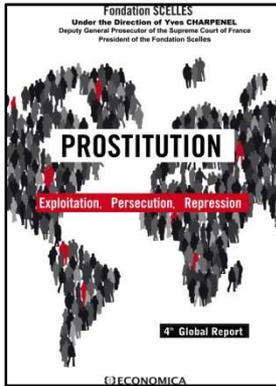




Fondation Scelles

Connaître, Comprendre, Combattre
l'Exploitation Sexuelle

Role of bilateral cooperation in the fight against sexual exploitation



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The exploitation of prostitution by criminal groups is not restricted by state borders: Legal action should not be either. However its need to respect the rule of law must be coupled with efficiency and effectiveness.

Profiting from new technologies, organized crime groups are proving that sex trafficking is able to adapt and evolve in such a way that it is now predominantly transnational. It is thus the responsibility of the state to anticipate the cooperative and procedural difficulties that could hinder the suppression of the transnational exploitation of prostituted persons. International cooperation is thus an essential component in any fight against sex trafficking.

International legal cooperation means extended collaboration between legal authorities of different countries, who have at least a minimum of common interest in working together. This cooperation is generally achieved through international conventions. In criminal matters this is a method to reach an individual, some information, or a proof, which a legal authority of one State needs but which is under the legal jurisdiction of another State. The growth of international agreements,

which dictate legal cooperation between countries suggests that there has been a realization that it is through international cooperation that the fight against transnational criminal activity must be fought. This cooperation can take diverse forms: either it can be agreed through intergovernmental organizations (through Interpol at the international level, through Europol and Eurojust in the European Union) or through liaison officers. There is also informal cooperation, which takes form as exchanges between personnel and officials of different state authorities and non-governmental organizations. More frequently this cooperation is formalized through agreements of mutual legal assistance (multilateral or bilateral) which aims to facilitate police and judicial cooperation. The evident mutual interest in these agreements is the ability to easily transfer police and judicial information, without an intermediary, and thereby avoiding inherent diplomatic delays. The idea behind these agreements is to achieve the dismantling of criminal networks as opposed to being restricted to a simple and immediate arrest of some individuals.

International cooperation has numerous elements: a universal multilateral vocation,

which constitutes big principles for States as a frame of reference, and bilateral cooperation which assures effectiveness. Faced with limitations such as state sovereignty, the variety of different state legislations, or even the general nature of international treaties that dictate guiding principles, bilateralism should be prioritized in the fight against sex trafficking, due to its greater effectiveness over multilateral cooperation.

Bilateral cooperation can be defined as collaboration between two sovereign countries, with the aim of defending their common interests through mutual assistance. This cooperation can be achieved through the signing of bilateral agreements. In the current context of “hyperglobalisation,” sex trafficking has taken the form of structured networks across at least two states and even more. This observation suggests that if a global investigation is necessary, bilateral relations should be established. Currently, however, no bilateral treaties against human trafficking exist: there are only treaties of mutual assistance for suppression, which serve as the basis in the fight against sex trafficking.

Once two countries have the motive to cooperate against sexual exploitation they will designate the terms of the bilateral agreement, the extent of mutual assistance and the domains and modalities of this cooperation: from the investigation, to the recovery of criminal assets and the protection of victims. Nevertheless, bilateral cooperation is not without limitations and faces a range of obstacles.

A preliminary period of preparation: identification of domains, partnerships, and boundaries

A State that is motivated to fight against the exploitation of transnational prostitution, via bilateral cooperation, cannot expect to do so the way it wants, with whoever it wants, and against whatever it wants. The State must, before any cooperation takes place, identify the

subject of the cooperation and the partners included in the bilateral cooperation. Following this it should define the boundaries of cooperation so that it functions effectively.

