

THE GLOBALIZED TREATMENT OF HUMAN TRAFFICKING IN INTERNATIONAL LAW

O TRATAMENTO GLOBALIZADO DO TRÁFICO DE PESSOAS NO DIREITO INTERNACIONAL

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Abstract

The trafficking in persons is a problem that directly affects the freedom and dignity of human beings. The globalization and transnationality inherent in this type of crime aggravates this problem and its suppression becomes more difficult. This paper aims to answer whether international human rights treaties can contribute effectively to combat this crime. Firstly, the basic concepts of globalization and trafficking in persons are presented, followed by forms of creating international treaties with their impact on public policies. Finally, an analysis of these policies in the light of the Supplementing Protocol to the United Nations Convention against Transnational Organized Crime on the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children, with a consequent survey of the international treaties on the subject is made. The method used was the exploratory descriptive. It was concluded that trafficking in persons is a complex phenomenon and international cooperation made through

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legislation contributes to enable countries in the pursuit of a more effective form of combat.

Keywords

Globalization, International Human Trafficking, the Palermo Protocol.

Resumo

O tráfico de pessoas atinge, diretamente, a liberdade e a dignidade dos seres humanos. A globalização e a transnacionalidade inerente ao próprio crime agrava e dificulta a repressão do mesmo. Este trabalho visa responder se os tratados internacionais de direitos humanos conseguem contribuir de maneira efetiva no combate a este delito. Para tanto, iniciou-se com os conceitos básicos de globalização e tráfico de pessoas, seguindo na forma de criação dos tratados internacionais com seu impacto nas políticas públicas. Encerra com uma análise destas políticas frente ao Protocolo Adicional à Convenção das Nações Unidas contra a Criminalidade Organizada Transnacional relativo à Prevenção, à Repressão e à Punição do Tráfico de Pessoas, em especial de Mulheres e Criança com um consequente levantamento dos tratados internacionais referentes ao tema. O método utilizado foi o descritivo exploratório. Concluiu-se que o tráfico de pessoas é um fenômeno complexo e a cooperação internacional feita por meio de legislações contribui para que os países tenham condições de buscar um combate de forma mais efetiva.

Palavras-Chave

Globalização. Tráfico Internacional de Pessoas. Protocolo de Palermo.

1 INTRODUCTION

This study aims to analyze, considering the globalized view, the international existing norms that seek to retain and combat trafficking in persons.

The present analysis becomes necessary for a theoretical basis when considering real, complex, as well as multidisciplinary aspects in this phenomenon.

In view of the scarce scientific production after the publication of Law 13344/16, this work seeks to make an exploratory analysis of the international documents gathered. As for the methodology, documentary and bibliographical research is used. Hereafter, a survey of the international treaties that deal with the subject of trafficking in persons will be made.

Globally, the practice of trafficking in persons represents a great financial gain which is based on the dehumanization of victims and their treatment as such a thing subjected to any use.

An offense to human dignity within this practice is clear as it inhibits many forms of individual freedom and, usually, keeps the trafficked person under subhuman conditions.

The negative impacts of this practice made the States gather efforts in order to formalize cooperation mechanisms. Many international instruments have been created to combat these effects and culminated in the Supplementing Protocol to the United Nations Convention against Transnational Organized Crime on the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children in 2000.

2 BASIC CONCEPTS OF GLOBALIZATION AND TRAFFICKING IN PERSONS

In order to make a coherent analysis of the international norms which aim to combat Trafficking in Persons, it is necessary to consider some conceptualizations for the understanding and interpretation of these documents.

2.1 Globalization

The study of trafficking in persons from an international perspective, underlies on the idea that the movement of people between countries and continents is a remarkable trace in human action.

