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Tenia Kyriazi

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The private sector against human trafficking in tourism

Tenia Kyriazi

Law and Politics, Middlesex University, Dubai, United Arab Emirates, Dubai, UAE

ABSTRACT

Tourism, travel and hospitality report a high prevalence of human trafficking, predominantly for sexual exploitation. With human trafficking recognized as a form of international organized crime and a serious human rights violation, states are bound to address it comprehensively. In parallel, the private sector in tourism, travel and hospitality has demonstrated engagement in the fight against human trafficking through a wide range of initiatives and ethical commitments that have been adopted locally, regionally and internationally. The current debate on the need for a business and human rights legally binding instrument serves as a backdrop for this concept paper to argue that the existing regulatory anti-trafficking framework is adequate to effectively address human trafficking in tourism.

KEYWORDS

Trafficking in human beings; international human rights; ethical commitments; positive obligations; private sector

Introduction

Trafficking in human beings is recognized as an international crime (UN Anti-Trafficking Protocol, 2000) and as a serious human rights violation (UN OHCHR, 2014) that amounts to a modern form of slavery (United Nations Special Rapporteur on Contemporary Forms of Slavery, 2016; United Nations Office for Drugs and Crime, 2009). According to the widely accepted definition of human trafficking provided in article 3 of the *United Nations Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Against Transnational Organize Crime* (UN Anti-Trafficking Protocol, 2000), trafficking in human beings comprises three elements, namely a) an action, including "the recruitment, transportation, transfer, harbouring or receipt of persons"; b) means, i.e. "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"; and c) the "purpose of exploitation". In cases of trafficking in children, the element of "means" is not required, therefore the recruitment and/or transportation (or other similar action) of children for the purpose of exploitation constitutes trafficking in human beings.

In the context of human trafficking people are moved and exploited in many different ways in various industries around the world. Globalization has allowed traffickers to recruit, transfer and exploit victims faster and easier than ever before. Increased mobility and technology, such as the internet and social media platforms facilitate their operations. According to statistical data, women and girls are mostly affected by human trafficking, representing 49% and 23%, respectively, of the total number of detected victims globally (UNODC, 2018). Trafficking for sexual exploitation is

CONTACT Tenia Kyriazi t.kyriazi@mdx.ac.ae Law and Politics, Middlesex University, Dubai, United Arab Emirates, Dubai Knowledge Park, Block 16, Dubai, UAE

reported as the most detected form of trafficking in the world (UNODC, United Nations Office on Drugs and Crime, 2018).

Tourism, travel and hospitality encounter a high prevalence of human trafficking, primarily, but not exclusively, for sexual exploitation (Carolin et al., 2015; Robinson, 2013).

Many cities and holiday spots are becoming attractive sex tourism destinations, either permanently, or for the duration of sports and other mega events (Kim et al., 2015). Trafficking and sexual exploitation of children is particularly widespread in the context of big sports events, such as FIFA World Cup and Olympic Games, Conferences, Trade Events and Mega Projects. This can often be explained by the rise in population that brings about a rise in demand for sex services, which is in turn exploited by traffickers (Bird & Donaldson, 2009; Hennig et al., 2007; Matheson & Finkel, 2013).

Sexual exploitation of women and men, particularly so minors, takes place there, given the rising demand for sexual services by local, regional and foreign tourists, both preferential and situational (Hawke & Raphael, 2016; Orndorf, 2010; O' Briain et al., 2008).

The demand for the services of victims of trafficking for sexual exploitation in tourism and hospitality is driven by the pursuit of cheap, more accessible and legal commercial sex (Bunn, 2011; Ying & Wen, 2019). In the countries of destination factors that contribute to the prevalence of trafficking for sexual exploitation in tourism include poverty, gender inequality, unemployment, cultural acceptance of prostitution, inconsistent regulatory framework, weak and ineffective law enforcement and corruption and impunity (Muntarbhorn, 1996; Orndorf, 2010; Perry & McEwing, 2013).

At the same time, the tourism industry provides a platform that facilitates human trafficking operations, because of its infrastructure and operational networks, offering an "activity space" for human trafficking (Paraskevas & Brookes, 2018). Most of the sexual exploitation of trafficking victims is taking place in hotels, motels and other hospitality industry establishments, such as night clubs, etc. (United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children, 2012). Privacy and confidentiality that transcend the tourism industry are extremely useful for trafficking operations. In July 2018, Polaris, a US-based anti-trafficking NGO, reported that 75% of trafficking survivors had come into contact with a hotel/motel in the context of their trafficking (Anthony, 2018).

