

**14th Specialization Course in International Criminal Law for Young Penalists**

**“Assessing the Effectiveness of International Criminal Law in the Prevention and Control of Transnational and International Crimes”**

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**The Effectiveness of International Criminal Law in Combating Transnational Trafficking in Persons**

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Good morning, and welcome to this session on human trafficking or trafficking in persons, one of the international or transnational crimes that we are addressing in this course, trying to find out how effective is international criminal law in combating human trafficking.

And with me there are two very distinguished panelists:

Ms. Kristina Kangaspunta, from Finland, Chief of the Global Report on Trafficking in Persons Unit at UNODC in Vienna, Austria; and

Professor Tomoya Obokata, from Japan, professor of International Law and Human Rights at the Keele University School of Law in the UK

And our issue is human trafficking

A crime

A serious crime

A transnational crime

An organized crime

And a crime against humanity

And at the outset you have to realize that human trafficking developed as part of international criminal law and not international human rights law.

In 2000, there was an international consensus over that fact that human trafficking is a crime that must be confronted.

The UN Protocol was then born, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, so the Organized Crime convention applies to the Trafficking Protocol.

So, where are human rights here? I invoke article 14 of the Protocol, the most important article which makes it clear that nothing in the Protocol would affect the rules embodied in International human rights law.

What is important about the Protocol is that it provided us with the first international definition of human trafficking. Under the Protocol human trafficking is basically recruiting people for the purpose of exploitation, so human trafficking equals human exploitation.

The Protocol shifts the focus from slavery to exploitation and shifts the focus from sexual exploitation to a more expanded concept that is not limited to prostitution.

I was in France, and the question was whether those who go to Syria and fight in the name of jihad are being trafficked;

And in Bahrain, the question was whether exploiting children in political conflicts constitutes a form of trafficking;

In Lebanon, the question was whether using people in terrorist attacks is a form of human trafficking;

In Egypt, the question is whether marriage of young Egyptians to the wealthier people from the Gulf is a form of human trafficking;

In Israel, the question is whether giving birth to a child and giving the child away constitutes a form of human trafficking for the purpose of child bearing;

In Saudi Arabia, the question is whether those who consent to go to Saudi Arabia to work as domestic workers are being trafficked.

Article 5 of the Protocol requires member states to criminalize all forms of human exploitation and there has been a successful legislative movement all over the world to enact anti-trafficking legislation.

So if you asked the question of how effective the Protocol is, as the main international legal instrument, I would agree that the Protocol had an impact at least on domestic laws, criminal laws.

Of course, the question of effectiveness requires us to ask the two most important questions:

How many cases of human trafficking have been prosecuted?

And here I want to refer you to the database created by UNODC – over a thousand cases.

How many of these allow a victim of trafficking the right to restitution, and other effective remedies?

The other question is how many victims have been identified?

The US Trafficking in Persons Report tells us that in 2012 only 46,750 victims have been identified.

That brings me to the implementation mechanisms.

One is reporting. The US Report asks whether there is a report in your country. The Dutch model is interesting, because there is a National Reporter. Also in Finland.

And then within the UN there is a Special Rapporteur, a mandate that was created in 2004, ten years ago.

Unfortunately, the Protocol does not require states to report. This is the case according to CEDAW, article 6 prohibits trafficking in women for the purpose of exploitation of prostitution and the optional protocol allows you to submit an individual complaint to the CEDAW Committee, and the case of a Chinese woman, who ended up in the street in The Netherlands was submitted in 2007.

This is the case according to the CRC, the Convention on the Rights of the Child. Article 35 prohibits trafficking in children.

And of course, there is the International labor law, ILO Convention n. 181 talks about the liability of private employment agencies, ILO Convention n. 182 talks about the worst forms of child labor, ILO Convention n. 189 talks about the rights of domestic workers.

And let me end with a reference to the ICC. Under article 7 of the International Criminal Court Statute, trafficking in persons is considered as a crime against humanity. Here there is no statute of limitations. I consider this a best practice. Under article 19 of the Arab Model Law, there is no statute of limitations in crimes against the person in the area of human trafficking.

And we are in phase two of the anti-trafficking movement: sharing best practices, such as the principle of non-punishment of the victims, article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings;

Another is punishing the client, the customer, the purchaser of sexual services, article 19 of the Council of Europe Convention.

Think about these basic principles and whether they are part of your domestic law

Thank you.