

ISSN 2785-5228



EUWEB
EU-WESTERN BALKANS
Cooperation on Justice and Home Affairs



EUWEB Legal Essays
Global & International Perspectives
Fasc. 1/2022

EDITORIALE
SCIENTIFICA

ES

EDITOR-IN-CHIEF

Teresa Russo, University of Salerno (Italy)

MANAGING EDITOR

Anna Oriolo, University of Salerno (Italy)

ASSOCIATED EDITORS

Francesco Buonomenna, University of Salerno (Italy)

Gaspere Dalia, University of Salerno (Italy)

Erjon Hitaj, University of Vlore “Ismail Qemali” (Albania)

Ana Nikodinovska, University “Goce Delčev” of Štip (North Macedonia)

Rossana Palladino, University of Salerno (Italy)

EDITORIAL COMMITTEE

Giuseppe Cataldi, University of Naples “L’Orientale” (Italy)

Angela Di Stasi, University of Salerno (Italy)

Elżbieta Feret, University of Rzeszów (Poland)

Pablo Antonio Fernández Sánchez, University of Sevilla (Spain)

Olga Koshevaliska, University “Goce Delčev” of Štip (North Macedonia)

Pietro Manzini, Alma Mater Studiorum University of Bologna (Italy)

Nebojsa Raicevic, University of Niš (Serbia)

Giancarlo Scalese, University of Cassino and Southern Lazio (Italy)

Anna Lucia Valvo, University of Catania (Italy)

Jan Wouters, University of KU Leuven (Belgium)

SCIENTIFIC COMMITTEE

Paolo Bargiacchi, KORE University of Enna (Italy)

Ivana Bodrožić, University of Criminal Investigation and Police Studies, Belgrade (Serbia)

Valentín Bou Franch, University of Valencia (Spain)

Elena Crespo Navarro, University Miguel Hernández Elche (Spain)

Luigi Daniele, University of Roma Tor Vergata (Italy)

Jordi Nieva Fenoll, University of Barcellona (Spain)

Luigi Kalb, University of Salerno (Italy)

Massimo Panebianco, University of Salerno (Italy)

Ioannis Papageorgiou, Aristotle University of Thessaloniki (Greece)

Nicoletta Parisi, Catholic University of the Sacred Heart of Milan (Italy)

Francisco Pascual Vives, University of Alcalà, Madrid (Spain)

Dino Rinoldi, Catholic University of the Sacred Heart of Milan (Italy)

REVIEWING COMMITTEE

Ersi Bozheku, University of Tirana (Albania)

Marco Borraccetti, University of Bologna (Italy)

Federico Casolari, University of Bologna (Italy)

Francesco Cherubini, University of Luiss Guido Carli, Rome (Italy)

Jasmina Dimitrieva, University “Goce Delčev” of Štip (North Macedonia)

Miroslav Djordjevic, Institute for Comparative Law, Belgrade (Serbia)

Jelena Kostić, Institute for Comparative Law, Belgrade (Serbia)

Ivan Ingravallo, University of Bari “Aldo Moro” (Italy)

Elena Maksimova, University “Goce Delčev” of Štip (North Macedonia)

Daniela Marrani, University of Salerno (Italy)

Francesca Martinez, University of Pisa (Italy)

Marina Matić Bošković, Institute of Criminological and Sociological Research, Belgrade (Serbia)

Pietro Milazzo, University of Pisa (Italy)
Stefano Montaldo, University of Turin (Italy)
Giuseppe Morgese, University of Bari “Aldo Moro” (Italy)
Niuton Mulleti, EPOKA University of Tirana (Albania)
Amandine Orsini, Université Saint-Louis, Brussels (Belgium)
Leonardo Pasquali, University of Pisa (Italy)
Christian Ponti, University of Milano (Italy)
Valentina Ranaldi, University “Niccolò Cusano” of Rome (Italy)
Fabio Spitaleri, University of Trieste (Italy)
Ismail Tafani, University of Barleti (Albania)
Maria Torres Perez, University of Valencia (Spain)
Paolo Troisi, University of Rome Tor Vergata (Italy)

EDITORIAL ASSISTANTS

Stefano Busillo, University of Salerno (Italy)
Miriam Schettini, University of Pisa (Italy)
Gabriele Rugani, University of Pisa (Italy)
Emanuele Vannata, University of Salerno (Italy)
Ana Zdraveva, University “Goce Delčev” of Štip (North Macedonia)

Rivista semestrale on line EUWEB Legal Essays. Global & International Perspectives

www.euweb.org

Editoriale Scientifica, Via San Biagio dei Librai, 39 – Napoli

Registrazione presso il Tribunale di Nocera Inferiore n° 5 del 23 marzo 2022

ISSN 2785-5228

Index
2022, n. 1

Teresa Russo <i>Editorial</i>	1
---	---

Migration Issues

Ana Nikodinovska Krstevska <i>Gli accordi di riammissione tra l'Unione Europea e i paesi Balcanici: più di quanto non sembri!</i>	9
Amandine Orsini <i>The Global Governance of Human Trafficking</i>	19
Rossana Palladino <i>Migration Management in Europe: Sovereignty vs. Human Rights-Based Approach</i>	35
Teresa Russo <i>The Migrant Crisis Along the Balkan Routes: Still a Lot to Do</i>	46

EU Anti-Corruption Strategies

Stefano Busillo <i>Asset recovery: nuova enfasi da parte delle Nazioni Unite nella lotta alla corruzione</i>	59
Gaspere Dalia <i>Prevenzione e percezione dei fenomeni corruttivi: istanze di difesa sociale e crisi del garantismo processuale penale</i>	87
Anna Oriolo <i>Gli standard etici degli international prosecutors e il ruolo del giudice a garanzia dello Stato di diritto</i>	99
Emanuele Vannata <i>La strategia anti-corruption del Consiglio d'Europa e il ruolo del GRECO nella emergenza pandemica</i>	111

Databases and Protection of Human Rights

Pietro Milazzo

La proliferazione delle banche dati di polizia e la tutela europea dei dati personali: alcune prospettive ed alcuni limiti della Direttiva (EU) 2016/680 129

Paolo Troisi

Principio di disponibilità, cooperazione orizzontale e scambio dei dati PNR 143

THE GLOBAL GOVERNANCE OF HUMAN TRAFFICKING*

*di Amandine Orsini***

SOMMARIO: 1. Human Trafficking: A Global Phenomenon. – 1.1 Definition and Worldwide Trends. – 1.2 Human Trafficking in the European Union. – 2. HT Governance: The Need for Multiple Dimensions. – 2.1 The EU as a Leader in HT Governance? – 2.2 Governance at The Global Level: The HT Regime Complex. – 3. The Involvement of Civil Society in HT Governance. – 3.1 The Importance of Civil Society Actors. – 3.2 The HT Regime Complex Seen Through Its Civil Society. – 4. Recommendations for Better HT Global Governance.

