

“Preventing and protecting refugee children from trafficking: a paradigm shift under R2P principle?”

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Abstract

According to the index of global peace, children of almost 25% of the States are exposed, or may be exposed to war. They are forced to flee to other countries to seek refuge from mass atrocities. Refugee children are traumatized, have no parents or other family to accompany them, or have no financial means to sustain their risky voyage. Thus, they can easily fall in the hands of human traffickers who exploit them for profits. Whereas the refugee children enjoy the protection of the 1951 Refugee Convention and trafficking in children is an internationally prohibited crime, many states lack the resources and knowledge to prevent and protect refugee children from this hideous crime.

The Responsibility to Protect (R2P) triggers individual and collective responsibility of the States when crimes against humanity are committed. Considering trafficking in refugee children as a serious risk factor for commission of crimes against humanity, question arises as to whether or not there is a need of a shift of the Responsibility to Protect (R2P) paradigm in order to use this principle to prevent trafficking in refugee children. The paper contribute towards the body of knowledge regarding effective global prevention of trafficking in refugee children. The methodology combines legal and comparative analyses of international instruments that create a safety net for refugee children from trafficking. Data are collated from the reports prepared by IOM, UNHCR, UNICEF, CoE, and UNODC and analysed by applying human rights approach and best interest of the child standard. The results show that the R2P principle entails a responsibility for the States to act and jointly collaborate with aim to prevent trafficking in refugee children. The shift of the paradigm under R2P principle will have a high impact on preventing trafficking in refugee children and protecting this vulnerable population. Further research is needed to develop a framework on the manner of application of the R2P principle by the States and the International Community with purpose to protect refugee children who are vulnerable to trafficking.

Key words: R2P, trafficking in refugee children

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1. INTRODUCTION

“What is at stake here is not making the world safe for big powers, or trampling over the sovereign rights of small ones, but delivering practical protection for ordinary people, at risk of their lives, because their States are unwilling or unable to protect them”

Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, December 2001

The principle of the Responsibility to Protect (R2P) came to light in the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS) that underscored the primary responsibility of the States to protect their own citizens from mass atrocities, and if they fail, the responsibility was to be borne by a community of States.¹ The 2005 World Summit Outcome (WSO)² endorsed and reformulated the R2P principle. The R2P principle is triggered in cases of four mass atrocities: genocide, war crimes, crimes against humanity and ethnic cleansing, if a state fails to protect its own citizens.³ It entails an obligation to prevent these atrocities. While the primary responsibility to protect lies with the State to protect its own population (pillar 1 – State action), other States should assist the State address the above four atrocities when needed (pillar 2 - assistance) and international community must be prepared to take a decisive and timely collective action when the State is manifestly failing to protect its population (pillar 3 – collective action).⁴

In paragraph 141 of the WSO, the States express their: *“dismay at the increasing number of children ... affected by armed conflict, as well as all other forms of violence, including ... exploitation and trafficking”*. The concern expressed over a number of children affected by wars, exploited and trafficked in 2005 is even bigger nowadays taking into consideration that out of 163 countries, 16 countries have a very low state of peace, while 26 countries have a low state of peace.⁵ Large populations, including children, of almost 25% of the countries are exposed, or may be exposed to war and violence. Children who flee their countries because of armed conflicts and violence are traumatized; they might be sick, wounded, have no parents or other family to accompany them, and lack money to cover their basic needs. Thus, they can easily fall in the hands of human traffickers who exploit them for profits.⁶ The children who flee their countries of origin because of armed conflict and violence and are unable/unwilling to return there belong to a vulnerable social group, which must be protected and assisted without any discrimination.

In this paper, the term “refugee children” denotes persons under age of 18 within the definition of “a refugee” in the 1951 Refugee Convention.⁷

There is no doubt that the international community has a moral duty to protect refugee children from trafficking in human beings. Moreover, a legal perspective on this issue denotes that refugee children

¹ ICISS, *Report of the International Commission on Intervention and State Sovereignty, The Responsibility to Protect*, International Development Research Centre 2001, para VII.

