

**Conference on Prevention of and Fighting  
Against Trafficking in Human  
Beings with a Particular Focus on Enhancing  
Co-operation in the Process of European Union  
Enlargement**

**Brussels**

**18<sup>th</sup> to 20<sup>th</sup> September 2002**

***Discussion Paper***

***'Law Enforcement Co-operation with Non-  
Governmental Organisations, with  
reference to the Protection of Victims and  
Victims as Witnesses'***

***Prepared by Paul Holmes  
International Law Enforcement Co-  
ordination Consultant***

## *Table of Contents*

<b><i>Part One</i></b> – Introduction	<b>3</b>
<b><i>Part Two</i></b> – Background & rationale to Co-operation	<b>4 – 7</b>
<b><i>Part Three</i></b> – Legislative and Structural Basis for Co-operation	<b>8 – 9</b>
<b><i>Part Four</i></b> – Risks Attached to Co-operation	<b>10 – 11</b>
<b><i>Part Five</i></b> – Thematic Recommendations	<b>12 – 16</b>
<b><i>Part Six</i></b> – Specific Recommendations – Trafficked Victims	<b>17 – 22</b>
<b><i>Part Seven</i></b> – Specific Recommendations – Victim-Witnesses	<b>23 - 29</b>

## ***Part One***

### ***Introduction***

#### ***Introduction***

It is the intention of this discussion paper to examine and review the relationship between law enforcement agencies and non-governmental organisations in the context of the combat of trafficking of human beings.

The paper will look at the rationale behind the co-operation between the two entities and propose a number of recommendations as to how the co-operation relationship could be standardised and improved.

The paper will be set out in the following sections:

- *Background and rationale to co-operation*
- *Legal and structural basis for co-operation*
- *Risks attached to co-operation*
- *Review and recommendations for the future*

The recommendations will be set out in three sub-sections:

- *Thematic recommendations*
- *Specific recommendations - trafficked victims*
- *Specific recommendations - trafficked victim-witnesses*

(N.B. Throughout this paper, the female pronoun has been used when referring to trafficked victims – this is simply for grammatical ease and is not intended to exclude male victims from the recommendations).

## *Part Two*

### *Background and Rationale to Co-operation*

#### ***Background***

Following the emergence during the course of 1990s of the organised international criminal phenomenon of trafficking in human beings, it has been rightly regarded as axiomatic that for the response to the challenge to be effective, it has to be multi-agency in character.

Within this broad, multi-agency response, the two critical, front line entities are the law enforcement agencies and the inter-governmental and non-governmental organisations that exist to provide assistance to trafficked victims.

Historically, the grave violations of the human rights of trafficked victims and the long-term impact upon them has meant that it was quickly recognised that law enforcement agencies could not address this crime on their own. The urgent specialist needs of trafficked victims could clearly not be met by law enforcement officers who possessed neither the skills, resources or time to provide the appropriate level of care and assistance to the victims.

Some inter-governmental and non-governmental organisations already existed to provide humanitarian support across a variety of sectors and they were able to build upon their existing operational experience to develop the highly specialised physical, sexual and psychological programmes of care and counselling that were urgently needed by the victims of this new form of abusive crime.

From this initial phase, the co-operation relationship between the law enforcement agencies and inter and non-governmental organisations has developed on a relatively ad hoc basis to the point where there is a significant divergence in the practical application of the relationship.

Within the European Union Member and Candidate States, there is a general acknowledgement of the critical importance of the role of inter and non-governmental organisations and an acceptance of the interdependency of the relationship between law enforcement officers and NGO personnel in the provision of a comprehensive response to the challenge presented by trafficking crime.

As stated above, across the Member and Candidate States, the practical application of the co-operation relationship varies from formal, national

protocols to loose co-operation on a case-by-case basis. Equally, at the operational level, the relationship between the front line personnel on both sides ranges from one of trust and close operational co-operation to one of suspicion and reluctance to practically embrace the proven benefits of the joint approach and to accept the interdependency upon each other.

### **Rationale**

To address the issue of co-operation thematically, law enforcement agencies and non-governmental organisations should co-operate within four closely inter-related categories if they are to achieve the common goal of providing a holistic response to trafficking crime:

- a) **Prevention by reducing the number of available victims** – through education and awareness raising campaigns
- b) **Prevention by reducing the number of traffickers** – through successful identification, investigation and prosecution
- c) **Victim assistance** – rescue, care and support, repatriation and re-integration
- d) **Victim – witness assistance** – physical and judicial protection

Within these broad categories, both entities should be working towards the same common humanitarian purpose to prevent and reduce and trafficking, alleviate the impact upon the victims of it and to punish those criminals that practice it.