1. Human Trafficking: A Global Phenomenon

1.1 Definition and Worldwide Trends

Human trafficking implies the traffic of human beings for several different purposes including sexual exploitation, forced labour, organ removal or for other purposes such as criminal exploitation (for drug transport, illegal traffics, etc.). For all these purposes, the economic motivation of the traffickers is the main defining criterion, together with coercion. Synthetizing both aspects, exploitation is the key term used to characterise HT¹ in the first place, since “*human trafficking generates huge illicit profits, seeing human beings as commodities with the purpose of exploiting them in several activities*”². While often associated with HT, a “transnational dimension” of such exploitation is not a defining criterion of the phenomenon: HT also very often takes place within state boundaries.

HT is in practical terms a highly ramified issue that implies different recruitment modes (transportation, harbouring and receipt of persons), means (threat, force, coercion, abduction, fraud, deception, abuse of power or vulnerability, giving or receiving of payment) and purposes of exploitation (prostitution or other forms of sexual exploitation, forced labour or services, slavery and similar practices, servitude, the removal of organs)³. Because of the wide scope of the phenomenon, HT poses a major threat to humanity: “*over the last thirty years, human trafficking has become one of the issues of major concern of the international community, of human rights activists, of regional organisations, and governments*”⁴.

* This article is a condensed and refined version of a working paper I published in 2020 on the same topic, see A. ORSINI, *Assessing Global Governance in the Area of Human Trafficking Through Civil Society Participation in Its Regime Complex*, in *Robert Schuman Centre for Advanced Studies working paper series*, RSCAS 2020/58, European University Institute, 2020, 42p., available at <https://cadmus.eui.eu/handle/1814/2>.

** Université Saint-Louis, Bruxelles.

¹ R. J. BURSCH, *International Law and Human Trafficking*, in *Global Review, A compilation of papers on International Relations by members of Sigma Iota Rho, Gamma Omega Chapter*, Vol. 3, 2014, pp. 77-88.

² L. GASPARI, *The International and European Legal Framework on Human Trafficking: An Overall View*, in *Deportate, esuli, profughe (DEP)*, No. 40, 2019, pp. 47-67, pp. 47-48.

³ L. RUBIO GRUNDELL, *EU Anti-Trafficking Policies: from Migration and Crime Control to Prevention and Protection*, EUI Publications, 2015, p. 2.

⁴ L. GASPARI, *op. cit.*, p. 47.

However, data on HT are not easy to gather because of, among others, the difficulty to detect victims (see below). At the international level general estimates are published within the *Global Estimates of Modern Slavery: Forced Labour and Forced Marriages*, issued in 2017 by the International Labour Organization (ILO), while data on detected victims are found in the *Global Report on Trafficking in Persons 2018* published by the United Nations Office on Drugs and Crime (UNODC).

According to the ILO, in 2017, out of the 24.9 million people trapped in forced labour worldwide, 16 million people were exploited in the private sector for domestic work, construction or agriculture; 4.8 million persons were in forced sexual exploitation, and 4.1 million persons were in forced labour imposed by state authorities⁵. Women and girls are disproportionately affected, accounting for 99% of victims in the commercial sex industry, and 58% in other sectors.

According to the 2018 UNODC report, the number of victims detected in 2016 was 24,000⁶, while they total 225,000 over the period 2005-2018. Women and young girls represented around 70% of the total number of detected victims.

While data on HT is difficult to compile, comparing the two sets of data reveals the existing gap between the number of detected victims versus the real total number. Indeed, despite the fact that HT is commonplace, solving the issue is not an easy task and one important problem is identifying the victims: “*trafficking in persons continues to be, to a large extent, a ‘hidden’ and underreported crime*”⁷. This difficulty is well known: “*a review of the literature pertaining to human trafficking reveals that human trafficking is a difficult crime to detect and prevent*”⁸. One problem is that networks of individuals are involved in trafficking practices, blurring and diluting the supply chain and complicating the identification of perpetrators. Another key problem is the criminalisation of victims, meaning that they are less inclined to look for assistance from national authorities: “*victims of trafficking are often treated as criminals by authorities: after being abducted in their countries of origin they may be arrested, detained, and charged in countries of destination for working illegally, frequently as prostitutes, and for having false documentation*”⁹. This means that some victims of trafficking can be victimised twice¹⁰ and “*the lack of trust between victims and authorities has led to the increased victimisation of victims of human trafficking through the criminalisation of irregular migration (which effectively turns the victims into criminal offenders)*”¹¹.

While several studies depict HT when taking place under exceptional conditions such as conflicts¹² that aggravate the trafficking dynamic, focusing exclusively on these studies might be misleading as trafficking is actually taking place everywhere: “*one thing is certain: no country and area of the world are immune to human trafficking. It is not a*

⁵ ILO, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, Geneva, September 2017, p. 10.

⁶ UNODC, *Global Report on Trafficking in Persons*, Vienna, 2018, p. 21.

⁷ GLOACT, *Conclusions of workshop “International Cooperation, Including Mutual Legal Assistance, to Combat Trafficking in Persons and Smuggling of Migrants”*, 9-10 July 2018, Bishkek, Kyrgyz Republic, p. 1.