Jesus Lima Torrado sees globalization as:

Broad, contradictory, complex, heterogeneous and profound process of exchanging relations between national and cultural societies, which creates a dynamic of interdependence in economic, political

and cultural spheres, where the current process of globalization takes place and enables happenings, decisions and activities occurring in particular places around the world, resonating significantly in other places, societies and people³. (TORRADO, 2000, 47).

Globalization can also be considered as a process which produces an exchange between systems of economic, cultural and personal relations, by mixing different people from different States, as well as a mechanism which creates international models. Globalization is in constant evolution and cannot predict when or whether the maturity of this phenomenon will occur, limiting its development. On the contrary, it is predicted to be the basis of a probable future conception (JUMILLA, 2002, 13).

Therefore, the understanding of globalization as an inevitable creation and a legal and practical framework where international norms are respected, regardless of the claim of the sovereignty of each State, makes it clear that this fundamental phenomenon for the creation and mechanisms of combat to trafficking in persons be effective and applicable worldwide.

2.2 Human Trafficking.

Internationally, a definition is found for Trafficking in Persons in Article 3, subparagraph “a” of the Supplementing Protocol for the United Nations against Transnational Organized Crime relating to Prevent, Suppress and Punish Trafficking in Per-

³ Our translation from: *proceso amplio, contradictorio, complejo, heterogéneo y profundo de cambio en las relaciones entre sociedades, naciones y culturas que ha generado una dinámica de interdependencia en las esferas económica, política y cultural, en las que se desenvuelve el actual proceso de mundialización y que hace posible que acontecimientos, decisiones y actividades ocurridas en un determinado lugar del planeta repercutan de forma muy significativa en otros lugares, en otras sociedades y en otras personas*

sons, Especially Women and Children, also known as the Palermo Protocol.

a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs; ⁴ (BRASIL, 2004)

When the victim is a child, the concept is extended and claims that the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth previously (threat, abuse of power, coercion, etc.)

Trafficking in persons has been considered a complex and multidimensional phenomenon, and therefore has caused global concern. Whether as a country of origin or as the country of destination of the victims, several nations have been involved in combating this phenomenon. Many are the causes listed for their occur-

⁴ Our translation from: *A expressão "tráfico de pessoas" significa o recrutamento, o transporte, a transferência, o alojamento ou o acolhimento de pessoas, recorrendo à ameaça ou uso da força ou a outras formas de coação, ao rapto, à fraude, ao engano, ao abuso de autoridade ou à situação de vulnerabilidade ou à entrega ou aceitação de pagamentos ou benefícios para obter o consentimento de uma pessoa que tenha autoridade sobre outra para fins de exploração. A exploração incluirá, no mínimo, a exploração da prostituição de outrem ou outras formas de exploração sexual, o trabalho ou serviços forçados, escravatura ou práticas similares à escravatura, a servidão ou a remoção de órgãos [...]*

rence, including: religious and ethnic conflicts, humanitarian crises, war conflicts, natural disasters, among others.

According to Mariane Strake Bonjovani, slavery dates back to Greece and Rome where the war-losers were turned into prisoners, with non-profit intentions thus far. The author adds that some commercial practices could be seen in Italian cities between the fourteenth and seventeenth centuries, where people were trafficked as a means of profit. Yet, with the arrival of the Europeans, the forced transportation of people to the discovered territory was common, along with their exploitation for the purpose of work, as well as sexual satisfaction. (BONJOVANI, 2017. P. 17).

When comparing trafficking in persons and slavery in history, several differences can be found. As for the origin of the enslaved and trafficked people, firstly, aspects such as religion, wars or debts were the bases for the definition of who could be trafficked. In the American territory, the racial issue was a delimiter for this type of practice. Presently, the in so-called “contemporary slavery”, has its deep roots in social inequalities.

Le Pere and Vickers address the difficulty in the understanding of trafficking in persons as a form of modern slavery.

