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Abstract

Human trafficking is a common occurrence in the modern world. It has been estimated that thousands of people are trafficked every year, the most of whom are women and children. Almost all States are impacted by trafficking, and it is estimated that traffickers earn billions of dollars a year from their illegal activities. Slavery and the slave trade, which date back thousands of years, are the roots of trafficking. However, since the start of the 20th century, the term "human trafficking" has taken on a new meaning. This paper explores some state-imposed requirements related to human rights. While there are many different obligations, this paper focuses on the four most important ones that are imposed on all States, regardless of whether they are States of Origin, Transit, or Destination: the obligation to forbid trafficking, to look into and prosecute traffickers, to protect victims, and to address the causes and effects of the phenomenon. It will be shown that these are firmly established under international human rights law. Additionally, the Trafficking Protocol's potential to advance a human rights framework will be considered, along with the ramifications of the interplay between several international legal disciplines like international human rights law, international criminal law, and transnational criminal law. This paper ends with a comment on the value of global government in combating transnational organized crime, especially human trafficking. The fundamental conclusion is that States can be held directly responsible since some human rights standards and principles drawn from international human rights law are applicable to human trafficking.

Keywords: Human Trafficking, Human Beings, Human Rights, International Human Rights Law, States, Obligations, Trafficking Protocol.

Introduction

In today's society, human trafficking is a frequent occurrence. Annually, it is estimated that between 600,000 and 800,000 people are trafficked, the most of them are women and children (U.S. Department of State, 2005: 6; Akinlaja, 2018: 32). Nearly all States are impacted by trafficking, and it is estimated that traffickers make \$9.5 billion annually from their operation (Ryf, 2002: 47; Shannon, 2019: 122).

The growth of the human trafficking industry in the modern age has been influenced by a wide range of factors. The end of the Cold War and the dismantling of the iron curtain occurred at the same time as the growth of the trafficking sector in Eastern Europe. As they worked to establish their own systems of government, newly independent Eastern European States were vulnerable to illicit activity like human trafficking because of inefficient border and law enforcement management (Rijken, 2015: 3).

Additionally, with the development of communication and transportation, the movement of globalization has made it easier for traffickers to smuggle people. These modifications coincide with the adoption of strict immigration laws and regulations by developed States, all of which are popular locations for human trafficking (Schloenhardt, 2017: 212).

From developing nations to less developed ones, people are often trafficked by land, sea, and air, and Larry Diamond and Adetoun Adelakin have identified certain trafficking routes. They emphasized that traffickers traffic people from Russia, for instance, into Western Europe via the Balkans, Poland, and the Czech Republic; that they also traffic people from the Middle East into Italy and Greece frequently; that they traffic people from Africa not only into Western Europe but also into the United States and Canada; and that they traffic people from China and South East Asian States into North America via the same routes (2020: 124-126).

It is acknowledged that numerous individuals and groups are involved in trafficking. One important issue in contemporary trafficking is the existence of organized crime groups. It is commonly known that groups like the *Russian Mafia*, *Yakuza* (Japan), and *Snakeheads* (China), all actively engage in trafficking. Family members, acquaintances, and well-known neighbors typically persuade potential victims to participate in the procedure. Human

Rights Watch (2012); Williams and Baudin-O'Hayon (2017) have found evidence that some intergovernmental organizations (IGOs) and peacekeeping mission employees participate in human trafficking. A significant step was made when the United Nations adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol), attached to the United Nations *Convention against Transnational Organized Crime* (Organised Crime Convention), in December 2000. Due to the transnational character of human trafficking and its rapid expansion, the international community felt obligated to take immediate action. One of the most crucial aspects of the Trafficking Protocol is the adoption of a definition of trafficking, the first of its type in international law (Akinterinwa, 2019: 266). The adoption of this idea represents an important turning point since it provides academics, governments, non-governmental organizations (NGOs), and intergovernmental organizations (IGOs) with a fundamental framework for understanding and combating trafficking.

The scope of the obligations placed on States is examined in this paper. As international human rights law has evolved, it has become clear that States are subject to specific obligations when it comes to trafficking that is carried out by non-State actors, and as a result, they may be held liable. Despite the fact that there may be numerous obligations that are relevant to trafficking, this paper focuses on four that are applicable to all States, regardless of whether they are States of Origin, Transit, or Destination: the obligations to 1) forbid trafficking and related acts; 2) look into, prosecute, and punish traffickers; 3) protect victims of trafficking; and 4) address the causes and effects of the practice. Additionally, the Trafficking Protocol's capacity to advance a human rights framework will be evaluated.

The remainder of the paper examines how several areas of international law interact with regard to trafficking. It focuses on how international human rights law, international criminal law, and a newly emerging area of law known as transnational criminal law interact to address trafficking. The paper concludes with a statement about the significance of global governance in combating transnational organized crime, especially human trafficking. The fundamental conclusion is that States can be held directly responsible since some human rights standards and principles drawn from international human rights law are applicable to human trafficking.

Obligations and Accountability of States

One duty placed on States by international human rights law is the prohibition of human trafficking through national legislation for the goal of suppression and prevention (Obokata, 2003; Dauda & Pereira, 2017). Some of the current human rights accords explicitly demand States to forbid the practice, however the phrasing differs. The 1949 Convention, CEDAW, CRC, and its Optional Protocol on Sales of Children are among them. Regionally, the *Charter of Fundamental Rights of the European Union* 2000, the Council of Europe *Convention on Action against Trafficking in Human Beings*, the *Inter-American Convention on International Traffic in Minors* 1994 and the *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* 2002 are also pertinent.