⁸ PORTLAND STATE UNIVERSITY, *Prevention of Human Trafficking: A Review of the Literature*, Criminology and Criminal Justice Senior Capstone Project, Paper 9, 2011, p. 2, available at http://pdxscholar.library.pdx.edu/ccj_capstone/9.

⁹ Ivi, p. 3.

¹⁰ C. VILLACAMPA, *Trafficking in Human Beings for Criminal Exploitation from the Perspectives of Victims and Professionals*, in *Rivista di Criminologia, Vittimologia e Sicurezza*, Vol. 13, Issue 3, 2019, pp. 9-26.

¹¹ FIDUCIA, *Policy Brief on the Findings on Human Trafficking*, February 2015, p. 1.

¹² L. BIRD, T. REITANO, *Trafficking in Persons in Conflict Contexts. What is a Realistic Response from Africa?*, in *ENACT policy brief*, Issue 10, June 2019 ; UNODC, *Lutte contre la traite des personnes en situations de conflit et note de synthèse*, 2017.

*problem so distant from us, instead it is among us, behind the corner, even within our national borders*¹³. Continents such as the European Union, that one could expect to be spared from human trafficking are actually also highly concerned.

1.2 Human Trafficking in the European Union

The European Union plays a central role due to the importance of the phenomenon of trafficking within and across its borders, that is evidenced thanks to the important trafficking tracing capacities of the EU. Data confirms the importance of the European continent with Europe being: *“the area of the world with the highest number of citizenships of human trafficking survivors... with 137 different detected nationalities”*¹⁴.

According to Eurostat¹⁵ key facts on human trafficking in Europe include:

- 20 532 victims were registered in the 28 EU Member States over the two years 2015-2016.

- 68 % of registered victims were female

- 56 % of registered victims were trafficked for sexual exploitation

- 95 % of registered victims of sexual exploitation were female.

- 23% of registered victims who were trafficked for sexual exploitation were children.

- 26% of the registered victims were trafficked for labour exploitation.

- 18% were trafficked for ‘other’ forms of exploitation.

- 23 % of registered victims were children.

- 44% of registered victims were EU citizens.

- 5 979 prosecutions for trafficking were reported during 2015-2016.

- 2 927 convictions for trafficking in human beings were reported during 2015-2016.

- Over 70 % of traffickers were male

- Around three quarters of actions against supposed traffickers concerned trafficking for sexual exploitation.

- Over three quarters of supposed traffickers held EU citizenship.

These facts confirm that the European Union is a key platform for human trafficking. They also introduce some trends regarding victims, such as the importance of the gender dimension of human trafficking.

Another visible fact is that while conviction of human traffickers happens, nearly only half of the prosecuted persons are then convicted. This is explained by the difficulty to actually prove human trafficking. And therefore, paradoxically, the lack of detection of HT renders it a worthwhile activity: *“this highly profitable trade poses a relatively low risk of capture or conviction when compared with trade in drugs and arms”*¹⁶. Developing governance instruments to correct this paradox is therefore crucial. The next section looks at the international governance arrangements to tackle human trafficking.

2. HT Governance: The Need for Multiple Dimensions

2.1 The EU as a Leader in HT Governance?

¹³ L. GASPARI, *op. cit.*, p. 48.

¹⁴ Cited in L. GASPARI, *op. cit.*, p. 56.

¹⁵ EUROSTAT, *Data Collection on Trafficking in Human Beings in the EU. Final Report*, 2018.

¹⁶ M.U. USMAN, *Trafficking in Women and Children as Vulnerable Groups: Talking Through Theories of International Relations*, in *European Scientific Journal*, Vol. 10, Issue 17, 2014, pp. 282-292, p. 282.

The European Union has developed several policy instruments to tackle HT and, as in other fields¹⁷, is trying to play a leadership role in HT governance, especially at the international level: “*the European Union has dealt with human trafficking since the 90s. It entered into legislation of the EU indirectly since the abolition of internal frontiers and the creation of a space in which movements of capital, people, services, and goods became free, which would have made transnational crime easier*”¹⁸. More precisely, the European union has adopted the following instruments to fight against human trafficking:

- The 2000 Charter of Fundamental Rights of the European Union and its Article 5.
- The 2002 Council Framework Decision on combating trafficking in human beings.
- The 2004 Council Directive regarding the residency permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004/81/EC).
- The 2011 Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims (2011/36/EU).
- The 2012 Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU).
- The 2012-2016 EU strategy towards the eradication of trafficking in human beings to supplement and complete the European Union framework.
- The 2017 EU Communication “Reporting on the follow-up to the EU Strategy towards eradication of trafficking in human beings and identifying further concrete actions”.

The EU also plays an important role because of its special position as a defender of human rights, although its HT policies have been questioned. Indeed, just as other governments in the past, the EU has initially perceived human trafficking as an irregular migration issue: “*the incorporation of trade in human beings into ‘migration’, especially irregular migration, is one of the main reasons for the lack of success of EU anti-trafficking policies*”¹⁹. This has led the EU to consider the issue through policy and criminal matters, rather than through protection and assistance. The situation has now improved and human rights are becoming more central to EU policies: “*the legal framework currently in force marks a significant shift in EU anti-trafficking measures: they have moved from a criminal and migration control approach to one that also includes human rights concerns*”²⁰.

The EU wishes to engage with international players²¹, which makes it an ideal candidate to express new views and strategies for HT global governance. The willingness to engage is reciprocal with several United Nations agencies having given advice to the EU on its Human Trafficking Directive²².

¹⁷ S. OBERTHÜR, F. RABITZ, *On the EU's Performance and Leadership in Global Environmental Governance: The Case of The Nagoya Protocol*, in *Journal of European Public Policy*, Vol. 21, Issue 1, 2014, pp. 39-57.

¹⁸ L. GASPARI, *op. cit.*, p. 61.

¹⁹ L. RUBIO GRUNDELL, *op. cit.*, p. 4.

²⁰ Ivi, p. 8.

²¹ EUROPEAN COMMISSION, *The EU Policy to Fight and Prevent Trafficking in Human Beings*, Directorate General, Justice, Freedom and Security, available at http://www.ohchr.org/Documents/Issues/Trafficking/Dakar_Protection_Gert_Bogers.pdf.

