

LL.M.

TRANSNATIONAL CRIMINAL JUSTICE

Human Trafficking 2.0

The Impact of New Technologies



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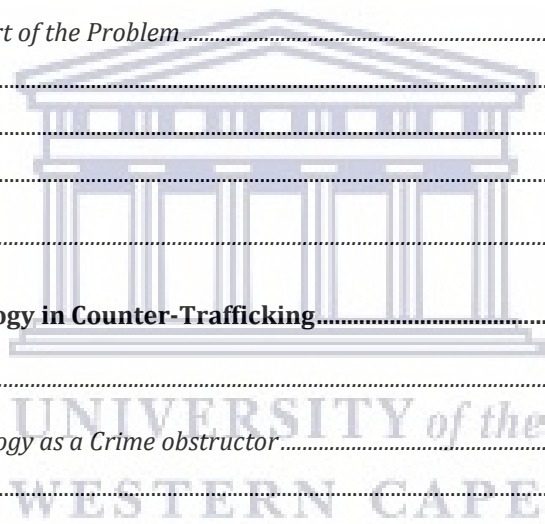
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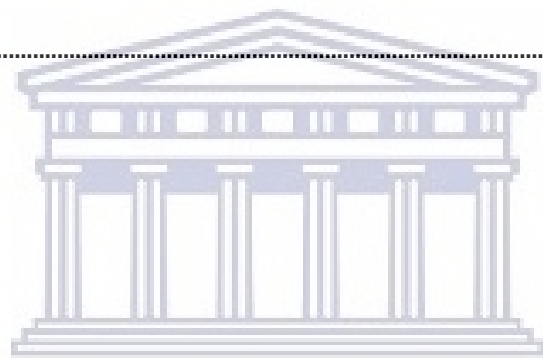
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1 Chapter One: Introduction

1.1 CONTEXT

Human history is traversed by migration. This manifold global phenomenon has shaped the world to its current state, moving people from one place to another in reaction to the changing world. The autonomous decision to permanently move locations represents only a segment of what is considered to be migration. Routes can be dangerous, reasons can be without any alternative, displacements forced, and journeys deadly. Arguably the most fatal of all long-distance global migration flows, the transatlantic slave trade has left an enduring legacy of economic patterns and persistent pain. Whilst the trade in human beings originated centuries before, with Europe's long history of slavery, this event represents an atrocious milestone in history. In a nutshell, European colonialists traded slaves for goods from African kings, who had captured them as war prisoners.

The enslaved humans were then shipped to the Americas where they were forced to work on cotton, coffee and sugar plantations – notably crops serving comfort, not essential for survival. Being a very early by-product of the consumerist culture, slavery degrades human beings as commodities, as one part of a trade. A severe violation of basic human rights, it required the development of powerful international instruments determined to strive for equality on a global scale. While many forms of slavery have been abolished throughout the last century, others have emerged.

In fact, scholars and international organisations hold the view that today slavery is by no means less ubiquitous than in the 19th century.¹ In the form of human trafficking, often graphically referred to as 'modern slavery'², the dehumanisation continues to flourish. It is nonetheless important to distinguish the two phenomena

1 Barner J, Okech D & Camp M 'Socio-Economic Inequality, Human Trafficking, and the Global Slave Trade' *Societies* 4.2 (2014) 148–160 at 151; Richardson K 'Sex Robot Matters: Slavery, the Prostituted and the Rights of Machines!' *IEEE Technology and Society Magazine* 35.2 (2016) 46–53 at 1.

2 The term *Modern Slavery* is used synonymously to human trafficking, e.g. by the ILO and terminologically is not without a problem: Ergo, this paper refers to the issue as human trafficking.

from each other, not without recognising their numerous similarities. Equating human trafficking with slavery is not legally accurate³ plus it lacks the necessary sensitivity. However, this rhetorical strategy captures the ‘moral urgency of addressing this human rights problem’⁴. Slave trade was widely accepted until the last century, whereas human trafficking is characterised by its clandestine nature, embodied in an underground reality. Where traffickers take advantage of vulnerable situations and consumers want to pay the cheapest price for their goods. It is crucial to understand economic aspects as drivers for human trafficking. Despite its invisibility, it brings severe consequences to society and forms a whole business sector.⁵

In recent years, human trafficking has received unprecedented attention as a humanitarian problem. I want to query the existing picture and introduce a modern economic crime perspective. Trafficking can be intertwined with prostitution. It certainly is intertwined with organised crime, involving concerns of precarious labour or illegal migration. While a majority of the anti-trafficking discourse evolves around sexual exploitation⁶, I argue that the issue’s high complexity and fluid character need to be recognised in order to get a grasp of the crime’s multiple dimensions.

1.2 PROBLEM STATEMENT

Not only has the clandestine nature of human trafficking always hampered effective countermeasures, technological progress is assumed to constantly add to the exploitation opportunities. Globalisation and liberalised markets have brought manifold benefits to the lives of societies and individuals. However, simultaneously the way has been paved for new forms of crime.⁷ It is a widely held view that governments, law enforcement agencies and international institutions are steadily challenged to keep up with the developments in trafficking schemes.

3 Jaleel RM ‘The Wages of Human Trafficking’ *Brooklyn Law Review* 81.2 (2016) 563–625 at 567.

4 Chuang JA ‘Rescuing Trafficking From Ideological Capture : Reform and Anti-Trafficking Law and Policy’ *University of Pennsylvania Law Review* 158 (2010) 1655–1729 at 1656.

5 ILO (2017).

6 Weitzer R ‘New Directions in Research on Human Trafficking’ *Annals of the American Academy of Political and Social Science* 653.1 (2014) 6–24 at 7.

7 Shelley L *Human Trafficking: A Global Perspective* (2010) 2.

With the help of examples, this work will demonstrate how new technologies have or have not enabled the same kind of trafficking⁸ to expand in scale and impact. The extent, to which technology might have reduced the risks for the involved criminals, will be displayed. Both digitalisation and human trafficking transcend national borders. Hence the following analysis will not be confined to one region and instead focus on international jurisdiction and law enforcement. The work aims at exploring the potential of new technologies in providing efficient ways to counteract the crime of human trafficking. Its focus will be the legal limits of technology-driven interventions. In order to determine the benefits as well as the drawbacks of technology, its crime obstructive power will be examined from different perspectives.

As will be shown through this work, almost every aspect of human trafficking has a technological dimension. The (anti-)human trafficking landscape has been affected by technology, both actual and theoretically. However, as a group of specialists of the Council of Europe (CoE) stated, new technologies are not:

in and of themselves harmful, but they provide those who wish to harm (...) with new, efficient and, often anonymous, ways of doing that.⁹

A dominant assumption in academia is that the Internet has changed trafficking from the root – although this consensus is made in the absence of evidence for the influence of technology on human trafficking.¹⁰ The clandestine nature of the crime hinders reliable research and there is no record of the trafficking cases happening under the radar of the authorities. This makes an accurate account of the dimensions of technology-facilitated trafficking impossible. Hence, legislators are reluctant to draft specific regulation, even more so in a counter-trafficking context. In the absence of sufficient prove for a link between technological advancement and human trafficking cases, the likeliness of such a relation remains a scholarly claim¹¹, held by authors such as Sakar (2015), Yu (2015), and Hughes (2000; 2001). This narrative is problematic because it gives the appearance that technology is a highly critical

8 The terminology *same kind of trafficking* is referring to different trafficking situations, which are comparable under the aspects of purpose or route that they have in common.

9 Council of Europe (2002) 17.

10 Milivojevic S, Moore H & Segrave M 'Freeing the Modern Slaves, One Click at a Time: Theorising human trafficking, modern slavery, and technology' *Anti Trafficking Review* 14 (2020) 17.

11 Milivojevic, Moore & Segrave (2020) 19.

aspect of human trafficking. It is often suggested that if only the advantage of traffickers over law enforcement agencies is rebalanced, the whole problem will be solved. Ideas of regulating the internet, shutting down advertisement websites or online platforms soon emerged. Their positive influence on crime rates is yet to be determined.¹² A generalisation of online content and tools can in fact have detrimental effects on the fight against human trafficking and – more importantly – draw attention from eliminating the root causes.

Some mobile applications connect, protect, and empower people in vulnerable positions, creating safe spaces and networks for exchange. They provide the opportunity to report information and experiences, for example about employers and organisations. These technologies keep workers from having to draw back on the more dangerous milieu of the streets. There is a fine line between protecting and harming potential victims of human trafficking when shutting down or regulating said services. This raises the question of whether the benefits of new technologies in counter-trafficking outweigh the drawbacks?

1.2.1 Research Landscape

The ‘dearth of information about the potential links between internet and human trafficking’¹³ can partially be explained by the sensitive character of data. Potent victim protection requires careful handling of information, of which the most delicate is not publicly accessible. Research is further hampered because human trafficking is clandestine in nature and a large amount of available content is anonymous. Nevertheless, the importance of stronger data on the topic is emphasised throughout literature, although anti-trafficking efforts do in fact not require absolutely accurate statistics. Having said that, a common aim should be an improved knowledge on the intersection of technology and human trafficking in order to enhance the effectiveness of counter-efforts.¹⁴ At present, only a fraction of the available research publications on human trafficking mention the trafficking-technology nexus.

12 Obertová Z & Cattaneo C ‘Child Trafficking and the European Migration Crisis: The Role of Forensic Practitioners’ *Forensic Science International* 282 (2018) 46–59 at 47.

13 Muskat-Gorska Z *The Role of the Internet in Trafficking for Labour Exploitation* (2011) 7.

14 Gerry F et al (2016) 205.

The following review of the current state of research provides an overview. As some reports that have been criticised for their weak methodology¹⁵, they have been left out of the analyses in this paper.

1.2.1.1 TIP Report

The United States (US) Department of State has published the Trafficking in Persons Report (TIP) on an annual basis since 2000. The reports occasionally feature technology-related topics, for instance in the 2013 edition under the title 'Human Trafficking and Technology'¹⁶. The findings of the report are not supported by data or specific examples, yet the power of technology for anti-trafficking is emphasised. Mobile technologies are mentioned as 'innovations in prevention'¹⁷ and as a potent tool for victim protection. Enhanced traceability is another benefit, mobile devices of victims and traffickers are seen as 'evidentiary gold mines'¹⁸. Presenting technology as a quick-fix solution, the report makes no attempt to assess the risks. Instead, surveillance techniques are openly advocated for. The report proceeds to list 'technology giants'¹⁹ which got on board the technological combat against trafficking. From today's perspective, it is clear that most of these initiatives fizzled out and were in fact initiated to whitewash companies' images and collect data on a large scale.

The TIP report of 2017 devotes another page to 'Online Sexual Exploitation of Children: An Alarming Trend'²⁰. It begins with the very detailed description of a trafficking situation including the use of new technologies at each level. The text is intended to appear as a case study. In the absence of any reference, it seems more like a collection of possible technology abuses. There is no verbalised thought wasted on the fact that, for example, online payment has not been possible or popular for a long time. Instead, the text leads the reader to believe that human trafficking was only made possible by all the technological advancement. The article continues to highlight the importance of 'advanced cybercrime investigative skills'²¹ and respective training and resources for law enforcement agencies.

15 See for example the critique of a CSJ report by Mendel & Sharapov (2016) 669.

16 TIP (2013) 14.

17 TIP (2013) 14.

18 TIP (2013) 14.

19 TIP (2013) 14.

20 TIP (2017) 32.

21 TIP (2017) 32.

The 2019 edition of the TIP report addresses ‘Challenges and Advances in Data Collection and Management in Combating Human Trafficking’²². It highlights the importance of standardised and well-maintained data. Wealthy states and powerful organisations are seen to take the lead in establishing appropriate databases. Privacy protection is listed among the results of inadequate data management systems. The article continues with a list of ‘Benchmark Data Management and Collection Initiatives’²³. The most recent TIP report of June 2020 does not target technology in particular, only as part of individual national states reviews. One example is Guatemala, where a governmental body developed ‘the Intersectoral Commission on Information Technology and Communication, which addressed trafficking crimes that utilize technology’²⁴ as a human trafficking prevention technique. In Iraq, a strategic planning unit was installed as well as ‘an information technology section for compiling data and records related to trafficking crimes’²⁵.

The overall language of the TIP reports tends to be denunciative. Published by the US Department of States, the evaluation appears to praise the own national efforts to combat trafficking, while constantly conflating it with sex work.²⁶ The reports act both as a research database and a monitoring mechanism. The US have been criticised for

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appointing itself a global policeman, judge and executioner, via automatic sanctions for a Tier 3 ranking, particularly when its corporate interests readily sacrifice the rights and dignity of the enslaved in pursuit of rapacious greed.²⁷

This leads to query the actual impact of the TIP reports on curbing the crime of human trafficking.

22 TIP (2019) 16.

23 TIP (2019) 16.

24 TIP (2020) 231.

25 TIP (2020) 265.

26 Kotiswaran (2014) 377.

27 Simpson R ‘The 2017 US trafficking in persons report: A critique’ (2017) available at <https://prachatai.com/english/node/7280> (visited 4 July 2020).

1.2.1.2 USC Report

Considerable research has been conducted by Mark Latonero and his team at the University of Southern California (USC) Annenberg Center on Communication Leadership & Policy. *The Research Series on Technology and Trafficking* explores the trafficking-technology-intersection from different angles. It consists of three publications, first of which is titled 'Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds'²⁸. It hypothesises that new technological tools can further the 4P Paradigm²⁹. It lays out guiding principles for technological trafficking interventions, one of which targets the potential impact on human rights. Privacy, security, and freedom of expression shall be accounted for while reducing the number of false positives.³⁰ Throughout the report, the methodological difficulties of human trafficking research are highlighted, particularly regarding online spheres. At the same time, new technologies are presented as 'an unprecedented window to observe, track, and monitor the conduct of both the supply and demand sides of the trafficking trade'³¹. According to the researchers, this potential has not yet been realised and the development of technological tools for law enforcement authorities and other actors is lacking behind.

The report analyses online classified advertisement sites, which were used to distribute trafficking-related content. Free web services offer platforms for all sorts of trade, including a chance for traffickers to advertise trafficked persons. After cases of child prostitution emerged, the services were publicly scrutinised. The case of Craigslist arose a campaign against the supposedly criminal content of the website's Adult Service Section³² and a law suit against the website operator, filed in front of an Illinois District Court. In the absence of the provider's liability for the distribution of third-party content, the case was eventually dismissed.³³ Later on, media coverage

28 Latonero M et al (2011).

29 The 4P Paradigm of counter-trafficking refers to prevention, prosecution (investigation), protection, and partnership and was established in the Trafficking Protocol see on page 54.

30 Latonero M et al (2011) vi.

31 Latonero M et al (2011) 9.

32 Similar webpages that are seen to facilitate crimes include *myreadbook.com* and *eron.com*.

33 In *Dart v Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. 2009) the court agreed that Section 230 (c) (1) of the Communications Decency Act of 1996 applied and granted Craigslist's motion for judgment on the pleadings.

and remarks on behalf of governmental institutions³⁴ resulted in the voluntary shutdown of said Section. The USC report describes the case as *striking* due to the insufficient empirical data serving as the basis for the debate, the lack of cross-sector cooperation, and the failure to attempt a more creative approach to fight the crime.³⁵ There is potential for cooperation between law enforcement agencies and internet companies. Craigslist claims to have been responsive to queries from the police, assisting anti-trafficking sweeps or reporting critical content.

Albeit the emerge in sexual services offered in the online sphere, the USC researchers could not prove the unlawfulness of the conduct. Little evidence relates to trafficking-cases.³⁶ That advanced analytics and innovative methods are potent tools to combat human trafficking appear as over-ambitious claims of the report. The hypothesis could not sufficiently be proven through primary, empirically driven research.³⁷ The first study aims at proving an increase in human trafficking cases via online technology during the course of major sport events. While a spike in posts mentioning escort services was visible, 'researchers could not discern signals of sex trafficking of minors or adults with any degree of confidence based solely on the methods used in this study'³⁸. The second study identified the social network platform *www.twitter.com* as a potential tool to detect trafficking cases. By stressing textual analysis over a certain period of time, the frequency of potentially trafficking-related words could be measured without drawing a concrete relation to criminal conduct.³⁹ The most interesting study combined 'advanced computer-assisted data gathering and analysis techniques'⁴⁰ with human expertise. Mass datasets (sourced from data mining of online content) could be filtered by computer-assisted technologies and then verified with the help of a human expert. Further identified technological tools for this process include automated data collection, natural language processing, facial recognition, and mapping technologies.

34 Miller C M & Moskovitz D (2012) 'Young prostitutes off the streets and online' *The Miami Herald* available at www.miamiherald.com/2012/07/28/v-full-story/2980491/young-prostitutes-off-the-streets.html (visited July 6 2020).

34 Council of Europe (2002) 63.

35 Latonero M et al (2011) 22.

36 Latonero M et al (2011) 14.

37 Latonero M et al (2011) 23.

38 Latonero M et al (2011) 26.

39 Latonero M et al (2011) 27.

40 Latonero M et al (2011) 28.

The report highlights the importance of inter-organisational cooperation and names competitive relations among organisations with regards to divergent moral values or funding as obstacles.⁴¹ Other challenges are differing domestic jurisdiction, limited financial and technological resources, privacy and safety concerns.

Technologies are also used for crowdsourcing and flagging. The respective tools involve the public in the process of crime control through connecting people and coordinating information (for example on shelter locations and other sensitive data).⁴² Flagging is what most social media platforms rely on in order to filter their content. Users monitor and report suspicious posts to the platform providers.

The USC report sees responsibility for anti-trafficking action on the part of governments. The allocation of resources is necessary for research in order to fill knowledge gaps. Governmental institutions can provide the required infrastructure for information sharing, multilateral, and inter-organisational cooperation.⁴³ Another voice of the collective response is the private sector. Apart from Internet companies' cooperation with law enforcement agencies, key industries such as the travel and tourism sector or banks have already integrated (preventive) anti-human trafficking measures in their codes of conduct or terms of service.⁴⁴ Technology companies and the media assist counter-trafficking through software development and awareness raising. NGOs can critically observe state action and call public attention to deficiencies as well as foster digital activism. Their proximity to potential victims, workers and survivors enables NGOs to monitor technological-driven anti-trafficking efforts. As the report mainly consists of literature reviews and primary research without original findings, its contribution is limited to shedding light on the trafficking-technology intersection.

The second part of the research series is 'The Rise of Mobile and the Diffusion of Technology-Facilitated Trafficking'⁴⁵. As the focus of the report is on the trafficking-facilitating power of technology, it will only be mentioned briefly at this point. The

41 Latonero M et al (2011) 31.

42 Latonero M et al (2011) 32.

43 Latonero M et al (2011) 34.

44 Latonero M et al (2011) 34.

45 Latonero M et al (2012).

report contains interviews with members of law enforcement about their perception of technology and how it was leveraged to combat human trafficking.⁴⁶ The mobile devices used by pimps and prostituted persons usually leave a trace of movement and transactions, so they contain crucial evidence. This shows how technology can be leveraged to build trafficking cases. The researchers raise the question of 'balancing privacy rights and civil liberties more generally with the need for safety and security'⁴⁷. But due to the dearth of research, no attempt was made to answer.

Law enforcement's widely known presence on popular classified ad sites has led some local police and anti-trafficking experts to see it as the "bottom of the online barrel," frequented by some of the least technologically savvy trafficker-pimps.⁴⁸

Interviews with law enforcement officers reveal common problems with technology-driven counter trafficking. These include a severe lack of training in the use of new technologies for investigation purposes; inappropriate equipment and upgradable knowledge as well as the access to intelligence from other jurisdictions.⁴⁹ The latter is particularly problematic because human trafficking is in its most frequent form a border-crossing crime.

The last part of the research series deals with the under-represented topic of 'Technology and Labor Trafficking in a Network Society'⁵⁰. With little data collection and analyses done in this area, the report's primary research (in form of a field study) is of exploratory nature and serves to frame the intersection of labour trafficking and technology. Without assuming that technology has caused this type of exploitation, the report aims to shed light on the underlying logic of new technologies and their impact on recruitment, supply chains, and migration. From the beginning, labour trafficking is marked as a complex social problem, to which technology cannot be the one and only solution. The researchers rather recognise its potential, that seems well worth exploring. The report addresses a social transformation underway and an evolution of network societies.⁵¹

46 Latonero M et al (2012) 26.

47 Latonero M et al (2012) 29.

48 Latonero M et al (2012) 30.

49 Latonero M et al (2012) 31.

50 Latonero M et al (2015).

51 Latonero M et al (2011) 8.

Traditional networks have existed soon before technological advancement brought new possibilities, such as instantaneous communication and information sharing. According to the report, the same technologies are used both to connect and to isolate victims. Adduced as an instance, a migrant would get into touch with recruiters and employers abroad through the same social media platform as he uses to keep in touch with his familial or social support network. Victims often have to hand over their mobile devices during the trafficking process and might receive new ones, which help the offenders to exercise control and facilitate communication. But as touched upon above, the same technology holds the opportunity for tracking and evidencing trafficking schemes. Other potentially beneficial uses of technology include mobile phone applications for the use by workers. The implemented victim-centred support and information applications have often not been evaluated yet.⁵²

1.2.1.3 ILO Report

The technology aspect of human trafficking is further addressed in a 2017 publication by the International Labour Organisation and the Walk Free Foundation titled *Global Estimates of Modern Slavery*. It explores possibilities of integrating new technologies into the fight against trafficking.⁵³ Data on “modern slavery” is assumed to have improved, but there are still significant gaps. The need for extended research for domestic policy is particularly highlighted. While many countries collect relevant data already, only a few have applied sufficient analytical systems and standardised survey tools. The report remains cursory regarding the ‘highly sensitive [datasets], raising a range of privacy and civil liberty concerns’⁵⁴. No attempt is made to propose specific technological tools into future counter-trafficking.