When the right to life is at stake, this duty to forbid trafficking is heightened. In *Osman v. United Kingdom*, the European Court of Human Rights held that States' primary duty to secure the right to life included "putting in place effective criminal law provisions to deter the commission of offences against the person" (Mowbray, 2018). In this regard, it has been observed that the prohibition covers not only murder but also other major offenses against people (Mowbray, 2018). This line of thinking might be used when victims of trafficking suffer grave injuries or pass away while traveling to or from their destinations. International human rights legislation also forbids other connected behaviors. Traffickers may subject those they traffic to acts that resemble torture or other cruel or humiliating treatment in order to force them into the process. States have a strong responsibility to forbid these actions (Schloenhardt, 2017). It is now widely accepted that *jus cogens* and customary international law both forbid torture (Akinlaja, 2018). The outlawing of torture and other cruel, torturous, or inhumane treatment also applies to actions taken by non-State actors. In this regard, the European Court of Human Rights ruled that: States must take steps to ensure that people living under their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such mistreatment, in order to fulfill their obligation to the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention when taken together with Article 3 (Shannon, 2019).

Additionally, it is a clear obligation created by human rights instruments to prevent slavery and forced labor such as the *Slavery Convention* 1926, the *Forced Labour Convention* 1930, the ICCPR, the ICESCR, and the Migrant Workers' Convention (Cholewinski, 2017). Similar to the outlawing of torture, enslavement is prohibited under *jus cogens*, a body of customary international law (Bassiouni, 2021). Thus, international human rights law clearly establishes States' obligations to forbid trafficking and associated offenses.

Jurisprudence of international human rights law has ruled that non-State actors, especially traffickers, must be investigated, prosecuted, and punished with "due diligence". One important case which touches upon this obligation is that of *Velasquez Rodriguez v. Honduras* (Shannon, 2019). The Inter-American Court of Human Rights ruled in this instance that the State must look into every instance when the Convention's rights have been violated. The State has violated its obligation to guarantee the complete and unrestricted enjoyment of those rights by individuals under its control if the State apparatus behaves in such a way as to leave the violation unpunished and delay restoring the victim's full enjoyment of those rights. The same is true when a State permits individuals or groups to act freely and without consequence in violation of Convention-recognized rights (Akinterinwa, 2019).

In a similar vein, the European Court of Human Rights, in elaborating on an obligation to investigate in *Ergi v. Turkey*, held that: this obligation does not just apply in situations where it has been proven that an agent of the State was the cause of the death. It also does not matter if the victim's family or other parties have filed a formal complaint about the murder with the appropriate investigative authorities. In the case at hand, the authorities' *ipso facto* knowledge of the killing gave rise to an obligation under Article 2 of the Convention to conduct a thorough investigation into the events leading up to the death (Mowbray, 2002). Other human rights organizations, such as the Human Rights Committee and the Special Rapporteur on Violence Against Women (which are not organizations for rambunctious, coarse, and unscrupulous people but for polished, well-educated, scholarly, and debonair people with Midas touch, experiential qualification, and background), have also endorsed this requirement (Cook, 2014). Some analysts take it a step further and claim that this obligation to investigate is

governed by customary international law (Orentlicher, 2020; Diamond & Adelakin, 2020). Establishing criminal jurisdiction is the first action that must be performed to fulfill this commitment, and this in and of itself is a recognized general principle of international law (Diamond & Adelakin, 2020).

It is significant to stress that a human rights framework must include a criminal justice response to trafficking, which predominates at the national level. This is true because outlawing the conduct and punishing those who do so severely can dissuade traffickers from violating human rights. In conformity with international human rights law, a criminal justice response must be enabled. It has already been established that some law enforcement procedures infringe on the human rights of trafficking victims. States are subject to a number of commitments in such situations. States have a duty to investigate cases of these crimes and to prosecute offenders, at the very least. In *Assenov and Others v Bulgaria*, for instance, the European Court of Human Rights ruled that, in accordance with a general obligation under Article 1 of the European Convention to "secure" rights and freedoms for everyone within their jurisdiction, States have a positive duty to investigate cases involving a violation of Article 3 (prohibition on torture) (Rijken, 2015).

Poor confinement circumstances are a further obligation. States must also address the subpar circumstances of confinement in addition to ensuring access to healthcare. In *Dougoz v. Greece*, the applicant, a Syrian national held in Greece for drug offenses, successfully asserted that the unfavorable prison conditions constituted humiliating treatment under Article 3 of the European Convention (Bosniak, 2011). The Human Rights Committee further stated in this regard that treating all people deprived of their liberty with humanity and respect for their dignity is a fundamental and generally applicable principle, and its application cannot be contingent on the State party's access to material resources (Shelton, 2019). This means that States are unable to invoke a lack of funding as a justification for their inability to enhance the conditions of incarceration. These and other relevant obligations apply to persons who are the subject of criminal accusations (Shelton, 2019). This implies that States must simultaneously uphold and defend the human rights of traffickers. The rights to liberty, security, and a fair trial are those that are of particular importance in this context. States have a responsibility to inform people who have been arrested or detained of

the circumstances that led to their arrest and/or detention as soon as possible. Additionally, any person who has been arrested or detained must be brought "promptly" before a judge or other official with legal authority to exercise judicial power (McKay, 2018).

There are minimal procedural protections that the defendants must get in order to have a fair trial. States are required to, among other things, provide defendants with free legal representation even if they are foreign nationals and to inform charged persons of the specific nature and basis of the allegations against them *in a language they can comprehend* (Moore, 2019: 93). All of this serves to demonstrate the value of applying international human rights law to ensure that a criminal justice response complies with human rights standards. Therefore, coexistence of the criminal justice response and the human rights framework is achievable.