²² UNITED NATIONS, *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, 2011.

In this role, the EU therefore embraces a unique proactive stance²³, orienting its foreign policy actions towards promoting bottom-up governance, whereby all actors, and especially actors from civil society (CS), are invited to contribute to governance efforts. On HT, the 2012-2016 EU Strategy recognised the need to, among others, widen the knowledge base and give more rights to victims²⁴.

Researchers on the EU have noted that: *“it is important to involve a broad spectrum of individuals from different backgrounds. Therefore, civil society organisations involved in anti-trafficking and non-governmental organisations, who have extensive knowledge of the reality of the trade in human beings, must be included in all stages of the policy-making process, from agenda-setting to implementation. It is crucial, however, that measures are taken to ensure that the EU’s civil society interface does not systematically favour certain voices from the anti-trafficking scene, while excluding others”*²⁵.

These calls are constantly reiterated, most of the time with little effect. Indeed, while the premise to include more CS actors is a promising one as they play an important role in shaping, implementing and enforcing the adopted measures, there exists very little knowledge of their involvement in global HT governance and it therefore becomes difficult to identify the relevant civil society actors to engage with.

2.2 Governance at The Global Level: The HT Regime Complex

The challenge of developing governance to tackle HT is not new. However, recognizing the scope of the phenomenon, it has recently taken on new dimensions with a multiplication of the policy levels involved (local, national, regional, international), the increasing relevance of actors beyond states and the growing complexity of issues (classical security threats, for instance, becoming embedded in broader dilemmas such as human rights or gender inequalities).

While trafficking has become more complex, governments continue to apply classical recipes to deal with it, such as creating networks of top-down international binding agreements with the underlying aim to *“take (intergovernmental) networks to fight (trafficking) networks”*²⁶. In 2000, states negotiated a key landmark agreement on HT: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

The Protocol has been significant in providing the first comprehensive definition of HT, covering all trafficking forms²⁷. In particular, it states that *“trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced*

²³ B. SIMMONS, A. DISILVESTRO, *Human Trafficking: The European Union Commitment to Fight Human Trafficking*, in A. ORSINI (ed.), *The European Union With(in) International Organisations. Commitment, Consistency and Effects Across Time*, Farnham, 2014.

²⁴ EUROPEAN COMMISSION, *The EU Strategy Towards the Eradication of Trafficking in Human Beings 2012-2016*, 2012, COM (2012) 286 final.

²⁵ L. RUBIO GRUNDELL, *op. cit.*, p. 9.

²⁶ Adapted from J. ARQUILLA, D. RONFELD (eds.), *Networks and Netwars: The Future of Terror, Crime and Militancy*, Washington, 2001.

²⁷ L. GASPARI, *op. cit.*, p. 6.

labour or services, slavery or practices similar to slavery, servitude or the removal of organs”²⁸.

However, intergovernmental politics are proving inefficient. In particular, most states have chosen to reassert control over borders to stop trafficking flows, leading to counterproductive effects. The ever-increasing number of deaths of migrants is a constant and tragic reminder of the need to find alternative solutions²⁹. In addition to death, “*many smuggled migrants can fall into the hands of traffickers and be exploited to repay the debt they incurred with smugglers to cross borders, being in a situation of debt bondage*”³⁰. Some underline “*the role governments in destination countries may play in causing trafficking through imposing restrictive migration regimes that render migrants vulnerable to traffickers*”³¹.

Intergovernmental policies have also run the risk to be disconnected from field realities, with governments struggling to reach their targets, and more precisely the victims of trafficking (being vulnerable populations such as women, children or local and indigenous communities).

Human rights issues have always been an important dimension of HT³² and recent efforts have been made to include them in global governance. HT interferes with several issue areas within a regime complex (see below) and “*efforts must be made to ensure better understanding of the coherence between human rights law, refugee law, labour law and other relevant bodies of law, and the need to bring diverse but complementary instruments to bear on the trafficking challenge, not only as reference tools but as an international framework that needs to be implemented on the ground*”³³. The Sustainable Development Goals (SDGs) show a promising, multiple understanding of HT, that has however still to be implemented. In particular, out of the 17 SDGs, trafficking in persons is specifically mentioned in three targets under the three goals: 5 (Gender Equality), 8 (Decent Work and Economic Growth) and 16 (Peace Justice and Strong Institutions). This means that, through the SDGs, governments recognise the multi-dimensions of the trafficking issue.

This state of the art of human trafficking global governance confirms that until the beginning of 2000, international issues were organised around “*international regimes*”³⁴, taking the shape of unique international organisations or treaties (the HT Protocol). However, with the proliferation of international institutions and the broadening of their scope, no such thing as a unique international regime for each international issue exists anymore.

Most international issues, including the HT issue, are now therefore evolving within what has been labelled “*regime complexes*” defined as “*a network of three or more international regimes that relate to a common subject matter; exhibit overlapping*

²⁸ Art. 3, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

²⁹ R. MILLER, S. BAUMEISTER, *Managing Migration: is Border Control Fundamental to Anti-Trafficking and Anti-Smuggling Interventions?*, in *Anti Trafficking Review*, Vol. 2, 2013, pp. 1-32 ; A.T. GALLAGHER, *Human Rights and Human Trafficking: Quagmire or Firm Ground - A Response to James Hathaway*, in *Virginia Journal of International Law*, Vol. 49, Issue 4, 2009, pp. 789-848.

³⁰ Cited in L. GASPARI, *op. cit.*, p. 50.

³¹ E. O'BRIEN, *Human Trafficking Heroes and Villains: Representing the Problem in Antitrafficking Awareness Campaigns*, in *Social and Legal Studies*, Vol. 25, Issue 2, 2016, pp. 205-224, p. 205.

³² A.T. GALLAGHER, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling*, in *Human Rights Quarterly*, Vol. 23, Issue 4, 2001, pp. 974-1004.

³³ ICAT, *The International Legal Frameworks Concerning Trafficking in Persons*, 2012, p. 14.

³⁴ S.D. KRASNER, *International Regimes*, Cornell University Press, 1983.

