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Human Trafficking: The Forced Labour Dimensions

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Ministers, Your Excellencies
Helga Konrad, Distinguished Chair of this Task Force
Colleagues, friends and all participants

I am honoured to be invited here today, to make some opening remarks about the forced labour dimensions of trafficking in Europe. This is a timely request, now that the UN Convention against Transnational Organized Crime and its Palermo Trafficking Protocol have recently entered into force.

It is now common wisdom, as indeed recognized in the new international law on the subject, that there are two main outcomes or purposes of the crime of trafficking. First, there is trafficking for sexual exploitation, affecting predominantly women and children. Second there is trafficking for various forms of forced labour and labour exploitation, also covering slavery-like practices and servitude. Once again, the most vulnerable persons, most likely to fall prey to the worst forms of modern slavery at the hands of traffickers, may be women and children. Yet also men, as is increasingly realized, can be victims of the forced labour outcomes of trafficking, as well as smuggling.

This evening, to start a discussion, I should like to dwell on three main points:

First, what do we know about this subject?

Second, how relevant is the concept of forced labour, including the ILO's own Conventions on the subject, to anti-trafficking laws, polices and programmes at the national level? What are the difficulties in carrying out effective prosecutions? And how can these be overcome?

Third, what is actually being done about the new forms of forced labour in Europe, linked to trafficking and migration? And how can we best move forward on this subject of growing concern, within the framework of the Stability Pact and its Task Force on Trafficking?

Forced labour and trafficking: dimensions and trends

Media attention, as we all know, has been mainly on trafficking for sex exploitation. In very general terms, it is acknowledged that irregular migrants can be victims of trafficking in domestic work, entertainment, agriculture, construction, textiles and garments and elsewhere. But it is only when some appalling tragedy takes place, like the death of 20 Chinese workers in Northern England this January, that the labour dimensions of trafficking really catch the public's concern.

The ILO is building up its own data base, as part of its efforts to conduct a global estimate of forced labour today. Eventually, when this work is completed early next year, it should give a fairly reliable estimate of the scale of different forms of forced labour, as well as the profits realized. For the moment, from a data sample of just over 5,000 cases, we can report that approximately one quarter of all trafficking victims in Europe as a whole have been trafficked for labour exploitation. This is slightly more than the global average, and is enough to indicate the urgency of addressing this concern on a more systematic basis.

As for the value and the profits realized, our work is at an early stage. From what we know so far, the profits - of perhaps US\$ 150,000 per head - are certainly greater for the sex traffickers. But some of the high profile cases that have come out in the press recently, point to many millions of profits that can be made by even small organized gangs, for example in agriculture.

From our national studies we are getting some idea of the numbers affected, but also of the complexities in even trying to assess these numbers, when the legal framework is generally so inadequate (I shall return to this point later), when the forced labour outcomes of trafficking have not caught the attention of the main law enforcement bodies, and when resources have not been made available to detect this.

A further issue, clearly coming out from our research in the Balkan countries, and in the principal destination countries for irregular migrants from the Balkans, is that both voluntary migrants and clearly trafficked individuals can end up in forced labour situations abroad. Conditions may be harshest of all for the persons in the clutches of organized criminal gangs. But all irregular migrant workers, even if they cross borders of their own volition, are at risk of highly exploitative labour conditions in certain economic sectors.

At the national level, our first reports now coming out have given some estimates. However, what these show mainly is just how many irregular migrant workers (a significant proportion of whom have been trafficked) have been exposed to some form of coercion and deception. Earlier this month, for example, we launched in Moscow with considerable publicity a report on *The New Forced Labour in Russia: Irregular Migration and Trafficking*. Our researchers concluded that, of between 3.5 and 5 million irregular migrants from mainly the CIS countries, as many as 20 per cent had been locked up or exposed to some form of physical constraint for all or part of the time. This led to the conclusion that as many as one million persons could be in some form of forced labour (a very much higher figure than we would normally expect to give). Far higher percentages of a sample in different regions of Russia had been subject to

other forms of constraint (such as compulsion to work overtime without pay, compulsion to perform work for which consent has not been given, or very lengthy delays in the payment of wages).

We are also completing a report on this issue in Germany, based on extensive interviews with victims, and also with a range of law enforcement authorities and other experts. Once again our researcher has come out with a far higher figure for forced labour victims than we would have expected beforehand, mainly because of the extended interpretation given to forced labour practices. For example only 2.5% per cent of an estimated one million migrant workers (85% of these women) have experienced the use of open violence in order to enforce the acceptance of unfavourable conditions of work and pay. This is primarily the case of women in forced prostitution. But far higher numbers are seen to have submitted to sub-standards conditions of work and pay, because of the threat of arbitrary dismissal, reporting to the police, or some form of intimidation against workers and their families.