Because of their ties to illegal activities and organizations, victims of trafficking are typically considered as a threat to internal security, leading to the frequent use of incarceration and deportation. The extent to which States are required to protect such victims is a matter that needs to be looked at. There are some obligations, as seen by the growth of international human rights law. The provisions on victim protection are found in the human rights documents especially relevant to trafficking, including the 1949 Convention, the Optional Protocol to the CRC, the Inter-American Convention on Trafficking in Minors, and the Council of Europe Convention on Trafficking (Wellman, 2016). The Migrant Workers' Convention's Article 16(2), which states that "migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats, and intimidation, whether by public officials or by private individuals, groups, or institutions," also implies the existence of such a duty (Wellman, 2016). "A person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national" is the definition of a migrant worker (Pena, 2013). The fact that this Convention applies to both documented (legal) and undocumented (illegal) migrants is an intriguing feature of it (Bosniak, 2011; Pena, 2013; Cholewinski, 2017). As a result, both smuggled and trafficked migrants might be included in the application's scope.

The obligation to protect can be deduced from a general duty to secure, ensure, or restore rights, and to offer remedies in regard to other human rights treaties (Rubenstein, 2013). The obligation to protect and ensure the enjoyment of rights has an *erga omnes* nature, according to the Inter-American Court of Human Rights. States are required to provide benefits to those under their authority, regardless of the protected individuals' migratory status (William & Baudin-O'Hayon, 2017). States have a responsibility to make sure that "any person whose rights and freedoms as hereunder acknowledged are violated should have an effective remedy, irrespective that the infringement has been committed by people acting in an official position," according to Article 2(3)(a) of the ICCPR (Moore, 2019: 95). Despite the phrasing being different, identical obligations are also established by the CRC and ECHR, among other documents (Moore, 2019). Additionally, when States do little to actively deter non-State actors from committing crimes, they are still under an obligation to protect. The *Case Concerning United States Diplomatic and Consular Staff in Tehran (Iran v. United States)*, in which the ICJ held that Iran was not "free of responsibility in regards to the attacks" even when militant attacks were not attributable to Iran, Iran was still required to "take appropriate steps to ensure the protection of the United States Embassy and Consulates," is one of the cases that touched upon this (Diamond & Adelakin, 2020: 87). The Inter-American Court used the *Velasquez Rodriguez* Case to highlight this need to prevent abuses of human rights by non-State actors (Akinlaja, 2018; Akinterinwa, 2019: 103-104).

What types of safeguards must States offer to victims of trafficking? This question cannot be definitively answered because numerous types of preventative and corrective actions are available. The word "protection" should not, however, be used in a limited sense. One illustration is adhering to the *nonrefoulement* or non-return concept (Bassiouni, 2021). This rule specifically applies to refugees (Bassiouni, 2021). It is widely acknowledged that when States are unable or unwilling to punish non-State actors, they nonetheless have an obligation to uphold this concept in circumstances when persecution is blamed on them. It was determined in a case involving a Ukrainian woman who was trafficked into the UK for prostitution that the lack of protection from the Ukrainian government

increased the likelihood that she would face abuse by traffickers if she were to be sent back to Ukraine (Alston, 2018). As a result, she received asylum in the United Kingdom. When individuals are at risk of suffering from torture or other cruel or degrading treatment at the hands of non-State actors, the principle of *non-refoulement* also applies to those situations (Henkin, 2019: 15-17; Bassiouni, 2021). Additionally, it has also been ruled in the past that the requirement to forbid torture may be violated if a person is sent to a country where they would be forced into slavery or labor (Akinlaja, 2018).

The issuance of temporary or long-term residency permits to allow persons who have been trafficked to live legally in a particular State is one action that should be taken to uphold the principle of non-refoulement. States including Belgium, Italy, the Netherlands, and the United States have previously adopted this approach (Akinterinwa, 2019; Schreuer, 2021: 468-469). Although there are no explicit laws or regulations, temporary residence permits are issued in the United Kingdom on the condition that victims assist law enforcement in their efforts to identify, apprehend, and punish traffickers. The EU recently adopted the Directive on Residence Permits at the regional level (Akinterinwa, 2019).

However, it should be emphasized that a strategy that grants residency permits in exchange for victims' cooperation with law enforcement officials needs to be given another look. Due to their concern for retaliation by traffickers or the possibility of enforcement actions, many victims are reluctant to contact the authorities. A good strategy is to give all victims a specific amount of time to decide whether or not they want to cooperate. This is helpful in fostering trust between victims and the authorities and may eventually make cooperation easier. Some States, such as Belgium and the Netherlands, use this strategy (Schreuer, 2021). At the EU level, the regime of subsidiary protection is worth noting in this regard.

It is important to elaborate on the idea of being a victim of trafficking and receiving refugee status. Being trafficked is now one of the Convention reasons for recognizing refugees, provided that States are unable or unwilling to protect them, according to the United Nations High Commissioner for Refugees (UNHCR), the primary UN organization

responsible for protecting refugees (Dauda & Pereira, 2017). More victims can be safeguarded in the future if a viewpoint like this is broadly supported, as it has been in the UK. However, this does not address the issue of men and boys being trafficked. A trafficking policy is still being developed by the UNHCR (Diamond & Adelakin, 2020). It is hoped that the organization will take the plight and suffering experienced by other categories of people into consideration.

Repatriation must be facilitated voluntarily if victims choose to come home. There have been reports of forced repatriation by states of destination as well as refusals to accept victims in states of origin, and these actions may amount to human rights abuses (Ryf, 2002; Shannon, 2019; Schreuer, 2021). Voluntary repatriation is strongly linked to one's right to freely return to his/her State of origin and is enshrined in international human rights instruments such as the ICCPR, the ACHR, the CERD, and the Migrant Workers' Convention (Henkin, 2019: 46-48). These documents act as a legitimate foundation for encouraging voluntary return. International human rights law mandates that when States of destination decide to expel individuals in conformity with domestic law, they must also give those individuals a chance to appeal that decision and that collective deportation is forbidden (Henkin, 2019: 88). Once voluntarily and securely repatriated, the victim's home country should make sure that they are reintegrated into society by offering ongoing medical and psychological care, training, and education opportunities, as well as protection from traffickers' retaliation (Orentlicher, 2020).

