

ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children

1-3 August 2001

Bangkok

**Report on the
Regional Seminar on Using Legal Instruments to
Combat Trafficking in Women and Children**

I. ORGANIZATION OF THE MEETING

A. Attendance

1. The Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children, convened by ESCAP in collaboration with the International Organization for Migration (IOM), was held at the United Nations Conference Centre in Bangkok from 1 to 3 August 2001. The Seminar was attended by a total of 81 participants representing national machineries for the advancement of women, and a range of line ministries such as Foreign Affairs, Social Welfare, Law and Justice, Interior, and Labour, of 17 countries in the Asian and Pacific region; 7 non-governmental organizations; 2 intergovernmental organizations; 6 United Nations agencies; 4 specialized agencies; 4 other entities; and 3 observers.

B. Opening statement

2. In her introductory statement, the Director of the Social Development Division, ESCAP, expressed her concern that the problem of trafficking in women and children had not lessened since the 1998 Regional Conference on Trafficking in Women, organized by ESCAP, where the Bangkok Accord and Plan of Action for Combating Trafficking in Women was adopted. Trafficking in women and children was over the past years increasingly being linked to activities of transnational crime organizations. The United Nations General Assembly Resolution 55/67 on Traffic in Women and Girls, adopted in December 2000, had serious concern for the increasing number of women and girl children, in particular from developing countries and from some economies in transition, who were being trafficked to developed countries, as well as within and between regions and States.

3. As many promising legal instruments had emerged since the 1998 Regional Conference, it was timely to take stock and to learn about the range of existing and new legal instruments and cooperative agreements available to Governments to combat trafficking. The Director emphasized the need to draw lessons from the ongoing processes, in terms of the institutional mechanisms behind the processes, the achievements and challenges, and to identify recommendations that could be presented to Governments wishing to embark on similar processes. It was envisaged that this regional seminar would be the starting point for elaborating a resource guide to Governments on using legal instruments to combat trafficking in women and children. She stressed that Governments, NGOs, civil society and international agencies, needed to work in concert to build alliances and synergistic partnerships to translate the legal instruments into policies and actions that would contribute towards preventing and eradicating trafficking in women and children.

C. Election of Officers

4. The Seminar elected Ms Aurora Javate-de Dios (Philippines) Chairperson, Ms Hwang In-ja (Republic of Korea), Vice-Chairperson, and Mr. Pratap Kumar Pathak (Nepal), Rapporteur.

D. Adoption of the Agenda

5. The Seminar adopted the following agenda:
 1. Opening session
 2. Election of Officers
 3. Adoption of the Agenda
 4. Presentation of Overview Paper
 5. International Conventions: The Protocol on Trafficking to the Convention Against Transnational Organized Crime
 6. Other International Human Rights Instruments: CRC and CEDAW
 7. National and bilateral Memorandums of Understanding
 8. Inter-regional/regional and sub-regional agreements or arrangements: ASEM, ARIAT, the Bangkok Accord, and the Puebla Process
 9. Projects from the Sub-regions
 10. Extraterritorial legislation
 11. Consideration and adoption of recommendations

6. During the opening debate, a proposal was made to rename the title of the seminar to Using Legal Instruments to Combat Trafficking in Persons, Especially Women and Children to keep it in line with the United Nations Protocol. However as the Seminar was an activity carried out as a follow-up to the Beijing Platform for Action, the current title was maintained.

II. PRESENTATION OF OVERVIEW PAPER

7. In her presentation, Attorney Amparita Sta. Maria, gave the international definition of trafficking and a brief introduction to the issue of trafficking. Further, she explained that international legal instruments were tools for prescribing international norms, standard-setting for minimum treatment of human beings, provided the framework for agreement and cooperation in order to address such common concerns, and provided a mandate for states to comply with obligations spelt out therein. It was noted that the most prominent international legal instrument addressing trafficking in persons was the United Nations Convention on Transnational Organized Crime with its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Adopted in 2000, this protocol included the first comprehensive definition of trafficking. While this Protocol was a clear step ahead, it had yet to enter into force in order to impose binding obligations on states parties. International human rights treaties were instruments to ensure fundamental rights and freedoms of all human beings by providing mechanisms to monitor state compliance. Here, attention was drawn to the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1953), as well as the International Covenant on Civil and Political Rights (Article 8) as examples of longstanding instruments. More recent initiatives in international human rights law included the Convention of the Rights of the Child (Article 32, 34, 35, 36, 39) and its Optional Protocol on the sale of children, child prostitution and child pornography, as well as the Convention on the Elimination of all Forms of Discrimination Against Women

(Article 6). These instruments set the minimum standard of treatment of all humans and were legally binding as such.

8. Other international legal instruments presented were declarations and plans of actions. While they were non-binding they expressed the political will and international consensus among states to address an issue. Most notably, the 1993 Vienna Declaration and Programme of Action as well as the Beijing Platform of Action were mentioned, which declared trafficking as incompatible with the dignity and worth of the human person and adopted the elimination of trafficking as a strategic objective. In addition to international treaties and declarations, the Seminar noted that most of the participating countries were party to several regional arrangements, which tackle the issue of trafficking in Asia and Pacific. Hence it was concluded that an international and regional legal framework exists, imposing various obligations on states, in the area of prevention, protection, rehabilitation and reintegration measures. These had to be taken seriously in order to combat the problem of trafficking and comply with international law.