1.2.1.4 UNODC Report

Another primary source of data is UNODC’s ‘Global Report of Trafficking in Persons’. It gathers domestic trafficking data on a bi-yearly basis in order to provide both a global overview and in-depth country profiles. The underlying research methodology is referred to as Multiple System Estimate (MSE) and was developed in

52 Latonero M et al (2015) 11.

53 ILO & Walk Free Foundation (2017) 49.

54 ILO & Walk Free Foundation (2017) 53.

2016 by the UNODC.⁵⁵ The compiled information is provided by the member states, which is why some outcomes are more detailed (and supposedly more accurate) than others. Differing resources and methodologies are given as a reason. The reports have so far not addressed the technology intersection.

1.2.1.5 OSCE Report

The long call for more research on this topic is beginning to be heard. The OSCE (2020) has recently published a comprehensive report analysing technological tools in the field. Following the consensus that technology invariably facilitates trafficking and at the same time comprises great potential to disrupt the crime, the report is not of a critical kind. Unfortunately, it does not attempt an impact assessment. However, the report does provide a useful overview on the current ‘technology tools used in the OSCE area and beyond to counter human trafficking’⁵⁶. To better understand the landscape, 305 tools were analysed in categories such as users; beneficiaries; developers et cetera. The report highlights the importance of collaboration among sectors in order to develop and deploy new technologies effectively.⁵⁷

[D]atasets relating to modern slavery are often highly sensitive, raising a range of privacy and civil liberty concerns where the risk of identifying data subjects can be high and the consequences severe. Databases are diverse, dispersed, mostly disconnected from each other, and are not standardized or comparable.⁵⁸

1.2.2 Literature Review

There are some voices in the human trafficking literature that reappear in the context of technological impact. The authors and researchers mirror the complex landscape of ideology and opinions around this topic. Donna M Hughes is a pioneer in this field. As early as 1997, she published research on the sexual exploitation of women through the internet. Hughes is an American researcher and associated with the abolitionist feminist camp. As the research and education coordinator of the international NGO CATW, she continuously takes the stand of protecting vulnerable people from external dangers. In doing so, she tends to neglect the autonomous

55 For more detail on this research strategy see UNODC (2016) 47.

56 OSCE (2020) 22.

57 OSCE (2020) 52.

58 ILO & Walk Free Foundation (2017) 54.

decision-making capacity of these individuals. According to Hughes, it cannot be a person's free will to involve in prostitution as commercial sexual services are exploitative by nature.⁵⁹

In her work from 2000 Hughes emphasises the dangers of new technologies, mainly the internet, that have had an impact on the sexual exploitation of women and children. She finds that introducing new technologies into exploitative systems usually benefits the powerful. The vast availability of sex-related online content is described as a demand-generated industry. With its origin in the US of the 1950s, this industry is assumed to have thrived on the liberalisation of prostitution laws. Throughout the course of her research Hughes observed an escalation of human trafficking cases, which she links to the industrialisation of what she refers to as 'organised prostitution and pornography'⁶⁰.

At the time of her first publications the internet was still young. Hughes highlights the driving role that the sex industry has played in the growth of the internet industry in the late 1990s. While some of her findings are intently shocking and show that sexual advertisements occupied a significant part of the web, the problem is that they do not inevitably connect to the crime statistics. Not all content can be related to criminal activity or exploitation. Today we know that the web is also used by independent sex workers as a safe space to advertise their services and to connect with clients.⁶¹ According to Hughes, the sex industry gained new means to exploit women as a result of technological advancement.⁶² She describes the degree to which the online sex industry in turn was on the leading edge of innovation. The high demand for privacy and security boosted technological advancements such as quick online payment via credit card and e-commerce software. Secure payment is crucial to the industry that mainly relies on customers who want to use its services in the privacy of their homes. A transaction of this sort must be convenient and discrete.

59 Hughes DM 'Protecting Women from Exploitation via the Internet' *Women and Earth Global Eco Network* (1997).

60 Hughes (2000) 36.

61 Majic S 'Same Same but Different? Gender, sex work, and respectability politics in the MyRedBook and Rentboy closures' *Anti-Trafficking Review* 14 (2020) 82-98, 83.

62 Hughes (2000) 36.

Set into today's context, Hughes misconstrues the internet as purely malicious. Her point is that new technologies solely benefit the powerful. While this might have applied to the late 1990s, it cannot be validated in the present context. Interdisciplinary taskforces are working on solutions to combat exploitation using technology that is designed to serve vulnerable people. Hughes makes no attempt to determine any other form of exploitation. The focus on sexual exploitation of women and children reflects the common misinterpretation of prostitution as primarily a trafficking related problem. The article was published at a time, when prostitution was illegal in most countries. It does not distinguish unlawful sexual exploitation from legal prostitution and pornography. The latter might be unethical, but do not generally constitute criminal offences.

In her subsequent study from 2001, Hughes targets 'The Impact of the Use of New Communications and Information Technologies on Trafficking in Human Beings for Sexual Exploitation'⁶³. Similar content is now supported by primary research in the form of interviews. Hughes further stresses case studies to provide an overview of law enforcement efforts. They show that the authorities' use of technology was limited to the creation of fake accounts on publicly accessible chats and bulletin boards to lure potential criminals into pitfalls. Although not specifically sophisticated, this method marks the beginning of web-facilitated investigations and is still in use today. The study's focus lies on the ways in which technology is used to facilitate crime in order to give policy makers an idea of the problem. Hughes paints a rather dark and pervasive image of the internet. She foresees the following challenges: Incompatibility of domestic legislation, lack of political will to oppose the maxim of economic growth by regulating the internet, the denial of harm that is done to women and children through pornography and the overall accepting attitude towards prostitution and alike.⁶⁴

Particularly problematic is the connection between the physical act and the produced images. As consumers can argue to have nothing to do with the actual exploitation, the value of sex-related online content as pictorial evidence diminishes. The question of responsibility has been answered for cases involving child

63 Hughes (2001).

64 Hughes (2001) 42.

pornography, where the mere consumption is criminalised. At the intersection of human trafficking and new technologies the responsibility of the consumer is a key issue. Preserving the free movement in the online sphere, including freedom of expression and data protection, stands in contrast to effective counter-mechanisms to protect those vulnerable to exploitation.

Although fairly outdated, Hughes' early work is an important and similarly controversial voice in the discourse. It has inspired and influenced policy, as can be seen in outputs of the CoE. While neglecting the sex workers' perspective, she did draw attention to the fact that a majority of online content is misogynistic. Her contributions display how overtly coercive pornographic content was available in the early years of the internet. This suggests that service providers might have found alternative ways to advertise and offer the meanwhile criminalised content. Compared to today's online landscape, the internet from around the turn of the century resembled a legal vacuum. Techniques formerly used by advertisement websites, including page jacking and mouse trapping⁶⁵, have largely been vanished from the internet at present.

Among Hughes' more recent work is a 2014 publication titled 'Trafficking in Human Beings in the European Union: Gender, Sexual Exploitation, and Digital Communication Technologies'⁶⁶. The EU is introduced as the 'world's leading region'⁶⁷ for trafficking for the purpose of sexual exploitation. Hughes' findings show that the majority of victims are female, and the most common purpose is sexual exploitation. The utilised data is provided by national states and multilateral bodies such as the UNODC or the European Commission. As technological-facilitated sexual exploitation is seen to outpace law enforcement, Hughes considers a revision of laws necessary in order to be applicable to digital evidence.⁶⁸ She states that the crime rates are increasing although human trafficking has been constituted a criminal offence in most European countries at the time of the publication. ^

65 These are methods to keep users from leaving certain websites, which are now prevented through security software and even legally challenged on the basis of competitive law.

66 Hughes DM 'Trafficking in Human Beings in the European Union: Gender, Sexual Exploitation, and Digital Communication Technologies' *SAGE Open* 4.4 (2014).

67 Hughes (2014) 1.

68 Hughes (2014) 4.

Her predictions include that technology will increasingly facilitate exploitation.⁶⁹ Her case studies show more low-technology cases. Wary perpetrators often chose older devices for being less traceable. Hughes compares sex trafficking with labour trafficking, concluding that the latter has less documented cases involving digital technologies. In this point, her work is in accordance with the findings of the USC reports. As the access to technology is not *natural* in the labour trafficking context, print media and word of mouth remain prominent in the recruitment phase.⁷⁰ Concluding, Hughes highlights that the intersection of trafficking and technology is under-researched and must be viewed as a combination of problems as opposed to separate elements.⁷¹

Hughes' claims have been strongly contested in recent years by a number of scholars, who are critical of the alleged link between technology and trafficking. In contrast to Hughes, representatives of the GAATW and other researchers stand for a view of trafficking that acknowledges the possibility of prostitution without coercion. Associated scholars include Jennifer Musto, Danah Boyd, and Mitali Thakor.

Boyd and Thakor are involved in the *Microsoft Research Human Trafficking Project* launched in 2011. They published a part of this research project in 2013, not holding back with their feminist standpoint. The disapproval concerns the 'Christian faith-based rhetoric of saving (female) victims and a radical feminist politic that reads all networked trafficking prostitution as systemic sexual coercion'⁷². Thakor and Boyd call the anti-trafficking movement a counter-network to the trafficking network that it seeks to disturb. They aim to explore the network use and perception of technology. The findings, conducted through interviews with anti-trafficking advocates, show discrepancies between federal and state laws, as well as divergent beliefs and perspectives among organisations. With regards to technology, a common uncertainty prevails among anti-trafficking actors, which often leads to 'require the erasure of technology in order to restore a comprehension of trafficking'⁷³.

69 Hughes (2014) 4.

70 Latonero M et al (2011) 17.

71 Hughes (2014) 6.

72 Thakor M & Boyd D (2013) 282.

73 Thakor M & Boyd D (2013) 287.

The blanket elimination of websites serves as a quick-fix to hinder the communication within trafficking networks. The director of a human trafficking legal clinic is cited expressing his 'fear about restrictions on technology or closing down certain websites'⁷⁴. The authors highlight the danger of ineffective counter-efforts and of underestimating the beneficial aspects of new technologies. Regulating online content in a blanket manner would make the anti-trafficking world believe that sufficient combating efforts were achieved, when in reality the crime is just shifted out of sight. Nevertheless, the authors emphasise the potential of technology as a destructive force.⁷⁵ They promote its use to destabilise the trafficking-network, or to facilitate new investigation and intervention opportunities. The Microsoft Research results and outputs are one example for interdisciplinary cooperation to explore the potential of new technologies in counter-trafficking.

Another well-known researcher in the field, Jennifer Musto, together with Boyd, has published the landmark-paper 'The Trafficking-Technology Nexus'⁷⁶. The authors challenge the widely held optimism about the role technology plays both in facilitating and disrupting human trafficking.⁷⁷ One of the concerns they express is the amalgamation of sex trafficking and sex work. This is particularly problematic because technology is partly used to enhance surveillance over supposed 'at-risk' persons. In contrast to voices like Hughes and MacKannon, Musto and Boyd hold the view that self-determined sex work exists and requires a safe infrastructure. In challenging the 4P and 3R paradigms⁷⁸, the article suggests the concept of the '4As of anti-trafficking sociotechnical innovation'⁷⁹.

The 4As denote heightened awareness and visibility of particular online sites assumed to promote trafficking, ... the amassment of data by law enforcement to pursue anti-trafficking investigations, the augmentation of traditional surveillance techniques and tools, and the advancement of collaborative arrangements and technological innovation⁸⁰

74 Thakor M & Boyd D (2013) 278.

75 Thakor M & Boyd D (2013) 287.

76 Musto J & Boyd D (2014).

77 Musto J & Boyd D (2014) 1.

78 Common approaches in counter-trafficking for the 4P paradigm see footnote 29; the 3R paradigm refers to the rescue, rehabilitation, and reintegration of trafficked persons.

79 Musto J & Boyd D (2014) 3.

80 Musto J & Boyd D (2014) 3.

In their work, Musto and Boyd recognise new dimensions of human trafficking in a digital, algorithmic and networked understanding. Due to the data lack however, new technologies are not assumed to have had a transforming impact on trafficking as such. The researchers describe an alliance between criminal justice and anti-prostitution, which is powerful but fails to address the actual problem. When exploring the potential of technology for investigation and prosecution, the article does not fail to acknowledge the drawbacks. These include augmentation and surveillance technologies for the purpose of victim protection.

Subjected to heightened law enforcement surveillance disproportionately often, people of colour who are involved in the sexual economy carry the risk of racial profiling.⁸¹ As the work was based in California, these findings cannot be applied globally. However, racism within law enforcement agencies has just recently been a matter of worldwide interest and systemic discrimination is not solely an American problem. Importantly, Musto and Boyd further challenge a certain *shared vision of inevitabilities* of the anti-trafficking mainstream. For instance, the necessity of more surveillance, that neoliberal market logics facilitate counter-trafficking, and that expert-led interventions will empower victims.⁸² Musto and Boyd express important factors for drafting policy or designing technological-driven counter-trafficking tools. However, the article does not include an assessment of the endangered constitutional rights when integrating technology in counter-trafficking efforts.

Jonathan Mendel and Kiril Sharapov (2016) draw on Musto and Boyd by advocating a shift in anti-trafficking understanding and action.⁸³ Reinforcing the statements of the aforementioned article and in contrast to what Hughes emphasises, Mendel and Sharapov call the link between technology and human trafficking unjustified by reason of absent data. They advocate a more systemic understanding of trafficking and alternative policy responses as opposed to the focus on victimisation and crime.

81 Musto J & Boyd D (2014) 16.

82 Musto J & Boyd D (2014) 16.

83 Mendel J & Sharapov K (2016) 665.

The authors point out a certain ignorance in the anti-trafficking movement, where albeit a determined knowledge gap publications and policy seem to work in a way that avoids the actual issues.⁸⁴ The constant attention of media and academia 'produced a considerable amount of "grey" literature'⁸⁵ and '(pseudo-)research'⁸⁶. There is no easy way to distinguish criminal content from the non-controversial use of online services. Removing content may disrupt benign subjects of the uninvolved. The scholars challenge the common perception of cybercrime being everywhere and yet placeless. For the case of human trafficking, explicitly distinct from cybercrime, borders and a geo-political context remain characteristic. Nuanced methods in counter-trafficking are advocated for in order to challenge the crime-networks in a comprehensive way.

Prabha Kotiswaran published 'Beyond Sexual Humanitarianism: A Postcolonial Approach to Anti-Trafficking Law'. Her work adds a perspective to the discourse. The author queries the focus on trafficking in western industrialised states. She advocates a postcolonial perspective, challenging the common image of the 'third world sex worker enslaved in a big-city brothel'⁸⁷. Contrary to Hughes, Kotiswaran disputes 'deeply ideological positions over women's sexuality'⁸⁸. She acknowledges the active involvement of people at risk in shaping policy. Accordingly, assumed passivity of victims is likely to deprive individuals of their autonomy and deny their ability to make decisions. Kotiswaran sees human trafficking for the purpose of sexual exploitation as substantially a labour migration issue. Alternative to the common organised crime approach, the author introduces domestic labour law as a potent response. Her work suggests what Mendel and Sharapov reiterate, which is nuanced customisation to domestic circumstances. Multilateral policy could benefit from individual approaches through what the author refers to as a 'feedback loop'⁸⁹.

As developing countries increasingly shape international anti-trafficking law and policy, this Article proposes two ways whereby the postcolony could be far more than a site of sexual humanitarianism.⁹⁰

84 Mendel J & Sharapov K (2016) 667.

85 Mendel J & Sharapov K (2016) 668.

86 Mendel J & Sharapov K (2016) 669.

87 Kotiswaran P (2014) 354.

88 Kotiswaran P (2014) 355.

89 Kotiswaran P (2014) 362.

90 Kotiswaran P (2014) 353.

Kotiswaran argues against the widely held view that trafficking mainly occurs from low-income to high-income countries. Rather than western humanitarianism, she advocates for overall more trust in the changing motivation of the supposedly less powerful. Her work is putting the agency of origin states and victimised persons at the forefront, including grassroot and community-based action. Taking the perspective of developing industries seriously, she also does not hold back with a critical assessment of the TIP reports. Although the paper makes no attempt to shed light on the technological aspect, the view is worth integrating in a sufficient solution approach. That is an approach reaching from a global perspective to the potential of domestic legislation.

As it directly concerns the use of new technologies in counter-trafficking, the work found by Felicity Gerry, Julia Muraszekiewicz, and Niovi Vavoula (2016)⁹¹ is more relevant for the present questions. The scholars raise concerns with regards to privacy and data protection when implementing new technologies in counter-trafficking. Their analysis is focused on three specific technological forms. Location tracking is described a potent anti-trafficking tool, particularly in combination with other surveillance intelligence such as messages and pictures. As an example the case of Bahrain is presented. The state provides mobile phone SIM cards to every migrant worker at entry. This blanket way of monitoring might assist law enforcement in detecting the location of employers and victims. However, it depicts a massive privacy invasion of innocent migrant workers.

Although initiated by the state, surveillance enables ICT providers to trade the collected location data. States rely on third parties to develop technological solutions. Not only Gerry et al highlight knowledge as a key requirement in the anti-trafficking network. To distribute and expand knowledge, collaboration is necessary. A large variety of anti-trafficking stakeholders collect data on victims in a non-uniform and blanket manner, which is not collaborative.⁹² Incautious data handling enhances the

91 Gerry F et al 'The role of technology in the fight against human trafficking: Reflections on privacy and data protection concerns' *Computer Law and Security Review* 32.2 (2016) 205-17.

92 Wijers M 'Where Do All the Data Go? European Data Protection Law and the Protection of Personal Data of Trafficked Persons' at *datACT* – Conference on Data Protection and Trafficking, Berlin, 25-27 September 2013, 1–7 available at <https://www.kok-gegen->

risk of being re-victimised or retaliated. Victims further carry the stigma of having been involved in criminal conduct and the data recording that can hinder recovery through re-socialisation. Gerry et al discover the potential of unmanned aerial systems, or drones. Patrolling for example US and EU borders, drones are already used for border security. Originally constructed for the military use, their potential to assist law enforcement is now being explored. The civilian use of drones is to date illegal in most European countries and a sufficient regulatory framework is yet to be drafted. Drones seem to be the least adaptable tool for counter-trafficking action.

Wilkens takes issue with the contention that ‘there is no reason the government and other watchdog agencies should not use twenty-first century tools to combat twenty-first century problems’⁹³. Her research is limited to agricultural labour in California, where the use of drones is broadly regulated and government agencies have been using them for a decade. The law and order orientated policy of the US justifies surveillance with the greater good of eradicating slavery and securing border protection.⁹⁴ What Gerry et al do not attempt to do is a critical assessment of the value for investigation. While location and other data can not only be evidence, but also actively assist in investigating ongoing crime and preventing further violations, drones (in combination with video technology) produce broad surveillance material. Blanket surveillance without special circumstances is not justified. Drones and the combined equipment need to be developed in a way that does not intervene with the privacy of uninvolved third parties, for example by instantly deleting non-relevant or unsuspecting content and video material.

The article does however identify the regulation gap of technological interventions aside from in criminal proceedings. Not domestically, nor multilaterally has there been an attempt to regulate new technologies’ implementation to facilitate the prevention of trafficking. Although the scope of the study was limited to Europe, its arguments on privacy and data protection are applicable on an international scale.

[menschenhandel.de/fileadmin/user_upload/medien/Projekte/datACT_Wijers_Where_do_all_the_data_go.pdf](https://www.menschenhandel.de/fileadmin/user_upload/medien/Projekte/datACT_Wijers_Where_do_all_the_data_go.pdf) (visited 23 July 2020).

93 Wilkens C ‘Using Drones to Fight Slavery in the Fields: An Examination of the Practicality and Constitutionality of Applying 21st Century Technology to a 21st Century Problem’ *Hastings Environmental Law Journal* 24.1 (2018) 157-178 at 178.

94 Wilkens C (2018) 165.

The most recent source, on which this work was able to draw is a special issue of the Anti-Trafficking Review dedicated to the topic 'Technology, Anti-Trafficking, and Speculative Futures' and published by the GAATW in April 2020. It appeared in a time, when the world was faced with the myriad consequences of the COVID-19 pandemic. While at first glance, the two phenomena seem to have nothing in common, intersections start to appear. Hence, the special issue aims

to spark creative interdisciplinary approaches in tracking how distinctive global phenomena constitutively overlap in moments of social and economic disruption.⁹⁵

And indeed, does the variety of research areas represented in the issue reflect the multi-dimensional analysis. Introducing, Musto, Thakor & Gerasimov highlight the importance of both a technical, political and social understanding of technology.⁹⁶ While exploring technology's potential for anti-trafficking action and policy, they take a critical stand on the optimism surrounding technology as a counter-trafficking weapon. In the development and implementation of innovative tech-tools by corporate and private actors the authors see neoliberal ideology reproduced.⁹⁷ Musto and her co-authors advocate for a fair distribution of the power over technological tools and data, regulated and legitimated on state-level.

The academic history of the trafficking technology nexus is assessed by Milivojevic, Moore & Segrave (2020). The scholars critically review the repeating narrative of technologies large impact on trafficking. The article advocates for a 're-thinking of the debate'⁹⁸. Its focus lies on a comprehensive account and critical debate of the literature discourse in a socio-political context, while the actual technical aspects are discussed elsewhere in the special issue.