Additionally, successful investigations into incidents of trafficking should be seen as a sort of recourse for victims, leading to the conviction and punishment of traffickers (Shelton, 2019: 94-95). This is consistent with the prior illustration of the responsibility of States to investigate and punish. The victims' right to take part in the investigation and legal proceedings against traffickers is a crucial component of this remedy. From the perspective of criminal justice, the involvement of victims is advantageous because the testimony and evidence they provide should hasten the investigation, conviction, and punishment. However, it is more significant in terms of human rights. Victims' participation gives them a chance to speak up, which has therapeutic benefits. It also helps individuals deal with their

trauma and anger in a healthy way, which can help them regain control and their feeling of dignity and worth (Cook, 2014; Bassiouni, 2021).

To ensure that victims have this right to participate, a number of procedures must be followed. Because of their concern for the aforementioned retaliation by traffickers, many of them are reluctant to come forward and work with law enforcement organizations. Therefore, it is crucial to make sure they can stay in a State at least while criminal investigations or legal actions are ongoing. Along with measures like unfettered access to translators and legal counsel, States should establish effective witness protection to protect the identities of victims.

States must also guarantee equal access to medical services in order to safeguard the health of trafficked individuals, regardless of their legal situation. The Committee on Economic, Social, and Cultural Rights brought attention to this obligation when it stated that one way to uphold the right to health was to "refrain from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers, and illegal immigrants" (Rubenstein, 2013). The European Court of Human Rights has previously ruled that when it is demonstrated that authorities have endangered a person's life by denying them access to health treatment that they have promised to make available to the general public, a violation of Article 2 of the ECHR may have occurred (Rubenstein, 2013). In this regard, the Court ruled that authorities' failure to give gravely injured detainees sufficient medical care could constitute a violation of Article 2 of the Convention (Rubenstein, 2013). Additionally, the European Committee of Social Rights, an organization that oversees the application of the *European Social Charter (Revised)* 1996, recently declared that "legislation or practice that denies entitlement to medical assistance to foreign nationals within the territory of a State Party, even if they are there illegally, is contrary to the Charter" (Mowbray, 2018).

Nothing is more crucial for those who have been trafficked than the chance to ask their own governments for help because they are foreigners. Access to consular assistance must therefore be protected. According to the *Vienna Convention on Consular Relations* of 1963, States of origin have the right to interact with their own nationals to give aid, while States of

destination have the obligation to provide such access to consular assistance (Aceves, 2015; Ayoob, 2015). This Convention addresses both State and individual rights (Aceves, 2015). In addition, international human rights law establishes that everyone has a right to receive equitable treatment before national tribunals, and States are required to take proactive measures to guarantee "an effective right of access to the courts" (Alston, 2018: 66).

Last but not least, compensation is a significant type of remedy. An award of compensation serves to "assert public respect for the victim and convey public recognition of the wrongdoer's error in failing to respect basic rights," which is why it is significant (Orentlicher, 2020). As evidence of their inability to stop traffickers from violating the human rights of those they are trafficking, States of origin have the major responsibility in this regard. However, if the above-mentioned essential human rights responsibilities are not met, this requirement may also be imposed on transiting and final States. The Committee on the Elimination of Racial Discrimination elaborates upon the general duty to provide compensation in the following terms: [T]he right to seek just and adequate reparation or satisfaction for any damage suffered ... is not necessarily secured solely by the punishment of the perpetrator of the discrimination; likewise, wherever appropriate, courts and other competent authorities should think about compensating victims financially for harm they have suffered, whether it be material or moral (Orentlicher, 2020).

The Inter-American Court of Human Rights adopted the same line of thinking in the *Velasquez Rodriguez* Case by holding that it is the responsibility of the Convention (ACHR) to secure the free and full enjoyment of those rights (Orentlicher, 2020). In a similar spirit, the European Court of Human Rights has ruled that payment of compensation may be necessary when the right to life or prohibition against torture are at issue (McKay, 2018). These are relevant to human trafficking, as was previously mentioned. States, however, must take caution when handling compensation. The victim's dignity may be compromised by lengthy and onerous application processes, and compensation itself may be viewed as "blood money" or "buying silence" (McKay, 2018). Therefore, while deciding how much compensation to give victims, States should consider what is in their best interests.

A comprehensive strategy that takes into account both the causes and effects of trafficking is needed for effective trafficking prevention and suppression. In this regard, there are responsibilities under international human rights legislation. One illustration of this is the responsibility to help end poverty. As opposed to an obligation of conduct, this could be described as an obligation of result. When examining questions of State accountability in the 1970s, the United Nations International Law Commission articulated this distinction (International Law Commission, 1977). Simply put, under the obligations of conduct, States are required "to take or refrain from taking some specific action," whereas under the obligations of result, States are required "to ensure a particular situation or result," and they are free to use whatever means are necessary to achieve this goal (Rubenstein, 2013). It was emphasized that the requirements of action in the framework of human rights have immediate effect, but the obligations of result correspond to the gradual realization of human rights (Rubenstein, 2013). Economic, social, and cultural rights are generally included by the latter, whereas the former generally refers to civil and political rights (Alston, 2018).