² 2005 World Summit Outcome, the United Nations General Assembly Res 60/1 (adopted 24 October 2005) paras 138 -142.

³ Zeynab Rostami, *Responsibility to protect: Disintegration or Congregation of International Law*, in Vasilka Sancin and Masha Kovac-Dine (eds), *Responsibility to Protect in Theory and Practice*, GV Zalozba Publishing House 2013, p. 45.

⁴ Gareth Evans, *R2P: The Next Ten Years*, in Alex J. Bellamy and Tim Dunne (eds), *The Oxford Handbook of the Responsibility to Protect*, Oxford University Press 2016, pp. 4, 15.

⁵ Global Peace Index <<https://reliefweb.int/report/world/global-peace-index-2018>> accessed 5 .1. 2019.

⁶ Briefing The problem of human trafficking in the European Union 2014, European Parliamentary Research Service, p. 3 <[http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140780/LDM_BRI\(2014\)140780_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140780/LDM_BRI(2014)140780_REV1_EN.pdf)> accessed 31.1.2019.

⁷ Convention Relating to the Status of Refugees, UNTS vol. 189 (entry into force 22 April 1954) p. 137.

enjoy the protection of the 1951 Refugee Convention and that trafficking in children is an internationally prohibited crime.⁸ The International Humanitarian Law (IHL) protects children, including refugee children, from human trafficking by. In particular, the Statute of the International Criminal Court (ICC)⁹ stipulates that enslavement is crime against humanity, if done systematically, or on large scale against civilian population. Its Article 7(2)(c) defines “enslavement” as the exercise of any or all of the powers attaching to the right of ownership over a person. It includes the exercise of such power in the course of trafficking in children. Thus, trafficking in refugee children can amount to a crime against humanity.

The central question examined in the paper is whether or not the R2P principle entails responsibility for the States and the international community to prevent and combat trafficking in refugee children, and thus require a paradigm shift under R2P?

The paper is structured as follows: -First, it presents the problem of trafficking in refugee children, which is placed high on the UN security and human rights agendas. Second, it discusses the responsibilities borne by the States and international community to prevent and combat trafficking in refugee children as moral and/or legal obligation within the international setting. Third, it presents arguments regarding a possible use of the R2P principle with aim to prevent trafficking in refugee children. The paper concludes by recommending a shift of the paradigm under the R2P principle to prevent trafficking in refugee children.

This paper seeks to make a theoretical contribution by closing a knowledge gap regarding a possible use of the R2P principle to prevent and protect refugee children from human trafficking. The methodology combines legal and comparative analyses of international and European instruments that create a safety net for refugee children from trafficking. Data are collected and collated from the documents prepared by international organizations such as IOM, UNHCR, UNICEF, CoE, FRONTEX, UNODC and INTERPOL and analysed by applying human rights approach and best interest of the child standard.

2. A NEED FOR IMMEDIATE AND DECISIVE ACTION TO PROTECT REFUGEE CHILDREN FROM TRAFFICKING

In 2016, according to UNICEF 28 million of children were forced to move due to conflict and violence.¹⁰ In 2017, according to the UNHCR Global Trends Forced Displacement out of 25.4 million refugees, 52% were children. Out of them 1.2 million children in distress, at serious risk of trafficking, are located in Turkey and may continue their trip to the EU.¹¹ In a meanwhile, conflicts in the home countries of the refugee children (Syria, Afghanistan, South Sudan, Myanmar, Somalia, Yemen) further escalate, meaning that even more children will flee their countries and find themselves in a vulnerable position, at risk of trafficking.

⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, General Assembly Resolution 55/25 (entry into force 29.9.2003) Article 5.

⁹ Statute of the International Criminal Court adopted at a diplomatic conference in Rome on 17 July 1998, U.N. Doc. A/CONF.183/9 (entry into force 1 July 2002).

¹⁰ Nearly a quarter of the world’s children live in conflict or disaster-stricken countries: UNICEF, Press release, UNICEF, 9 December 2016. <www.unicef.org/media/media_93863.html>, accessed 5 1. 2018.