A discussion of mobile applications targeting consumer ethics can be found in the work of Limoncelli. Her point is that the technologies in question are part of a business model in the anti-trafficking industry benefitting social entrepreneurship rather than providing solutions to the global exploitation.⁹⁹ The ethical consumption

95 Musto J, Thakor M & Gerasimov B (2020) 1.

96 Musto J, Thakor M & Gerasimov B (2020) 5.

97 Musto J, Thakor M & Gerasimov B (2020) 8.

98 Milivojevic, Moore & Segrave (2020) 20.

99 Limoncelli SA 'There's an App for That? Ethical consumption in the fight against trafficking

services work by informing users about the conscientiousness of a purchase. According to Limoncelli, this market-led and consumer-orientated approach is an inappropriate channel through which to accomplish actual change. It reduces governmental involvement and promotes a problematic pro-consumerist attitude.

One of the contradictions pointed out is the production of the phones necessary to run these apps. Their supply chains contain a high risk of labour trafficking. But Limoncelli's criticism does not remain on the surface, elaborating a number of problems surrounding anti-trafficking apps. Company fusions and reforms in supply chains require fast adjustments. Outdated information can lead to false brand grading. Only a small fraction of the apps is self-funded. The majority grew to work on affiliate marketing links and commission. The collected consumer data is sold to third parties for targeted advertising and market research in order to finance the project. The biggest identified problem is the lack of confrontation with systematic problems and a respective assessment. There is no explanation on how consumer behaviour translates into change or incites companies to act. This approach overestimates the power of the consumer¹⁰⁰ and deprives state accountability for the underlying inequities that lead to labour exploitation. After all, Limoncelli's criticism is well-founded. However, the article is concerned with the sociological dimension and does in the margins attempt to recognise the affected civil rights of the involved.

In contrast to these business-driven technologies, Fukushima's explores a web application that is both worker-inspired and driven. Her thorough examination includes the history of US border and security policy. It discusses the effects on human trafficking within a migration framework. The enhanced state surveillance in border protection, which began in the 1990s and involved the increased militarisation of the US-Mexican border, is described as a means to demonstrate power. State authorities actively select the people, whom to allow entrance. According to Fukushima, the technologies used for migration control also impact trafficking. And in turn, 'trafficking is used to authorise state-based efforts to further a homeland futurity'¹⁰¹. Her primary research was conducted in California. While home to the

for labour exploitation' *Anti-Trafficking Review* 14 (2020) 33-46.

100 Limoncelli SA (2020) 35.

101 Fukushima AI 'Witnessing in a Time of Homeland Futurities' *Anti-Trafficking Review* 14 (2020) 67-81 at 72.

Silicon Valley, where technological innovations arise, marginalised groups and migrants do not benefit equally from these advancements. Due to the cumbersome migration bureaucracy individuals are deemed to live with an unsolved status for a long time. This hinders them from exercising their rights including the accessibility to services and technologies.

Fukushima explains and analyses an app, which is supposed to support migrants in this situation.¹⁰² Her work comprehensively describes how harmful technology can be when used to protect borders. On the other hand, it shows and supports one positive example for the use of technology to counter labour exploitation. As the app does not replace existing state law, migrants still have to go through the official process. The service certainly does make the process easier and empowers the users to know their rights. Hence, it might indeed be a potent tool to prevent trafficking. While here the focus was on the US, other countries are seen to similarly pump up their border security level. Hence, the app could be adapted globally.

Another remark is added by Mogulescu and Goodmark, who address online sex offender registries from the perspective of former trafficking victims. Survivors of trafficking are frequently convicted of federal crimes connected to their own trafficking situation.¹⁰³ Notably young adults who were trafficked for sexual exploitation as minors and can be liable for prosecution on sex offence grounds when they engage in prostitution alongside minors after they come of legal age. Victims can also be held accountable for the crime facilitating duties that were forced upon them by traffickers. This leads to the abstruse situation, that former victims have to serve prison time as traffickers and afterwards are required to register as sex offenders. Official registers across the US make their personal information publicly available.

They can hardly live a normal life without violating their parole, which is simply done by using the internet or possessing a cell phone. The article emphasises the danger of the registries' accessibility with regards to further abuse and the risk of

102 Fukushima AI (2020) 76.

103 Mogulescu K & Goodmark L 'Surveillance and Entanglement: How mandatory sex offender registration impacts criminalised survivors of human trafficking' *Anti-Trafficking Review* 14 (2020) 125-130 at 129.

being stigmatised. Mogulescu and Goodmark generally query the criminalisation of trafficking survivors – public registries being just the most significant of collateral consequences. However, the link to technology seems slightly far-reaching, as non-digital records would have a similar effect. Technology facilitates the instant access to the registers, but the actual problem is situated before that. Removing technology from the situation would not eliminate the problem.

In her most recent publication, Musto calls technology in counter-trafficking an idea that relies on limited data and a number of assumptions. She explains why technologies have yet failed to combat human trafficking and suggests guidelines for future counter-trafficking interventions.¹⁰⁴ As the answer to that question belongs to the main part of this thesis, Musto's contribution will be discussed further below.

1.2.3 Significance of the Study

There is a severe lack of publications on the affected human rights through combating trafficking with the help of new technologies. So far, the whole debate forgoes without any substantial analyses of the legal limitations and moral principles, let alone a respective regulation. While there seems to be a consensus among scholars and international organisations, that human rights such as the freedom of expression or privacy protection 'might be affected'¹⁰⁵, no further research has dealt with human rights as an actual barrier in this regard. While not all of the reviewed literature is on technology per se, it has nonetheless been made visible that the topic has gained scholarly attention. What is missing yet, is an in-depth analysis of the constitutional and human rights at risk when technology is used in the anti-trafficking framework.

With new technologies being increasingly explored as assisting tools to the traditional counter-trafficking methods, the following chapters will go into detail on the potential uses. The assumed link of exploitation to the rise in new technologies¹⁰⁶ will be critically assessed. This study will be significant in broadening the debate, not only

104 Musto J (2020).

105 Gerry F et al (2016) 216; Zdravkova (2019) 5; Sharapov K (2014) 1.

106 National Association of Attorneys General (2013) Letter to Senator Rockefeller, Senator Thune, Representative Upton, and Representative Waxman
<https://www.eff.org/sites/default/files/cda-ag-letter.pdf> (visited 20 July 2020).

because its focus lies on the rarely explored legal limitations of these practises. But mainly, because it merges the main views while adding a new perspective, that helps to understand the current state of the art. The exploration of the human rights violations combined with an understanding of the actual potential of technology can encourage a progressive discourse leading to a more effective fight against human trafficking.

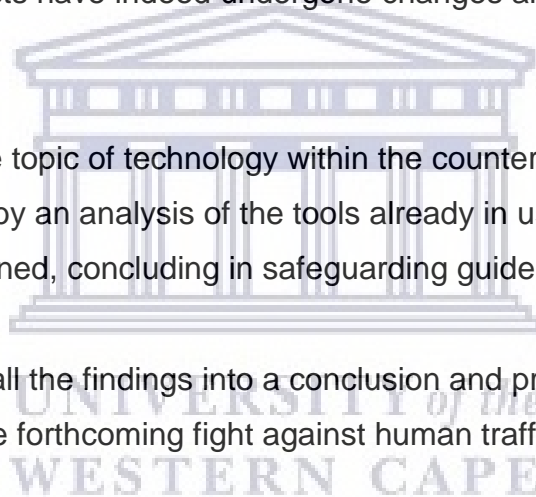
1.3 CHAPTER OUTLINE

Chapter two will set out the framework by explaining the crime of human trafficking. The current state of the art in counter-trafficking will be outlined.

The subsequent chapter will address the impact of new technologies on the crime. It will analyse which aspects have indeed undergone changes and detect misconceptions.

In the fourth chapter, the topic of technology within the counter-trafficking arena will be introduced, followed by an analysis of the tools already in use. The challenges and risks will be determined, concluding in safeguarding guidelines.

Chapter five will collect all the findings into a conclusion and provide recommendations for the forthcoming fight against human trafficking.



2 Chapter Two: The Crime of Trafficking in Human Beings

An appropriate response to human trafficking requires profound knowledge about the crime itself. Hence, this chapter provides an understanding of what the crime is, how it is understood, how it emerged, and what its consequences are.

2.1 THE DEFINITION: COMMON GROUNDS

This paper resorts to the definition of human trafficking as outlined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially in Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (UNTOC). The so-called Trafficking Protocol entered into force on 25 December 2003 and has been ratified by 178 jurisdictions.¹⁰⁷ The UNTOC applies to the protocol *mutatis mutandis*, so the offences established by the Trafficking Protocol are considered offences under the Convention itself.¹⁰⁸ After a long time of lacking a universal consent, the Trafficking Protocol is the first legally binding instrument on a global scale with an agreed definition of trafficking in persons.

Article 3, paragraph (a) “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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

Paragraph (b) clarifies that a victim’s consent does not oust the jurisdiction of the criminal conduct, as long as the mean of exploitation is fulfilled. According to paragraph (c), treating a minor by any of the aforementioned acts for the purpose of exploitation must always be considered trafficking, without regard to the means.¹⁰⁹

107 Current ratification status available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en (visited 15 June 2020).

108 Gallagher A ‘Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis’ *Human Rights Quarterly* 23.4 (2001) 975–1004 at 977.

109 UNTOC (2004) Annex II at 43.

2.2 THE ELEMENTS OF THE CRIME

2.2.1 Act

In order to constitute the offence, a trafficker must commit one or more of the acts lined out in paragraph (a). Hence, human trafficking can take place in both domestic, regional inter- and intra-trans-regional settings. An act of movement is implied, but not essential.¹¹⁰

2.2.2 Means

The listed means, by which to accomplish the act, allow for both an active or passive application of force as well as the abuse of power or vulnerability. Force, fraud and coercion are vague terms in international law, as they lack explicit definition.¹¹¹ Subsuming a certain behaviour as coercive for instance is at the discretion of not only judges, but also prosecutors and border officials.¹¹² The 'relative amount of personal decision-making ability a trafficking victim retains'¹¹³ is concurrently pivotal and an ethically influenced, subjective matter. This can lead to a severe lack of victim protection.

2.2.3 Purpose

The final element is the purpose of exploitation. Sufficient subcategories are named in paragraph (a). Among the variety of exploitative practices, the explicit reference to prostitution reflects an ongoing debate in the anti-trafficking discourse. The differing framing of sexual exploitation and labour exploitation contributes to a stigma of trafficking as a gendered and hypersexual issue.¹¹⁴ As women's rights grew popular within the human rights discourse, feminist theories gained increased entry in governance and drafts of international jurisdiction. The negotiations leading up to the Trafficking Protocol were noticeably influenced by contemporary debates in the dominant member states.¹¹⁵ A key controversial was (and continues to be) the legality of prostitution.

110 Leggett T 'Hidden Agendas? The Risk of Human Trafficking Legislation' *South African Crime Quarterly* 9 (2016) 1-5 at 2.

111 Jaleel (2016) 575.

112 Kim K 'The Coercion of Trafficked Workers' *Iowa Law Review* 96 (2011) 409-474 at 460.

113 Wheaton EM, Schauer EJ & Galli TV 'Economics of Human Trafficking' *International Migration* 48.4 (2010) 114-141 at 116.

114 Jaleel (2016) 575.

115 Chuang JA (2010) 1657; Kotiswaran P 'Beyond Sexual Humanitarianism : A Postcolonial Approach to Anti-Trafficking Law' *UC Irvine Law Review* 4.353 (2014) 353-406 at 357.

One camp in the debate is represented by the (neo-)abolitionists. Often referred to as radical feminists, their leading thinkers hold the view that commercial sexual practice inevitably involves coercion, thus is exploitative by nature.¹¹⁶ Accordingly, prostitution perpetuates male dominance and has to be broadly prohibited.¹¹⁷ The opposition – a diverse group of pro-sex work and human rights activists, postcolonial scholars, the pro-decriminalisation lobby, liberal and materialist feminists – argues to distinguish forced prostitution from voluntary sex work so that the engagement in the latter does not entail a loss of autonomy or dignity.¹¹⁸ For fair and safe working conditions in the milieu, they advocate a regulatory framework.¹¹⁹ The Trafficking Protocol reflects joint efforts to expand previously narrow definitions of trafficking and its habitual equation with prostitution, and yet remains focussed on trafficking for the purpose of sexual exploitation.

Prostitution is not the only controversy in the human trafficking debate. Given the persistent dominance of industrialised countries, critical postcolonial arguments feature prominently in the anti-trafficking network.¹²⁰ Questions of definitional power and ideological dichotomies traverse not only this paper, but international law in general. A variety of actors feel called to define what human trafficking is and how to deal with it out of an even greater variety of motivations.¹²¹

2.3 THE INVOLVED: STAGES OF ACCOUNTABILITY

2.3.1 Trafficker

The main criminal of a trafficking offence is the trafficker. He or she identifies and places the victim(s) and is typically left with most of the profit. In the majority of

116 Barry K 'The Prostitution of Sexuality' *NYU Press* (1995); MacKinnon CA 'Trafficking, Prostitution, and Inequality' *Harvard Civil Rights-Civil Liberties Law Review* 46 (2011).

117 In addition to feminist thinkers, key actors holding this view include evangelical Christians, conservatives, and NGOs such as *Equality Now* and the *Coalition Against Trafficking in Women* (CATW) <https://catwinternational.org/our-work/> (visited 12 May 2020).

118 Thakor M & Boyd D 'Networked Trafficking: Reflections on Technology and the Anti-Trafficking Movement' *Dialectical Anthropology* 37.2 (2013), 277–290 at 285.

119 Refer to *Global Alliance Against Traffic in Women* (GAATW) <https://gaatw.org> (visited 13 May 2020); Kempadoo Kamala & Doezema J eds. *Global Sex Workers: Rights, Resistance and Redefinition*, New York: Routledge (1998) 12.

120 Kotiswaran P (2014); Thakor M & Boyd D (2013).

121 Sharapov K 'Giving Us the "Biggest Bang for the Buck" (or Not): Anti-Trafficking Government Funding in Ukraine and the United Kingdom' *Anti-Trafficking Review* (2014), 1–14 at 2.

cases the trafficker is part of a large network as opposed to operating autonomously. After selecting a victim, the trafficker takes care of any movements and isolations required to deliver the final product. Providing this service may include illegal border crossings, funding travel costs and relocation. As unique and highly developed each trafficking scheme might be – a common feature is usually the trustful relationship between victim and trafficker. Interviews with victims show that many experiences were perceived as respectful cohabitation instead of abusive exploitation.¹²²

Traffickers make sure that they know a great deal about the victims' private lives in order to have a leverage effect to force compliance, such as a threat to the safety of relatives. The overwhelming number of traffickers are male but in comparison to most other crimes 'women comprise a relatively large share of convicted offenders'¹²³. Especially when trafficking young girls, a female perpetrator is more likely to gain the trust of the victims. Due to a lack of prospects and the experienced trauma, in some cases former trafficking victims become perpetrators themselves.¹²⁴ Large transnational crime organisations have developed complex systems of routes, transactions and people. As soon as a basic infrastructure is built, the investment costs remaining for the trafficker are little.

2.3.2 Victim

In preparation of the crime, most perpetrators observe their victims over a long period of time. The generic environment to find vulnerable people is stricken by poverty and desperation. A disproportionately high number of victims are part of ethnic minorities and disadvantaged communities.¹²⁵ A history of abuse can be seen in many profiles. Again, a victim's consent does not oust the criminal content. Someone who is easily convinced of leaving home for a new and better life makes easy prey. Hence, runaways are at high risk. Traffickers achieve the required trust by raising hope, by promising high wages or a professional breakthrough. It may be conducive when traffickers and victims are from the same background. Particularly endangered are orphans, homeless people, and individuals who suffer from drug

122 Blazek M, Esson J & Smith DP 'Relational Geographies of Human Trafficking: Inequality, Manoeuvring and Im/Mobility across Space and Time' *Transactions of the Institute of British Geographers* 44.1 (2019) 63–78 at 68.

123 UNODC (2016) 7.

124 Shelley (2010) 4.

125 TIP (2014) 19.

addictions. Statistics show that women remain most affected.¹²⁶ The majority of female victims are being trafficked for the purpose of sexual exploitation; men and children often have to serve in forced labour, inter alia as beggars or soldiers. Depending on the current demand, victims are selected for certain features such as exotic origin, virginity, fighting experience, or other skills. In change for preferential treatment, the most manipulable out of a group of trafficking victims will often be given an alleged position of responsibility to watch over the other victims or help with the accounting and administration of the business.

Investigating human trafficking is seen to be the easiest at a low level, thus at victim stage. Monitoring the financial interactions of victims can facilitate investigations and may even lead them to the trafficker or the individual laundering the proceeds of the crime.¹²⁷ Victims of human trafficking for the purpose of sexual exploitation often show suspicious types of transaction. These may involve little to no expenses for daily needs like groceries, petrol or rent but extensive accommodation, restaurant and taxi fare payments.

2.3.3 Employer

Trafficked persons are often being sold to different employers for a variety of purposes both in the construction and textile industry, agriculture and domestic services. Their wages oftentimes get sent directly to the traffickers, who invoice the victims for the accrued costs of transport, migration, accommodation et cetera. In some cases, the employer might not be aware of the trafficked status of the employed person. Large companies often use offshoring and outsourcing as ways to keep their labour costs lean. They are seldom held accountable for their (indirect) involvement in trafficking.¹²⁸ In general terms, this means that trafficked workers are a cheap and uncomplicated source of labour for any market-orientated business, showing the neoliberal character of labour exploitation.¹²⁹

126 International Labor Organization & Walk Free Foundation *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, (2017); UNODC (2016).

127 FATF (2018) 21.

128 Sharapov K (2014) 3.

129 Mendel J & Sharapov K 'Human Trafficking and Online Networks: Policy, Analysis, and Ignorance' *Antipode* 48.3 (2016) 665–684 at 669.

In the case of trafficking for the purpose of prostitution, the employer is called a pimp. He or she gets most of what the prostituted person earns with the exploitative duty while controlling every step of theirs. The pimp and the trafficker may be identical and the prostituted person becomes interloped into the business by a mixture of lies and extortion. However, not every prostituted person is under the control of a pimp¹³⁰, and neither does 'being pimped' necessarily include forced prostitution or entail a trafficking history. Trafficked people are not always employed in the conventional sense of the word. Sometimes the aim is to merely sell the victim. Forced marriage and adoption fall under this category.

2.3.4 Consumer

Among the rather invisible actors of the human trafficking arena, people who use the service of a trafficked person, act as the driving force in the vast spread of the crime. Just like the employer, the consumer aims to pay the lowest price in change for the highest benefit.¹³¹ In the milieu of prostitution, this person is commonly referred to as John, 'the invisible subjects of the sex industry'¹³². That prostitution is the oldest business in the world serves as a common excuse. The John is often not aware of a person's trafficking history. In addition, interviews with men who use the services of prostituted women reveal a certain ignorance of coercive situations.¹³³ Among the interviewees, it is assumed that prostitution is always a free choice.

Another widely believed myth is 'that the concept of rape simply does not apply to women in prostitution'¹³⁴. The assumption that prostitution would help to prevent rape, legitimises violence against women. It creates an overall acceptance, almost compassion for the men who have to purchase sex in order to fulfil their needs. While misogynistic attitudes are prevalent, other issues certainly play a role, including toxic masculinity, peer pressure, a lack of effective deterrents.

130 Thakor M & Boyd D (2013) 285.

131 Wheaton EM et al (2010) 130.

132 Marttila AM (2008) 'Desiring the "Other": Prostitution Clients on a Transnational Red-Light District in the Border Area of Finland, Estonia and Russia' *Gender Technology and Development* 12 (2008) 31-51 at 42.

133 Farley M Bindel J & Golding JM *Men Who Buy Sex: Who They Buy and What They Know* London (2009) 6.

134 Farley M Bindel J & Golding JM (2009) 13.

Demand has a significant impact on the human trafficking market and therefore holds potential to combat the crime. Domestic jurisdictions vary enormously in their approaches towards prostitution. Germany and the Netherlands for example legalised prostitution so that both the offering and the receiving person go without charges. This is referred to as the sex work approach and aims at legitimising all aspects of prostitution in order for it to become a socially accepted occupation. It often goes in line with a regulation of the industry. Further research suggests what has been touched upon above, namely that 'paid sexual access to human bodies'¹³⁵ may raise the acceptance for dehumanising behaviour, particularly targeting female. So, while a regulation of the sector is aimed at the protection of sex workers, it may on the contrary legitimise sexual violence against women.

In contrast, the sexual exploitation approaches seek to abolish prostitution in general. There is no consensus on the most effective way to achieve this.¹³⁶ In roughly half of the African countries and most of South America there is no specific regulation to criminalise prostitution, while organised activities such as brothels and pimping are illegal. This approach pushes many sex workers on the streets and is likely to result into even more dangerous and criminal milieus.¹³⁷ Both the Russian legislation and a majority of the US chose the so-called prohibitionist approach, targeting all actors of prostitution with the power of criminal law.¹³⁸ The act of adult prostitution itself constitutes a crime. The person paying for sexual services can face charges for solicitation of prostitution and any middlemen involved in the transaction can be held accountable for pimping or pandering.