This is enough on country-specific situations or figures. But it does illustrate a real dilemma that we and others are facing, in providing practical guidelines and operational strategies against the forced labour dimensions. Forced labour is a crime, but in the private sector it is a crime that is hardly ever detected, prosecuted and punished. And when there is a continuum, ranging from perhaps minor deception over conditions of work to flagrant cases of physical restraint and violence, it is obviously important to distinguish the serious from the lesser offences.

This brings me on to the concept of forced labour itself, in both international law and national legal systems.

Forced labour: the concept

We now need to turn to concepts of exploitation, including forced labour or services, and slavery or practices similar to slavery.

Most of you here today will be familiar with the definitional Article in the Palermo Trafficking Protocol, and there is no need to go into great detail. Suffice it to say, first, that the means or threat or the use of force or other forms of coercion, for the purpose of exploitation, is seen as one of the key elements of a trafficking relationship. And second, that the Protocol draws a basic distinction between different forms of exploitation. On the one hand there is exploitation of the prostitution of others or other forms of sexual exploitation. On the other hand there is forced labour or services. Slavery or practices similar to slavery, and servitude. A third aspect of exploitation is the removal of organs, a particular matter with which I shall not be dealing in today's presentation.

In addition, under Article 5 of the Trafficking Protocol on Criminalization, each State Party is to adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in this earlier definitional article.

The implications are of course far-reaching. Before 2000, only a handful of States had specific legislation on trafficking. And of those that did have, from Germany in Europe through to China in Asia, the majority did indeed construe trafficking as an issue of sexual exploitation, and

relating furthermore only to the exploitation of women and children. An important exception was the United States Trafficking Victims Protection Act of 2000, which provides for terms of up to 20 years imprisonment as well as fines for trafficking with respect to peonage, slavery, involuntary servitude, or forced labour.

Some ILO Member States in Europe and elsewhere are now turning to our organization, seeking guidance as to how to give both legal and practical effect to these provisions. And I distinguish between law and practice, for a very deliberate reason. It is one thing to have a general law - either constitutional or criminal law, or even labour law - which proscribes forced labour and slavery, and perhaps provides for specific penalties for the offence or offences. It is another thing to have clear operational guidelines, which enable law enforcement agencies to identify specific cases of abuse, of the forced labour outcomes of human trafficking, and which can prepare the ground for successful prosecutions against those persons responsible.

A number of our international partners are quite reasonably expecting the ILO to take a lead on this issue. I am pleased to say that we are quite advanced with general guidelines, which should be officially available by the middle of this year. Today I can share the overall thrust of our approach.

Conceptual issues and challenges

The ILO's basic definition of forced labour is fairly straightforward. It has two elements. First, the menace of a penalty, and second, a work relationship for which the said persons have not offered themselves voluntarily. Thus forced labour occurs when people are subjected to some form of coercion, either physical or even psychological, and which they would not otherwise have agreed to perform under the prevailing conditions. This definition was set out almost 75 years ago in the ILO's first Convention on forced labour (No. 29 of 1930), which has since been ratified by 163 Member States and thus enjoys almost universal acceptance. In consequence, the penal legislation of most countries that have ratified this Convention provides for some punishment of the illegal exaction of forced labour.

To say that exacting forced labour is a crime, may be simple enough. Yet how much of modern forced labour is actually investigated and prosecuted? Not, it seems, very much. In fact much national law at present (Germany and the United Kingdom being examples in Europe) does not have a specific offence of exacting forced labour.

One reason is that European societies may not really have come to grips, in either conceptual or legal terms, with the realities of modern forced labour. Forced labour, like slavery and slavery-like conditions, can be a highly emotive term. In Germany for example the very term *Zwangsarbeit* (the literal translation of the term forced labour in the ILO's Conventions), is most commonly associated with the forced labour practices in the concentration camps of the Nazi era. The same is sometimes said about the Russian term, likewise associated with the Gulags of the Soviet era. In other words forced labour is still seen as something which it rarely is today, as an abusive practice perpetrated directly by the State on its citizens, for ideological or political reasons. A government can thus be reluctant to admit to the existence of different forms of forced labour within the country.

Yet a considerable range of existing law can be applied to the international definition of forced labour. Examples are physical violence; physical restrictions on the movement of workers; various forms of debt-bondage, (ie. deliberately inducing persons into a situation of spiralling debt from which they cannot hope to extricate themselves), withholding wages or refusing to pay them; retention of passports and other identity documents; or threat of denunciation to authorities, in order to avoid paying wages and social benefits for work performed.

