

**The Convention for the Suppression of the Traffic in Persons and the
Exploitation of the Prostitution of Others (1949): reinforcement of
international instruments and insufficient obligations to combat human
trafficking**

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Introduction

In 1949, by adopting the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others, the UN strengthened all the international instruments relating to trafficking. The abolitionist fight against trafficking started, which led to international awareness.

In a climate of humanist hope, it was adopted after the Second World War, and only a year after the Universal Declaration of Human Rights¹. The Convention is situated in the context of the significant rise in human rights². The 1949 Convention brings together the content of previous conventions relating to the trafficking in women and children. The ultimate goal is to replace the previous scattered provisions in order to simplify³. This Convention establishes a new legal regime to combat this crime, including the commercial sexual exploitation of children. The objective is to strengthen international cooperation to combat the exploitation of the prostitution of others.

The 1949 Convention constitutes the synthesis of the instruments relating to the slave trade in white women and the trafficking in women and children adopted previously⁴, which are the International Agreement of May 18, 1904 for the suppression of the slave trade, amended by the Protocol approved by the General Assembly of the United Nations on December 3, 1948, the International Convention of May 4, 1910 relating to the suppression of white slave traffic⁵, the International Convention of September 30, 1921 for the Suppression of the Traffic in Women and

¹ Malka Marcovich (Présidente du MAPP, Mouvement pour l'Abolition de la Prostitution et de la Pornographie, et de toutes formes de violences sexuelles et discriminations sexistes), fondé à Paris en France), *Guide de la Convention de l'ONU du 2 décembre 1949 pour la répression de la traite des êtres humains et de l'exploitation de la prostitution d'autrui*, Fondation Scelles, 2000, 28 pages, 2pp.

² Plamondon Ginette, *La prostitution: Profession ou exploitation? Une réflexion à poursuivre - Recherche adoptée par les membres du Conseil du statut de la femme lors de l'assemblée du 10 mai 2002*, Dépôt légal — Bibliothèque nationale du Québec, 2002 Bibliothèque nationale du Canada, ISBN : 2-550- 39361-9, 155 pages, 94pp. Available at :

<http://lelotuswebzine.files.wordpress.com/2009/11/rechercheprostitutionprofessionouexploitation.pdf>

³ Emmanuel Decaux, *Les formes contemporaines de l'esclavage*, op. cit, 101 pp.

⁴ David Weissbrodt et la Société anti-esclavagiste internationale, — *Abolir l'esclavage et ses formes contemporaines*, op. cit., 20 pp.

⁵ The States (Great Britain, Germany, Austria, Hungary, Belgium, Brazil, Denmark, Spain, France, Italy, Netherlands, Portugal, Russia and Sweden) to give as much efficiency as possible to the repression of the traffic known as the name of "White slave trade", concluded the Convention. The Convention punishes any person who, in order to satisfy the passions of others, by fraud or with the help of violence, threats, abuse of authority, or any other means of coercion, hires, involves or diverts a woman or adult girl in view of debauchery. The acts are punished even when they are committed with the consent of the victims. The various acts which constitute the constituent elements of the offense may be carried out in different countries. The provisions of Articles 1 and 2 must be considered as a minimum, that is to say that the Contracting Governments remain absolutely free to punish other identical offences, such as, for example, the recruitment of adults when there would be no fraud or coercion.

Children⁶, amended by the Protocol approved by the General Assembly of the United Nations on October 20, 1947, and the International Convention of October 11, 1933 for the Suppression of the Traffic in Women of Full Age⁷.

The 1949 Convention has key provisions that have revolutionized and changed the international context of prostitution. The state cannot organize prostitution. The organization of prostitution is prohibited, including in the form of administrative, health or other files. States are obliged to repeal or abolish any law, regulation, or any administrative practice that registers women in a situation of prostitution; which prohibits them from being recorded in registers, special papers, and being subject to exceptional monitoring or reporting conditions⁸; it is the first time that people in a situation of prostitution are considered victims; the burden of proof cannot in any case be borne by the victims, the responsibility for the criminal act cannot be placed on persons in a situation of prostitution.

