

Council of Europe: International Partnerships Session

Martin Fowke, UNODC, 16 June 2015

Excellencies,

Distinguished colleagues

Ladies and Gentlemen,

It is a great honour for UNODC to be part of this meeting celebrating, on its 10th anniversary, the impact that the Convention has had, and, in particular, to speak in this last session on the topic of partnership.

We have the highest regard for the Convention, the ongoing work of GRETA and, most importantly, the implementation by States of this key pillar of international law addressing trafficking in persons.

Partnership is very much in our mind at UNODC when we consider all of the work and the standards we associate with the Convention. That is because that ongoing work is extremely informative and has been, and will continue to be, highly influential beyond the regional boundaries of the current Parties to the Council of Europe Convention. Further, I believe much of the current work associated with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, is of great significance to those who work closely with the Convention – both policy makers, but also practitioners, in their day-to-day work.

I would like to talk a little about partnership in this sense - the awareness and responsibilities of **partnership** that UNODC sees between the interlinked work being undertaken further to both the UN

Protocol and the Convention, and, ultimately, how this combined work can benefit our front-line practitioners charged with implementing these instruments, as well as informing the development of better and more progressive policy to respond to human trafficking.

The innovations of the Convention as an international instrument addressing trafficking in persons are well-known, and are often compared in stark comparison to the earlier United Nations Trafficking in Persons Protocol. But having served in the secretariat to the UN Protocol since before the Convention came into effect, my experience is that the **influence** of the policies and standards captured in the Convention has been strong in the continuing evolution of how the UN Protocol is interpreted and implemented in practice.

This has been demonstrated, for one, by the increasing outputs of the core UN intergovernmental working group addressing human trafficking. The *Open-ended Interim Working Group on the Protocol to Prevent, Suppress and Punish Trafficking in Persons* was first convened by the *Conference of the Parties to the United Nations Convention against Transnational Organized Crime* in April 2009; and will meet for its sixth session in November 16-18, later this year in Vienna. The Working Group has now been mandated by the Conference of the Parties to meet every year, with the expectation that it will increase its work and focus on the core challenges facing State Parties in truly implementing the UN Protocol, which our bi-annual Global Reports continue to document remains an issue in all regions globally. Over those six sessions, the UN Working Group has formulated more than 150 recommendations for action by States Parties, which have all been adopted by the Conference of the Parties. These recommendations do have their inconsistencies, do overlap at times, but, importantly, they cover some issues never explicitly addressed by the Protocol – but which are contained within the Council of Europe Convention, such as the definition of a trafficking victim, and the principle of non-punishment or prosecution of a trafficked person. These recommendations have been adopted, in full,

by consensus by the States Parties to the Protocol who have participated in these meetings.

A second vital influence of the Convention has been on the development of our key legislative tool for implementation of the UN Trafficking in Persons Protocol, that is, the UNODC Model Law against Trafficking in Persons, finalised in 2009. In seeking to aid legislative drafters at the national level, the Model Law arguably addresses every aspect of the Convention, with either mandatory or optional provisions, including draft legislative provisions regarding monitoring and reporting – something which goes beyond the Protocol, but which experience, not only in Europe, has shown to be a positive mechanism.

But we have also conducted extensive work under the UN Protocol that is directly of benefit to those concerned with implementing the Convention. Tomorrow, in Geneva, UNODC will launch with the Governments of Switzerland and Brazil more language versions of a series of issue papers addressing core legal concepts that are common to both the UN Trafficking Protocol and the Council of Europe Convention.

In January 2010, the UN Working Group considered the proposition that important concepts contained in the Trafficking in Persons Protocol are not clearly understood and, therefore, are not being consistently implemented and applied. It requested its secretariat, UNODC, to prepare a series of issue papers to directly assist criminal justice officers in penal proceedings. Over the last three years, UNODC has accordingly published three papers with technical advice for practitioners on the concepts of “abuse of a position of vulnerability”, “consent”, and “exploitation” all in the context of trafficking in persons. The methodology for each paper included: a thorough review of all relevant literature including legislation and case law; a survey of countries in different regions and legal traditions, including in-depth practitioner interviews; and an international consultative drafting process. The relevance of these papers has been demonstrated by their

increasing dissemination in national trainings and discussion, and use by judicial authorities – the papers and their recommendations have now been cited by courts in multiple jurisdictions, including, for example, on the practical issue of how to assess “abuse of a position of vulnerability”, which is often a completely new and unprecedented term in national criminal laws, causing great uncertainty for criminal justice actors.

Yesterday I received a video statement of an Argentinian prosecutor, Mr. Marcelo Colombo, who heads a special national unit supporting the trafficking in persons work of prosecutors throughout Argentina, and is also the Chair of an Ibero-American Network of Prosecutors in Trafficking in Persons. Mr. Colombo has been a key contributing expert to the process resulting in these issue papers, but, more immediately, is a key advocate for the importance and direct relevance of these issue papers in the day-to-day work of not only his immediate colleagues, but to police, prosecutors and judges throughout Argentina. This is no empty statement – the UNODC papers have been used by the Argentinian courts in reaching their decisions in several trafficking in persons cases, particularly to refute legal defences that adult victims had consented to their exploitation. Of note is a recent prosecution of 9 traffickers, made by one of the countries highest criminal courts, which applied the legal reasoning of the relevant UNODC paper to establish that there had been an abuse of a position of vulnerability in that case, and provide a precedent for future trafficking cases.

The immediate value of this work to practitioners seeking to discharge obligations under the Council of Europe Convention is very clear. In a few months time, UNODC will publish a Case Digest on Evidential Matters in Trafficking in Persons Cases. The publication sources and analyses material from the UNODC Global Human Trafficking Case Law Database, which provides immediate, public access to officially documented instances of trafficking in persons, with more than 1200 cases from more than 90 jurisdictions. A key goal of the Database is to increase the visibility of successful prosecutions, to give criminal justice

practitioners tools with which to enforce existing laws and at the same time to promote awareness of the realities of this crime. In addition, the Database is also a source of good practices for investigation techniques in different jurisdictions. Importantly, all the case information in the database is presented with reference to the requirements of the UN Trafficking in Persons Protocol, so again of direct relevance to practitioners in State parties to the Council of Europe Convention.

In taking the starting point of and then surpassing the requirements of UN Protocol, the Council of Europe Convention helped define the UN Protocol as a series of minimum standards that **should be built upon**. In so doing, it has done a great service in exemplifying an ambition to continue to build and improve our international legal framework, and, with the example of GRETA, to invest the resources to ensure this framework is workable on the ground. That ambition continues to have a grounding in the real needs that exist in all regions, and provides a joint challenge to all of us. There is so much more to be done to give these instruments true meaning, and integrating our partnerships at the international, regional and national levels to do so is essential. We each have our own masters, be they national laws, institutions, international treaties or a combination of such, but the challenges our practitioners face in every jurisdiction are the same. In marking this anniversary today, I congratulate all those gathered here but also urge you to reach beyond your traditional limitations in responding to these challenges. Knowledge, experience and good practices need to be shared, within countries, over borders and across regions. Practical ways to do this would include, to contribute to and use the Global Human Trafficking Case Law Database, to disseminate and train your national practitioners on these issue papers regarding key concepts, and to send your experts to the UN Working Group in November.

Thank you to the Council of Europe for the opportunity to speak here today. I wish you all the best in your continued efforts. Thank you.