9. In the discussions that followed, the Seminar recognized that trafficking must be seen in a socio-economic context and the importance of push/pull factors. In addition, it was necessary to look beyond the law as using legal instruments was not sufficient. New modes of investigation, child-friendly procedures and possible legal aid associations across borders were viewed as positive developments. Political will was also important as implementation had to cross line agencies and constant advocacy was needed. It was further found necessary to strengthen implementation mechanisms. The linkage between migration and trafficking was also noted. Also, examples were given of how legal instruments could be effective in addressing trafficking e.g. criminalizing trafficking was not adequate unless people change their attitude. Moreover, there was a need to look at implementation in the broad sense such as what arrangements for implementation and enforcement mechanisms existed. Finally, it was pointed out that in the Asia and Pacific region there was no overarching legal framework within which anti-trafficking legislation could fall in place and the establishment of a regional framework was proposed.

III. INTERNATIONAL CONVENTION: The Protocol on Trafficking to the Convention Against Transnational Organized Crime

10. The Representative of the United Nations Office for Drug Control and Crime Prevention for East Asia and the Pacific presented the Convention Against Transnational Organized Crime and its three protocols: Protocol against the Smuggling of Migrants by Land, Sea and Air, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, and the protocol that had an immediate relevance to the Seminar, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. While the Convention and Protocol on Trafficking had been signed by 126 and 85 countries respectively, since they were opened for signature in Palermo in December 2000, they had as yet not come into force. Significantly, the Protocol on Trafficking provided the first internationally agreed definition of trafficking in persons in Article 3a; as "the action of recruitment, transportation, transfer, harbouring, or receipt of persons by means of threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim for the purpose of exploitation, which

includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs". Article 5 called upon State Parties to establish legislative and other measures to criminalize thus defined acts of trafficking in persons, and Article 6 called for further measures to assist and protect victims beyond those stipulated under the Convention itself. The Protocol further stipulated, *inter alia*, prevention policies, investigative measures including witness protection, border and security measures as well as training programmes. State Parties were also required to accord one another the widest measure of mutual legal assistance.

11. In the discussions that followed it was noted that efforts were under way among ESCAP member states to build understanding of the Anti-trafficking Protocol so that they would be ready for ratification. Some delegates pointed out the necessity of international assistance in capacity building. UNODCCP was providing technical support to the interested countries for such efforts. While the agency was giving priority to ratification, it also planned, as the secretariat to the Convention, to establish a reporting mechanism whereby State Parties would be obliged to monitor the status of implementation and enforcement of the Convention. Further, traditional donors on anti-trafficking efforts were expected to continue supporting countries' efforts of anti-trafficking measures strengthened through the Convention. However, the importance of decisions of each country to prioritize anti-trafficking measures as the country's priority area and allocate sufficient resources accordingly was highlighted. It was also underlined that countries should engage themselves in building bilateral and regional frameworks of mutual legal assistance, such as to define the cost sharing responsibility. It was pointed out that this comprehensive Convention was developed to prevent the global village from becoming global pillage, and to reduce the damage to victims was the top priority.

IV. OTHER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS: CRC and CEDAW

12. The Convention on the Rights of the Child (CRC) was adopted by the General Assembly in 1989 and has received nearly universal ratification. The Convention contained 54 Articles on the survival, development, participation and protection aspects of children's lives. Moreover, it was emphasized that the Convention was indivisible, and all Articles thus were interdependent, and that the Convention should be understood holistically within the context of other significant human rights instruments. In her presentation, Dr. Saisuree Chutikul briefly mentioned previous international definitions of trafficking, outlining their common elements, namely the recruitment and transportation of persons domestically and across borders, for the purpose of work or services, with profit for traffickers. She also presented the 1997 agreed definition on trafficking by countries of the Mekong Region. Five articles of the CRC were mentioned to directly address trafficking and sexual exploitation, namely Article 34 on protection from all forms of sexual exploitation and abuse, Article 35 on the prevention of abduction of, the sale of or traffic in children, Article 36 on the protection against all other forms of exploitation, Article 32 on protection from economic exploitation and hazardous labour, and Article 39 on the recovery and social reintegration of child victims. The Seminar noted that almost all ESCAP member states were Parties to the CRC, and thus were obliged to implement the CRC, as well as to report every five years to the CRC Committee on the progress on measures as contained in the CRC. The

Seminar was also presented with 10 recommendations as guidelines to governments in implementing the CRC. Finally, it was noted that the positive development and well-being of children should be the centre of our concern as children were the future of our nations.

13. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) had been ratified by all of the ESCAP members attending the seminar. In her presentation, Ms Shanti Dairiam briefly mentioned the push factor of trafficking. She further informed the participants how CEDAW addressed trafficking in women. While trafficking was specifically covered under Article 6 of the Convention, which obliged States Parties to suppress all forms of trafficking in women and exploitation of women, it was also touched upon in other provisions. In Article 1 of CEDAW discrimination was defined as any treatment that had the effect or purpose of denying women the enjoyment or exercise of rights. As trafficking in women violated several human rights and fundamental freedoms of women, such as the right to life, the right to be free from torture, the right to liberty and security of the person as well as the right to equal protection under the law, it constituted discrimination. Furthermore, it was observed that trafficking in women was also contrary to the obligations of states to eliminate discrimination against women in the private sphere (Article 2 f), to eliminate traditional attitudes, which see women as inferior to men (Article 5), to ensure equality in employment (Article 11) and development for rural women (Article 14). As Party to CEDAW, countries were obliged to implement CEDAW, and to report to the CEDAW Committee every five years on measures taken. Examples of four country reports to the CEDAW Committee and its concluding comments showed that both sending and receiving countries fell short of fulfilling the obligations arising under the Convention, regardless of their level of development.

14. In the subsequent discussions, the Seminar found that with regard to the usefulness and effectiveness of International Human Rights instruments, CEDAW and CRC established standards, set norms and were important monitoring tools. Also issues such as trafficking and prostitution could be examined within the context of other articles, as the Conventions were integral and indivisible. The Seminar also noted that from the examples given of CEDAW reporting, it was useful to note the different ways in which countries conceptualized approaches to trafficking such as measures for asylum, assistance and protection of victims. Moreover, the Conventions were useful tools for sharing experience, best practice and monitoring. The recommendations of the reviewing committees of the Conventions also crystallized urgent issues as shown in the reports and it was useful to apply the recommendations.

V. NATIONAL AND BILATERAL MEMORANDUMS OF UNDERSTANDING

15. The Seminar was informed of the various aspects of national and bilateral Memorandum of Understandings in Thailand through a panel of speakers moderated by IOM. The first presentation on the work on assisting victims of trafficking in Thailand outlined the evolution from a sporadic tackling of domestic trafficking to an interactive approach with the help of MOUs to coordinate efforts of various agencies to assist national and cross-border victims of trafficking. It was noted that as a country of origin, transit and destination of trafficked women and children, Thailand encountered this problem in various forms, and thus different agencies had to be involved in the undertaking of combating trafficking and assisting victims. This need

was brought to a fore and highlighted through an early ad-hoc repatriation of some 150 Burmese victims of trafficking in the early nineties, prior to the development of any formal assistance structures in Thailand. That effort required high-level intervention from both the Royal Thai and Myanmar governments and involved the combined efforts of the Thai Police and Immigration Department, NGOs, social workers and health personnel. Hence, a clear need to coordinate these efforts emerged. Subsequent to this event, concerted efforts began to put in place a formal coordination structure, amend/modify relevant legislation and to establish a National Policy and Action Plan to address trafficking. The National Policy and Action Plan was adopted by the Cabinet in August 1996, concerning the complete cycle of work: prevention, rescue, assistance and protection, prosecution and suppression, repatriation and reintegration as well as establishment of mechanisms for coordination, monitoring and evaluation. As a further step, a Memorandum of Understanding (MOU) on coordination of procedures of government agencies and a division of labour among these agencies was formulated. The need for additional MOUs and increased operational transparency was also recognised.

16. The Seminar was informed that in Thailand there were three types of MOUs under development: among government agencies (signed in June 1999), among NGOs and between the government and the NGOs (both awaiting final approval). Further, it was noted that apart from the national MOUs, efforts were underway to develop bilateral MOUs. However, it was emphasized that before reaching bilateral agreements on cooperation between countries, effective in-country coordination had to be established. This was most effectively achieved if the signing of an MOU was immediately followed up by its dissemination to and training of all personnel concerned. Not only did this ensure the information of officials on how, why, by which means and in which area to combat trafficking, but also provided the possibility for feedback and suggestions regarding problems previously overlooked. It was concluded that MOUs were most effective if they were action-oriented agreements on detailed procedures to provide assistance to victims of trafficking within the overall framework of a well-defined National Plan of Action, and the supporting legislative base. Due to the clear division of labour, MOUs served as an excellent tool for coordinating efforts of various agencies in assisting victims of trafficking.

17. Ms Srisak Thaiarry, Executive Director of the National Council for Child and Youth Development (NYCD), Bangkok mentioned in her presentation that NGOs in their work with migrant and trafficked children had discovered the importance of cooperation among NGOs. As the NGOs started providing assistance to victims of cross-border trafficking they in their work invariably had to deal with government organizations, in first instance immigration officers as they sought access to victims in the detention centres. This work was often on a case-by-case basis, and the NGOs found that a more systematic arrangement would be helpful and more effective. Through their work they also learned that simple cross-border repatriation was not enough for victims. Thus, they looked into how NGOs could work with governments in rehabilitation and repatriation. The Thai government was at the same time addressing these issues, also realizing the potential benefits of cooperation with NGOs. She emphasized the coordination between NGOs, the government and other agencies, was crucial in fighting the problem, because each could fill gaps or shortcomings of others. These simultaneous developments gave ground to the first MOU. The Seminar was informed that the process of drafting the MOU had not been unproblematic, but a consensus had been reached, recognizing

that trafficking could not be dealt with by one agency alone. This first MOU was between government agencies. One of the results was two shelters for child victims. After drafting the first MOU, NGOs decided that they should have a framework for cooperation, and another MOU was drafted. As explained, it contains provisions on all steps of the trafficking process. The NGOs had also discussed the contents extensively before reaching consensus. Finally, a third MOU between the Government and NGOs was in its fourth draft.