Whether the victims of prostitution consent or not, States must repress those who organize prostitution, i.e. traffickers, pimps, recruiters and all other exploiters who hire, train or entice others into prostitution⁹. Transnational trafficking and national procuring have the same position with regard to the States Parties. The Convention also provides for the creation of a centralized office for information.

⁶ To completely ensure the repression of the traffic in women and children, designated in the preambles to the Agreement of May 18, 1904 and the Convention of May 4, 1910 under the name of "White slave trade", the Contracting States undertook to take all necessary measures with a view to punishing attempted offenses and preparatory acts for offenses and to seek out and punish individuals who engage in trafficking in children of either sex. So we see that unlike the other conventions, the 1921 Convention also punishes attempted offenses and preparatory acts for offences. The Convention also protects children of both sexes. On the other hand, the States undertook to take administrative and legislative measures to combat the trafficking of women and children with regard to their immigration and emigration services.

⁷ The Convention ensures in a more complete manner the suppression of the traffic in women and children and supplements the Agreement of May 18, 1904 and the Conventions of May 4, 1910 and September 30, 1921 relating to the suppression of the traffic in women and children. It punishes each person who, to satisfy the passions of others, hires, entices or diverts, even with her consent, a woman or adult girl for the purpose of debauchery in another country. The constituent elements of the offense may be carried out in different countries. The attempt is also punishable. The Parties undertake to communicate about any individual of either sex who has committed or attempted to commit one of the offenses covered by the Convention, or by the 1910 and 1921 Conventions relating to the suppression of the traffic in women and children.

⁸ Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949, art. 6

⁹ Idem, art. 1

After showing the circumstances in which the convention was adopted, it will be interesting to take a closer look at its main aspects and examine the specific obligations adopted to combat trafficking in persons.

This research paper is divided in two chapters:

Chapter 1: Main aspects guaranteeing respect for human rights

Chapter 2: Insufficient obligations of the Convention

Chapter 1: Main aspects guaranteeing respect for human rights

The Convention, which is one of the great texts of the post-war period on human rights, is the first to carry in its preamble a negative value judgment on prostitution¹⁰. *“Prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community”*¹¹. The terms used in this preamble constitute a somewhat old language, which can lead to conceptual confusion. The use of the term “dignity and worth of the human person” may lead us to think that prostituted women have no dignity. In fact, it is the terminology used in the Universal Declaration of Human Rights that is used in this convention, and which has served as the basis for a large number of international instruments for the protection of human rights, such as the Convention on the Elimination of All Forms of Discrimination against Women. The objective is to demonstrate that all people are equal in dignity and that they have inalienable rights such as integrity and security. In this context, the Convention presents the phenomenon of prostitution as an abuse of women’s human rights which is an important achievement for women.

By affirming that prostitution “endangers the welfare of the individual, of the family...”, the preamble resembles the Universal Declaration of Human Rights of 1948 which affirmed that “All

¹⁰ Dinah DERYCKE (Sénatrice), *Rapport d’Activité pour l’année 2000 (No:209) fait au nom de la délégation du Sénat Français aux droits des femmes et à l’égalité des chances entre les hommes et les femmes et compte-rendu des travaux de cette délégation sur la prostitution, déposé en application de l’article 6 de l’ordonnance n° 58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires, Session ordinaire de Sénat Français de 2000-2001, annexe au procès-verbal de la séance du 31 janvier 2001*, 228 p., 84 pp.

http://www.senat.fr/rap/r00-209/r00-209_mono.html

¹¹ Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, op. cit, preamble

human beings are born free and equal in dignity and rights”¹², and also stated that “*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*”¹³.