Most critically, child sex tourism (or sexual exploitation of children in travel and tourism – SECTT; or extraterritorial commercial child sexual exploitation and abuse), generally defined as travel for the purpose of engaging in commercial sexual activity with minors, is without a doubt the most appalling side of sex tourism (O' Briain et al., 2008; United States Department of State, 2020). The majority of victims of SECTT can also be identified as trafficking victims. In 2016, ECPAT (a network of 100 organizations across 90 countries undertaking initiatives focusing on ending the exploitation of children) published the first global study that explores SECTT, its causes, consequences and possible solutions, across different regions (Hawke & Raphael, 2016). This study supports a correlation between the sexual exploitation of children and the surge in international and domestic travel in the last decades (Hawke & Raphael, 2016). The influx of tourists is commonly followed by that of potential "customers", creating a demand that is met by the sexual exploitation of vulnerable children (Davy, 2017). The link between child sex tourism and child pornography is also reported to be very strong, as pornographic material is also used to blackmail and "groom" victims (United States Department of State, 2007).

Methodology

This article aims to address the limited consideration of human trafficking in tourism in literature (Wen et al., 2020). To this aim, it presents and critically evaluates the impact of the existing normative and ethical framework that is relevant and applicable to the fight against human trafficking in the tourism industry and explores new solutions and perspectives. To do so, it engages

in doctrinal legal research (Duncan & Hutchinson, 2012), in the context of which the existing normative and ethical framework is studied. Firstly, the article looks at the legally binding human rights Conventions, as well as the reports, recommendations and judgements of human rights monitoring and judicial bodies to establish the content, scope and subjects of legal obligations to fight trafficking in human beings in the tourism industry. It then examines the instruments that reflect ethical commitments to address the phenomenon articulated by the private sector at the national, regional and international level. Finally, it considers the current debate on the need for adoption of a normative framework that would establish binding obligations for the private sector, as this has been developed in theory and scholarship.

The existing international anti-trafficking framework

Legally binding anti-trafficking provisions in international and regional instruments

International anti-trafficking and human rights law instruments have stipulated several state obligations for preventing and prosecuting human trafficking and protecting its victims. The most relevant international instrument is without a doubt the UN Anti-Trafficking Protocol, which has been ratified by 174 states and establishes a wide range of state obligations, including the effective prevention, criminalization, investigation of human trafficking, the training of law enforcement officials, the prosecution of traffickers and the identification and protection of victims.

The Protocol, being a predominantly criminal law instrument, imposes criminal justice obligations to states. Specifically, according to article 5 states are under the obligation to criminalize trafficking offences, including complicity and attempt, as well as the knowing use of services of trafficking victims. States are also called to adopt appropriate and effective legal and administrative measures, to ensure that victims of trafficking are removed from harm, are offered immediate protection and support and are able to participate in criminal proceedings and seek compensation (article 6). Articles 7 and 8 stipulate that states should allow victims to remain in their territory – at least temporarily – or be repatriated in their country of origin. Finally, states are called to develop and implement programmes for the prevention of trafficking, including border controls, international cooperation and mutual legal assistance, research and training (articles 9–11).

Crucially, it is important to note that as per article 1, the UN Anti-trafficking Protocol has to be interpreted and applied together and in line with the UN Convention against Transnational Organized Crime (UN Organized Crime Convention, 2000). The latter establishes in article 10 the clear obligation of state parties to regulate the liability of legal persons – criminal, civil or administrative – for participating in serious crimes covered by the Convention. These obviously include corporations and businesses operating in tourism and hospitality industry. Furthermore, article 18 (2) calls states to engage in mutual legal assistance in the investigation, prosecution and trial of crimes that involve the liability of legal persons.

At the same time, state obligations to combat human trafficking derive from the fundamental international human rights instruments. The *International Covenant for Civil and Political Right*s (ICCPR, 1966) prohibits slavery in article 8, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW, 1979) stipulates the obligation to suppress trafficking in women and exploitation of prostitution in article 6 and the *Convention on the Rights of the Child* (CRC, 1989) establishes the obligation to prevent the sale of children for any purpose and in any form in article 35. The *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OP SC, 2000) establishes specific state obligations in relation to trafficking in children, child labour and sexual exploitation of children. Sexual exploitation of children in the tourism industry is closely linked to the offences covered by the Protocol. Moreover, a number of International Conventions have been adopted by the International Labour Organization (ILO) to address workers' rights with the aim to prevent and combat trafficking for labour exploitation,

including the *Forced Labour Convention* (Forced Labour Convention, 1930), the *Abolition of Forced Labour Convention* (Abolition of Forced Labour Convention, 1957) and the *Convention for the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (Worst Forms of Child Labour Convention, 1999).