Each of the above acts, when committed intentionally by an employer against an employee, is likely to be a criminal offence within the criminal law of most countries. Acts of violence for example are likely to come within the scope of the criminal offence of assault. Non-payment of wages can be subsumed under the criminal law of theft. The withholding of identity documents and passports may also be classified as theft or part of the offence of deception, depending on the intention of the employer. Was the intent never to return the documents? Or to deceive and coerce the victim into receiving little or no remuneration? And in many jurisdictions, the threat of denunciation to the authorities can fall within criminal law definitions relating to blackmail.

The list can go on. Yet in practice, there are two major problems to be dealt with.

First, when law enforcement agents are overstretched with a multiplicity of crimes - and also difficulties in securing successful prosecutions - they are unlikely to give much attention to this, except in extreme cases such as the death of 20 Chinese workers in the United Kingdom this January. And because of the legal vacuum, it becomes almost impossible to know how serious are the problems of forced labour and slavery-like practices in destination countries. Because the offence does not exist in strict legal terms, data are not collected. As there are no official data, mindsets are not turned on to the problem.

Second, although the analogous offences may be identifiable, it seems in practice to be very difficult to prosecute those responsible. And this is true for the employers and contractors in the places of origin, let alone for the complex transporting and recruiting agents in the cross-border offence of trafficking. The current trend seems to be towards increasing penalties for the hiring of "illegal" migrant workers. We can see this for example in such countries as France, Germany, Russia, the United Kingdom and probably many others.

Linking prosecution, punishment and prevention: the importance of other ILO standards

It is clearly important to crack down hard on the worst and most egregious forms of forced labour. However, law enforcement measures against a limited number of employers or recruiting agents can only be part of the solution. This is why the ILO, as a standard-setting agency, as part of its anti-trafficking strategy will always draw attention to other Conventions for the protection of workers and particularly migrant workers. It is abundantly clear that problems of coercion in the modern world are frequently connected with seasonal migration, whether within countries or across national borders. And as noted in a recent report by the US National Academy of Sciences, on the monitoring of core labour standards including the ILO's Forced Labour Conventions, "There is no well-accepted international labour standard regarding who pays recruitment fees- the employer or the employee- or the level of those fees in

relation to the worker's wages".

But the coercion exists because women and other migrant workers do not have the real capacity to avoid debt-bondage situations, to know and stand up for their rights, or to seek legal and other remedies without an ever-present threat of denunciation and deportation. A handful of high profile prosecutions of employers is not of itself going to change this situation of vulnerability. The ILO thus draws particular attention to its Conventions on Migrant Workers, notably the migration for Employment Convention (No. 97 of 1949), and the Migrant Workers (Supplementary Provisions) Convention, No. 143 of 1975. These instruments, taken together with other Conventions for the protection of workers' rights, contain a considerably higher set of guarantees than those set out in some more recent international instruments. For example the 1949 Convention requires States Parties to apply without discrimination in respect of nationality (or other criterion as set out) treatment no less favourable than that applied to its own nationals as regards remuneration, including family allowances and other benefits, membership of trade unions and the enjoyment of the benefits of collective bargaining; accommodation; social security subject to specified limitations; employment taxes, dues or contributions and legal proceedings related to matters included in the Convention.

If such provisions were rigorously applied in the destination countries today, with major awareness raising campaigns amongst the migrant workers themselves as well as national authorities, the scope for deception and abuse by the trafficking networks could be greatly reduced.

Capacity building and training requirements:

Given all of the above - the absence of a clear legal framework, the uncertainties as to the borders between trafficking and smuggling, and the paucity of reliable data - the need for training and capacity building is very obvious. The letter of the law can clarify certain issues, and can set out the broad parameters of penalties. There is still a huge amount of work to be done, to sensitize various actors as to how to identify the forced labour situations that do occur, and also to prevent others from occurring. First, the police have to be sensitive to the issues. Second, labour inspectors and other labour authorities have to work together with the police and other law enforcement agencies. Third, worker organizations have a key role to play, in the countries of origin and destination. Fourth, employer organizations and also employment services need to be on constant alert, regulating themselves and carrying out awareness campaigns amongst their members.