Another alternative is the so-called Nordic Model¹³⁹, which decriminalises the behaviour of those who are (being) prostituted. Instead exit-support services, which can be legally-run and state-funded, are provided. Canada, France, Iceland, Ireland, Israel, Northern Ireland, Norway, and Sweden adopted respective legislation in an approach to decrease the demand side of sexual exploitation through criminalising

135 Richardson K (2016) 7.

136 Simmons B, Lloyd P & Stewart BM 'The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking' *International Organization* 72.2 (2018) 249–281 at 253.

137 Limoncelli SA 'The trouble with trafficking: Conceptualizing women's sexual labor and economic human rights' *Women's Studies International Forum* 32.4 (2009) 261-269 at 262.

138 Chuang JA (2010) 1669.

139 For more information refer to <https://nordicmodelnow.org> (visited 29 April 2020).

the act of buying people for sex. This approach is deemed to account for the discrepancy between male and female power.¹⁴⁰

2.3.5 State

Legislation is only one aspect showing the influential power of national governments. Their role as a safeguard for human rights should force them to take preventive measures. So far, there has not been a lot of international attention drawn to national states' responsibility in creating factors that lead to trafficking. The conditions in which crimes like human trafficking flourish are manifold. In this context, neoliberal state policies with regards to the management of migration is an aspect, which that is too often neglected.¹⁴¹ Albeit its complexity, human trafficking is commonly pictured in a good versus bad framework, neglecting the role of states and other facilitating contributors.¹⁴²

2.4 THE FRAMING OF HUMAN TRAFFICKING

Although human trafficking is recognised as a crime by almost every country in the world – and a matter of international concern – it is not limited to transnational contexts. There is a national dimension as well. As the documented trafficking cases in Europe commonly show a transnational context, the EU attributes trafficking a border-crossing character. Whereas trafficking in other regions largely takes place at national level. Indian law enforcement agencies are faced with an internal problem, where local traffickers 'target those from the most disadvantaged social strata'¹⁴³.

2.4.1 Human Smuggling

Human trafficking is often confused with human smuggling, which in contrast does require both an illegal border crossing and in general the consent of the smuggled person. As stated above, committing human trafficking does not require any act of movement whatsoever. It can occur within one's own home. The two crimes are similar and may overlap, but a distinction is important in terms of victim protection. Incorrect expulsion harbours the risk of being re-trafficked. While trafficking requires an ongoing exploitation, the relationship between the smuggler

140 Richardson K (2016) 6.

141 Geiger M & Pécoud A 'International Organisations and the Politics of Migration' *Journal of Ethnic and Migration Studies* 40.6 (2014) 865–887; Sharapov (2014) at 3.

142 Milivojevic, Moore & Segrave (2020) 16-32 at 25.

143 TIP (2019) 239.

and the migrant usually ends after the border crossing and involves a commercial transaction. The smuggler's source of profit confines to the transfer fees, whereas the trafficker additionally acquires profits through the exploitative practise.¹⁴⁴

2.4.2 Human Rights

Like traditional human rights violations, human trafficking is characterised by the disproportionate power of perpetrators over victims.¹⁴⁵ The success of the crime hinges on the vulnerability of people, hence it thrives in milieus of inequality and marginalisation. A human rights-based approach to anti-trafficking is above all victim-centred in that it focuses on their identification and protection. It highlights the special vulnerability of women and children, while recognising the full spectrum of rights violations in the trafficking cycle.¹⁴⁶ The strong focus on sexual exploitation within the anti-trafficking discourse is neutralised here, because protection is equally advocated for all victims, regardless of the trafficking purpose.¹⁴⁷

This approach holds states accountable for providing the breeding ground for criminal behaviour, ergo, is popular among non-state actors.¹⁴⁸ Human Trafficking is no novelty to the human rights agenda, although mainly featured in the organised crime system. The Rome Statute constitutes trafficking in human beings as a crime against humanity, addressed within the context of enslavement.¹⁴⁹ Most international human rights treaties and conventions refer to trafficking.¹⁵⁰ Domestically, border security seems to precede the protection of victims' rights.¹⁵¹ While drawing attention to the long-neglected victims' perspective, the human rights-based approach does

144 UNODC (2008) 5.

145 Bassiouni MC et al *Addressing International Human Trafficking in Women and Children for Commercial Sexual Exploitation in the 21st Century Revue Internationale de Droit Penal* (2010) 488.

146 Simmons B et al (2018) 252.

147 Pescinski J (2015) *A Human Rights Approach to Human Trafficking* United Nations University, Institute on Globalization, Culture and Mobility, available at: <https://gcm.unu.edu/publications/articles/a-human-rights-approach-to-human-trafficking.html> (visited 18 May 2020).

148 Amnesty International (2004; 2010).

149 Rome Statute of the International Criminal Court (1998) Article 7 Para 2 Subparagraph c.

150 They include the Universal Declaration on Human Rights (1948); International Covenant on Civil and Political Rights (1976); Convention on the Elimination of all Forms of Discrimination Against Women (1979); Convention on the Rights of the Child (1990); UNCTOC and the supplementing Protocols (2000).

151 Charnysh V, Loyd P & Simmons BA 'Frames and Consensus Formation in International Relations: The Case of Trafficking in Persons' *European Journal of International Relations* 21.2 (2015) 323–351 at 334.

not offer grounds for all required interventions. With regards international cooperation and law enforcement challenges, a pure human rights channel is insufficient.¹⁵²

Nevertheless, a significant part in literature argues, that human rights should not only be an additional consideration.¹⁵³ They constitute the common ground ‘which should serve as a foundation and reference point for all undertakings in this area’¹⁵⁴. Humanitarianism¹⁵⁵ refers to the increasing manner in which persons and groups are perceived as particularly vulnerable with regards to their migration status or sexual behaviour. Humanitarian concerns often serve as justification for anti-migration or anti-sex work policies and interventions. The distinct focus on the sexual exploitation dimension of human trafficking makes it an apparent female problem.

2.4.3 Transnational Organised Crime and Migration

Human trafficking is the fastest growing illicit flow¹⁵⁶ and supposedly interconnected with other crimes such as money laundering and illegal migration. Not least because its potential to fund further crime, terrorism and war, human trafficking rapidly gained attention on the international agenda over the past two decades.¹⁵⁷ Although the link to an increase in other illicit flows is not based on available data¹⁵⁸, human trafficking is commonly viewed from an organised crime perspective. As touched upon above, threats to national security and state authority urge states to take measures, whereas endangered human rights often fade into the background of motives. Globalisation in general, and newly opened borders specifically, brought chances and challenges for the global community. Especially developing and newly established states were tested on the ‘ability to control their borders and stabilize their legal institutions’¹⁵⁹.

152 Gallagher A (2001) 982.

153 Gerry F, Muraszkiwicz J & Iannelli O ‘The Drive for Virtual (Online) Courts and the Failure to Consider Obligations to Combat Human Trafficking – A Short Note of Concern on Identification, Protection and Privacy of Victims’ *Computer Law and Security Review* 34.4 (2018) 912–919 at 916; Simmons B et al (2018) 252.

154 Gallagher A (2001) 1004.

155 Kotiswaran P (2014).

156 Shelley (2010) 2.

157 Simmons B et al (2018) 250.

158 Simmons B et al (2018) 275; Weitzer (2014) 13.

159 Simmons B et al (2018) 254.

Transnational organised crime increased significantly in scope and impact.¹⁶⁰ The growth is linked to trade liberalisation, having encouraged mass movements of people and commodities around the world. International crime networks emerged at unprecedented pace to a point where border control is a number one national concern. This drives a competition, which entails legislative pressure. On one side, states want to secure their legal authority and lower their crime rates. Concurrently, economic growth is on top of the agendas. Scarce trade and tax regulation can create business friendly markets that attract investment and financial flows. Disparate domestic legislation can lead to crime diversion. When a certain business is criminalised in one country it may simply be shifted to another where regulation has not taken place (yet).¹⁶¹ These dynamics are likely to affect neighbouring countries, leading to border conflicts. Instead, the crime could be deterred by raising the costs and risks for criminals. Viewing human trafficking as a pure trans-border issue will only ever tackle a part of the problem. Many industrialised countries are criticised for having exploited the Trafficking Protocol solely as an instrument of border control.¹⁶² There is a need for international cooperation and mutual legal assistance in law enforcement, which is not much highlighted in the discussions about the migration side of the problem.

2.4.4 Economy and Labour

While it is important to understand human trafficking as an encroachment on human rights, the economic element shall not go unrecognised. Trafficking creates a market, where human beings are the product. The traffickers embody the supply side and demand is determined through employers and consumers. The involved actors base their decisions on cost-benefit analyses. Easy access, low start-up costs, minimal risk, high profits, and a large demand make the market so appealing to traffickers.¹⁶³ Market forces do not abide by the law.

Global competition intensifies based on product features, availability, the quantity of 'alternative products available, and the negotiating acumen of the

160 UNODC (2010) 39-52.

161 Simmons B et al (2018) 257.

162 Kotiswaran P (2014) 361.

163 Shelley (2010) 4.

trafficker'¹⁶⁴. As cheap and replaceable labour force, trafficking victims are at risk of abuse in their new work environment. There are little incentives needed to keep them obedient. Using anti-human trafficking law as a corrective for state failure in migration management neglects the economic facet and the link to domestic labour markets.

2.4.5 Sexual Exploitation

Historically, anti-trafficking was primarily located within the sexual exploitation and prostitution context. Abolitionists joined the table and anti-sex work efforts were disguised as anti-trafficking efforts.¹⁶⁵ The political and moral debate on this point would exceed the scope of the present study. Hence, the sexual exploitation frame shall only be mentioned for the sake of completeness.

2.4.6 Interim Findings

Domestic legislation and international treaties follow the elucidated framings. Depending on the frame, the main obligations range from securing human rights to enforcing stricter (migration, prostitution, trade) regulation. Preventing policy diffusion by setting global standards cannot come at the cost of states' sovereignty. At the same time, a competition about the strictest governance is also not conducive. Social norms and market-driven economic logic imply an assessment of 'the counterintuitive economic consequences of anti-trafficking regulatory options'¹⁶⁶.

The interface between law and economy makes the fight against human trafficking part of a larger concern surrounding the forces of globalisation.¹⁶⁷ Apart from a social issue that highlights political cleavages, human trafficking is in essence an alarming humanitarian crisis. The several billion USD per year¹⁶⁸ generated by this industry has resulted in a shift of focus onto economy. The business deprives freedom for profit. A consensus is emerging towards 'a holistic approach where the

164 Wheaton EM et al (2010) 119.

165 Musto J, Thakor M & Gerasimov B 'Editorial: Between Hope and Hype: Critical evaluations of technology's role in anti-trafficking' *Anti Trafficking Review* 14 (2020) 1-14 at 2.

166 Kotiswaran P (2014) 363.

167 Bassiouni MC et al (2010) 490.

168 Despite the lack of statistics, estimating the proceeds of trafficking has become a rhetorical strategy trend and numbers from 5 to 120 billion can be found, see e.g. Raymond JG, D'Cunha J, Dzuhayatin SR et al 'A Comparative Study of Women Trafficked in the Migration Process' *CATW* (2002); ILO (2014) 13.

crime control aspects of trafficking were addressed along with traditional human rights concerns.¹⁶⁹

Joining forces in counter-action does not come without challenges, as will be seen throughout this study. So far, it has pointed out the urge to act globally and in an intersectional manner.

2.5 THE CAUSES AND FACTORS

Concerted counter-efforts are sufficient when the reasons for trafficking are identified and understood. As suggested above, a variety of circumstances can lead to human trafficking. Their continuous assessment is an essential tool to improve the response to the developing crime. While some factors can be understood as roots, others merely facilitate the crime. Despite an overlap of these categories, a separation can contribute to understand the evolution of trafficking and adapt corresponding counter-measures. Additionally, the elimination of root causes should be located in the prevention work area as opposed to the reactive manner in which to deal with the amplification factors.

2.5.1 Root Factors

The breeding grounds include political instability and conflict, poverty, corruption, lack of employment opportunities and – above all – inequality. Inequalities between and among states, communities, and individuals are causative for the emergence of organised crime in general.¹⁷⁰ They manifest in social inequity, inadequate health care, poor housing conditions, and an overall preservation of traditional class and caste systems.¹⁷¹ In some cases, simply belonging to a suppressed or disadvantaged part of society can lead to mental illness, substance abuse, violence, and homelessness. These factors raise the risk for exploitation.

Correlated with inequality, poverty is another deep-seated root of human trafficking. Victims from low-income regions, driven by the prospective prosperity abroad, are easy targets. The lack of alternatives is a strong push-factor. According to the most recent published estimates on extreme poverty, ten percent of the world's

169 Gallagher A (2001) 982.

170 Blazek M (2019) 17.

171 Barner J et al (2014) 149.

population 'lived on less than US\$1.90 a day'¹⁷². Poverty is, inter alia, provoked by a lack of employment opportunities. While especially in rural areas of developing countries the job variety has never been great to begin with, the recruitment of lower wage jobs decreases even more over time due to digitalisation.¹⁷³ Lacking technological competence, many are hindered to even apply for an aspired job.¹⁷⁴

Other root causes include corruption, political instability and conflict. A correlation between corruption and human trafficking can be ascertained on the basis of the two leading reports in this field. The above-mentioned TIP evaluates each state with regards to their compliance with international anti-trafficking standards. The operating principle of the report is the analysis of national trafficking data and legislation efforts in order to rate states into so-called tiers. Tier 3 countries are defined as 'countries whose governments do not fully meet the TVPA's minimum standards and are not making significant efforts to do so'¹⁷⁵.

Transparency International's Corruption Perception Index (CPI) on the other hand is an instrument to determine the distribution and scale of global corruption. As the name indicates, the processed data purely shows how corruption is perceived as opposed to how much corruption actually takes place. In doing so, the CPI recognises the problem of accumulating reliable data on corruption due to its clandestine nature and various definitions. Instead, the report focuses on tangible information that can be collected. This approach is certainly controversial, yet it constitutes the number one tool to get a grasp of the overall corruption dimensions – especially for industrialised countries.¹⁷⁶ The concept of the CPI is to ask multi-sectored stake-holders, government officials and private individuals about their individual perception of corruption.

When compared, the two datasets show that the majority of states rated as Tier 3 or even special cases under the TIP also show a very low¹⁷⁷ CPI score. These

172 World Bank 'Supporting Countries in Unprecedented Times' *Annual Report 2020*.

173 Bessen JE 'How Computer Automation Affects Occupations: Technology, Jobs, and Skills' *SSRN Electronic Journal* 15 (2015) 31.

174 Zdravkova K 'Reconsidering Human Dignity in the New Era' *New Ideas in Psychology* 54 (2019) 112–117 at 114.

175 TIP (2019) 37.

176 The morally charged debate, led by developing countries against the definitional power of the *first world*, exceeds the scope of this work.

177 On a scale from 0 (highly corrupt) to 100 (very clean).

countries include South Sudan, Syria, Venezuela, Libya, Somalia, and Yemen. Both the perception of corruption and the occurrence of human trafficking are high in these states. Only in a few exceptions the hypothesis does not hold true. Ranking 25 (out of 180 countries) on the CPI, Bhutan shows a relatively low corruption perception, while being listed as a Tier 3 country on the TIP. The opposite goes for Chad and Haiti, which are ranked 165 and 161 on the CPI, while counting as TIP Tier 2 countries (among states like Germany).

After all, corruption and human trafficking naturally correlate. Bribable border officials facilitate the trafficking flow and corrupt societies function as push factors. Because the discussed root causes tend to exist in countries of origin and urge people to leave their homes, they are referred to as push-factors. They are contrasted by pull-factors. Destination countries typically attract with higher standards of living and better working conditions (perceived, anticipated or actual), plus the ever-growing demand for cheap labour.¹⁷⁸

2.5.2 Facilitating Factors

The integration of economies worldwide into a global market is fuelled by human innovation. Trade, capital flow, migration and movement of people, as well as dissemination of knowledge and technology make globalisation an economic issue with social, cultural and political dimensions. Transnational interconnectedness and the liberation of markets have enabled the flow of data, persons, ideas, goods, services, capital, funds, and technology. But well-intended trade agreements and international treaties have also widened inequality gaps between states.¹⁷⁹

It is thought that pre-existing problems such as poverty, discrimination, rural-urban divide, disadvantages, and class systems are intensified.¹⁸⁰ These problems coincide with the aforementioned root causes for human trafficking, suggesting a link. By enabling cross-border transfers, globalisation is seen as a facilitator for transnational organised crime.¹⁸¹ Declined state intervention paired with free markets and reduced border controls are open for exploitation. Some scholars attribute

178 Chuang JA (2010) 1703.

179 Barner J (2014) 150; Shelly L (2010) 42.

180 Kar D 'Globalisation, Illicit Financial Flows Widen Inequality' *Thomson Reuters Foundation* (2013) available at <https://gfintegrity.org/press-release/globalisation-illicit-financial-flows-widen-inequality/> (visited 11 June 2020).

181 Shelley (2010) 2.

globalisation a significant role in the growth of human trafficking.¹⁸² Accordingly, organised crime groups established vast transnational networks that profit from the growing market economy.¹⁸³ The role of globalisation, alongside industrialisation and capitalism, is de facto that of a facilitating factor.

Already vulnerable individuals typically benefit least from human innovations, economic developments, and digital evolutions.¹⁸⁴ Forced labour, sexual exploitation, unregulated organ removal and sale, child pornography and other manifestations of human trafficking have existed prior to globalisation, even under communist lead regimes.¹⁸⁵ However, the access to these practices has become easier and cheaper. In the absence of data, researchers rely on the visibility of the problem. A notable example for this is the 'industrialization of sexual exploitation'¹⁸⁶, becoming visible through the amount of pornography available on the internet, advertisements for sexual entertainment, mail-order-bride agencies, sex tourism¹⁸⁷ et cetera.

Historical events are presumed to have influenced human trafficking, for example the collapse of the Soviet Union at the end of the Cold War.¹⁸⁸ Conflicts impoverish and displace people.¹⁸⁹ Post-communist societies were often left with destroyed social and economic environments. Leaving a society alone with the consequences of a system transition additionally leads to mistrust and a lack of identification. After all, natural disasters are also mentioned among the factors, which can leave people impoverished, vulnerable and without alternatives.¹⁹⁰

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- 182 Castells M *The Rise of the Network Society* Volume 1, Second edition (2009) 160.
183 Charteris A, German C, Hansrani Z et al 'Health at Risk: Health Implications of Human Trafficking in the Context of Globalization and Migration' (2018).
184 Latonero M, Dank M & Wex B *Technology and Labor Trafficking in a Network Society*, (2015) 9.
185 Jolluck KR 'Combating the Trafficking of Women in Eastern Europe' *Stanford University* (2012) 15.
186 Hughes DM 'The Internet and Sex Industries: Partners in Global Sexual Exploitation' *IEEE Technology and Society Magazine* 19.1 (2000) 35–42 at 36.
187 See e.g. Abu-Ali A & Al-Bahar M (2011) 793; Bassiouni MC et al (2010) 484; Geldenhuys K (2018) 13; Limoncelli SA (2009) 266.
188 Shelley (2010) 38;
189 OSCE *Leveraging Innovation to Fight Trafficking in Human Beings : A Comprehensive Analysis of Technology Tools* (2020) 53.
190 Shelley (2010) 38.

The identified push- and pull-factors mutually define each other. Attention must be drawn to states' responsibility for creating and entertaining these conditions. Generally speaking, the ones responsible for and most profiting of industrialisation are usually not the countries suffering from the changes. Additionally, high-income countries tend to have influential power but are hesitant to act. So far, the accountability of fast developing industries for growing inter alia at the costs of low-income countries is disregarded.

When comparing the Human Development Index (HDI)¹⁹¹ with the CPI and the TIP, consonances show for certain low-income countries. This suggests that the assets needed for development are often siphoned off to further developed countries and offshore havens.

2.6 THE RESPONSE

Having outlined the phenomenon of human trafficking, the need for a comprehensive response is evident. The anti-trafficking arena consists of multiple stake-holders and actors with diverse interests and motivations. This complexity combined with the lack of credible data hinder a consensus on the best way to combat human trafficking.

2.6.1 Who responds?

The first question is who should take measures. Possible public sector actors include parliaments and law enforcement agencies both on the regional, national and international level. It lies in the power of states to reform (economic) systems and constitute legal fundamentals for further action. Prosecution, the creation of equality and the assurance of access to free and public education are state duties. National states are not only responsible for reacting to criminal behaviour, but moreover to take preventive measures. Several UN bodies deal with human trafficking.¹⁹² It has been an issue on the international agenda for many decades. Drafting effective legislation has proven to be a cumbersome process.

191 UNDP Human Development Index available at <http://hdr.undp.org/en/content/human-development-index-hdi> (visited 11 June 2020).

192 United Nations Office on Drugs and Crime (UNODC); Inter-Agency Coordination Group against Trafficking in Persons (ICAT); United Nations Children's Fund (UNICEF); The Office of the High Commissioner for Human Rights (OHCHR); Active Communities against Trafficking (ACT); United Nations Global Initiative to Fight Human Trafficking (UN:GIFT).

The private sector on the other hand is more flexible and adaptable. The industry is able to react faster than the public sector, and through lobbying can influence state policy. But business is profit-driven. Business can also involve human trafficking, for instance through third-party recruiters. Companies are not willing to take preventive measures without strong incentives; one example is a threat to suppliers' selling power if not compliant with supply chain standards.¹⁹³

However, corresponding codes of conduct and due diligence regulations in this regard exist already, some of which effectively safeguarding workers' rights and preventing crime. Investment treaties are another factor to enhance compliance. When the correct behaviour is rewarded, following business interest can be tantamount to civil rights protection. There have been regional attempts aside from legislation to innovate the fight against organised crime. Cross-sector cooperation including financial industries to track suspicious transactions have been in focus. Over the past decades, there were several newly initiated taskforces¹⁹⁴ like this.

