Key Elements of the Trafficking Protocol

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Purpose of the Protocol and Scope

I prevent and combat trafficking in persons
  • Article 3 (Definitions) and Article 5 (Criminalization) of the Protocol
  • Article 16 (Extradition) Article 18 (Mutual legal assistance) of UNTOC
  • Article 9 of the Protocol (Prevention)
I protect and assist the victims
  • Article 24 (Protection of Witnesses) and 25 (Protection of Victims) of UNTOC
  • Articles 6 (Assistance and protection of victims), 7 (status of victims) and 8 (Repatriation) of the Protocol
I promote cooperation among the Parties
  • Articles 13 (confiscation), 18 (mutual legal assistance), 19 (joint investigations) , 26 and 27 (cooperation in law enforcement) of UNTOC
Definitions – Article 3 „use of terms“

1. 3 constituting elements of the crime
   - Act
   - Means
   - Purpose: Exploitation

2. Open list on exploitation
   - Exploitation of the prostitution of others
   - Forced labour and services
   - Slavery or practices similar to slavery
   - Servitude
   - Removal of organs

Prevention

1. Article 9 of the Protocol
   - Is binding to the extent that States parties must establish comprehensive policies, programmes etc for:
     1. Prevention of trafficking in itself and
     1. Prevention of revictimization
   - Article 9 gives examples of useful measures to implement this article, such as awareness rising measures
   - States parties under this article must take measures to fight the underlying root causes making people vulnerable (push factors)
   - States parties under this article must take measures to counter discourage the demand (pull factors)
Prosecution

- Criminalization of trafficking in persons (irrespective of a transborder element) (Article 5 of Protocol)
- Extradition and Mutual legal assistance (Articles 16 and 18 of UNTOC)
  - bound to organized crime and transborder element
  - is one example why the Protocol cannot be interpreted and applied without UNTOC and a proof for the necessity for one single implementation mechanism for UNTOC and the Protocols

Protection

- Article 24 (Protection of witnesses) and 25 (Protection of Victims) of UNTOC are binding clauses
- Article 6 (Assistance and protection of victims) of the Protocol gives guidance on specific measures for victims of trafficking
- Article 7 (Status of victims in receiving States) of the Protocol
  - Importance of witnesses
  - Humanitarian aspects: trafficking as a human rights violation
- Article 8 (Repatriation)
  - Right to return
  - Cooperation in safe return
Cooperation

- Overriding principle of the UNTOC and the Protocol
- International trafficking in persons can only be fought by international efforts
- Specific areas for cooperation in law enforcement in Articles 13, 18, 19, 26 and 27 of UNTOC

⇒ you cannot implement the Protocol without the UNTOC
⇒ You need one single mechanism for both instruments

Conclusions

- The Protocol cannot be interpreted and implemented without the UNTOC.
- The overriding principle of international cooperation in criminal matters is in the UNTOC and not the Protocol.
- The Protocol together with the UNTOC follows an holistic approach going far beyond an instrument of cooperation in criminal matters.
- The Protocol is to a large extent a human rights instrument.
- By following up the implementation of the Protocol there is a universal program of action to combat trafficking in persons.
Thank you very much for your attention!

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