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Co-Editors:  
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## International Journal of Sustainable Human Security

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ORIGINAL PAPER<sup>1</sup>

# Rethinking Trafficking in Human Beings - Towards International Coalition of Academics Against Trafficking in Human Beings (Trace)

Davor Derencinovic<sup>2</sup>

**Abstract:** Author in this paper deals with the possibilities of setting up the informal network of experts gathered in International Coalition of Academics against Trafficking in Human Beings (TRACE). TRACE will examine legal avenues for global extension of human rights approach (victim centered). This may require elaboration of a new universal legally binding instrument similar to those that were adopted for other international crimes and that are comprehensive in nature (e.g. United Nations Convention against Corruption), and/or further promotion of regional instruments that are open for accession to third parties (e.g. Council of Europe Convention on Action against Trafficking in Human Beings). In addition, TRACE contribution could be in developing of universal model of standard operating procedures for victim identification similar to guidelines that apply in cases of torture and other inhumane and degrading treatment (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1999, also known as Istanbul Protocol). Building global academic consensus on these issues that has been established in other fields (for instance death penalty – International Academic Network for the Abolition of Capital Punishment) would have practical implications on policy makers in the area of anti-trafficking. Expected outcome of this initiative is positive impact on preventing push and pull factors that lead to trafficking in human beings.

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## I. Introduction – from perpetrator oriented to a victim oriented approach

Trafficking in human beings (hereinafter: THB) is a global phenomenon that affects contemporary societies. It is difficult, if not impossible, to find country that is not affected either as a place of origin, transit or destination.<sup>3</sup> As a dynamic and fast changing phenomenon, THB requires appropriate responses in the areas of prevention, protection of victims, prosecution and international cooperation.<sup>4</sup> In most of the countries there is still low level of awareness and knowledge, not only among general population but also among relevant professionals and practitioners about, for instance, THB for the purposes of exploitation other than sexual (this particularly goes for forced labor and services<sup>5</sup>) as well as about internal (domestic) trafficking. Unlike persons who are sexually exploited or at least trafficked for that purpose, persons who are subjected or intended to be subjected to other types of exploitation have not always been perceived as victims. This is due to the inconsistencies in legislation and jurisprudence on what is the threshold required for criminal exploitation. Despite the legislative differences, in practice THB has not always been perceived as a phenomenon substantially different from smuggling of migrants.<sup>6</sup> Although these two phenomena distinguish considerably, the borderline between them that sometimes might seem blurred has just occasionally been subject of academic interest. Another relevant, but still mostly unexplored issue, is the relationship between legal status of prostitution in a given country and its impact on THB.<sup>7</sup> There have been many countries that recently criminalized using the services of THB victims (knowing that they are victims of THB) but still without relevant case law and convictions.<sup>8</sup>

General assessments and approximations of trafficking in human beings victimization rates that can be found in different reports of NGO's, international organizations and other interested subjects<sup>9</sup> do not correspond to the relatively low numbers of identified victims as well as to the number of apprehended, prosecuted and convicted traffickers. Some of the dysfunctional moments that contribute to this picture are, *inter alia*, lack or underdevelopment of reliable data collection mechanisms, significant dark number of THB, biased research approach from various interested subjects etc. The lack of comprehensive and coherent data collection mechanisms complicates sharing of information among relevant stakeholders. In relation to high victimization rate that can be found in various reports, number of persons apprehended, prosecuted and convicted for THB remains very low. It may be due to the complexity of the definition which encompasses three different (and cumulative) elements –

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<sup>3</sup> O'Brien *et al*, *The Politics of Sex Trafficking*, Palgrave Macmillan, 2013.

<sup>4</sup> Winterdyk *et al.* (edit.), *Human Trafficking: Exploring the International Nature, Concerns and Complexities*, CRC Press, 2011.

<sup>5</sup> *Forced Labour & Trafficking in Europe: How People are Trapped in, Live Through & Come Out*, International Labour Organization, 2008.

<sup>6</sup> Gallagher A., David F., *The International Law of Migrant Smuggling*, Cambridge University Press, 2014.

<sup>7</sup> Di Nicola *et al.* (edit.), *Prostitution and Human Trafficking: Focus on Clients*, Springer, 2008.