*membership; and generate substantive, normative, or operative interactions recognised as potentially problematic whether or not they are managed effectively*³⁵. The specificity of regime complexes is to have effects that are structural, meaning that they go beyond the mere sum of effects of their different elements. They also put the focus on interactions between international institutions: “*with the rise of research interest in regime complexes and governance architectures over the past decade, the analytical focus has started to shift away from networks of actors to networks of institutions*”³⁶.

Many regime complexes have emerged around a high number of topics in international relations (refugees, climate change, etc.) including human trafficking. Indeed, HT issues are now dealt with by no less than four international regimes on: (i) migration; (ii) labour; (iii) human rights; and (iv) organised crime, involving a very diverse set of international arenas including, among others, meetings of the International Organization for Migration (IOM), the International Labour Organization or the United Nations Office on Drugs and Crime³⁷ (see also below).

The current challenge of global governance, HT governance included, therefore becomes the coordination of all these international institutions: “*in other words, just like states had to be brought together with the help of international institutions, the myriad of international institutions themselves need coordination for their effectiveness. This is an ultimate policy objective of the emerging field of research on global governance networks*”³⁸. Civil society is one potential coordination mechanism of all these different governance efforts.

3. The Involvement of Civil Society in HT Governance

3.1 The Importance of Civil Society Actors

CS actors are key for HT. Firstly, because the victims of HT play a role at the beginning of the supply chain, suffering from misappropriation, and could, if empowered, react against traffickers. The “*situated knowledges*”³⁹ that these victims of trafficking hold are key and are therefore likely to be the basis of important policy solutions to be applied at the international level. In HT, victims are known for being “*better suited to formulating contextually appropriate policy and enforcement responses*”⁴⁰.

The problem is that so far the views of victims have been marginalised as they represent minorities: the local and gender dimensions of victims are particularly important, with women as the main victims of HT⁴¹. The fact that “*the majority of*

³⁵ A. ORSINI, J.F. MORIN, O. YOUNG, *Regime Complexes, a Buzz, a Boom or a Boost for Global Governance?*, in *Global Governance*, Vol. 19, Issue 1, 2013, pp. 27-39, p. 29.

³⁶ BURCH, ET AL., 2019, cited in R.E. KIM, *Is Global Governance Fragmented, Polycentric, or Complex? The State of the Art of the Network Approach*, in *International Studies Review*, 2019.

³⁷ L. GOMEZ-MERA, *Regime Complexity and Global Governance: The Case of Trafficking in Persons*, in *European Journal of International Relations*, Vol. 22, Issue 3, 2016, pp. 566-595.

³⁸ R.E. KIM, *op. cit.*, p. 7.

³⁹ D. HARAWAY, *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*, in *Feminist Studies*, Vol. 14, Issue 3, 1988, pp. 575-599.

⁴⁰ R. WEITZER, *New Directions in Research on Human Trafficking*, in *The ANNALS of the American Academy of Political and Social Science*, Vol. 653, Issue 1, 2014, p. 6.

⁴¹ N. CHONG GUTIERREZ, J.B. CLARK (eds.), *Human Trafficking: A Complex Phenomenon of Globalization and Vulnerability*, Abingdon-New York, 2016; N.L. GREEN, *Changing Paradigms in Migration Studies: From Men to Women to Gender*, in *Gender & History*, Vol. 24, Issue 3, 2012, pp. 782-798; K. KEMPADOO, J. SANGHERA, B. PATTANAIK, *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sexwork and Human Rights*, Abingdon-New York, 2012.

*literature on human trafficking originates within feminist schools of thought*⁴² has contributed towards taking these gender dimensions into account and should be encouraged.

Secondly, CS organisations (CSOs) are essential as gatekeepers with respect to state policies and behaviour. Indeed, “*responses which rely on the state, or approach the issue through a criminal lens, should be treated with caution*”⁴³. In particular, current governance efforts based on states come with a number of problems. One of these problems can be governmental corruption⁴⁴, or, as mentioned above, the risk that the rights of victims can be violated by governments who penalise victims twice⁴⁵.

Moreover, an efficient approach to combat HT “*relies heavily on well-functioning government systems with strong civil society networks and community infrastructure – schooling, healthcare, employment opportunities and effective criminal justice systems*”⁴⁶, which are not always available within states. These elements are in particular problematic for a number of weak states, and for specific situations such as conflict areas: “*international efforts to combat trade in persons must recognise the limited role that states can be realistically expected to play in responses to TIP in conflict areas, where they have by definition at least partially lost control*”⁴⁷.

This has led civil society to participate to the implementation of policies, very often replacing the fundamental role of states through “*the altruistic work of civil society organisations*”⁴⁸. However, CSOs are not necessarily invited to define state policies. It is interesting to look at the participation of CSOs to decision-making up-stream, and not only at the down-stream effects of CS organisations once policies have been adopted.

Investigating the engagement of CS is also key as there is currently a risk to engage only a limited number of CS organisations. The lack of comprehensive discussion generates some inaccurate perceptions of trafficking. In a recent study of national civil servants dealing with trafficking victims, Schwarz shows how “*for most interviewees, the exclusive meaning of human trafficking was sex trafficking*”⁴⁹. This incomplete perception of HT and HT victims can be relayed by specific CSOs as explained by experts on communication: “*(some CSOs) campaigns construct a narrow understanding of the problem through the depiction of ‘ideal offenders’. In particular, a strong focus on the demand for commercial sex as causative of human trafficking serves to obscure the problematic role of consumerism in a wide range of industries, and perpetuates an understanding of trafficking that fails to draw a necessary distinction between the demand for labour, and the demand for ‘exploitable’ labour*”⁵⁰. This also poses important problems for victims who “*believe they cannot access victim services unless they fit the dominant idea of a ‘pure victim’*”⁵¹.

The problem is that we are currently lacking an overall description and assessment of which CS actors are involved in global HT governance. As governments, and especially

⁴² M.U. USMAN, *op. cit.*, p. 283.

⁴³ L. BIRD, T. REITANO, *op. cit.*, p. 1.

⁴⁴ PORTLAND STATE UNIVERSITY, *op. cit.*, p. 2.