As globalization processes widely transmit, spread and disperse discourses on fundamental political, socioeconomic and human rights, it is hard to believe that trafficking and trade in human life continues to exist as form of modern-day slavery [...] Many of the victims of these crimes are unwittingly peddled into conditions of forced labor, servitude, slavery or sexual exploitation, often with the connivance of families and friends. (LE PERE; VICKERS 2011. P. 62).

In the Brazilian legal system, the issue was already disciplined by Decree No. 5071/04, which ratified the Supplementing Protocol to the UN Convention against Organized Crime related to the Prevention, Suppression and Punishment of Trafficking in Per-

sons. In spite of the Brazilian commitment in the international arena, its confrontation with trafficking in persons by their legal system occurred only in the form of sexual exploitation (articles 231 and 231-A of Brazilian Penal Code), ignoring any other modalities.

The issue of Law No. 13344/16 resulted in a change of paradigm. Brazil, in arrears with the international community, started to establish more complete mechanisms for the prevention and repression of trafficking in persons. Since the aforementioned law has been approved, other forms of sexual exploitation started to be punished, not only for sexual purposes (removal of organs, slave labor, servitude and illegal adoption).

A thorough reading of Law No. 13344/16 leads to the conclusion that it is based on three basic pillars: prevention, repression and assistance to the victim.

Regarding repression, the current article 149-A follows:

Art. 149-A. Negotiate, procure, recruit, transport, buy, harbor or shelter people by means of serious threat, violence, coercion, fraud or abuse, with the purpose of:

- I – remove organs, tissues or body parts of persons;
- II – submit persons to work in conditions similar to slavery;
- III – submit persons to any kind of servitude;
- IV – illegal adoption; or
- V – sexual exploitation.

Penalty – imprisonment, from 4 (four) to 8 (eight) years, and fine.

§ 1 The penalty shall be increased from one-third to one-half if:

- I – the crime is committed by a civil servant in the exercise of his functions or under the pretext of exercising them;
- II – the crime is committed against a child, adolescent or elderly person or with a disability;
- III – the agent prevails in relations of kinship, domestic relations, cohabitation, hospitality, economic dependency, authority or hierarchical superiority

inherent in the exercise of employment, position or function; or

IV – the victim of trafficking is removed from the national territory.

§ 2 the penalty is reduced from one to two thirds if the agent is primary and does not integrate criminal organization⁵. (BRASIL, 1940).

There was also a change regarding legal interests protected by crime, which was formerly called Sexual Dignity, is now named Individual Freedom.

Law No. 13344/16 has brought several advances when it comes to combating Trafficking in Persons, especially to the considerable increase in figures covered by the criminal type.

3 THE BASIS FOR THE CREATION OF INTERNATIONAL TREATIES AIMED AT COMBATING TRAFFICKING IN PERSONS

Concerning International Law, a great evolution is noticeable as well as the creation of two new phenomena in the last

⁵ Our translation from: Art. 149-A. Agenciar, aliciar, recrutar, transportar, transferir, comprar, alojar ou acolher pessoa, mediante grave ameaça, violência, coação, fraude ou abuso, com a finalidade de: I - remover-lhe órgãos, tecidos ou partes do corpo; II - submetê-la a trabalho em condições análogas à de escravo; III - submetê-la a qualquer tipo de servidão; IV - adoção ilegal; ou V - exploração sexual. Pena - reclusão, de 4 (quatro) a 8 (oito) anos, e multa.

§ 1º A pena é aumentada de um terço até a metade se: I - o crime for cometido por funcionário público no exercício de suas funções ou a pretexto de exercê-las; II - o crime for cometido contra criança, adolescente ou pessoa idosa ou com deficiência; III - o agente se prevalecer de relações de parentesco, domésticas, de coabitação, de hospitalidade, de dependência econômica, de autoridade ou de superioridade hierárquica inerente ao exercício de emprego, cargo ou função; ou IV - a vítima do tráfico de pessoas for retirada do território nacional. § 2º A pena é reduzida de um a dois terços se o agente for primário e não integrar organização criminosa

century. The first would be the creation of international organizations, with sufficient legal personality to reside at the poles of the treaties. The second is the codification of the law of treaties, meaning the transformation of customary rules into conventional ones, written and expressed in the text of a treaty (REZEK, 2011, p. 284).

