**THE INTERNATIONAL LEGAL FRAMEWORK FOR THE CRIME OF TRAFFICKING IN HUMAN BEINGS**

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**RESUMEN**: El presente artículo presenta un breve estudio del delito de trata de seres humanos desde una óptica internacional. Se cree ampliamente que el delito de trata de personas está relacionado con la explotación sexual, pero este articulo nos demuestra que no siempre es así. Existen otros fines de explotación. La regulación de la trata de seres humanos, no sin dificultades, no solo tiene que centrarse en exclusiva en la investigación y persecución del delito, sino además en el aspecto garantista de las víctimas del delito, especialmente mujeres y niños, debido a su vulnerabilidad en tanto que son, sin duda alguna, sometidos a una situación ardua. En este contexto, la comunidad internacional ha combatido el fenómeno de trata de seres humanos con la redacción y mejora de varios documentos jurídico-internacionales, que se mencionarán y examinarán a continuación.

**Palabras clave**: Derecho Penal Internacional, Trata de seres humanos, Trata de personas, Protocolo de Palermo, Naciones Unidas, Unión Europea.

**ABSTRACT**: The following article presents a brief study of the crime of trafficking in human beings from an international perspective. It is widely believed that human trafficking is related to sexual exploitation, but this essay proves that it is not always the case. There are other exploitation purposes. The regulation of human trafficking, not without difficulties, does not solely have to be focused on the investigation and prosecution of this offence but also on the protective aspect of the victims of the crime, specially of women and children, due to their vulnerability as they are, without a shadow of a doubt, subjected to a strenuous situation. In this context, the international community has combated the phenomenon of human trafficking by drafting and enhancing several legal international documents, which will be mentioned and examined hereinafter.

**Key words**: International Criminal Law, Trafficking in human beings, Trafficking in persons, Palermo Protocol, United Nations, European Union.

**ABBREVIATIONS INDEX**:

CEDAW Convention on the Elimination of all forms of Discrimination Against Women
EU European Union
OHCHR Office of the High Commissioner
STS *Sentencia del Tribunal Supremo* (Judgement of the Spanish Supreme Court)
TFEU Treaty on the Functioning of the European Union
UN United Nations
UNODC United Nations Office on Drugs and Crime

**1. The phenomenon of trafficking in persons: Introduction.**

In an intensely globalized context characterized by the continuous migration flows, the phenomenon of trafficking in human beings has acquired an extreme importance, becoming a new authentic form of criminality[[1]](#footnote-1). Indeed, it has been said that trafficking in persons is the new form of *modern slavery*[[2]](#footnote-2) and thus, it could be stated that it is, if not one of the worst, an egregious crime of the XXI century.

What is more, trafficking in human beings has been declared as the third most lucrative illicit business worldwide[[3]](#footnote-3) and as a matter of fact it is not uncommon to admit that this crime has an economic purpose since the main goal of the trafficker is to commercialize with the victim, while he or she makes profit at the victim´s expense[[4]](#footnote-4).

In fact, it cannot be ignored that the economic benefits that the trafficker seeks are also explained by the demand of clients of the services he or she provides. This is to say that our current society contributes to the continuance of this crime whenever there is a demand of the services provided by the trafficker, regardless of whether the client knows that the services provided by the trafficker and performed by the victims, constitute trafficking in persons[[5]](#footnote-5). Therefore, if there is a demand, the trafficker will inevitably continue to promote these practices so his or her main goal can be achieved[[6]](#footnote-6).

The current existence of different countries and the consequent proliferation of heterogeneous migration routes have led human beings crave new horizons in situations of crisis, unemployment and lack of opportunities. In this context, many people resort to emigrate illegally in order to escape from their unfortunate personal situation[[7]](#footnote-7), and it is, normally in these cases, in which the victims, especially women and children[[8]](#footnote-8), suffer the abuse of the traffickers. Clearly, women and children are, due to economic, social and cultural factors, propitious to be victims of this crime. Women´s vulnerability is explained by reasons of historical gender inequality, sexist stereotypes, the non-intervention of women in the labour market, the lack of economic opportunities, and so on. Regarding children, some factors that contribute to their vulnerability can be, among others, poverty, living in conflict areas or the sale of poor children to wealthier families[[9]](#footnote-9). Therefore, the legal protection that must be given to vulnerable groups, such as women and children, must be a priority to overcome this atrocious crime[[10]](#footnote-10).