18. Mr. Opat Varophat, Provincial Chief State Attorney, spoke on the legal aspect, explaining how the Thai government had changed key laws on prostitution, the trafficking act and the penal code. These changes had signified a decriminalization of prostitution, trafficked children under 18 were defined as victims, and stronger penalties for traffickers. He explained that the MOUs would separate the procedures for Thai and alien victims of trafficking. The MOUs also set new standards for victim statements, securing protection of victims by videotaping testimonies, as well as outlining procedures for police officers upon rescuing victims from brothels such as placing under-aged victims in national shelters rather than detention centre.

19. Ms Sudarat Sereewat, from the FACE coalition, explained that the MOUs were developed based on experiences of real problems in dealing with cases of trafficking. NGOs that had found the double victimization of children of being trafficked and then charged with illegal entry unfair had thus proceeded to work for the MOUs.

20. In his statements, the representative of IOM, commented on the issue of irregular migration and that the effective management of migration required a comprehensive approach that promoted multi-ministerial and inter-departmental dialogue and information sharing, as well as cooperation with civil society. This, however, was not straightforward, and developing trust between NGOs and government organizations was essential. Government and NGOs had different capacities and comparative competencies and through strengthened coordination and collaboration could address capacity gaps. He also acknowledged the efforts made by NGOs of reaching consensus in the MOU. Moreover, he elaborated on the importance of dissemination of the MOUs to front line officials to ensure operational transparency and consistency, and explained how a team from Bangkok, made up of senior Thai government officials and NGO representatives, had conducted numerous training sessions for police and immigration officers in the provinces. Their understanding of the MOUs and feedback was deemed essential. In addition, he explained about IOMs collaboration with and technical assistance to the Thai Government in the process of drafting MOUs, as well as their protection and reintegration projects.

21. Ms Pisawat Sunkonthapan, Executive Director of MRLC, emphasized in her presentation the importance of having a bilateral MOU as a step to bring about cooperation between countries in combating trafficking. The difficulties in drafting the bilateral MOU included issues of what to include, which actors, and the importance of resources to implement the obligations. She pointed out that it is much easier to create trust between countries at the bilateral level than multilateral level. Effective cooperation can also be created at the bilateral level because there is often less pressure of unbalanced power of several countries than in the multilateral level. Therefore, she concluded that the bilateral MOU is a crucial initiation of cooperative work between countries in combating trafficking. It is a first step for countries before going to the multilateral step, which needs much more efforts in creating cooperation.

22. The many presentations gave ground to a lively and rich debate where several important issues were raised and clarifications were given. Clarification was provided on which government agencies were parties to the MOU and the registration status of NGOs working under the MOU between Government organizations and NGOs. It was emphasized that work was in progress on extending the government organizations party to the MOU to include also Ministry of Foreign Affairs as this ministry played a crucial role in the repatriation of victims. One issue discussed was the effectiveness of MOUs in reducing the incidence of trafficking. The Seminar noted that the MOUs addressed the protection of victims not the traffickers, and as such it was difficult to assess the effect on the incidence of trafficking. However, the MOU was found effective in terms of giving victim protection and assistance in rehabilitation and repatriation. Another pertinent issue discussed was that of resources for combating trafficking and implementing the MOUs. The role of international organizations in supporting national efforts was highlighted in this respect, in giving technical assistance, as well as their projects on trafficking and general poverty alleviation and empowerment projects.

23. Further discussions ensued on the issue of laws and the legal system, such as the videotestimony of victims and criminal law procedures. It was clarified that the videotape testimony was not always effective due to technical problems and resource problems as there were more victims than anticipated. During the session participants also debated the relationship between NGOs and GOs in view of their different perspectives and approaches to trafficking, maintaining NGO independence and the democratic space and debate. Furthermore, the importance of capacity building of front line officers on the MOUs and the significance of feedback from them was underscored. While the importance of working with the media was emphasized, there could also be problems such as identified under-aged victims in the media. The importance of prevention, particularly of re-trafficking, was also noted. The Seminar also observed that a bilateral MOU between Thailand and Cambodia was currently in the process of being drafted, and that this would address both victims and perpetrators. It was explained that the MOU between the Thai Government agencies was not legally binding, but provided a clear operational framework. Finally, it was explained that a Task Force monitoring the implementation of the future 10-year national policy and action plan to combat trafficking in children and women would be appointed in the near future.

VI. INTER-REGIONAL/REGIONAL AND SUB-REGIONAL AGREEMENTS OR ARRANGEMENTS: ASEM, ARIAT, the Bangkok Accord, and the Puebla Process

24. At this information session the Chief of the Women in Development Section, the Social Development Division of ESCAP summarized five initiatives at regional and sub-regional levels. Two of them were from Europe. The South Eastern Europe Anti-Trafficking Ministerial Declaration was signed in December 2000, emphasizing the need for implementing effective programmes of prevention, victim assistance and protection, legislative reform, law enforcement and prosecution of traffickers. The Declaration had been developed under the Stability Pact for South Eastern Europe. The Declaration called each participating state to appoint a high-ranking government official to co-ordinate national actions and efforts on trafficking, regularly exchange

information with other participating states, prepare follow-up and progress reports. Ministers of participating states would meet annually to review activities and give political guidance. Under the Stability Pact, guidelines for national plans of action to combat trafficking in human beings had also been developed. The Council of Europe had also been proactive in combating trafficking in persons, and recently Recommendations no. R (2000) 11 on Trafficking in human beings for the purpose of sexual exploitation were adopted by the Committee of Ministers in May 2000. The Recommendations were based on the cumulative efforts over the past decade, especially under the Steering Committee for Equality between Women and Men. Although the document was not legally binding, it provided guidelines for national legislation and administrative practices and a means of proposing effective and practical solutions to new problems.