For Husek, this need arises from ignorance of international norms based on customs and non-compliance with rules of pacts between States, situations that make international life insecure (HUSEK, 2015, p. 181).

The Vienna Convention on Law of Treaties, of May 1969, can be regarded as a framework which recognizes the growing importance of treaties as source of International Law and has brought the codification of customary law on treaty law.

The Convention also acknowledges the treaties as a means of developing peaceful cooperation among nations, recalling the determination of the peoples in the United Nations in order to create conditions necessary for the maintenance of Justice and the respect for treaty obligations. Besides, the codification and progressive development reached by treaty law would promote the maintenance of international peace and security, the development of friendly relations and the achievement of cooperation among nations (BRASIL, 2009).

Since The Vienna Convention in 1969 on Law of Treaties, International Law has had a set of rules to establish ethical and legal principles of universal scope, aligned as a true positive norm.

In addition, because it refers to a treaty on treaties, its peculiarity is demonstrated, since signatory countries are disposing to how the future agreed instruments will be interpreted, by not creating specific commitments. This refers to a norm which can be material and formal, not only for determining what can be done, but also for determining the procedure of the elaboration of treaties.

In the same context, years later, the Palermo Protocol will come, in search of the union among States for the combat of trafficking in persons.

4 PUBLIC POLICIES AGAINST TRAFFICKING IN PERSONS UNDER THE PERSPECTIVE OF THE PALERMO PROTOCOL

Currently trafficking in persons is seen as a transnational and multifaceted problem, considering the great difficulty in identifying its victims, establishing statistics and, consequently, more in-depth studies on the issue.

Trafficking exists in a multiplicity of flows. Some victims are trafficked within countries, to neighboring countries or even to other continents. More than 500 different traffic flows were detected between 2012 and 2014 (UNODC, 2016, p.01).

These individuals are also victims of a social reality. Usually victims are found in a vulnerable situation due to economic, political, social or cultural issues, as explained previously.

Lack of perspective and underdevelopment in certain countries and regions can make people seek opportunities in other places. Inequality in treatment between ethnic groups, or even between genders in some places, can also lead to the emergence of vulnerable populations, which become easy targets for criminals.

In order to have efficiency in combating international trafficking in persons, one should start perceiving the problem under a multidisciplinary perspective, involving human rights, criminal system and the creation of public policies.

In the same arena, the Palermo Protocol is based on three pillars: prevention, which consists in adopting measures to reduce factors such as poverty, underdevelopment and inequality in opportunities, in order to soften vulnerability in trafficking; effective punishment of criminals, by severely criminalizing conducts, as

well as international cooperation among States; and protection of victims by the creation of public policies.

Despite considerable increase in media attention to trafficking in persons, it is undeniable that the practice still has a wide reach, and many factors can demonstrate the reasons for ineffectiveness in existing policies nowadays. Internal organizations that seek to retain this practice, usually, are financially deficient and, moreover, even with media exposure, various ways of practicing this crime make it difficult to understand and identify a situation of imminent risk.

In addition, legislation against trafficking in persons in most countries is still fragile and poorly applied – in Brazil, for instance, trafficking in persons was broadly criminalized only in 2016.

It is unacceptable that, in Social and Democratic States of Law, the Universal Declaration of Human Rights which expressly prohibits slavery as well as other international human rights legal instruments, still keep being mere letters of intent, without any practical application.

In Brazil, Decree No. 5948/2006 established the National Policy to Combat Trafficking in Persons, yet considering only the sexual issue, with the purpose of establishing principles, guidelines and actions of prevention and repression against trafficking in persons and attention to victims. This policy has as guiding principles the respect for human dignity, non-discrimination, protection and full assistance to direct and indirect victims, promotion and guarantee of citizenship and human rights and respect for international treaties and conventions.

