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INTERNATIONAL LEGAL COMBATING TRAFFICKING IN WOMEN FROM HUMAN RIGHTS AND GENDER PERSPECTIVE¹

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The article considers specific issues regarding international legal combating trafficking in women from human rights and gender perspective and contains its definition. The author determines that international legal combating trafficking in women has a gender specificity. This brings the vulnerable position of women into focus in the process of development and adoption of measures to prevent trafficking, as well as the provision of assistance to victims and also envisages the involvement of non-governmental organizations. The author proposes a periodization of international legal framework in combating trafficking given the peculiarities of its foundation and evolution. Specific anti-trafficking efforts of the United Nations, Organization for Security and Co-operation in Europe, Commonwealth of Independent States are also considered. Special attention is paid to anti-trafficking activities of the Republic of Belarus.

Keywords: international legal combating trafficking in women; gender; human rights; *due diligence* standard.

О МЕЖДУНАРОДНО-ПРАВОВОМ ПРОТИВОДЕЙСТВИИ ТОРГОВЛЕ ЖЕНЩИНАМИ С УЧЕТОМ ОБЕСПЕЧЕНИЯ ПРАВ ЧЕЛОВЕКА И ГЕНДЕРНОГО РАВЕНСТВА

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Рассматривается международно-правовое противодействие торговле женщинами с учетом обеспечения прав человека и гендерного равенства, формулируется определение последнего понятия. Международно-правовое противодействие торговле женщинами имеет гендерную специфику, что предполагает уделение особого внимания уязвимому положению женщин при разработке и принятии мер по предотвращению данного преступления и оказанию помощи его жертвам, а также опосредует участие неправительственных организаций в этом процессе. Автор предлагает периодизацию договорно-правового регулирования противодействия торговле женщинами с учетом особенностей его становления и развития. Анализируется специфика деятельности Организации Объединенных Наций, Организации по безопасности и сотрудничеству в Европе, Содружества Независимых Государств в данной области. Особое внимание уделено усилиям Республики Беларусь по противодействию торговле женщинами.

Ключевые слова: международно-правовое противодействие торговле женщинами; гендер; права человека; принцип должной осмотрительности *due diligence*.

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Introduction

Combating trafficking in women has been the subject of numerous studies in international and national law. There are a huge number of publications devoted to analysis of international treaties in the said field. Paying special attention to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children of 2000 (Trafficking in persons protocol)² (see [1–5] and other). C. Morcom and A. Schloenhardt consider a gendered conception of trafficking within Trafficking in persons protocol [6, p. 22–24]. Trafficking in women is a complex crime that can be qualified as a crime against humanity or a transnational organized crime (for more information see [7]). It is characterized by a huge number of victims. So there is a need for legal analysis of anti-trafficking

legal measures from gender perspective and human rights approach at international and national levels. The purpose of the article is propose a periodization of international legal frameworks in combating women's trafficking given the peculiarities of its foundation and evolution, also to consider specific issues regarding international legal combating trafficking in women from human rights and gender perspective, to give its definition. Further, the article highlights specific anti-trafficking efforts of intergovernmental organizations such as the UN, Organization for Security and Co-operation in Europe (OSCE), and Commonwealth of Independent States (CIS), and produces recommendations for improving anti-trafficking activities of the Republic of Belarus.

Periodisation of the legal framework for international combating trafficking in women

The development of legal framework for international combating trafficking in women includes four periods. In order to follow the dynamics of its evolution, attention was paid to the following criteria: prevention, criminalization of trafficking in women and related crimes, prosecution and punishment of traffickers, identification of victims, assistance to victims and their protection.

The first period (1899–1918) is associated with the adoption of early international agreements to combat trafficking in women and has a number of features. At the *universal level* primarily international treaties to combat trafficking in women and girls were adopted³ then followed international agreements on the abolition of slavery⁴. Secondly, early international agreements focused on combating the trafficking of white women and girls for sexual purposes. Thirdly, at the international level non-governmental organizations including the National Vigilance Association [8] were

the first to draw public attention to the problem of trafficking in women and girls.

The second period (1919–1944) is associated with the work of the League of Nations and international agreements adopted under its auspices⁵. International agreements of this period relate to the sale of children of both sexes, along with criminal law norms, rules are set out with detailed regulation for the prevention of trafficking in women, the provision of protection of these persons during travel. Within this period, trafficking in women is considered exclusively in the context of prostitution.