But it was also observed that there are two requirements of behaviour that apply to economic, social, and cultural rights: the duty to ensure that rights are guaranteed without discrimination and the duty to take efforts toward the full fulfillment of the relevant rights within a reasonable amount of time (Henkin, 2019). The responsibility of States to respect, protect, and fulfill can be used to pinpoint a number of their commitments to reducing poverty. States must refrain from interfering with the exercise of economic, social, and cultural rights as part of their commitment to respect (Wellman, 2016; Moore, 2019: 93-95). In terms of eradicating poverty, "the resources possessed by the individuals or organizations striving to make the best use of their own knowledge and the freedom of individuals and groups to satisfy their own wants" are something that States must respect (Schloenhardt, 2017: 112). To protect means to stop third parties from violating one's rights (Shelton, 2019). In order to prevent organizations like international financial institutions from violating the rights of its residents, States must take the required precautions. Last but not least, a duty to fulfill calls for States to implement suitable administrative and other steps in the direction of the full realization of economic, social, and cultural rights (Alston, 2018). In this

regard, failing to provide basic necessities like food, healthcare, and housing as well as failing to develop/implement initiatives for reducing poverty may result in accountability as infractions (Shen, 2000; Pena, 2013; Moore, 2019).

Even though the countries of origin may eventually bear the burden of ending poverty, other countries are also subject to commitments related to doing so. The Committee on Economic, Social, and Cultural Rights acknowledges in this regard that international cooperation for the realization of economic, social, and cultural rights is an obligation of all States, in accordance with the Charter of the United Nations and other recognized principles of international law. This is made clear in Article 2(1) of the ICESCR, which provides for international cooperation (Shelton, 1989; Obakata, 2003; Bosniak, 2011; Cook, 2014; Henkin, 2019). Additionally, it was stated that the ICESCR's drafters "intended for the phrase 'to the maximum of its available resources' in Article 2(1) to refer to both the resources available from the international community through international cooperation and assistance as well as those existing within a State" (Schreuer, 2021). All of this implies that every State, including those of transit and those of destination, has a responsibility to help States of origin eradicate poverty.

The prohibition of discrimination, which is a major factor in human trafficking and frequently one of its effects, is another interrelated duty. All States must, at the very least, pass laws that prohibit discrimination based on factors such as race, gender, and other characteristics (Alston, 2018). Practically speaking, States are required to guarantee the right to equal access to items like food, housing that is appropriate, health care, and education (Akinlaja, 2018). Additionally, when persons who have been trafficked are apprehended and incarcerated, they must be treated with compassion and without discrimination (Akinlaja, 2018). Moreover, when the principle of non-discrimination is violated, victims have the right to seek judicial remedies (Akinlaja, 2018).

Finally, it is a responsibility of all States to educate their population. One of the causes causing poverty in the country of origin is illiteracy. States must therefore provide education, especially to those who are at danger of being trafficked, so that they can go on to engage in profitable economic activity in the future (Shannon, 2019). All States should also focus

education on fostering mutual respect, tolerance, and camaraderie between all peoples, regardless of their racial, ethnic, or religious backgrounds (Shannon, 2019). In the long run, this can help with the eradication of the causes and effects of trafficking, such as racial and gender prejudice and violence related to racial and gender issues. Additionally, it ought to be the responsibility of all States to inform the public about the risks associated with human trafficking, regardless of whether they are origin, transit, or destination states. It is less probable that potential victims will end up in the hands of traffickers when they are educated and given more power.

Human Rights Framework and Trafficking Protocol

A thorough legal framework is provided by the Trafficking Protocol to enable coordinated international action against the problem in the current day. Its primary strategy is suppression and prevention; thus, it complies with the requirement of human rights to forbid trafficking. The Trafficking Protocol says that States have a duty to coordinate information, give law enforcement authorities adequate training, and cooperate in border control for the aim of prevention in relation to the duty to look into, prosecute, and punish traffickers (Henkin, 2019).

Additionally, the Trafficking Protocol stipulates that one of its objectives is to safeguard victims in accordance with Article 2. (b). This is why it has a section dedicated to victim protection. States are required to provide certain things under Section II, including counseling, accommodations, educational and career training, and temporary or permanent residency permits (Aceves, 2015). Additionally, there is provision for the facilitation of voluntary return (Aceves, 2015). Last but not least, the Trafficking Protocol requires States to address a number of the causes and effects of human trafficking, including poverty, underdevelopment, and the demand for trafficked individuals (Ayoob, 2015). These clauses of the Protocol on Human Trafficking amply demonstrate their potential to make it easier to apply a human rights framework to the activity. Of course, this does not imply that the Trafficking Protocol completely complies with the norms for human rights established by international human rights law. The Trafficking Protocol does not address other crucial issues, such as violence and/or discrimination against women and racial and ethnic minorities, as well as methods used by law enforcement.

Additionally, it might be argued that certain of the Protocol's human rights duties are insufficient. For instance, Article 6 states that States "must consider" taking action to help trafficking victims recover physically, mentally, and socially. Similar to Article 6, Article 7 requires States to explore, but not to enact, legal measures that would permit victims to stay in their countries at least temporarily.

All of this, however, should not be seen as a drawback because regions not covered by the Trafficking Protocol can be supplemented by international human rights law, and the relevant human rights standards and principles can be enforced through the set-up mechanisms at the international level. For its part, the Trafficking Protocol can be used as a tool to encourage global collaboration among various parties. Therefore, it needs to be a tool acknowledged as a crucial component of advancing and putting into practice a human rights framework, enhancing global action against the act.

Interaction among Different Branches of International Law

An analysis of human trafficking demonstrates how the issue is covered by several different areas of international law at once. The use of international criminal law against traffickers is possible. This paper has demonstrated how international human rights law applies to human trafficking. Additionally, the practice is covered by transnational criminal law, a newly emerging area of international law. By contrasting them with those of international criminal law, the traits of transnational criminal law may be better appreciated. The first benefit of transnational criminal law is that it encourages "the indirect suppression by international law, through local penal law, of criminal actions that have actual or potential trans-boundary effects" (Diamond & Adelakin, 2020). Individual criminal culpability for violations of international law before international tribunals is instead a result of international criminal law (Diamond & Adelakin, 2020: 233). In other words, it is feasible to directly oversee criminal activity on a global scale.