The Second National Plan to Combat Trafficking in Persons (II PNETP), dated to 2013, brought concrete mechanisms for the implementation of political, ethical and technical commitment of the Brazilian State to prevent and suppress the crime of trafficking in persons and guarantee the necessary assistance and protection to victims, as well as the promotion of their rights, in harmony with Brazilian society desires and in accordance with the established national and international commitments.

In 2018, the Third National Plan to Combat Trafficking in Persons was approved and, in its content, did not bring about great changes compared to the previous plan. However, its implementation has proved to be more effective since it was approved after the changes in criminal type of trafficking in persons in the year of 2016. Thus, the focus is no longer the issue of sexual exploitation of women, including more types of trafficking in persons, such as organ donation, adoption and enslavement.

Such a plan, from which new data and suggestions on measures to combat trafficking in persons should emerge, is expected to be implemented within four years.

5 INTERNATIONAL TREATIES AIMED AT COMBATING TRAFFICKING IN PERSONS

According to the Ministry of Justice, trafficking in persons is a multinational, complex and transnational criminal activity, whose costs are low and profits are high, being manifested in a wide variety of ways throughout the world (UNODC, 2016, p. 11).

In Brazil, the most relevant data are from 2002 when the National Survey on Trafficking in Women, Children and Adolescents (Pestraf), which mapped 241 routes of trafficking in persons for the purpose of sexual exploitation, among which 131 routes was international, 78 interstates and 32 inter-municipalities, which demonstrates the dimension of the problem (UNODC, 2016, p. 01). The survey was not updated by the Brazilian government and is considered the most comprehensive and important study on Trafficking in Persons.

In 2005, the International Labor Organization (ILO) estimated around 2.4 million people in the world who were trafficked for forced labor. This figure was informed by a report called “A Global Alliance Against Forced Labor”, which also concluded that the total annual profit produced by trafficking in human beings amounts to 31.6 billion dollars (OIT, 2005, p.01). An analysis of

the data presented can already demonstrate the need to combat Trafficking in Persons by the States.

For this reason, the main international instruments that aim to prevent and combat this type of practice will be listed up to the Palermo Convention and its Brazilian ratification.

The first step for international legislation which treated trafficking in persons occurred in 1814 with the Treaty of Paris, in agreement with England and France, aimed to combat trafficking of black people, who were the focus for slave trade.

In the year of 1910 the International Convention for the Suppression of Trafficking in Women and Children took place and in 1933 the Convention for the Suppression of Trafficking in Older Women occurred. In 1947 a Protocol of Amendment to the International Convention for the Suppression of Trafficking in Women and Children was elaborated. In 1949 the Final Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others was signed in New York (AMARAL; CARVALHO e FELIX, 2013, p. 130).

Another relevant document is the Convention on Slavery, signed in 1926 by the extinct Society of Nations, which defined slave trade in its art. 1, §2 as:

Any act of capture, acquisition or assignment of an individual for the purpose of slavery; any act of acquisition of a slave with the purpose of sale or exchange, purchased to be sold or exchanged; as well as, in general, any act of trade or transport of slaves (BRASIL, 1966).

In the same Convention, in art. 1, §1, slavery was defined as a state or condition of an individual upon which the attributes of the right of property were exercised.

Subsequently, the Geneva Convention in 1956 (included in Decree No. 58563/66), also known as Supplementary Convention on the Abolition of Slavery, of Slave Trade and of Institutions and Practices Similar to Slavery, not only reviewed existing

ideas and concepts, but also included new concepts, such as practices analogous to slavery, servitude by debts, forced marriage of a woman in exchange for economic advantages for their parents and so on.