Even if trafficking in human beings is normally related to sexual trade[[11]](#footnote-11), it needs to be highlighted that there are other criminal purposes equally alarming to sexual exploitation such as forced labour or forced marriages, among others. Even so, sexual exploitation is the most pursued purpose by criminals and with it, the common victims are mournfully girls and women[[12]](#footnote-12).

Therefore, defined as the *modern slavery* of our century, trafficking in persons is considered to be a crime of special seriousness[[13]](#footnote-13) and a severe violation of human rights as it is prohibited by article 5.3 of the EU Charter of Fundamental Rights, which seeks the safeguard of inherent rights of European people for the sake of respect and European coexistence.

What is more, in view of the magnitude of the crime of trafficking in persons, it might be considered that the legal protection that must assist the victims, as well as the legal prosecution of this crime, cannot be individually adopted by countries, but cooperation between nations is necessary with the culmination of this criminal practice. In that sense, the United Nations (UN) and the European Union (EU) have proficiently contributed to the legal creation of international instruments of prosecution against trafficking in human beings, as we will later see in this article.

Trafficking in persons not only entails a manifest violation of human rights, but also a complex and overwhelming reality to which the victims of this crime are subjected. Certainly, trafficking in human beings involves the conduct for which the trafficker takes advantage of the victim´s personal situation (due to, among others, his or her helplessness, weakness or poverty) and, through coercive, intimidating or violent means (among others), displaces him or her, either nationally or internationally[[14]](#footnote-14), to a place where his or her exploitation can be succeeded.

**2. International legal regulation on trafficking in human beings.**

As stated before, trafficking in persons has become one of the most worrisome international crimes of our century. As a result, and so as to combat effectively this crime, several international organisations have drafted and implemented international legal instruments in order to prosecute these ruthless practices, and thereby I point out the following:

**2.1. Palermo Protocol.**

On the basis that this legal document is inserted within the United Nations Convention against Transnational Organized Crime, the importance of Palermo Protocol is such that it was the first international instrument to manifest a comprehensive, consistent and integral definition of the phenomenon on trafficking in persons[[15]](#footnote-15), despite the different definitions that existed at that time in the international scope[[16]](#footnote-16).

The Protocol defines trafficking in persons in its article 3 and provides the elements that conform the crime. Not only an action is required to integrate the concept of trafficking in persons, but also specific means and a purpose of exploitation are needed[[17]](#footnote-17). Accurately defined in this legal text, trafficking in persons requires an action that can be either “*the recruitment, transportation, transfer, harbouring or receipt of persons*”. Then, when committing the specific action this offence requires, the trafficker must perpetrate his or her action by means of “*the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person*” with the ultimate aim of attaining the victim´s exploitation, defined as the third requisite of the crime. In other words, trafficking in human beings is portrayed as the action where the trafficker uses violent and intimidating means (among others) to subject the victim to his or her dominion and, therefore, facilitate the victim´s exploitation[[18]](#footnote-18).

Having said that, the Protocol also regulates the victim´s consent. The crime is either committed when the victim does not consent to his or her transfer and subsequent exploitation[[19]](#footnote-19), or when the victim (due to the means used by the trafficker) grants a meaningless consent, which is in reality a non-consent[[20]](#footnote-20), as well as the consent that a minor under 18 years of age may give[[21]](#footnote-21).

Within the different forms of exploitation, it is evident that the Protocol points out prostitution and sexual exploitation but at the same time, among others, servitude or the removal of organs[[22]](#footnote-22). In this sense, this broader concept of exploitation is remarkably relevant as the idea that trafficking in persons is exclusively linked to prostitution or sexual exploitation is abandoned[[23]](#footnote-23).

It is significant to mention that international law, as well as domestic law[[24]](#footnote-24), establish a different definition for trafficking in human beings when the victims are minors, this is to say, persons under 18 years of age[[25]](#footnote-25). In these cases, considering that a minor is the victim of the crime, the existence of human trafficking will subsist if the action and purpose of exploitation elements exist. Thus, a position of vulnerability or giving or receiving of payments or violent or intimidating means, among others, are not necessary to commit human trafficking when minors are the victims of the crime. Precisely, it can be admitted that the reason behind this regulation is constructed for protective purposes, while the minor, who is a more vulnerable human being, needs a more extensive and supportive field of protection.