The third period (1945–1999) covers the establishment of the UN and the adoption of numerous international documents. These documents can be classified into the following groups: 1) on combating trafficking in women as a criminal offence⁶; 2) on the provision of legal assistance by states⁷; 3) on the protection of human rights, aimed at eradicating the causes and

²Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime of 15 Nov. 2000 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch_XVIII_12_ap.pdf (date of access: 18.03.2020).

³International agreement for the suppression of the white slave traffic of 18 May 1904 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1951/06/19510621%2010-34%20PM/Ch_VII_7p.pdf (date of access: 18.03.2020); International convention for the suppression of the white slave traffic of 4 May 1910 [Electronic resource]. URL: <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1910.html> (date of access: 18.03.2020).

⁴Slavery convention of 25 Sept. 1926 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1955/07/19550707%2000-53%20AM/Ch_XVIII_2p.pdf (date of access: 18.03.2020); Protocol amending the slavery convention of 23 Oct. 1953 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1953/12/19531207%2000-20%20AM/Ch_XVIII_1p.pdf (date of access: 18.03.2020).

⁵International convention for the suppression of the traffic in women and children of 30 Sept. 1921 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1921/09/19210930%2005-59%20AM/Ch_VII_3p.pdf (date of access: 18.03.2020); International convention for the suppression of the traffic in women and children of 30 Sept. 1921 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1921/09/19210930%2005-59%20AM/Ch_VII_3p.pdf (date of access: 18.03.2020).

⁶Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others of 2 Dec. 1949 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1951/07/19510725%2010-37%20PM/Ch_VII_11_a_bp.pdf (date of access: 18.03.2020).

⁷European convention on mutual assistance in criminal matters of 20 Apr. 1959 [Electronic resource]. URL: <https://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/09000016800656ce> (date of access: 18.03.2020); Additional protocol to the European convention on mutual assistance in criminal matters of 17 March 1978 [Electronic resource]. URL: <https://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/0900001680077975> (date of access: 18.03.2020); Convention on legal assistance and legal relations in civil, family, criminal matters of 22 Jan. 1993 // ETALON. Internatl. Agreements. Minsk, 2020.

consequences of trafficking in women⁸, including the prevention and eradication of forced labor⁹, taking into account the special protection of children¹⁰. It should be noted that, despite the large number of accepted international agreements, acts of international organizations and international conferences¹¹, there is no single complex international multilateral agreement of a universal nature containing substantive and procedural criminal law in the field of combating trafficking in women, as well as its prevention, assistance and protection of victims.

The fourth period (2000 – present) is characterized by the adoption of the Trafficking in persons protocol, Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and

child pornography¹², etc. These international instruments have made a significant impact on the modern criminal law assessment of the crime of trafficking in women and children at international (global and regional) and national levels. The definition of trafficking in persons set up in the Trafficking in persons protocol has been reproduced by regional legal instruments of the Association of Southeast Asian Nations (ASEAN)¹³, Council of Europe (CoE)¹⁴ and CIS¹⁵. This period is marked by the active codification of regional international intergovernmental organizations, the ASEAN, CIS, CoE and South Asian Association for Regional Cooperation (SAARC)¹⁶. It should be emphasized that the codification process to prevent and combat trafficking in women continues.

Specific gender-based legal issues in combating trafficking in women

According to Recommended principles on human rights and human trafficking states have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons (para 1)¹⁷. A. Kartusch also mentions the obligation under international human rights law to act with due diligence [9, p.14]. The concept of due diligence is of primary importance in the area of international gender-sensitive legal action against trafficking in women. As the special rapporteur on violence against women has noted in his report, under the due diligence obligation, states have a duty to take positive action to prevent and protect women from violence, punish

perpetrators of violent acts and compensate victims of violence¹⁸.

A fundamental principle connected to the application of the due diligence standard is that of non-discrimination, it implies that states are required to use the same level of commitment in relation to prevention, investigation, punishment and provision of remedies for violence against women as they do with regards to the other forms of violence¹⁹. The obligations to take respective measures are found in treaties at global and regional levels.

It is crucial to consider the international measures meant to combat trafficking in women from a human rights and gender perspective. International agree

⁸International covenant on civil and political rights of 19 Dec. 1966 [Electronic resource]. URL: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (date of access: 18.03.2020) ; Convention on the elimination of all forms of discrimination against women of 18 Dec. 1979 [Electronic resource]. URL: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (date of access: 18.03.2020).

