



# Action against trafficking in human beings for the purpose of sexual exploitation

Recommendation No. R (2000) 11  
of the Committee of Ministers  
and Explanatory Memorandum



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE



**Action against trafficking  
in human beings  
for the purpose  
of sexual exploitation**

**Recommendation No. R (2000) 11  
adopted by the Committee of Ministers  
on 19 May 2000  
and explanatory memorandum**

**Equality Division  
Directorate General of Human Rights  
Council of Europe**

For information on the activities of the Council of Europe in the field of equality between women and men, please consult our website:

*<http://www.coe.int/equality/>*

or contact us at:

Equality Division  
Directorate General of Human Rights  
Council of Europe  
F-67075 Strasbourg Cedex  
France

E-mail: [dg2.equality@coe.int](mailto:dg2.equality@coe.int)

Tel: +33 3 88 41 20 00

Fax: +33 3 88 41 27 05

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Equality Division  
Directorate General of Human Rights  
Council of Europe  
F-67075 Strasbourg Cedex  
France

<http://www.coe.int/equality/>

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# Contents

Recommendation No. R (2000) 11 .....	5
Appendix to Recommendation No. R (2000) 11 .....	6
I. Basic principles and notions .....	6
II. General measures .....	7
III. Basis for action and methods .....	7
IV. Prevention .....	8
i. Awareness-raising and information .....	8
ii. Education .....	8
iii. Training .....	9
iv. Long-term action .....	9
V. Assistance to and protection of victims .....	9
i. Victim support .....	9
ii. Legal action .....	10
iii. Social measures for victims of trafficking in countries of origin .....	10
iv. Right of return and rehabilitation .....	11
VI. Penal legislation and judicial co-operation .....	11
VII. Measures for co-ordination and co-operation .....	12
i. At national level .....	12
ii. At international level .....	12
Explanatory memorandum .....	14
I. Preliminary remarks .....	14
A. Historical background .....	14
B. Trafficking in human beings today: a global phenomenon .....	15
1. The context .....	15
2. Organised crime .....	15
3. Different legislation in Council of Europe member states .....	16

C.	Measures introduced at international level to combat trafficking .....	17
1.	United Nations Organisation .....	17
2.	Interpol .....	18
3.	International Organisation for Migration (IOM) .....	18
4.	Budapest Process .....	19
5.	Organisation for Security and Co-operation in Europe (OSCE) .....	19
6.	European Union .....	19
D.	The origins of the recommendation: the work of the Council of Europe .....	20
E.	The drafters of the recommendation and their approach .....	21
II.	Comments on the recommendation's provisions .....	22
	Preamble and provisions .....	22
1.	Context .....	22
2.	Reminder of the international reference texts .....	23
3.	Condemnation of trafficking in human beings for the purpose of sexual exploitation .....	23
III.	Appendix to the recommendation .....	24
I/II	Basic principles, notions and general measures .....	24
III.	Basis for action and methods .....	27
IV.	Prevention .....	30
i.	Awareness raising and information .....	31
ii.	Education .....	33
iii.	Training .....	34
iv.	Long-term action .....	34
V.	Assistance to and protection of victims .....	35
i.	Victim support .....	35
ii.	Legal action .....	36
iii.	Social measures for victims of trafficking in countries of origin .....	38
iv.	Right of return and rehabilitation .....	38
VI.	Penal legislation and legal co-operation .....	39
VII.	Co-ordination and co-operation measures .....	42
i.	At the national level .....	42
ii.	At the international level .....	42

## **Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation**

*(Adopted by the Committee of Ministers on 19 May 2000,  
at the 710th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Bearing in mind that Europe has recently experienced a considerable growth of activities connected with trafficking in human beings for the purpose of sexual exploitation, which is often linked to organised crime in as much as such lucrative practices are used by organised criminal groups as a basis for financing and expanding their other activities, such as drugs and arms trafficking and money laundering;

Considering that trafficking in human beings for the purpose of sexual exploitation extends well beyond national borders, and that it is therefore necessary to establish a pan-European strategy to combat this phenomenon and protect its victims, while ensuring that the relevant legislation of the Council of Europe's member states is harmonised and uniformly and effectively applied;

Recalling the Declaration adopted at the Second Summit of the Council of Europe (October 1997), in which the heads of state and government of the member states of the Council of Europe decided "to seek common responses to the challenges posed by the growth (...) in organised crime (...) throughout Europe" and affirmed their determination "to combat violence against women and all forms of sexual exploitation of women";

Bearing in mind the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its protocols;

Bearing in mind the European Social Charter (1961), the Revised European Social Charter (1996) and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints;

Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (96) 8 on crime policy in Europe in a time of change, and Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence;

Bearing in mind the following texts of the Parliamentary Assembly of the Council of Europe: Recommendation 1065 (1987) on the traffic in children and other forms of child exploitation, Recommendation 1211 (1993) on clandestine migration: traffickers and employers of clandestine migrants, Resolution 1099 (1996) on the sexual exploitation of children and Recommendation 1325 (1997) of the Council of Europe on trafficking in women and forced prostitution in Council of Europe member states;

Recalling also the Convention on the Elimination of all forms of Discrimination against Women (1979) and other international conventions such as the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);

Considering that trafficking in human beings for the purpose of sexual exploitation, which mainly concerns women and young persons, may result in slavery for the victims;

Condemns trafficking in human beings for the purpose of sexual exploitation, which constitutes a violation of human rights and an offence to the dignity and the integrity of the human being,

Recommends that the governments of member states:

1. review their legislation and practice with a view to introducing, where necessary, and applying the measures described in the appendix to this recommendation;
2. ensure that this recommendation is brought to the attention of all relevant public and private bodies, in particular police and judicial authorities, diplomatic missions, migration authorities, professionals in the social, medical and education fields and non-governmental organisations.

## **Appendix to Recommendation No. R (2000) 11**

### **I. Basic principles and notions**

1. The basic notions should be as follows: trafficking in human beings for the purpose of sexual exploitation includes the procurement by one or more natural or



legal persons and/or the organisation of the exploitation and/or transport or migration – legal or illegal – of persons, even with their consent, for the purpose of their sexual exploitation, inter alia by means of coercion, in particular violence or threats, deceit, abuse of authority or of a position of vulnerability.

On this basis, the governments of member states are invited to consider the following measures:

## **II. General measures**

2. Take appropriate legislative and practical measures to ensure the protection of the rights and the interests of the victims of trafficking, in particular the most vulnerable and most affected groups: women, adolescents and children.
3. Give absolute priority to assisting the victims of trafficking through rehabilitation programmes, where applicable, and to protecting them from traffickers.
4. Take action to apprehend, prosecute and punish all those responsible for trafficking, and to prevent sex tourism and all activities which might lead to forms of trafficking.
5. Consider trafficking in human beings for the purposes of sexual exploitation as falling within the scope of international organised crime, and therefore calls for co-ordinated action adapted to realities both at national and international levels.

## **III. Basis for action and methods**

6. Take co-ordinated action using a multidisciplinary approach involving the relevant social, judicial, administrative, customs, law enforcement and immigration authorities and non-governmental organisations (NGOs).
7. Encourage co-operation, involving both national authorities and NGOs, between countries of origin, transit and destination of the victims of trafficking, by means of bilateral and multilateral agreements.
8. In order to ensure that these actions have a firm and reliable basis, encourage national and international research concerning, in particular:
  - the influence of the media, and above all new information and communication techniques on trafficking in human beings for the purpose of sexual exploitation;
  - the clients of the sex trade: trends in demand and their consequences for trafficking in human beings for the purpose of sexual exploitation;
  - the origin of the phenomenon of trafficking and the methods used by traffickers.

9. Consider the establishment of research units specialising in trafficking in human beings for the purpose of sexual exploitation.
10. Take steps to develop, both at national and international level, data and statistics that will help to shed more light on the phenomenon of trafficking in human beings for the purpose of sexual exploitation and, if possible, compare the way the phenomenon is developing in the Council of Europe's different member states.

## **IV. Prevention**

### **i. Awareness-raising and information**

11. Organise information campaigns with a gender perspective in order to increase public awareness of the hazardous situations that may lead to trafficking and the negative effects of such trafficking and, in particular, discredit the notion that there are easy gains to be made from prostitution; these campaigns should be directed at all parties concerned, particularly female immigration applicants and women refugees.
12. Organise information campaigns intended to discredit sex tourism and discourage potential participants from joining in such activities.
13. Provide appropriate information, such as documentation, videos and leaflets on trafficking in and the sexual exploitation of women, children and young persons to diplomatic representatives, public authorities, the media, humanitarian NGOs and other public and private bodies working in the countries of origin of potential victims.
14. Disseminate widely, in every country, information on the health risks associated with sexual exploitation.
15. Encourage and organise activities to make media professionals more aware of issues relating to trafficking in human beings for the purpose of sexual exploitation and the influence the media can have in this field.

### **ii. Education**

16. Introduce or step up sex education programmes in schools, with particular emphasis on equality between women and men and on respect for human rights and individual dignity, taking into account the rights of the child as well as the rights of his or her parents, legal guardians and other individuals legally responsible for him or her.
17. Ensure that school curricula include information on the risks of exploitation, sexual abuse and trafficking that children and young people could face and ways of protecting themselves; this information should also be circulated to young people outside the education system and to parents.