At the regional level, trafficking in human beings has been recognized as falling within the scope of article 4 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR, 1950) prohibiting slavery, servitude and forced and compulsory labour (*Rantsev v Cyprus and Russia, 2010*). *Rantsev v Cyprus and Russia*, a landmark judgement of the European Court of Human Rights, concerned the death of a Russian victim of human trafficking exploited in the tourism and entertainment industry in Cyprus. Furthermore, member states of the Council of Europe have adopted the Council of Europe Convention on Action against Trafficking in Human Beings (CoE Anti-Trafficking Convention, 2005) which reflects a clear victim-centred and human rights-based approach to human trafficking, prioritizing the protection of the rights of victims. States' compliance with their anti-trafficking obligations established by the two instruments are effectively monitored by the European Court for Human Rights on one hand (ECHR) and the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of Ministers on the other hand (Anti-Trafficking Convention). The former has explicitly categorized tourism as a high-risk industry for human trafficking (Group of Experts on Action against Trafficking in Human Beings (GRETA), Group of Experts on Action against Trafficking in Human Beings (GRETA), 2018b).

Trafficking in human beings is explicitly mentioned as one of the prohibited practices in the context of freedom from slavery in article 6 of the American Convention on Human Rights (ACHR, 1969). The Inter-American Court of Human Rights has contributed to the interpretation of the prohibition of human trafficking and the application of the relevant human rights obligations of states, clearly applying all three elements of the definition: action, means and purpose.

In Southeast Asia, following the 2004 ASEAN Declaration against Trafficking in Persons, particularly Women and Children, states have adopted the ASEAN Convention against Trafficking in Persons, especially women and children in 2015 (ASEAN ACTIP, 2015). The Convention constitutes an anti-trafficking milestone for Asia, a region that accounts for an extraordinary number of trafficking victims, especially in tourism and hospitality, but with a weak and fragmented response to human trafficking (Glover, 2006; Kaviani, 201; Piotrowicz, 2017; Yusran, 2018). ACTIP generally follows the approach of the UN Anti-Trafficking Protocol, placing particular emphasis on prosecution and international cooperation. Its main weaknesses are the lack of monitoring mechanism and the soft nature of its provisions, as a result of the application of the principle of "non-intervention" that traditionally transcends all ASEAN legal instruments (Yusran, 2018).

In Africa, article 5 of the *African Charter of Human and People's Rights* (African Charter, 1981) establishes a prohibition of all forms of exploitation and degradation, including *slavery* and *slave trade*. It is useful to mention that the provisions of the Charter are also applied by the regional ECOWAS Community Court of Justice (*Hadijatou Mani Koraou v Niger*, 2008). Moreover, article 29 of the *African Charter on the Rights and the Welfare of the Child* (African Charter for Children, 1990) stipulates state obligations to protect children from human trafficking in all its forms and for every purpose and establishes the African Committee of Experts on the Rights and Welfare of the Child.

Soft law: ethical anti-trafficking commitments from the private sector

While a thorough international law framework is being developed, the private sector in tourism, travel and hospitality is also demonstrating engagement in the fight against human trafficking through a wide range of initiatives and ethical commitments that have been adopted locally, regionally and internationally. These are useful to complement government measures and address

their gaps, create awareness in the industry and encourage its members to undertake a preventative role (Peters, 2018; Tepelus, 2008). Despite the lack of sufficient tourism-specific research on the phenomenon (Wen et al., 2020), tourism and hospitality scholars have also called for the industry to play an active role in the rehabilitation and social reintegration of trafficking victims (Aston et al., 2022). Such an approach has been adopted by recent industry initiatives that focus on providing trainings and employment opportunities to trafficking survivors (World Travel & Tourism Council (WTTC) World Travel & Tourism Council (WTTC), 2021).