The general public and NGOs are another category of potential actors. Through critical assessments on both state and non-state action they have the power to draw attention to structural problems. With the help of awareness raising campaigns, the role of society can be that of a critical observer. With enough information on hand, certain structures can be identified as trafficking situations. Some scholars and practitioners advocate for a larger victim and worker involvement in the counter-trafficking work. Victim protection often falls into the scope of action for NGOs, even though the protection and reintegration of people is primarily a state responsibility.

As shown in this subsection, there is no quick-fix to human trafficking. The complex problem calls for a differentiated response, incorporating multiple actors for their different features. Most of the potential approaches require a legal basis. Hence, the focus will now shift to the current legal situation.

193 Respective approaches can be seen within the *Worker-Driven Social Responsibility Network* <https://wsr-network.org/what-is-wsr/> (visited 13 June 2020).

194 See e.g. the *Financial Action Taskforce* (FATW) for more information refer to <https://www.fatf-gafi.org> (visited 25 November 2020).

2.6.2 Policy and Legal Framework

There are different juridical approaches to human trafficking. The main channel is criminal law, while labour and migration law are less common alternatives. The way in which human trafficking is framed manifests itself in the area of law used to fight the problem. As touched upon above, globalisation has had a twofold effect on policy-making. On the one hand, free market competition urges jurisdictions to attract business, investment, and capital through a liberalisation of markets and other transaction-friendly policy innovations. On the other hand, regulations on certain flows or transactions are intensified.¹⁹⁵ Before the turn of the century, human trafficking legislation was part of the human rights agenda. The discourse was morally charged, thwarting a common response. A paradigm shift in the international debate has resulted into the current organised crime centred approach. In the past two decades, jurisdictions focused on constituting the offence of human trafficking in their criminal codes, following the global standards laid out by the UN. The majority of member states have drafted respective laws safeguarding the 4P Paradigm.

2.6.2.1 The Trafficking Protocol

The Trafficking Protocol was the first legal instrument to constitute a universal consent on trafficking in human beings.¹⁹⁶ It is one of the three so-called Palermo protocols supplementing the UNTOC and guarded by the United Nations Office on Drugs and Crime (UNODC). The controversial shift to the organised crime framework reflects the perception of trafficking as a threat to security.

The protocol includes the mandatory duty for the states parties to criminalise all forms of human trafficking and prosecute traffickers. It is silent about possible punishments for trafficking. The scope of application is limited to transnational offences involving organised crime groups. States parties are supposed to draft domestic anti-trafficking laws, which cover the areas left out in the protocol and correct its shortcomings. One section is dedicated to the protection of victims and their status in the destination countries as well as with their repatriation to the states of origin. The terminology of this section is rather precise as the norms name concrete measures on, for example, the recovery of victims including appropriate

195 Simmons B et al (2018) 275.

196 Gallagher A (2009) 790.

housing, medical and psychological assistance as well as education (Article 6 Paragraph 3). Nevertheless, there is an optional tone to these measures. Phrases such as ‘in appropriate cases and to the extent possible under domestic law’ suggest that the regulations are mainly hortatory for the states parties. With regards to the absence of obligations, said section is criticised for not meeting international human rights standards on victim protection.¹⁹⁷

The section ‘prevention, cooperation and other measures’ is mainly seen as the protocol’s law enforcement and security facet. It serves as a border control tool for high-income countries against migrants from low-income areas.¹⁹⁸ The absence of victim identification standards¹⁹⁹ has been pointed out as one major weakness of the protocol, precisely in distinction to illegal and smuggled migrants.²⁰⁰

The trafficking definition provided by the protocol is expansive. Literature has appraised this as anything between a lack of clarity²⁰¹ to sufficiently broad in order to encompass most forms of human trafficking²⁰². In effect, the wide scope enables individual national interpretation, while certain aspects are regulated uniformly.

The textual vagueness of the protocol is interpreted as a price for the high ratification rate. Only three years after its adoption the protocol could enter into force. Although it has been a milestone in the global concert against human trafficking and a long sought-after consensus among countries, it is not immune to criticism. The critique is aimed at the lacking independent evaluation mechanism besides the UNTOC inherent assessment of implementation of the basic standards.²⁰³ In order to create a consensus among states parties²⁰⁴, definitions and obligations were held vague.

197 Gallagher A (2001) 980.

198 Kotiswaran P (2014) 361.

199 Iroanya RO ‘Human Trafficking with Specific Reference to South African and Mozambican Counter-Trafficking Legislation’ *Acta Criminologica: Southern African Journal of Criminology* 27.2 (2014) 102–115 at 108.

200 Gallagher A (2001) 994.

201 Kotiswaran P (2014) 369.

202 Gallagher A (2009) 791.

203 UNTOC Article 32 establishes a Conference of the Parties to the Convention to periodically review the implementation of the convention and the protocols thereto as well as improve the capacity of states to combat transnational organised crime.

204 Jaleel (2016) 575.

The approach of the Trafficking Protocol is comprehensive, expressing the drafters' vision of concerted counter-trafficking efforts. Only through this transnational justice framework was it possible to address issues like mutual legal assistance, extradition, and criminal jurisdiction. Similar to other international treaties, the protocol relies on a blaming and shaming system among the states parties instead of applying a strict monitoring system. Although no control mechanism has initially been established, the aftermath of the convention elaborated specific procedures and rules for implementation review.²⁰⁵ The Conference of the Parties to the UNTOC finally adopted an implementation review mechanism.²⁰⁶ In accordance, the assigned intergovernmental expert group finalised a self-assessment questionnaire for the states parties. It contains 54 questions about the domestic legislation in the field of human trafficking. In addition to the questionnaire, states have the possibility to upload any relevant data or documents to a knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC). Hence, the review of the implementation of the protocol is based on the information provided by the states.

The pure reliance on criminal law raised criticism. A counter-example is the Indian approach, where a combination of labour law and criminal law mechanisms is an assumed more efficient way, considering the high corruption rate. This could hold true for other countries with instable or corrupt governments.²⁰⁷

A final shortcoming of the protocol is the failure of mentioning technology-driven trafficking. However, the broad definition can include the recruitment of trafficking victims through online technology. While the protocol does not explicitly address internet-facilitated crimes, the broad scope allows for that inclusion.²⁰⁸

205 The Conference of the Parties to the UNTOC (2018) Resolution 9/1.

206 UNODC (2019) available at <https://www.unodc.org/unodc/en/organized-crime/intro/review-mechanism-untoc.html> (visited 24 June 2020).

207 Kotiswaran (2004) 391.

208 Kunze EI 'Sex Trafficking Via The Internet: How International Agreements Address The Problem And Fail To Go Far Enough' *Journal of High Technology Law* 1 (2010) 241–289 at 271.

2.6.2.2 Other Instruments

Subsequent regional action has indeed closed some gaps²⁰⁹. In 2005 the CoE drafted the Convention on Action against Trafficking in Human Beings, monitored by a Group of Action (GRETA) and currently ratified by 47²¹⁰ member states.

An example for a concerted action task force is the Global Action against Trafficking in Persons and the Smuggling of Migrants (GLO.ACT). The four-year (2015-2019) joint initiative by the UNODC and the European Union (EU) was realised in partnership with the International Organisation of Migration (IOM) and the United Nations Children's Fund (UNICEF). An objective of the project was to enhance the implementation of the Trafficking Protocol and the so-called Smuggling Protocol.²¹¹

Independent from the UNODC structure, the above-mentioned TIP evaluates international efforts to combat trafficking and to adopt international standards. It is supposed to function as a monitoring mechanism, motivating states to enhance their efforts. The report is in critique for the questionable domestic changes and reforms it fortifies in some countries in order to increase their ranking.²¹² 'Still, an assessment of such unintended consequences should not dissuade us from improving the bargaining power of workers.'²¹³

Former US President, Barack Obama, has laid a significant emphasis on the fight against human trafficking.²¹⁴ In a 2012 federal anti-trafficking campaign he has made distinct statements, following the policies of the Bush administration with

209 Gallagher A (2009) 791.

210 Ratification status available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/signatures?p_auth=bKsFe7TP (visited 20 June 2020).

211 <https://www.unodc.org/unodc/en/human-trafficking/glo-act/overview.html> (visited 24 June 2020).

212 e.g. when minimum wage is a mandatory labour law an unintended effect could be less employment and more people at-risk of being trafficked.

213 Kotiswaran (2014) 392.

214 Latonero M et al *The Rise of Mobile and the Diffusion of Technology-Facilitated Trafficking* USC Annenberg Center on Communication Leadership & Policy: Center on Communication Leadership & Policy (2012) at 14; Harris R & Goncalves D *Combating Human Trafficking* (2017) at 3; Tien MT 'Human Trafficking: The Missing Male Victim' *Public Interest Law Reporter* 18.3 (2013) 207–214 at 211; TIP (2014) 6.

regards to anti-trafficking, a clearly abolition-motivated approach.²¹⁵ The focus of the US American anti-trafficking agenda lies on combatting the sexual exploitation of women and children. In situations involving prostitution, the arrest-to-assist model is predominant. A major drawback of this is that the protection comes in form of imprisonment and at a time when the exploitation has already taken place²¹⁶. What this makes visible is that instead of empowering sex workers, the aim is to criminalise prostitution. Assisting functions as a justification for arresting.

2.6.2.3 With Regards to Technology

However, most instruments are kept rather broad and largely remain silent on the issue of technology. Although the link to human trafficking has gained attention on the international agenda, it has not yet been integrated in the main treaties. Particularly the use of new technologies in counter-trafficking requires regulation in order to guarantee a legal and careful handling of sensitive data.

The CoE Convention on Cybercrime was adopted in 2001 and entered into force in 2004. It targets computer system facilitated crimes and those crimes that harm computer systems. Online child pornography is addressed, but there is no further regulation on internet content promoting the exploitation of trafficked persons. Nor does the convention mention internet technology that facilitates trafficking. Another multilateral treaty, which could be expected to mention technology, is the ILO Convention 29 on Forced Labour from 1930 plus the June 2014 Protocol thereto. Both texts ignore a technological impact on forced labour. Neither does the ILO Domestic Workers Convention from 2011 address the topic. As set out above, technology is not a matter of focus in the Trafficking protocol either. But it can be found at a few points in the UNTOC. The foreword thereto states, that

criminal groups have wasted no time in embracing today's globalized economy and the sophisticated technology that goes with it. But our efforts to combat them have remained up to now very fragmented and our weapons almost obsolete.²¹⁷

215 Thakor M & Boyd D (2013) 283.

216 Musto J 'The Limits and Possibilities of Data-Driven Antitrafficking Efforts' *Georgia State University Law Review* 36.4 (2020) 1147–1172 at 1154.

217 Annan K A, Secretary General (2004) foreword to the UNTOC at iv.

As this statement appreciates the changes brought by a social evolution, it highlights the need for adaptation to technological advancement. However, being mentioned in the foreword is similar to in the preamble. While showing the will of states parties in that regard, it also reflects the failure to integrate the issue in the binding text of the treaty. Article 24 UNCTOC calls states to guarantee the safety of witnesses in criminal proceedings. In order to prevent retaliation or intimidation in testimony situations, paragraph 1 subparagraph b advises the use of communication technologies. As the provisions of the Convention apply mutatis mutandis to the supplementing Trafficking Protocol, they are applicable to trafficking cases. This is one potential use of new technologies, such as video communication, with regards to the protection aspect of counter-trafficking. The partnership aspect is addressed in article 27 paragraph 3 UNCTOC, where law enforcement cooperation among states parties is advocated 'to respond to transnational organized crime committed through the use of modern technology'²¹⁸. Yet, the term 'modern technology' is not defined in the convention, nor can one find any examples on how cooperation shall be designed. Finally, the use of technology in the investigation phase is addressed in article 29 UNCTOC, which is titled 'Training and Technical Assistance'²¹⁹.

Subparagraphs g and h of paragraph 1 mention new law enforcement equipment and methods using modern technology. The broad text leaves space for interpretation due to the differences in technological advancement in the member states. While one state might have a sophisticated modern technology system in place for combating organised crime, in another the resources are lacking to build such a system. Challenges can also include a lack of know-how or privacy concerns. In order for a high ratification rate, potential member states need to be able to implement all the provisions of the convention, hence the broad average. No other international legal instrument deals with the intersection of technology and human trafficking. This leaves the definitional framework to domestic jurisdictions, some of which have found ways to regulate the use of technology in counter trafficking.

218 UNODC (2004) 30.

219 UNODC (2004) 31.

In the United Kingdom, a recently published study highlights that legislation can lure societies in a 'false sense of security'²²⁰. Regarding the intersection of crime control, privacy and data protection, legislation only covers measures for criminal proceedings, while no guidelines have been developed on the use of technologies in the investigation phase.²²¹ Legislation in this regard include the OECD Guidelines Governing the Protection of Privacy and Trans-border Flows of Personal Data (1980); the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data 108 (1981); the Council of Europe; and the United Nations Guidelines Concerning Computerized Personal Data Files (1990). The reformed EU Directive on Data Protection introduces new principles of transparency and accountability including novel reforms for the consent of individuals as well as the right to be forgotten and the right to data portability.

2.6.3 Wrapping up

The Problem inherent to internationally standardised approaches is the agreement on common definitions and obligations. A treaty's ratification rate regularly depends on the complexity of the subject matter in question.²²² Finding a consensus is especially challenging when it is sought for morally charged issues, such as the legality of prostitution; the maximum age for child pornography; the legality of entrapment as an investigation technique; the requirements for consent; criminal liability; or procedural police powers. The tension between the consistent prosecution – or affirming a global understanding of human dignity – on one side and recognising individual cultural and socio-economic features of national states – or pluralism – on the other must be balanced. Notwithstanding state sovereignty, a least minimum of effective international standards is necessary.²²³ Despite a rise in human trafficking cases²²⁴, and whilst the Trafficking Protocol is widely implemented (national legal frameworks correspond to international law), local law enforcement agencies still fail

220 CSJ & Justice & Care 'It Still Can Happen Here: Fighting UK Slavery in the 2020s Contents' (2020) 6.

221 Gerry F et al (2016) 206.

222 Council of Europe (2001) Explanatory Report ETS 185 to the Convention on Cybercrime.

223 Council of Europe (2002) Group of Specialists on the Impact of the Use of New Information Technologies on Trafficking Inn Human Beings for the Purpose of Sexual Exploitation (EG-S-NT) Final Report, Strasbourg at 62.

224 Foot K & Vanek J (2012) 1; Obertová Z & Cattaneo C (2018) 47.

to sufficiently recognise and prosecute the crime, leading to an impunity gap for trafficking victims.²²⁵

[W]hen exploitation has been framed as a rights violation, state responses have been modest and episodic. But when framed as a component of transnational criminal activity, the response has been swift and more or less global.²²⁶

The principle of subsidiarity in international law, which safeguards a degree of independence for national states, can be of help when the aim is to counterbalance the above-mentioned tension. With divergent jurisdictions, the geographical location of a perpetrator or a server can neutralise the law. Furthermore, the lack of reliable research hampers concrete legislation and international criminal jurisprudence.

2.7 INTERMIN FINDING

The review of public and private action this section reflects the previously identified problems. With unclear definitions a concerted approach is not agreed on – ergo the lowest common denominator is a vague framework with non-measurable effects. The industry’s modus operandi often deviates from the realities of victims. In addition, some approaches are not financially independent and rely on private sector funding. Worker-driven approaches are emerging alternatives.

This chapter has explained the phenomenon of human trafficking, which is comprised of the three elements: act, mean, and purpose. The stages of involvement and accountability were shown. The various lenses through which human trafficking is understood indicate a multi-faceted problem. Only an intersectional approach can sufficiently combat the crime. A limitation to one area of law or sector can have counterproductive effects. Instead, a constructive dialogue about and among the divergent understandings within the anti-trafficking arena could facilitate sustainable change. The challenge is to unite the various stakeholders.²²⁷ Creating a powerful international response requires common objectives and overcoming the challenges posed by legal, cultural, political, and ethical contrasts. Aside from international jurisdiction this can be achieved through community-based attempts, self-regulatory

225 OSCE (2020) ‘Prosecute human traffickers and deliver justice to victims’ *OSCE Alliance Conference against Trafficking in Persons*, Vienna <https://www.osce.org/cthb/457702> (visited 5 January 2021).

226 Simmons B et al (2018) 250.

227 Sharapov K (2014) 2.

boards, and awareness campaigns. Sustainable counter-measures combine long-term preventive measures to fight the root causes of trafficking with ad-hoc responses to help the currently affected. After all, their benefit should be the underlying purpose of all efforts. Less focus on economic growth and border security could be a step in the right direction.

After having set the framework around human trafficking, the following chapter will add new technologies. Whether this aspect poses more challenges on the already difficult problem or can help solving it, will be matter of discussion.



3 Chapter Three: A Transformation through New Technologies?

3.1 INTRODUCTION

This chapter introduces the impact that technology might have had on trafficking. An emphasis is made on the fact that technology has intentionally not been mentioned as a cause for trafficking. In the absence of credible research data, technology could merely be categorised as a contributing factor. This will be dealt with later in further detail, in order to now focus on contextualising technology within the human trafficking framework. The term technology in this work generally refers to information and communication technologies (ICTs). New technologies in specific shall mean those ICTs that constitute networked and digital environments in which information are exchanged.²²⁸

There is a regulation gap of global scale regarding the link between human trafficking and technology. Crimes committed online are not exhaustively covered by penal codes. In addition, the border-crossing character of the internet makes establishing a correspondent legislation a global challenge. In the absence of 'reliable statistics on the magnitude of trafficking'²²⁹, political will towards legislative reforms is scarce. The lack of data leads governments and international bodies to base their decisions on what can 'only be described as guesswork'²³⁰. The clandestine nature of human trafficking combined with the unexplored potential of new technologies suggest that most of the statistics are inaccurate or even false. However, research outputs can draw the required attention. In order to receive funding and inspire change, the shocking effect of high numbers should not be underestimated. I share the view of many critics, who in the absence of data advice not to leap to conclusions. After all, the trafficking-technology nexus constitutes a popular scholarly topic for a variety of disciplines. Beyond that, it has been discussed on the international agenda by multilateral organisations.²³¹

228 Latonero M et al (2012) 9.

229 Weitzer (2007) 455.

230 Weitzer (2007) 455.

231 UN.GIFT (2008) 'The Vienna Forum to fight Human Trafficking' B.P.:017; Europol (2014) 'Trafficking in Human Beings and the Internet' Intelligence Notification 15/2014; OSCE (2020).

At present, cybercrime is a novelty for policy makers and practitioners. The prevailing view in the anti-trafficking discourse is that technological advancement has had a facilitating impact on human trafficking and the current legal system is not fit to deal with that.²³² The opposite position is critical towards further regulation and holds that it would intervene with the freedom of expression or entail an inappropriate intrusion into individual privacy matters.²³³ At this point, moral concepts clash and the discussions surrounding the matter of this work begin.

3.2 THE CLAIM: TECHNOLOGY AS A CRIME FACILITATOR

As can be seen in everyday life, technological advancement has brought new ways of communication, which enabled the world to be interconnected. People's use of online technologies has increased.²³⁴ As a side-effect to the manifold benefits that have simplified daily life, 'a darker narrative has also emerged'²³⁵. Some argue that new technologies have facilitated transnational organised crime in general, and human trafficking in specific.²³⁶ Through new communication channels and easy access to online markets, the trafficking processes is assumed to be simplified. Perpetrators would take advantage of the newest technologies and are constantly one step ahead of law enforcement agencies.²³⁷

Another assumption is that digital technologies transformed human trafficking into a transnational organised crime.²³⁸ Both the internet and criminal behaviour transcend national borders. Legal systems must be fit to deal with these dynamics. As mentioned above, the growing use of ICTs is often linked to expanded capacities for traffickers.

232 Hughes (2001) 33.

233 Mendel J & Sharapov K (2016) 675.

234 For Internet Usage Statistics refer to <https://www.internetworldstats.com/stats.htm> (visited 27 July 2020).

235 Latonero M, Bernahe G et al *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds* USC Annenberg School for Communication & Journalism: Center on Communication Leadership & Policy (2011) iv.

236 Hughes (2001) 14.

237 Dixon HBJ 'Human Trafficking and the Internet (and Other Technologies, Too)' *Judges Journal* 1 (2013) 38.

238 Iroanya R (2014) 103.

It has further been stated, that new technologies have replaced traditional trafficking schemes and methods. However, assumptions like these tend to be verified by only a few cases. The clandestine nature of human trafficking suggests a high dark figure. This is why the interpretation of trafficking-related data requires caution. Knowledge and reliable information are crucial for evidence-based policy.²³⁹

3.3 THE EVALUATION: PART OF THE PROBLEM

In the following, the extent to which new technologies have actually facilitated the crime is explored. The aim here is not to categorically debunk what has been stated above, but rather to unpack assumptions, which could otherwise lead to false responses. Although similarly difficult to verify, certain aspects of the information gathered so far can be critically assessed in order to contradict some of the claims. The hereby added perspective will also be of importance to the main discussion of this study, which queries technology's potential in counter-trafficking. It is crucial for a progressive approach to understand technology as multi-dimensional.