All things considered, it is correct to affirm that the Palermo Protocol established the basis of an international legal definition of the crime of human trafficking and also adopted a victim-centred appreciation of the crime of trafficking in persons[[26]](#footnote-26).We can admit this legal text contains an integral approach towards the offence of trafficking since it does not exclusively urge the States parties to legislate and define trafficking in persons as a domestic crime[[27]](#footnote-27), but also advocates, however lightly[[28]](#footnote-28), for protection of the victims of trafficking - for example, in its article 6.1[[29]](#footnote-29), 7[[30]](#footnote-30), or 9[[31]](#footnote-31).

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**2.2. Council of Europe Convention on Action against Trafficking in Human Beings.**

The 16th May 2005, the Council of Europe approved the Convention on Action against Trafficking in Human Beings (hereinafter Warsaw Convention), which was considered one of the most effective documents for the regulation of trafficking in persons[[32]](#footnote-32). In effect, the Convention crystallized all the regulations existing to date to combat trafficking and inspired the Spanish legislator into modifying the Spanish Criminal Code towards an individual article in which human trafficking was typified[[33]](#footnote-33)- currently article 177 *bis* of the Spanish Criminal Code.

Again, the Convention established a clear definition of trafficking in persons and determined the defining elements of this offence. In addition to this, it can be considered that the Warsaw Convention completed in a victorious way the insufficient victim-centred approach, however positive, of the Palermo Protocol[[34]](#footnote-34). Indeed, it can be affirmed that the Warsaw Convention was inherently focused on human rights and victim protection[[35]](#footnote-35). In that sense, in this trajectory and unlike the Palermo Protocol, the binding force of the victim´s assistance provisions were well set forth[[36]](#footnote-36).

The protectionist side of the international document is reflected, for instance, in article 10 of the European Convention, where the identification of victims is regulated and thus, each State Party “*shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims*”[[37]](#footnote-37). Assistance is also provided to minors in the sense that “*as soon as an unaccompanied child is identified as a victim, each Party shall provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child*”[[38]](#footnote-38).

The safeguarding of the victim´s private life is also one of the key features of the instrument since States Parties “*shall protect the private life and identity of victims*”[[39]](#footnote-39) and have a greater protective diligence when the victim is a minor, so as not to disclose publicly the minor´s identity or identification[[40]](#footnote-40). Moreover, and along other sort of means, aid measures are established to ensure the victim´s social, psychological and physical recovery[[41]](#footnote-41), such as *emergency medical treatment* or *secure accommodation*, for instance.

Together with this considerable protection of human trafficking victims, international cooperation between States Parties is also regulated in the Convention and thus, embodied in its Chapter VI and in other provisions such as article 16, which deals with *repatriation and return of victims*: in these cases, cooperation between States is manifested even with residence permits, in the sense that when a State solicitates help or collaboration from another Party, the requested State will verify if the victim has a residence permit and if not, an authorization or a similar document will be issued so as not to deny assistance to the victim of trafficking.

Having said the above, the Warsaw Convention was efficient to demonstrate that the criminalisation and prosecution[[42]](#footnote-42) of the human trafficking crime can coexist with an extensive range of protective articles whose main mission is the safeguard of the inherent rights of the victims, their social integration and the redress of the damage caused[[43]](#footnote-43).

**2.3. European Legal Framework.**

Under the regional territory of the European Union, human trafficking has also been a matter of a serious concern. Although briefly, this article lays out two of the most distinguished legal documents that the EU drew up to combat human trafficking.