Also on the occasion, each State Party was obliged to define as crimes the conduct of: transporting and trying to transport slaves from one country to another; mutilate or punish; enslave someone or incite someone to alienate their freedom or whoever is under their authority, among others. The signatories were obliged to determine administrative and civil measures to retain practices similar to slavery of women and children.

Along with the combat against slave trade, there was concern on the trafficking of white women for prostitution, which is why the International Agreement for the Suppression of the Traffic in White Slaves was signed in 1904.

Several other related instruments were signed, namely: International Convention for the Suppression of the Traffic in White Women (Paris, 1910); International Convention for the Suppression of the Traffic in Women and Children (Geneva, 1921); International Convention for the Suppression of the Traffic in Older Women (Geneva, 1933); Protocol of Amendment to the International Convention for the Suppression of the Traffic in Women and Children and to the International Convention for the Suppression of the Traffic in Older Women (1947); and, finally, the Convention and Final Protocol for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others (Lake Success, 1949).

The 1949 Convention of Lake Success is considered the legal framework for the historic division of treaties into two phases: the first, under the extinct League of Nations; the second, already in the context of the United Nations.

In the words of the doctrine professor Damásio de Jesus,

[...] the principles enshrined in international instruments have not always enjoyed full status of universal protection. The first international anti-trafficking document (1904) proved to be ineffective not only because it was not truly universal, but also because it reveals a European-centered view. The second document, from 1910, complemented the first document including provisions to punish the enticer, but obtained only 13 ratifications. The following instruments of 1921 and 1933, which were drafted in the context of the League of Nations, were more comprehensive, but defined trafficking regardless of the woman's consent. These four instruments were consolidated by the 1949 Convention, which remained the only instrument effectively addressed to the problem of trafficking in persons until the adoption of the Palermo Convention and its Protocols⁶ (JESUS, 2003, p.17).

Even though no exponential results were noticed at the time, the international community's efforts to ensure the realization of fundamental human rights should be considered, especially with the Universal Declaration of Human Rights of 1948, proclaimed by

⁶ Our translation from: os princípios consagrados nos instrumentos internacionais nem sempre gozaram de pleno status de proteção universal. O primeiro documento internacional contra o tráfico (1904) mostrou-se ineficaz não somente porque não era propriamente universal, como também porque revela uma visão de fato centrada na Europa. O segundo documento, de 1910, complementou o primeiro na medida em que incluía provisões para punir os aliciadores, mas obteve apenas 13 ratificações. Os instrumentos seguintes, de 1921 e 1933, que foram elaborados no contexto da Liga das Nações, eram mais abrangentes, mas definiam o tráfico independentemente do consentimento da mulher. Esses quatro instrumentos foram consolidados pela Convenção de 1949, que permaneceu como o único instrumento efetivamente voltado para o problema do tráfico de pessoas até a adoção da Convenção de Palermo e de seus Protocolos.

the United Nations right after World War II, seen as a movement for the recovery of human dignity.

The first phase, therefore, began in 1904 with a focus on the protection of European women, not defining trafficking, but only establishing the commitment of repression and sanction by means of administrative measures.

The International Convention for the Suppression of Trafficking in White Women of 1910 brought the definition of trafficking and favoring prostitution as to procure, entice or lead away, for purpose of prostitution, a married or underage single woman, even with their consent. In the case of a married or a single older woman, punishment was only if trafficking had been committed with fraud or through violence, threats, abuse of authority or any other means of embarrassment.

The 1921 International Convention for the Suppression of Trafficking in Women and Children increased the legal age from 20 to 21 years of age and reaffirmed that the consent of married and older women excluded the criminalization of the conduct.

This position was modified with the 1933 Convention, when it was defined the crime of international trafficking of adult women and its criminalization regardless of their consent.

Without major changes, in the second phase and in the scope of UN, the Protocols of Amendment to the Agreement of 1904 and the Conventions of 1910, 1921 and 1933 were approved in 1947 and 1948, which did not change the precepts earlier, only ratifying the ideas already signed. It should be noted that the legal interests protected at the time were morality and good customs violated by prostitution.