3.3.1 Game Changer

The first assumption is that traffickers exploit initially neutral technologies for trafficking and therefore technology has brought significant changes to the character of the crime. The claim contains two aspects: One being the ability of traffickers to misuse technologies that were not initially designed to assist criminal activity. Consequently, criminals would always be one step ahead of law enforcement. The claim presupposes that every trafficker is tech-savvy while at the same time no police officer knows how to operate a smart phone. In order to shed light on this debate, a significant amount of research has been dedicated to technology-facilitated trafficking in recent years.²⁴⁰ In essence, it suggests that technologies such as online classified advertisement sites, social media, and mobile phones are harnessed by traffickers at various phases of the trafficking process. The recruitment of victims via the internet is only one example. The possibility to approach a target online potentially enables traffickers to recruit more victims in less time and by using less resources.

239 Fedotov J (executive director of UNODC at the time) *Crime Commission to address protection of children from exploitation on the Web* (April 11th 2011) available at <https://www.unodc.org/unodc/en/frontpage/2011/April/crime-commission-to-address-the-protection-of-children-from-exploitation-on-the-web.html> (visited 4 July 2020).

240 Geldenhuys K 'Human Trafficking: A Click Away' *Servamus* (2018); Kunze E (2010); Latonereo M et al (2011; 2012; 2015).

There are reported cases of offenders, who made the initial contact through social media platforms like Facebook²⁴¹ or used online classified websites to market and sell their victims. Online advertisements of work abroad have also lured job seekers into contacting unverified recruiters that are part of trafficking schemes. Another stage, at which new technologies come in handy, is the threat and control. Through digital communication and location tracking, a tech-savvy perpetrator can exercise constant power over a victim without having to be present, controlling every movement. In general, the exploited technology is not very advanced. Only the use of social media and mobile phones can be transparently retraced on a broad scale. A supposedly small group of offenders use more sophisticated technologies like embedded images and encryption.²⁴²

Another feature of the crime are financial transactions. The developing trend of payment via email money transfers or crypto currencies simplifies the flow of not only licit transactions. Concurrently, technological payment methods potentially enable the monitoring of suspicious transactions.²⁴³ When investigating economic crimes such as money laundering, to which human trafficking constitutes a predicate offence, it is critical to follow the money. Where large organised crime networks are involved, there is usually no easy trace and layering techniques are applied in order to disguise the illicit origin of the money. Several (simple) technological advancements facilitate this step, such as credit card payments and cash dispensers.²⁴⁴ In sum, when leveraged in the right way technology can help to create distance between the crime and the criminal. Regarding the second aspect of the claim however, a character changing impact is rather an emphasis for this development. By no means have traditional channels been broken off and interchanged with new methods.²⁴⁵ The core of the crime remains in the exploitation.

241 Barney D 'Trafficking Technology: A Look at Different Approaches to Ending Technology-Facilitated Human Trafficking' *Pepperdine Law Review* 45.4 (2018) 747-784 at 761.

242 Wolak J (2012) 'The Role of Technology in Human Trafficking' at the *Microsoft Research Faculty Summit* available at <https://www.microsoft.com/en-us/research/video/the-role-of-technology-in-human-trafficking/> (visited 9 July 2020).

243 Todorof M 'FinTech on the Dark Web: the rise of cryptos' *ERA Forum* (2019) 2.3.

244 Europol 'Trafficking in Human Beings and the Internet' (2014) 2.

245 Muskat-Gorska Z (2011) 9.

Usually when a new technology is introduced into a system of exploitation it enables those with power to intensify the harm and expand the exploitation.²⁴⁶

Not only traffickers are capable of misusing technology. Both the employer and the consumer can search the variety of human products online. Some trafficking schemes operate exclusively on online platforms. At the same time, victims and workers at risk have the chance to connect through apps and messaging, building safety and information networks. As this aspect belongs to the crime-obstructing potential of technologies, it will be dealt with in further detail below. While anonymity made the internet a favoured channel in the trafficking trade, every transaction does leave a trace. These traces can be valuable for criminal investigations.

This leads to another aspect of the assumption and a common critique in the scholarly discourse: that law enforcement agencies are unfit to deal with modern trafficking cases. Having to enforce anti-trafficking laws, part of their task is to adapt to new criminal methods and schemes. In order to learn and react appropriately, 'having more technical tools at their disposal to pursue investigations'²⁴⁷ is important for some agencies. But process innovation in state-led authorities is cumbersome and requires expert knowledge. Having said that, a lack of resources or training could be mended through inter-sectoral cooperation.

3.3.2 Across Borders

Part of the discussion is further that the internet transcends borders and therefor enables the crime to do the same. Yet, human trafficking is not a problem solely concerning low-income countries. Instead, it happens on a global scale. The point of this approach is not that online technologies enabled the crime to cross national borders. The history of the crime's border-crossing character has been outlined above. What this theory rather attempts to highlight are the crime networks, which have benefitted from the development of the web and ICTs.²⁴⁸ The possibilities to connect and exchange information instantly allowed criminal networks to grow without losing connection. Some crime rings are assumed to span across continents. Borders seem to play less of a role in the globalised and digitalised world.

246 Hughes (2000) 36.

247 Musto J (2020) 1157.

248 Kunze E (2010) 252.

The experiences of the current moment enhance that perception, when conferences and meetings are held via the web and instantly connect people across the globe. While the question of a borderless internet and crime scenes detached from tangible space play a big role in the discussions around cybercrime, human trafficking is very much geography-related with a remaining focus on physical location.²⁴⁹ This applies also to domestic trafficking situations, where rural and disadvantaged areas of origin contrast with large consumerist destination cities. With new technologies in organised crime groups, the concept of borders is challenged in a new way. However, it is not dissolved and will remain to play a critical role.²⁵⁰ A global perspective tends to draw attention away from regional deficiencies.

3.3.3 Fast Spread

Human trafficking is among the fastest spreading illicit trades.²⁵¹ Some trace the unprecedented growth back to the integration of new technologies. As stated above, it is impossible to determine the exact impact. What the internet undeniably brought, is a faster and more diverse, while at the same time customised, access to pornographic content²⁵² and sexual services. The heightened visibility leads some to assume higher crime rates. The inherent problem is the assumed link to criminal behaviour.

The content does not invariably involve victims of human trafficking or other crimes and might have instead resulted from consensual sex work. Whether this consent is biased by systemic power imbalances and gender-based discrimination is another matter. Most of the attention on sex-related online content is a result of the panic that has evolved around trafficking as a threat to national security – a panic inherent to industrialised countries in Europe and Northern America. Suddenly, everything is framed as trafficking-related, although the spread of trafficking through online media remains an assumption that is not backed up by the respective case data.

249 Graham M 'Geography/internet: Ethereal alternate dimensions of cyberspace or grounded augmented realities?' *Geographical Journal* 2 (2013)177-182 at 179.

250 Mendel J & Shrapov K (2016) 677.

251 Shelley (2010) 138.

252 Hughes (2001) 24.

Taking a step away from the internet as such, other technological innovations offer new approaches and to a certain extent replace the objectification of human beings. Internet of Things (IoT)-connected sex toys are one example of tools that are already used by sex workers in the safety of their own home. There are people worldwide doing live webcam-shows for a living, digitally moving in a grey zone between prostitution, pornography, and striptease. Virtual reality pornography and sex robots are in the development phase.²⁵³ Although unlikely to replace real human intimacy, these gadgets are seen to foster a safer work environment for sex workers. The risk for misuse by traffickers and other perpetrators is low. They can be helpful tools for people who choose to involve in self-determined sex work, including former victims of trafficking. Statistics show that survivors are likely to re-involve in sex work – especially when they had to face incarceration in consequence of prostitution law violations.²⁵⁴ However, not every sex worker has access to these technologies or even the comfort of an own home. It is therefore unlikely that the innovations help the majority of persons who are currently victimised by trafficking or pimped. Quite the contrary, technological innovations that drive the market and nourish the sex industry can in turn have an impelling impact on human trafficking for sexual exploitation. As stated above, it is a demand-generated industry.

There are problematic aspects about IoT-gadgets and sex-robots. Being connected to the internet, they run the risk of being hacked and of releasing sensitive private data. Being able to do anything with a human-like object does not raise awareness for misogynistic behaviour in general and fight sexual violence in particular. As the overall acceptance of these attitudes in virtual spheres justifies their normality, the risk of sexual and gender-based violence in reality might increase. The reinforced consensus, that the most pressing problem within the trafficking sphere is the sexual exploitation of women and children, draws crucial attention away from forms of exploitation involving queer and male persons as well as labour and migration situations.²⁵⁵

253 Opray M (2017) ‘Robots May Change the Sex Industry but could they Replace Intimacy?’ in *The Guardian News* of Wed 5 Apr 2017 <https://www.theguardian.com/sustainable-business/2017/apr/05/robots-may-change-the-sex-industry-but-could-they-replace-intimacy> (visited 28 July 2020).

254 Jaleel (2016) 582.

255 Musto J (2020) 1153.

3.4 INTERIM FINDING

The focus on technology-facilitated trafficking is disproportionate. Investigated trafficking schemes are shown to involve rather simple technologies, while a sophisticated use of new and complicated methods remains the exception. In a nutshell, a technological evolution, that is irregular to any other criminal or non-criminal behavioural process, is hardly the case. The unbroken focus on this topic seems like an excuse for not leading a more successful conversation about and fight against trafficking. Hence, the involved stakeholders would be well advised to not demonise technological advancement per se. Some actors are slowly coming to terms with the fact that it does not help to wish technology away.²⁵⁶

A revision of the trafficking characteristics in the light of technological developments becomes necessary. At first, the definition of human trafficking requires an update with regards to technology-facilitated forms such as cyber-crime and internet-trafficking. Only a few jurisdictions have undergone respective reforms.²⁵⁷ And while most regulations allow for a respectively wide interpretation of the actus reus, it would be an important and progressive sign to textually include the modern forms. Secondly, a technological perspective could supplement the framing of human trafficking. According to some of the voices listed above, the whole phenomenon could be framed as a technological issue, including both its facilitating and its obstructing form. Another potential adjustment pertains to the involved persons. If digital and online technologies can complete jobs fast and efficient, less manpower might be required to find, persuade, transport, and constrain victims within large trafficking schemes. Only two aspects of the crime are not likely to change with technology. Neither the elements of the crime nor the root causes have been affected by a technological evolution. Because these are core aspects of human trafficking, it is worth querying the enthusiasm for a purely technology-inspired response.

256 Obertová Zuzana & Cattaneo C (2018) 49.

257 See e.g. the controversial U.S. Senate and House bills FOSTA-CESTA (2018).

4 Chapter Four: Technology in Counter-Trafficking

4.1 INTRODUCTION

In the sense of the above definition and considering the reviewed state of the art in research and literature, new technologies are framed both as part of the problem and as part of the solution. In order to fully understand and use their potential for the anti-trafficking network, a comprehensive assessment of the concomitant risks is required. In this chapter, a brief evaluation of the common claims around technology in counter-trafficking will be followed by an analysis of the tools in use. This will lead to challenging the hopes surrounding the topic and exploring whether actual benefits outweigh the predicted harms.

Privacy and data protection will play important roles in the following. For the purpose of this study, the term data is used in its most simple form, meaning facts and statistics collected for reference and analysis. This includes the different kinds (content, telecommunication and transaction) as well as various forms of data.

The term privacy is rather complicated, as a universal definition thereto does not exist. It is characterised by individuality and unclear boundaries. Violations are often assumed, when in fact other legally protected interests are affected.²⁵⁸ An outline of the scholarly discourse on the right to privacy and its alteration through technological progress would go beyond the scope of this thesis. From a juridical perspective, the right to privacy has found its way into most constitutions as a vital element of legal traditions. A number of international human rights frameworks protect a right to privacy, but do not attempt a definition.²⁵⁹ Guidelines can be found at EU level. Article 8 of the European Convention on Human Rights (ECHR) protects the 'the individual against arbitrary interference by the public authorities'²⁶⁰. Further

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- 258 Gavison R 'Privacy and the Limits of Law' *The Yale Law Journal* 893 (1980) 421-471 at 422.
259 Universal Declaration of Human Rights (1948) Art 12; International Convention on Civil and Political Rights (1966) Art 17; International Convention on the Protection of All Migrant Workers and Members of Their Families (1990) Art 14; Convention on the Rights of the Child (1989) Art 16.
260 ECHR (1968) Belgian Linguistic Case 'relating to certain aspects of the laws on the use of languages in education in Belgium' (Merits) published in Series A no. 6 at 7; see also ECHR

recognised by jurisprudence is the protection of the individual against broadcasting of personal information²⁶¹ and other integrity violations including by private actors.

While privacy and its protection contain the individual per se, data protection evolves around personal information. Hence, its regulation is based on specific instances of data processing and follows key principles, such as purpose limitation²⁶² and consent. These principles are reflected in international legal frameworks.²⁶³ The concept of data protection is recognised both as a part of privacy and as a separate construct, such as in the European Data Protection Directive. Applying both to the public and the private sectors, the EU directive also defines requirements for the processing of personal data.²⁶⁴

4.2 THE CLAIM: TECHNOLOGY AS A CRIME OBSTRUCTOR

As technology is exploited to foster human trafficking, the idea of using it against the crime arises. Digitalisation is both a threat and a source of hope. Scholars²⁶⁵ and international organisations²⁶⁶ have been advocating the use of new technologies in the fight against human trafficking for almost a decade. Ideas evolve around technology training for law enforcement officers²⁶⁷ and digitalisation of agencies, (big) data collection, (mass) surveillance, geo tracking, the recruitment of hackers and tech-savvy people at law enforcement agencies in order to cover internet-facilitated crime or use modern investigation techniques. At the prevention level, technological tools are implemented to identify risk areas and factors. The ongoing exploration of the role of social media in this context shows a twofold development. While being abused to facilitate trafficking, it can provide counter-trafficking platforms and community support. Plus, traditional advertisement platforms

(1979) *Marckx v Belgium* at 31.

261 ECHR (2003) *Peck v United Kingdom* 36 E.H.R.R. 41 at 57.

262 Gerry F et al (2016) 208.

263 OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data (1980); UN Guidelines Concerning Computerized Personal Data Files (1990).

264 Wijers M (2013) 3.

265 Welch SA 'Human Trafficking and Terrorism: Utilizing National Security Resources to Prevent Human Trafficking in the Islamic State' *Duke Journal of Gender Law & Policy* 24 (2017), 165–88; McAlister R 'Web scraping as an Investigation Tool to Identify Potential Human Trafficking Operations in Romania' *ACM Web Science Conference* (2015).

266 Council of Europe 'Monitoring Mechanism - Convention on Action against Trafficking in Human Beings', 2014; UN.GIFT *Workshop: Technology and Human Trafficking* (Vienna, 2008).

267 Musto J & Boyd D (2014) 10.

are used in undercover investigations. International funding has been prompted to the development of apps based on crowdsourcing and data mining. Reporting hotlines, which have been used to identify victims for decades, are technically upgraded.

Some of these methods can make ordinary citizens to rescuers and are seen to expand the coverage of the police. Other apps and services are designed to be used by victims and people at risk. There are online review-platforms for workers offering evaluated information on various employers. Social networks are used to connect and empower workers and communities in order to raise awareness for trafficking situations. Surveillance technology is deployed in all sorts of contexts. Some jurisdictions allow surveillance mechanisms for the identification of victims, while it usually serves criminal prosecution in identifying and observing the suspect. There has been a global rise in facial recognition technology.²⁶⁸

New technologies seem to have found their way into counter-trafficking. They appear both evil and good. But this would be a simplification of a complex problem. As on the crime-facilitating side, assumptions on the crime-disrupting side flourish in the scholarly discourse. The same argument that saw technology replacing *offline* trafficking methods is applied to traditional strategies in counter-trafficking. Some criticise the cumbersome methods²⁶⁹, which could easily be replaced with new technologies. They demand to enhance the current technological state of counter-trafficking. Another hypothesis holds that a technological response invariably benefits the victims, offering instant help. This thought is stems from a viewpoint referred to as tech-solutionism.²⁷⁰ Technological interventions are assumed to offer a quick-fix, which is associated with expectations of greater solutions.

As will be seen throughout this chapter, hopes surrounding technological-driven counter-trafficking measures are high. A common (mis-)understanding is that by only exploiting the same technologies as traffickers, investigation and prosecution would be improved. Other ambitions concern the cooperation aspect of anti-

268 Milivojevic, Moore & Segrave (2020) 22.

269 Buono L 'The genesis of the European Union's new proposed legal instrument(s) on e-evidence: Towards the EU Production and Preservation Orders' ERA Forum (2019) 310.

270 Musto J, Thakor M & Gerasimov B (2020) 6.

trafficking. Both inter-, intra-, and transnational as well as inter-institutional coordination and communication are assumed to benefit from technological advancements. Similar anticipations appear in the research sphere, hoping for optimisation through new methods.

Moving on, the question is whether technology can be transformed from a liability into an asset. It is a wide-spread idea in academia and policy that technology must only be leveraged to assist anti-trafficking efforts. Resources and energy are funnelled to explore the possibilities of Artificial Intelligence (AI), dark web search tools, facial recognition et cetera. As human trafficking for sexual or labour exploitation are the most detected kinds of trafficking, technology tools are primarily developed to prevent, report and combat these kinds of trafficking.²⁷¹

4.2.1 Instant Benefit

It is often assumed that victims benefit as a direct result of introducing new tools and methods to existing counter-trafficking systems. This is a desirable maxim, provided it not only serve to justify enhanced exercise of power. Advocated in a moralising and gendered manner, the rescue of ‘innocent victims’ at any price almost becomes a ‘moral crusade’²⁷². Some questionable anti-trafficking action is grounded on humanitarian reasons, including blanket surveillance methods and ‘border hardening practices’²⁷³. Other nuanced technologies are harnessed for risk assessment. The University of Nottingham Rights Lab is working with AI and satellite imagery to detect “modern slavery” from space. The project successfully identified high-risk sites and industries for labour exploitation.²⁷⁴

However, identification does not guarantee remedy.²⁷⁵ What can be at stake in the end is the affected person’s own agency and free movement, while the actual beneficiaries turn out to be countries with strict border policies and an evolving rescue industry. Especially the power over sensitive data of vulnerable populations is

271 OSCE (2020) 23.

272 Weitzer (2007) 447.

273 Milivojevic, Moore & Segrave (2020) 27.

274 University of Nottingham (2017) for more information on the project see <https://www.nottingham.ac.uk/connectonline/research/2017/fighting-slavery-from-space.aspx> (visited 6 November 2020).

275 Milivojevic, Moore & Segrave (2020) 28.

a serious concern. Whether a tool effectively identifies labour abuses depends largely on its purpose. As big businesses often rely on tools that were primarily made to comply with risk mitigation and due diligence requirements, labour rights violations in supply chains often go undetected.²⁷⁶ Whereas remediation-oriented approaches aim 'to expose the broad reality and complexity of labour risks and abuses related to exploitative recruitment, forced labour, and human trafficking'²⁷⁷. NGO and worker-based approaches are more likely to result in direct impacts on people's lives because their funds are often bound to this specific cause.

Private businesses on the other hand usually depend on external compliance firms and data management operators to fulfil certain due diligence standards and/or identify human trafficking factors. Since personal data has evolved into a currency, there is a lack of confidence in the credibility of some private sector anti-trafficking action. Hence, worker-driven tools such as the Fair Food Program gain trust and significance. Tools are usually used by another actor as the developer and yet another can be the beneficiary. A tangible example would be an investigation technology developed by a private tech-company, used by law enforcement to benefit victims. The above-mentioned OSCE study found that 'victims and potential victims account for almost half of the total beneficiaries'²⁷⁸ of the examined tools, while victims and potential victims together make up for 24 per cent of the target users. This reflects the contemporary mode of tools and initiatives focussing on the victims. However, tools that immediately support victims are still rare.²⁷⁹

An important aspect to keep in mind is an efficient impact assessment when technology is used to disrupt trafficking. Most modern interventions consider the potential harm to the privacy of both (potential) victims and an undetermined mass of uninvolved persons. However, these concerns are outweighed by the cause of the greater good. Problems arise when that greater good is in fact not achieved. Then the failed protection of a few justified the violation of the legal interests of many.

276 Rende Taylor L & Shih E 'Worker Feedback Technologies and Combatting Modern Slavery in Global Supply Chains: Examining the Effectiveness of Remediation-Oriented and Due-Diligence-Oriented Technologies in Identifying and Addressing Forced Labour and Human Trafficking' *Journal of the British Academy* 7 (2019) 131–165 at 148.

277 Rende Taylor L & Shih E (2019) 147.

278 OSCE (2020) 25.

279 OSCE (2020) 25.

4.2.2 Digital Evidence

The emerging consensus suggests that the current technological state of counter-trafficking is insufficient. Mirroring the assumption that trafficking has undergone a technological evolution, law enforcement agencies are called to keep up. Easy-fix suggestions include using the same technologies as traffickers and digital evidence is seen to make more and more cases. In fact, law enforcement agencies have already enhanced their technological outset. Information such as GPS patterns, phone data, and financial transactions often play a key role in investigations. As digital information can provide crucial evidence, police officers have referred to it as an 'evidentiary goldmine'²⁸⁰. As crime gains facets through technology, law enforcement also improvises creative responses. Network activity can be uncovered through decoding phone numbers and analysing group behaviour. The movement in packs can be detected through mapping technologies and may lead to cases. With regards to online investigation, innovations such as age recognition software and Photo DNA have facilitated a more comprehensive understanding of criminal behaviour.