Framework for such initiatives is provided by the *Guiding Principles on Business and Human Rights* (UN Human Rights Council, 2011b), developed by Professor John Ruggie, the former Special Rapporteur to the UN Secretary General on Business and Human Rights to provide guidance on the implementation of the UN *"Protect Respect Remedy" Framework* (United Nations Human Rights Council, 2008). The UN Framework and Guiding Principles are inspired by "principled pragmatism" (Ruggie, 2006) and have been developed on the basis of three pillars: the state's duty to protect against (third party) abuse, the corporate responsibility to respect human rights and the access to effective remedy. They have been endorsed and celebrated for creating ethical commitments for business entities and for providing a platform for them to engage with human rights (European Commission, 2011; Organization for Economic Cooperation and Development (OECD), Organization for Economic Cooperation and Development (OECD), 2011; United Nations Global Compact, 2011; United Nations Human Rights Council 17/4, 2011a). However, they have also been heavily criticized as not going far enough as to establish legally binding rules, for adopting a narrow approach to human rights and for not recognizing extraterritorial human rights obligations of states (Amnesty International, 2011; Blitt, 2012; Davitti, 2016; International Federation for Human Rights (FIDH), 2011; Human Rights Watch, 2011).

In 1995, the World Tourism Organization (UNWTO) adopted a Statement on the Prevention of Organized Sex Tourism (UNWTO Resolution, 1995) and in 1999, it adopted the *Global Code of Ethics for Tourism* (The Code, 1999), a set of ethical commitments by its members to promote ethical, responsible and sustainable tourism. In 2012, the United Nations Office for Drugs and Crime (UNODC), which promotes anti-trafficking efforts as part of its mandate, signed a Memorandum of Understanding with the UNWTO agreeing to join forces to fight trafficking and sexual exploitation of children in the tourism industry (United Nations Office on Drugs and Crime, 2012).

Furthermore, other local, regional and global initiatives have been undertaken, including the publication of reports and the development of guidelines, resources and tools to enable states and the private sector to effectively address the phenomenon. Those include the ITP *Know-How Guide on Human Trafficking in the Hotel Industry* (https://sustainablehospitalityalliance.org), the US Government's *Blue Campaign* training material (US Blue Campaign) , ECPAT's country and regional reports and handbooks (https://www.ecpat.org/resources) and the UNODC's global anti-trafficking toolkit (United Nations Office on Drugs and Crime, 2006). These initiatives are recognized as "models of responsible practice" (Tepelus, 2008, p.104), as they create awareness in the industry and engage all stakeholders in developing and implementing policies, practices and measures to combat trafficking and protect the victims. Recent research has also contributed to the development of a framework to engage hotel employees in anti-trafficking initiatives (Zhang et al., 2022).

Assessing the effectiveness of the current framework

Taking the above framework into account, it is time to assess whether the existing anti-trafficking regulatory system provides adequate and effective guarantees for the prevention of trafficking and the rights of victims or if a treaty with a special focus on the protection of human rights by businesses would add any significant value to. To this aim, it is important to first consider the

current debate on whether it is feasible and useful to move from soft law to hard law in the field of business and human rights.

Context: business and human rights – treaty or not?

The UN Framework and its Guiding Principles were developed on the basis of the corporate responsibility to protect human rights, which is discharged by developing a "policy commitment", undertaking "human rights diligence" and, preparing a framework that allows for remedial action. This scheme, being based on due diligence and reporting, processes familiar to business entities, makes human rights more "manageable" for them (Fasterling & Demuijnck, 2013; McCorquodale, 2009).

In 2014, the UN Human Rights Council (HRC) aiming to take a step further from the UN Guiding Principles, established an open-ended intergovernmental working group (OEIGWG) to work towards creating a regulatory framework for the obligations of business entities under international human rights law (United Nations Human Rights Council, 2014). In view of the split between the UN member states as to supporting or rejecting the HRC resolution calling for a legally binding instrument (Martens & Seitz, 2016), there has been a wide debate among scholars, states and civil society. One side calls for an international treaty to establish clear and strict human rights obligations for businesses, arguing that such an international instrument can coexist with the Guiding Principles (Bilchitz, 2015; Jägers, 2011). Those who oppose a treaty, on the other hand, highlight the normative, theoretical and practical challenges of such an approach and propose to stick to ethical standards instead (European Union, 2015; Ruggie, 2014). In the middle between the two are those who explore hybrid models for engaging businesses, such as a model law, a framework convention, the integration of human rights provisions in international trade and investment agreements, etc. (Backer, 2015; Cirlig, 2016; De Schutter, 2016). The challenges to enforce human rights rules on businesses are both theoretical and practical. The former basically relate to the traditional approach that international human rights law rules only bind states parties and cannot be enforced vis-a-vis private entities. The practical challenges derive from the reluctance of states to recognize the extraterritoriality of human rights rules, as well as the complex company structures that sometimes render accountability practically impossible (Davitti, 2016; De Schutter, 2016; McConnell, 2017).