25. In the ESCAP region, the Seminar was briefed on the Draft South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the Bangkok Accord and Plan of Action for Combating Trafficking in Women. The Draft SAARC Convention, a pioneering effort in the Asia and Pacific region, was finalized in 1998 and was awaiting signature. The Bangkok Accord and Plan of Action adopted at the Regional Conference on Trafficking in Women, held by ESCAP in 1998 was developed as the starting point for a regional consensus on measures to combat trafficking and it called for national, sub-regional and regional actions to address the different aspects of trafficking in humans. Finally, the Chief of the Women in Development Section introduced the regional ESCAP Trafficking Prevention Programme, which gave priority to regional cooperation in sharing information, addressing root causes, using legal instruments, and community based approaches.

26. The Seminar was also informed of an inter-regional level initiative, namely the ASEM Action Plan to Combat Trafficking in Persons, Especially Women and Children. Ms Srisak Thaiarry, Executive Director, National Council for Child and Youth Development of Thailand presented the initiative proposed by Sweden, Thailand and the Philippines. The idea started in ASEM 3 in Seoul in 2000, where leaders expressed their commitment to addressing global issues of common concern such as transnational crime of trafficking of persons, in particular of women and children for the purpose of sexual exploitation. An expert group meeting to follow up on the initiative identified knowledge and overall coordination; prevention of and combating trafficking; law enforcement and protection of victims; recover, repatriation and reintegration of victims; and monitoring and follow-up as key priority areas, which was crystallized in the ASEM Action Plan. The Plan was in compliance with CRC and CEDAW and addressed the needs to deal with HIV/AIDS issues, mobilization of support in the social sector and the media, and the privacy of victims.

27. Ms Aurora Javate-de Dios, Chairperson, National Commission on the Role of Filipino Women, discussed the Asian Regional Initiative Against Trafficking in Persons, Especially Women and Children (ARIAT) process. In March 2000, the Philippines had hosted an ARIAT meeting, which was attended by 23 governments and other organizations. The meeting adopted a comprehensive and implementable regional action plan. In order to deal with the transnational crime of trafficking, the ARIAT Plan called for development of databank and information sharing mechanisms, cooperation with the civil society, coordination with parallel initiatives, and

South-South cooperation. Identifying poverty as a primary cause of trafficking, it listed education and training as a strategic action for prevention. Also in training, ARIAT called for strengthened efforts for capacity building of ASEAN members to deal with transnational crime. The ARIAT Action Plan recognized the need of gender mainstreaming in economic cooperation and development and the strengthening of existing mechanisms to promote gender mainstreaming. Although the ARIAT Action Plan had not specified the timeframe for implementation, some follow-up actions had taken place, including the USA and the Philippines' actions to finalize the legislation on trafficking and the efforts of almost all participating countries to strengthen national mechanisms. Some national projects on selected areas had also been undertaken.

28. Following these presentations the floor was opened to participants to share their experience in combating trafficking. Many governments presented statements on their efforts and actions, showing that the countries had not only recognized trafficking as a serious concern, but that they had addressed the issue in various ways by ratifying international human rights instruments and taking measures to harmonize national laws, improving travel documentation and control of these, training and capacity building of government officials, developing policy and national plans, establishment of working committees, research, prevention and protection programmes, awareness raising campaigns, programmes for empowerment of women, etc. The scarce resources of Governments to address the issue, and the need for NGOs, GOs, and IOs to work together as this problem happened internationally were also discussed. The Seminar was also informed by the UNDP HIV and development project for South and South West Asia of its three areas of concern, which were trafficking, migration, and HIV/AIDS. Moreover, it was noted that a United Nations Task Force Against Trafficking in Nepal was established in 1998. One of the major outputs of this Task Force had been the formulation and implementation of the project, "Beyond Trafficking: A Joint Initiative in the Millennium Against Trafficking in Girls and Women". The growing needs for research, establishment of database, and creation of policy as well as cooperation among various stakeholders was also emphasized.