On the one hand, **Decision 2002/629/JHA**, formally known as the Council Framework Decision of July 2002 on combating trafficking in human beings. The conduct constituting the offence of human trafficking contained in this legal instrument was intimately similar to the first definition provided by aforementioned UN Protocol[[44]](#footnote-44). Notwithstanding Decision 2002/629/JHA seemed to follow the general guidelines of its predecessor, it did not confront human trafficking in like manner the UN Protocol did[[45]](#footnote-45). Indeed, it seems that the Decision´s drafting disregarded the victim-centred focus established in previous international documents, as the Decision rested on *repressive aspects*[[46]](#footnote-46). In that sense, the essentially punitive nature of the Decision was crystallized in its article 1 as States were obliged to typify human trafficking as a crime in their criminal codes; and in article 2, where *instigation, aiding, abetting and attempt* to commit human trafficking were punishable too. Furthermore, its article 3.2 urged States to incorporate into their criminal codes aggravated circumstances to the simple crime of trafficking in persons that would result in a higher imprisonment penalty, which will not be of less than eight years[[47]](#footnote-47).

On the other hand, in a more accurate way[[48]](#footnote-48), the European Parliament and European Council gave birth to the **Directive 2011/36/EU** of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, which replaced the Decision mentioned above. The Directive constituted a milestone in terms of trafficking within the EU as it did not only welcome ideas from the UN Protocol or Warsaw Convention but also was able to adjust the victim-centred insufficiency of the Decision[[49]](#footnote-49). The Directive´s protectionist approach is reflected, for example, by stating the *non-prosecution* *of the victims[[50]](#footnote-50)* when they have committed crimes due to their submission to the act of trafficking; by taking into consideration a gender perspective[[51]](#footnote-51) when preventing this crime and protecting victims; by providing *compensation to victims[[52]](#footnote-52)*; by providing investigation *ex officio[[53]](#footnote-53)*, and so on.

Additionally, Directive 2011/36/EU is also a legal document of paramount importance as it provides new forms of trafficking exploitation, such as the exploitation of criminal activities[[54]](#footnote-54) and forced marriages[[55]](#footnote-55). These two additional forms of exploitation represented a conceptual advance of the crime of human trafficking with respect to the aforementioned Decision, as well as with Palermo Protocol and Warsaw Convention as these three documents did not include the two new forms of exploitation that the Directive added in its writing. Regarding penalty, the Directive binds States to punish the simple crime of trafficking in persons with an imprisonment penalty of at least five years and a maximum of ten when it is committed as an aggravated offence[[56]](#footnote-56).

**2.4. Brief reference to the CEDAW (Convention on the Elimination of all forms of Discrimination Against Women).**

Although the CEDAW, whose main aspiration is to respect and accomplish equality of rights of men and women, is not the international pioneer instrument in the regulation of trafficking in persons, it is fair to mention that this international legal instrument, despite being focused on the gender perspective and safeguarding the rights of women to avoid their discrimination[[57]](#footnote-57), also contemplates, in its article 6[[58]](#footnote-58), a concise interest and intention to combat trafficking against women by calling States up on implementing measures of all kind to supress it.

Despite this provision, one must however bear in mind that the CEDAW does not propose which specific measures shall be adopted or the reasons why trafficking in persons is to be prosecuted, but its brief reference to the crime rather shows the long-lived and persistent existence of this offence, as well as the submission of women, mostly, as victims of this precise crime.

**3. Conclusion.**

Human trafficking is, in all likelihood, one of the most atrocious crimes of our time. The concept of trafficking in persons is a broad one and it entails a process in which the victims are threatened so as to attain their exploitation. As explained in this article, the elements of this offence are the victims´ recruitment or transfer, the use of suitable means (force or intimidation, for instance) to void their consent and in third place, the will to obtain the victim´s exploitation, which can be of a varied nature: sexual, forced marriage, forced labour, etc.

Forasmuch as this crime is of an arduous nature due to the situation to which the victim is subjected, it is of the utmost priority to legislate domestically and to cooperate internationally between Nations to strengthen a unified criminal law that punishes these conducts and avoid impunity but also to bestow a protectionist focus to this phenomenon to safeguard the integrity, health and life of the victims. In that sense, the international community, as guarantor of the security of its inhabitants, must act efficiently to prevent these sharp practices that vulnerate human rights and fundamental freedoms.

Through this essay, it has been proven that both efforts to eradicate this crime of States and those of certain international organizations, such as the EU, have achieved a solid regulation of the crime of human trafficking through the elaboration of several legal international instruments. Indeed, the Palermo Protocol initiated a favourable international prosecution of this offence and its regulation through a victim-centred focus. Yet, the legislative advances of the Protocol in terms of victims´ assistance were not efficient and thus, led the international community to approve a superior protectionist document: the Warsaw Convention. While all of these were applicable internationally, the EU drafted, as a regional international organization, other legal instruments such as the Directive 2011/36/UE, which followed more efficiently the victim-centred approach delineated in Palermo Protocol.