⁴⁵ A. BACHAKA, *Human Trafficking, The Rights of Victims and Government Obligations under the International Laws*, in *International Policy Review*, Vol. 3, Issue 12, 2017, pp. 1-7.

⁴⁶ L. BIRD, T. REITANO, *op. cit.*, p. 9.

⁴⁷ Ivi, p. 9.

⁴⁸ L. RUBIO GRUNDELL, *op. cit.*, p. 10.

⁴⁹ C. SCHWARZ, *Human Trafficking and Meaning Making: The Role of Definitions in Antitrafficking Frontline Work*, in *Social Service Review*, Vol. 93, Issue 3, 2019, pp. 484-523, p. 487.

⁵⁰ E. O’BRIEN, *op. cit.*, p. 205.

⁵¹ HOYLE, BOSWORTH AND DEMPSEY, *Labelling the Victims of Sex Trafficking: Exploring the Borderland between Rhetoric and Reality*, in *Social & Legal Studies*, Vol. 20, Issue 3, 2011, pp. 313-329, p. 322, cited in E. O’BRIEN, *op. cit.*, p. 206.

the EU, are trying to re-think HT politics, this appears as an opportune time for “mapping the field” to provide an overview, serving as a “*map which might guide more holistic forms of policy co-creation, outreach and engagement*”⁵². This is what the next section is about.

3.2 The HT Regime Complex Seen Through Its Civil Society

A database on CSOs participating as observers to the negotiations of the different international institutions shaping the HT regime complex is useful to give a systematic and comprehensive view of the complex. The lists of participants to most of the international negotiation meetings included in the database (a list of all meetings included in the HT database is available in Annex 1) are publicly available upon request to the corresponding international secretariats. The temporal scope of the database is defined as 2000-2019. 2000 is chosen as a starting date as it marks the adoption of the HT Protocol.

The international institutions included in the HT database were selected on the basis of a number of criteria. First, they are known to be part to the HT regime complex⁵³. Second, data is available on CS participation to their negotiation meetings through the lists of participants. Third, these institutions are party to the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) created within the United Nations by the Economic and Social Council resolution 2006/27 and General Assembly Resolution 61/180. More precisely, they are ICAT members, members of the ICAT working group and have been ICAT chairs. Fourth, they are regularly mentioned in international reports, documents and academic publications on HT.

More precisely, this database on the HT regime complex includes 138 meetings, since 2000, of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organisation (ILO), the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC), and the Office of the United Nations High Commissioner for Human Rights (OHCHR). ILO lists of participants were available only since 2004. Moreover, the first session of the Regular Session of the Human Rights Council convened for the first time in 2006. The postponed starting dates for both venues will be taken into account when analysing the results.

All these organisations have clear mandates and missions on HT. The UNHCR, among others, issues regularly reports and guidelines, not binding for states, to better interpret international migration instruments in the light of human trafficking (such as the 2006 Guidelines). The ILO has several conventions specifically dedicated to forced labour, such as Convention No. 29 of 1930, enhanced by a Protocol in 2014, which entered into force in 2016. The IOM supervises the interactions between migration and human trafficking, while the UNODC supervises the relations between transnational crime and HT. The OHCHR produces guidelines such as the 2002 United Nations Principles and Guidelines on Human Rights and Human Trafficking. The United Nations, under the OHCHR, in 2004, also established through its Decision 2004/110 a Special Rapporteur for trafficking in persons, especially women and children⁵⁴.

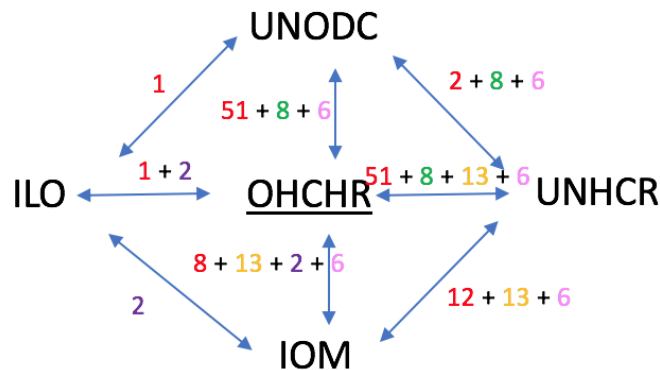
⁵² J. KIDWELL, *Mapping the Field of Religious Environmental Politics*, in *International Affairs*, Vol. 96, Issue 2, 2020, pp. 343-363, p. 343.

⁵³ See L. GOMEZ-MERA, *op. cit.*; C. ARADAU, *Human Trafficking Between Data and Knowledge*, King's College London, keynote talk for the conference on “Data Protection and Right to Privacy for Marginalized Groups: A New Challenge in Anti-Trafficking Policies”, Berlin, 25-27 September 2013.

⁵⁴ For the mandate and main activities of these organisations, also with regard to human trafficking, see ICAT, *op. cit.*

Regarding the shape of the regime complex on the basis of CS participation, it is possible to draw a network representing it, where institutions are nodes linked by CS participation. Figure 1 presents such representation.

Figure 1. Civil society links between the different institutional elements of the human trafficking regime complex*



* Mono-forum non-state actors (CSOs present in only one institution of the complex) appear in red; the different groups of multi-fora actors (CSOs present in more than one institution of the complex) appear in different colours. The central institution of the complex is underlined.

The OHCHR appears as the central institution around which CSOs create links. This is surprising, especially when one considers that data for the OHCHR was collected from 2006, not 2000. Such data confirms the importance of the norm of human rights within HT governance. CSOs following the OHCHR process are particularly well connected on the one hand to the UNHCR, on the other hand to the UNODC. These three institutions are the most central. The IOM is connected to the complex, but mostly only through the three-fora multi-fora non-state actors. To the contrary, the ILO is clearly underrepresented within the complex.

This last point is surprising as positive spill-overs exist between the ILO and the other international institutions of the complex: “*several conventions adopted within the ILO, for example, reduce incentives for trafficking in persons and thus support the governance objective of the UN Trafficking Protocol. The latter, in turn, supports the governance objective of the ILO because preventing human trafficking reduces forced labor practices*”⁵⁵.