Apart from the affirmation of the Preamble, it is only the exploitation of prostitution that is condemned. This convention only mentions the sexual exploitation aspect of trafficking. It considers trafficking as a consequence of prostitution and sanctions pimping. However, the problems of trafficking and prostitution are indisputably linked¹⁴.

The 1949 Convention does not make trafficking a distinct offence, recognized as such, but identifies it with the exploitation of prostitution¹⁵. Traffickers and pimps are therefore treated in the same way.

The Convention provides that trafficking in human beings for the purpose of prostitution is prohibited¹⁶. The Convention does not condemn and does not fight against prostitution as such, but against the exploitation of the prostitution of others.

The 1949 Convention provides for offenses relating to the sex trade. It is the act of hiring, training or enticing with a view to prostitution or the exploitation of prostitution, another person, even if he or she consents¹⁷. Therefore, the article applies in cases where the prostituted person is subjected to any form of coercion and acts performed with or without their consent¹⁸. The possibility of voluntary prostitution is excluded if there is a pimp who participates in the act, because any person,

¹² Universal Declaration of Human Rights, op. cit, art. 1

¹³ Idem, art. 16(3)

¹⁴ Radhika Coomaraswamy, *Rapport de la rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences, sur la traite des femmes, les migrations des femmes et la violence contre les femmes, —Intégration des droits fondamentaux des femmes et de l'approche sexospécifique - Violence contre les femmes*], présenté en application de la résolution 1997/44 de la commission des droits de l'homme des Nations Unies, Commission des droits de l'homme des Nations Unies, cinquante-sixième session, op. cit, 12pp.

¹⁵ Toupin Louise (chercheuse autonome), *La question du « trafic des femmes » - Points de repères dans la documentation des coalitions féministes internationales anti-trafic, document de travail, mars 2002*, Dépôt légal, 1er trimestre 2002, Bibliothèque Nationale du Québec Bibliothèque Nationale du Canada, 102 pages, p. 20.

¹⁶ Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, op. cit, art. 1

¹⁷ Yao Agbetse, *Manuel sur la traite des êtres humains*, op. cit, 14 pp.

¹⁸ Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, op. cit, art. 1(2)

even consenting, is mentioned. The act of prostitution without resorting to the intervention of a pimp is not covered by this convention.

Therefore, consent has no legal value on the part of pimps and traffickers when facing criminal charges. This approach supports the main idea of the preamble that prostitution is a practice incompatible with the dignity and worth of the human person. Hiring is punished for any purpose whatsoever.

Although recruitment need not take place across national borders for it to be considered “trafficking” under the Convention, parties must monitor immigration and emigration to halt trafficking for the purpose of prostitution¹⁹. There is no explicit distinction made between prostitution in general and trafficking. We must take into account that not all foreign prostitutes are trafficked according to national laws, and not all migrant women are involved in prostitution. While all trafficking is and should be illegal, not all illegal migration is trafficking. There is a dilemma in this position. Some modern legislation now provides that any woman involved in prostitution, even with consent, is a victim of abuse of her vulnerability²⁰.

On the other hand, the trafficked person does not necessarily have entered a country illegally. In Europe, several countries formulate visas or permits for “entertainers” or “artist visas”, which allow them to work as dancers or hostesses. Entry into the country is therefore legal. The deception on the part of the traffickers, and the deception of the women, consists in the fact that they are not only destined to work as dancers, but also to be sold to establishment owners to work as prostitutes²¹.

In some Arab countries, the situation is the same. Hundreds of women from Eastern Europe and the Maghreb entered legally on “artist” visas. Once in the workplace, they find themselves in conditions that leave them with no way out of leaving the premises, forced to offer sexual services for payment; in most circumstances, these prostitutes are unpaid, qualifying the act as “pure trafficking.”

¹⁹ Idem, art. 17

²⁰ Sweden and other Nordic countries are famous for this new approach.