Defining the sector of bilateral cooperation: the fight against sex trafficking with purposes of sexual exploitation

As cooperation requires a relinquishing of sovereignty on behalf of the two states, it is necessary that the partners in bilateral cooperation find common interests to accept this loss. The states thus have the responsibility to define the sectors of bilateral cooperation (the domains in which they are willing to cooperate), which are the areas of work where the states would not achieve anything without the cooperation and the collaboration of their partner. The common interest in this case is the fight against sex trafficking. For example, France and Romania wanted to collaborate due to the large amount of Romanian women being exploited for prostitution within the French territory. As the French authorities wanted to fight against this exploitation as much as the Romanians, they had a common interest.

Determining an appropriate partner for bilateral cooperation

Bilateral cooperation presupposes a willingness to cooperate, which immediately reduces the amount of available partners when one considers how many sovereign countries have little desire to cooperate or are completely unwilling. The identification of partners with whom cooperation is possible is thus a necessary preliminary step in the creation of a bilateral agreement. Nigeria is a current example of a country that has little desire to cooperate with regards to human trafficking: Nigeria does not respond to international rogatory requests communicated through diplomatic channels. On the other hand, the Romanians and the Croatians are completely willing to discuss, sign, and put into action bilateral treaties, to the end that, even when the terms of the bilateral agreement

have come to a conclusion, the willingness to cooperate remains, which allows for good diplomatic relations.

In the case of France and Morocco, however, bilateral cooperation was suspended during almost a year at the end of February 2014, due to diplomatic tensions, which were, to some degree, the result of charges brought against high dignitaries of Morocco, and to another degree, the result of a series of diplomatic incidents and faux pas'.

Besides the willingness of a partner to cooperate it is necessary that the public policies of the two States are not contradictory. In the case of incompatibility between legislations, unless the discordance is amenable, a partnership should not be pursued. With this in mind, France is often tentative to cooperate with countries that allow the death penalty, such as China or the United States.

In an ideal situation, it would be necessary to have uniform legislation, which would permit the avoidance of "forum shopping," where the defendant has a choice between whichever legislation is preferable.

Effectively, bilateral cooperation is much more accessible if the partners are party to the same international multilateral agreements, as this suggests they share the same principles and values already.

Determining the boundaries of bilateral cooperation

Bilateral cooperation with regards to the suppression of human trafficking can apply to many domains. It is therefore necessary that the partners define the boundaries in the agreement. This can include police cooperation (direction of investigations), judicial cooperation (conviction of perpetrators, seizing of assets, extradition, transportation of convicted people), or even the protection and accompaniment of victims. This list is theoretical, however, because generally everything is proceeded with.

For example, the treaty of judicial cooperation in penal matters of the 18th of April 2005, agreed between France and China, only covers the domains for which an agreement could be found: the investigation and pursuit of criminal matters. However, it is not applicable to making decisions with regards to arrests and convictions, which does not inhibit the cooperation foreseen with regards to seizing assets.

Judicial bilateral cooperation from the direction of the investigation to the sentencing

As soon as it becomes part of an agreement, bilateral cooperation is implemented during the entirety of an investigation, meaning as soon as a sexual exploitation network has been identified. However, this cooperation is only possible once partners in the investigation have been identified abroad.

The necessity of a preliminary identification of partners

Bilateral cooperation networks allow for the identification of trustworthy partners who can be dealt with abroad. The state needs to identify which services are the most competent in each country to ensure this cooperation takes place.

In France, the competent partner for cooperating with foreign agencies in the fight against sex trafficking, is the state prosecutor or the investigating judge in charge of the case. The prosecutor can be apprised by the criminal police officers, who have a general role, or by the police service specializing in human trafficking, which, in France, is the central office for the suppression of human trafficking (OCRTEH).

The OCRTEH is thus the police service that cooperates with foreign authorities during an investigation. In the case of Franco-Romanian cooperation, one Romanian officer was placed at the OCRTEH and a French

liaison officer was placed in Bucharest to maintain relations with Romanian police and judicial authorities. Information exchanges are organized daily, to identify if an individual is known in the other country, for example.