Both the apparent marginalisation of the ILO and the IOM could be problematic as “*the evidence showed that it is important to tackle exploitative practices in the labour market at an early stage in the exploitative continuum. Targeted prevention efforts and services to migrant workers are the key to protecting their rights and eradicating the phenomenon from the outset*”⁵⁶. This confirms the problem underlined earlier that restrictive policies towards migrant workers and domestic workers emphasise HT: “*research on labour exploitation showed that restrictive immigration policies make workers vulnerable to exploitation and abuse from the side of their employers. This concerns particularly undocumented workers and workers on tied visa*”⁵⁷. Re-tying both elements (ILO and IOM) to the complex would be an interesting approach to take.

⁵⁵ L. GOMEZ-MERA, *op. cit.*, p. 584.

⁵⁶ FIDUCIA, *op. cit.*, p. 2.

⁵⁷ DEMANDAT, *The Demand-Side in Anti-Trafficking: Current Measures and Ways Forward*, European Policy Brief, October 2017, p. 9.

Figure 1 also shows that the international institutions within which more negotiation meetings take place are not necessarily the central ones in regime complexes. In HT, the ILO convened many meetings but is marginalised within the regime complex. This confirms that the dynamics of regime complexes are different from the dynamics of their respective parts.

The main players of each regime complex are defined as: (i) the multi-fores CS actors (they are the ones following more fores); (ii) that demonstrate the highest level of participation (they are the ones following more meetings). On the basis of these criteria, I have selected the top 15 CSOs of the regime complex. Table 2 below presents them.

Table 2. Top 15 multi-fores civil society organisations, HT regime complex

Name	Attendance	Period	Behaviour	Fora	Reached in	Headquarter	Type
Amnesty International	68	10/2001 - 09/2019	Forum linking	4	06/2006	London	Human Rights organisation
Friends World Committee for Consultation (Quakers)	65	05/2001 - 11/2019	Forum linking	4	06/2005	London	Faith-based organisation
Human Rights Watch	60	07/2000 - 09/2019	Forum linking	4	06/2006	New York	Human Rights organisation
Caritas Internationalis	55	05/2001 - 09/2019	Forum linking	4	10/2010	Vatican City	Faith-based organisation
International Federation Terre des Hommes	51	10/2001 - 09/2019	Mostly OHCHR, shopping others, once UNODC	4	11/2013	Geneva	Youth organisation
Save the Children International	45	10/2004 - 10/2019	Forum linking but UNODC only once	4	11/2014	London	Youth organisation
Norwegian Refugee Council	61	10/2001 - 10/2019	Forum linking	3*	09/2006	Oslo	Humanitarian organisation
Lutheran World Federation	60	10/2001 - 10/2019	Forum linking	3*	06/2006	Geneva	Faith-based organisation
World Vision International	52	10/2001 - 10/2019	Forum linking	3*	11/2012	Uxbridge	Humanitarian youth organisation
International Trade Union Confederation	48	11/2001 - 06/2019	Forum shifting from IOM to ILO + forum shopping to OHCHR	3**	06/2006	Brussels	Workers organisation

International Federation for Human Rights Leagues	45	07/2000 - 09/2019	Forum shifting to OHCHR	3*	06/2006	Paris	Human Rights organisation
Defence for Children International	44	05/2001 - 09/2019	Forum shifting to OHCHR	3** *	03/2007	Geneva	Youth organisation
International Organisation of Employers	42	03/2004 - 06/2019	ILO basis + forum shopping to IOM and OHCHR	3**	05/2011	Geneva	Business organisation
International Catholic Migration Commission	37	11/2001 - 11/2019	Forum linking	3*	03/2007	Geneva	Faith-based organisation
International Council of Women	28	07/2000 - 06/2019	Shifting from UNODC to UNHCR and OHCHR	3** *	06/2006	Seoul	Women's organisation

* UNHCR, OHCHR and IOM

** IOM, ILO and OHCHR

*** UNODC, UNHCR and OHCHR

Regarding attendance, CS organisations appear to have been engaged for a long period of time, starting their engagement in the early 2000s (all civil society organisations engaged in 3 fora started following the negotiations in early 2000s), with the latest one engaging in 2004, and still following the negotiations now. The multi-fora group belonging to the HT regime complex is balanced in terms of follow-up capacity, with all key actors able to ensure participation. This observation confirms that the regime complex is rather integrated in its different elements linked by CS organisations and that participation to regime complexes in general requires a certain level of resources. Multi-fora participation is not practiced by newcomers.

Regarding strategy, most key CSOs engaged practice forum linking. Several also practice forum shifting towards the OHCHR, underlying the human rights dimension of HT global governance. It is also visible that economic actors navigate the complex differently, being mostly based at the ILO and practicing forum shopping to other fora. These actors could be mobilised and invited to participate more consistently to other fora.

Regarding headquarters, the HT regime complex is highly dominated by CS organisations based in the global north. Engaging more organisations from the global south could be a solution to tackle the HT problem more comprehensively. Moreover, it is noticeable that only three organisations are not based on the European continent: 1/3 are based in Switzerland and 1/5 in the EU. This confirms the key role the EU could play in reaching out to these organisations.

Regarding type, the HT regime complex does not have a good mix of for profit and not for profit actors. Business for example is very discreet in the HT regime complex. While engaging more businesses, a certain balance should be maintained. Moreover, in the regime complex, universal non-specialised organisations (such as Amnesty International or Human Rights Watch) are a majority, presenting no specific specialisation in human trafficking. Also, several key CS organisations are faith-based

organisations. The literature rarely mentions such organisations, while they could actually play a crucial role in preventing HT, by reinforcing local ties: “*greater understanding of factors that increase individual and community resilience to trafficking is needed to ensure support is appropriately directed*”⁵⁸. Human rights and youth organisations are equally well represented, confirming the importance of human rights’ norms within HT governance and the importance to recognise children and youth as HT victims. Humanitarian organisations are also present, which might, again, play against a conception of human trafficking insisting on its criminal dimension: “*seeking to address trafficking in conflict through criminal frameworks can lead to inappropriate responses which detract from efforts to meet humanitarian needs*”⁵⁹.