²¹ Toupin Louise (chercheuse autonome), *La question du «trafic des femmes»- Points de repères dans la documentation des coalitions féministes internationales anti-trafic, document de travail, mars 2002, op. cit, 25-26 pp.*

The Convention provides that the trafficked woman or man must have been hired “to satisfy the passions of others” and “for the purpose of prostitution”. Since the international instruments do not have a definition for prostitution, it is therefore interpreted according to its ordinary meaning, that is to say any sexual act offered in exchange for a reward or for profit²². The principle of the right of access, for “clients”, to the sex of prostitutes is consolidated. These customers are indeed presented, as being supposed to be governed by “their passions”. In this way, a positive status is undeniably attributed to prostitutional sexuality. On the other hand, the reference to “passion”, which is opposed to “reason”, helps to relieve them of their guilt, at least partially. As for the use of the word “satisfy”, not only does it not call into question the principle of their “request”, but it legitimizes it²³.

The status of prostitutes is much more ambiguous. In reality they are either considered as objects of “the exploitation of others”, or as “devoting themselves to prostitution”. Indeed, if prostitutes are considered to be “indulging in prostitution”, they are therefore considered to be conforming to the role, which their community attributes to them, in order to meet the expectations expected of them. Therefore, they are acted, they do not act. Therefore, failing to be recognized as free human beings in prostitution, they cannot be considered active victims. On the other hand, they can even be considered, because they did not oppose it, as having participated in the construction of this system. Even, because they are the only ones visible, to be considered as, alone, responsible for a system which, however, only exists on their own negation²⁴.

Through this Convention, adult sex workers have the right to practice their trade²⁵, if they are the sole beneficiaries of the income of prostitution, but the main idea behind the convention is that sex work should be eliminated, and adult sex workers rescued and rehabilitated. This undermines the

²² Geronimi Eduardo, *Aspects juridiques du trafic et de la traite des travailleurs migrants*, op. cit., p. 39.

²³ Marie-Victoire Louis - Chargée de recherches au Centre d’analyse et d’intervention sociologique (CADIS), *Pour construire l’abolitionnisme du XXI^e siècle*, date de rédaction: 01/04/2000, date de publication: 01/07/2000, Available at : <http://www.marievictoirelouis.net/document.php?id=510&themeid=>

²⁴ Idem

²⁵ Radhika Coomaraswamy, *Rapport de la rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences, sur la traite des femmes, les migrations des femmes et la violence contre les femmes, —Intégration des droits fondamentaux des femmes et de l’approche sexospécifique - Violence contre les femmes*], présenté en application de la résolution 1997/44 de la commission des droits de l’homme des Nations Unies, Commission des droits de l’homme des Nations Unies, cinquante-sixième session, op. cit, 11-12 pp.

human rights claims of sex workers, and is used by governments to justify the maintenance of laws that expressly criminalize these people²⁶.

In any case, we cannot affirm that the Convention recognizes “the right to prostitute oneself”. This is incompatible with the political judgment of condemnation of prostitution that it provides in its preamble, as well as with the criminalization of certain methods of pimping that it formulates²⁷.

The convention also speaks of incitement to the prostitution of others, the opening, operation or financing of brothels. Certain forms of procuring, especially in hotels, are punishable by article 2 of this convention. Here, it is interesting to say that the hiring, or the fact of involving others in prostitution are acts of organizing the prostitution of others, whereas the opening, financing or knowingly hiring a brothel are acts of participation in the organization of the prostitution of others, acts which facilitate and help pimps by preparing a favorable environment for them to carry out these criminal activities, and recruitment alone constitutes the act prostitution of others.

According to some people and politicians, the term “prostitution” confirms the fact that a person’s sex can be an object of “enhancement”. And if the Convention establishes the principle of the condemnation of certain modalities of procuring, it does not call into question the principle according to which, subject to certain reservations, this “activity” can generate a profit²⁸. It does not cover the condemnation of the profit made by the traffickers.