To achieve this common purpose, both sides depend on each other in a number of key ways:

Broadly speaking, law enforcement officers should accept that they depend upon the non-governmental personnel for three main reasons:

- a) *Because of the endemic lack of trust in law enforcement officers that is exhibited by trafficked victims, it is the IGO-NGO personnel that are able to build trusting relationships with them*
- b) *Because the high-grade intelligence that is so critical to the successful identification and investigation of traffickers is likely to be provided by the victims to IGO-NGO staff, not to police officers*
- c) *Because it is IGO-NGO staff that have the specialist skills to treat, counsel and accommodate the victims that investigators wish to convert in to witnesses*

Non-governmental organisations personnel should accept that they depend upon the law enforcement agencies for three broad reasons:

- a) Because it is the law enforcement agencies that have the legal powers and resources to respond to requests to enter and remove victims from exploitative situations*
- b) Because, in certain instances, it is the law enforcement agencies that refer trafficked victims to the non-governmental organisations*
- c) Because, in certain instances, it is the law enforcement agencies that provide levels of protection to victims and non-governmental personnel*

In brief summary, this is the current situation as regards co-operation between law enforcement and inter and non-governmental organisations and the developments of the counter-trafficking response within both entities is to be welcomed.

Notwithstanding these remarks, the current status quo in the co-operation relationship is insufficient. As things stand, it offers only continuity of the current position; fragmented law enforcement counter-trafficking tactics that fail to maximise the potential of the victims and the continued treatment of an unending supply of victims by highly skilled and specialised non-governmental personnel.

The current reality, rather than offering concrete potential to actually reduce the number of victims and the scale of the problem, proffers a vision of continued treatment of the symptoms of the crime as opposed to addressing the practical operational cause of it – the trafficker.

Without doubt, it can be persuasively argued that the most effective and sustainable way to combat the cause of trafficking is to attack the root causes, namely continued economic deprivation and feminisation of poverty within the countries of origin.

That is not the point of this paper; even if all relevant parties accepted the force of the argument and immediately implemented a concerted campaign of economic development aid within the origin countries, it would not bear measurable fruit in the immediate and medium term future to the extent of significantly reducing the number of trafficked victims.

It is this reduction in the number of victims that should be the common objective of law enforcement agencies and non-governmental organisations. In order to achieve this goal, it is essential to maximise the joint potential of the law enforcement agencies and inter and non-governmental organisations to identify, prosecute and convict the traffickers.

Delivering a significant increase in the rate of detection and imprisonment of these ruthless criminals offers the best and most immediate means of attaining this common objective. As the law enforcement agencies in the Member and Candidate States develop the professionalism, specialisation

and focus of their investigative response, it will become a logical progression on their part to seek to convert more victims into witnesses.

They cannot achieve this without co-operation and assistance of the inter and non-governmental sectors, whether it is by seeking access to victims within their care or seeking their support to accommodate and care for victims that have already agreed to testify against their exploiters.

In order to achieve this, it will be necessary to move the co-operation relationship between the two entities onto the next operational level that will allow the law enforcement agencies and criminal justice systems to optimise the asset value of the victims of trafficking as witnesses in the prosecutions of their traffickers.

Highly credible and reputable inter and non-governmental organisations will only support this strategy if certain conditions are fulfilled that will satisfy their humanitarian and legal duty of care to the victims that they assist.

This is the challenge for law enforcement agencies and criminal justice systems:

*To create the framework and conditions within which trafficked victims can cease being disenfranchised by fear from exercising their legal rights and be ready to provide the highest quality evidence of all against their exploiters.*

This is the major shift in the strategic counter-trafficking approach and there are significant inherent risks attached to it. To un-lock the potential whilst simultaneously addressing the risks, the mechanisms of the relationship of co-operation between law enforcement agencies and inter and non-governmental organisations will need to be identified, standardised and agreed.

## **Part Three**

### ***The Legislative and Structural Basis for Co-operation***

#### ***The Legislative and Structural Basis for Co-operation***

The operational rationale behind the co-operation between law enforcement agencies and non-governmental organisations is overwhelmingly reinforced by all of the relevant international conventions, protocols, directives and European initiatives on the subject of trafficking in human beings.

The relevant articles of the instruments and structures cited below provide the legal and moral foundation for co-operation between the two entities in the following general categories:

- a) Prevention activities*
- b) Education and awareness raising activity*
- c) Provision of physical, sexual and psychological assistance to victims*
- d) Provision of information to victims*
- e) Co-operation and partnership between law enforcement and civil society*
- f) Joint training initiatives*
- g) Information exchange between law enforcement and non-governmental organisations*
- h) Rights of victims and conditions under which they should testify*

The international instruments and structures are as follows:

*The United Nations Protocol to Prevent, Suppress & Punish Trafficking in Persons, Especially Women & Children, Supplementing the UN Convention Against Trans-national Organised Crime*

Article 6, 7, 8, 9 and 10

*European Union Council Framework Decision on Combating Trafficking in Human Beings*

Article 7

*European Council Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography.*

Articles 9 and 10

*European Union Directive on Short-Term Residency Permits*

Articles 7, 8, 9, 13, 14 and 15

*The European Union JHA Ministers Meeting – September 2001 – The Twelve Commitments in the fight against trafficking in human beings*

Commitments 8, 9 and 10

*United Nations Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography*

Articles 8, 9 and 10

*The United Nations Office of the High Commissioner for Human Rights Principles and Guidelines on Human Rights and Human Trafficking*

Guidelines 2, 3, 5, 6, 9, 10 and 11

*The Council of Europe Recommendation No R (2000) 11*

Chapters 2, 3, 4, 5 and 7

*Organisation for Security and Co-operation in Europe Ministerial Council on Enhancing Efforts to Combat Trafficking in Human Beings*

Council Decisions 1 and 6

*Europol Crime Strategy – December 2001*

Recommendation 5.3.2.11 – NGO and witness assistance

## **Part Four**

### ***Risks Attached to Co-operation***

#### ***Risks Attached to Co-operation***

It would be difficult to under-state the level of risk posed to trafficked victims by the criminals that exploit them. The capacity of the traffickers to execute reprisals against those victims who have managed to escape from their exploitation and or testified against them is a documented reality.