⁹Abolition of forced Labour convention of 5 June 1957 No. 105 [Electronic resource]. URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312250 (date of access: 18.03.2020) ; Home work convention of 4 June 1996 No. 177 [Electronic resource]. URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312322 (date of access: 18.03.2020).

¹⁰Convention on the rights of the child of 20 Nov. 1989 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf (date of access: 18.03.2020).

¹¹Beijing declaration and platform for action of 15 Sept. 1995 [Electronic resource]. URL: https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf (date of access: 18.03.2020).

¹²Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography of 25 May 2000 [Electronic resource]. URL: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx> (date of access: 18.03.2020).

¹³ASEAN convention against trafficking in persons, especially women and children of 21 Nov. 2015 [Electronic resource]. URL: <http://agreement.asean.org/media/download/20160303122945.pdf> (date of access: 18.03.2020).

¹⁴Council of Europe convention on action against trafficking in human beings of 16 May 2005 [Electronic resource]. URL: <https://www.refworld.org/docid/43fde544.html> (date of access: 18.03.2020).

¹⁵Agreement on cooperation of states-members of the Commonwealth of Independent States in combating human trafficking, organs and tissues of 25 Nov. 2005 // ETALON. Internatl. Agreements. Minsk, 2020.

¹⁶SAARC convention on preventing and combating trafficking in women and children for prostitution of 5 Jan. 2002 [Electronic resource]. URL: <http://www.jus.uio.no/english/services/library/treaties/02/2-04/saarc-traff-women-children.xml> (date of access: 18.03.2020).

¹⁷Recommended principles and guidelines on human rights and human trafficking, E/2002/68/Add.1 [Electronic resource]. URL: <https://undocs.org/en/E/2002/68/Add.1> (date of access: 18.03.2020).

¹⁸Integration of the human rights of women and the gender perspective: violence against women. The due diligence standard as a tool for the elimination of violence against women [Electronic resource]. URL: <https://undocs.org/E/CN.4/2006/61> (date of access: 18.03.2020).

¹⁹*Ibid.* Para 35.

ments on combating trafficking in women envisage the following obligations of states to act with due diligence.

An obligation to criminalize trafficking in women (Art. 1 of the International convention for the suppression of the white slave traffic of 1910 (Convention of 1910), Art. 3 of the International convention for the suppression of the traffic in women and children of 1921 (Convention of 1921), Art. 1, 2 of the International convention for the suppression of the traffic in women of full age of 1933 (Convention of 1933), Art. 1 of the Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others of 1949 (Convention of 1949), para 1 of Art. 5 of the Trafficking in persons protocol, Art. 18 of the Council of Europe convention on action against trafficking in human beings (CoE convention of 2005 No. 197), para 1 of Art. 3 of the SAARC convention on preventing and combating trafficking in women and children for prostitution (SAARC convention of 2002), Art. 5 of the Convention against trafficking in persons, especially women and children of 2015 (ASEAN convention of 2015).

An obligation to properly investigate and prosecute crimes of trafficking in women and hold perpetrators accountable. It is envisaged that appropriate jurisdiction will be established with respect to criminal offenses of trafficking (Art. 31 of CoE convention of 2005 No. 197, Art. 10 of ASEAN convention of 2015). In the case *L. E. v. Greece* the European Court of Human Rights stated, that this is an obligation not of result, but of means (para 68). A requirement of promptness and due diligence is implicit in all cases, but when it is possible to remove the individual concerned from a harmful situation, the investigation must be carried out as a matter of urgency²⁰.

An obligation to identify victims, provide protection and assistance to victims. International agreements stipulate that participating states should take into account the age, gender and special needs of victims when providing assistance and providing protection to victims (para 4 of Art. 6 of Trafficking in persons protocol, para 12 of Art. 14 of ASEAN convention of 2015). The Art. 17 of CoE convention of 2005 No. 197 indicates that each party shall in applying measures referred to victims' protection and other measures, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures. The norms of these international treaties have a universal and regional level focus on gender-based approach to the provision of assistance and protection of victims of trafficking.

The obligation of states to provide protection and assistance to victims includes ensuring confidential

nature of criminal proceedings on trafficking in women and children (para 1 of Art. 6 of Trafficking in persons protocol; compensation for the damage caused (para 6 of Art. 6 of Trafficking in persons protocol, para 3 of Art. 15 of CoE Convention of 2005 No. 197); appropriate consideration to humanitarian and compassionate factors (para 2 of Art. 7 of Trafficking in persons protocol), provision of a recovery and reflection period for rehabilitation and decision-making (Art. 13 of CoE convention of 2005 No. 197).