<sup>8</sup> See "Vae victi(m)s? Towards building a human rights approach in combating trafficking in human beings", Joint project of Max Planck Institute für ausländisches und internationales Strafrecht and Zagreb Faculty of Law.

<sup>9</sup> Since the estimates are not fully reliable they are called 'guesstimates' in academic literature, see Lee M., *Trafficking and Global Crime Control*, SAGE Publications Ltd., 2011.; Agustín L.M., *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, Zed Books, 2007.

means, activities and intended type of exploitation. There has been a support for assumption/hypothesis that complex nature of THB as a criminal offence may divert law enforcement to prosecute traffickers for so called common crimes such as pimping, sexual offences, infringements of labor standards etc. Symptomatic reluctance (and resistance) to apply THB provisions has resulted in tendency towards departing from the element of „means“ in some legislations (for instance in France<sup>10</sup> and Bulgaria<sup>11</sup>) with a view to simplify prosecutions for THB. Allegedly, this approach has led to a higher number of prosecutions and convictions. At the same time, departing from the definition based on international consensus, raises certain issues concerning consistency and harmonization of domestic legislation that may be relevant for the purposes of international cooperation (double criminality principle). Furthermore, there is a risk that such an approach, by considerable broadening the scope of the crime, could result in “mislabeling” as a THB of certain prohibited behaviors that normally do not reach the threshold of THB because of the absence of criminal means (threat, use of force, deceit etc.). This could also have distorting impact on designing of policy measures against THB. There is also lack of sensitivity of law enforcement, prosecution and judiciary towards victims. According to NGO’s, some judges and prosecutors fail to show respect for the victims, police officers still approach victims without taking into account gender mainstreaming etc.

Overcoming of these shortcomings is possible through taking human rights approach in addressing the problem of THB. In the regional European context, trafficking is not only serious criminal offence but, as ruled by European Court of Human Rights (*Rantsev v. Cyprus and Russia*), gross human rights violation.<sup>12</sup> Having said that, responsibility of countries in this field goes far beyond criminal prosecution of the perpetrator. The concept of THB as s human rights violation assumes positive obligation of states to prevent human trafficking and to provide effective protection within its jurisdiction. However, this concept has not been universally recognized. It is restricted to Council of Europe member states as well as to those states outside this regional organization who decide to accede to the Convention on Action against Trafficking in Human Beings (hereinafter: Convention).<sup>13</sup> Convention established unique twofold monitoring system. Committee of Parties is political body competent for issuing recommendations to the state parties and to observe their implementation. Group of States on Action against Trafficking in Human Beings (GRETA) is composed of 15 independent experts and functions as a human rights quasi-judicial body competent for evaluating state parties by using different methodologies including country visits. Committee of the Parties recommendations are based on the GRETA proposals for further action to be taken in a given state party. Evaluation is divided in rounds, and so far, 35 state parties have been evaluated in the first round. The second evaluation round was launched in May 2014.

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<sup>10</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France, GRETA, Council of Europe, Strasbourg, 2013, 52.

<sup>11</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria, GRETA, Council of Europe, Strasbourg, 2011, 62.

<sup>12</sup> ECHR, Case of *Rantsev v. Cyprus and Russia*, Application n. 25965/4, Judgement 7 January 2010.

<sup>13</sup> Council of Europe Convention on Action against Trafficking in Human Beings, CETS n. 197, 2005.

## 2. Shortcomings and gaps identified through GRETA evaluations

### 2.1. THB for the purposes of labour exploitation

In the state parties to the Convention, during the period 2009-2013, trafficking for the purpose of sexual exploitation was the predominant form of trafficking in the majority of the evaluated countries. At the same time, trafficking for the purpose of labour exploitation is on the rise and has emerged as the predominant form of trafficking as regards identified victims in several countries (e.g. Belgium, Georgia, Ukraine). In Portugal, 46% of the victims identified in 2008-2011 were subjected to labour exploitation. In the Netherlands, the proportion of victims trafficked for labour exploitation increased from 6% in 2007 to 20% in 2011. Linked to this trend is the increasing number of identified male victims of trafficking. GRETA's reports reveal that trafficking for labour exploitation is not recognized and addressed by policy and practice in most parties, and consequently the number of identified victims may be artificially low.<sup>14</sup>