There have always been risks attached to the victims of trafficking and to a lesser level, to those individuals that provide them with the shelter and assistance, but the level and extent of the risk is likely to alter radically as operational law enforcement and non-governmental organisation co-operation produces more victims that are prepared to testify against their traffickers.

It is critically important to make the distinction here. A victim that escapes exploitation and receives shelter and assistance represents a 'lost investment asset' in the eyes of the trafficker, but does not represent a specific threat to the criminal, beyond the negative business consequence if multiples of victims begin to defect without penalty. For the trafficker, this possibility is bad for business credibility and profitability and is therefore enough to trigger reprisals against the escaped victim in order to ensure compliance across the business spectrum.

However, once the victim's status changes from one of 'escapee' to 'prosecution witness', the situation and risk level changes dramatically. The 'lost investment asset' that formerly posed no specific threat now represents a very real and present threat to both the liberty and profits of the trafficker. This is almost certain to compel the trafficker to implement reprisals in an attempt to prevent the victim from giving her testimony.

However, given that the victim-witness will almost certainly be receiving support and possibly accommodation from the inter and non-governmental organisations, the level of risk is not only raised but also extended to include:

- a) Risk to the trafficked victims who wish to testify*
- b) Risk to the families of such victims*
- c) Risk to the inter and non-governmental organisation victim assistance personnel in general*
- d) Risk to the shelter staff and premises in particular*

It is therefore of critical importance that this new level and range of risk is fully recognised and addressed. As this new co-operation strategy develops

between law enforcement agencies and inter and non-governmental organisations, it is well within the bounds of probability that traffickers will step up their efforts to infiltrate the support organisations in order to identify and locate the shelters and co-operating victims that represent a threat to their liberty.

If law enforcement agencies and inter and non-governmental organisations are to continue to combat trafficking by maximising the potential to reduce trafficking through the use of the victims to secure the conviction and imprisonment of the traffickers, these risks cannot be avoided.

The means by which to manage them is to ensure that the mechanisms of the relationship of co-operation between law enforcement agencies and inter and non-governmental organisations recognise the risks, identify a standardised method of assessing them and provide jointly agreed programmes of protection for the victims and those that assist them.

## **Part Five**

### **Review and Recommendations for the Future**

#### **Thematic Recommendations**

The thematic recommendations set out below should be considered in parallel with the similar recommendations set out in the discussion paper 'Prevention and Reduction of Trafficking in Children'. The themes of a European Multi-Agency Experts Group, a European monitoring function, joint, specialised training and the creation of an IGO-NGO network are common to both papers simply because the recommended themes are consistent and relevant across the spectrum of counter-trafficking strategy

#### **Thematic Recommendation 1**

***Creation of a European Multi-Agency Experts Working Group to research, design and publish a set of minimum standards and best practice models in respect of all forms of law enforcement and inter-governmental and non-governmental organisation co-operation.***

The objective would be to create a European set of minimum professional standards to govern the co-operation between the two entities that would act as the template for all co-operation activity, such as intelligence exchange, joint training and witness protection etc.

Whilst this co-operation model would be researched and designed at the European level, the standards would have to retain sufficient flexibility to enable Member and Candidate States to adapt them to local conditions, without compromising upon the principles and practice contained in the minimum requirements.

The topics to be addressed by this multi-agency 'centre of excellence' would include model minimum standards and best practices in relation to:

- a) *Creation of an IGO-NGO European Network*
- b) *Creation and implementation of an IGO-NGO Accreditation Scheme*
- c) *General protocol of the principles of police and judicial co-operation with the IGO-NGO sector*
- d) *Protocol of exchange of material for education and awareness raising campaigns*
- e) *Protocol for intelligence evaluation and exchange*

- f) *Protocol on victim assistance and judicial treatment of victim witnesses*
- g) *Protocol for joint witness protection programmes*
- h) *Matrix for risk assessment and security advice*
- i) *Development of joint training modules*

The first task of the group would be to identify and reach common agreement on the exchange and co-operation policies, standards and operational best practices

It would be the role of this group to draw all the various multi-agency strands of the counter-measures into a coherent and co-ordinated strategy that is applied across the Member and Candidate States.

Amongst the multi-agency partners to be included in the group should be expert representatives from across the IGO-NGO sector, Europol, Eurojust, The Police Chiefs Task Force and other expert operational practitioners as required.

This Experts Working Group could be developed from the existing law-enforcement entity based at Europol or could be created as a completely new structure. Given the specific nature of it's role and tasks, the operating costs of the recommendation could qualify for funding from the EU 'AGIS' programme.