18. Provide both boys and girls with an education that avoids gender stereotypes and ensures that all teachers and others involved in education are trained in such a way as to incorporate a gender dimension into their teaching.

### iii. Training

19. Organise special training for social workers, as well as for medical, teaching, diplomatic, consular, judicial, customs and police personnel to enable them to identify cases of trafficking for the purpose of sexual exploitation and respond appropriately.
20. Introduce and/or develop training programmes to enable police personnel to acquire specialised skills in this field.
21. In particular, set up specific training programmes and exchanges of experiences in order to improve co-operation between the police and the NGOs specialising in victim protection.
22. Also introduce training programmes for immigration officials and frontier police so that they can contribute to prevention by making sure that persons travelling abroad, particularly young persons not accompanied by a parent or guardian, are not involved in trafficking.

### iv. Long-term action

23. Combat the long-term causes of trafficking, which are often linked to the inequalities between economically developed countries and those that are less developed, particularly by improving the social status as well as the economic condition of women in the latter.
24. Take into account in economic, social, migration or other policies, the need to improve women's condition and prevent trafficking in human beings and sex tourism.
25. Disseminate information on the possibilities of legal migration in order to make women aware of the conditions and procedures for obtaining visas and residence permits.

## **V. Assistance to and protection of victims**

### i. Victim support

26. Encourage the establishment or development of reception centres or other facilities where the victims of human trafficking can benefit from information on their rights, as well as psychological, medical, social and administrative support with a view to their reintegration into their country of origin or the host country.

27. In particular, ensure that the victims have the opportunity, for example through the reception centres or other facilities, to benefit from legal assistance in their own language.

ii. Legal action

28. Provide, where possible, victims of trafficking, particularly children and witnesses, with special (audio or video) facilities to report and file complaints, and which are designed to protect their private lives and their dignity and reduce the number of official procedures and their traumatising effects.
29. If necessary, and particularly in the case of criminal networks, take steps to protect victims, witnesses and their families to avoid acts of intimidation and reprisals.
30. Establish victim protection systems which offer effective means to combat intimidation as well as real threats to the physical security of the victims and their families both in countries of destination and countries of origin.
31. Provide protection when needed in the country of origin for the families of victims of trafficking when the latter bring legal proceedings in the country of destination.
32. Extend, where appropriate, this protection to members of associations or organisations assisting the victims during civil and penal proceedings.
33. Enable the relevant courts to order offenders to pay compensation to victims.
34. Grant victims, if necessary, and in accordance with national legislation, a temporary residence status in the country of destination, in order to enable them to act as witnesses during judicial proceedings against offenders; during this time, it is essential to ensure that victims have access to social and medical assistance.
35. Consider providing, if necessary, a temporary residence status on humanitarian grounds.

iii. Social measures for victims  
of trafficking in countries of origin

36. Encourage and support the establishment of a network of NGOs involved in assistance to victims of trafficking.
37. Promote co-operation between reception facilities and NGOs in countries of origin to assist the return and reintegration of victims.

iv. Right of return and rehabilitation

38. Grant victims the right to return to their countries of origin, by taking all necessary steps, including through co-operation agreements between the countries of origin and countries of destination of the victims.
39. Establish, through bilateral agreements, a system of financing the return of victims and a contribution towards their reintegration.
40. Organise a system of social support for returnees to ensure that victims are assisted by the medical and social services and/or by their families.
41. Introduce special measures concerned with victims' occupational reintegration.

**VI. Penal legislation and judicial co-operation**

42. Enact or strengthen legislation on trafficking in human beings for the purpose of sexual exploitation and introduce, where necessary, a specific offence.
43. Introduce or increase penal sanctions that are in proportion to the gravity of the offences, including dissuasive custodial sentences, and allow for effective judicial co-operation and the extradition of the persons charged or convicted.
44. Take such steps as are necessary to order, without prejudice to the rights of third parties in good faith, the seizure and confiscation of the instruments of, and proceeds from, trafficking.
45. Facilitate police investigation and monitoring of establishments in which victims of trafficking are exploited and organise their closure if necessary.
46. Provide for rules governing the liability of legal persons, with specific penalties.
47. Provide for traffickers to be extradited in accordance with applicable international standards, if possible, to the country where evidence of offences can be uncovered.
48. Establish rules governing extra-territorial jurisdiction to permit and facilitate the prosecution and conviction of persons who have committed offences relating to trafficking in human beings for the purpose of sexual exploitation, irrespective of the country where the offences were committed, and including cases where the offences took place in more than one country.
49. In accordance with national laws concerning the protection of personal data, as well as with the provisions of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, set up and maintain information systems which could be useful for the investigation and prosecution of trafficking offences.

## **VII. Measures for co-ordination and co-operation**

### **i. At national level**

50. Set up a co-ordinating mechanism responsible for drawing up the national policy on combating trafficking and organising a multidisciplinary approach to the issue.
51. Use this mechanism to encourage the exchange of information, the compilation of statistics and the assessment of practical findings obtained in the field, trends in trafficking and the results of national policy.
52. Use this mechanism to liaise with mechanisms of other countries and international organisations in order to co-ordinate activities, and to monitor, review and implement national and international strategies aimed at combating trafficking;

### **ii. At international level**

53. As far as possible, make use of all the available international instruments and mechanisms applicable to trafficking, particularly regarding the seizure and confiscation of profits earned from trafficking.
54. Set up an international body to co-ordinate the fight against trafficking, with particular responsibility for establishing a European file of missing persons, in accordance with national laws concerning the protection of personal data.
55. Increase and improve exchanges of information and co-operation between countries at bilateral level as well as through international organisations involved in combating trafficking.
56. Governments are invited to consider signing and ratifying, if they have not already done so, the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), the Revised European Social Charter (1996) and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (1995), the European Convention on the Exercise of Children's Rights (1996), the Convention on the Elimination of all forms of discrimination against Women (1979) and its Optional Protocol (1999), as well as the United Nations Convention on the Rights of the Child (1989) and/or to consider withdrawing existing reservations to these instruments.
57. Governments are invited to incorporate into their national systems all the measures necessary to apply the principles and standards laid down in the Action Programme adopted at the 4th World Conference on Women (Beijing, 4-15 September 1995), and in particular Part IV.D, and the agreed conclusions adopted at the 42nd session of the United Nations Commission on the Status of Women, the resolution adopted regularly by the General Assembly of the United Nations on the Traffic in Women and Girls, the declaration adopted at the Ministerial

Conference containing European Guidelines for Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (The Hague, 24-26 April 1997), as well as in the following recommendations of the Committee of Ministers to the member states of the Council of Europe: Recommendation No. R (80) 10 on measures against the transfer and the safekeeping of funds of criminal origin, Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure and Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation.

# **Explanatory memorandum to Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation**

## **I. Preliminary remarks<sup>1</sup>**

### **A. Historical background**

The phenomenon of trafficking has always existed, but it has changed considerably in the course of time. Towards the end of the 19th century and at the beginning of the 20th century, large-scale migration of European women to the American continent and North Africa was organised, as was the trafficking of women into Europe.

To put an end to what was commonly known as “white slaving”, two international conferences were held in Paris in 1902 and 1910. This work culminated in the signing of the International Convention for the Suppression of the White Slave Traffic (Paris, 4 May 1910), later supplemented by the International Convention for the Suppression of the Traffic in Women and Children (30 September 1921) and the International Convention for the Suppression of the Traffic in Women of Full Age (Geneva, 11 October 1933). The Convention for the Suppression of the Traffic in Persons and the exploitation of the Prostitution of Others (New York, 2 December 1949) cancelled and replaced, in parts, the provisions of the earlier international instruments.

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1. A number of comments and data have been taken from the “Plan of Action against traffic in women and forced prostitution”, prepared by Mrs Michèle Hirsch, Barrister in Brussels (Belgium) and consultant to the Council of Europe.



## **B. Trafficking in human beings today: a global phenomenon**

The development of communications and the economic imbalances in the world have made trafficking more international than ever. There was first the white slave traffic, then trafficking from South to North and now there is trafficking in human beings from the more disadvantaged regions to the more prosperous regions, whatever their geographical location (but in particular to western Europe).

### 1. The context

Recently, trafficking in human beings (mainly women and girls, though men are also to be found among the victims) has developed world wide, and affects the whole planet. When the desire to emigrate cannot be satisfied legally, would-be migrants resort to intermediaries, who often turn out to belong to organised crime rings and are in fact responsible for "recruiting" people destined for prostitution. The situation in certain parts of Europe, in particular in central and eastern Europe since the end of the 80s, (with the opening of the frontiers, increasing unemployment and poverty, collapse of state structures and less controls) has tended to favour the development of all types of illegal trafficking and in particular trafficking in human beings for the purpose of sexual exploitation.

This trend would not be possible without the development of specific networks in the field of sexual exploitation, which rely on the demand. The clients are the true pillars of the prostitution system. The client, the male buyer in the prostitution market, generally remains anonymous or invisible, except in the case of rape or sexual abuses perpetrated on children. However, he plays an important role in trafficking (see below).