Consequently, the condemnation of “prostitution”, linked to exploitation, this term which was not used in the titles of previous international conventions on the subject, legitimizes the possibility of repressing certain aspects of pimping²⁹.

The 1949 Convention, by condemning the principle of prostitutional exploitation, constitutes a historic advance in the evolution of the concept of “human rights”³⁰. The human being, the individual, any person is not a commodity or a product of sale and purchase, and therefore cannot

²⁶ Centre canadien d’information sur le VIH/sida, Sexe, travail, droits: réformer les lois pénales du Canada sur la prostitution, Réseau juridique canadien VIH/sida, 2005, 142 pages, 56 pp. Available at : <http://sagecollection.ca/fr/system/files/sw-info-fra.pdf>

²⁷ Marie-Victoire Louis - Chargée de recherches au Centre d’analyse et d’intervention sociologique (CADIS), *Pour construire l’abolitionnisme du XXIe siècle*, op. cit.

²⁸ Idem

²⁹ Idem

³⁰ Idem

be the object of exchange and commerce. This is expressly stated in this convention, which we are studying in detail.

By this convention, men, women and children under the age of 18 are covered in the same way. The term “others” also includes men. When those who engage in it are adults over the age of 18, this activity is not explicitly prohibited by international standards but the Convention strongly discourages it³¹.

The 1949 Convention provides that persons who exploit the prostitution of others shall be punished by criminal or civil measures, and in its closing protocol it provides that States Parties may adopt more stringent conditions to combat trafficking and exploitation of others for the purpose of prostitution³². On the other hand, prostituted or trafficked women should not be punished, they should be considered as victims, because prostitution is considered to be one of the forms of sexual exploitation of women. By establishing a clear concept of pimping, it in no way criminalizes people in a situation of prostitution.

Chapter 2: Insufficient obligations of the Convention

By this convention, States are required to punish anyone who exploits the prostitution of another person, therefore the pimp who depends on prostitution and profits from it. Pimping is the offense of organizing and managing the prostitution of others and making a profit from it. It is always present in different societies and takes on new forms to accompany new ways of life and communication. It is an offense that treats women, children even men, with a view to their exploitation, for the benefit of the pimp who has relations with organized crime circles. A person who keeps, directs or, knowingly, finances or helps to finance a brothel or even gives or knowingly rents, in whole or in part, a building or any other place for the purposes of the prostitution of others must also to be punished³³. These acts are considered extradition cases³⁴ in any extradition treaty

³¹ David Weissbrodt et la Société anti-esclavagiste internationale, —Abolir l’esclavage et ses formes contemporaines, *op. cit.*, 33 pp.

³² Malka Marcovich, Guide de la Convention de l’ONU du 2 décembre 1949 pour la répression de la traite des êtres humains et de l’exploitation de la prostitution d’autrui, *op. cit.*, 5 pp.

³³ Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, *op. cit.*, art. 2

³⁴ Extradition is the handing over by a State, at the request of the other State, of an individual who is on its territory to another State which is looking for this individual either to try him for an offense he may have committed, or to make him execute the sentence that his courts have already pronounced against him. International law has established this procedure so that those who flee justice are judged or punished for the

concluded or to be concluded between Parties to this Convention³⁵. The sex trade and intermediaries are criminalized, but prostitutes are exempt, they are considered victims in need of protection. It is necessary to add that the intentional participation in these acts³⁶ as well as the attempt to achieve them³⁷ are also suppressed.

The Convention is very clear on the issue of the legalization of prostitution, it advocates the elimination of all its forms. It provides for the abolition of the filing of prostitutes by the Regulator State. It provides that any regulations that require prostitutes to comply with specific monitoring or reporting provisions must be abolished³⁸. Parties to this Convention shall take all necessary measures to repeal or abolish all laws, regulations and administrative practices imposed on persons who engage or are suspected of engaging in prostitution. The Convention obliges States Parties to create or maintain a service with a specific mandate responsible for coordinating and centralizing the results of research relating to the offenses provided for by the Convention³⁹ and measures to prevent prostitution.