Last ten GRETA country reports adopted in the first round of evaluation (Italy, Iceland, Ukraine, Andorra, San Marino, Netherlands, Macedonia, Sweden, Azerbaijan, Slovenia) reveal that trafficking for labour exploitation has not been adequately addressed in national anti-THB policies of the state parties. For Italy, there are reports suggesting that THB for the purpose of labour exploitation, in particular of irregular migrants, has assumed worrying proportions in that country, but is not addressed adequately.<sup>15</sup> Therefore, the measure to be welcomed is the adoption of legislative provisions in 2011 aimed at combating labour exploitation of migrants, in particular the new Article 603-bis of the Criminal Code introducing the crime of "unlawful gangmastering and labour exploitation" (*intermediazione illecita e sfruttamento del lavoro*), a phenomenon known in Italian as *caporalato*.<sup>16</sup> Victims of THB are trafficked for the purposes of labour exploitation to a countries with better standard of living. Iceland is one of these countries that has been destination for women and men from Eastern Europe and Asia who are subjected to forced labour, in particular in restaurants, massage parlours, the construction industry and fish factories.<sup>17</sup> During GRETA's evaluation visit to Iceland, various interlocutors referred to reports about exploitation of migrant workers (e.g. in fisheries, Chinese restaurants, massage parlours) and the police was reportedly investigating some possible cases of labour exploitation. GRETA notes that the second Action Plan does not address specifically THB for labour exploitation.<sup>18</sup> Likewise, a number of studies have been carried out on the issue

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<sup>14</sup> 4th General Report on GRETA's activities, Council of Europe, Strasbourg, 2015, p. 35.

<sup>15</sup> Amnesty International, *Exploited Labour: Migrant Workers in Italy's Agricultural Sector*, December 2012, available at: [http://www.amnestyusa.org/sites/default/files/exploited\\_labour\\_italy\\_migrants\\_report\\_web.pdf](http://www.amnestyusa.org/sites/default/files/exploited_labour_italy_migrants_report_web.pdf), 5 May 2015.

<sup>16</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, GRETA, Council of Europe, Strasbourg, 2014, 69.

<sup>17</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland, GRETA, Council of Europe, Strasbourg, 2014, 10.

<sup>18</sup> *Idem*, 61.

of prostitution and the links between THB and sex services in Iceland, but little is known about THB for forced labour.<sup>19</sup>

Contrary to the assumption that small markets do not give rise to a labour exploitation, some recent trends suggest otherwise. For instance, NGO activists in Andorra have indicated that, while it is a priori difficult for an employer to hide a worker, given the size of the country, it is equally difficult for a worker suffering from difficult working conditions to openly complain, as he/she risks being ostracized given the limited size of the labour market in that country.<sup>20</sup> Precarious regime of issuing work and residence permits could also put in risk foreign workers to end up as victims of THB. Women from Romania, Ukraine, the Republic of Moldova and other Eastern European countries travel to San Marino to work as private carers (*badanti*) for elderly or disabled people and living in the households where they work are considered to be potentially vulnerable to THB and exploitation. These women often arrive first in Italy based on Schengen visas delivered by the Italian authorities. They then meet in San Marino the family who requires their services. The family and the prospective carer apply together for a work permit at the labour office. Once the work permit has been granted, they can obtain a residence permit for the duration of the work permit. This period is of a maximum duration of 11 months within a given year. Private carers are obliged to leave San Marino after the expiry of 11 months even if they can come back a month later on the basis of a new work permit. If the work contract is interrupted for a reason beyond their control, the private carers can stay for a period of three months in the country to find another employer.<sup>21</sup>