### 2. Organised crime

Trafficking in human beings has become a highly lucrative business, run by criminal networks. These networks consist of several types of organisation.

The large organisations are characterised by a hierarchical international structure with political and economic contacts at all levels, in both the countries of origin and in the destination countries. The traffic generally takes place behind a legal facade and builds upon a thorough knowledge of the law and administrative practice in the different destination and transit countries.

The victims are promised high earnings in the destination countries. Sometimes it is agreed at the outset, orally or in writing that they will work as barmaids, dancers, "hostesses" or prostitutes. In other cases they are enticed by the prospect of obtaining a good job, with no allusion made at all to prostitution. Victims have reported that they were

transported in groups and that they had passed through the hands of several intermediaries (and sometimes several countries) before reaching their destination. On the way they were medically examined for AIDS or any venereal diseases. During the journey they generally had no idea where they were or where they were being taken to. Sometimes they were sometimes sequestered in a transit country and forced to prostitute themselves there. On arrival at their destination, their passports were confiscated.

Medium-sized organisations differ from the large organisations mainly in that they do not sell the victims to other groups, but keep them under their control, placing them in their own clubs and brothels. The victims of these organisations are subjected to close surveillance, forced to sign acknowledgements of debts (they are often made to contract substantial loans before leaving their country of origin) and required to hand over a large proportion of their earnings from prostitution for the use of rooms and other facilities. The pressures exerted are often very strong: the victims are held against their will, beaten, raped, drugged, underfed and fined if they do not do the organisation's bidding.

Small organisations are based on the demand of cabarets and other establishments of this type, and supply women/men.

There is also a minority group of people who have migrated to Europe without going through any of these organisations. These people use a broad range of methods, both legal and illegal, for crossing frontiers, sometimes with the help of others who exploit their vulnerable situation.

Regardless of the way in which the victims entered the destination countries – whether through the intermediary of a trafficking ring or not – they nearly always enter the same prostitution circuit where they are obliged to use the “services” offered by the criminal organisations.

### 3. Different legislation in Council of Europe member states

There are important differences between the relevant laws of member states. Some states specifically make trafficking for the purpose of sexual exploitation a criminal offence, others trafficking in human beings in general, while in others again there are as yet no specific provisions.

Regarding prostitution, there are different legal systems or practices. Some states apply “prohibitionism” (prostitution is prohibited and clients are punished); others practice “legalism” or “regulationism” (the exploitation of the prostitution of persons of full age is not punishable) or again an “abolitionist” system (prostitution is not an offence but its exploitation is).

These substantial differences give rise to considerable argument at international level, with states starting from positions which are often opposed or difficult to reconcile.

### **C. Measures introduced at international level to combat trafficking**

Noting the considerable increase in trafficking in human beings, the international community has taken action to combat this phenomenon. Without claiming to be exhaustive, this section traces the main activities undertaken in this field by the international organisations, which were taken into account by the authors of the recommendation.

#### 1. United Nations Organisation

Member states of the United Nations Organisation have stressed that trafficking in human beings constitutes a flagrant violation of the victims' fundamental rights. They have noted that trafficking has become a major activity of international organised crime and called for the elimination of this phenomenon and assistance to the victims of this form of violence, who are mainly women and girls. Several United Nations reports, resolutions and programmes of action are concerned with this subject. Mention should be made in particular of:

- The annual resolutions on combating traffic in women and girls adopted by the United Nations General Assembly.
- The report on trafficking in women and forced prostitution submitted to the UN Commission on Human Rights by the UN special rapporteur on violence against women, its causes and consequences (document E/CN.4/1997/47).
- The Vienna Programme of Action, adopted by the World Conference on Human Rights (Vienna, 14-25 June 1993), and the Declaration on the Elimination of Violence against Women adopted by the General Assembly (December 1993) stated that member states were "alarmed that opportunities for women to achieve legal, social, political and economic equality in society are limited, inter alia, by continuing and endemic violence against women (...)".
- The Cairo Programme of Action adopted by the International Conference on Population and Development (Cairo, 5-13 September 1994), and the Beijing Platform for Action adopted at the Fourth World Conference on Women (Beijing, 4-15 September 1995), established a series of basic principles concerning equality between women and men. The Beijing Platform for Action in particular called on governments of countries of origin, transit and destination, and regional and international organisations, to address the root factors that encourage trafficking by taking measures in the sphere of criminal and civil justice, ensuing co-opera-

tion between all relevant law enforcement services, and allocating resources for rehabilitation of victims and preventive education and training programmes.

## 2. Interpol

Responsible for promoting co-operation and mutual assistance between the criminal police authorities, Interpol should play a major role in combating trafficking. Very early some member states expressed concern as the result of a first wave of women transported to West European countries from South East Asia. There was a need to improve the exchange of information on illegal activities such as bogus marriages, illegal entry and the use of forged identity papers. At the time, the main consideration was not the interests of the women victims of these activities but illegal immigration as an activity of organised crime.

In accordance with the terms of reference decided by its General Assembly, Interpol adopted a multidisciplinary approach calling for co-ordination of the activities of all the authorities. In co-operation with the appropriate agencies of the United Nations and the European Union, joint campaigns against trafficking in human beings and the exploitation of prostitution have been organised. Future projects in this field could include the publication of a handbook listing the competent authorities, contact points and departments with specialised knowledge and expertise in such matters. Through its particularly effective information network, Interpol has also started to collect data on trafficking in human beings.

## 3. International Organisation for Migration (IOM)

Among the activities undertaken by the IOM in recent years in the field of trafficking in human beings, the reports and the publications prepared under the Migration Information Programme were especially useful to the drafters of the recommendation.<sup>2</sup> The drafters also examined the results of a project carried out by the IOM for the European Commission's STOP programme on "Analysis of data and statistical resources available in EU member states on trafficking in humans, particularly in women and children for the purposes of sexual exploitation (1998)".

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2. See in particular: "Trafficking and Prostitution: the growing exploitation of migrant women from Central and Eastern Europe", May 1995; "Trafficking in Women in Italy for sexual exploitation", June 1996; "Trafficking in Women to Austria for sexual exploitation", June 1996; "Trafficking of women to countries of the European Union: characteristics, trends and policy issues", paper submitted by the IOM to the Conference on Trafficking in Women for sexual exploitation, Vienna, June 1996.

#### 4. Budapest Process

The drafters of the recommendation followed the work done under this process, in particular the Ministerial Conference on the prevention of illegal migration held in Prague (October 1997).

#### 5. Organisation for Security and Co-operation in Europe (OSCE)

Being directly concerned by the problem, OSCE member states have on several occasions expressed their concern at the scale of the phenomenon of trafficking.<sup>3</sup>

#### 6. European Union

EU member states have undertaken to maximise co-operation in the fight against trafficking in human beings, and against trafficking in women and children in particular. Several initiatives and actions are worthy of mention:

The European Parliament has adopted a series of Resolutions: Resolution on the protection of witnesses in the fight against organised crime (OJ No. C 327 (1995)), Resolution on trafficking in human beings (OJ No. C 32 (1996)) and the Resolution on victims of violence who are minors (OJ No. C 320 (1996)).

The conclusions of the European Conference on trafficking in women for the purpose of sexual exploitation (Vienna, 10-11 June 1996), organised by the European Commission in collaboration with the IOM resulted in the Communication of the Commission to the Council and the European Parliament on this subject (COM (96) 567 final), later supplemented by a second Communication (COM (98) 726). One of the main conclusions of these texts is the need for national, regional and international co-operation and co-ordination between the authorities responsible for migration, justice and social affairs and NGOs, and for links to be made between international and regional organisations such as the United Nations, the Council of Europe, EU institutions and other regional groupings in order to benefit from the application of more complementary policies. The Communications refer to the different activities undertaken by the Steering Committee for equality between women and men (CDEG) of the Council of Europe (see below).

This action was strengthened by the adoption of Joint Actions of the Council based on article K.3 of the European Union Treaty concerning action to combat trafficking in

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3. See the Stockholm Declaration of the OSCE Parliamentary Assembly (Stockholm, 9 July 1996) and the interventions made by several states and NGOs participating in the Fourth OSCE Implementation Meeting on Human Dimension Issues (Warsaw, 26 October-6 November 1998) and at subsequent meetings.

human beings and the sexual exploitation of children (96/700/JAI and 97/154/JHA). These joint actions were adopted among other things to improve judicial co-operation.

The Declaration adopted at the Ministerial Conference on the question of trafficking in women for the purpose of sexual exploitation (The Hague, 24–26 April 1997), contains guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation.

The fight against trafficking in human beings is now part of the mandate of Europol, which has introduced activities in this field.

Several Community programmes to combat trafficking (STOP, DAPHNE, etc.) have been introduced.

#### **D. The origins of the recommendation: the work of the Council of Europe**

At the beginning of the 90s, the Council of Europe, and in particular its Steering Committee for Equality between Women and Men (CDEG), launched various actions to combat trafficking in human beings in present-day form.