Special attention should be paid to human rights and gender-based approaches to protection and assistance of persons who claim to be victims of trafficking in women. It is about non-discrimination of victims. Due to Trafficking in persons protocol, the measures set forth in the protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination (para 2 of Art. 14). The implementation of the provisions of CoE convention of 2005 No. 197, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex or other status (Art. 3). In other words, ensuring the principle of non-discrimination and taking into account the special needs of victims are the main requirements of international agreements in identifying, providing assistance and providing protection to victims. These requirements are the core specificity of international combating trafficking in women from gender perspective and human rights protection.

The integration of human rights and gender-based approach in identification of victims, provision of assistance and protection of their rights implies involvement of non-governmental organizations. In this regard, the following standards are of interest: according to para 3 of Art. 6 of Trafficking in persons protocol, each state party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, cooperation with non-governmental organizations, other relevant organizations. Following para 5 of Art. 12 of CoE convention of 2005 No. 197, each party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organizations or other elements of civil society engaged in assistance to victims. In accordance with para 10 of Art. 14 of ASEAN convention of 2015, each party shall provide care and support to victims of trafficking in cooperation with relevant non-governmental organizations. Hence, according to the Trafficking in persons

²⁰L. E. c. Grèce. Requête No. 71545/12. Arrêt, 21 Sept. 2016. La Cour Européenne des Droits de l'Homme [Electronic resource]. URL: <http://hudoc.echr.coe.int/eng?i=001-160218> (date of access: 18.03.2020).

protocol, CoE convention of 2005 No. 197, and ASEAN convention of 2015, non-governmental organizations should be involved in the prevention of trafficking and the assistance of victims of trafficking.

The obligation to take appropriate measures to prevent trafficking in women with *due diligence* is an integral part of international legal combating women trafficking. Trafficking in persons protocol declares that states parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, *especially women and children*, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity (para 4 of Art. 9). The same requirement is envisaged by the para 4 of Art. 11 of ASEAN convention of 2015. According to para 8 of Art. 8 of the SAARC convention of 2002, state parties to the convention shall promote awareness, inter-alia, through the use of the media, of the problem of trafficking in women and children and its underlying causes including the projection of negative images of women. The listed provisions of international agreements focus on the eradication of factors contributing to the vulnera-

bility of women and girls, including stereotypes about them. This implies the human rights and gender-based prevention of trafficking in women.

Taking into account all the above considerations a definition of international legal measures aimed at combating trafficking in women is proposed; namely, as *a system of measures* to prevent, suppress, investigate trafficking in women, prosecute and punish traffickers, identify victims, provide assistance and protection with due human rights-based approach and gender perspective.

The gender specifics of international legal combating trafficking in women extends to *cooperation* in this area. The international legal *cooperation* in combating trafficking in women is a *joint activity* of states and other actors regulated by international instruments and national legislation to coordinate efforts and foster partnership against trafficking with due human rights and gender-based approach. It's worth mentioning that non-governmental organizations both at international and national levels contribute significantly to anti-trafficking activities (for more information see [7]).

Specific UN, OSCE and CIS efforts in combating trafficking in women

The acts adopted by the main UN bodies (General Assembly, Security Council, ECOSOC) are aimed at *integrating human rights and gender-based approach and determining the priorities* of international legal combating trafficking in women, *clarifying areas of cooperation* thereby contributing to its development in this area and improving coordination of multilateral cooperation to combat trafficking in women. Regarding the international legal fight against trafficking in women, special representatives of the UN Secretary General and special rapporteurs of the UN Human Rights Council perform their functions by collecting and analyzing country-specific information, taking into account gender perspectives and human rights (for more information see [7]).

At the regional level, the acts of the OSCE bodies to combat trafficking in women are practice-oriented and have the following characteristics: they create OSCE "internal law" to prevent and combat trafficking in women; determine the priorities of international legal combating and contribute to the development of new areas of cooperation in this area integrating gender perspectives, taking into account the specifics of the OSCE region (for more information see [7]).