29. A second representative of IOM delivered a presentation on the Puebla Process. In his presentation, he explained that the Puebla Process was initiated during the course of the Central and North American Presidential Summit held in Tuxtla, Mexico, in February 1996. The heads of state of 11 countries of the region gave special relevance to migratory issues within the framework of the economic and social development of the region. In March 1996, Mexico organized the first Regional Conference on Migration in America, also called the "Puebla Process". The Seminar was informed that for the first time, the issue of migration was discussed at the multinational level, leading to the recognition that migration between nations could be beneficial for both, countries of origin and countries of destination, and that multilateral dialogue was the most effective tool for addressing these issues. The presentation outlined the different instruments of the Puebla Process, with the help of which the participating countries sought to stimulate the regional dialogue on migration issues. Apart from the Joint Communiqué, which served as a policy guideline, a Plan of Action was updated every year the implementation of which was followed up by the Virtual Secretariat. The Seminar noted that the secretariat was an Internet site administered on a rotating basis by the participating countries to facilitate coordination and discussion, disseminate information and create an effective database. As one of the most important lessons learned, the IOM representative stressed the need to focus only on a

limited number of high priority migration issues in order to achieve significant results. In this way the Puebla Process had managed to adopt a focused plan of action as well as create a Regional Consultative Group on Migration meeting twice a year to discuss migration issues with the participation of NGOs.

30. In the subsequent discussions, mention was made of parallel initiatives on the regional level to combat migrant trafficking and the overall need for inter-regional arrangements to map out routes of trafficking and migration, collect essential data and exchange information on all issues related, including legal review and improvement of migratory laws. In addition, the interest of the participants centered on the idea of a virtual secretariat as a cost effective means of running an international or regional agency, as funding was always problematic. Also, the floor was opened to countries for another round of information sharing on lessons learned in national efforts to combat trafficking in women and children.

VII. PROJECTS FROM THE SUB-REGIONS

31. The representative of UNIFEM South Asia began his presentation by outlining the conceptual approach that UNIFEM followed in addressing trafficking. He then went on to explain the underlying causes of trafficking including the issue of poverty, low status of women and girls, increasing violence against women and most importantly the powerful demand that existed for the abuse of female labour and women's bodies. In describing UNIFEM's anti-trafficking efforts, he listed the major strategies which were (1) strengthening regional collaboration at governmental and non governmental levels (2) supporting networks against trafficking (3) developing capacity of state and non-state actors in addressing the prevention, protection and prosecution related work (4) supporting research leading to more validated information and understanding about the nature, size and the dynamics of the problem (5) disseminating information through websites, and other means and (6) supporting media advocacy.

32. In her presentation, the ILO representative presented the issue of trafficking of children for exploitative employment sharing the ground-level experiences of the ILO's international Programme on the Elimination of Child Labour (ILO-IPEC) with child domestic workers in the Philippines. The ILO's Convention No. 182 on the Prohibition and Immediate Action on the Worst Forms of Child Labour was introduced as an important tool in the campaign against the trafficking of children for employment. She also remarked upon the development of appropriate strategies against the trafficking in children for specific worst forms of child labour as in child domestic workers, and lessons learnt in the development, designing, and implementation of programmes on the issue.

33. The chairperson opened the floor for discussion following the panel presentations. The issue of legislation as a solution to decreasing and eliminating trafficking was discussed, and it was underscored that legislation alone was not enough but it played a significant role in raising awareness and creating instruments in combating trafficking. It was proposed that trafficking laws be developed, since traffickers obtaining a valid visa could not be prosecuted under the immigration laws. Another issue raised was that of forced repatriation of trafficked persons. The

Seminar noted that forced repatriation was a major human rights issue and stressed the importance of understanding various factors such as poverty and broken families since repatriation was not sufficient to solve the problem. The necessity of a process approach which included creating the conditions such as law and policy, building capacity, and taking direct action by looking at the target group and listening to their issues, was also remarked upon.

VIII. EXTRATERRITORIAL LEGISLATION

34. In her presentation, Ms Terri Ann Motusue, explained that the Victims of Trafficking and Violence Protection Act was signed into law in 2000. The Seminar noted that it provided new tools and stronger penalties for traffickers (including foreign government officials) in the United States, and the Act also defined “minimum standards for the elimination of trafficking”, and mandated that foreign governments satisfy those standards or make significant efforts to bring themselves into compliance with those standards. The minimum standards for the elimination of trafficking were the following: (1) The government must prohibit trafficking and punish acts of trafficking; (2) For the knowing commission of sex trafficking, or of trafficking in children, or of trafficking which includes rape, kidnapping, or death, the government must prescribe punishment that is commensurate with that for grave crimes; (3) For the knowing commission of any act of a severe form of trafficking, the government must prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense; and (4) The government must make “serious and sustained efforts” to eliminate trafficking.

35. The Seminar was informed that beginning in the year 2003, a government failing to meet the minimum standards, and to make significant efforts to comply, would face withholding of foreign assistance from the USA. In addition, the USA would oppose non-trade-related assistance from the multilateral lending institutions such as the World Bank to such countries. It was further noted that if the U.S. President determined that it was against the U.S. national interest to do so, the President may waive the minimum standards. The State Department would assist the President in this decision by including an evaluation of each country’s compliance with the minimum standards in the Department’s annual Country Reports and in annual Trafficking Reports required by the Act. The Seminar was also informed that to help foreign governments meet the minimum standards, the Act sets aside funds (about \$94.5 million over the next two years) to support U.S. and foreign programs to combat trafficking, and that Governments and NGOs could receive assistance for programs that address prevention of trafficking, protection of victims, and prosecution of traffickers. To apply for funding, foreign governments and NGOs should contact the U.S. embassy or consulate in their country or region, to find out which embassy staff member is responsible for anti-trafficking programs. A government or group that seeks funds should then submit a proposal to the embassy, identifying specific programs that focus on prevention, protection, and prosecution. Finally, the US State Department report of July 2001 was presented.