The CDEG organised study and research activities: the seminar on action against traffic in women and forced prostitution as violations of human rights and human dignity (Strasbourg, 25 September 1991) was followed by the setting up of a Group of Experts on action against traffic in women and forced prostitution (EG-S-TP) (1992–1993).

As a result of this work, a consultant, Ms Michèle Hirsch (Belgium), at the request of the CDEG, prepared a Plan of action against traffic in women and forced prostitution (EG (96) 2). A true platform for government action, this Plan contains many pointers for reflection and research concerning legal provisions, socio-economic and administrative measures, the police, and preventive and educational measures to combat trafficking.

Other activities were aimed more at awareness raising:

- The CDEG organised an international seminar on "action against traffic in human beings for the purpose of sexual exploitation: the role of NGOs" (Strasbourg, 29–30 June 1998). The conclusions of this seminar (attended by over 150 people from over 40 countries) called for joint and concerted actions, and in particular co-operation between the NGOs of different countries;
- The CDEG held a workshop on "good" and "bad" practices regarding the image of woman in the media: the case of trafficking in human beings for the purpose of sexual exploitation (Strasbourg, 28–29 September 1998). At this workshop, journalists and media professionals from all over Europe sought solutions for avoiding sensationalism while at the same time disseminating information about the realities of trafficking;

- Several seminars in a number of countries of origin (Albania, Bosnia and Herzegovina, Ukraine) have been organised in recent years with the aim of alerting the different actors (police, judges, social workers, embassy staff, teachers) to their role vis-à-vis the victims of trafficking and the dangers that threaten certain persons. In 1999, an information and prevention campaign on the risks of trafficking was organised in Albania for refugees from Kosovo.<sup>4</sup>
- Various activities have been carried out in co-operation with other international organisations (United Nations, Interpol, Europol, United Nations High Commissioner for Human Rights, etc.).

### **E. The drafters of the recommendation and their approach**

After all this work the CDEG was convinced that trafficking could be combated only through a multidisciplinary and co-ordinated approach involving all the parties concerned at national, regional and international level. The Committee thus considered it necessary to follow up the activities already undertaken by the different committees of the Council of Europe by taking the initiative to define a strategy for preventing and combating this type of offence. Following consultations with the different Council of Europe committees concerned in the legal, social, economic, human rights and mass media fields, the Multisectoral Group on action against trafficking in human beings for the purpose of sexual exploitation (EG-S-TS) was set up under the authority of the Steering Committee for Equality between Women and Men (CDEG).<sup>5</sup>

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4. The final report of this campaign is available and may be obtained from the Council of Europe, Directorate General of Human Rights, Secretariat of the Steering Committee for Equality between Women and Men (CDEG), F -67075 Strasbourg Cedex.

5. The terms of reference of the EG-S-TS were as follows:

"Under the authority of the CDEG, the task of the Group is to plan and prepare actions that the Council of Europe could undertake in the field of combating traffic in human beings for the purpose of sexual exploitation, and in particular traffic in women and girls. The Group will have to undertake the follow-up to the work of the CDEG on action against traffic in women and forced prostitution, [. . .] taking into account the work undertaken by other national and International bodies (European Union, United Nations, International Organisation for Migration, Budapest Group, INTERPOL/EUROPOL, etc.). In particular, the task of the Group is to:

- i. determine priority fields of action for the Council of Europe on the fight against traffic in human beings for the purpose of sexual exploitation and study and evaluate, in particular on the basis of the opinions of the different Committees already consulted by the CDEG, the necessity and feasibility of the various actions that the Council of Europe could consider undertaking;
- ii. in the framework of the possible actions envisaged, determine the modalities of co-operation to be established with other competent International bodies and NGOs;
- iii. on the basis of previous work achieved by the CDEG, and also taking into account existing international legal instruments, prepare a draft Recommendation including basic principles and suggestions for action at national level on the fight against traffic in human beings for the purpose of sexual exploitation."

The EG-S-TS was made up of experts from a number Council of Europe committees.<sup>6</sup> It begins its work in December 1997 and completed it in February 1999, holding three working meetings during that period.

The multisectoral group studied the methods of preventing trafficking in human beings for the purpose of sexual exploitation, in particular traffic in women and children, especially young girls. The recommendation suggests to member states a list of measures that can really help protect the victim's interests, ensure that the perpetrators are prosecuted and respect the interests of the other parties concerned, such as the medical, social and judicial authorities, the law enforcement services, the migration authorities and the NGOs. They constitute guidelines that states can decide to apply according to their national situation.

## **II. Comments on the recommendation's provisions**

### **Preamble and provisions**

After having evoked the context of trafficking in human beings in Europe, the recommendation recalls the international reference texts and condemns trafficking as a violation of human rights.

#### 1. Context

The preamble begins by briefly describing the context of the phenomenon of trafficking: rapid growth in Europe and association with the category of organised crime. Faced with such a situation, the setting up of a co-ordinated strategy becomes indispensable and must, above all, be realised on the basis of a harmonisation of the relevant legislation in the Council of Europe's member states. The term "relevant legislation" refers to legislation in the civil, social and penal domains.

As concerns the more general context of trafficking, see also the comments above (under "preliminary remarks").

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6. Its ten members were appointed by the following Committees, in consultation with the Secretariat, having regard to the need for an equitable geographical balance: CDEG; Steering Committee on the Mass Media (CDMM); Steering Committee on Social Policy (CDPS); Steering Committee for Human Rights (CDDH); European Committee on Legal Co-operation (CDCJ); European Committee on Migration (CDMG); Governmental Committee of the European Social Charter (T-SG); European Committee on Crime Problems (CDPC).



## 2. Reminder of the international reference texts

First it should be recalled that the heads of state and government of the Council of Europe member states decided, in the Final Declaration of the Second Summit (Strasbourg, 10-11 October 1997), to seek common responses to the challenges posed by the growth in organised crime throughout Europe and to intensify their co-operation to strengthen the legal protection of children and affirmed their determination to combat violence against women and all forms of sexual exploitation of women. The impact of this declaration was reinforced by the actual presence and signature of all the 40 heads of state and government of the Council of Europe member states.

In the course of their work, the drafters constantly referred to the principles enshrined in the European Convention on Human Rights and Fundamental Freedoms (1950), the European Social Charter (1961), the European Social Charter (revised) (1996) and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (1995), the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) and the European Convention on the Exercise of Children's Rights (1996), which are fundamental for the activities of the Council of Europe. They also took account of the guidelines for the joint actions of the European Union to combat trafficking in human beings and sexual exploitation of children (1997), the Convention based on Article K.3 of the Treaty on European Union on the establishment of a European Police Office (Europol Convention) (1995), the United Nations Convention on the Elimination of all forms of discrimination against women (1979) and the United Nations Convention on the Rights of the Child (1989).

The text of the preamble also lists a series of recommendations<sup>7</sup> adopted by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to which reference was made in the preparation of the text.

## 3. Condemnation of trafficking in human beings for the purpose of sexual exploitation

The recommendation condemns trafficking in human beings, which cannot be compatible with the principles or application of the texts mentioned above.

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7. Namely, Recommendations adopted by the Committee of Ministers of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendations adopted by the Parliamentary Assembly of the Council of Europe: Recommendation No. R (96) 8 on crime policy in Europe in a time of change, and Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation 1065 (1987) on the traffic in children and other forms of child exploitation, Recommendation 1211 (1993) on clandestine migration, Recommendation 1099 (1996) on the sexual exploitation of children and Recommendation 1325 (1997) of the Council of Europe on trafficking in women and forced prostitution in Council of Europe member states;

In accordance with their terms of reference (see footnote 5), the drafters concentrated on trafficking in women and minors. This corresponds to the statistics available (above all thanks to the work of the NGOs that support and assist the victims), which show that, while men and boys may be victims of trafficking, the phenomenon affects mainly women and girls.

### III. Appendix to the recommendation

#### I./II. Basic principles, notions and general measures

Together with the general measures, the basic principles and notions set out in the recommendation form the guidelines that underlie the action taken by governments to combat trafficking.

##### *Paragraphs 1, 2, 3, 4 and 5*

The context: it is difficult to define trafficking because it is not an unequivocal notion, even, and perhaps especially, when it is a matter of trafficking for the purpose of sexual exploitation. The various international instruments that deal with it and the national texts, where they exist, define this form of trafficking more or less broadly according to whether they cover all human beings or only the most vulnerable, and according to whether their aim is enforcement or not.

Trafficking for the purpose of sexual exploitation is a many-faceted phenomenon with no uniformity. There are many variables: the number of people involved, the type of traffickers, victims and "clients" or "consumers", and also the degree of organisation on which it is based and its extent, according to whether trafficking remains within national frontiers or extends to different states or even continents.

A violation of human rights: the drafters chose to take a comprehensive approach to trafficking in human beings for the purpose of sexual exploitation. Without denying the specific forms of trafficking in women or the particular vulnerability of child victims of trafficking for the purpose of sexual exploitation, which may call for different measures, it is in the first place a matter of condemning this phenomenon in general as a flagrant violation of human rights and an offence to the dignity and integrity of the human being.