Currently and while the debate is still ongoing, the working group is deliberating on the basis of a third revised draft of a *legally binding instrument to regulate in international human rights law the activities of transnational corporations and other business enterprises* (OEIGWG, 2021).

State obligations interpreted:

Legal effect of international anti-trafficking rules on states

Against this background, this section examines the nature and effect of state anti-trafficking obligations, to argue that the existing normative framework is adequate for effectively engaging businesses in preventing and combating human trafficking, ensuring that offenders are effectively punished, as well as protecting the rights of the victims.

The prohibition of trafficking and other slavery-like practices enshrined in the international human rights treaties discussed earlier may seem rather broad and lacking in legal effect at first reading. However, the judicial and quasi-judicial monitoring bodies overseeing state compliance with those instruments, as well as other UN agencies, have put particular emphasis on interpreting those provisions and establishing positive obligations to state parties that extend well beyond the criminalization of human trafficking. The Office of the High Commissioner for Human Rights, the European and Inter American Courts of Human Rights, the UN Special Rapporteurs on Trafficking in Persons, Especially Women and Children and on the Sale of Children, Child Prostitution and Child Pornography treaty monitoring bodies and other UN agencies have elaborated on the content

and extended the scope of states' anti-trafficking obligations, in most cases by adopting a human rights-based approach.

In terms of criminal responsibility, states are under the obligation to prosecute and punish not only those directly responsible for trafficking offences but also criminalize complicity in trafficking offences, including that of legal persons. As a result, within the specific context of the tourism industry, criminal responsibility may be established in the case of legal persons which are corporations operating in tourism, travel and hospitality (hotels, bars, etc.) that are used as "facilitators" of the trafficking process, provided that the *mens rea* required is proven.

On the other hand, it has been established that victims of trafficking should not be criminally prosecuted and/or detained for offences committed in the course of their exploitation, such as breaching immigration regulations or engaging in prostitution – when this is illegal (United Nations Office of the High Commissioner for Human Rights, 2002; United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children, 2020). The importance of early and effective identification of victims has been stressed by human rights monitoring bodies in many instances. For example, the Special Rapporteur on Trafficking has recognized that the tourism industry is critical for the prevalence of trafficking and has called for government protocols and guidelines to screen tourists, migrants and other vulnerable groups and to raise awareness about trafficking indicators in tourism and hospitality (United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children, 2014). Special policies should be implemented for children victims on the basis of the principles of non-discrimination, best interests of the child, respect for the views of the child, as well as the rights to information and confidentiality and the right to be protected (Group of Experts on Action against Trafficking in Human Beings (GRETA), Group of Experts on Action against Trafficking in Human Beings (GRETA), 2018; UNICEF, 2006). The UN Special Rapporteur on the Sale of Children in her thematic study exploring the sexual exploitation of children in travel and tourism urges states to put in place policies that prioritize the child protection initiatives, to incentivize the tourism industry to commit to the protection of children and to increase the law enforcement monitoring of tourist areas (United Nations Special Rapporteur on the Sale of Children Child Prostitution and Child Pornography, 2012).

Moreover, measures need to be adopted to facilitate the safe return, repatriation and reintegration of trafficking victims – or social inclusion, as recently proposed by the UN Special Rapporteur on Trafficking- and allow them to seek appropriate and effective remedies (OHCHR, United Nations Office of the High Commissioner for Human Rights, 2002; United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children, 2019; United Nations Office on Drugs and Crime Inter-Agency Coordination Group Against Trafficking in Persons (ICAT), 2016). Besides, competent authorities must appropriately and thoroughly investigate all trafficking cases and effectively prosecute and punish the perpetrators (*Chowdury and others v Greece, 2017; Hacienda Brazil Verde Workers v Brazil*, 2016; *Rantsev v Cyprus and Russia, 2010; SM v Croatia, 2020)*.