36. In his presentation, Mr. Vitit Muntarphorn, explained that extraterritorial legislation sought to cover the criminal liability of nationals who had committed an offence abroad, but had not been prosecuted by the foreign state. In the context of trafficking in women and their sexual exploitation, an example of such legislation was the conviction of a French national who was prosecuted and convicted in France early this year for raping an 11 year-old Thai girl in

Thailand. To date, the Seminar was informed, 32 countries in the world had extraterritorial legislation, some of which readily applied these laws whereas law enforcement in others lagged behind intention. He further pointed out several lessons learnt from dealing with extraterritorial legislation. First of all, extraterritorial legislation often covered a broad range of offences committed abroad, and was not necessarily geared only to trafficking and related offences. However, as trafficking overlapped with several offences, which were often covered, such as forced labour, sexual abuse and exploitation of children, a trafficker would most likely come within the ambit of extraterritoriality upon return. Second, extraterritorial legislation did not substitute local law enforcement. Effective law enforcement in the country where the crime took place was necessary since usually extraterritorial legislation could be used to prosecute nationals who had committed offences abroad only when they returned to their country of origin. Thirdly, it should be borne in mind that, although it was easy to advocate for more extraterritorial legislation, enforcement of such laws depended heavily on mutual cooperation and was thus not always easy. Lastly, extraterritorial legislation was found in mainly those legal systems, which refused to extradite their nationals for crimes committed abroad. These laws thus served as a legal basis for states to deliver justice for crimes committed by their nationals abroad.

37. He then proceeded to give recommendations to countries seeking to develop extraterritorial legislation. Among the issues that countries should take into consideration in this process were: (1) Until what age should a child tried under extraterritorial legislation be considered a minor? He recommended that it be 18. (2) Which offences and crimes should be covered by the extraterritorial legislation, in view of the fact that trafficking comprised more than just trafficking for sexual exploitation? (3) Jurisdiction, *inter alia* who should be subject to the extraterritorial law? Should it be nationals, residents of the country or visitors or all of these? (4) Should double criminality (i.e. a crime under the extraterritorial legislation also be a crime in the alien country where the crime took place) be included? He explained that the trend was to abolish double criminality. (5) What should be the time period for prosecution? It was recommended that the time period should preferably start from the time of maturity of the child, rather than from the time of the crime, to allow more time for prosecution of offenders. (6) Should offenders be subject to double jeopardy (i.e. if convicted in one country, should the perpetrator also be tried in the other country)? (7) What sentence should the perpetrator receive? It was recommended that sentencing take into account the different nature of the crimes of sex offenders who are often not receptive to retributive sentencing. (8) Finally, in elaborating extraterritorial legislation the quality of the legal process with regard to obtaining evidence and the questioning of witnesses abroad should be considered. Overall, it was concluded that extraterritorial laws required international cooperation, whether formally or informally, and it was recommended to adopt mutual cooperation treaties or MOUs to ensure the quality of the legal process abroad by providing access to evidence and witnesses.

38. The presentations gave ground to a lively debate predominantly on the US Act and the recent State Department report. One of the main concerns of the Seminar was the categorization of the countries into tiers, in particular what sources of information had been used for the report and the categorization. The latter was deemed important as countries informed the Seminar that requests had not been made to their governments to provide information for preparing the report. It was clarified that the 2001 report was not alterable, and should be seen as a baseline study, and that the sanctions did not come into effect until the year 2003, thus leaving time for governments

to alter their status on the list. In addition, it was pointed out that the US Government could waive the sanctions. Moreover, countries were urged to contact local US embassies and consulates to enter into dialogue to allow for a better informed 2002 report. It was clarified that US citizens also could be charged with crimes of trafficking. It was also pointed out that having laws alone did not appear sufficient to be categorized under tier 1; rather demonstration of law enforcement seemed more essential.

IX. ADOPTION OF RECOMMENDATIONS

39. A wide variety of recommendations came out of the Seminar deliberations, among others:

General recommendations:

40. As there was no overarching regional human rights framework within which trafficking legislation could build upon, countries in the ESCAP region should consider starting to establish a regional cooperative process.

41. The Seminar noted that laws were fundamental in combating trafficking, as they provided the framework for Governments to address the issue, for NGOs to advocate implementation, compliance and action, and for raising awareness. Thus Governments were urged to draft and adopt anti-trafficking laws if they had not already done so. It was further recommended that Governments harmonize national laws with the CRC, CEDAW and other international human rights instruments in accordance with national conditions. Governments were also encouraged to strengthen law enforcement so that the laws will be effective. In addition, new and innovative modalities of legal cooperation such as forming legal aid associations between countries to provide cross-border legal counsel should be promoted.

42. Governments should consider formulating national action plans through consultation with other concerned stakeholders, which should be prepared by all concerned stakeholders, and should have quantitative and qualitative measures within a specified time frame. This would allow for progress to be measured against the national action plan and would enable the abstract to be translated into concrete action with the commitment of all actors.

The Convention on Transnational Organized Crime and the Protocol on Trafficking

43. Governments should consider ratifying the Convention and the Protocol and adopt appropriate measures for combating trafficking in women and children within the general principles of the Convention and Protocol, including taking measures to harmonize national legislation in accordance with the Convention and Protocol.