#### ***Thematic Recommendation 2***

***Creation of a small, multi-disciplinary group at the European level to monitor the implementation and adherence to the minimum standards and best practices published by the above mentioned Experts Working Group.***

To optimise the impact of the dissemination of minimum standards and best practices outlined above, it will be necessary to create a mechanism to actually monitor their implementation and assess their practical value at the operational level.

The group could be staffed with a small, permanent secretariat of specialist personnel drawn from the key agencies and organisations of law enforcement, prosecution and victim assistance. Whilst operating independently of the Experts Working Group, it could operate under the same conditions and budgetary arrangements as those set out above.

#### ***Thematic Recommendation 3***

***Creation of a European network of inter-governmental and non-governmental organisations with a 'single point of liaison contact' within each country***

It is the accepted wisdom that effective counter-trafficking strategies and tactics require a multi-agency response. Within this axiom, the key dimensions are law enforcement agencies, the prosecutorial agencies and the various victim assistance organisations.

European networks already exist in respect of the first two in the form of Europol and Eurojust – it is vital to create an identical structure and capacity in respect of the third dimension.

#### ***Thematic Recommendation 4***

##### ***Creation of an independent accreditation mechanism for inter and non-governmental organisations working in the counter-trafficking field***

There are clear indicators that attempts are being made by traffickers to infiltrate the non-governmental sector. As growing numbers of victims are supported by the inter-governmental and non-governmental sector and more of them elect to become witnesses, it will become increasingly inevitable that these attempts at infiltration will grow and become more sophisticated.

It is essential that law enforcement agencies are able to be sure that the support organisations to whom they are referring victims for care and protection, whether they be inter-governmental or non-governmental organisations, are bona fide, credible and have the capacity to deliver the requisite specialist care and assistance.

For such an accreditation mechanism to be acceptable to all the entities involved within the Member and Candidate States, it is essential that it would have to incorporate an independent element and that accreditation should not solely be within the governmental gift. As a suggestion, this function could be allocated to the European Multi-Agency Experts Monitoring Group that could bring the requisite level of international overview and independence.

#### ***Thematic Recommendation 5***

##### ***Development of a European protocol of principles of co-operation between law enforcement and inter-governmental and non-governmental agencies***

The protocol would set out the principles that are the foundations of co-operation within the following categories:

- a) *Protocol of exchange of material for education and awareness raising campaigns*
- b) *Protocol for intelligence evaluation and exchange*
- c) *Protocol on victim assistance and judicial treatment of victim witnesses*
- d) *Protocol for joint witness protection programmes*

As the response of law enforcement agencies to trafficking becomes more specialised with the creation of task forces and specialist squads and as the victim assistance programmes become more widespread and effective, the co-ordination relationship will grow.

The development of co-operation will involve highly sensitive issues that should be governed by commonly agreed principles between the two sides and these should be clearly set out. The identification and promulgation of these principles could form one of the first tasks of the Experts Working Group.

The principles would cover themes such as:

- a) Acknowledgement of the crucial importance of co-operation to the potential of all counter-trafficking strategy
- b) The interdependency of each side on the other
- c) A commitment to work together to rescue and assist victims first and identify and convict traffickers second
- d) The rights and responsibilities of each side

The specific operational protocols on subjects such as intelligence exchange and witness protection would comply with the letter and spirit of the principles in each case.

#### ***Thematic Recommendation 6***

***To research, develop and deliver case history based training modules on law enforcement and IGO-NGO sector co-operation***

The intention is to design and deliver highly technical training modules to create more specialists in the field and to enhance those that are already operating. The material will be prepared on the basis that those receiving the training will have operational experience in the field.

These modules would be researched and designed in co-ordination with the multi-agency Experts Working Group referred to at Recommendation 1 above and would reflect the principles, minimum standards and best practices that are to be identified and disseminated by them.

There is a need for the identification and development of multi-agency training modules that incorporate police, prosecutors and inter and non-governmental organisation personnel. The objective of the training would be to develop a bank of case history based 'models' that promulgate the minimum standards and best practices covering the whole area of law enforcement co-operation with the inter and non-governmental sector.

Probably the most sensitive and challenging training module will be the one addressing the interviewing of the victims. Whilst victims are the primary and highest quality sources of high-grade evidence, they are also the most traumatised individuals who have the most to lose from co-operating with the criminal justice system.

It is the personnel and counsellors of the inter and non-governmental sector that are the most experienced and skilled in the interview of victims and it is they who should be given the lead responsibility for designing and delivering the victim interview training skills to law enforcement investigators.

This entire training initiative could be sponsored at the level of the Union and be jointly implemented by EuroJust, Europol and the European Police College. However, it is important to acknowledge that the co-operation relationship can be sensitive for the non-governmental sector and it may be preferable for the joint training to be delivered at an independent venue that is not so closely identified with the law enforcement function.

It is important that police investigators, prosecutors and accredited personnel providing assistance and care to the child victims are trained together because the role, interdependency and professionalism of each are ultimately critical to the successful conduct of the co-operation that will provide the foundation stones for the rescue and support of victims and the successful prosecution of traffickers.

Joint training, at the national and international level will enhance their collective capacity as each becomes more informed as to the problems, requirements and responsibilities of the other.

As an additional but nonetheless important benefit, this joint training programme would facilitate the building of the crucial networks of specialists.