The problem of trafficking in women is especially relevant for the CIS region since the CIS member states are countries of origin, transit and destination. There is need to establish a post of the CIS coordinator for combating trafficking in the structure of the Bureau for the coordination of combating organized crime and other dangerous crimes on the territory of the CIS member states [10]. Constant monitoring of the situation in the states, carried out by the CIS coordinator for combating trafficking, will make it possible to monitor trends in trafficking in women, respond to them in a timely manner, strengthen international legal cooperation in this area, in particular, coordinate the exchange of experience, organize interaction between competent state bodies, and monitor practical implementation of the obligations undertaken by the CIS member states to combat trafficking in women from gender perspective. The analysis of activities of the OSCE special representative and coordinator for combating *trafficking* in human beings²¹ and EU anti-trafficking coordinator²² highlights the effectiveness of their anti-trafficking work carried out throughout the OSCE and EU.

Belarusian efforts to combat trafficking in women

Belarus has significantly contributed to the international combating trafficking within UN and regional organizations which are the CIS, OSCE (for more in-

formation see [7]). Belarus is a party to the Trafficking in persons protocol, Convention on the rights of the child of 1989, Optional protocol to the convention

²¹Annual reports of the OSCE office of the special representative and co-ordinator for combating THB [Electronic resource]. URL: <https://www.osce.org/secretariat/107391> (date of access: 18.03.2020).

²²EU anti-trafficking coordinator [Electronic resource]. URL: https://ec.europa.eu/anti-trafficking/institutions/eu-anti-trafficking-coordinator_en (date of access: 18.03.2020).

on the rights of the child on the sale of children, child prostitution and child pornography of 2000, etc. At regional level Belarus participates in the Agreement on cooperation of CIS states in combating human trafficking, organs and tissues of 2005, CoE convention of 2005 No. 197 (for more information about the CoE convention of 2005 No. 197 and its monitoring mechanism of the Group of experts on action against trafficking in human beings (GRETA) see [7; 11]), etc. Also, national legislation has been amended according to international anti-trafficking standards. To improve interstate collaboration the possibility of joining the two following international agreements may be considered:

1) in the field of combating trafficking and providing legal assistance in criminal matters within CoE: the European convention on mutual assistance in criminal matters of 1959, Additional protocol to the European convention on mutual assistance in criminal matters of 1978, Second additional protocol to the European convention on mutual assistance in criminal matters of 2001²³. The accession to these international agreements will increase the efficiency of activities coordination of competent authorities with foreign partners

in matters of data and information exchange in criminal matters, but also in providing protection and assistance to victims and witnesses, preventing criminal acts;

2) International Labour Organization Domestic workers convention of 2011²⁴ and Protocol of 2014 to the Forced labour convention of 1930²⁵. These treaties are of great interest for states that support socially oriented policies. By accepting obligations under these international agreements, the state confirms the human rights oriented approach and commitment to eradicate forced labor, both children and adults, also to eliminate the conditions causing trafficking of women as domestic workers.

For effective trafficking in women prevention the Law of the Republic of Belarus of 7 January 2012 No. 350-3 “On combating trafficking in human beings”, the Law of the Republic of Belarus of 19 November 1993 No. 2570-XII “On the rights of the child”, the Law of the Republic of Belarus of 25 November 1999 No. 326-3 “On tourism” (for more information [7]) need for amendments. Amendments are aimed at considering gender perspectives and rights-based approach to preventive anti-trafficking measures.

Conclusion

The evolution of the legal framework shows the complex regulation of combating trafficking in women at global, regional and national levels. The human rights and gender-based approach to international legal combating the trafficking in women implies focus on vulnerable position of women in the development and adoption of measures to prevent trafficking in women and to identify victims and provide assistance. The gender specificity and human rights-based approach to international legal cooperation in combating trafficking in women needs the involvement of non-governmental organizations in identifying victims, assisting them, as well as preventive activities. Multiple international instruments indicate that best practices in preventing and combating traffick-

ing in women rely on the partnership between states, non-governmental organizations. The acts adopted by the main UN bodies (General Assembly, Security Council, ECOSOC) express the attitude of states to the problem of trafficking, and contribute to development and fostering of international cooperation in said field. Regional organizations such as the OSCE and CIS take anti-trafficking actions within their competence with due attention to the specifics of the regions. Establishment of the CIS coordinator for combating trafficking will foster cooperation of the CIS member states in combating trafficking. Belarus accession to the above international agreements will enhance the effectiveness of national efforts in combating trafficking in women, its investigation and prevention.

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