¹¹ Refugee and Migrant Crises in Europe 2018, UNICEF <https://www.unicef.org/appeals/files/UNICEF_Refugee_and_Migrant_Crisis_in_Europe_Humanitarian_SitRep_March_2018.pdf>accessed 31.1.2019.

A grim reality of trafficked refugee children pops up from facts, figures and stories presented in the reports of organizations with a mission to assist children, from the news, the YouTube.¹² Refugee children are usually trafficked for the purpose of sexual exploitation by other migrants, and their mafia gangs.¹³ A study of the European Commission states that: “children who come from a war-affected zone are more at risk of being trafficked, especially when there are established transport and trafficking routes from such countries”.¹⁴ A research carried out in four sites in Greece with high migration population documented that children, caught up in humanitarian crises, easily become victims of violence, of sexual and labour exploitation. Syrian refugee children in Turkey, Lebanon and Jordan are forced to leave school to work illegally or are victims of forced marriages.¹⁵ The 2018 Report of the Special Representative of the Secretary General for Children and Armed Conflict (the 2018 Report) draw the attention of the UN General Assembly (GA) about an increase of the number of children mostly coming from Africa who were externally trafficked to be used as child soldiers, for forced marriages and for sexual exploitation.¹⁶

In the conflict-affected zones, peacekeepers can exacerbate the trafficking problem, as it is considered that their presence increases a demand for sexual services, sometimes even from children.¹⁷ The 2018 Report treats protection of refugee children from sexual exploitation and abuse perpetrated by the UN peacekeepers as a matter of priority.¹⁸

While international community is increasingly gaining awareness of these hideous crimes to which refugee children are falling victims¹⁹, the time for decisive action to save refugee children at risk of trafficking is running out. The costs of impunity for traffickers of refugee children and obliviousness vis-à-vis child victims are too high to be paid by the war-torn societies. The impunity of traffickers not only adversely affects the rule of law and its prospects to be re-established in a mid-term, but it actually fuels the conflict, and thus creates a desirable environment for lucrative illegal “businesses”. Traumatized child victims may easily become traffickers themselves, luring other victims into the same trafficking trap.

3. CRIMES AGAINST HUMANITY: ENSLAVEMENT, SEXUAL SLAVERY, FORCED PROSTITUTION

Crimes against humanity involve a treatment of the victim as if he was not human and as if he does not enjoy protections belonging to every human being, which are meant to shield human beings against outrage to their dignity.²⁰ They offend general principles of law and therefore become the concern of the

¹² See for example the BBC story about the Rohingya children trafficked for sex dated 20 March 2018, BBC <<https://www.bbc.com/news/world-asia-43469043>>; Inside a Camp Where Children are for Sale, CNN <<https://www.youtube.com/watch?v=fJe6QJ2FIXk>>; Stories of refugee children, Refugee Council <<https://www.refugeecouncil.org.uk/animation>> both accessed 5.1.2019; Human Rights Watch, *Shattered Lives: Sexual Violence Crimes during the Rwandan Genocide*, Human Rights Watch, 1996, pp. 6, 7, 13; Anne P. Wilson, *Trafficking Risks for Refugees*, Third Annual Interdisciplinary Conference on Human Trafficking (2011) p. 12; European Commission, *Study on high-risk groups for trafficking in human beings*, Luxembourg: Publications Office of the European Union, 2015, p. 55.

¹³ FXB Centre for Health and Human Rights, *Emergency within an Emergency*, Harvard University, 2017, pp 22, 25-27.

¹⁴ European Commission (N. 12) p. 55.

¹⁵ Elizabeth Ferris and Kemal Kirişçi, *The Consequences of Chaos*, Brookings Institution Press, 2016, p. 44.

¹⁶ General Assembly, Report of the Special Representative of the Secretary General for Children and Armed Conflict, A/73/278 (30 July 2018), paras 4-5, 8-10 - 12, 22 -23.

¹⁷ Alvaro Ballesteros, *Trafficking in Human Beings and International Peacekeeping Missions: The 2004 NATO THB Policy, Connections*, Vol. 6, No. 3 (2007) pp. 121-139.

¹⁸ General Assembly (N. 16) para 58.