## **Part Six**

### **Specific Recommendations**

#### **Trafficked Victims**

The recommendations contained in this part of the paper address the subject of the trafficked victim and considered a range of issues that arise in respect of victims, irrespective of whether or not a victim subsequently decides to become a witness.

The decision by a victim to co-operate with the criminal justice system creates a completely new and additional set of challenges and they are specifically considered in the following section.

The research and design of the activities set out in the following recommendations would be most logically allocated to the multi-agency Experts Working Group referred to under Thematic Recommendation 1 above

#### **Recommendation 1**

##### ***Development of principles of continuous risk assessment***

Risks will always exist to trafficked victims, particularly in the case of those who are in shelters and to NGO personnel that provide care and assistance to them.

These continual risks to victims and NGO staff rise significantly if a victim then elects to become a witness and it is essential to design and reach agreement upon a formula of minimum standards of continuous risk assessment that could be uniformly implemented in all countries that provide assistance to victims.

The principles underpinning the risk assessment process should be applied by law enforcement and IGO-NGO personnel are as follows:

- a) *Law enforcement and inter and non-governmental agencies have a clear humanitarian duty of care to the victims of trafficking crime*
- b) *In accordance with a number of international legal conventions, law enforcement and inter and non-governmental agencies may have a legal duty of care to the victims of trafficking crime*
- c) *A critical part of fulfilling this duty is to conduct a risk assessment in relation to existing and potential victims.*

*d) The risk assessment should be carried out as soon as possible after a trafficking victim has come to notice and then become a continuing process.*

The risk assessment procedure should always be applied sequentially to the four following categories;

- a) The current victim that has come to notice and is the subject of the risk assessment*
- b) Other outstanding victims that are still being exploited*
- c) Other potential victims that maybe on the brink of being trafficked and exploited*
- d) IGO-NGO personnel that assist the victims*

When conducting the risk assessment process in respect of victims, the officer or IGO-NGO personnel concerned should always pose the four following questions:

- a) What is the level of risk posed to the current victim and personnel?*
- b) Are there other outstanding victims to be considered – if so, what is the level of risk posed to them?*
- c) Are there other potential victims about to be trafficked – if so, what is the level of risk posed to them?*
- d) Is the level of risk posed to current, outstanding or potential victims so high that it demands immediate intervention?*

## **Recommendation 2**

### **Development of a matrix of risk assessment indicators**

Clearly, the level and type of risk to victims and IGO-NGO personnel is likely to vary according to location and circumstances and it will not be possible to devise a matrix that addresses every possible scenario.

However, it would be possible to design a list of indicators and benchmarks for the assessment of risk. This recommendation cannot be exhaustive, but the types of issues that could be incorporated into a matrix for general reference are as follows:

- a) Generic assessment of the trafficking situation in the State concerned*
- b) Generic and historic assessment of the criminal networks involved*
- c) Generic and historic review of previous cases and victim accounts*
- d) Level of risk indicated by the current victim(s) account*
- e) Capacity and propensity of the traffickers to implement reprisals*
- f) Changes of circumstances – for example, a victim becomes a witness*
- g) Location and vulnerability of the victim shelter*
- h) Level of security measures in place at the shelter*

- i) Resilience and stability of the victim*
- j) Resilience and stability of the personnel*

### **Recommendation 3**

#### ***Development of protocol of minimum standards for law enforcement and IGO-NGO personnel in the treatment and care of trafficked victims***

The intention is to formulate a minimum standard of treatment for trafficked victims from the moment that they come to notice.

In respect of law enforcement officers, the standards should incorporate the following minimum response

The principles upon which this humanitarian approach should be based are as follows:

- a) That the safety of trafficked victims and their families and loved ones is the paramount consideration at all times and the direct responsibility of the law enforcement officer*
- b) That the officer has a clear duty to conduct a continuous process of risk assessment in respect of the safety and welfare of the victims and their families at every stage of the investigative and judicial process and beyond.*
- c) That the officer has a clear duty to be open and honest at all times with the victims so that they are made fully aware of the issues, responsibilities and potential consequences and risks attached to any decision that they may be called upon to make.*
- d) That the officer has a clear duty to ensure that the victims are made fully aware of all available support measures and services that exist to help them overcome their ordeal and that the victims are enabled to establish initial contact with them.*

Clearly, the four responsibilities of safety, risk assessment, honesty and facility that are itemised above would and, indeed, do apply in equal measure to the IGO-NGO personnel. However, it is important to make the distinction because the primary responsibility rests with law enforcement agencies and cannot be abrogated by them.

The duty outlined under sub-paragraph (d) above is intended to also apply to trafficked victims who are to be removed or deported from one State back to another, usually the country of origin. Many instances occur where trafficked victims are removed; in some jurisdictions, their willingness or otherwise to co-operate does not stop the removal or in cases whereby their refusal to co-operate on grounds of fear disqualifies them from any other course of action.

In such cases, the law enforcement agency concerned should ensure that the removal is delayed sufficiently to enable contact to be established with IGO-NGO support in the country to which the victim is being removed so that assistance can be made available upon arrival.