Western and Northern European countries attract foreign workers to take jobs in so called high-risk sectors. In Netherlands, as high-risk sectors are identified agriculture, horticulture, catering and construction.<sup>22</sup> Foreign workers are very dependent on their employer through benefits in kind (work, accommodation, meals, all provided by the employer) that could rise suspicion about THB. In cases reported by NGO's from mushroom picking sector and asparagus sector, workers were entirely dependent on their employers, having to put up with poor working conditions, squalid accommodation, and sometimes not being paid for months. Employment agencies, if not properly supervised, could have detrimental role in turning foreign workers to THB victims. Therefore, in order to deal with rogue employment agencies, the Netherlands took measures such as setting up a hotline to report such agencies, concluding agreements with main countries of origin (Poland, Romania and Bulgaria) to exchange relevant data etc.<sup>23</sup> Furthermore, the positive attitude and sensitivity of prosecutors and judges is indispensable for efficient suppression of the THB for the purpose of labour exploitation. Regrettably, in most cases they fail to recognize that workers (especially foreign) are exploited because no matter how bad their treatment and position in destination country

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<sup>19</sup> Idem, 78.

<sup>20</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Andorra, GRETA, Council of Europe, Strasbourg, 2014, 37.

<sup>21</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by San Marino, GRETA, Council of Europe, Strasbourg, 2014, 67.

<sup>22</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Netherlands, GRETA, Council of Europe, Strasbourg, 2014, 12.

<sup>23</sup> Idem, 73-74.

is, it is still considered to be better than in the country of origin they escaped to look for a second chance abroad. In this regard, an indication of the successful awareness raising campaign is the judgment of the Supreme Court of 2009 that established that the consent of victims to their exploitation is irrelevant.<sup>24</sup>

Lack of attention to THB for labour exploitation has been observed in Sweden where was confirmed by the authorities that so far there has been no mapping as regards THB for non-sexual types of exploitation, even though significant cases of THB for forced begging and labour exploitation (berry picking) have been successfully detected in the past few years, involving significant numbers of victims of THB.<sup>25</sup> Swedish legislation on labour migration for third-country nationals had been significantly liberalised through amendments made to the Aliens Act in 2008, opening new work opportunities to third-country nationals seeking employment in Sweden. However, this liberalization, if not accompanied by sufficient safeguards to protect migrant workers against labour exploitation could therefore facilitate THB for the purposes of labour exploitation.<sup>26</sup> Just before the 2011 berry season the Swedish Migration Board launched new guidelines applicable to a range of sectors, including berry-picking, cleaning, hotel and restaurants, construction, trade, agriculture and forestry and automobile repair. To secure a work permit for a third-country national, an employer must demonstrate that their business can guarantee a salary for at least three months, and must describe the terms of employment in the Offer of Employment, as well as provide information to the Migration Board about the work. Employers are also required to demonstrate that potential employees have received accurate and comprehensive information about the work, terms of employment and working conditions. As a result of the stricter requirements now in place, the Migration Board can deny applications from employers who have not shown satisfactory economic conditions to employ third country nationals. According to the Swedish Government, employers not providing the necessary documentation will usually have their applications denied by the Migration Board.<sup>27</sup>

In some of the state parties to the Convention, GRETA found that labour inspectorate and trade unions are not sufficiently involved in combating THB for labour exploitation and the identification of victims of this form of THB. For instance, in Ukraine neither the Anti-Trafficking Law nor the two decrees regulating the identification of victims of THB and the interaction of competent authorities envisage any tasks for the labour inspectorate. According to representatives of the police and the Prosecutor's Office, there is a lack of training and expertise to detect cases of THB for labour exploitation.<sup>28</sup> In Slovenia, labour inspectors and prosecutors had difficulties in distinguishing cases of labour exploitation from labour disputes.<sup>29</sup> Also in Azerbaijan, law enforcement officials and labour inspectors reportedly have a tendency

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<sup>24</sup> *Idem*, 71.

<sup>25</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden, GRETA, Council of Europe, Strasbourg, 2014, 88.

<sup>26</sup> *Idem*, 117.

<sup>27</sup> *Ibid.*

<sup>28</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine, GRETA, Council of Europe, Strasbourg, 2014, 60.