¹⁹ See among other, Security Council, Resolution S/RES/1612 (adopted 26 July 2005); General Assembly (N. 16); Statement of the President of the Security Council, S/PRST/2017/24 (7 December 2017).

²⁰ Massimo Renzo, *Crimes against Humanity and the Limits of International Criminal Law*, Law and Philosophy, Vol. 31, No. 4, (2012) p.451.

international community.²¹ Crimes against humanity can also occur during times of peace, most likely when there are serious levels of political instability, threats to the security of the country or even volatility in economic or social affairs.²²

Article 7, para 1 (c) and (g) and para 2 (c) of the ICC Statute proscribes crimes against humanity of a) enslavement, b) sexual slavery and c) forced prostitution, as follows:

- a) The main element of enslavement is the exploitation of a person deprived from liberty to whom the right of ownership is attached. The definition of enslavement also includes labour exploitation.²³
- b) Sexual slavery encompasses forced marriages, rapes and sexual assaults of persons deprived from liberty who are purchased, sold, lent.
- c) Enforced prostitution is committed when there is an expectancy of a pecuniary gain for the perpetrator in exchange for sexual exploitation of the victim.

According to the ICC Statute, the acts of enslavement, sexual slavery and enforced prostitution are considered crimes against humanity when committed as part of a wide spread or a systematic attack. The perpetrator must know that enslavement, sexual slavery and enforced prostitution are committed in the context and fitting a pattern of a massive or a systematic attack against targeted civilian population. A wide-spread attack means commission of multiple acts, while a systematic attack engages planning and orchestration of the act. It is not a cumulative requirement.

Article 22, para 2 of the ICC Statute stipulates that the crimes are strictly construed and shall not be extended by analogy. Crimes against humanity can be committed also by non-state actors in pursuance of a policy.²⁴

Trafficking in human beings, especially in refugee children is modern-day slavery that corresponds to crimes of humanity of enslavement and sexual slavery.²⁵ Trafficking in human beings, where it is committed as part of a widespread or a systematic attack directed against a civilian population, may amount to a crime against humanity.²⁶

Children displaced due to armed conflict, including refugees, can be especially vulnerable to trafficking in persons in armed conflict.²⁷ Recruitment of children to be used as combatants, suicide bombers or for other supportive roles (cooking, cleaning etc.) in a war context can constitute trafficking in children. Children can be also trafficked for the purpose of forced or child marriage, sexual slavery and enforced prostitution. Often girls, (the so called “bush wives”) can be a victim of dual exploitation.²⁸

²¹ Kriangsak Kittichaisaree, *International Criminal Law*, reprint Oxford University Press 2002, p.84.

²² UN, *Framework of Analysis for atrocity crimes: A tool for prevention*, United Nations 2014, p.10.

²³ Kittichaisaree (N. 21) p. 107.

²⁴ Ibid, pp. 91, 95, 96, 113, 114, 429, 430.

²⁵ Ibid, p.107.

²⁶ UNODC, *Thematic Paper—Countering Trafficking in Persons in Conflict Situations*, United Nations Office on Drugs and Crime, 2018, p. x.

²⁷ Security Council, Resolution S/RES/2331 (adopted 20 December 2016).

²⁸ UNODC (N. 26) pp. 12-19, 31.

4. ANTI-TRAFFICKING COMMITMENTS

At global level, trafficking in children is prohibited by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the UN Protocol), supplementing the United Nations Convention against Transnational Organized Crime.²⁹ At European level, trafficking in children is prohibited by the Council of Europe Convention on Action against Trafficking in Human Beings (the CoE Convention).³⁰

Article 3 of the UN Protocol and Article 4 of the CoE Convention contain the same definition of this crime. For the offense of trafficking in children to be committed three elements must be present: 1) act, 2) means and 3) purpose. *Actus reus* encompasses the acts and means of the crime, while *mens rea* refers to the purpose of the exploitation.