To address the transnational nature of trafficking in human beings, states are under the obligation to establish close cooperation with neighbouring countries, as well as countries of origin and transit of victims of trafficking and use tools, such as informal cooperation mechanisms, intelligence exchange, extradition and mutual legal assistance, as well as bilateral agreements on immigration regulation, in order to eliminate safe havens for traffickers and to regulate lawful channels of migration (Association of South East Asian Nations (ASEAN), Association of South East Asian Nations (ASEAN), 2010; 2009). The obligation of states to engage in international cooperation, in order to effectively prosecute and punish traffickers is particularly relevant to the tourism industry that inherently incorporates a trans-border element. To pursue effective international cooperation in criminal justice, the Committee on the Rights of the Child and the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography have stressed the importance of extraterritorial application of laws on sexual exploitation of children in order to allow

states to prosecute their citizens for such crimes committed abroad. They, in turn, requested states to abolish the rule of double criminality, according to which offences committed outside the state of nationality would be prosecuted only if they are criminalized in both jurisdictions (state of nationality and state where the offence took place). This is particularly relevant for trafficking offences committed in the context of travel and tourism, as the application of double criminality may contribute in trafficking offenders escaping justice. Instead, states should ensure that travellers are informed about the legal sanctions applicable to citizens engaging with sexual exploitation of children abroad (UNICEF, 2009, United Nations Special Rapporteur on the Sale of Children Child Prostitution and Child Pornography, 2012).

Finally, states are required to develop and implement effective prevention strategies to address the root causes of trafficking, such as factors that increase the vulnerability of the victims, those that create and sustain demand for victims' services and those that foster an environment of impunity for traffickers (*Hacienda Brazil Verde Workers v Brazil*, 2016; United Nations Office on Drugs and Crime, 2008). In implementing those obligations, states are required to ensure that the protection of established human rights of the victims and others is not undermined (United Nations Office of the igh Commissioner for Human Rights, 2014). The – softer – obligation to prevent trafficking involves *inter alia* addressing vulnerabilities of certain population groups. Prevention strategies that fulfil this aim include the regulation of the labour market and the setting of a minimum wage. Such measures will definitely affect the operation of businesses in tourism and hospitality. In the same vein, the Committee on the Rights of the Child has also called states to step up their preventative efforts by adopting measures relating to the operation of travel and tourism, such as promoting responsible tourism, launching campaigns to raise awareness of tourists and establishing cooperation channels with NGOs, tourist agents and travel operators (UNICEF, 2009). Similarly, the Committee on the Elimination of Discrimination against Women has called for government measures to raise awareness among "actors directly involved in the tourism industry" about the vulnerability of children – particularly girls – engaged in tourism-related activities (United Nations Committee on the Elimination of Discrimination Against Women, 2018).

Legal effect of states' anti-trafficking obligations on the private sector

International law is traditionally constructed to regulate inter-state relations and its rules typically establish obligations that bind states vis-à-vis other states, and international responsibility operates on the basis of the concepts of independent and exclusive responsibility (Karavias, 2015; Nollkaemper & Jacobs, 2013). At the same time, it is widely acknowledged that international human rights law, in order to be effective, creates obligations to states to protect the human rights of individuals within their jurisdiction (Meron, 2006). A study of the human rights courts' jurisprudence also supports that human rights norms create state responsibility for human rights violations committed by private parties who are non-state actors. This approach argues that the Constitutional law doctrine of *Drittwirkung* (horizontal effect) is also applicable in international human rights law (Clapham, 1993). The establishment of state-positive obligations to address trafficking in the jurisprudence of the regional human rights courts is of vital importance for the effect of the legal framework on the private sector (Duffy, 2016; Karavias, 2013).

The Inter-American Court of Human Rights recognized and defined the concept of the state's duty of due diligence in relation to its compliance with the provisions of the ACHR in its 1988 landmark case: *Velásquez Rodríguez v. Honduras*, when it held that

> *An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.*

In this case, besides establishing the doctrine of due diligence, the Court also recognized the horizontal effect of state obligations and, as a result, the responsibility of states for failing to prevent and to address human rights violations committed by third parties.

More recently, in *Hacienda Brazil Verde Workers* the Court had to rule on a case of human trafficking for labour exploitation where more than 100 workers were subject to exploitation and abuse by a cattle ranching company in Brazil. The case is particularly relevant to this discussion, as it regards state responsibility that is triggered through human rights violations committed by private, non-state actors. The most significant contribution of this case is the emphasis on the duty of the state to take preventative measures to address slavery-like practices and human trafficking, such as addressing risk factors and strengthening institutional response. According to the facts of the case, the Brazilian authorities, although aware of abusive and exploitative practices taking place in the ranch, due to a number of inspections undertaken between 1988 and 2000, did not adopt any effective measures to respond to the situation, prevent further abuse and address human rights violations. Most crucially, the Court highlighted the duty of Brazil to address the structural root causes of trafficking and slavery practices, including poverty, discrimination and illiteracy (Milano, 2018).