44. Governments should also consider making requests to the UNODCCP for technical assistance in preparing for ratification of the Convention and its Protocols, as well as request

assistance for capacity building for ratification and implementation. It was further recommended that technical assistance also be available for pre-signing of the Convention.

CRC:

45. Governments should consider improving the implementation of the CRC, specifically trafficking in children, among others revising legal procedures to make them child-sensitive and victims and witness oriented. In addressing trafficking, governments should also consider other related rights of children and providing services accordingly. Moreover, building capacities in investigating techniques dealing with children and psychosocial counselling and support for child victims was recommended, as well as to disseminate the knowledge about the CRC and other relevant legal instruments to the public, community and religious leaders, private sector, professional organizations, civil society, government officers, politicians, law makers and law enforcers, mass media, other relevant persons or organizations, teachers, parents caregivers and children themselves.

46. Governments were invited to consider signing and ratifying the optional protocols to CRC on the sale of children, child prostitution and pornography, and the involvement of children in armed conflicts. Finally, coordinating efforts among the international agencies and international organizations in using child rights approach as a base for their advocacy and actions as well as coordinating their efforts in their financial and technical support to combat trafficking at the local, national, sub-regional, and regional levels was recommended.

CEDAW:

47. As all states, developing and developed, had further scope for improvement in relation to the full implementation of CEDAW, it was noted that the goal of eliminating discrimination and achieving gender equality is a long process attained through progressive realization. Governments should therefore prioritize the different aspects of discrimination to be addressed. As CEDAW provided the normative framework within which member states were obliged to act, states parties should define specific targets according to set priorities in a clearly defined time limit. By designing 5-year plans of action, states parties would be able to tackle pressing issues in a comprehensive manner with noticeable results. The concluding comments by the CEDAW Committee given after the reporting obligation of a country should be taken into account by the country in its efforts to combat trafficking. Gender mainstreaming in the legal process on trafficking both at the national and international levels should be promoted.

Memorandums of Understanding:

48. Based on the successful development and effective utilization of an MOU by various government agencies dealing with trafficking in Thailand, Governments were urged to make constructive efforts to develop their own MOUs. The Seminar learned that the highest possible authority of each agency should be involved in signing and disseminating information about an

MOU for it to be most effective across the country, including border areas. A national MOU among governmental agencies, which preferably may include ministry of finance, should enable a better coordination and collaboration of a multi-sectoral approach whereby each agency would bring in respective authority and expertise to counter the cross-cutting issue of trafficking. Governments should also consider developing an MOU with NGOs to enable NGOs to perform their roles specified in the MOU and in the procedure also specified therein with explicit governmental support. NGOs should also enhance collaboration and coordination among themselves through an adoption of an MOU among NGOs. Effectiveness of MOUs could be augmented through identification of focal points or establishment of a coordinating body.

49. Countries that share a border or the countries of origin, transit and destination of trafficking should consider establishing bilateral and/or multilateral agreements to define and to adopt the terms and procedures of cooperation to prevent and punish the offence of trafficking and to help victims to return to life with dignity.

Inter-regional/regional/and sub-regional agreements:

50. The Seminar welcomed the many presentations on inter-regional, regional and sub-regional arrangements as inspiration, including the experience of ASEM and the Puebla Process, and recommended that similar processes and political framework of cooperation would be explored in the region. In doing so, it was further recommended that such a framework for cooperation initially limited itself to a few priority areas to gain greater momentum and success.

51. All United Nations agencies, including ESCAP, should consider compiling and maintaining these initiatives along with other pertinent documents in the interest of protecting human rights of persons victimized by or vulnerable to trafficking. Efforts should be made to build a cross-reference system and another device for easy reference. Efforts should also be made by Member States to have sustained opportunities to share best practices and address common concerns, perhaps at regular intervals. Regional agencies should also mobilize resource to develop a standardized methodology to collect and archive reliable data and train concerned parties in the methodology and use of the database.

International Responses:

52. The Seminar emphasized the importance of regional and international initiatives in support of country level actions to combat trafficking in persons, especially women and children. International organizations, particularly ESCAP and other entities in the United Nations system, other international and regional organizations and donor agencies and governments are invited to follow up on this seminar by:

- (a) Producing a resource guide to assist countries to utilize legal instruments to combat trafficking in women and children, which would include materials discussed at this seminar

- (b) Organizing sub-regional meetings of governments, NGOs and other civil society members to create awareness, stimulate interaction and catalyze action to use international instruments and national laws to formulate public policy to combat trafficking in persons, especially women and children
- (c) Strengthening country-level, sub-regional and regional networks for promotion and exchange of experience and information and comparative research
- (d) Establishing a regional resource facility to collect and disseminate information of activities undertaken by the United Nations system and other entities, (building upon the ESCAP Directory of Anti-Trafficking Activities) and bilateral/multilateral agreements, national action plans, cooperative efforts etc.

53. ESCAP was requested to take steps to establish a Regional Task Force on Trafficking in Women and Children which would meet periodically to share and exchange information and discuss further cooperation.

54. The Regional Seminar unanimously adopted the recommendations as outlined above on 3 August 2001.