<sup>29</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia, GRETA, Council of Europe, Strasbourg, 2014, 53.

to see potential cases of THB for labour exploitation as labour disputes between the worker and the employer.<sup>30</sup> In some state parties, labour inspectors are not involved in the victim identification. For instance Slovenian labour inspectors, although entitled to visit any enterprise or business without prior notification, have no competence to identify victims of THB.<sup>31</sup> The Macedonian authorities have indicated that the Labour Inspectorate is involved in the implementation of the National Action Plan for 2013-2016 and labour inspectors are always present during police raids of night clubs which are suspected of using victims of THB. However, the Standard Operating Procedures do not involve labour inspectors.<sup>32</sup>

As indicated in the case of Macedonia, there have been cases of trafficking for the purpose of forced marriage and trafficking resulting in a combination of forms of exploitation (forced marriage and sexual and/or labour exploitation).<sup>33</sup> In general, there is a lack of information and research about the scale and the nature of trafficking for the purpose of labour exploitation. During the visit, GRETA was informed of a case in 2012 concerning exploitation of Macedonian nationals in Azerbaijan (the so-called “Serb-Az case”).<sup>34</sup> This Caucasus country that is recognized as a new emerging market has also been affected with THB for the purposes of a labour exploitation but mostly as a country of destination. While male victims identified (18 in 2012, 15 in 2013) were primarily trafficked to Russia and the United Arab Emirates for labour exploitation,<sup>35</sup> according to several reports, Azerbaijan is increasingly becoming a country of destination for people trafficked for the purpose of labour exploitation, in particular in the construction sector, and to a lesser extent in agriculture and domestic work. However, Azerbaijani authorities do not consider Azerbaijan to be a destination country for THB for labour exploitation.<sup>36</sup> They even blamed local NGO’s for making unjustified or sensationalist claims concerning the situation of THB in the country when it comes to labour exploitation.<sup>37</sup> Like in most other countries evaluated by GRETA, in the absence of recent research on the topic, the scale of the problem of THB for the purpose of labour exploitation in Azerbaijan is yet unknown.<sup>38</sup>

## **2.2. Other issues**

The 4th annual GRETA report of activities offers very indicative list of issues concerning THB that have not been properly addressed by the parties. For instance, only eight of the 35

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<sup>30</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan, GRETA, Council of Europe, Strasbourg, 2014, 54.

<sup>31</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia, GRETA, Council of Europe, Strasbourg, 2014, 108.

<sup>32</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by „the former Yugoslav Republic of Macedonia“, GRETA, Council of Europe, Strasbourg, 2014, 67.

<sup>33</sup> *Idem*, 10.

<sup>34</sup> *Idem*, 67.

<sup>35</sup> Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan, GRETA, Council of Europe, Strasbourg, 2014, 10.

<sup>36</sup> *Idem*, 12.

<sup>37</sup> *Idem*, 52.

<sup>38</sup> *Ibid*.

evaluated countries had set up comprehensive data collection mechanisms enabling the compiling of statistical information on victims of trafficking and allowing its disaggregation.<sup>39</sup> In its reports, GRETA has considered that the authorities of 15 countries should conduct and support research on THB-related issues and has highlighted areas where more research is needed in order to shed light on the extent and new trends of human trafficking. While welcoming the research efforts made in the other countries, GRETA has invited them to continue conducting and supporting research on THB as an important source of information for future policy measures.<sup>40</sup>

In addition to THB for the purposes of labour exploitation and some other types of exploitation, another area of concern is child trafficking. Children are very vulnerable category of victims that require special protection and assistance measures. More attention should be paid to specific guidelines for children in national action plans for combating THB. It is also very important to provide consultancy in drafting special referral mechanism for unaccompanied children and to share experiences with other countries on unaccompanied children as potential victims of THB. In order to reduce risks that children fall as victims of THB, it is crucial to set up a protocol for sharing best practices in developing education curriculum in schools on recruitment of child victims through Internet. Furthermore, national action plans are rarely sent for independent evaluation. Therefore, new action plans are in most cases just repetition of the previous ones without thorough assessment of the efficiency and impact of the measures that have been taken. This problem could easily be solved by sending national strategies and respective action plans to independent external evaluators.