In addition, all States undertake to take the relevant measures to combat trafficking in persons of either sex for the purpose of prostitution, as well as to protect immigrants and emigrants, in particular women and children⁴⁰.

Another important approach of the Convention gives foreigners, like nationals, the possibility of bringing civil proceedings⁴¹.

The 1949 Convention indicates that States Parties may adopt more stringent measures to combat international trafficking and the exploitation of the prostitution of others⁴². So we can say that the

crimes they have committed. It is not to be confused with expulsion, which is carried out for internal reasons to the expelling State, nor with *refoulement*, which consists in refusing an individual at the border, nor with repatriation, which takes place in a non-criminal or even transfer, which is a notion of the Statute of the International Criminal Court.

³⁵ Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, *op. cit.*, art. 8

³⁶ *Idem*, art. 4

³⁷ *Idem*, art. 3

³⁸ *Idem*, art. 6

³⁹ *Idem*, art. 14

⁴⁰ *Idem*, art. 17

⁴¹ Malka Marcovich, *Guide de la Convention de l'ONU du 2 décembre 1949 pour la répression de la traite des êtres humains et de l'exploitation de la prostitution d'autrui*, *op. cit.*, 23 pp.

⁴² Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, *op. cit.*, Closing Protocol

repression of the buyers of sexual services and their prosecution in the courts does not oppose the 1949 Convention. Therefore, we can be avant-garde and criminalize the client or the buyer of the sexual service who is an accomplice of the pimp.

But the Convention does not address the question of “the buyer”, it does not contain any article repressing “buyers” in the context of trafficking⁴³. The Convention had the effect of punishing criminals rather than protecting women. It denies sex workers the right to economic and sexual self-determination. This denial of rights only serves to marginalize and reprimand them⁴⁴.

We can see that the Convention does not contain specific provisions against trafficking in human beings, or they are not defined in a clear way, therefore trafficking in persons can be assimilated to exploitation for the purpose of prostitution.

For lack of having been able to condemn the system of prostitution as a whole, and of not having condemned the principle of demand, it could only condemn some of the methods of exercising this system⁴⁵.

It should be noted that in 1949, male violence against women was not a central human rights issue as it is today. But, we see ourselves in the urgency of talking about the role of the buyer, the first actor in the sexual exploitation of women and children, because demand is part of the sex industry, and contributes to its expansion⁴⁶.

The absence of a monitoring mechanism is deplorable in this convention. It obliges States to submit to the Secretary-General a report on the efforts made in the legislative, regulatory, and administrative and other fields to implement the Convention, on an annual basis⁴⁷. Nevertheless, the absence of an international control body remains regrettable and undoubtedly constitutes a

⁴³ Malka Marcovich, Guide de la Convention de l'ONU du 2 décembre 1949 pour la répression de la traite des êtres humains et de l'exploitation de la prostitution d'autrui, *op. cit.*, 7 pp.

⁴⁴ Toupin Louise (chercheuse autonome), *La question du «trafic des femmes»- Points de repères dans la documentation des coalitions féministes internationales anti-trafic, document de travail, mars 2002*, *op. cit.*, 15 pp.

⁴⁵ Marie-Victoire Louis - Chargée de recherches au Centre d'analyse et d'intervention sociologique (CADIS), *Pour construire l'abolitionnisme du XXI^e siècle*, *op. cit.*

⁴⁶ Malka Marcovich, Guide de la Convention de l'ONU du 2 décembre 1949 pour la répression de la traite des êtres humains et de l'exploitation de la prostitution, *op. cit.*, 7 pp.

⁴⁷ Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, *op. cit.*, art. 21

restriction⁴⁸, because this lack weakens the effectiveness and the application of the Convention of December 2, 1949.