Verification of the veracity of the crime and the identification of perpetrators

The criminal investigation is the first area where bilateral cooperation will be put into action, generally in order to characterize and verify the veracity of the infraction of sex trafficking. With efficacy and speed in mind, bilateral cooperation thus allows for the investigation to be as well rounded as possible, as the authorization of a foreign police officer or magistrate to act on foreign territory only occurs in the case of specific bilateral agreements. In effect, bilateral cooperation allows for information exchanges between the two cooperating states during the investigation. This permits the interrogations executed by state A to be legitimate on the territory of the state B, which can be fundamental in the communication of evidence to a jury. Furthermore, bilateral cooperation allows for a legal act carried out by the police or judicial authorities of one state to be used by the other. Therefore, a person can be tried in state A even though they were interrogated in state B.

For example, French and Belgian police have been cooperating in order to fight against infractions caused by French tourists in a particular prostitution district. This cooperation then inspired the signing of a partnership agreement. During the operation, named “Dolly” the presence of 5 French police officers on Belgian territory facilitated the identification of stolen French vehicles, which were often found in this particular district.

The establishment of the European Union has permitted the development of a common area of security, liberty, and justice, which has led to a revolution in cooperative practices with regards to criminal matters. The mutual trust within the EU has allowed for the

movement from interstate cooperation to direct cooperation between legal authorities. This, however, is only possible within the EU and otherwise bilateral agreements are necessary.

In addition, member states of the EU benefit from a specific procedure that privileges bilateral cooperation, in the case of investigations, due to the possibility of creating common investigation teams. This procedure allows for criminal investigations to be conducted during a specific time frame and with specific objectives. There can be consultation about actions and a sharing of methods or even the coordination of the pursuit of criminals in joint investigations.

The European arrest warrant, which has replaced extradition between EU member states, is another legal procedure that is specific to the EU, which facilitates bilateral cooperation at the investigation or conviction stages. It simplifies and accelerates extradition by replacing the political and administrative phase of the procedure with a legal mechanism. The demand for double criminality with regards to 32 infractions, including human trafficking, has notably been abolished. A maximum delay of 90 days, including the arrest, has been imposed on countries for the return of an accused person to the state where the European arrest warrant was issued. The European arrest warrant is founded on the principle of mutual recognition of judicial decisions: a decision made by the legal authorities in a member state to request the arrest and the transfer of an accused person needs to be acknowledged and executed as quickly and immediately as possible by the other EU member states. Without a bilateral agreement the average delay for extradition between France and Romania was 18 months. With the European arrest warrant, once the conditions are met, the average delay is 20 days. In the case of an investigation, this gain in time is essential.

Outside of the European Union, extradition agreements will always apply at the

point of investigation or trial. Extradition means that a state, which finds an individual already pursued or convicted by the legal authorities of another state, delivers that individual so he may be tried or serve his sentence. Effectively, it is generally preferable that the perpetrators of sex trafficking are tried in the state where the crimes were committed, as this is where the victims, the witnesses, and the evidence will be. Furthermore, when perpetrators of human trafficking are found outside the jurisdiction of the country where they committed their crime, extradition to that state is generally the better option, as they have the resources to pursue a case more effectively. This, however, is difficult to obtain outside of a specific agreement. Currently, France is a signatory to general extradition conventions, bilaterally or multilaterally, with numerous countries but is lacking agreements of legal cooperation with many developing countries, which are often origin states or transit states for human trafficking. The foreign affairs minister has the central position of authority in France with regards to the transmission and reception of extradition requests brought forward under these agreements.

Legal bilateral cooperation as an indispensable tool for the identification and protection of victims

A state approach that aims only at suppression has the risk of negating the question of respect for fundamental human rights with regards to victims who should be able to act in order to gain protection and compensation for damages. State authorities also need to cooperate, not only with the state authorities of their partners but with civil society and particularly NGOs that give assistance to victims of sexual exploitation, as they are not represented by organizations for prostituted persons. Nevertheless, all action aimed at helping victims of sexual exploitation requires the preliminary identification of victims.