It is hard to over-estimate this challenge. It is going to require political commitment and choices, and inevitably the allocation of some resources. When we had our first technical meeting with EUROPOL earlier this month, they explained their commitment in principle. EUROPOL's position is that trafficking is a crime now on the increase, and that their mandate is to support law enforcement activities against trafficking for either labour or sexual exploitation. Yet when it comes to actually doing things, it is often a question of money. It is for lack of resources that EUROPOL's activities are now concentrated only on trafficking for sexual exploitation and on child pornography. This will only change in the future, if European Member States can be convinced of the seriousness of trafficking for forced labour exploitation. But they, like many others, have encouraged us to continue with our efforts. Among other things, they have invited us

to attend their trafficking meeting with high-level police authorities next month, to diffuse this message more widely.

In practice, what are we doing?

Capacity building started earlier this year in Bucharest, with a wide range of actors including the police, labour authorities, recruiting agents, trade unions and NGOs. On trafficking, this was the first time that such a group had ever been brought together. Building on this, we have now prepared a manual on Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers. We hope that it does help clarify the linkages between trafficking and forced labour. But we realize that this is going to be a longterm programme, in which we shall also be "learning by doing", by promoting continued interchange between labour authorities, police and other law enforcement authorities.

This is why, together with the International Centre for Migration Policy Development (ICMPD) in Vienna as our principal partner, we have now embarked on a more significant capacity-building proposal, now covering origin, transit and also destination countries of Europe. Its main objective is to strengthen administrative controls with regard to the detection of forced labour; as well as to cover activities of the private recruitment agencies (including travel, bridal, model and other agencies) that can all form part of the criminal networks involved in trafficking.

A further aim, as I mentioned earlier, is to help private recruitment agencies and private business to regulate their own activities. This is where the ILO can have a particular strength, in reaching out to employers as well as workers as its principal social partners. With a bit of creativity, one can think of all kinds of business enterprise that runs some risk of involvement in trafficking or forced labour, at one stage or another of the trafficking cycle. Airlines and travel agencies, taxi and road services, sea transport and port authorities, to name but a few.

To conclude

When the Task Force chair asked me to make this presentation, she was her usual firm self. She did not want lofty statements about our aims and what we were planning to do. She wanted concrete information about the issues, about what was done, assessed and achieved.

In the circumstances, this has not been easy. We have together with our constituents been addressing a huge new problem area, one to which more lip service than practical attention is given at present, and which in one way or another can affect millions of persons whose rights are severely abused in the modern world.

The invitation, I repeat, came at an opportune but also difficult time because we are still analyzing the results of our first round of research projects. In the course of this year we shall be able to share with you, at least: studies on Germany, Hungary, Moldova, Romania, Turkey and the United Kingdom, on Chinese trafficking and smuggling to France, and on trafficked domestic workers. And we are now working intensively on our next global report on forced labour, which I trust will really shed light on the new forms of forced labour that are affecting Europe and other industrialized regions.

In Europe, the ILO started only last year with the implementation of counter-trafficking projects, covering Albania, Moldova, Romania and Ukraine. These projects will link into awareness raising and training activities in major destination countries, such as Turkey or the United Kingdom. Finally, this month we are starting, after months of preparation, an integrated project on forced labour, migration and trafficking between Tajikistan, Uzbekistan and Russia. We hope that this can be a model for similar interventions elsewhere in Europe, with an integrated approach across the trafficking cycle, combining both prevention and law enforcement, and seeking to involve labour institutions together with other law enforcement agencies.

I firmly believe it is the only way to move forward on the problem, and we sincerely look forward to more intensified cooperation with you all in the months and years to come, as Europe comes more firmly to grips with these unacceptable aspects of our labour markets and working practices.

We have already been formally asked by one European government to provide guidelines on forced labour, for its criminal law amendments now required in order to give effect to the Palermo Trafficking Protocol. Another government, under its Presidency of the OSCE, has given us financial support for a series of studies on the reality of forced labour in different economic sectors of destination countries, mainly in the industrialized world. We are also now expanding this work in Asia, preparing the ground for specific projects of technical cooperation.

So far, we are identifying serious gaps in the legal framework, as well as in the capacity of government institutions including labour departments to investigate the forced labour dimensions of trafficking. The two go together. Unless the criminal activity of forced labour can be clearly specified, with practical examples, it is obviously impossible to pursue criminal investigations. So our programme is now embarking on a complex exercise, involving rigorous surveys of forced labour situations in practice as well as law, on the basis of which we hope to offer some useful guidelines to governments. We expect to be able to provide such guidelines to our Member States over the coming months. And we look forward to collaboration with legislatures in Asia, as elsewhere in the world, to ensure that these complex but important forced labour concerns are placed more firmly on national law and policy agendas.

Thank you for your attention.