The exercise of State jurisdiction is another distinction between transnational criminal law and international criminal law (Akinlaja, 2018). International crimes give rise to universal jurisdiction, as was previously

mentioned. However, this is not always the case for other transnational crimes, such human trafficking and money laundering. Article 15 of the Organized Crime Convention, which establishes the territoriality or nationality criteria as the foundation for establishing jurisdiction, serves as an example of this (Rijken, 2015; Shannon, 2019). In this context, it is clear that the Organized Crime Convention and the Trafficking and Smuggling Protocols fall under the purview of transnational criminal law because, in essence, they serve as tools for indirect national suppression.

As a result, human trafficking lies at the nexus of three areas of international law: transnational criminal law, international criminal law, and international human rights law. The prohibition of the offense, the punishment of traffickers, and the protection of victims are the common obligations imposed by all three areas of international law. While transnational criminal law and international human rights law both impose the need to address the causes and effects of trafficking, international human rights law and international criminal law together impose the obligation to protect the rights of defendants. Last but not least, reciprocal legal assistance or international cooperation is an illustration of a duty shared by transnational criminal law and international criminal law.

The fact that these three areas of international law have overlapping obligations does not imply that transnational criminal law, international criminal law, or international human rights law are at odds with one another. Instead, it is argued that they reinforce each other. As was already mentioned, the primary goal of international human rights law is to safeguard each person's fundamental rights. As a result, the obligations are placed on all people within their jurisdiction rather than other States (Inter-American Court of Human Rights, 1982; Shen, 2000; Akinterinwa, 2019). This means, among other things, that because these are examples of obligations towards other States rather than individual human beings, international human rights law is not necessarily adapted to encourage international cooperation and mutual help. However, transnational criminal law and international criminal law, whose primary goal is to enable and/or secure cooperation with other Parties, can make up for this (Akinterinwa, 2019). Another advantage of using international criminal law is that it encourages direct control of international crimes through international

tribunals, as previously said. This makes it obvious what role both States and the international community as a whole must play.

Some flaws in transnational criminal law provide another illustration in support of the aforementioned argument. It is challenging to establish harmonization in practice, even while the Trafficking Protocol may be utilized to seek uniformity in the definition of the offense itself and criminal culpability among Member States. In Thailand, Poland, and the United Kingdom, the definition of the crime of trafficking and the severity of the punishment vary. According to one expert, all of this may have an impact on the legality principle, which requires States to apply the same fundamental guidelines, processes, and sanctions when dealing with a specific offense (Akinlaja, 2018). Additionally, it has been suggested that because international criminal law's primary goal is to promote effective prohibition, prosecution, and punishment, it may not be well suited to advance and safeguard the human rights of defendants (Akinlaja, 2018).

Indeed, there is not much information about defendant rights in the Organized Crime Convention and the Trafficking Protocol. There are no provisions pertaining to rights of defense in the Trafficking Protocol, and the only ones in the Organized Crime Convention are Articles 11(3) (Prosecution) and 16(13) (Extradition), both of which make only passing references to them (Shelton, 2019).

Along with the obligations placed on States, it is crucial to remember the notion of State sovereignty. The fact that States are responsible for carrying out obligations is one restriction placed on transnational criminal law. In other words, State sovereignty is the dominant value (Shelton, 2019). To further demonstrate this, the Organized Crime Convention has a special clause guaranteeing Member States' sovereignty. Article 4 stipulates: (a) the values of sovereign equality, territorial integrity, and non-interference in the internal affairs of other States must all be upheld by State Parties in carrying out their obligations under this Convention and (b) nothing in this Convention grants a State Party the right to exercise jurisdiction over or carry out actions that are exclusively the responsibility of the authorities of another State under that other State's domestic law within the territory of another State (Shelton, 2019). Seeking effective interstate cooperation and coordination may become more challenging as a result.

However, international criminal law and international human rights law may make up for the flaws in transnational criminal law. The development of international criminal law is widely acknowledged to be predicated on the legality premise (Bassiouni, 2021). In order to ensure that crimes are specifically defined in written law (*nullum crimen sine lege scripta*), that criminal laws adhere to the rule of specificity (*nullum crimen sine lege stricta*), and that criminal laws are not applied retroactively (*nullum crimen sine proevia lege*), international criminal law could therefore support this principle (Bassiouni, 2021). The right to liberty, security, and procedural protections including enough time for preparation, a speedy trial, and the right to legal representation can all be improved by international human rights legislation, even though the principle of legality is already intended to protect defendants' rights (Bassiouni, 2021).

Given that state sovereignty is a fundamental tenet, the fact that trafficking is recognized as an international crime underscores the fact that effective international cooperation is required to eradicate and prevent the activity. Furthermore, it has long been argued that state sovereignty is no longer an unqualified idea when it comes to the advancement and defense of human rights. Former UN Secretary-General Javier Perez de Cueller made this point abundantly clear: it is now felt that the principle of non-interference within the important domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be violated in large-scale or systematic ways with impunity (Schreuer, 2021: 468-469). In this light, the case that States can no longer hide behind the pretext of State sovereignty in respect to human trafficking may be strengthened by pointing to international criminal law and international human rights law.

International criminal law is a criminal justice solution because it places a heavy emphasis on deterrence, prosecution, and punishment. One flaw is that it is not intended to go in-depth on bigger subjects like the causes and effects of human trafficking. However, the Trafficking Protocol's representation of transnational criminal law and international human rights law can solve this issue. All of them point to the fact that three different areas of international law can work together to help solve some of these issues. Therefore, it appears acceptable to say that they are complementing one another rather than necessarily being at odds.

Towards Global Governance?