The exploitation of THB victims includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. Apart from being exploited or at least trafficked for that purpose, victims of THB are constantly under serious risk of criminal (or administrative) proceedings against them for certain violations that are logical and inevitable consequences of their victimization. For instance, a person who has been trafficked for prostitution faces a risk to be prosecuted and punished for prostitution if this is criminalized in a given country. The same goes for persons subjected to a forced labor who can be held responsible for violating labour legislation. Despite of some interpretative guidelines, there are still numerous issues/uncertainties concerning the content and the scope of non-punishment provision.<sup>41</sup> There are some practical advantages of having specific provision in domestic legal system, and most legal practitioners agree that further elaboration and legal clarification is needed on non-punishment provision because it is very important to conclude the case before it reaches the court if there is reason to believe that person might be the victim of THB. That said, the existing provisions on coercion are not sufficient legal defense for those who claim to

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<sup>39</sup> 4th General Report on GRETA's activities, Council of Europe, Strasbourg, 2015, p. 34.

<sup>40</sup> *Idem*, p. 35.

<sup>41</sup> Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking, Working Group on Trafficking in Persons, CTOC/COP/WG.4/2010/4.

be victims of THB. In such cases, the police (or prosecution) should have a right to discontinue or abandon the proceedings.

Providing assistance measures in some countries depends on sufficient number of highly qualified interpreters and cultural mediators for reaching and assisting the victims (and potential victims) from the main countries of origin. It is indispensable to have knowledgeable and reliable interpreters and cultural mediators who could access the victims and provide them with all relevant information in a way they can understand. This is of the utmost importance in the country affected with large number of irregular migrants and asylum seekers who could be potential victims of THB (e.g. Malta). The problem is that best cultural mediators usually come from the migrant community but most of them look for other employment opportunities. In the light of the aforementioned, there is a need to conduct a study on cross-cultural best practices in hiring of the interpreters and cultural mediators and using of their services. The authorities should develop schemes for selecting the best candidates for potential cultural mediators in the migration community and creating motivating and satisfactory working conditions for these professionals. International organizations or NGO's, could explore possibilities to establish permanent pool of experts in cultural mediation (facilitation) and cultural advocacy on bilateral or regional level.

There is also a need to step up the training of various professionals including judges and prosecutors and to create opportunities for them to share experiences on international level. To this end, various practical measures can be taken. For instance, drafting manual for training of judges and prosecutors about relevant THB issues, setting up systematic and up-to date training of judges and prosecutors on the case law regarding THB with participation of counterparts from other countries (bilateral or regional level), providing human rights based training modules taught by judges of the European Court of Human Rights etc.

### **3. Conclusion – towards International Coalition of Academics against THB**

Under the framework of scientific collaboration and according to the Memorandum of Understanding signed between two institutions, *Zagreb Faculty of Law* and *Max Planck Institute for Foreign and International Law in Freiburg* have been working on the project “*Vae Victi(m)s – Towards Building a Human Rights Approach in Combating Trafficking in Human Beings*”. So far, two annual seminars were organized, one in Zagreb in 2013, and one in Freiburg in 2014. Issues raised at this two events, as well as project activities and outputs, address most of the shortcomings identified in this paper:

- Development of the criteria for setting up reliable data collection mechanisms and databases containing disaggregated statistical data with due respect to personal data protection standards. (*output 1*);
- The research should address the causes for underestimation and disregarding types of exploitation other than sexual, in particular when committed against male victims, and to provide criteria for setting up the threshold for criminal exploitation. (*output 2*);
- Development of indicators that distinguish between THB and smuggling of migrants. (*output 3*);

- Comprehensive comparative analysis of legislation and practice will be carried out to answer the question on whether criminalization or legalization (including decriminalization) of prostitution is in anyway linked to the THB trends and whether criminalization of buying of sexual services (Swedish approach) have deterrent effect on potential traffickers? This analysis should also address issues concerning criminalization and adjudication of knowing use of services of a victim. (*output 4*);
- The comprehensive research study will focus on providing an explanation on whether the low number of persons apprehended, prosecuted and convicted for THB is due to the complex nature of the crime, law enforcement and prosecution conformity and/or inertia, difficulties in procuring evidence etc. This study will also include comprehensive elaboration on *opinio iuris* and relevant state practice concerning definition of THB. (*output 5*);
- The research on non-punishment provision should address the following issues: in addition to the possibility not to impose penalty on the victim, does it encompass non-prosecution and non-detention requirement (both could interfere with pending identification of a victim), does it cover all offences committed by victim irrespective of their gravity or only status related offences, how to apply non-punishment provision while respecting some other fundamental principles of national legal system (for instance legality, necessity and/or proportionality principles), what is the relationship between non-punishment provision and justifications/defenses in criminal proceedings (for instance duress) etc. (*output 6*).