This is one of the reasons why the creation of the European IGO-NGO 'single point of contact' network would prove so operationally useful. For their part, the IGO-NGO sector could produce and distribute brief information leaflets, in the language of the country in which the organisation is based that could be made available to the police conducting the removal who could then ensure that the leaflets are handed to the victims prior to their removal.

The IGO-NGO sector should be specifically responsible for the provision of minimum standards of care and support within the following categories:

- a) *Accommodation – in a shelter or other local arrangement*
- b) *Sexual, physical and psychological health assessment and treatment*
- c) *Legal and civic counselling*

#### **Recommendation 4**

##### ***Development of protocol for the exchange of intelligence between law enforcement agencies and the inter-governmental and non-governmental organisations***

Both sides of the counter-trafficking equation receive trafficking intelligence from a variety of sources and both stand to mutually benefit from the exchange of intelligence.

Law enforcement agencies can use the intelligence material to develop counter-trafficking strategies and operations and for the efficient deployment of resources.

For the IGO-NGO sector, thematic intelligence material provides them with an opportunity to tailor education and awareness raising campaigns. More precise intelligence may also enable them to provide very specific advice to victims and potential victims that they come into contact with.

Whilst this is a highly sensitive and potentially risky subject, victims should not be discouraged from providing intelligence for two reasons:

- a) *With the strict proviso that the intelligence material is properly and securely handled, it gives the victim an opportunity of at least contributing to the combat of trafficking in circumstances where the victim cannot countenance the prospect of acting as a witness. This should not be forgotten – enough victims are already disenfranchised from their legal rights through fear and they should be allowed to provide intelligence if they choose to do so.*

- b) The intelligence known to victims is always likely to be of high value in the development and deployment of operational strategies and resources and not to tap into such a rich source of assistance would be derelict.*

Notwithstanding the fact that both entities may receive intelligence from various sources such as intelligence de-briefs, it is self-evident that the most valuable source of high-grade intelligence comes from the victims themselves. Whilst not all trafficked victims are prepared to become witnesses against their traffickers for reasons that are well documented and understood, experience has shown that many are prepared to provide detailed, high quality intelligence about their exploiters.

A frequent opportunity for intelligence gathering from victims may occur for law enforcement officers and IGO-NGO sector personnel when trafficked victims are removed or assisted to return from countries of destination countries. The optimum time for intelligence de-briefing may arise in either the origin and destination countries, either before victims are compulsorily removed or voluntarily assisted or when they arrive home, either as deportees or assisted return victims.

To gather the intelligence and manage the sensitive security issues that surround it, it is necessary to develop a protocol to regulate the recording, evaluation and exchange of the material between law enforcement agencies and inter and non-governmental organisations.

Such a protocol should address the following issues

- a) A common, checklist style format should be devised to provide a framework for the intelligence gathering that can be used by both sectors*
- b) A common formula for the evaluation and dissemination of intelligence material should be designed that would be used by both sides. A common evaluation system is crucial to enable either side to withhold particular intelligence that could identify the source of the intelligence.*
- c) The same principles apply to the dissemination system – it may be necessary to release intelligence but on a restricted basis. The key point is that the system for achieving this is commonly agreed and implemented so that both sides are operating to the same parameters*
- d) Joint training on the recording, evaluation and dissemination limits of intelligence material would be researched and delivered to law enforcement and IGO-NGO personnel*
- e) All material exchanged would be de-personalised and sanitised of any intelligence data that could lead to the disclosure of the source*
- f) Personal data would only be exchanged with the express and written permission of the individual concerned*
- g) In the case of intelligence received from victims, interviews would be only be conducted after the victims had been given a full verbal and written explanation of their rights of refusal, the purpose of the*

*intelligence collection and the extent of the dissemination and only after the victim had given written permission.*

*h) In the case of trafficked victims in shelters, interviews would only take place after the victim had been certified as being fit for such an interview by the shelter psychologist.*

### **Recommendation 5**

#### **Protocol agreement for provision of security advice and training**

As has already been stated, trafficked victims are always at risk to some degree and the same principle applies to the IGO-NGO sector personnel that assist them. The level of risk to victims and staff is likely to increase in the case of victim shelters.

Without a doubt, one of the keys to the success of counter-trafficking strategies is the relationship of co-operation between the two crucial actors on the stage, namely, law enforcement agencies and inter-governmental and non-governmental organisations that provide victim assistance and protection.

If the law enforcement investigators wish to have access to victims, they clearly have a vested interest in ensuring that the level of security available to those victims and support personnel is as good as it can be in the given circumstances.

Therefore, law enforcement security specialists should be made available to provide security assessment and advice in respect of both personal and building security to victims and support personnel. Where requested, this co-operation should be extended to include basic personal security awareness training.

Training should also be provided in the continuous process of identification and evaluation of risk and risk management planning.

## **Part Seven**

### **Specific recommendations**

#### **Trafficked Victim-Witnesses**

##### **Recommendation 1**

***Development of a protocol to regulate all issues of law enforcement agency and inter and non-governmental organisation co-operation when a victim elects to become a victim-witness***

Nowhere within the counter-trafficking firmament is the interdependency of the law enforcement and the IGO-NGO sector relationship so evident and so critically important.