Over all, the technological use of law enforcement and investigations are noticeably more sophisticated as opposed to the rather low-tech approaches developed for the use by victims and at-risk groups.²⁸¹ This justifies the call for higher technological literacy in law enforcement agencies. The allocation of resources and the responsible handling of data require know-how and training. Cases all over the world show that sensitive data is too often skimmed on insufficient grounds. An example are phone searches at the borders of both Australia and Thailand, where 'too little is an indicator of potential victimisation, and too much agency is an indicator of potentially working in breach of visa conditions'²⁸².

The dangers of digital evidence include false positives and subsequent incrimination. The elimination of hoaxes is a trend topic in the research area of machine learning technologies. The above-mentioned diffusion of the global legal landscape poses an additional problem. Due to the national discrepancies, for

280 Musto J (2020) 1158.

281 OSCE (2020) 36.

282 Ham J, Seagrave M & Pickering S 'In the Eyes of the Beholder: Border Enforcement, Suspect Travellers and Trafficking Victims' *Anti-Trafficking Review* (2013) 51–67 at 57.

example in the criminalisation of sex work, the same technology can lead to multiple outcomes in different national contexts. Where investigations suspect forced prostitution (e.g. suspicious language in smartphone communication), some jurisdictions allow for the arrest of the prostituted person. In other contexts, this data is used to approach and support the supposed victims. Having said that, recent media articles show an initiating trend – even in the US – suggesting that the most progressive law enforcement agencies forgo the prosecution of prostituted persons and instead offer assistance and service to them.²⁸³ Crime statistics substantiate the claim of less prostitution arrests at the example of New York.²⁸⁴ What becomes visible is an agenda that assumes the persons involved – trafficked or not – have made decisions due to a lack of alternatives. As an attempt to justify the blanket surveillance, this approach acknowledges that not every person who is found to sell sex online has been a victim to human trafficking. However, by taking advantage of mass surveillance, law enforcement agencies increase the risk of affecting uninvolved third parties. In their work, some investigators use AI to trap customers into a chat and eventually scare them away with a police department warning, including with a threat of subpoena based on the illegal purchase of sex. A responsibly designed AI leaves no trace to the internet user, who has not committed any criminal offence yet.

4.2.3 Better Data

Apart from on the investigation and prosecution level, data collection is assumed to play a key role in crime prevention and for policy in general. The lack of data is criticised in almost any publication on human trafficking and has consequently been stressed on many levels in this work. It is often argued, that without knowing exactly what to fight it is impossible to fight it effectively. In fact, modern technologies play a key role in the improvement of trafficking data. Through technological progress, servers are now able to collect, analyse and save an unprecedented mass of information in almost no time. While research quantity is significantly higher, the

283 Rosenberg T (2019) ‘A.I. Joins the Campaign Against Sex Trafficking’ *The New York Times* 9 April 2019 available at [https://www.nytimes.com/2019/04/09/opinion/ai-joins-the-campaign-against-sex-trafficking.html%20\[https://perma.cc/7223-D33P\]](https://www.nytimes.com/2019/04/09/opinion/ai-joins-the-campaign-against-sex-trafficking.html%20[https://perma.cc/7223-D33P]) (visited 30 July 2020).

284 McKinley J (2019) ‘Bills to Decriminalize Prostitution Are Introduced. Is New York Ready?’ *The New York Times* 11 June 2019 available at <https://www.nytimes.com/2019/06/11/nyregion/prostitution-legal-ny.html> (visited 30 July 2020).

quality of the statistics and outcomes is difficult to assess. AI is used to determine more accurate figures of past trafficking cases and to facilitate their analysis in order to detect future risks. In theory, this should lead to a comprehensive risk mitigation. Yet, policy action is seldom as fast as technological advancement. In the best case, that is due to a careful consideration of potential human rights violations. Hasty (state) action has the power to cause more harm than benefit. This is arguably the case for state-led mass surveillance technologies.

An example for innovative research techniques is the recent study by the anti-slavery charity *Justice and Care* in collaboration with the think tank *The Centre for Social Justice*²⁸⁵, which introduced a new method to the ‘anti-slavery measurement toolkit’²⁸⁶. Trafficking data not only inspires policy, it leverages valuable insights for justice and creates a narrative to point into direction of necessary action. By enhancing the visibility of the crime, creating awareness for risk situations and spreading information of and in countries of origin, the role of data should not be underestimated. However, it is important to note that technology cannot overcome the obstacle of concealment. Even if datasets are improving to build a better base for action, the dark figure of trafficking will never be tackled. The narrative that more collected data guarantees a better outcome is outdated. A collect-all approach is not sufficient. Plus, the accessibility of data remains a problem. Hence, I query the benefits of a focus on research tools and methods to come closer and closer to a result that is unreachable instead of channelling the existing funds and creativity into action and direct support for the people at risk.

4.2.4 Enhanced Cooperation

When shared, said data can facilitate the cooperation among state and private actors to combat trafficking, possibly leading to more effective interventions. As the information is often sensitive it requires access limitations, which again can obstruct the potential of data itself. Nobody wants the data collected by state-enforced surveillance tools in the hands of the tech-businesses that designed the tool. Case

285 CSJ (2020).

286 Trodd Z, director of the University of Nottingham Rights Lab (2020) *Thomson Reuters Foundation News* available at https://news.trust.org/item/20200713112335-sg139/?utm_campaign=trafficking&utm_medium=newsletter&utm_source=mainListing&utm_content=link6&utm_contentItemId=20200713112335-sg139 (visited 17 July 2020).

data for preventive reasons can partly be provided with the help of anonymisation. Armed with enhanced data 'many anti-trafficking organizations have also embraced technology to build powerful networks of allies, advocates, and donors'²⁸⁷. As societal awareness for trafficking situations is increasing, more and more stakeholders get involved in the anti-trafficking movement. The private sector is a source of innovation for technology-facilitated anti-trafficking.²⁸⁸

An example for cooperative action is the ethical consumption apps, which have been discussed in the literature review above. Crowd-sourced approaches emerge. Through citizen-reporting tools ordinary people are involved to create a safer world via social media, online petitions, apps and hotlines. Problematic is that non-legitimised, inexperienced people and organisations perform a task, which traditionally belongs to police work. To identify a certain scenario as a human trafficking case requires know-how and training. Consequently, the investigating officials are 'left to navigate through leads of varying quality'²⁸⁹. To learn about and report risk situations, dozens of civil coalitions have formed, again with the help of online technologies.²⁹⁰ Civil society is supposed to overcome the distance of law enforcement, policy makers and national states to the realities of victims. A common problem with multi stakeholder approaches lies in the divergent agendas and different moral crusades to counter-trafficking. State-orchestrated initiatives that are augmented by non-state actors raise questions of accountability and concerns about privacy.²⁹¹ Virtues of public-private partnerships are the technical expertise and financial independence of non-state actors. In contrast, technology is seen as 'a means of generating income and livelihoods for individual entrepreneurs and businesses finding their way into anti-trafficking work'²⁹².

287 Thakor M & Boyd D (2013) 288.

288 Latonero M et al (2012) 16.

289 Foot K & Vanek J 'Toward Constructive Engagement Between Local Law Enforcement and Mobilization and Advocacy Nongovernmental Organizations About Human Trafficking : Recommendations for Law Enforcement Executives' *Law Enforcement Executive Forum* 12.1 (2012) 2.

290 See e.g. Truckers Against Trafficking, information available at <https://truckersagainstrafficking.org> (visited 30 November 2020).

291 Musto J & Boyd D (2014) 12.

292 Limoncelli SA (2020) 44.

The resulting 'anti-trafficking-industry' is criticised for generating profits and creating a market around an urgent issue. More detailed discussions are concerned with aspects such as data manipulation, censorship, propaganda, or digital imperialism. As data has become a currency in modern society, integrating it into anti-trafficking practise holds the risk of reinforcing neoliberal capitalist agendas. Where a range of organisations store, shift and exchange sensitive personal data, the actual owners' interests fade into the background. This leads to the idea that initiatives driven by NGOs, workers and victims feature more ethical solutions. At the same time there is a risk of false or inaccurate information attached. One example is ranking situations, where the results rarely represent the majority of the workers. That is due to the fact that despite guaranteed anonymity, mainly the content workers participate in voluntary employer-rankings.

When thinking multi stake-holder collaboration, the perspective often does not go beyond public-private partnership or increased 'cross-border police cooperation'²⁹³. It is helpful to visualise all the possible actors to effectively implement the findings. International organisations such as the ILO and OECD function as communication tools, mouthpieces and research agencies alike. Giants from the private sector such as Microsoft and Google can use their assets for more than whitewashing, for example with regards to research and education. Evidence-based research provided by scholars of social and computer science can add a socio-technical perspective to the traditional methods of law enforcement agencies. The role of media is enormous in shaping the public perception about human trafficking.²⁹⁴ And lastly, NGOs can provide a link to field and social workers as well as risk groups or (former) victims. A carefully designed networked response can have a powerful and significant impact.²⁹⁵

Additionally, the load of key actors like judges would profit from more evenly distributed responsibilities.²⁹⁶ As long as the necessary protection of the people at risk, including undercover law enforcement agents and platform users, is guaranteed, the use of tools and programs to share important information is appropriate.

293 Wijers M (2013) 4.

294 TIP (2017)33.

295 Thakor M & Boyd D (2013) 288.

296 CoE (2002) 65.

Sufficiency is another prerequisite that makes a necessary measure proportionate to the encroachment on fundamental rights. For the case of online classified advertisement sites (see above) a more proportionate approach than only making technical intermediaries liable would be to 'foster a constructive dialogue between them and the prosecutors'²⁹⁷. Information from these platforms can not only facilitate law enforcement efforts. Other anti-trafficking organisations also base their work on identifying and approaching victims of trafficking through online sites.²⁹⁸

4.2.5 Tech-Solutionism

What is included in most of the above stated, yet worth a separate concluding point is the debate around technology's general potential to disrupt human trafficking.²⁹⁹ By creating new opportunities and mechanisms, certain tools often hold more hope than real effectiveness.³⁰⁰ What some critics refer to as the above-mentioned 'tech-solutionism'³⁰¹, stands for the framing of humanitarian problems as technological ones, suggesting that technology can solve them easily. Although the approaches of tech-entrepreneurs tend to offer easy ad-hoc methods, which might have an instant effect, they are not likely to tackle any root causes of the complex phenomenon. Furthermore, technological interventions can be dangerous if they are not capable of capturing the social context into which they are applied.³⁰²

4.3 THE CHANCES

Having mapped the field of expectations behind technology-facilitated anti-trafficking efforts, this next section will carve out the realistic chances. Most prospects have been identified in the area of law enforcement. As state budgets are limited, technology offers relatively low-cost approaches.³⁰³ The kind of evidence that is required to make a human trafficking case has changed. With the help of scraping and other sophisticated technologies, crucial information can be gathered from the web. A simple example is the Microsoft Photo DNA, where a certain picture can be

297 CoE (2002) 63.

298 Musto J & Boyd D (2014) 7.

299 Thakor M & Boyd D (2013) 286.

300 Agarwal P (2019) 'Can we really spot slavery from space?' *openDemocracy* available at <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/can-we-really-spot-slavery-space/> (visited 19 August 2020).

301 Musto J, Thakor M & Gerasimov B (2020) 5.

302 Miliwojevic, Moore & Segrave (2020) 27.

303 Musto J & Boyd D (2014) 12.

identified out of a mass of pictures. This technology can help to see if an image, previously used in a trafficking context, appears again on the web. This eventually leads to higher success rates for the police. Digital evidence can make a victim's testimony more believable and also build trust through additional background knowledge. Further, witnesses and victims who fear a testimony can be convinced to testify; first because their statement is backed up by reliable evidence and second because online video testimonies are possible. While the actual detention of the suspect does not become redundant, a shift of presence takes place. The cumbersome collection of physical traces is supplemented by the relatively lean collection of telecommunication trails.³⁰⁴

On the prevention level, new technologies can have both individual and general effects. Data analyses, AI, and automated tools facilitate the prediction of future exploitation. A comprehensive risk-assessment can improve the overall understanding of the crime itself, the involved networks and potential routes. ICTs offer opportunities for the support of sex workers in a way that traditional methods do not. When social workers want to reach out to prostituted persons who they see at-risk of being exploited, they can find out their contact details more easily now. Then they send messages to the numbers that are used for online advertisement. The functioning of this method of course presupposes that the person is in possession of the phone and can answer independently from a pimp. If that is the case ICTs depict a powerful tool by avoiding face to face meetings, which are possibly monitored by an exploiter and can be dangerous for the exploited person.

Another preventive aspect is the chance for private sector actors to mitigate the crime risk. Online service and social media providers who 'acknowledge the extent to which their products and services are being misused for human trafficking'³⁰⁵ also have the power to change that. Platform regulation and privacy protection are counter-productive to companies' profit motive. Additional incentives come from an increased public interest in data protection and related issues. By reducing the confidence of consumers moving in an 'anonymous, risk-free arena'³⁰⁶,

304 CoE (2002) EG-S-NT Final Report, 74.

305 Latonero M et al (2012) 38.

306 UN.GIFT (2008) 20.

the internet could become a hostile space – safe for the average consumer but dangerous for organised crime.

As this section has shown, the whole anti-trafficking arena can benefit from optimised research data and modern measurement tools. These are gaining ‘credibility, confidence and the foundations from which to build effective action’³⁰⁷.

4.4 THE CHALLENGES

In order to take advantage of the full scope of the technological opportunities, the inherent challenges will be identified. First of all, it is important to be aware of and avoid the paralysing effect that might come with the implementation of new technologies. The introduction of a new method entices those involved to fall back on insufficient statements. The challenge here is to follow up on each new method and if necessary withdraw from any ineffective attempts. Periodic reviews show whether new methods are a gain and if the tool is well positioned or causes harm instead. Constant questioning of the original aim can help in this regard.

4.4.1 Accessibility

The next challenge for the implementation of a new technological tool is the translation of the software developer’s language into that of potential users.³⁰⁸ The best tool is worth nothing if the user cannot take full advantage of its potential. Easy, inclusive and user-friendly application is key. Network technologies can both include and isolate individuals and should aim at overcoming technological illiteracy. Even though mobile technology is the most adopted and the devices only get smarter with time, not every user can be described as technological literate. Searching for the appropriate and helpful online content requires the respective skillset.³⁰⁹ The awareness that technology can be accessed and experienced in different ways depending on ‘one’s gender, nationality, educational attainment, or skill-level’³¹⁰ is crucial to understand how people are using a technology. Equally important is to

307 University of Nottingham Rights Lab Data and Measurement Programme
<https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/programmes/data/index.aspx> (visited 22 August 2020).

308 Hovy E (2012) at the Microsoft Research Faculty Summit ‘The Role of Technology in Human Trafficking’ available at <https://www.microsoft.com/en-us/research/video/the-role-of-technology-in-human-trafficking/> (visited 9 July 2020).

309 Latonero M et al (2015) iv.

310 Latonero M et al (2015) 8.

overcome myths and assumptions around the libertarian culture of the Internet³¹¹, where online technology is illustrated as uncontrollable. Various actors remain scared of change because they are unfamiliar with technologies. In today's highly digitalised world, a large amount of the adult population is yet computer illiterate.³¹² While some see a problem in the computer (over-)use of younger generations, there is a predominant reluctance to accept new technologies among many elderly people.³¹³ Especially concerning technologies such as AI the societal mistrust is still high. In order to be efficient AI technology requires massive amounts of data.

4.4.2 Cooperation

A returning aspect is the diversity of the involved actors in the anti-trafficking network.³¹⁴ It can be a challenge to find common grounds in the interdisciplinary work and development, especially to balance competing missions and moralities with new experts entering at all times. In the field of data collection stakeholders encounter difficulties because some NGOs, probation departments and social services practice so-called data gatekeeping.³¹⁵ As the work with data is yet new and evolving, the authority over certain information is not always clear and transparent. Standardised and consistent systems are yet to be determined. The resources to follow through the engineering cycle of a technology are generally limited. This makes cooperation in the development, maintenance and testing phases essential. Further, there is an undeniable lack of regulation for the use of technologies in counter-trafficking. Yet, especially international law must be carefully drafted, considering divergent resources and agendas.³¹⁶

Legislation concerning transnational crime is challenging, because the involved perpetrators operate trans-border and multiple jurisdictions are affected as opposed to traditional systems, which are state based.³¹⁷ Each executive measure again must account for the rights of perpetrators and suspects, while at the same time guaranteeing effective prosecution. An additional challenge is the protection of

311 Hughes (2004) 49-71.

312 OECD (2016) 17.

313 Zdravkova K (2019) 3.

314 Musto J & Boyd D (2014) 14.

315 Latonero M et al (2012) 26.

316 CoE (2002) 93.

317 Shelley (2010) 39.

victims, including physical safety, freedom of movement, and privacy. Victim protection is already an established measure in investigation processes. It is yet to have received adequate consideration after the completion of cases. A standardised framework on technological trafficking-interventions should not unjustifiably infringe on human rights at any stage. As previously pointed out, what needs to be overcome is the moral imperative that methods are justified simply because they serve a greater cause. The mandatory focus on the victim's perspective and empowerment cannot be highlighted enough.

4.4.3 Root Causes

Finally, a challenge that would make any other effort redundant, if successfully achieved, is the elimination of root causes. This means that root causes ideally should not initially emerge. Theoretically, this could only be realised through broadly rethinking economy, labour, and migration systems.³¹⁸ Particularly necessary are the 'political will and agitation for redistributive justice'³¹⁹. In reality, the anti-trafficking scheme focuses on reactive measures, fighting that what intensifies the problem instead of what initially laid the foundation. This is problematic because crime schemes are constantly progressing, utilising every new possibility – not least technologies. Technology is mainly implemented as a reaction to the facilitators of human trafficking.

The current technological tools developed to combat trafficking prove to be insufficient to tackle the circumstances that lead to the root push and pull factors. Instead, new markets are created around the development of anti-trafficking apps and services for social entrepreneurs, in the absence of accountability for the workers and consumers.³²⁰ Some of the tools might be necessary but they are certainly not sufficient. As the use of technologies becomes more sophisticated, it is advisable to take a step back and exploit the available traditional methods. While the challenges so far revolved around limited knowledge, little experience, and almost no training, questions that will become more important in the future will be ones of ethics and morality. It is advisable to integrate, at the current stage of learning, already a sensibility and awareness of the endangered interests.

318 Shelley (2010) 58.

319 Shelley (2010) 17.

320 Limoncelli SA (2020) 45.

4.5 THE RISKS

The limits and consequences entailed in technology-driven trafficking-interventions have been touched upon above. In this section the identified risks will be gathered and supplemented with the help of practical examples.

4.5.1 Privacy

The introduction of mass surveillance technology can have severe repercussions on both a society and the individual. Beginning with the latter, surveillance can have a serious lasting impact on the right to and the perception of privacy. This is particularly the case, where the monitored individual did not give consent or – even worse – had no knowledge about the operation. The sex industry and border areas have been identified as so-called risk milieus for human trafficking. But a blanket observation of all milieu-related behaviour would not be justified or even feasible. In accordance with the presumption of innocence and the principle of equality, the implementation of surveillance measures requires a strong suspicion with the target not being the victim, but the perpetrator.

Other technologies that possibly infringe on personal privacy include facial recognition, location tracking via the Global Positioning System (GPS) and Radio Frequency Identification (RFID), as well as automated data collection. For most of these technologies, the amount of data processed exceeds the capacity of the servers. Which is why not all information can be permanently saved. Hence, the profiling of potential victims and perpetrators is necessary. Easy distinctive features include gender and race.³²¹ As stated above, there are major drawbacks in predictive analytics.

Endangered is further the privacy of an unidentified mass of uninvolved persons, who suffer the right to their personal image and untracked movement. A blanket surveillance approach can cause mistrust in society. Studies have shown that the negative feeling of state control outweighs the positive feeling of safety in the public space.³²² Most people are not prepared to give up privacy for the sake of

321 Ham J et al (2013) 59.

322 See e.g. the report by DATA - PSST and DCSS 'Public Feeling on Privacy, Security and Surveillance' (2015) *Universities of Bangor & Cardiff*.

security. They are aware, that ‘technological advancements might assist in furthering state control over human mobility and people’s access to labour markets is genuine’³²³.

4.5.2 Equality

The potential privacy invasion is not the only problematic aspect. Certain individuals and groups of people are particularly exposed to technology-driven interventions. For example, sex workers who do not identify themselves as trafficking victims run the risk of losing income. Surveillance and restrictions can become an obstacle to good business, safe working conditions and job security. At the same time, many of the affected people depend on technological tools in daily life. Removing technology from a victim or person at risk can have a disempowering effect.³²⁴ Key technologies in this regard reach from mobile phones to worker support apps and online social networks. Particularly in the areas of prostitution and migration, the line between criminalisation and protection is thin and blurry. A lot of decisions at this level have a moral or ethical dimension and the risk of power misuse to impose a certain agenda is high.

Both automated and manual interventions have their limits. Technologies like pattern identification in risk assessments involve complicated methods and ‘algorithms are far from impartial’³²⁵. Hence, the responsibility continues to be in the hands of human individuals. And with that, systemic problems around race, class, religion, gender and other discrimination remain a source of malicious action. There is a lack of sensitisation on the fact that interventions come with a greater risk to marginalised groups.³²⁶ Both state and non-state surveillance, made possible by data and technology, have been intensified on people at risk.³²⁷ As low-income and minority communities are often exposed to false presumptions and predictions, detrimental effects disproportionately afflict them.