Setting up a framework for action: beyond this condemnation of principle, the recommendation proposes to states a basis and methods for taking action against trafficking. The text lists a number of priority actions that governments are encouraged to take in the various stages of preventive measures, assistance to and protection of victims and the punishment and treatment of perpetrators, without forgetting the very necessary dimension of international co-operation.

It is in this context and taking account of this objective that the definition of trafficking adopted for the purpose of this recommendation was drafted. It seeks to reconcile the need to ensure the respect of the rights, dignity and integrity of the victims of trafficking in human beings with the diversity of the legislation existing in the Council of Europe member states confronted with this complex phenomenon.

The definition adopted seeks to cover the whole chain of behaviours, which lead to the exploitation of the victims. This includes the "recruitment" of the future victims, the organisation of their transport, and the final stage, which constitutes their sexual exploitation proper. The expressions "and/or" and further on "inter alia" reflect the drafters' desire to enumerate the various possible stages, trafficking being able to take place without all of them necessarily being involved.

Elements of the definition: the definition includes the notion of organising the relocation of the victims in the term "transport" or "migration". This includes the crossing of a frontier and calls for specific measures, both national and international, in both the prevention and enforcement stages.

The transport or migration may be "legal or illegal": in some cases of trafficking, the persons are taken to the country illegally or without a valid residence permit, but in other cases the persons enter the country in a legal manner, including as tourists, fiancées, artists, servants, *au-pair* girls and applicants for political refugee status, depending on the legislation in the various states. There can be cases of trafficking while the conditions of the border crossing or the stay are legal. The trafficking rings know the laws of the various states and they find legal means to organise the traffic. This is why the drafters, in defining traffic, did not take into account the legality or illegality of the entry to or stay in the country of destination.

The drafters considered that transport or migration of persons may occur even with the consent of these persons.

The debate on the question of consent is not new and was raised at length by the drafters. It is not easy to determine where free choice ends and constraint begins. In the case of trafficking, some persons do not know what is in store for them, but others know perfectly well that they are bound for prostitution. Some researchers and experts believe that, strictly speaking, there is no trafficking when the persons know what they are exposing themselves to and still wish to emigrate. However, although a person may voluntarily emigrate to work and possibly prostitute her/himself, this does not mean that he/she consents to suffer violence or be abused in one way or another.

For the purposes of the recommendation, the drafters decided to apply the concept of "consent" to the procurement phase. "Even with their consent" refers to the fact that persons may or may not have consented to the transport or migration: the situation qualifies as trafficking in both cases. At the beginning of the process, the

absence or the presence of consent are not determining factors, quite apart from the difficulty of establishing their existence.

The drafters also discussed the relevance of introducing the notion of sexual exploitation for "gainful" purposes.

Some experts were of the opinion that trafficking was defined as an action carried out in order to force a human being into prostitution or inducing her/him to supply sexual services to another person with the aim to obtain financial gain.

Following in-depth discussions, the drafters recognised that financial gains were a key element as they were both the origin and the outcome of trafficking (it should also be mentioned that trafficking in human beings and money-laundering seem to be closely related). However, it was decided that this element was not to be included directly in the text of the Recommendation in order not to limit the concept of sexual exploitation. The Recommendation addresses all sexual services rendered under conditions of coercion or constraint, regardless of whether these services are regarded as work, whether they are paid or not.

For the purposes of the recommendation, "coercion" can include sequestration, beatings, rape, threats, violence through the abuse of a dominant position, i.e. the act of obtaining from a person, through taking advantage of his/her vulnerability resulting from her/his precarious or illegal administrative situation, from her/his position of economic dependency or precarious state of health, the supply of sexual services.

Regarding the perpetrators of trafficking, these may be individuals such as recruiters, smugglers, accomplices abusing their position in the public services of the states concerned, and also legal entities taking part in trafficking, such as "sex shops", "live shows", brothels and other sex enterprises, or again certain hotel and entertainment companies, and tourism, video and publishing companies in the case of child pornography.

In the case of minors,<sup>8</sup> all sexual acts are punishable. In some European legislation, consent of a minor can be examined above the age of what is called "sexual maturity". Above this age appreciation is left to the judges to evaluate whether the minor was able to express his/her consent.

The victims of trafficking are:

- persons having been subjected to violence, abuse of authority or threats which are at the origin of their entry into the process leading to their sexual exploitation, or during it;

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8. The term "minor" is understood as "every human being below the age of eighteen", as defined in the UN Convention on the Rights of the Child (1989).

- persons who were deceived by the organisers/traffickers and believed they had an attractive contract for work unconnected with the sex industry or simply an ordinary job;
- persons who were aware of the true intentions of the organisers/traffickers and agreed in advance to this sexual exploitation because of the vulnerable situation in which they found themselves. Abuse of the vulnerability of the victims is thus expressly included as a component of trafficking. A situation of vulnerability of the victims means any kind of vulnerability, whether psychological, affective, family, social or economic. In short, it covers all of the situations of distress that may lead a human being to accept sexual exploitation. The persons abusing such a situation commit a flagrant violation of human rights and of the dignity and integrity of the person, which cannot be validly renounced.

The situations thus envisaged are very diverse: it may be a matter of the abduction of women for the purpose of sexual exploitation, the seduction of children in order to use them in paedophile or prostitution rings, violence committed by pimps to keep prostitutes under control, abuse of the vulnerability of an adolescent or adult, victim of sexual assault or not, or more simply abuse of the precariousness and poverty of an adult hoping to improve the situation for herself or himself and the family. But these different cases are more a difference of degree than of the nature of a phenomenon which can always be termed trafficking and which is based on the use of such methods.

Investigation and prosecution must be targeted at traffickers and not at the victims of such practices. The readiness of the victims involved to report to the police and act as a witness is a critical condition for effective investigation and prosecution of traffickers. Practice shows that victims often refrain from reporting to the public authorities, as they are faced with possible arrest, detention and expulsion as illegal aliens and/or prostitutes. Therefore, there is a need for measures to encourage and assist victims to report to the police against their offenders and to act as a witness, and ensure the appropriate "fair treatment" response on the part of the criminal justice system.

Trafficking in human beings may have major consequences for the victims involved, both material and non-material, which are not accommodated by the criminal investigation and prosecution of the offenders. Appropriate assistance and support for victims who wish to co-operate as witnesses by disclosing information can serve to remove or redress the consequences of trafficking and can contribute to the prevention and deterrence of trafficking.

### **III. Basis for action and methods**

#### *Paragraphs 6 and 7*

Trafficking for the purpose of sexual exploitation is an international crime perpetrated by organised networks which are characterised by being mobile and adapting

rapidly to change (for example, changes in a state's legislation) by redeploying their structures. Thus it has turned out that certain organisations involved in trafficking provide for a system of rotation of the women they exploit from one country to another in order to avoid possible surveillance. To be effective therefore, action against such organisations must be co-ordinated. The text of the recommendation stresses the need for this co-ordination, both as regards the actors and the levels of intervention.

Paragraph 6 proposes a multidisciplinary approach involving all the sectors whose action is essential to counter the activities of traffickers or assist the victims. These include the immigration, customs, police, social, health, judicial and administrative authorities as well as NGOs.

All levels must be alerted, both national and international. The aim of paragraph 7 is to encourage international co-operation between national authorities and NGOs in order to permit in particular the effective exchange of information and the implementation of co-ordinated actions. Several methods can be used to achieve this end, such as networking and police co-operation.

The recommendation encourages in particular the use of bilateral and multilateral agreements. These are particularly suitable instruments in so far as the parties themselves draft the clauses, which can be very precise and can be modified as time goes on. Furthermore, a given trafficking network normally concerns only a limited number of countries and an agreement between these countries can considerably enhance the efficacy of measures introduced at national level (for example, such an agreement could be between neighbouring countries such as Austria, Slovakia and Hungary).

### *Paragraph 8*

The drafters wished to call on governments to support research connected with the fight against trafficking, a vital factor in developing effective measures to prevent and combat the phenomenon.

Three fields of research are mentioned in particular, but these are only indicative.<sup>9</sup>

- *The influence of the media and above all new information and communication technologies on trafficking in human beings for the purpose of sexual exploitation*

The stereotyped images of the sexes conveyed by the media often tend to reinforce the inequality between women and men. The drafters highlighted the fact that

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9. In addition to the fields of research mentioned in the recommendation, the drafters also recommended that studies be carried out in future on specific issues such as the close connections existing between trafficking in human beings and trafficking in drugs; money-laundering connected with sexual exploitation; sex tourism; trafficking and sexual exploitation of minors. See the final activity report of the multisectoral group on action against trafficking in human beings for the purpose of sexual exploitation (EG-S-TS), document EG-S-TS(99)8.

the approach of certain media which convey misleading, or even degrading images of women (for example: the trivialisation of women's sale of their bodies, which implies the loss of self-respect and dignity) could have an influence on trafficking in human beings, by making certain women more vulnerable.