1. The acts encompass: the recruitment, transportation, transfer, harbouring or receipt of persons.
2. Trafficking in children (persons below age of 18) is committed even when the means (one of the elements of the crime) are not deployed.
3. Both instruments stipulate that purpose is exploitation, which 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. Forced marriages, begging, using children for criminal activities, selling their body parts, illegal adoptions and using children soldiers are all forms of exploitation.

There are no circumstances under which it could be considered that children have given a consent or intended to give a consent to be subjected to human trafficking.

The UN Protocol and the CoE Convention stipulate a bundle of rights for trafficked children, which include protection and various types of assistance under the principle of non-discrimination, as well as prosecution and punishment of the perpetrators. States must abide by the *non-refoulement principle*³¹, if it is likely that trafficking victims will face persecution or ill-treatment, if returned. Both international instruments require ratifying States to undertake a variety of measures and cooperate with aim to prevent trafficking in children.

The UN Protocol applies to offences which are transnational in nature, involve an organized criminal group, and requires a protection of the victims. Transnational offences are those committed in more than one State; or while committed in one State a substantial part of their preparation, planning, direction or control takes place in another State; or are committed in one State but involve a “transnational” organized criminal group; or while committed in one State the offenses have effects in another State. The UN Protocol protects the State’s sovereignty and functions that are reserved exclusively for its domestic authorities.

The Convention on the Rights of the Child³² contains a strong anti-trafficking commitment in its Article 35, which requires State parties to undertake measures to prevent the abduction of, the sale of or traffic in

²⁹ UN General Assembly (N. 5).

³⁰ Council of Europe Convention on Action against Trafficking in Human Beings, CETS No.197 (entry into force 1.2.2008) Article 4.

³¹ See the 1951 Refugee Convention (N. 7) Article 33.

³² Convention on the Rights of the Child, UNTS vol. 1577 p. 3, General Assembly resolution 44/25, 20 November 1989 (entry into force 2.9.1990) Articles 19, 22, 32, 34, 35, 36 and 38.

children for any purpose or in any form. Its provisions prescribe protection of the child from sexual, economic and any other form of exploitation (see Articles 19, 32, 34 and 36). These illegal activities must be prevented; the victims must be identified and referred; and the crime must be investigated and dealt with by the courts. When refugee children are at stake the States must ensure that a refugee child receives appropriate protection and assistance (Article 22). Furthermore, children affected by an armed conflict must be protected and cared for (Article 38).

Anti-trafficking legal commitments relevant for children are further to be found in the International Convention on Elimination of All Forms of Discrimination against Women (CEDAW)³³, the International Covenant on Civil and Political Rights (ICCPR)³⁴ and the European Convention on Human Rights (ECHR)³⁵ that prohibit slavery, enforced servitude and similar practices.

From the above it follows that the States, which have ratified the above treaties and the UN Protocol must abide by comprehensive anti-trafficking legally binding obligations to cooperate, prevent, protect, prosecute and punish. The States have a positive obligation under the international human rights law to prevent trafficking in children, to protect this vulnerable group and to curtail the impunity of perpetrators of this hideous crime.³⁶ The States where the refugee children are located during their journey have an obligation to protect refugee children from trafficking under the international human rights law.

If a State has not yet ratified the above international instruments, it does not mean that it is absolved from the anti-trafficking obligations. On the contrary, the State might be bound by regional political commitments, such as the anti-trafficking commitments of the Organization for Cooperation and Security in Europe (OSCE) and/or national legislation to protect children from trafficking.

Refugee children are a subgroup of children as a vulnerable group, and thus the anti-trafficking obligations applicable to children are also valid for the refugee child. Refugee children cannot and should not be discriminated against only because they find themselves in extra-ordinary and difficult circumstances. Moreover, only refugee children of specific ethnicity or religion may be targeted for trafficking.