The necessity of preliminary identification before any protection

Victims need to be identified as early as possible so that they can be liberated from their situation of sexual exploitation and vulnerability. In France, the national action plan against human trafficking (2014-2016) makes the identification of victims the starting point in the mobilization of public services.

However, the identification of foreign victims by national authorities is difficult. Sometimes, before they are able to be identified, victims are sent to another country. Bilateral cooperation, therefore, allows for the presence on the territory of foreign officers, from the relevant country, who might be able to identify the nationality of the victim, or even their region of origin, ethnicity, and language. Once identified as such, the victim is accorded specific rights to be protected: the victim is given a cooling off period during which they receive assistance to decide on their eventual cooperation with legal authorities and during which they are protected from immediate exportation when they are in an illegal situation (in terms of immigration or work) in their host country. Measures of protection against the traffickers are also proposed. Furthermore, the victim can ask for compensation through legal channels and receive information regarding the necessary procedures to undertake legal action.

Effectively, the identification of victims primarily aids in the fight against criminal networks of sexual exploitation, as victims are involved in proving traffickers' roles and responsibilities by providing evidence as a witness. However, in order to assure their protection, victims can appear as X so they do not have to appear before the court (practice of the OCRTEH). When this protection is assured via the placing of victims in holding, the police assure that when they get out, the victims do not find themselves back on the street: they are put in touch with charitable organizations, and they can be allocated emergency housing.

Recently, a guide of best practices, relative to the identification of victims of human trafficking was created by the United States and the EU (Bulgaria, Spain, France, Greece, Netherlands, Romania). From November 2011 to November 2013, *Euro TrafGUID* developed the guidelines and common procedures for the identification of victims of human trafficking. The guide aims to resolve the lack of harmonization of indicators, procedures, and tools of identification of victims of human trafficking in the participating countries, and within the European Union in general, via the development of common guidelines. The guide outlines best practices for:

- The detection of victims of trafficking (for example by monitoring specific websites or by encouraging the reporting of traffickers by third parties through telephone lines and information campaigns);
- Orientation towards legal organisms specialized in victims of human trafficking (for example by bringing together all the organisms focused on hosting and rehabilitating victims);
- Primary evaluations of risks, in terms of access to basic needs and information;
- Allowing a healing and cooling-down period

This project is the emblematic example of a project that has worked well. Due to its success the program is currently in action in Bosnia.

The crucial role of NGOs and charitable organizations

Sex trafficking is a subject that cannot be examined without considering the role of NGOs and charitable organizations. The state does not have the means to act beyond the investigation and conviction stages. NGOs, therefore, represent the only alternative to manage and support victims during an investigation into sexual exploitation, which generally lasts for some years. They can also

eventually convince the victims to cooperate, which is an extremely delicate process, as victims know that protection will not be assured with a simple name and address change and that it will be limited in time by a lack of means. Bilateral cooperation thus allows for the identification of appropriate partners.

In France, the facility for secure accommodation *Ac.Sé*, financed by the state and run nationally, is the only organization to have secure accommodation at the request of the police. On the one hand, it accommodates and protects major victims of sex trafficking, be they French or foreign, without a distinction of gender. The protection of victims rests on geographic distancing, the multiplicity of locations, and the confidentiality concerning their location. On the other hand, this facility relies on a network of charitable organizations specialized in the rehabilitation of victims of human trafficking and sexual exploitation.

In Romania there is a national agency for victims of human trafficking, which is in charge of victims' safe return to the country and their care: *Agencia Națională Împotriva Traficului de Persoane* (ANITP). This specialized agency puts victims in contact with legal organizations or NGOs in the country that work in this domain. The agency cooperates with Romanian and foreign NGOs as well as intergovernmental organizations, with the aim of altering public opinion to be more sensitive to human trafficking, prostitution, and their consequences.

However, the means of NGOs are limited: faced with the rise in potential victims, the budgets of NGOs are stagnant or even diminishing.