The development of the new information technologies has added a further dimension to the phenomenon of trafficking. The Internet offers unprecedented opportunities and the traffickers have been quick to seize them. Trafficking in human beings is now often effected in the form of job offers or under the cover of marriage bureaux by e-mail, the sale of pornographic material and prostitution services. According to the drafters, the study of these phenomena is now a matter of urgency in view of the speed at which they are developing.<sup>10</sup>

- *The clients of the sex trade: trends in demand and their consequences for trafficking in human beings for the purpose of sexual exploitation*

This is certainly one of the prime causes of the existence of trafficking in human beings, a phenomenon that meets a precise demand on the part of "clients" whose behaviours closely follow the evolution of European societies. It therefore appears that the clients of the sex trade play a vital role in trafficking (traffickers' endeavour above all to satisfy this "demand"<sup>11</sup>).

Very few studies have been made on these issues, although Swedish and Norwegian researchers have collected some statistics and identified and classified some of the motives that induce men to buy sex services.<sup>12</sup>

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10. See in this connection the Council of Europe contribution to the study of these phenomena: Proceedings of the Workshop on "good" and "bad" practice concerning the image of women in the media: the case of trafficking in human beings for the purpose of sexual exploitation, organised in Strasbourg on 28 and 29 September 1998.
  11. The proliferation of trafficking networks corresponds to different types of demand. Thus while networks have been "supplying" Asian women to the western market for a long time, in 1998 the Thai press reported the recent organisation of a network trafficking in Slav women (Russian and Ukrainian) for Asian male clients with a preference for women with certain physical characteristics (pale skin, blond hair, blue eyes).
  12. See in particular the studies by Sven-Axel Mansson, Lund University, Social Sciences School (Sweden), and Priør and Taksdal (Norway) on "The man in the sex trade". On the basis of several series of interviews with men who buy sex, Mansson identifies three sets of motives for this behaviour: curiosity, sexual variation and convenience; loneliness and problem with making contacts; problems in the relationship with the life partner. A study by the Norwegian researchers Priør and Taksdal places buying sex in the present context of relations between men and women. According to them, while in the past men's purchase of sex was a confirmation of male dominance, now, given the changes that have taken place in society, this purchase may appear to be an attempt to win back this lost dominance. They consider that the reasons for buying sex have changed. The fact remains that women, placed in a situation similar to that of men, do not react in the same way and are not inclined to turn to buying sex.

Quite apart from the existing studies, many carried out in Scandinavia, the fact is that the (essentially male) client of the sex trade remains anonymous or entirely invisible, whereas his demand is one of those that guides the traffickers and their networks. Taking up the conclusions of Council of Europe Groups of Specialists who have analysed this,<sup>13</sup> the drafters wished to encourage governments to initiate or pursue research on trends in the pattern of demand as a structural cause of trafficking in human beings for the purpose of sexual exploitation.

- *The origin of the phenomenon of trafficking and the methods used by traffickers*

Still concerned with the development of strategies to prevent and combat trafficking, it is important to understand the way in which the phenomenon starts and develops. Several techniques are used, especially as regards the "recruitment" of women and girls<sup>14</sup> and it is essential to know them fully before in order to be able to undertake effective action against trafficking, such as information campaigns (see the recommendation's provisions under Prevention).

#### *Paragraphs 9 and 10*

Up to now, the lack of reliable data or statistics has prevented to measure the magnitude of the phenomenon and to act effectively against trafficking in human beings. It is important to improve data collection and adopt methods that allow both national and international comparisons. Furthermore, continuous monitoring, control and evaluation of research activities are necessary to ensure their efficacy.

Governments are invited to take steps in this direction, if possible by creating research units or other entities specialising exclusively in these tasks. Set up on a multidisciplinary basis, these bodies could work in co-operation with the police, legal institutions and NGOs, as well as with the international organisations concerned (for example, Europol, Interpol, IOM, etc.).

## **IV. Prevention**

A distinction has been made between short and medium-term prevention measures on the one hand (paragraphs 11 to 22) and long-term measures on the other (paragraphs 23 to 25).

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13. See the final report of the Group of Specialists on trafficking in women and forced prostitution, Council of Europe, Strasbourg, December 1993, and the final report of the Multisectoral Group on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation, Council of Europe, Strasbourg, March 1999.
  14. While the most widespread practice is to place advertisements in the press offering fictitious jobs abroad (Ukraine), some traffickers do not hesitate to abduct girls or women, that simply disappear without trace (Albania).



i. Awareness raising and information

*Paragraph 11*

Information campaigns are important short-term prevention measures. Based on the concept of equality of the sexes, these actions can have an important effect in the countries of origin. The fact is that in these countries, the public, and in particular the women, have little information about the real conditions they would be living in the destination country. The images conveyed by the western media, who may be exaggerated or taken out of context, often mislead people wishing to emigrate, and certain professions appear to have financial advantages and prestige, which are not always found in reality.<sup>15</sup> The people involved in trafficking networks often take advantage of this lack of objective information to lure their victims with promises of easy money and a much better lifestyle.

In these circumstances, the recommendation stresses the need to organise information campaigns reaching all those likely to be concerned, especially women tempted by emigration and their families and friends.

It is a matter of informing them about the possibilities for legal emigration and their limits, drawing attention to the risks of exploitation associated with illegal emigration, and the negative effects of trafficking in human beings. These campaigns should aim at permitting potential victims to take their decisions in full knowledge of the facts and to be able to ask for help in the case of abuse. The people concerned could also be given information about places where they can obtain assistance once they are in the destination country and the addresses and telephone numbers of reception centres in these countries, where they exist.

The text stresses the need to provide specific information for women refugees, who often find themselves in very vulnerable situations: speaking the language of the host country very badly if at all, separated from their family, sometimes without any identity documents, they may be tempted to accept the proposals or offers of jobs abroad made by traffickers and thus become victims of trafficking.

*Paragraph 12*

The drafters deemed it useful to draw attention to the need to organise information campaigns to discredit sex tourism. Targeted information can be made available (in the form of leaflets and videos, and on Internet sites for example) to travel agencies, consulates, at the customs service in the context of the formalities necessary to obtain visas and in aircraft on flights to certain destinations.

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15. By way of example, a survey carried out in 1998 among Muscovite grammar school girls revealed that the two professions they were most interested in for later on were "model" and "prostitute".

### Paragraph 13

With a view to greater efficiency, the text identifies the actors who may be in contact with potential victims of trafficking and thus play a key role in prevention. The governments of member states are invited to provide these persons and/or institutions with information adapted to their specific role.

In this connection the NGOs have a particularly important role to play in alerting public opinion to the dangers associated with trafficking in human beings, whether in general through providing information or in the context of the education system, among young people or among people applying for visas and work permits.

The text specifically mentions humanitarian NGOs, thus making reference to conflict situations. In this context, the humanitarian NGOs, which are in direct contact with refugees, can provide them with information on the risks associated with trafficking (the drafters had in mind in particular the critical situation of the Kosovo refugees who had left their country as a result of the crisis of March 1999).<sup>16</sup>

### Paragraph 14

Concerning health, the governments of member states are invited to disseminate as widely as possible information on the health risks associated with sexual exploitation. It is clear that the victims of trafficking run a higher than average risk of unwanted pregnancy and contamination by sexually transmitted diseases, including HIV/AIDS.

### Paragraph 15

The text of this paragraph is in response to a phenomenon, which has developed over the past few years. The upsurge and expansion of trafficking in human beings have aroused the interest of the media, which have started to deal with this issue (this is true of both the press and radio and television). In many cases a "sensationalist" approach is taken, stressing the aspects connected with the sex trade without explaining the true reasons that incite the women involved to want to leave their countries of origin. Concerned mainly with profitability and the need to sell their products, certain media concentrate on these aspects. This is also due to the partial image that the media sometimes give of women, often reducing them to sex objects.

What is more, it is often the media that convey information that gives people wanting to emigrate the impression that they will easily be able to find well paid work abroad.<sup>17</sup>

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16. On the role of NGOs in the fight against trafficking in human beings for the purpose of sexual exploitation, see the Proceedings and Conclusions of the International Seminar organised by the Council of Europe in Strasbourg on 29 and 30 June 1998 (reference EG/NGO/SEM (98) 8).

17. On the influence of the media in the field of against trafficking in human beings for the purpose of sexual exploitation, see the Proceedings of the Seminar organised by the Council of Europe on 28 and 29 September 1998.

To try to alleviate these problems, this paragraph encourages the governments of member states to organise actions which, while respecting the freedom of the press,<sup>18</sup> make media professionals more aware of issues relating to trafficking in human beings for the purpose of sexual exploitation and the problems that this phenomenon brings both for the victims and for European societies as a whole.

## ii. Education

The measures to prevent trafficking in human beings can never be fully effective without the dissemination of information and its integration in the education system, right from the earliest schooling. The victims of trafficking are getting younger and younger, often being minors, and the dissemination of appropriate information is of great importance for prevention.

### *Paragraphs 16, 17 and 18*

Recommendation No. R (91) 11 of the Committee of Ministers to the member states of the Council of Europe concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults contains measures concerning education and information for children and young adults on the dangers of trafficking.

The text of the present recommendation consolidates this approach, inviting the governments of member states to promote equality between the sexes and the respect of human rights in school curricula. Better assimilation of these concepts by pupils would make them less likely later on to become victims of phenomena such as trafficking, based on an unequal balance of forces between men and women, between traffickers and victims, constituting a flagrant violation of several human rights.