When refugee children are at risk of trafficking, the obligation to prevent this crime and protect the victims should not be easily dispensed with by the States on the basis of a lack of jurisdiction, of capacities or of legally binding obligation without looking deeper in this world-wide problem. It is the children's rights that are at stake. The State, and the international community for that matter, must take into consideration the extra-ordinary circumstances, which render refugee children extremely vulnerable to trafficking, such as prolonged armed conflicts, humanitarian crises, years of living in refugee camps or journeying to find a refuge, poverty, failed States of origin, a lack of protection and assistance and a lack of rule of law. Moreover, freedom from slavery, enforced servitude and similar practices under the international human rights regime is non-derogable, even in cases of war (see in particular, the Siracuse principles, ICCPR Article 4 and ECHR, Article 15).³⁷

³³ Convention on Elimination of All Forms of Discrimination against Women, United Nations, Treaty Series, vol. 1249, p. 13, UN Doc. A/47/38 (entry into force 3.9.1981) Article 6.

³⁴ International Covenant on Civil and Political Rights, UNTS vol. 999, p. 171 and vol. 1057, UN Doc United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966 (entry into force 23.3.1976) Article 8.

³⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No.005 (entry into force 3.9.1953) Article 4.

³⁶ G.J.H van Hoof, *The Legal Nature of Economic, Social and Cultural Rights: a Rebuttal of Some Traditional Views*, Philip Alston and Katarina Tomaševski (eds), *The Right to Food*, Dordrecht: Martinus Nijhoff 1984, p. 97.

³⁷ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985), UN (N.34) Article 4, and CoE (N. 35) Article 15.

Refugee children are protected under international law, and this protection must be adequate and effective even in cases of trafficking. If the refugee children cannot afford themselves of adequate and effective protection from trafficking from their State of origin, or from other States or from the international community, and if this crime cannot be prevented, the international obligation to protect refugee children will become illusory.

Therefore, the paper will now examine the R2P principle which under certain circumstances enables States and international community to gradually take measures in the territories of other States in balance with their sovereign rights and the non-intervention principle.

5. PREVENTIVE NATURE OF R2P

The R2P principle, which has been both praised and criticized by the States, provides a vision of global protection of the people from mass atrocities, including crimes against humanity. Under the WSO, the international community, acting through UN, is provided with a discretionary mandate to undertake certain executive actions when populations need protection.³⁸ The R2P principle includes the responsibility to prevent, to react and to rebuild with the UN key actors emphasizing prevention.³⁹ The R2P principle underscores the importance of preventing the atrocity crimes in preference to military solutions.⁴⁰ Atrocity crimes, including crimes against humanity, are for the most part large-scale events that, if prevented, will avoid significant loss of human life, as well as physical, psychosocial and psychological damages and trauma.⁴¹ The R2P should move from words to effective practical implementation: in particular for early prevention and early reaction to the risk factors.⁴²

Although there is a legal requirement only to prevent genocide, the obligation under R2P to prevent crimes against humanity is a moral obligation. As Sheri Rozenberg put it: -The sense of moral urgency that led to the Genocide Convention and its prevention obligation applies equally to crimes against humanity. Moreover, she suggests that there is a progress in acceptance of a legal norm to prevent also crimes against humanity- *de lege ferenda*.⁴³ It is furthermore a political responsibility to contribute to the prevention of this crime.⁴⁴

The R2P principles has been applied in Libya, upon approval of the Security Council, which ultimately included a military intervention.⁴⁵ Seven years later, Libya is a failed State. In the 2018 trafficking in Persons Report, the US Department of State reports about a wide-spread trafficking in children from Sub-Saharan Africa, Libya and Asia who are used for the purpose of sexual and labour exploitation, as well as recruited as children soldiers.

Certainly the case of Libya emphasizes the responsibility that R2P engages for the international community to rebuild the institutions and the rule of law after the military intervention has taken place.

³⁸ Anne Orford, Rethinking the Significance of the Responsibility to Protect Concept, Proceedings of the Annual Meeting (American Society of International Law) Vol. 106, Confronting. Complexity (2012) pp. 27-31.

³⁹ Sheri P. Rosenberg, Responsibility to Protect: A Framework for Prevention, Global Responsibility to Protect 1 p.442-477 (2009) p. 443.

⁴⁰ Evans (N. 4) p. 14.

⁴¹ UN, (N. 22) p.3.

⁴² Evans (N. 4).

⁴³ Rosenberg (N. 33) pp. 475, 476.