The European Court of Human Rights has a crystallized jurisprudence on the horizontal effect of the ECHR provisions (*Groppera Radio AG and Others v. Switzerland*, 1990; *X and Y v. The Netherlands*, 1985; *Young, James and Webster v. UK*, 1981) and the positive obligations deriving from them (*Marckx v Belgium*, 1979; *MC v. Bulgaria*, 2005; Mowbray, 2004). In relation to the application of article 4 and addressing human trafficking, the Court has recognized two types of state-positive obligations: the substantive obligation to establish a comprehensive legal framework to criminalize trafficking, protect the victims and punish the offenders and the procedural obligation to investigate and prosecute the offenders effectively (*Rantsev v Cyprus and Russia*, 2010; *Siliadin v France*, 2005). The *Rantsev* case is a landmark one and very relevant to the sexual exploitation taking place within the tourism, hospitality and entertainment industries. The case involved the death of Mrs Rantseva, who, like many young women from Eastern Europe, had come to Cyprus under the regime of "*artiste* visa" and was exploited in a cabaret, until she died in the hands of her "employer". Its significance lies not only in the fact that the Court extended the scope of article 4 of ECHR to include all trafficking cases but also in that it elaborated on the wide range of state obligations established by the prohibition of slavery (Kyriazi, 2015; Piotrowicz, 2012). For our discussion, it is useful to note that the Court established the responsibility of Cyprus for maintaining the abusive regime of "*artiste* visas" which was used as a platform for the recruitment of trafficking victims. Those victims were then exploited in the wider tourism and hospitality industry.

In the same vein, the latest report of the UN Special Rapporteur on Trafficking in Persons emphasizes the importance of the duty of due diligence of states, as established by human rights instruments, for effectively addressing human trafficking (United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children, 2020). It makes particular reference to the state's duty of due diligence with respect to corporations and clarifies that the human rights obligations of states have both territorial and extraterritorial application. Crucially, it adds that the due diligence duty should not only apply to address human rights violations but also to prevent them. In relation to trafficking, this includes developing strategies of prevention, including addressing the root causes of the phenomenon and protecting vulnerable population groups.

Most crucially, the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Ms Najat Maallat M'jid, concludes her 2012 thematic study on sexual exploitation of children in travel and tourism, with a recommendation to states to adopt the *Global Code of Ethics in Tourism* and apply its principles as conditions for granting and renewing licences in businesses operating in travel and tourism. Furthermore, she suggests that states should turn the *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism* into a legal obligation (United Nations Special Rapporteur on Sale of Children Child Prostitution and Child Pornography, 2012).

The tourism and hospitality industry has made tremendous progress in recognizing the problem of human trafficking, its complex prevalence and the risk factors and indicators presented by it. With the realization of the human rights law dimension of the phenomenon and the unpacking of their international human rights obligations, states are expected to regulate and monitor the tourism industry and guarantee safe and responsible tourism for travellers, tourists and local populations – including the most vulnerable.

Conclusion and implications

With the rising prevalence of human trafficking in the tourism industry, it is important to consider and assess the current normative and ethical framework in place to prevent and combat the phenomenon and protect the victims. There is no doubt that there is a very good case in favour of a binding instrument for business and human rights to further advance and complement the Guiding Principles. However, this paper argues that the existing normative international anti-trafficking framework is adequate to establish clear and strict obligations for states against trafficking. At the moment, it is important to prioritize the fulfilment of international obligations that states have undertaken in their jurisdiction and through international cooperation.

Those state obligations have been identified by the monitoring and judicial bodies, which have extended the scope of relevant human rights provisions. Despite the fact that only *Rantsev* involves trafficking in the context of tourism, the jurisprudence of the regional human rights courts is of particular value for combating trafficking in tourism because it establishes clear and justiciable obligations for states to regulate private sector operations.

Those obligations are positive, both substantial and procedural, and are not only enforceable against state agents but have a horizontal effect and establish the responsibility of states for violations committed by private individuals and legal persons, such as private corporations.