Information on the risks of trafficking and sexual exploitation run by children and young adults should be disseminated as widely as possible and a particular effort should be made to reach marginalised people (children, adolescents and young adults outside the education system could be reached in youth reception centres, for example).

In conformity with the provisions foreseen in international texts (United Nations Convention on the Rights of the Child (1989) and Council of Europe Convention on the Exercise of Children's Rights (1996)) the measures envisaged in this field must respect the rights of the child as well as the rights and obligations of the parents or any other legally responsible person.

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18. In pursuance of article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the relevant case law.

### iii. Training

#### *Paragraph 19*

The main aim here is to make all the groups concerned aware of the existence of trafficking and of the consequences it may have in their field of activity. This is essential to gain an understanding of all aspects of the phenomenon and become able to recognise cases of trafficking. States are asked to organise "special training", i.e. training relating specifically to trafficking issues. It should be noted, however, that the terms used in the recommendation are of a general nature to enable each state to organise training according to its own needs and structures.

#### *Paragraphs 20, 21 and 22*

The drafters wished to emphasise the importance of training programmes for police personnel and for immigration officials and frontier police. These categories of personnel clearly play a crucial preventive role, as they are the first to come into contact with the victims. They must be able to recognise the victims of trafficking and take the necessary measures, where appropriate in co-operation with specialist NGOs. Some drafters envisaged the possibility of setting up specialist units within the police to deal with trafficking issues, and of providing continuing training (trafficking being a constantly evolving phenomenon, it is important to monitor changes in networks and identify the routes followed).

### iv. Long-term action

#### *Paragraphs 23 and 24*

A whole range of factors contribute to the development of trafficking in human beings, whose underlying causes may be described without any hesitation as "structural". In particular, mention should be made of the following:

- Disparities between countries in terms of economic development, which prompt people to leave their country of origin to look for better-paid work elsewhere;
- Gradual changes in migration flows: in the past, women tended to come with the children to join the family head who had emigrated to a wealthier country, but there are currently signs of a change. Many women have themselves become family heads and seek to emigrate in order to find work and be able to send money home to their children and family; more generally, women no longer hesitate to look for jobs abroad;
- The status of women: the status of women in both the countries of origin and the countries of destination is another factor in trafficking. In the countries of origin, women do not always have the same professional or economic opportunities as men

and are more severely affected by poverty, which can prompt them to seek to emigrate. In the countries of destination, the attitudes of some sections of the male population play a role: sexist prejudices, sometimes combined with a racist outlook, actually create a demand in some countries for women from other countries, because they are thought to be "submissive", "unsophisticated" or "exotic" (see footnote 11).

- Crisis and/or conflict situations: any situation of this kind creates a situation of lawlessness (breakdown or absence of traditional legal structures) which is particularly conducive to the development of trafficking of all kinds, including trafficking in human beings.<sup>19</sup>

Governments are asked to take account of trafficking in human beings and its consequences in their efforts to combat poverty and assist development.<sup>20</sup>

### *Paragraph 25*

Improving the economic and social situation in the countries of origin is considered to be the most effective way of preventing trafficking and discouraging those who hope to improve their lot by accepting the traffickers' offers. In the present state of affairs, however, it would be desirable for persons wishing to emigrate to be fully informed about legal migration possibilities, which would enable them to identify traffickers' offers more easily and, if possible, avoid accepting them.

## **V. Assistance to and protection of victims**

Under the heading of assistance and protection the recommendation provides for four types of action in favour of and rights for victims.

### *i. Victim support*

#### *Paragraph 26*

It is a matter of providing support for victims of trafficking in order to favour their reintegration into society. The text encourages the creation or development of reception centres or other facilities where victims can benefit from various services essential for their reintegration into society.

This reintegration may be envisaged either in the country of origin or the host country, since the social measures mentioned apply to victims in the countries of origin as well as the right to return and reintegration (see iii. and iv. below).

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19. The drafters were thinking in particular of post-conflict situations in which trafficking and sexual exploitation have taken on considerable proportions, as in Bosnia and Herzegovina after the 1995 Dayton Agreement.

20. In this connection, see the Platform for Action adopted at the 4th World Conference on Women (Beijing, 4-15 September 1995), and in particular Chapter IV.A and F.

Besides specialised reception centres, all of the existing administrative, medico-social and legal infrastructure, including partnership with associations, should be able to contribute to this support, insofar as these services are able to integrate the specific dimension of the problems of the victims of trafficking for the purpose of sexual exploitation.

The support measures in general (information for victims on their rights, psycho-medico-social and administrative assistance) are the concrete expression of the need for multidisciplinary highlighted in section C, Basis for action and methods.

#### *Paragraph 27*

The text draws attention to the importance in providing assistance in the victims' mother tongue. This provision is essential to ensure the effectiveness of access to the law, a necessary precondition for victims' access to justice. This is different from the right to the assistance of an interpreter in legal proceedings.

### *ii. Legal action*

#### *Paragraph 28*

Where possible, states are invited to provide victims of trafficking, in particular children, and witnesses with special facilities for reception and questioning (audio and video recording), in order to avoid as far as possible, the repetition of hearings and certain confrontations, and thus attenuate the traumatising effects of legal proceedings. In recent years, many states have developed the use of these technical resources in the legal context, where necessary adapting the rules of procedure applicable to the recording of evidence and the questioning of victims. This is the case in particular for the victims of sexual assault. However, on the one hand, this is not yet the case in all Council of Europe member states, and on the other, the victims of trafficking are far from benefiting from such protection measures, even in countries where the validity of these methods is recognised by the national legal system.

#### *Paragraphs 29, 30 and 32*

As set out in the general principles, trafficking should be considered a form of organised crime and thus calls for corresponding treatment and action. Paragraphs 29 to 32 draw the appropriate conclusions calling upon states to take steps, particularly in the case of criminal networks, to protect victims, witnesses and their families to avoid acts of intimidation and reprisals. It is a matter of making victim and witness protection programmes available to the judicial services, which implies having effective ways of combating real threats to the safety of these people in both the host country and the country of origin.

When it comes to protecting the people concerned in a country other than that where the proceedings are taking place, co-ordination and co-operation measures as

envisaged under section G below are also essential. The recommendation also encourages states to extend, if necessary, these protection programmes to the members of associations or organisations assisting the victims during civil or criminal proceedings, who may be particularly exposed to criminal networks.

In paragraph 32, the drafters stressed the role of victim defence organisations in this respect. As well as their traditional role of providing assistance, these organisations can sometimes, in the respect of national legal principles and traditions, be empowered to institute legal action (as is the case in certain member states of the Council of Europe).

### *Paragraph 31*

In some cases, victims hesitate to bring legal proceedings in the country of destination because of the threat of reprisals by the traffickers against family members who have remained in the country of origin. To facilitate legal action, it is important therefore, in some cases, to be able to provide protection for the families of victims.

This calls for close co-operation between the victim's country of origin and country of destination, which could be instituted, for example, through the signing of bilateral and/or multilateral agreements between the countries concerned. The drafters were aware of the difficulties involved in setting up such machinery, but wished nevertheless to stress its importance given that it is a guarantee enabling victims to take legal action. Governments are invited to bear this factor in mind and take the necessary measures where possible.

### *Paragraph 33*

The compensation aspect appears here and is intended to ensure that victims can obtain monetary compensation for the prejudice they have suffered. In the case where the criminal courts handling proceedings against traffickers do not have the power to also pronounce on the civil liability of the accused with respect to the victims, it is necessary to ensure that the victims can also take their claim to civil courts which are competent to rule on this point and award them compensatory damages.

### *Paragraphs 34 and 35*

These paragraphs extend the above guarantees, dealing with the temporary status of victims during legal proceedings. Being most of the time illegal residents in the country of destination, the victims of trafficking are often treated as such and are in danger of being expelled before being able to file any legal action. In order to avoid this, the Recommendation encourages destination countries, if necessary and in conformity with the national legislation in force, to grant temporary residence permits to enable the victims to testify against the offenders. These testimonies are essential in order to charge the traffickers, as they often constitute the only tangible proof against them.

The text recommends that, during their temporary period of residence, victims have access to any necessary medical and social assistance. Given the extremely precarious conditions in which many victims find themselves, destination countries are also encouraged, if necessary, to consider providing victims with the more protective status of temporary resident on humanitarian grounds. This may be necessary for example in cases when the victim has been threatened by the offenders (before, during or after the judicial proceedings) and when her/his life or her/his family's are in danger in case of return in the country of origin.

### iii. Social measures for victims of trafficking in countries of origin

#### *Paragraphs 36 and 37*

Some victims of trafficking will prefer to return to their country of origin, and others may be forced to do so (should they fail to obtain a residence permit in the country of destination). Whatever the case, victims may require support of various kinds (social assistance, occupational reintegration etc) which may be provided by reception facilities and, above all, by non-governmental organisations, which play a key role in this area.