The dignity of the human person became the main legal interest protected by the 1949 Convention of Lake Success, which became concerned with the well-being of the trafficked as an individual, his family and the community as a whole, asserting that the victim could be anyone, regardless of gender or age.

The document brought to each State Party the commitment to punish any person who, in order to satisfy the passions of another person, induces or misuses someone for the purpose of prostitution, even with his consent, as well as to exploit the prostitution of another person, even with their consent, also allowing their domestic legislation to provide for stricter conditions, laying the foundations for international legal cooperation.

It should be noted that the 1949 Convention took place at a post-war period, with the emergence of the UN and the promulgation of the Universal Declaration of Human Rights.

Despite the changes and progress made with the Convention of Lake Success, it has proven to be ineffective in practice as the signatory countries have not taken steps to adopt policies that prevent and suppress trafficking or any form of exploitation.

In an attempt to remove the ineffectiveness left by the 1949 Convention, the UN would endeavor to discuss the issue and find real answers to the problem over the next half-century. In this context, the Convention on the Elimination of All Forms of Discrimination against Women took place in 1979, obliging each State Party to take appropriate measures in order to eliminate all forms of trafficking and exploitation of prostitution of women.

Seeking for an effective policy to combat trafficking in human beings, in 1983, the UN, through its Economic and Social Council, began to collect reports from each State Party. Less than ten years later, in 1992, the Action Program for the Prevention of the Sale of Children, Child Prostitution and Child Pornography was launched.

In the following year, the World Conference on Human Rights reinforced the need for changes in the fight against all forms of sexual harassment, exploitation and trafficking in women, which would later culminate in the Action Program of the Human Rights Commission for the Prevention of Trafficking in Persons for the Exploitation of Prostitution.

In 1994, a definition for trafficking in human beings finally emerged, through Resolution No. 49/166 issued by the UN General Assembly:

Illicit or clandestine movement of persons across national and international borders, especially in developing countries and some countries with economies in transition, with the purpose of forcing women and children into situations of oppression and sexual or economic exploitation for the benefit of pimps, traffickers, and criminal organizations, as well as other illicit activities related to trafficking in women, for example, forced domestic labor, false marriages, clandestine employment and fraudulent adoption (BRASIL, 2007).

In 1995, the Fourth World Conference on Women in Beijing adopted a platform for action to combat violence against women, as well as welcoming the understanding that spontaneous prostitution would not constitute a violation of human rights, only considering forced prostitution. It is important to remember that forced prostitution is also a crime against humanity provided for by the Statute of the International Criminal Court, 1998.

In Mexico City, there was the 1998 Inter-American Convention on International Traffic in Minors, which brought the concept of international trafficking in persons under the age of 18: "subtraction, transfer or retention, or attempted subtraction, transfer or retention of a minor, for purposes or by illicit means".

Also at the same time, an intergovernmental committee was created by the UN General Assembly to design a global convention against transnational crime and to develop an effective instrument to combat trafficking in human beings. Thus, the Convention against Transnational Organized Crime was known as the Palermo Convention because the conference for the analysis of the text prepared by the committee established by the UN General Assembly was held in Palermo, Italy, in 1999. The Convention was

adopted by the UN at the Millennium General Assembly on November 15, 2000.

The Palermo Convention was promulgated by Decree No. 5015/2004 and aims to promote cooperation to prevent and combat transnational organized crime more effectively. To this end, article 37 provides that the Convention may be supplemented by protocols.

It is important to outline the Additional Protocols to the Palermo Convention. They are three: Protocol against the Smuggling of Immigrants by Land, Air and Sea, promulgated by Brazil through Decree No. 5016, of March 12, 2004; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, known as the Palermo Protocol, promulgated by Decree No. 5017 of March 12, 2004; and Protocol against the Illegal Manufacture and Trafficking in Firearms, Including Parts, Accessories and Ammunition, promulgated by Decree No. 5941, of October 26, 2006.

