafficking: estimating the profits", Working paper No. 42, *International Labour Organisation*, March 2005. It is also available on the internet: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor>

Berman, J. and Friesendorf, C. "EU foreign policy and fight against human trafficking: coercive governance as crime control", *European Foreign Affairs Review*, 13, 2008, pp.189-209.

Bruin, R. "Compelling grounds. A residence permit for severely traumatised persons?", *European Journal of Migration and Law*, 8, 2006, pp.61-77.

Commission Communication "Towards an area of freedom, security and justice", COM(1998) 459 final, Brussels, 14.07.1998.

Commission Communication "Enhancing police and customs cooperation in the European Union", COM(2004) 376 final, Brussels, 18.5.2004.

Commission Decision on "The appointment of members of the Group of Experts on Trafficking in Human Beings", OJ L 194/12, 23.7.2008.

Council Framework Decision on combating trafficking in human beings, OJ L 203, 1.8.2002. It is also available on the internet: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States, OJ L 190, 18.7.2002.

Dijon, X. "*Vers un commerce du corps humain?*", Journal des tribunaux, V. 125, No 6233, 9 September 2006, p.501-504

Economist, The, "*Drawing lines in a dark place*", issue of 16 August 2008, p.51 and 52.

"*Employment in Europe*", 2008, prepared by the Directorate-General for Employment, Social Affairs and Equal Opportunities, which is also available on the internet: http://bookshop.europa.eu/eubookshop/download.action?fileName=KEAH08001ENC_002.pdf&eubphfUid=10000026&catalogNbr=KE-AH-08-001-EN-C

EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, OJ C 311, 9.12.2005.

Gallagher, A. "*Trafficking, smuggling and human rights: tricks and treaties*", Forced Migration Review (12), 2002. It is also available on the internet: <http://www.mediamonitors.net/annegallagher1.html>

The Hague Programme: Strengthening freedom, security and justice in the European Union, OJ C 53, 3.3.2005.

Hennig J., Craggs S., Laczko F. and Larsson F. "*Trafficking in Human Beings and the 2006 World Cup in Germany*", International Organisation for Migration, Migration Research Series, No 29, Geneva, 2007. It is also available on the internet: <http://www.humantrafficking.org/uploads/publications/mrs29-excerpt.pdf>

Hirsch, M. "*Plan of Action against traffic in women and forced prostitution*", Council of Europe, EG (96) 2, Strasbourg, 9 April 1996.

International Labour Office, "*Trafficking in human beings: New approach to combating the problem*", first edition, May 2003.

Kangaspunta, K. "*Mapping the inhuman trade: preliminary findings of the database on trafficking in human beings*", Forum on crime and society, Vol.3, Nos 1 and 2, December 2003.

Lehti, M. and Aromaa, K. "*Trafficking in human beings, illegal immigration and Finland*", European institute for crime prevention and control, Series No 38, Helsinki 2002.

Lutterbeck, D. "*Policing migration in the Mediterranean*", Mediterranean Politics, Vol. 11, No 1, March 2006, pp59-82.

McCreight, M.V. "*Smuggling of migrants, trafficking in human beings and irregular migration on a comparative perspective*", European Law Journal, Vol.12, No.1, January 2006, pp.106-129.

Mendelson, S. E. "*Barracks and brothels: peacekeepers and human trafficking in the Balkans*", Centre for Strategic and International Studies Report, Washington DC, February 2005. It is also available on the internet: http://www.csis.org/media/isis/pubs/0502_barracksbrothels.pdf

Myers, N. "*Environmental Refugees: An Emergent Security Issue*", 13th Economic Forum, Prague, 23-27 May 2005, which is also

available on the internet: http://www.osce.org/documents/eea/2005/05/14488_en.pdf

Naím, M. "*Illicit*", William Heinemann, London, 2005

Obokata, T. "*Trafficking of human beings from a human rights perspective*", Martinus Nijhoff Publishers, 2006.

Phillips, W.D. "*Slavery from Roman times to the early transatlantic trade*", Manchester University Press, Manchester, 1985.

The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium, OJ C 124, 3.5.2000.

Second Euro-African Ministerial Conference on Migration and Development, Final Statement, 25 November 2008, which is also available on the internet http://www.ue2008.fr/PFUE/lang/en/accueil/PFUE-11_2008/PFUE-25.11.2008/conference_de_paris_sur_la_migration_et_le_developpement

Tabaku, A. "*Ethnic Albanian rings of organised criminals and the trafficking and smuggling of human beings: an international, regional and local perspective*", South-East Europe Review 2008, V. 11, No 1, p. 99-109.

"*Terrorism & Trafficking*", The Quarterly Journal, Connections, Vol. VI, No 1, Spring 2007.

United Nations, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, 20 May 2002. It is also available on the internet: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument)

US Department of State, Trafficking in persons report 2007, which is also available on the internet: <http://www.state.gov/g/tip/rls/tiprpt/2007>

Zhang, S.X. "*Smuggling and trafficking in human beings: all roads lead to America*", Praeger Publishers, Westport, Connecticut, 2007.