Indeed, the UN Conventions drafted before 1960 (those of 1926, 1956 and 1949) do not contain any mechanism of binding application or control within the United Nations⁴⁹. Normally, these conventions are open for signature by the States. To ratify them, the States must take legislative measures in conformity with these conventions with a view to ratification, but if the laws are changed, no international authority can raise that the State has failed in its obligations of ratification, which constitutes a weakness of the 1949 Convention.

The Convention does not provide any mechanism or procedure to ensure monitoring of compliance with human rights obligations⁵⁰. Although the Convention obliges States parties to create or maintain a service with a specific mandate as provided for in Article 15 of the convention, responsible for coordinating and centralizing the results of research relating to the offenses covered by the Convention, and measures to prevent prostitution and to ensure the re-education and rehabilitation of victims of prostitution and of the offenses covered by the Convention, as well as the taking of the necessary measures to exercise supervision over the offices and placement agencies with a view to prevent persons seeking employment, especially women and children, from being exposed to the danger of prostitution, it does not provide any entity to receive and review reports. It has little effect on States' compliance with their obligations and does not designate any mechanism for implementing the provisions. However, the effectiveness of an international instrument can be assessed according to the extent to which the States parties apply it⁵¹.

The lack of implementation procedures leads to the fact that Member States have not put in place a system of safeguards against all contemporary forms of slavery⁵². Furthermore, all States are

⁴⁸ Yao Agbetse, Manuel sur la traite des êtres humains, *op. cit.*, 15 pp.

⁴⁹ Malka Marcovich, Guide de la Convention de l'ONU du 2 décembre 1949 pour la répression de la traite des êtres humains et de l'exploitation de la prostitution d'autrui, *op. cit.*, 6 pp.

⁵⁰ Idem

⁵¹ The word application, in the case of international instruments, refers both to the national measures adopted by States and to the international procedures put in place to monitor the measures taken at the national level.

⁵² Malka Marcovich, Guide de la Convention de l'ONU du 2 décembre 1949 pour la répression de la traite des êtres humains et de l'exploitation de la prostitution d'autrui, *op. cit.*, 7 pp.

under an obligation to take the necessary measures to combat trafficking in persons of either sex for the purpose of prostitution, in accordance with Article 17.

Due to the lack of a monitoring mechanism, added to the increase in trafficking and the multiplication of its forms and criminal networks, the 1949 Convention has not been able to respond to today's concerns. It cannot live up to the values and the contemporary context where trafficking has taken many forms, which are not always linked to prostitution or sexual exploitation. The convention does not address modern forms of trafficking, such as trafficking in domestic workers, mail-order marriages, undeclared work in agriculture. It does not address abuse in the workplace⁵³. Nor does it mention forced marriages and the recruitment of children into armed groups. Generally, the different forms of trafficking practiced during armed conflicts are not covered by these provisions.

The 1949 Convention too often refers to national legislation. Although the Convention encourages the abolition of prostitution, some States do not opt for an abolitionist approach to prostitution in the fight against trafficking. So its approach is no longer relevant⁵⁴.

In this context, the 1949 Convention marked an important achievement in that it marked a crucial step in the fight for women's human rights⁵⁵. Moreover, this Convention was until 2000 the only international instrument recognizing that consent is irrelevant to change the qualification of the offense of trafficking. It cannot be used as a defense by pimps and traffickers against criminal charges by female victims.

This convention was ratified by Iraq in 1955 and by Syria in 1959, therefore acts of transportation or transfer of women from Iraq to Syria to profit from their sexual services constitute a crime which requires extradition of its authors with regard to this convention.

Although the Convention is partly inoperative in the absence of binding provisions and has only been ratified by seventy-two countries, the 1979 Convention on the Elimination of All Forms of

⁵³ Toupin Louise (chercheuse autonome), *La question du «trafic des femmes»- Points de repères dans la documentation des coalitions féministes internationales anti-trafic, document de travail, mars 2002*, op. cit, 25 pp.