The Palermo Protocol became the main reference in the combat against the crime of trafficking in human beings and defined it as:

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (BRASIL, 2004).

The Palermo Convention now represents a third stage in the legal treatment of trafficking in persons and prostitution, no longer limiting possible victims, who were treated only as women and children. Another important change brought about by the Palermo Protocol is the purpose of the pursued criminal activity: be-

fore, there was repression of trafficking for the purpose of prostitution. Currently, combat to trafficking refers to any type of exploitation, be it sexual exploitation, forced labor or even removal of organs.

It is timely to distinguish trafficking in migrants from trafficking in persons for the purpose of exploitation. The difference already lies in the definitions. Unlike the concept of trafficking in persons for the purpose of exploitation above, trafficking in migrants is regarded as promotion, with the aim of obtaining, directly or indirectly, a financial or other material benefit, from the illegal entry of a person into a State of which he or she is not a national or a permanent resident.

Under the terms of the International Organization for Migration, trafficking in persons provided in the Palermo Protocol is a process of coercion and exploitation which begins with the recruitment of the person in their place of origin and continues with the exploitation at the transit and destination sites. On the basis of these definitions, some distinctions can be made between trafficking in persons and trafficking or smuggling of migrants.

The purpose of trafficking in persons is exploitation, of whatever nature; it consists in making money with the trafficked person by turning them into an object that can be traded and exploited. In the case of trafficking in migrants, the intention is only to promote illegal entry into a given country through a financial consideration. The income obtained from trafficking in persons is continuous, coming from exploitation, whereas smuggling of migrants ends with only one transaction.

There is a common confusion between the trafficked for the purpose of exploitation and the illegal migrant: in trafficking in persons, the victim is the trafficked person himself, and in the trafficking of illegal migrants, the State is the victim, since its legislation is violated both by the trafficker and by the trafficked. In the first case, the trafficked is a victim; in the second, an object.

As for consent, in trafficking in persons the victim is coerced or misled; the illegal migrant usually consents to criminal practice. Lastly, as far as fate is concerned, human trafficking may occur internationally or nationally, whereas trafficking in migrants is a transnational offense, as it aims at the illegal entry of a person into a country where they are not national or do not reside permanently.

FINAL CONSIDERATIONS

Trafficking in Persons, specifically in women, started to be seriously perceived in the early 1990s, when a number of women's rights movements began to organize. Concomitantly, to aggravate this perception, there was the beginning of mass migrations for the purpose of work, creating a growing concern which gave the States a dimension of the problem. It was also noticed that the phenomenon reached, simultaneously, men and children and did not have the sole purpose of sexual exploitation.

The United Nations Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others of 1949 aimed only at trafficking for sexual purposes, without concern for the other purposes of criminal activity. From the concern of governments around the world, a global coordination was necessary to combat this transnational problem, since the current legal apparatus was not enough to do so.

The Palermo Protocol calls for effective action to prevent and punish trafficking in persons, which has led the signatory countries to have greater control of entry and exit from their territories and, in addition, of a series of public policies aimed at protecting victims, safeguarding their internationally recognized fundamental rights.

Brazil has always been deficient in this sense, but with the enactment of Law 13344/16, a new step has been taken to adapt its internal legislation to international regulations.

Trafficking in persons can be considered as a phenomenon of such complexity that each State, individually, cannot contain it. It is necessary, therefore, that the States come together and create regulations and enforceable rules that generate the creation of public policies and coordinated measures aimed at the tripod of prevention, repression and punishment of the practice of this type of trafficking. Only with this mutual commitment will States have the capacity to bring about legislative changes in domestic law and thus, have an effective impact in reducing the practice of trafficking in persons.

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