323 Milivojevic, Moore & Segrave (2020) 27.

324 Gerry F et al (2016) 211.

325 Musto J & Boyd D (2014) 13.

326 Wijers M (2013) 1.

327 Lyon D ‘The Snowden Stakes: Challenges for Understanding Surveillance Today’ *Surveillance and Society* 13.2 (2015), 139–52 at 13; Musto J, Thakor M & Gerasimov B (2020) 3.

4.5.3 Data Protection

Attached to the collection and processing of information data, specifically personalised case data, is the risk of retaliation and stigmatisation. Data does not exist in a vacuum. And perpetrators are not the only ones abusing, but also the state through corrupt officials.³²⁸ Databases are exposed to the risk of theft and can be subject to hacker attacks.³²⁹ Especially when shared, personalised data becomes vulnerable. At the same time, data-sharing is a key cooperation component across areas and sectors. Leaked personal data is a threat to the physical safety of former victims and related persons, in part because it entails the risk of retaliation. Stigmatisation and re-victimisation are further risks. In some cases, data turns out to be useful for subsequent causes, gradually diverging from the initial aim. When collected information is used for a different than the intended purpose, experts refer to the term function creep.³³⁰ An example for this problem is the misuse of trafficking data as evidence concerning the migration status of a person.

4.5.4 Power

An important aspect in the general field of technological advancement is power. As crime rates legitimise new methods, risk notion authorises control through technology. That could be enhanced state or non-state surveillance of an entire sector or producing a victim subject of an at-risk population. Each new tool and technique that is hastily designed could lead to unwanted consequences. Every outsourced technological aspect of a strategy holds the risk of shifting power from legitimised institutions to non-legitimised private partners. Technology is power in the hands of the one who regulates it.

4.6 THE SAFEGUARDS

Having identified the chances, challenges and risk inherent to the use of new technologies in counter-trafficking, methods of safeguarding the endangered rights will be presented in the following.

A comprehensive anti-trafficking approach requires a responsible use and regulation of technology and power. Every novel technological counter-tool should

328 Wijers M (2013) 1.

329 Zdravkova K (2019) 4.

330 Gerry F et al (2016) 216.

consider the above-mentioned aspects around data. In fact, the necessity of personalised data for combating human trafficking is limited. Anonymous data can provide the same insights in crime statistics and risk areas. What is needed by NGOs for the allocation of resources must not be attributable to individual persons. And when personal information is required in a law enforcement context, authorisation of receivers and holders can enhance data security. As touched upon above, the global regulation framework is insufficient and should be supplemented following victim-centred data-protection principles. That could feature conditions such as court orders or warrants required for lasting infringements of privacy. Factors for such must be found in the individual case's exceptional circumstances in order to be reasonable. To accomplish equitable measures at a high standard, a solid data protection scheme supplementing certain methods is required.

The mentioned EU directive can function as a guideline with regards to securing access to and control over personal data. When it comes to the storage of information data, decentralised approaches correspond to the state of the art.³³¹ Further, homomorphic encryption is suggested as an innovative technology to ensure the protection of sensitive data.³³² Interventions at the economic level of trafficking, with the support of financial institutions, could increase the risk for traffickers. With the help of technology, data could be analysed without showing the sensitive plaintext.

Another safeguard is the temporary character of surveillance measures. An exposure to constant monitoring should require continuous consent in collaboration situations as well as a high transparency standard. A crucial condition is the right to be forgotten, which should be applied to both victims and former perpetrators. Legitimate policing must entail 'clear and strict limitations of the powers of national authorities'³³³. General precautions include training for the users and maintenance of

331 See e.g. the German Open Source Project for the Corona-Warn Application <https://www.coronawarn.app/en/> (visited 19 October 2020).

332 Rajan A, Chief Technology of Polaris at the U.S. House of Representatives Committee on Science, Space & Technology Hearing to the Role of Technology in Countering Trafficking in Persons, July 28 2020 available at <https://polarisproject.org/blog/2020/08/polaris-cto-testifies-on-the-role-of-technology-in-countering-trafficking-in-persons/> (visited 2 November 2020).

333 Gerry F et al (2016) 212.

the technologies. Law enforcement staff and other persons who use modern techniques should undergo specific independent supervision, so that evidence gathered through ambiguous technological methods is legitimate. Evidence which has not been gathered following strict guidelines shall be excluded before court.³³⁴ An enhanced sensibility, awareness and knowledge on what is implied by said guidelines is key for the efficiency of modern methods.³³⁵ A fall-back system needs to be established for when novel tools fail. An example could be the undue monitoring of someone who is not a victim or a perpetrator of human trafficking. Hence, ways must be developed in which people can find support and remove their data. In order to fight the above-mentioned paralysing effect, a sustainable design of new interventions includes follow-up mechanisms.

While monitoring the human rights due diligence standard of private sector entities, with regards for example to their supply chains, depicts a reasonable measure '[a]n approach that is limited to trade embargoes risks shifting the burden as companies go out of business and labourers become even more vulnerable. The key, then, is to ensure that importers act responsibly so that ethical and legal supply chains become the norm and slavery is no longer "modern".'³³⁶

Taken together, the identified safeguards suggest that counter-trafficking efforts need a solid foundation. A major step in this regard, is to involve the affected persons into the development of new measures. Prevention-tool design in the area of labour exploitation would strongly benefit from a 'worker-informed and worker-led'³³⁷ influence. The inherent challenge is to create an environment where the affected people feel confident to 'lead and shape the conversation'³³⁸. The following questions would improve the validation process: What has the anti-trafficking framework to offer for people in need? What is the main goal of this specific measure? Who is the ultimate beneficiary?

334 Gerry F et al (2016) 217.

335 Wijers M (2013) 1.

336 <https://www.weforum.org/agenda/2020/01/how-ai-and-satellite-imaging-tech-can-put-an-end-to-modern-slavery/> (visited 24 August 2020).

337 Milivojevic, Moore & Segrave (2020) 30.

338 Rende Taylor S & Shih E (2019) 162.

4.7 GOOD PRACTICES

By reference to a few initiatives and tools in practise, this section provides an overview of the current technological state of anti-trafficking.

4.7.1 Polaris

The US based NGO Polaris is a data-driven anti-trafficking project founded in 2002. Its initial project is the 'U.S. National Human Trafficking Hotline', which supports victims and people at risk of trafficking. Polaris created a nationwide network, reaching from immediate help to long-term assistance and client services programmes. On the basis of data analyses, an insight into current trafficking schemes is provided, resulting in policy recommendations. As the information gathered stems from so-called survivors, the organisation is distinct in understanding the patterns and trends. The aim is to integrate survivors' expertise in the anti-trafficking innovation process.

The NGO advocates for the required regulations and critically assesses U.S. legislation on state and federal level. Partnered with the IOM, Polaris periodically publishes the 'Human Trafficking Case Database'. Among data-driven strategies, the NGO explores the opportunities of advanced cryptography, secure multiparty computation and other innovations. As one of the recently discussed technologies, encryption may in future help to ensure the protection of sensitive data while at the same time providing valuable knowledge and information to researchers and law enforcement. In this regard, Polaris acts as a network platform for information sharing and cooperation. One specific example is the 'Counter Trafficking Data Collaborative', which harmonises multiple different primary research results into the first open data portal on human trafficking cases.³³⁹

4.7.2 Microsoft

The global technology giant functions as a sponsor and facilitator of research in various areas. Within their 'Technology and Human Rights' section, multiple research programs were initiated. Among them is the work by the aforementioned authors Boyd, Thakor, Casteel and Johnson. Their project began in 2011 and explored the role of technology in human trafficking. One interim finding was that due

339 For more information refer to <https://www.ctdatacollaborative.org> (visited 4 November 2020).
<http://etd.uwc.ac.za/>

to the diffusion of empirical research it is impossible to know whether technological progress resulted in more trafficking cases nor if it can truly help to combat the crime.³⁴⁰ Yet, Microsoft believes that the field is worth exploring, which is shown through funding. A goal is to combine the knowledge of different disciplines to develop sustainable innovation.³⁴¹ Along these lines, the Microsoft 'Digital Crimes Unit' was founded in 2010 as an organisation of transnational investigators, private entities, forensic analysts, and attorneys to support law enforcement in the fight against cybercrime. The inherent infrastructure of advanced analytics and AI is used to combat human trafficking, and so is the aforementioned 'PhotoDNA'. For the development of the 'Child Exploitation Tracking System' Microsoft collaborated with the Canadian national law enforcement agency. The software manages and links child protection cases across jurisdictional boundaries. As a support for investigations involving digital evidence, another development in this regard is the 'Computer Online Forensic Evidence Extractor'. Although these and other technologies were not initially developed for human trafficking scenarios they are applied to them. A proactive and constantly adapting approach is aimed at ensuring that the measures meet the demand.

4.7.3 Other Programs and Initiatives

'Tech Against Trafficking'³⁴² is a coalition of technology companies founded in 2018 to create counter-trafficking technology solutions. It brings together civil society, law enforcement, academia, technologists and survivors in exploring opportunities to innovate counter-trafficking. Considering itself as an innovation accelerator, the collaboration has recently co-released the OSCE report.

Technology supported efforts can further be found within what is broadly known as the Worker-driven Social Responsibility (WSR) network.³⁴³ It originated as a counter-momentum to the so-called Corporate Social Responsibility (CSR) that left the compliance with existing 'fair-working' legislation up to companies and corporations. CSR is known for handling ongoing human rights violations in global

340 Boyd D & Thakor M (2011).

341 More information available at <https://news.microsoft.com/apac/2015/06/22/fighting-human-trafficking-with-technology/> (visited 29 October 2020).

342 Tech Against Trafficking, for more information refer to www.techagainstrafficking.org (visited 20 August 2020).

343 For more information refer to <https://wsr-network.org/resource> (visited 4 November 2020).

supply chains as public relations crises. The approach is characterised by broad standards with ineffective monitoring, the absence of enforcement mechanisms and overall voluntary commitments. It is a failed model of ensuring fair and equal working conditions. WSR on the other hand is defined by the coalition between workers and their organisations to find solutions that ‘ensure the real, verifiable protection of human rights in corporate supply chains’³⁴⁴. The change lies in the shift of power for workers to protect and enforce their own rights. Lean technology plays a big role in that process, because it is widely accessible. The number of mobile phone users worldwide has already reached 3 billion. Initiatives resulting out of the WSR network include the ‘Fair Food Program’³⁴⁵ and ‘Milk with Dignity’³⁴⁶.

‘WeClock’ is a mobile phone application, which enables workers to track data such as their work times, distance travelled throughout a workday, work apps usage outside paid work hours et cetera. Its main feature is that the evidence is not available to third parties. Only the user decides what happens with it, whether it should be shared and combined with other workers’ data to feed campaigns. The information can further serve in a criminal proceeding, if it depicts valid evidence.³⁴⁷

‘Survivors Connect’ is an organisation dedicated to fighting gender-based violence, human trafficking and other hidden crimes. Programs, awareness campaigns, crowdsourcing, training and SMS report platforms are launched to display criminal behaviour in order to stop violence. The organisation therefore collaborates with local partners in various countries.

Other approaches focus on the consumer perspective and responsibility. Ethical consumption apps have been discussed above. To name another project, ‘Slavery Footprint’³⁴⁸ encourages companies to monitor their supply chains while approaching the customers to use their purchase power to reward compliant companies.

344 Factsheet on WSR July 11, 2017, published on website above.

345 For more information see www.fairfoodprogram.org (visited 6 November 2020).

346 For more information see <https://milkwithdignity.org> (visited 6 November 2020).

347 For more information see <https://www.weclock.it> (visited 28 July 2020).

348 For more information see www.slaveryfootprint.org (visited 6 November 2020).

The above-mentioned University of Nottingham Rights Lab's initiative 'Slavery from Space' is a so-called citizen science project aiming at more accurate measurements of the distribution and location of "modern slavery"³⁴⁹. It uses satellite captured data to locate and measure industries and sites with a high risk of slavery by using machine learning techniques.

Aside from academia and NGOs, powerful actors in the anti-trafficking arena are financial institutions. As recognised during the process of combatting economic crimes on a global scale, public-private partnerships with the support of banks form impactful coalitions to identify illicit flows. Launched in 2018, a cooperative project between the financial service companies Lloyd's, Barclays and Western Union, computer giant IBM and Europol exchanges financial data in an international hub. The enhanced information is used to predict and combat human trafficking.³⁵⁰ The data hub platform uses machine learning capabilities and data analyses to drive intersectoral intelligence-led human intervention.³⁵¹ Data security is achieved through a cloud-service with access granted only to authorised stakeholders.

Finally, a low-tech example showing how technology can replace trafficking victims and thereby lower the demand-side are the camel jockey robots in the United Arab Emirates (UAE). Today, the simply constructed robotics broadly substitute the formerly employed children jockeys, mainly trafficked boys from Bangladesh, Sudan and Pakistan as young as three years old. In response to pressure on the governments and international disapproval, the UAE and Qatar have banned the use of human jockeys in camel racing.³⁵² No longer is lawful demand driving the illicit flow of trafficked children. The use of robots may ensure law-abidance.

349 For more information see <https://www.zooniverse.org/projects/ezzjcw/slavery-from-space-punjab/about/research> (visited 6 November 2020).

350 Bacchi U (2018) 'Embrace AI, technology to beat human traffickers, activists told' *Thomson Reuters Foundation* November 15 <https://www.reuters.com/article/us-slavery-conference-tech/embrace-ai-technology-to-beat-human-traffickers-activists-told-idUSKCN1NK2E5> (visited 23 August 2020).

351 For more information refer to <https://www.stopthetraffik.org/what-we-do/traffik-analysis-hub/> (visited 10 November 2020).

352 Khaleej Times (2005) 'UAE enforces stringent steps to eradicate child jockeys' available at <https://www.khaleejtimes.com/nation/general/uae-enforces-stringent-steps-to-eradicate-child-jockeys> (visited 6 November 2020).

4.8 INTERIM FINDING

This chapter has discussed the impact of new technologies on the fight against human trafficking. Using new possibilities provided by the internet and ICTs, the anti-trafficking industry has emerged. The currency is data. While it is doubtful whether each modern trafficking intervention brings an actual benefit to the affected, technologies' general usefulness to improve data was confirmed. Standardised research data can facilitate cooperation and enable a common foundation from which to respond effectively. On the downside, the focus on research can hinder actual progress. The infringement on the right to privacy and other inherent risks demand a high standard of data protection. Particularly because data collection, like other modern measures, disproportionately affect marginalised groups.

Technology provides power to the ones in charge. Hence, technology-facilitated counter-action should be less of a trial and error project, and rather a balanced long-term plan according to the rule of law and human rights principles. The list of safeguards above regarding data ethics, transparency, validation and more should be incorporated in a well-designed approach. When framed as something that can be constructed and designed by people, new technologies lose their deterrent effect and can be leveraged as one out of many pillars for a comprehensive response to human trafficking.

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5 Chapter Five: Conclusion

5.1 INTRODUCTION

The purpose of this work was to explore the world of technology-driven trafficking interventions. This world is at a point, where it is too late to determine whether to introduce technologies into the fight against human trafficking. As elucidate through this study, technology has widely found its way into the anti-trafficking arena. Some technological tools already contribute to the protection of human rights, others need revision in this regard. And still others have turned out to be over-ambitious attempts driven by a global industry of modernisation.

5.2 KEY FINDINGS

Technological innovation developed faster than international legislation. Hence, both crime facilitating and crime obstructing technological tools could flourish in legislative grey areas. States, private entities and individuals are increasingly able to follow, track, study and predict human behaviour. And the information content produced by each individual person is growing constantly. The right to online privacy is deduced from traditional legal phrases, and yet to be put into a distinct regulatory framework.

The current technological state of counter-trafficking is located at a landmark. Digitalisation with all its facets does not exist in a vacuum and is highly topical in multiple areas. This study has found that the times of mystification of technologies are ending and an environment for innovation is created. Powerful technological tools can indeed enable human progress. It is hoped that 'the opportunities for using tech as a tool to identify people ... and to assist them are far greater and they outweigh the threat.'³⁵³ The new era manifests itself in partly overzealous attempts that include mass data collection and blanket surveillance measures.

353 Bhoola U, United Nations leading expert on slavery, London, 2019
<https://news.trust.org/item/20190903163445-c0xau> (visited 28 October 2020).

At the same, a significant crowd in the anti-trafficking arena seems attached to the idea of technology as a quick-fix solution. The unbroken faith in technology as the best possible response to human trafficking is entangled with a misunderstanding of the crime as a one-dimensional phenomenon that ‘obfuscates [its] complex and non-linear nature’³⁵⁴. Equating sex work with prostitution which therefor invariably includes trafficking, is just one of the many simplifications identified by this work.

In consequence, counter-trafficking efforts are increasingly limited to eliminate the novel channels through which people are exploited. Shutting-down websites and regulating online content fail to benefit persons at risk. These measures give the appearance of crime prevention when in reality they serve as excuses for not leading a more successful fight against the modern forms of trafficking. Hence, the anti-trafficking stakeholders would be well advised not to demonise technological advancement and instead try to understand and make their own use of it.

As stated by the US Ambassador to Combat Human Trafficking “there is no magic tech solution to end human trafficking, and innovation should not be overstated. Yet technology, in the right context, can help move us forward.”³⁵⁵ This should be reflected in the expectations placed in technology. The presented good practices suggest that collaboration across sectors and disciplines is necessary. At the same time, failed projects and privacy infringements raise important questions about accountability, autonomy and the nature of human dignity.

Although this work focuses on human trafficking, the insights may well have bearing on other transnational organised crimes. Hence, they will be of assistance to policy makers, law enforcement agencies, and research. Being methodologically limited to literature review, this work lacks original findings. In addition, the scope of this work was of global character and therefor limited in terms of detailed analyses of national jurisdictions. Notwithstanding these limitations, the exploratory nature of this work suggests new perspectives under which to examine the (anti) trafficking-technology nexus. Moving away from framing human trafficking as an organised

354 Milivojevic, Moore & Segrave (2020) 29.

355 Cotton Richmond J (2019) opening remark at the *19th Alliance against Trafficking in Persons Conference*, Vienna, 8 April 2019 available at <https://www.osce.org/secretariat/416744> (visited 24 August 2020).

crime and appreciating it as a problem of labour and markets would benefit modern approaches. This new perspective should help to improve predictions of the impact by digitalisation.

With regards to equality, one of the safeguards to develop sufficient new methods is to prevent the negative impact on marginalised groups, who are assumed to be disproportionately affected by the drawbacks of globalisation. Proactive efforts must go further and consider socio-economic and geo-political factors. Considerably more work will need to be done in order to provide better perspectives to disadvantaged and minority communities. New technologies can be exploited to design efficient processes, especially when they are supported by expert knowledge. This includes people who have experienced trafficking, victims, survivors, to understand what kind of support is actually needed. A 'heightened focus on technology promotes new types of expertise and also encourages new kinds of experts to join the anti-trafficking table'³⁵⁶.

In the light of the current global situation, where the world has been struck by a pandemic and a significant part of work has shifted online, the impact on human trafficking cannot yet be shown, but is assumed to be significant.³⁵⁷ If the aftermath of the pandemic shows that brothels and hotels remain closed, refugee camps are overcrowded, and debts are rising, parallels to the root causes for trafficking become visible. An overall aim in the fight against human trafficking should be the mitigation of these roots for pushing people away from their homes and pulling them towards dangerous but seemingly bright futures. In an environment that fosters innovation and closes knowledge gaps, technology can make a difference.

5.3 CONCLUSION

Having identified a lack of evaluation of the implemented technological counter-trafficking tools, this present thesis lays the groundwork for future study. Instead of using the existing infrastructure and resources to determine the precise impact technology might have had on facilitating the crime, efforts should be

356 Musto J & Boyd D (2014) 14.

357 Bobrow M 'COVID-19's Impact on Human Trafficking' *MPI* July 29, 2020
<https://www.mpi.org/blog/article/covid-19-s-impact-on-human-trafficking> (visited 30 November 2020).

channelled towards exploring its realistic potential in counter-trafficking. To conclude, I emphasise a nuanced and innovative use of technology as one out of a variety of tools in a comprehensive strategy to transform the systems that create vulnerability. At the best, technology can help rebalance the power 'back in the hands of victims and survivors.'³⁵⁸



358 Rajan A, CTO of Polaris, July 2020 available at <https://polarisproject.org/blog/2020/08/polaris-cto-testifies-on-the-role-of-technology-in-countering-trafficking-in-persons/> (visited 28 January 2021).

List of Abbreviations

AI	Artificial Intelligence
CATW	Coalition Against Trafficking in Women
CoE	Council of Europe
CPI	Corruption Perception Index
CSR	Corporate Social Responsibility
EU	European Union
FATF	Financial Action Task Force
GAATW	Global Alliance Against Traffic in Women
Glo.Act	Global Action Against Trafficking of Persons and the Smuggling of Migrants
GPS	Global Positioning System
GRETA	Group of Experts on Action against Trafficking in Human Beings
HDI	Human Development Index
ICT	Information and communications technology
ILO	International Labour Organization
IOM	International Organization of Migration
IoT	Internet of Things
MSE	Multiple System Estimate
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
RFID	Radio-frequency identification
SHERLOC	Sharing Electronic Resources and Laws on Crime
TIP	Trafficking in Persons Report
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention Against Transnational Organized Crime
US	United States
USC	University of Southern California
WSR	Worker-driven Social Responsibility

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DECLARATION

I declare that **Human Trafficking 2.0: The Impact of New Technologies** is my own work, that it has not been submitted before for any degree or examination in any other university, and that all sources I have used or quoted have been indicated and acknowledged as complete references.

Signed.....

Viola Rentzsch

Signed.....

Prof. A J Hamman

