Organization for Security and Co-operation in Europe

Opening Remarks by Ms. Eva Biaudet, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings

"SUCCESSFUL PROSECUTION OF HUMAN TRAFFICKING – CHALLENGES AND GOOD PRACTICES"

Conference in Helsinki, 10-11 September 2008

Dear Minister Brax,

Excellencies, Ladies and Gentlemen,

Dear Colleagues and Friends,

I warmly welcome you to Helsinki! I am impressed and very thankful that all of you, representatives from over 40 OSCE countries - have come this long way to share your experience and knowledge at this conference which takes place here at the Hotel Kalastajatorppa – a venue with historical significance for the OSCE. 33 years ago - in July 1975 – 1,500 delegates from 35 nations who came here for the signing of the Helsinki Final Act of the Conference on Security and Co-operation in Europe, met at a reception at this very place.

I want to sincerely thank the Finnish Chairmanship for co-organising, and so generously hosting this event together with my Office. I am also very pleased that Minister Brax is here representing the Finnish Chairmanship, and honoured that President Tarja Halonen will address us later today. This reflects Finland's determination to be at the forefront in our common fight against human trafficking. I also hope that this event can serve as an example and catalyst for future OSCE Chairmanships, encouraging them to continue to prioritize OSCE's anti-trafficking work and fully take advantage of our organisation's pioneering role in working to eradicate human trafficking from the OSCE region and beyond.

Especially, I want to thank our distinguished speakers and moderators for being here. We very much look forward to hearing your views and learn from your experiences during these two days.

The aim of this conference is to exchange experiences on how to effectively investigate and prosecute human trafficking cases based on a victim-centred approach. This approach means taking the needs of the trafficking victim to be protected, assisted and ultimately empowered to live a dignified life, as the fundamental starting point during all phases of criminal proceedings. And I want to stress that adhering to this principle, often also referred to as the human rights-based approach, is not an option but an imperative for all OSCE countries, having signed up both to our OSCE anti-trafficking commitments and other key international instruments, most importantly the UN Palermo Protocol, and the Council of Europe Convention on Action Against Trafficking in Human Beings.

During these two days we will hear experts speak about many topics that are vital for achieving an effective criminal justice response to human trafficking – issues ranging from victim/witness co-ordination and victim protection, to trans-border cooperation. With this in mind, I have no ambition of presenting you with an exhaustive list of do's and don'ts in these opening remarks. My intention is only to highlight a few important issues.

Ladies and Gentlemen,
In my view, the biggest shortcoming of all, in trying to achieve successful prosecutions, is our continued failure to identify the victims - regardless of whether we are talking about sexual or labour exploitation. What are the reasons for this - why are so few victims detected? Why are most countries still having so few investigations and prosecutions, and even fewer convictions? Is it only because resources to fight human trafficking are scarce and a clear understanding of this serious crime are lacking? Are evidential problems so complex that we have difficulties to achieve progress – or are our societies indifferent or even becoming tolerant to trafficking and exploitation? To what extent is prejudice and blaming the victim still part of the problem despite the fact that we have been talking about the seriousness of this severe human rights violation for over a decade?

What we know is that a very high number of victims all over the OSCE region still are being treated as criminals instead of receiving assistance and protection, and that many people including officials, think that the exploitative conditions victims are facing, at least partly, are their own fault. A very worrying fact I have noticed during my visits to different participating States, is that these detrimental attitudes not only exist among the general population, but sometimes also among representatives of law enforcement, prosecution services and the judiciary. In one country, when

referring to several NGO-reported cases of intimidation of victims by prosecutors, judges and trial attorneys, the Prosecutor General categorically refused to recognise any such problems, which compounds the difficulties of working on this issue. The OSCE is doing its best to help address this problem by building capacity, and organising specialised training for law enforcement and the judiciary throughout the region. However, without strong national ownership the impact will of course remain limited.

In order to increase victim identification we need a systematic and coordinated approach of front line investigators and prosecutors who respect the rights of potential victims and look beyond irregular migration. On many occasions, human trafficking is detected following ordinary investigations on related crimes such as smuggling, possession of false documents, pimping, or other violent crimes.

To give you an example of our failure to identify potential victims, I want to mention a recent case from an EU country. As a result of a large police operation, several hundred women from a non-EU country who had been exploited in prostitution were arrested and detained on the grounds of their irregular immigration status. The women had been locked in apartments, kept in debt bondage, and prostituted under severe physical and psychological conditions. Despite these deprivations of freedom and inhuman treatment, they were not recognised as victims but simply treated as criminals and irregular migrants. No victim referrals were made and the women were deported. I am sure we all agree that this is not acceptable!

Not the least because of such practices, trafficking victims often have very little trust in authorities and fear coming forward. In order to lower the threshold for victims to report exploitation, the provisions for granting reflection delays and residence permits to trafficking victims have to be clear and consistent. Residency procedures and access to support services should not be dependent on the victim's participation in criminal proceedings, to ensure that the receiving of residency status is not be used to discredit the victim's testimony in the course of a trial against traffickers. The provision of a clear legal status and the perspective of social inclusion will also help the victim to regain control of her or his life and encourage the person to participate and contribute to successful prosecution. The basis for providing assistance to victims cannot solely depend on initial determinations by the police and definitely not on the eventual outcome of a trial.