According to Yves Charpenel, the Deputy General Prosecutor of the Supreme Court of France, and the president of Fondation Scelles, despite the willingness to grant an important place to victims of sex trafficking, only 1 in 100 victims is present during the conviction

stage. Numerous trials suffer because of the absence of witness accounts or are weakened by contradictory testimonies by victims who do not confirm to the court their declarations made during the investigation, as they are concerned for their lives or the lives of their loved ones. Sometimes they deny their status as victims due to their incomes being much higher than they could be otherwise through legal activities.

Furthermore, the absence of victims present during trials of human trafficking can be explained by the fact that victims often do not speak the language of the country where they live, their level of education is very low, they do not know their rights and they worry that the state authorities will arrest them due to their illegal status, having not respected immigration laws or having been coerced to commit other crimes such as trafficking illegal drugs. These observations present obvious obstacles for investigators and pursuing authorities. Specific criteria for identifying victims of trafficking and sexual exploitation can be determined, such as the absence of identity documents, the repayment of a trafficking fee, the absence of regular income and the prohibition of free circulation and communication outside their place of residence.

The average delay to go from the identification of a trafficking network to conviction is 4 years. This suggests that bilateral cooperation must be long-term. This cooperation, however, is only really effective if it lasts right up until the dismantling of the network and achieves results, meaning the seizing of assets and the transfer of convicted persons.

Judicial bilateral cooperation at the end of proceedings: the seizure of criminal assets and legal transfer of detained persons

Beyond the boundaries of investigation and conviction, bilateral cooperation can also target the perpetrators of sexual exploitation

through the recuperation of profits generated by the illegal activity or by the transferring of the perpetrators to another country where they did not commit the crime.

Bilateral cooperation in financial matters: the seizure of criminal assets

As the principal motivation of sex traffickers is profit, the seizure of criminal assets is essential in dissuading perpetrators from continuing or restarting their illegal activities. Bilateral cooperation is an effective measure in this part of the fight against sex trafficking. In reality, the assets that the traffickers use to commit their infraction, and the revenue that they make, are often transferred or hidden in other states than the one where the crime was committed. This allows the criminals and their families to profit from the illegal activity, all the while making their identification more difficult by the pursuant legal authorities. Thus, bilateral cooperation is useful in improving identification procedures and the seizure of funds and assets, which are the profits of criminality.

Identification of criminal assets

The seizure of criminal assets requires the identification of the elements that make up the criminal assets. For local authorities, which have pursued the perpetrator on their territory, it is very difficult to identify these assets once they have been transferred to a foreign country. Local authorities do not necessarily have an understanding of the foreign banks or their financial systems, or they aren't particularly capable at identifying property purchases effectuated by a perpetrator of sex trafficking. In these cases, where financial investigation is required, it is necessary to have bilateral cooperation with state authorities. This cooperation takes form as a financial investigation that is directed by the same principles and guidelines as outlined previously. This kind of investigation is, therefore, not going to focus on the

identification of proofs that an infraction was committed, but on the property, real estate, liquid assets, or financial assets of the identified perpetrator, or presumed perpetrator of sex trafficking. Again, it is necessary that the cooperating state has the technological capacities, experience and means to be an effective partner. In France, a specialized police force was created to facilitate the identification and localization of criminal assets during the investigation, which is called the Platform for the identification of Criminal Assets (PIAC). This body has the power to conduct financial investigations under the supervision of a judicial authority. Furthermore, PIAC centralizes all the information linked to the detection of criminal assets on French and foreign territory. This is necessary as organized crime knows no boundaries and can exploit them to its advantage.