Clear picture about the extent of the phenomenon and its characteristics (*output 1*) would facilitate information sharing between relevant stakeholders, contribute to designing of appropriate policy measures for the prevention of THB and to speed-up establishment of victim identification procedures based on human rights approach (*outcome 1*). Paying increased attention to types of exploitation other than sexual, in particular when committed against male victims, as well as providing criteria for setting up the threshold for criminal exploitation (*output 2*) will strengthen non-discrimination principle and gender mainstreaming as pillars of human rights approach envisaged in a relevant treaty law but rarely observed in practice (*outcome 2*). It may be foreseen that further development of indicators that distinguish between THB and smuggling of migrants (*output 3*) will contribute to the shift in perception, particularly in destination countries, of the THB as an irregular migration issue rather than fundamental human rights violation (*outcome 3*). Further research analysis of complex relationship between various approaches to (de) regulation of prostitution and THB (*output 4*) will serve the purpose of selecting and enforcing effective measures to discourage demand as an important prerequisite for prevention of THB in either country of origin or country of destination (*outcome 4*). The conclusion of comprehensive research study on causes of low numbers of traffickers apprehended, prosecuted and convicted for THB and internationally recognized definition of THB (*output 5*), can help in encouraging proactive approach of the law enforcement and prosecution as well as to reinforce deterrent effect of criminal legislation (*outcome 5*). Conclusions of comprehensive study on non-punishment provision (*output 6*) may be taken into consideration by policy makers (legislators) as a valid argument in balancing between fundamental principles of domestic legal system (proportionality, legality etc.) and requirement that arise under treaty law to treat those who were subjected to THB as a victims, not criminals (*outcome 6*).

In addition to this ongoing project, on the regional Southeast Europe context it is worth mentioning that Croatian Science Foundation in 2014 approved for 5 year financing project titled “Multidisciplinary Research Cluster on Crime in Transition – Trafficking in Human Beings, Corruption and Economic Crime” and headed by the author of this paper (research team is composed of 30 experienced researchers from the worldwide). Concerning THB, the project was granted due to the identified shortcomings in Croatia that are similar to those described in this paper. The number of those identified as victims in Croatia remains low (around 10 victims annually in a last few years). United States Department of State Trafficking in Persons Report for 2013 highlighted that experts and government officials reported victim identification was inadequate in light of the suspected magnitude of the trafficking problem in Croatia. This could be explained by the structural deficiencies of national anti-trafficking policies and disregard of research and multidisciplinary approach in addressing three key priority areas – that of prevention, protection of victims, and prosecution of traffickers. Besides, the law enforcement authorities are mostly focused on trafficking for sexual exploitation and neglect other types of exploitation (e.g. labour exploitation). The need for the research based policies is indispensable for Croatia as a new EU member state that has been under the risk of turning into a country of destination for victims from the Balkan countries as well as from the countries either affected from internal instabilities and conflicts (e.g. Syria) or from the African countries (e.g. Nigerian nationals that are on a large scale trafficked to nearby Austria and Italy). According to findings of international monitoring mechanisms as well as to the assessments made by some foreign governments (aforementioned TIP report) Croatia falls short on “conducting and supporting research on THB-related issues as an important source of information for future policy measures in the field of action against THB”. Some of the areas that have been largely unexplored are trafficking for the purposes of labor exploitation, trafficking of children, internal trafficking (within the country) etc. These shortcomings were taken into account in the newest TIP report that downgraded Croatia from Tier I to Tier 2 - the group of states that “do not fully comply with the minimum standards for the elimination of trafficking”. Current research into the topic of THB faces serious challenges that include the lack of relevant criminological data about victims and offenders as well as inadequate methodologies in collecting and comparing the scarcely available data. Therefore, the aim of this project is to contribute, through establishment of fully operational informal network of experts from different legal disciplines, in promoting research-based policies. In the light of the foregoing, this multidisciplinary research cluster can take a lead in carrying out of assessments of trends in trafficking in human beings, measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organizations active in this field, and reporting (Article 19 of the Directive 2011/36/EU).