It is clear that global governance may be required when analyzing the responses to trafficking at the national, regional, and international levels. In this sense, Williams and Baudin-O'Hayon point out that the emergence of global organized crime is a reaction to the shortcomings of domestic administration (2017: 77-78). In addition, they contend that transnational organized crime is both a reflection of and a contributor to new geopolitics, whose primary characteristics now center on transnational flows of capital, goods, and people rather than just power, boundaries, and territory (Williams and Baudin-O'Hayon, 2017: 85). All of this helps us realize that global governance has a role to play in combating transnational organized crime, including human trafficking.

What is global governance? Although there have been lengthy discussions about this issue and several viewpoints exist, the key traits may be distinguished. States are no longer recognized as the only bearers of power under global governance, and the roles performed by other entities including NGOs, multilateral businesses, and IGOs are seen as equally significant (Akinterinwa, 2019). In this regard, it has been argued that the key feature of global governance is the realignment or transfer of power between various levels or infrastructures of governance, including the substate (community associations and local governments), transnational (civil society and business networks), suprastate (UN) and regional (EU, ASEAN, etc.) (Akinterinwa, 2019). Global governance differs from the concept of global government in that it emphasizes the interactions between these various actors rather than calling for the establishment of a "global central public authority" to enact laws on behalf of the entire international community (Akinterinwa, 2019; Bassiouni, 2021).

Several models for global governance can be found by examining diverse responses to trafficking. The first model, as shown by transnational criminal law and the Trafficking Protocol, emphasizes global cooperation and reciprocal legal assistance between States with minimal engagement from other parties. State authority is therefore increased under this approach. The fundamental issue with this strategy is that certain States are unable to contribute because they are corrupt or weak politically or economically,

which helps organized crime flourish (Orentlicher, 2020). Furthermore, as was already mentioned, the idea of State sovereignty can make it more challenging to seek effective coordination.

The second model is based on international criminal law, and the primary feature of this system is direct control over the crime of trafficking. This concept has a significant feature in that it gives IGOs, like the ICC, more authority to combat human trafficking. Due to the fact that international institutions, as already said, are more resistant to the influence of organized criminal groups, one advantage of this approach is that issues related to weak or corrupt States may be relieved. One potential issue, however, is that organizations like the ICC may occasionally have excessive control over how the law is interpreted and even created. This might interfere with or destabilize a system of global governance based on involvement by various parties.

A hybrid model that combines aspects of the two existing models sits somewhere in the middle of these two. The framework for international human rights legislation is this. States continue to play a crucial role in carrying out the human rights commitments related to human trafficking. In contrast to the other two departments of international law, however, implementation and observance of these duties are continuously monitored by various human rights bodies at national, regional, and worldwide levels. In light of the fact that this model more than any other acknowledges the contributions made by all parties involved, it can be regarded to be a representation of global governance. This model aids everyone involved in understanding the significance of adopting a holistic approach, as emphasized throughout this paper, in terms of what concerns should be tackled under the umbrella of global governance.

At this juncture, it is difficult to say with certainty which approach will support and maintain global governance over human trafficking. To make up for these deficiencies, international law must encompass all three departments. Therefore, it is possible that all three models are required for efficient prevention and suppression. The efficiency of these models and the results of the interaction of the three departments of international law need to be seen, as human trafficking has only lately gained attention.

Conclusion:

At the national, regional, and international levels, reactions to human trafficking have significantly changed during the past ten years. The act's transnational dimension necessitates worldwide action involving numerous actors. The adoption of the Trafficking Protocol by the UN was one of the primary initiatives made to combat issue. This tool is essential because it offers a definition of trafficking those various actors can use to create laws and regulations at the national, regional, and international levels. Additionally, it aims to foster cooperation in order to strengthen the contributions offered by various actors.

Human trafficking is unquestionably a problem for the criminal justice system. Due to the practice's frequent facilitation of border crossings that are against national immigration rules and policies, it compromises the territorial integrity of States. Because traffickers, particularly organized criminal gangs, utilize violence and corruption as tools to further their illicit enterprises, it also poses a challenge to the rule of law and the political underpinning of States. This paper demonstrates that criminal and immigration control, which tries to prosecute and punish traffickers and stop the flow of trafficked persons, has been the most prevalent reaction. The Trafficking Protocol, which is essentially a tool that attempts to facilitate the successful suppression and prevention of this behavior, enhances this criminal justice response. However, in recent years, the human rights aspects of trafficking have become more widely acknowledged. This shows that in order to address the complex problems posed by the phenomena, a human rights approach to trafficking is also required.

This paper sought to examine the scope of state obligations under the human rights treaties related to human trafficking. It outlined four obligations: 1) to forbid trafficking; 2) to look into, prosecute, and punish traffickers; 3) to protect victims; and 4) to deal with the origins and effects of the activity. It has been demonstrated that these obligations are unequivocally established under international human rights law. The key finding is that a human rights framework can be a beneficial addition to international efforts to combat trafficking by promoting and enforcing human rights norms and values. This primary conclusion triggers a number of additional observations. One of the main ideas that is reiterated by a

human rights analysis of human trafficking is that all human rights are interconnected and indivisible. Human rights have historically been divided into three generations: the first generation includes civil and political rights; the second generation includes economic, social, and cultural rights; and the third generation includes collective or group rights, self-determination, and development (Bassiouni, 2021). A human rights analysis of human trafficking highlights the reality that all human rights are linked and indivisible and that this practice impacts economic, social, cultural, as well as civil and political rights. This necessitates a painstaking examination of trafficking that considers all human rights.

Practically speaking, a human rights analysis of trafficking also reveals the shortcomings of the criminal justice system's response to the problem, which focuses on controlling borders and punishing both traffickers and victims. A comprehensive strategy that addresses all facets of trafficking is needed to combat the activity effectively. In this regard, a human rights perspective is advantageous because it offers a framework for comprehending the nature of the issues inherent in the practice and for looking for not only legal but also political, social, and economic answers.