There are two key dimensions to be regulated within the co-operation process:

1. Law enforcement access to the victims who may wish to exercise their legal rights and become witnesses against their exploiters
2. Management of the co-operation relationship if the victim does elect to testify against her trafficker

It would be difficult to overstate the sensitivity and potential risks that arise to the safety of trafficked victims and the IGO-NGO support personnel once a victim chooses to become a witness against her trafficker. For this reason alone, it is of the utmost importance that every stage of the co-operation relationship is conducted in accordance with carefully researched and agreed parameters.

The recommendations for protocols to regulate the co-operation relationship is based on the premise of law enforcement agencies seeking access to victims that under the care of the IGO-NGO sector and in the vast majority of instances, that will be the case.

However, police investigators may also have direct access to victims who agree to become witnesses and where the officers then seek the assistance of the IGO-NGO sector for accommodation and specialist support etc. In such cases, the philosophy and principles contained within these recommendations should still be adhered to as far as possible under the circumstances.

It should be the task of the Experts Working Group foreseen in Thematic Recommendation 1 to design and publish a protocol to govern this entire

process. The following recommendations will separately examine each subject area that should go to make up the entire protocol.

## ***Recommendation 2***

### ***Protocol for law enforcement agency access to victims accommodated in IGO-NGO shelters***

The current reality for the law enforcement agencies that lies behind the need for such a protocol is a stark one; in the majority of cases, the victims simply do not trust the police; the IGO-NGO support personnel often share this distrust and harbour grave doubts that the criminal justice system provides the necessary measures of protection for the victims that would allow them to recommend co-operation with it whilst at the same time allowing them to fulfil their humanitarian duties to their victim clients.

Whether such a perception is fair or justified is not the issue for law enforcement, the indisputable issue is that it does exist and needs to be addressed if victims are to become witnesses. The key to overcoming the problem is to build relationships of trust with the victims and support staff and to demonstrate that the criminal justice system can and will provide victims with fair and sympathetic treatment.

The measures set out in these recommendations may offend more traditional law enforcement officers because they will interpret them as representing an intrusion and limitation upon their control of investigations. This is not the case or intention. In fact, they have nothing to lose and much to gain from these measures because they will optimise the chances of a victim remaining as a witness for the duration of the proceedings.

Investigators are repeatedly frustrated by cases in which victims initially provide evidence that they later radically alter or withdraw entirely, usually as a result of fear or full realisation of what is actually entailed in the giving evidence. Understandably, investigators become sceptical when this occurs after much effort and resources have been put into a prosecution that then collapses because of non-co-operation on the part of the victim-witness.

The purpose of these recommendations is to maximise the likelihood of victim remaining committed to her decision to testify because she will have been given an opportunity to consider and to make a fully informed decision from the outset - under conditions that will foster some trust on her part in both the investigators and the system.

It would be counter-productive for law enforcement investigators not to acknowledge the fairness and common sense of these ideas; if a fully informed victim decides not to co-operate, that is her human right and no resources will have been expended on a case that later collapses. If she remains committed throughout because she knew from the outset what was

required of her and that her genuine fears were being addressed it must be to the benefit of the criminal justice system.

**R.2.1. – No disclosure of shelter location and no attendance of law enforcement officers**

The basic rule should be that police investigators and other police personnel should not visit the victim shelters. In certain locations, the existence of endemic levels of corruption makes the presence of police officials at the shelters a security issue and underlines the basic tenet that police officers should not be permitted to attend.

Moreover, it would normally be a matter of best practice that the location of the shelter would never be disclosed to law enforcement agencies so as to ensure that the location could never be revealed by police officers, either corruptly or inadvertently. The officers should only make contact with individuals resident at the shelters through the offices of the organisation responsible for it.

An additional but nonetheless important factor that should preclude police officers from being able to visit the shelters is the fact that it would be likely to cause extreme anxiety to the resident victims who have often had very negative experiences of police officials.

However, whilst these are the basic principles, the matter may have to be left to local negotiation because some schemes are already operating whereby police officers provide the physical security at the shelter.

**R.2.2. – Initial counselling and discussion to be conducted by qualified shelter staff**

Without doubt, the first responsibility of the IGO-NGO personnel is to provide the specialised humanitarian support required by the victim. However, it is also a fundamental human right of the victim to exercise her legal rights and testify against her exploiter - *if she wishes to do so* – and thus it should be a part of the role of the IGO-NGO staff to inform the victim of these rights and as to how they could be accessed.

The matter should be dealt with in the following manner:

- a) *Subject to the prior consent of the shelter psychologist and during a legal counselling session with a qualified member of the staff:*
- b) *The victim should be informed of these rights*
- c) *The fact that she is not legally compelled to act as a witness*
- d) *If the victim indicates a desire to explore the requirements of acting as a witness further:*
- e) *The counsellor will take responsibility for initiating contact with the relevant law enforcement agency.*

***R.2.3. – Conduct of initial meeting between the victim, the counsellor and the law enforcement agency***

An integral part of the co-operation protocol will be the establishment of dedicated lines of communication between the IGO-NGO shelter and the specific law enforcement agency with responsibility for trafficking crime.