⁴⁴ UN General Assembly Security Council, Implementing the Responsibility to Protect: Accountability for Prevention Report of the Secretary-General, A/71/1016 –S/2017/556, 10 August 2017, paras 15-18.

⁴⁵ Security Council, Resolution 1970 /RES/ 1970 (adopted 26.2.2011) and Security Council, Resolution S/RES/1973 (adopted 17.3 2011).

Nonetheless, the key responsibility which should be invoked in order to prevent similar cases from re-occurring in the future falls under the R2P responsibility to prevent.

6. IS THERE A RESPONSIBILITY TO PREVENT TRAFFICKING OF REFUGEE CHILDREN UNDER THE R2P PRINCIPLE?

Trafficking in refugee children can constitute a crime against humanity stipulated in Article 7 para 1 (c) and (g) and para 2 (c) of the ICC Statute⁴⁶, due to the following reasons:

- a) Trafficking in refugee children is a modern-day slavery, which may fit descriptions of the crimes against humanity of enslavement, sexual slavery or enforced prostitution under the ICC Statute. Bearing this in mind, the crime of trafficking in refugee children may be committed for the purpose of labour exploitation (e.g., domestic servitude, working in agriculture), for sexual exploitation (forced marriages), for enforced prostitution, for a use of child soldiers, or for committing criminal offenses.
- b) Refugee children are an extremely vulnerable population. By default they belong to the civilian population. Child soldiers - victims of trafficking cannot be considered combatants, *per se*, especially when they are under the age of 15 and not without prior thorough examination of the circumstances under which they were forced to take up arm.
- c) Under the ICC Statute it is accepted that perpetrators do not need be internationally recognized. So, groups like Boko Haram could be also prosecuted under the ICC Statute for crimes against humanity.⁴⁷
- d) The elements of a wide-spread or a systematic attack depends on factual circumstances surrounding the alleged crime against humanity of enslavement, sexual slavery or enforced prostitution. When hundreds of children are abducted, recruited, harboured and received with the aim to be used as child soldiers, suicide bombers or forced brides, there are indications about a strategic planning and policy behind it.

From the above it transpires that acts when refugee children are recruited, transported, harboured or received with the aim to be exploited (e.g., as child soldiers, or for forced marriages) and when there are indications that such acts are part of a policy or a wide-spread attack even of actors who are not internationally recognized, such acts may constitute crimes against humanity, which trigger State and collective responsibility under the R2P principle.⁴⁸

Abducting children to use them as suicide bombers or for forced marriages, qualify as crimes against humanity of enslavement and sexual slavery, and maybe a war crime. The attacks and acts committed by Boko Haram against civilian population, which includes refugee children, in Africa's Lake Chad Basin (Nigeria, Niger, Cameroon and Chad) represent such examples. In this extremely poor region in Africa 1. 4 million of children have been displaced and are clearly running a risk of enslavement sexual slavery and enforced prostitution.⁴⁹

⁴⁶ ICC (N.7), Article 7 para 1 (c) and (g) ad para 2 (c).

⁴⁷ The Office of the Prosecutor, Report on Preliminary Examination Activities 2018, ICC <<https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf>> accessed 5.1.2019.

⁴⁸ See also UNODC (N. 26).

⁴⁹ Report 2016, UNICEF <https://www.unicefusa.org/sites/default/files/Boko_report-20160821_LR.pdf> accessed 13.1.2019; Amnesty International, 'They Betrayed Us' Women Who Survived Boko Haram Raped, Starved and Detained in Nigeria, Amnesty

The States have a responsibility to assist and encourage the State in whose territory such unlawful acts occur or may occur to prevent the crimes and protect refugee children. Ultimately, it is the responsibility of the international community to prevent collectively these inhuman acts.