Two aforementioned projects are comprehensive in nature but limited in their reach (for instance Croatian Science Foundation project is limited to Croatia and region of South East Europe). Therefore, there is a huge potential in both projects to be upgraded. One realistic possibility to that end is setting up of informal network of experts gathered in International Coalition of Academics against Trafficking in Human Beings (TRACE – adverb for finding or discovering the facts by investigation). TRACE will examine legal avenues for global extension of human rights approach (victim centered). This may require elaboration of a new universal legally binding instrument similar to those that were adopted for other international crimes and that are comprehensive in nature (e.g. United Nations Convention against Corruption), and/or further promotion of regional instruments that are open for accession to third parties (e.g.

Council of Europe Convention on Action against Trafficking in Human Beings). In addition, TRACE contribution could be in developing of universal model of standard operating procedures for victim identification similar to guidelines that apply in cases of torture and other inhumane and degrading treatment (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1999, also known as Istanbul Protocol). Building global academic consensus on these issues that has been established in other fields (for instance death penalty – International Academic Network for the Abolition of Capital Punishment) would have practical implications on policy makers in the area of anti-trafficking. Expected outcome of this initiative is positive impact on preventing push and pull factors that lead to THB. Launching event will take place at the University of Zagreb Faculty of Law in November 2015 and 1st TRACE international conference will be organized in Dubrovnik in 2016. There is a lot of symbolic in both, venue and the date, because medieval Republic of Ragusa (modern day Dubrovnik, Croatia) was first in the world that banned slavery. This historical commitment to a human freedom is well reflected in a city flag (lat. *libertas* – freedom) and in inscription above the gates on Dubrovnik fortress Fort Lawrence (Lovrijenac) – *Non bene pro toto libertas venditur auro*” (Freedom is not to be sold, not for all gold of the world).

## References

- 4th General Report on GRETA's activities, Council of Europe, Strasbourg, 2015;
- Agustin L.M., *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, Zed Books, 2007;
- Amnesty International, *Exploited Labour: Migrant Workers in Italy's Agricultural Sector*, December 2012, available at:  
[http://www.amnestyusa.org/sites/default/files/exploited\\_labour.\\_italy\\_migrants\\_report\\_web.pdf](http://www.amnestyusa.org/sites/default/files/exploited_labour._italy_migrants_report_web.pdf);
- Council of Europe Convention on Action against Trafficking in Human Beings, CETS n. 197, 2005;
- Di Nicola et al. (edit.), *Prostitution and Human Trafficking: Focus on Clients*, Springer, 2008;
- ECHR, *Case of Rantsev v. Cyprus and Russia*, Application n. 25965/4, Judgement 7 January 2010;
- Forced Labour & Trafficking in Europe: How People are Trapped in, Live Through & Come Out*, International Labour Organization, 2008;
- Gallagher A., David. F., *The International Law of Migrant Smuggling*, Cambridge University Press, 2014;
- Lee M., *Trafficking and Global Crime Control*, SAGE Publications Ltd., 2011;
- Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking*, Working Group on Trafficking in Persons, CTOC/COP/WG.4/2010/4;
- O'Brien et al, *The Politics of Sex Trafficking*, Palgrave Macmillan, 2013;

- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Netherlands, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the former Yugoslav Republic of Macedonia, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by San Marino, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Andorra, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine, GRETA, Council of Europe, Strasbourg, 2014;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France, GRETA, Council of Europe, Strasbourg, 2013;
- Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria, GRETA, Council of Europe, Strasbourg, 2011;
- Vae victi(m)s? Towards building a human rights approach in combating trafficking in human beings”, Joint project of Max Planck Institute für ausländisches und internationales Strafrecht and Zagreb Faculty of Law;
- Winterdyk et al. (edit.), Human Trafficking: Exploring the International Nature, Concerns and Complexities, CRC Press, 2011.