A human rights analysis of trafficking, however, also highlights the shortcomings in the current implementation of human rights standards and principles. It is challenging to say that the human rights community, which consists of concerned actors at the national, regional, and international levels, has been able to facilitate a human rights framework to address the phenomenon, despite the fact that many aspects of trafficking are already covered by international human rights law. Although it may be simple to point the finger at States, who are the primary recipients of obligations under international human rights law, for failing to uphold those obligations, enforcement issues can also be attributed to the fact that the human rights implications of trafficking have not received enough attention. As a result, the human rights obligations in relation to the practice have not been explicitly stated. Therefore, the human rights community's responsibility is to go beyond merely documenting instances of human rights abuses related to human trafficking and to define human rights obligations. The value of a human rights framework to combating trafficking won't be fully realized unless the human rights community takes a more aggressive approach.

References:

- Aceves, W. J, 'Relative Normativity: Challenging the Sovereignty Norm Through Human Rights Litigation' 45 *Hastings International and Comparative Law Review* 291, 2015.
- Akinlaja, Z.A., *Trafficking in Persons: Theory and Practice in Regional and International Cooperation* (Abuja: Veral Publications, 2018).
- Akinterinwa, G.A., *Human Rights and Trafficking in Persons: A Handbook* (Bangkok: Gaat Press, 2019).
- Alston, P, 'A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?' 49 *Netherlands International Law Review* 237, 2018.
- Ayoob, M, 'Humanitarian Intervention and State Sovereignty' 36 *International Journal of Human Rights* 111, 2015.
- Bassiouni, M.C, 'Enslavement as International Crime,' 33 *New York University Journal of International Law and Politics* 455, 2021.
- Bosniak, L.S, 'Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention,' 45 *International Migration Review* 787, 2011.
- Cholewinski, R, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Oxford: Clarendon Press, 2017).
- Cook, R, 'State Responsibility for Violation of Women's Human Rights,' 27 *Harvard Human Rights Journal* 135, 2014.
- Diamond, L. and Adelakin, A., *Trafficking, Slavery and Peacekeeping: The Need for a Comprehensive Training Program* (New York: Francais Press, 2020).
- Dauda, D. and Pereira, K., *Trafficking and Sexual Exploitation of Children: An Evaluation of ILO-IPEC Programmes* (Maryland: Bowie State University, 2017).
- Inter-American Court of Human Rights, *The Effect of Reservations on the Entry into Force of the ACHR (Articles 74 and 75)*, (1982).
- Henkin, L, 'That "S" Word: Sovereignty, and Globalization, and Human Rights, Et Cetera' 88 *Fordham Law Review* 19, 2019: 22-45.
- Human Rights Watch, *Hopes Betrayed: Trafficking of Women and Girls to the Post-Conflict Bosnia and Herzegovina for Forced Prostitution* (2012).

- McKay, F, 'Civil Reparation in National Courts for Victims of Human Rights Abuse', in Lattimer, B.D. and Sands, A.V. (eds.), *Justice for Crimes against Humanity* (London: Routledge Publishing Company, 2018).
- Moore, J, 'From Nation State to Failed State: International Protection from Human Rights Abuses by Non-State Agents,' 51 *Columbia Human Rights Law Review* 111, 2019: 92-96.
- Mowbray, A, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Oxford: Hart Publishing, 2018).
- Mowbray, A, 'Duties of Investigation under European Convention on Human Rights,' 51 *International and Comparative Law Quarterly* 437, 2002.
- Obokata, T, 'Human Trafficking, Human Rights, and the Nationality, Immigration and Asylum Act 2002,' 4 *European Human Rights Law Review* 410, 2003.
- Orentlicher, N, 'State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law,' 98 *California Law Review* 489, 2020.
- Pena, L.R, 'Some Salient Human Rights in the UN Convention on Migrant Workers,' 12(3) *Asian and Pacific Migration Journal* 189, 2013.
- Rijken, C., *Trafficking in Persons, Prosecution from a European Perspective* (The Hague: T.M.C. Asser Press, 2015).
- Rubenstein, P, 'State Responsibility for Failure to Control the Export of Weapons of Mass Destruction,' 33 *California Western International Law Journal* 341, 2013: 87-104.
- Ryf, K.C., 'The First Modern Anti-Slavery Law: The Trafficking Victim Protection Act 2000,' *Case Western Reserve Journal of International Law*, 45(2), 2002: 47.
- Schloenhardt, A., 'Organised Crime and the Business of Migrant Trafficking: An Economic Analysis,' *Crime, Law and Social Change*, 203(3), 2017: 212.
- Schreuer, C, 'The Waning of Sovereign State: Towards a New Paradigm for International Law?' 24 *European Journal of International Law* 487, 2021: 468 – 469.

- Shannon, S., 'Prostitution and the Mafia: The Involvement of Organized Crime in the Global Sex Trade,' in Williams, S. (ed.), *Illegal Migration and Commercial Sex: The New Slave Trade* (New York: Frank Cass Publishers, 2019), p. 122.
- Shen, J 'National Sovereignty and Human Rights in a Positive Law Context,' 16 *Brooklyn Journal of International Law* 417, 2000.
- Shelton, D, 'Private Violations, Public Wrongs, and the Responsibility of States,' 23 *Fordham International Law Journal* 43, 2019.
- Shelton, D, *Remedies in International Human Rights Law* (Oxford: Oxford University Press, 1989).
- U.S. Department of State, *Trafficking in Persons Report 2005*, (hereinafter Trafficking Report 2005).
- Wellman, C, 'Solidarity, the Individual and Human Rights' 52 *Human Rights Quarterly* 669, 2016.
- Williams, P. and Baudin-O'Hayon, G., 'Global Governance, Transnational Organized Crime and Money Laundering' in Held, D. and McGrew, E. (eds.), *Governing Globalization: Power, Authority and Global Governance* (Cambridge: Polity Press, 2017).