### iv. Right of return and rehabilitation

#### *Paragraph 38*

In keeping with the approach adopted by the drafters from the outset, which was to give priority to aspects relating to protection of the victims, the text calls on governments to make it possible for victims of trafficking to decide to return to their country of origin. In view of the nature of the trauma suffered, such a decision must be accompanied by a number of measures (detailed in the following paragraphs) whose implementation calls for close co-operation between the countries of origin and destination, as already emphasised in the previous section.

#### *Paragraphs 39, 40 and 41*

The return of victims to their country of origin and their reintegration call for several obstacles to be overcome.

From a purely financial point of view, victims have often taken out loans in order to advance large sums of money for the administrative formalities, which their "employers" were to complete for them. These debts often constitute one of the main barriers to reintegration in the country of origin. Another practical problem is the cost of the return journey.

Above and beyond the material aspects, sexual exploitation can harm victims of trafficking both physically and mentally for the rest of their lives. It must also be borne in mind that, upon their return, victims run the risk of being rejected by their



family or the community, of being unable to find viable employment, of becoming outcasts from society, of being subjected to harassment, reprisals or persecution by the traffickers, etc.

To obviate these difficulties, the drafters have drawn up a series of measures, which are set out in paragraphs 39, 40 and 41. These are minimum measures. If necessary, governments may add to them. For instance:

- In addition to financial assistance to cover the cost of the return journey and a sum of money to aid reintegration, victims could be provided with the means of settling their debts, in the form of a compensation scheme or any other suitable system for settling debts (possibly based on confiscation of the proceeds from trafficking, as provided for in paragraph 44);
- The social support provided upon their return to the country of origin could include access to counselling services and specialised medical care (social workers responsible for dealing with victims upon their return should be familiarised with trafficking issues);
- Occupational reintegration measures upon their return to the country of origin could include, in particular, training courses and help with finding employment.

## **VI. Penal legislation and legal co-operation**

Although victim protection was expressly made the main focus of the recommendation, which explains the priority given to prevention and assistance measures, there can be no effective fight against trafficking without appropriate legislation, enforcement and legal co-operation.

As we have seen, there are great differences in the legislation on this subject in Council of Europe member states and what is more the phenomenon of trafficking goes far beyond the limits of the European continent.

### *Paragraph 42*

Certain member states have legislation under which not all of the activities defined and condemned by this recommendation are criminal offences. The recommendation therefore invites the countries concerned to introduce or strengthen their legislation and where necessary criminalise specific activities.

It is not necessarily a matter of adopting a specific mode of criminalisation of the activities involved by creating an offence of "trafficking for the purpose of sexual exploitation", but rather of ensuring that criminal proceedings can be instituted against all of the acts or offences concerned. This can be achieved by means of offences already existing in the national criminal legislation, where necessary by eliminating certain conditions of the said offences which may constitute a legal obstacle to criminalisation, or

on the contrary by adding to the definition of existing offences a description of the corresponding activities, in order to clarify the conditions in which they apply. It is also possible to introduce specific offences, this possibility being expressly intended by the drafters, accompanied by the expression "where necessary".

### *Paragraphs 43 and 47*

Besides the criminalisation of the activities in question, these paragraphs address the matter of penal sanctions and have two objectives.

First, it is a matter of introducing or increasing existing penal sanctions in order to make them proportional to the seriousness of the offences. Offences against individuals, criminal acts associated with the phenomenon of trafficking should, as solemnly reaffirmed in the recommendation, be considered flagrant violations of human rights and an offence to the dignity and integrity of the human being, and should be treated as such in the legislative arsenal.

Second, it is a matter of ensuring that the sentences that can be imposed permit effective international legal co-operation and the extradition of prosecuted or convicted persons. Because of the transnational dimension of trafficking, examining magistrates in one country should be able to make international requests for information, in order to be able to pursue their investigations in one or more other countries, have witnesses heard, searches carried out, seizures made, etc. Similarly, when the suspects or convicted individuals are within the jurisdiction of a state other than the prosecuting state, it is important that the latter, in the respect of the principles and provisions applicable, should be to obtain their extradition. Before they will comply with such requests for assistance or extradition, certain states require that the sentence faced by a suspect or pronounced for a convicted individual should be above a threshold set by their domestic law. It is therefore important that this threshold should at least be taken into account when fixing the sentences for the various offences connected with trafficking in human beings.

On the question of the extradition of traffickers, paragraph 43 should be seen in relation to paragraph 47, which encourages states to provide for measures permitting the extradition of traffickers, in compliance with the international rules in force, preferably to a country where evidence of the offences can be found. The jurisdiction criteria in force may indicate several states where evidence of the said offences may be found: countries where the victims are "recruited", transit countries, countries where they are exploited, countries where the perpetrators are domiciled or where companies involved are registered, etc. It is therefore the likelihood of finding evidence that should be the criterion.

### *Paragraph 44*

While recommending the adoption of provisions authorising the seizure and confiscation of the instruments and proceeds of trafficking, the drafters have taken care

to recall the need to preserve the rights of third parties of good faith. In the case of the dismantling of trafficking networks, as in the case of organised crime in general, the origin of the disputed goods and funds is often difficult to establish. Companies and individuals engaged in perfectly legal activities might unknowingly find themselves used in the labyrinth of a network as part of the perpetrators' efforts to cover their traces. In this way the rights of third parties of good faith may be violated.

Besides the necessary prudence of the administrative or legal authorities who have to proceed to the confiscation of the goods in question, it is necessary to have legal provisions permitting third parties of good faith whose goods have been confiscated or seized to retrieve them or at least be compensated for their loss in conformity with the right to enjoyment of possessions set out in Article 1 of Protocol No. 1 to the ECHR.

#### *Paragraph 45*

Whether the national legislation authorises the existence of the establishments in which the victims of trafficking generally exploited or not, such establishments do exist and can be identified by the police. It is therefore necessary to facilitate police investigation and surveillance of the establishments concerned and organise their closure if necessary.

#### *Paragraph 46*

As indicated in the definition of trafficking adopted, traffickers sometimes act through legal persons. The text encourages states to provide for rules governing the liability of such entities, together with specific penalties. It may obviously be a matter of the civil liability of these legal persons but, in the case of states whose legal system includes a system of criminal liability for such entities, provision should be made for its application to offences connected with trafficking.

#### *Paragraph 48*

States are invited to adopt rules governing extra-territorial jurisdiction to permit the prosecution and conviction of persons who have committed offences connected with trafficking, regardless of the country the offences were committed in, including when the acts constituting the offence were perpetrated in several different countries. Extra-territorial jurisdiction is a particularly necessary legal tool in the fight against forms of crime extending across frontiers or using them, such as trafficking for the purpose of sexual exploitation.

Rules governing extra-territorial jurisdiction facilitate the prosecution of the perpetrators of offences. Recommended in the action plan adopted by states at the Stockholm congress on action against the sexual exploitation of children for commercial purposes, they were also introduced in the joint action adopted in the European Union in 1997. It is important that Council of Europe member states, which have not yet

incorporated such rules in their penal arsenal, or only for certain offences, should consider it and extend it to all criminal acts connected with trafficking.

#### *Paragraph 49*

The last weapon in the fight against trafficking is the creation and continuous updating of systems such as computerised databases and files to assist investigations and the prosecution of the perpetrators of the said offences. Like other forms of organised crime and sex offences in general, action against trafficking in human beings for the purpose of sexual exploitation is a field in which the use of such methods is particularly necessary. In the use of information technologies however, it is necessary to comply with the national legislation on the protection of personal data as well as with the relevant international texts (such as the Council of Europe Convention for the protection of individuals with regard to the automatic processing of personal data, 1981).

### **VII. Co-ordination and co-operation measures**

As stressed by the drafters throughout the text, trafficking is a multiform and intersectoral phenomenon, the implications of which concern several branches of society. In view of the nature of the phenomenon, if action against trafficking is to be effective it has to be co-ordinated at both national and international level.

#### i. At the national level

##### *Paragraphs 50, 51 and 52*

Specifically, the text recommends the establishment of a national mechanism to serve as both:

- the centre for defining a national strategy to combat trafficking;
- the centre for liaison with other countries or entities involved in the fight against trafficking.

The form that the national mechanism may take is to be decided by each state. Some countries have already taken steps in this direction (by way of example, we may mention the Netherlands where, pursuant to the decisions taken at the Ministerial Conference of the Hague of 24 and 26 April 1997, the appointment of a national rapporteur responsible for matters relating to trafficking is being prepared; the rapporteur will be an independent person responsible for reporting to the government).

#### ii. At the international level

##### *Paragraphs 53, 54 and 55*

On the international level too, the co-ordination of the actions undertaken by the different actors is essential. As was described in detail at the beginning of this explan-

atory memorandum, several organisations have taken action to combat trafficking (United Nations, Interpol, Union European, Council of Europe, etc.). While acknowledging the usefulness of these different actions, the drafters wished to stress the need to ensure their co-ordination by setting up a specialised international body to be responsible for several tasks specifically concerned with the fight against trafficking.

*Paragraphs 56 and 57*

The recommendation invites the governments to sign and ratify, if they have not already done so, or to take account of, a number of relevant international instruments concerning the fight against trafficking in human beings for the purpose of sexual exploitation.