The initial meeting should be conducted as follows:

- a) The counsellor will arrange for a meeting to take place with a specified officer at a neutral venue.*
- b) The counsellor will accompany the victim to this meeting*
- c) The victim's identity will not be disclosed to the officer and she will not disclose any of her potential evidence at this stage*
- d) The officer will provide the victim with a detailed verbal and written explanation of the responsibilities and conditions under which the victim would be required to provide her evidence and give her testimony.*
- e) At the conclusion of the interview, the officer would invite the victim to make contact through the counsellor should she wish to pursue her option of testifying against her exploiter*
- f) The meeting will then be terminated.*
- g) The victim can then take as long as she wishes to consult with her counsellor (as required) before making an informed decision whether or not to give evidence*

***Recommendation 3***

***Development and approximation of minimum standards for deposition and testimony conditions for trafficked victims***

Trafficked victims are acutely vulnerable individuals who will usually have to weigh very serious consequences, both to themselves and their loved ones, when reaching a decision whether or no to testify against their exploiters.

As their preparedness to do so is a major and vital component of the counter-trafficking strategy, it is therefore incumbent upon the law enforcement and prosecutorial agencies to ensure that the conditions under which the victims will be required to do so are such as to minimise the inevitable stress of doing so – whilst at the same time maintaining the rights of the accused to a fair trial.

The minimum conditions would include:

- a) Legal right to have an independent counsellor present during the recording of her deposition*

- b) Legal right and technical capacity to provide the deposition by video format*
- c) Guarantee of complete confidentiality before, during and after the criminal proceedings*
- d) Guarantee of escort to, during and from any criminal proceedings*
- e) Legal right and technical capacity to provide live testimony via a video link format*

The evidence of victims is critical to the success of the counter-trafficking effort and it is vital that minimum standards are agreed under which the victims feel able and free to co-operate.

Experience clearly and repeatedly demonstrates that, second only to concerns for their own personal safety and that of their families, trafficked victims are caused severe and genuine anguish by the possibility of their involvement in prostitution becoming public knowledge during the course of the court proceedings. The existence of a risk of disclosure of this fact to their families or close friends as a result of the judicial process is one of the most prevalent reasons for victims declining to exercise their legal rights.

An equal source of fear and anguish for the victims is the prospect of having to be physically in the presence of their exploiter in the same courtroom or building. This fear also applies in respect of being left in the presence of the trafficker's family or associates

These genuine and understandable fears can be addressed by the use of the means described above. None of these measures would in any way compromise the rights of an accused trafficker to a fair trial or deny him or his legal team the opportunity to properly and fairly question the witness. The measures do not require vast sums of money to implement and rely upon simple technical means that are now commonplace in many criminal justice systems.

#### ***Recommendation 4***

##### ***Development of a protocol of co-operation on witness protection***

Once a victim elects to become a witness, the level of risk to her and the support personnel is likely to increase markedly and protection issues must be addressed.

Witness protection for trafficked victims is an extremely complex area. In normal circumstances, a vital witness that was under threat would be placed within a police witness protection programme and placed under physical protection.

This cannot apply in trafficking case because the victims require highly specialised support such as sexual, physical and psychological care that police agencies has neither the skill nor resources to provide. The result is

that witness protection for trafficked victims in the vast majority of cases is provided on a composite basis of co-operation between law enforcement and the IGO-NGO sector that is providing the shelter and care.

Therefore, once a victim becomes a witness, the co-operation mechanism should address the following issues:

***R.4.1. Agreement upon who is responsible for providing protection – when.***

Models already exist in which the law enforcement agencies are responsible for the protection of the victim-witness during the course of any activity outside of the shelter that is related to the criminal proceedings, such as attendance at identification parades, interviews with prosecutors and attendance at court. At all other times, the support personnel are responsible for the victim-witness.

***R.4.2 The law enforcement officers in the case and the shelter management should conduct a joint and immediate review of the risk assessment and management plan in respect of the victim and the IGO-NGO personnel.***

A number of options may be thrown up by this process; it may be necessary for the victim to be accommodated outside of the shelter or it may be necessary to augment the existing security measures with physical protection, emergency communication systems etc. The critical point is that the new situation triggers a fresh review of the attendant risks.

Where the decision was taken to remove the victim from the shelter, it would be necessary to implement a programme of visits under which the victim could continue to receive the necessary levels of specialist care and counselling.

***Recommendation 5***

***Creation of an external witness protection and testimony programme***

As stated, victims as witnesses are critical to the overall success of the counter-trafficking strategy. The level of risk to victims who agree to testify is significantly increased if they decide to act as witnesses.

Moreover, in major, high profile cases, the risks may well become acute, to both the victim and or her family. This risk has to be addressed if witnesses in the most important cases are to be able to testify in safety.

With the advent of the EU directive on short term residency permits for cooperating victims and the proliferation of shelter programmes throughout Europe, consideration should be given to the possibility of re-locating a victim-witness in a neutral country for the duration of the proceedings.

Such arrangement would require the prior agreement of both States and the re-location costs and duration would have to be carefully monitored. The costs could either be borne by the State in which the prosecution is being conducted or could be met by the creation of a separate EU budget line specifically established for such cases.

The victim could then either testify from the neutral State via a video link to the court proceedings being held in the other country or be flown back there under proper conditions of escort protection on the day appointed for her to testify again via a video link in the country concerned.