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- The Council Framework Decision 2002/629/JHA on combating trafficking in human beings.

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- Spanish Supreme Court Judgement, Criminal Chamber, 824/2016 4th March

- Spanish Supreme Court Judgement, Criminal Chamber, 380/2007 10th May

- Spanish Supreme Court Judgement, Criminal Chamber, 1536/2004 20th December

1. Carolina Villacampa Estiarte, *El delito de trata de seres humanos: una incriminación dictada desde el derecho internacional*, Aranzadi Thomson Reuters, Navarra, 2011, p. 19. [↑](#footnote-ref-1)
2. Considered by Carolina Villacampa Estiarte, “La moderna esclavitud y su relevancia jurídico-penal”, in *Revista de Derecho Penal y Criminología, 3.º Época,* nº. 10, 2013, pp. 296-300. [↑](#footnote-ref-2)
3. Pointed out by María Gavilán Rubio, “Delitos relativos a la prostitución y la trata de seres humanos con fines de explotación sexual. Algunas dificultades en la fase de instrucción”, in *Anuario jurídico y económico escurialense,* nº 48, 2015, p. 118. [↑](#footnote-ref-3)
4. The Spanish Supreme Court (see STS 380/2007 10th May) stated that the perpetrators of the crime of trafficking in persons acquire benefits from the exploitation of the victim, and defined trafficking in human beings as “*the instrumentalization of the subject in the interest of the economic benefit that he or she can provide*”. [↑](#footnote-ref-4)
5. For example, Laura Nuño Gómez, “La trata de seres humanos con fines de explotación sexual. Propuestas para un cambio de paradigma en la orientación de las políticas públicas”, in *Revista de derecho político*, nº98, 2017, p. 181., states that the “*transformation of market economies into market societies advocates a model of life based on having desires and satisfying them in an uncritical way. Everything seems to be able to be sold or bought [..]”.* [↑](#footnote-ref-5)
6. Regarding this, Atria Mier Hernández y Sara Rodríguez-Argüelles, “La trata de niños y niñas: estado de la situación actual”, in *Nova et Vétera*, nº64, 2011, p. 202; point out that in a globalized world there are tourists who travel to developed countries to consume sexual services and therefore, they contribute to the existence of the crime. These authors also state that factors such as gender discrimination and poverty lead to the maintenance of trafficking. [↑](#footnote-ref-6)
7. In this sense, Laura Nuño Gómez, “La trata de seres humanos con fines de explotación sexual. Propuestas para un cambio de paradigma en la orientación de las políticas públicas”, in *Revista de derecho político*, nº98, 2017, p. 167., points out that our global context has led to *inequality and situations of extreme need*, and, in these situations, criminals deceive the victims of trafficking by offering them better personal situations. [↑](#footnote-ref-7)
8. Of the same opinion Ignacio Francisco Benítez Ortúzar, “Criminalidad organizada y «trata de seres humanos» con fines de explotación sexual” p.18, in Juan José González Rus (Ed.), *La Criminalidad Organizada,* Tirant Lo Blanch, 2014. [↑](#footnote-ref-8)
9. The UNODC stated that 79% of detected victims are women and children and therefore, it considers that the situation is of a tragic concern. For the factors explaining the vulnerability of both women and children, please see UNODC, “Global Report on Trafficking in Persons”, 2016, available in: [https://www.unodc.org/documents/lpo-brazil//Topics\_TIP/Publicacoes/2016\_Global\_Report\_on\_Trafficking\_in\_Persons.pdf](https://www.unodc.org/documents/lpo-brazil/Topics_TIP/Publicacoes/2016_Global_Report_on_Trafficking_in_Persons.pdf) [↑](#footnote-ref-9)
10. In that sense, the Report of the Fourth World Conference on Women (1995) stated that the suppression of trafficking of women is a matter of international concern since sex trade, forced prostitution and sex tourism are, inevitably, increasing in our global society. Therefore, among other possible solutions, the Report mentioned that enacting laws to prevent sex tourism, focusing on protecting young women and children, and providing social and health care remedies to assist victims are needed. [↑](#footnote-ref-10)
11. Laura Nuño Gómez, “La trata de seres humanos con fines de explotación sexual. Propuestas para un cambio de paradigma en la orientación de las políticas públicas”, in *Revista de derecho político*, nº98, 2017, p. 171., points out that “*trafficking in women with means of sexual exploitation, far from being a marginal phenomenon within the prostitution system, is its main provider*”. [↑](#footnote-ref-11)
12. ##  Regarding victims, from a gender perspective, María Luisa Maqueda Abreu, “El tráfico de personas con fines de explotación sexual”, in *Jueces para la democracia*, nº 38, 2000, pp.24-25; considers that the crime of trafficking in human beings has been essentially linked to women due to economic and social factors.