Regarding less represented types, a few organisations are specialised in migrations but are overall poorly represented. Finally, worker and business organisations are a minority of represented interests within the HT regime complex (2 out of 15). This might be a problem because they are directly concerned by human trafficking, especially with regards to forced labour. Trafficking is also an economic issue and the marginalisation of the ILO as a forum of the regime complex is coupled by the absence of business interests within the regime complex. These imbalances could be corrected by the EU.

4. Recommendations for Better HT Global Governance

In March 2017 the UN Secretary General announced at a UN Security Council meeting that “*at a time of division in so many areas, this [the fight against human trafficking] should be an issue that can unite us*”⁶⁰. Indeed, the challenge of HT is still ongoing and requires an efficient coordination between the different elements of the HT regime complex.

This article aims to better characterise this complex, identifying its shape by looking at non-state actors’ participation to its negotiation meetings. The analysis reveals some strengths of the regime complex, as well as a number of weaknesses. By pointing at potential improvements to correct these weaknesses, the analysis suggests ways to further organise HT global governance. These policy recommendations are meant to be endorsed by governments, with the EU as a particular target.

Regarding strengths, the analysis of CS participation within the HT complex confirms the good inclusion of CS actors in HT global governance. This inclusion is positive for participatory dynamics and creates a rather dense and solid regime complex. Another trend is the progressive shift towards the increasing inclusion of human rights’ concerns in HT governance, confirming former assumptions that “*one can easily assume that the contrast to trafficking in persons changed perspective throughout the years, from a mere repressive strategy of the Palermo Protocol in order to fight the crime itself to a more human-rights sensitive approach of soft law international instruments, like the Recommended Principle and Guidelines on Human Rights and Human Trafficking and recent regional legal instruments*”⁶¹ (61). In particular, the analysis reveals the central role of the OHCHR and of the UNHCR in the HT regime complex. This evolution clearly marks a shift towards the recognition of victims’ conditions and rights.

⁵⁸ L. BIRD, T. REITANO, *op. cit.*, p. 1.

⁵⁹ *Ibidem*.

⁶⁰ UNITED NATIONS, *Open Debate on Human Trafficking, Modern Slavery, Forced Labour in Conflict Situations*, 7898th Meeting., 2017.

⁶¹ L. GASPARI, *op. cit.*, p. 63.

Regarding weaknesses, both the ILO and the IOM appear disconnected from the complex and could be further engaged in HT governance by suggesting followers of these fora to follow other international negotiation processes. In particular, the ILO is the only forum that engages business actors, which are necessary players to stop the HT demand side, especially in relation to forced labour. Economic actors could therefore be mobilised and invited to participate more consistently to other fora than the ILO, to better perform forum linking. Of course, business actors can have reluctances and involving them could be seen as a potential risk to water down HT governance. However, business actors could also be willing, for corporate responsibility reasons, to adopt and implement a code of business conduct to address labour trafficking, and prevent human trafficking in supply chains by publishing information, including supplier or factory lists, for consumer awareness. They could adopt fair trade certification or other ethical business practices that guarantee that no child or forced labour was used in the production of goods. Consumers could therefore be better informed of their responsibility with regards to HT and be interested by these labels: *“it is argued that the narrow construction of the ‘trafficking offender’ establishes a very limited scope of blame for the crime of trafficking, absolving others of responsibility. The target audiences for the campaigns are positioned as a solution to, not potential cause of, the crime of trafficking”*⁶² (62).

Another weakness is the unbalanced characteristics of key organisations engaged in the HT regime complex. The research confirms the existence of a negotiation burden in regime complexes that means that only organisations with a certain level of resources are able to participate consistently over time. Therefore, organisations from the global south tend to be underrepresented in regime complexes and involving them would be a solution to tackle the HT problem more comprehensively, involving also the analysis of the very causes of HT. Indeed, so far, *“a large part of the efforts are concentrated towards rescuing victims and prosecuting traffickers”*⁶³ (63), while preventive measures should also be included: *“why are people trafficked? What pushes them to fall into the traffickers’ trap?”*⁶⁴ (64).

Finally, this article enables to identify a new research agenda on HT. First, it would be useful to conduct qualitative research, by interviewing each of the identified key actors of the HT regime complex, to better grasp their practices and views on HT global governance. Second, it would be interesting to assess how regional processes are connected to the global processes evidenced here. HT is also a regional issue and several regional initiatives have been developed. On the European continent, the Council of Europe and the European Union are important players. Regarding the former, *“Europe is both an area of destination and origin of trafficking in human beings and for this reason it has developed a well-structured system, starting from the Council of Europe (CoE) – which is not a European Union institution and numbers forty-seven member States. On 16th May 2005 in Warsaw (Poland), the Council of Europe Convention on Action against Trafficking in Human Beings was opened to signatures”*⁶⁵ (65). Regarding the latter, it would be interesting to look at the participation of CSOs within internal European policy processes, to see how well they are connected to the global level, and to build more bridges between these different policy levels.

⁶² E. O’BRIEN, *op. cit.*, p. 208.

⁶³ M.U. USMAN, *op. cit.*, p. 283.

⁶⁴ L. GASPARI, *op. cit.*, p. 49.

⁶⁵ Ivi, p. 56.

ABSTRACT

Human trafficking is a major international problem that states still struggle to tackle. Against this backdrop, this article aims at analyzing the architecture of human trafficking global governance and at suggesting ways for improvement. It, among others, gives recommendations for actors such as the European Union, which is very active in human trafficking governance, on how to improve global policy efforts.

After presenting the phenomenon of human trafficking and its governance puzzle, I characterize such governance, identifying and describing the human trafficking regime complex by using civil society participation as a proxy. I also present the main civil society actors of the regime complex. The conclusion draws recommendations, such as reintegrating labor and migration aspects of human trafficking in global governance. It also identifies paths for further research.

KEYWORDS

Civil Society Organisations, European Union as a Leader, Global Governance, Human Trafficking, International Negotiations, Regime Complexes.