Seizure of criminal assets

Seizure is a conservative measure, established by order of the court, that places temporary restrictions on transfers and the conversion and movement of assets. In the fight against sex trafficking, the seizure of assets is essential as it prevents the criminal use of funds and deprives the criminal of his or her profits. Under a bilateral agreement, the solicited authority can directly comply with the requesting countries court order on its territory, via a national court. The country can also create its own court order, based on the one received. In France, an interdepartmental service, directed by a judge for the seizure and holding of criminal assets was put in place in 2010: The agency for the management and recovery of criminal assets and confiscated assets (AGRASC), can be mandated to execute requests for mutual assistance in international criminal investigations, under the control of a judicial authority. The mechanisms to effectuate seizures are functioning and becoming more and more significant over time (AGRASC, 2014).

Confiscating criminal assets

In the absence of cooperation with the nation-state of the trafficker, the assets of the criminal must be returned after judgement. Bilateral cooperation with the trafficker's country of origin is thus necessary for the confiscation of assets. This allows for a permanent seizure of the criminal assets after a judicial or administrative process, which transfers the assets to the state. When the assets are not liquid assets but vehicles or property, the state will sell the assets. Therefore, it is often the state where the assets are found that profits from their sale. A bilateral agreement, however, can assure that a 50/50 share is divided between the countries (*Protocole of Palermo*, 2000). However, the confiscation of criminal assets in terms of sex trafficking is often complicated: once seized and put on sale, it is often close affiliates of the trafficker or employees who will purchase the items. These situations represent a failure of the system because the criminal gets his assets back with the sentiment that crime pays. The failure of the sale can also result from the absence of willing buyers due to fears that they will be targeted by the criminals. This problem is still not resolved even if some solutions have been found such as the destruction of assets. The following of the procedure adds further difficulties. To this day, few cases have resulted in the seizure of criminal assets due to a lack of material and human means. The volume of seized assets is pathetic compared to the revenue generated from sex trafficking. Effectively, the total revenue generated from sex trafficking in France in 2012 was 574 million US\$ (530 million €), according to the statistics collected by the OCRTEH, while the value of seized assets in the same year was 9.74 million US\$ (9 million €), according to the AGRASC. Furthermore, a fair amount of those seized assets were not confiscated but returned, and the methods used by different judicial systems in these matters vary from country to country. These obstacles are very detrimental to bilateral cooperation, as the

traffickers are aware of these flaws and thus distribute their assets across numerous countries in order to take advantage of the differences in legislation.

Bilateral legal cooperation in penitentiary matters: the transfer of detained persons

In the last step of the criminal proceedings, people convicted by the state can be transferred to their country of origin in order to favor their reintegration into society. In order to be sure that the country of origin understands and applies the sentence that was handed down, it is necessary to implement a bilateral cooperation. This permits fluid dialogue and the granting of guarantees. The country of origin is informed about the sentence and the possibility for the detained to serve the entirety or part of their sentence. The guarantee that the sentence will be carried out exists because the authorities are informed and can take the steps necessary to ensure it is.

With regards to the transfer of convicted persons, France is connected to 80 countries with bilateral conventions or through the Convention of the European Council, which, by itself, groups 63 states.

Bilateral legal cooperation faced with numerous obstacles in the fight against sexual exploitation

The relinquishing of state sovereignty implied in bilateral cooperation is the main obstacle: criminal law is very connected to its territory and states are not willing to abandon this in order to have a common area of criminal law. Furthermore, bilateral cooperation is a difficult procedure to put into action in terms of cost and time.

Some other obstacles include the conflict between legal systems in cooperating countries and the high rate of corruption in countries where sex trafficking is common. Furthermore, it is rare that bilateral cooperation remains between two states, it often happens that it

extends to 4 or 5 states, which multiplies the stated difficulties.

Nevertheless, when bilateral cooperation is put into action it works effectively and allows for the dismantling of sex trafficking networks.

Additionally, for the mutual legal assistance in the fight against sex trafficking to be effective, it seems evident that it is advantageous to include multiple legal parties along with all other actors involved in criminal law proceedings where penal cooperation requires a global approach.

Besides, professionals agree unanimously that the development of human relationships is vital for all successful cooperation. The development of personal relationships of confidence between motivated and specialized people thus often allows for solutions to be found to difficult problems.

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