The above said is illustrative of the need to use the R2P principle, which does entail a responsibility for the States and the international community to prevent trafficking in refugee children when there are circumstances such as armed conflict, prolonged conflict, attacks carried out by armed groups, humanitarian crises or displacement of large populations seeking refuge. The R2P principle should be applied because of the following:

- a) Abducting children by belligerents or terrorist groups to be used for war purposes is not only an inhuman and criminal act, but it also represents a clear threat to regional and international security and order. As the case of Dominic Ongwen before ICC shows, abducted children used as soldiers perpetuate a vicious circle of violence.⁵⁰
- b) Abducting children, including refugee children, for forced marriages with members of terrorist groups and other non-state actors, is an internationally prohibited act of sexual and domestic slavery. This transnational crime is not only committed in Africa, but also in Asia and Europe where countries of origin, transit and destination of the unhappy “brides” are located. Remaining passive means that the world has given up on these children, and sends a wrong signal of continuous impunity, especially in the cases of “failed States”.
- c) Situations like the one in Libya, where slaves, including children, are reportedly auctioned⁵¹ without any consequences for the perpetrators, runs contrary to the international and human rights law, and thus, represents the concern of the international community. Any form of slavery is shocking to the conscience of humanity and to the world soul (anima mundi), and requires an appropriate reaction to stop this barbarous act.
- d) Transnational slavery practices that go unpunished are taking place close to EU, in its Mediterranean neighbourhood. International borders are not a barrier, and reportedly the EU has already been infected by this contagious disease called trafficking in refugee children. In 2016, IOM reported that 80% of estimated 11,009 Nigerian women who arrive in Europe are potential trafficking victims and that trafficking for the purpose of sexual exploitation increasingly involves minors.⁵²
- e) Traffickers in refugee children earn lucrative profits, which are later used for organized crime and terrorism⁵³, and thus threaten international security.

International 2018, pp.16-17. See, *mutatis mutandis*, the Case of the Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06 (2012), pp. 282-399.

⁵⁰ Profile: Dominic Ongwen of Uganda's LRA, BBC <<https://www.bbc.com/news/world-africa-30709581>> accessed 24.1.2019.

⁵¹ Worldwide Report Libya 2018, Human Rights Watch <<https://www.hrw.org/world-report/2018/country-chapters/libya>> accessed 13.1.2019.

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The application of the R2P principle must adjust to the changing world of organized crime and crimes against humanity, in order to be effective and fulfil its objective. At international level, trafficking in refugee children is mostly looked at from a perspective of preventing and combating trafficking in human beings, while sexual slavery, enforced prostitution and enslavement are representing the types of exploitation.⁵⁴

Since trafficking in refugee children is a matter of international concern and is placed high on the UN agenda, there is a need to shift the paradigm under the R2P principle to prevent this crime and thus offer a different outlook. Preventing trafficking in refugee children should be also looked at from a perspective of the States' obligations under IHL and international criminal law. The shift of the paradigm for preventing trafficking in refugee children brings the application of the R2P principle in the picture and leads to a recognition that trafficking in refugee children falls within its scope. Thus, the application of the R2P principle should be broaden and understood as entailing a responsibility for the States and the international community to prevent trafficking in refugee children also in a State in whose territory trafficking in refugee children occurs, or may occur, when this State fails to execute its obligations, with a caveat that application of the R2P principle must work in synergy with the enforcement of other anti-trafficking obligations.

7. CONCLUSION

There is a pressing need to protect refugee children from trafficking and to prevent this egregious crime from further perpetuation at global level. The obligation to prevent trafficking in refugee children and to protect them stems from the international human rights law, refugee law and IHL. The obligation is well placed on States and international community.

The R2P principle applies to crimes against humanity of enslavement, sexual slavery and enforced prostitution. Trafficking in refugee children may amount to a crime against humanity, with the purpose of exploitation being labour exploitation, sexual slavery or enforced prostitution.

This paper demonstrates that there should be a shift of the paradigm under the R2P principle. In particular, trafficking in refugee children should not be only looked at as a matter primarily belonging to the realm of human rights and refugee law, but also as a matter of concern that belongs to the realm of IHL and international criminal law. Therefore, the R2P principle may and should be used to prevent trafficking in refugee children and protect this vulnerable population from further abuse. Further research is needed to develop a framework on the manner of application of the R2P principle, its early warning mechanism and preventive tools, by the States and the International Community with purpose to protect refugee children who are vulnerable to trafficking.

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