Tourism and hospitality have been recognized by human rights bodies as critical presenting high risks for trafficking and exploitation. To address this, states must ensure that the industry is well regulated and monitored in terms of both employment conditions and compliance with ethical principles in travel and tourism. In fact, it has been suggested that states should enforce the latter as legal obligations that tourism and hospitality companies must comply with in order to be granted licences to operate. Furthermore, states have the obligation to prosecute and enforce duties and penalties to businesses in the tourism and hospitality industry that are – or risk to be – involved directly or indirectly in trafficking cases and to criminally prosecute and punish their legal representatives (Bauer, 2016). Considering that complicity in trafficking offences is also punishable against natural and legal persons, states must ensure that corporations that act as "facilitators" to trafficking must be prosecuted. Crucially, states are also called to step up international cooperation in criminal justice and, in this context, abolish double criminality rules, which may be used by traffickers to escape punishment.

Moreover, states must prioritize child protection initiatives in tourism and hospitality and raise awareness about trafficking and sexual exploitation among all stakeholders, including travellers and tourists, so that victims of trafficking are effectively and timely identified and provided with support and assistance.

Legal instruments

African Charter of Human and People's Rights (1981) ("Banjul Charter"), CAB/LEG/67/3 rev. 5, 21 ILM 58

African Charter on the Rights and Welfare of the Child (1990), CAB/LEG/24.9/49

American Convention on Human Rights (1969) ("Pact of San Jose"), TS 36

Association of Southeast Asian Nations *Convention Against Trafficking in Persons, Especially Women and Children* (2015), Chairman's Statement of the 27th ASEAN Summit. https://asean.org/wp-content/uploads/images/20November201527th-summit/statement/Final-Chairmans%20Statement%20of%2027th%20ASEAN%20Summit-25%20November%202015.pdf

Association of Southeast Asian Nations *Declaration against Trafficking in Persons Particularly Women and Children* (2004). https://asean.org/wp-content/uploads/2012/05/ASEAN-Declaration-against-Trafficking-in-Persons-Particularly-Women-and-Children-TPPWC.pdf

Council of Europe *Convention on Action against Trafficking in Human Beings* (2005), CETS 197

European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), ETS 5

International Labour Organization *Abolition of Forced Labour Convention* No 105 (1957), 320 UNTS 291

International Labour Organization *Convention for the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* No 182 (1999), 2133 UNTS 161

International Labour Organization *Forced Labour Convention* No 29 (1930), 39 UNTS 55

United Nations *Convention against Transnational Organized Crime* (2000), 2237 UNTS 239 A/Res/55/25

United Nations *Convention on the Elimination of All Forms of Discrimination Against Women* (1979), 1249 UNTS 13

United Nations *Convention on the Elimination of All Forms of Racial Discrimination* (1965), 660 U.N.T.S. 195

United Nations *Convention on the Rights of the Child* (1989), 1577 UNTS 3

United Nations *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (2000), A/RES/54/263

United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (2000), Doc. A/55/383

Case law

ECOWAS Community Court of Justice

Hadijatou Mani Koraou v The Republic of Niger (2008) ECW/CCJ/JUD/06/08

European Court of Human Rights

Chowdury and others v Greece (2017), ECHR 112

Groppera Radio AG and Others v. Switzerland (1990), 12 EHRR 321

Marckx v Belgium (1979–80), 2 EHRR 305.

MC v. Bulgaria (2005), 40 EHRR 20

Rantsev v. Cyprus and Russia (2010), ECHR 22

Siliadin v France (2005), 43 EHRR 16

SM v Croatia (2020), ECHR 193

X and Y v. The Netherlands (1985), 8 EHRR 235

Young, James and Webster v. UK, (1981) 4 EHRR 38

Inter-American Court of Human Rights

Hacienda Brasil Verde Workers v. Brazil (2016), C 318

Velasquez Rodriguez v Honduras (1988), C 4

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Notes on contributor

Tenia Kyriazi completed her undergraduate and postgraduate studies in law in Greece and the UK and qualified as an attorney in Greece. She holds a BA in Law from the University of Athens (Greece), an LLM in International Law and International Relations from the University of Kent at Canterbury (UK), and a Ph.D. in International Human Rights Law from the University of Athens (Greece). Currently, she is an Associate Professor of Law, Deputy Director Academic Operations and Head of Law and Politics Programmes at Middlesex University, Dubai and a Principal Fellow at the Higher Education Academy, UK. Through her research and teaching practice, she studies issues of international human rights law, mostly relating to education, gender, migration and trafficking in human beings.

ORCID

Tenia Kyriazi http://orcid.org/0000-0002-1642-9317

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