 [↑](#footnote-ref-12)
13. Trafficking in persons is defined as a “*serious crime with a cross-border dimension*” on article 83 of the Treaty on the Functioning of the European Union (TFEU). [↑](#footnote-ref-13)
14. In that sense, The Spanish Supreme Court (STS 214/2017 29th March) explains that trafficking in persons may be transnational or not, since the victims may be European citizens, or even Spaniards. Therefore, it is not necessary for the victim to cross an international frontier as trafficking can be committed internationally and domestically. [↑](#footnote-ref-14)
15. In that sense, the Protocol´s Preamble appeals to a “*comprehensive international approach in the countries of origin, transit and destination*” in order to combat the crime of trafficking in persons and assumes that a legal instrument of this nature is necessary due to the nonexistence of one of such that regulates, universally, the phenomenon of human trafficking. [↑](#footnote-ref-15)
16. Carolina Villacampa Estiarte, *El delito de trata de seres humanos: una incriminación dictada desde el derecho internacional*, Aranzadi Thomson Reuters, Navarra, 2011, p. 161., who considers that Palermo Protocol is the international document *par excellence* that aims to prevent this crim. [↑](#footnote-ref-16)
17. For more information about the three elements that configure the crime of human trafficking, see <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> [↑](#footnote-ref-17)
18. So as to comprehend the natural elements of the crime of human trafficking, the Spanish Supreme Court stated that the two elements that characterize the crime are: on the one hand, the means used to capture the victim, that is to say, the effect on the victim´s consent (see STS 824/2016 4th March); and on the other hand, the simultaneous concurrence of the trafficker´s desire to perpetrate the further exploitation of the victim (see STS 420/2016 18th May). [↑](#footnote-ref-18)
19. In that sense, “v*ictims of trafficking have either never consented or, if they initially consented, that consent has been rendered meaningless by the improper means of the traffickers*” as stated by UNODC, “Antihuman trafficking manual for criminal justice practitioners. Module 1: Definitions of trafficking in persons and smuggling of migrants”, 2009, pp. 12-13. Available in: <https://www.unodc.org/documents/human-trafficking/TIP_module1_Ebook.pdf> [↑](#footnote-ref-19)
20. Article 3 of Palermo Protocol states that “*the consent of a victim of trafficking in persons to the intended exploitation […] shall be irrelevant where any of the means set forth in subparagraph (a) have been used*”. [↑](#footnote-ref-20)
21. Regarding minors, the Spanish Supreme Court (see STS 1536/2004 20th December) stated that the Law assumes that the consent given by minors to the petition of an adult to commit criminal offences (such as prostitution) cannot be considered valid. Therefore, even if this case law was related to prostitution, this reasoning can be applied to the case of human trafficking. [↑](#footnote-ref-21)
22. Article 3 of Palermo Protocol states that “*exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*”. [↑](#footnote-ref-22)
23. Trafficking in persons is generally related to sexual exploitation. However, Atria Mier Hernández y Sara Rodríguez-Argüelles, “La trata de niños y niñas: estado de la situación actual”, in *Nova et Vétera*, nº64, 2011, p. 196.; point out that, effectively, the crime of trafficking in human beings includes other purposes of exploitation, other than sexual exploitation. In the same sense, considered by the United Nations: Office of the High Commissioner (OHCHR), *Human Rights and Human Trafficking,* 2014, pp. 2-4, available in:

<https://www.ohchr.org/Documents/Publications/FS36_en.pdf> [↑](#footnote-ref-23)
24. In the Spanish Criminal Code article 177 *bis* 2 regulates trafficking in human beings when the affected victim is a minor. [↑](#footnote-ref-24)
25. As it is exposed in Palermo´s Protocol “Use of terms”. [↑](#footnote-ref-25)
26. Carolina Villacampa Estiarte, “El delito de trata de personas: análisis del nuevo artículo 177 bis CP desde la óptica del cumplimiento de compromisos internacionales de incriminación” , in *Anuario* [*da Facultade de Dereito da Universidade da Coruña*](https://dialnet.unirioja.es/servlet/revista?codigo=104)*,* nº 14, 2010, pp. 830-833. [↑](#footnote-ref-26)
27. The United Nations Convention against Transnational Organized Crime requires that the offence of trafficking in persons must be established in the domestic law of all States Parties under its article 34.2. [↑](#footnote-ref-27)
28. In this sense, Kristina Touzenis, “Trafficking in human beings: human rights and transnational criminal law, developments in law and practices”. Published by the United Nations Educational, Scientific and Cultural Organization, 2010, p. 89. Available in: [https://unesdoc.unesco.org/ark:/48223/pf0000188397](https://unesdoc.unesco.org/ark%3A/48223/pf0000188397) [↑](#footnote-ref-28)
29. Article 6.1 of Palermo Protocol states that “***to the extent possible under its domestic law****, each State Party shall protect the privacy and identity of victims […]”* or article 6.3. states that “*each State Party* ***shall consider*** *implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons […]”.* [↑](#footnote-ref-29)
30. Article 7 of Palermo Protocol states that “*each State Party* ***shall consider*** *adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory […]*”. [↑](#footnote-ref-30)
31. Article 9 of Palermo Protocol states that “*States Parties* ***shall endeavour to undertake*** *measures such as research, information […]”.* [↑](#footnote-ref-31)
32. Carolina Villacampa Estiarte, “El delito de trata de personas: análisis del nuevo artículo 177 bis CP desde la óptica del cumplimiento de compromisos internacionales de incriminación” , in *Anuario* [*da Facultade de Dereito da Universidade da Coruña*](https://dialnet.unirioja.es/servlet/revista?codigo=104)*,* nº 14, 2010, pp. 830-833. In particular, she emphasizes that the Convention aims to guarantee a minimum standard for the protection of victim’s rights. [↑](#footnote-ref-32)
33. Borja Mapelli Caffarena, La trata de personas, in “*Anuario de derecho penal y ciencias penales*”, 2012, pp. 37-38. [↑](#footnote-ref-33)
34. Carolina Villacampa Estiarte, “El delito de trata de personas: análisis del nuevo artículo 177 bis CP desde la óptica del cumplimiento de compromisos internacionales de incriminación” , in *Anuario* [*da Facultade de Dereito da Universidade da Coruña*](https://dialnet.unirioja.es/servlet/revista?codigo=104)*,* nº 14, 2010, pp. 830-833. [↑](#footnote-ref-34)
35. Anne Gallagher, “Recent Legal Developments in the Field of Human Trafficking: A critical review of the 2005 European Convention and Related Instruments” in *European Journal of Migration and Law*, Vol. 8, 2006, pp. 170-186. [↑](#footnote-ref-35)
36. Of this opinion Kristina Touzenis, “Trafficking in human beings: human rights and transnational criminal law, developments in law and practices”. Published by the United Nations Educational, Scientific and Cultural Organization, 2010, p. 85. Available in: [https://unesdoc.unesco.org/ark:/48223/pf0000188397](https://unesdoc.unesco.org/ark%3A/48223/pf0000188397). This author considers that some articles use non-binding language (to consider, for example). [↑](#footnote-ref-36)
37. Article 10.1 of the Council of Europe Convention on Action against Trafficking in Human Beings. [↑](#footnote-ref-37)
38. Article 10.4.a) of the Council of Europe Convention on Action against Trafficking in Human Beings. [↑](#footnote-ref-38)
39. Article 11.1 of the Council of Europe Convention on Action against Trafficking in Human Beings. [↑](#footnote-ref-39)
40. Article 11.2 of the Council of Europe Convention on Action against Trafficking in Human Beings. [↑](#footnote-ref-40)
41. Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings. [↑](#footnote-ref-41)
42. Stipulated in Chapters IV and V of the Council of Europe Convention on Action against Trafficking in Human Beings. [↑](#footnote-ref-42)
43. Carolina Villacampa Estiarte, *El delito de trata de seres humanos: una incriminación dictada desde el derecho internacional*, Aranzadi Thomson Reuters, Navarra, 2011, p. 177. [↑](#footnote-ref-43)
44. Virginia Mayordomo Rodrigo, “Nueva regulación de la trata, el tráfico ilegal y la inmigración clandestina de personas” in *Estudios Penales y Criminológicos*, nº 31, 2011, pp. 330-331. [↑](#footnote-ref-44)
45. Carolina Villacampa Estiarte, “El delito de trata de personas: análisis del nuevo artículo 177 bis CP desde la óptica del cumplimiento de compromisos internacionales de incriminación” , in *Anuario* [*da Facultade de Dereito da Universidade da Coruña*](https://dialnet.unirioja.es/servlet/revista?codigo=104)*,* nº 14, 2010, pp. 832. [↑](#footnote-ref-45)
46. Borja Mapelli Caffarena, La trata de personas, in “*Anuario de derecho penal y ciencias penales*”, 2012, p. 34. [↑](#footnote-ref-46)
47. In that sense, for example, article 3.2.a) of the Decision 2002/629/JHA stated that an aggravated circumstance will occur if “*the offence has deliberately or by gross negligence endangered the life of the victim*”. [↑](#footnote-ref-47)
48. Of this opinion Tania García Sedano, “La reforma del código penal español motivada por la trasposición de la directiva 2011/36, sobre prevención y lucha contra la trata de seres humanos y protección de las víctimas”, in *Revista Jurídica de Investigación e Innovación Educativa*, nº 8, 2013, p.119; as she considers that the Directive 2011/36 contains a clear protectionist policy for the victims of trafficking and with it, the European Union set out its position on trafficking in persons. [↑](#footnote-ref-48)
49. Carolina Villacampa Estiarte, “La nueva directiva europea relativa a la prevención y la lucha contra la trata de seres humanos y a la protección de las víctimas. ¿Cambio de rumbo de la política de la Unión en materia de trata de seres humanos?”, in *Revista Electrónica de Ciencia Penal y Criminología*, nº 13, 2011, pp. 2-47. [↑](#footnote-ref-49)
50. See article 8 of the Directive 2011/36/EU. [↑](#footnote-ref-50)
51. See article 1 of the Directive 2011/36/EU. [↑](#footnote-ref-51)
52. See article 17 of the Directive 2011/36/EU. [↑](#footnote-ref-52)
53. See article 9 of the Directive 2011/36/EU, named “*Investigation and prosecution*”, as it states that “*Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement*”. [↑](#footnote-ref-53)
54. The eleventh whereas clause of the Directive 2011/36/EU defines ‘exploitation of criminal activities’ as “*the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain*”. [↑](#footnote-ref-54)
55. See the eleventh whereas clause of the Directive 2011/36/EU, which states that the definition of human trafficking given by the Directive “*also covers trafficking in human beings for the purpose of forced marriage*”. [↑](#footnote-ref-55)
56. In this sense, the Directive 2011/36/EU, among others, in its article 4.2 considers that the aggravated crime of human trafficking is perpetrated where the offence is “*committed against a victim who was particularly vulnerable*”; or “*committed within the framework of a criminal organisation*”; or “*committed by use of serious violence*”; etc. [↑](#footnote-ref-56)
57. To know more about the definition of discrimination in article 1 of the CEDAW see Ademola Abass, *Complete International Law. Text, Cases, and Materials,* Oxford University Press (New York, 2012) pp. 689-691. Indeed, it is stated that the CEDAW provides a well-defined definition of discrimination against women, and in this sense, it embraces discriminatory acts against women of different depth whose main objective is to invalidate the full enjoyment of women human rights and fundamental freedoms. [↑](#footnote-ref-57)
58. Article 6 of the CEDAW states: “*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women*”. [↑](#footnote-ref-58)