We also know that unconditional assistance to victims, regardless of their willingness to act as informers or witnesses in criminal proceedings, brings positive results also for investigation and prosecution. Experience from the USA and Italy demonstrates that conditioning assistance to testifying in court is counterproductive. Victims are much more likely to be reliable and valuable witnesses if their decision to co-operate with law enforcement has been voluntary.

Ladies and gentlemen,
A trafficked person is a victim of a serious crime, needing sufficient time to recover from her or his trauma. Medical research has found that the short and long term effects on the mind and memory of a victim of trafficking are similar to that of victims of torture. The victim loses his or her memory, telling the story in an inconsistent way or simply appearing un-collaborative. The research showed that victims need time to recover enough to be a helpful witness. This surely shows how important it is also for the crime investigation to provide assistance to the victim and a reflection period.

Victims need timely legal aid, to be fully informed about their legal rights in order to understand his or her options, to make the best choices, and be an active and determining party in criminal proceedings. Only if receiving the necessary assistance, and when dignity and rights are respected during the prosecution, will the victim be able to play a protagonist role, recalling what happened and presenting her or his account in a systematic way, without fear, and being better able to bear the pressure of the situation.

Moral and material redress for infringements against a victim's fundamental rights and liberties are important to the full restoration of a victim's dignity. Participating in the criminal proceedings and contributing to the establishment of the truth and the condemnation of the exploiter is an important passage to allow the survivor to move on. .

As many of you well know, one of the most crucial aspects for an effective judicial response to human trafficking is how national legislators implement and national courts interpret the vague concept of "abuse of power or of a position of vulnerability" in the UN Palermo Protocol definition. In my opinion, it is questionable if this concept currently is interpreted in accordance with the rationale of the UN Palermo Protocol and the Council of Europe Convention, for example. The threshold for determining what kind of behaviour constitutes "abuse of power or of a position of vulnerability" has been set very high – sometimes one even gets the impression that a certain amount

of exploitation, threats and even violence are accepted, especially in connection with prostitution. It also seems as if far too much relevance is given to the initial consent given by a victim to circumstances which in fact lead to exploitation and constitute trafficking. It is alarming if authorities when dealing with victims of trafficking, and courts when determining whether a person is a victim of trafficking, do not take abuse of power, threats or the use of direct force against victims into due account.

Another aspect we have to analyze carefully is who are the perpetrators, who are the persons that are being convicted for trafficking or related offences? As with any type of organised crime it is of course difficult to indict or convict the main criminals and profiteers. The current situation in many OSCE participating States is that an increasing amount of women are sentenced for human trafficking. This raises serious concerns since we also know that many of these women were trafficking victims themselves. In such cases there is a need to carefully analyze the line between ongoing exploitation and having been turned into an exploiter. As the modus operandi of trafficking rings become more and more sophisticated, I have the impression that women still in a position of vulnerability are used for dangerous activities where the risks of getting caught are high, while the higher level perpetrators are not brought to justice. I am very much looking forward to hearing your thoughts about this phenomenon.

Since we have recently faced violent conflict within the OSCE region, in Georgia, I want briefly to refer to its relevance to human trafficking. A sad but well known fact is that THB thrives during and after conflicts. Especially women and children become vulnerable to abuse as a result of chaos, displacement and hate-based violence. Based on our experiences from the Balkans, we also know there is an increased risk of human trafficking in areas where international military and peace-keeping operations and civilian contractors are deployed. Sometimes military, peace-keeping personnel, civilian contractors or even international humanitarian workers themselves are directly involved in the trafficking process. In one OSCE participating State, cash strapped senior officers forced young conscripts to work as male prostitutes; in other countries, military contractors have been involved in trafficking for sexual exploitation, and in another, civilian contractors trafficked men onto military bases for labour exploitation. Very few of these serious crimes and misconducts have ever led to prosecutions. I appeal to you to please ensure this cannot happen again.

Let me also say a few words about reducing demand – without which we definitely cannot achieve a sustainable decrease of human trafficking. Countries of destination have a special responsibility to decrease the demand - for both sexual and labour exploitation that fosters trafficking. There is a clear need to develop effective legislation that makes people accountable at different levels for exploitation. And I want to remind all States present that they, already since the OSCE Ministerial Council Declaration on Trafficking in Human Beings adopted in Porto in 2002, have committed themselves to introducing a thorough discussion on how to strengthen legislative, social and cultural measures for reducing demand. The criminalisation of demand is of course only one measure – but can be a most effective measure in this regard.

Ladies and gentlemen,

Making the fight against human trafficking a priority means mobilizing the political will and resources to address the issue. In addition to prioritising victim identification among irregular migrants, prostituted women, Internally Displaced Persons, and other vulnerable groups, and providing victims with assistance and access to justice, it of course also implies prioritising investigation of this crime. Financial and economic investigations, as well as shortening the length of criminal proceedings are just as important. When compared with the resources dedicated to other serious crimes, it is clear that we still have devoted insufficient resources for an effective criminal justice response to trafficking.

I hope this conference will serve as good example of how OSCE countries can take on board the knowledge and expertise of others who have achieved positive and sustainable results – in making laws adequate and compatible with the severity of the crime of human trafficking, in protecting the victims, and in making sure that the whole chain of traffickers is brought to justice.

In conclusion, my sincere hope is that putting victims' rights at the centre will soon be not only a declaratory statement of the national authorities, but the daily practice of law enforcement, prosecution services and the judiciary of all OSCE countries – this will help us reach our goal to successfully prosecute human trafficking for which we are all gathered here together.

Thank you for your attention!