⁵⁴ Nouvelles études de l'OIM sur la traite de mineurs d'âge non accompagnés aux fins d'exploitation sexuelle dans l'Union européenne, *Traite des migrants*, Bulletin trimestriel, Numéro 24 - décembre 2001, 21 pages, ISSN 1020-8631.

⁵⁵ Malka Marcovich, Guide de la Convention de l'ONU du 2 décembre 1949 pour la répression de la traite des êtres humains et de l'exploitation de la prostitution d'autrui, *op. cit.*, 7 pp.

Discrimination against Women, which obtained the ratification of one hundred and fifty States, resumed its philosophy⁵⁶: “*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women*”⁵⁷.

Conclusion

The 1949 Convention was until 2000 the only international convention relating to the fight against human trafficking, with a single purpose, which is the repression of prostitution. The definition of trafficking is therefore very selective, as it only includes the exploitation of the prostitution of others. The so-called “classic” conventions do not provide an explicit definition of trafficking in women and children, hence the need to establish a new international instrument which would clearly recognize the existence of the fundamental right of not to be the object of sexual exploitation. This is what the Palermo Protocol tries to do⁵⁸.

The idea being to find a solution for the shortcomings of the previous Conventions, the Palermo Protocol widens the concept of trafficking and its approach to encompass women, children and men for the purpose of exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour, slavery or practices similar to slavery, servitude and the removal of organs. The Protocol conceptualizes organized crime and its components as a constituent element of trafficking, which facilitates the prosecution of traffickers⁵⁹.

Trafficking in women and children has continued to grow with globalization, hence the need for new international and even national measures to address this problem.

In this atmosphere, while some governments are for the regulation of prostitution, others are trying to eradicate its expansion by other means. But, with regard to the sexual exploitation of people, all members of the international community are doing everything possible to condemn it. Consequently, its legislative framework is the subject of controversy. Should we prohibit it, try to

⁵⁶ Dinah DERYCKE (Sénatrice), Rapport d'Activité pour l'année 2000 (No:209), *op. cit.*, 85 pp.

⁵⁷ Convention on the Elimination of all Forms of Discrimination Against Women, 1979, art. 6

⁵⁸ Yao Agbetse, *Manuel sur la traite des êtres humains*, *op. cit.*, 15 pp.

⁵⁹ Nouvelles études de l'OIM sur la traite de mineurs d'âge non accompagnés aux fins d'exploitation sexuelle dans l'Union européenne, *Traite des migrants*, *op. cit.*

abolish it or regulate it? Across cultures, times and religions, different answers are given to these questions⁶⁰.

The extent of the phenomenon and the increase in the exploitation of women and children for sexual purposes are of growing concern to States⁶¹, which leads States to adopt concrete measures at all levels.

Until the year 2000, there was no single international definition of trafficking, and different countries used different definitions. The term “trafficking” is used in different areas to describe activities that range from voluntary and facilitated migration to the exploitation of prostitution, to the movement of people initiated by the use or threat of use of force, coercion, violence, etc, for the purpose of exploitation⁶². By the Palermo protocol, a definition of the phenomenon is given for the first time, it insists on the abuse of authority and the vulnerable situation of the victims. The protocol appears to be an important instrument in the fight against trafficking in human beings.

⁶⁰ Plamondon Ginette, La prostitution: Profession ou exploitation? Une réflexion à poursuivre, *op. cit.*, 93 pp.

⁶¹ Idem

⁶² Radhika Coomaraswamy, *Rapport de la rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences, sur la traite des femmes, les migrations des femmes et la violence contre les femmes, —Intégration des droits fondamentaux des femmes et de l'approche sexospécifique - Violence contre les femmes*], présenté en application de la résolution 1997/44 de la commission des droits de l'homme des Nations Unies, Commission des droits de l'homme des Nations Unies, cinquante-sixième session, *op. cit.*, 8 pp.