



UPPSALA
UNIVERSITET

Department of Theology
Spring Term 2015

Master's Thesis in Human Rights
30 ECTS

Human trafficking in the Sinai Desert

A case study of Egypt

Author: Ruth Ghebrai

Supervisor: Mark Klamberg

Abstract

Since 2009 thousands of Eritreans, as well as other, sub-Saharan migrants have become victims of human trafficking in the Sinai Peninsula. These occurrences are linked to the newly coined notion of “Sinai Trafficking” which has been labeled as a new form of human trafficking. According to reports, released or escaped victims have disclosed information regarding collusion between traffickers and Egyptian security forces. Further, there have been reports that trafficking victims from the Sinai are put in detention centers, prisons and police stations in Egypt and are often charged or prosecuted for crimes committed in their capacity as victims of trafficking. Although Egypt is bound to respect and uphold its international law obligations national criminal law concerning human trafficking, the continuation of the situation in Sinai has demonstrated an unwillingness or inability to prevent, suppress and punish the crime. Consequently, the purpose of this thesis is to examine and interpret international law as well as Egypt’s national criminal legislation and policies, pertaining to human trafficking, to determine if there are any inadequacies or gaps in the international legal framework with regards to human trafficking or if it’s rather Egypt’s implementation of the law that is faulty. Moreover, a human rights perspective, relevant theories, literature related to the conceptual framework of human trafficking, the status and treatment of non-nationals and securitization of migration will be applied.

With regards to the international law on human trafficking, it has been assessed that there are some inadequacies in relation to protection and support granted to trafficking victims. Egypt, has adopted relevant international instruments concerning human trafficking. Further, Egypt has enacted national legislation that corresponds to the Anti-Trafficking Protocol, which might indicate that it is not Egypt’s national legislation that is inadequate and rather that the international law concerning human trafficking.

Increasingly restrictive immigration laws, policies and States conduct towards migrants indicate that migration has been securitized. The Egyptian authorities conduct and approach towards migrants could indicate that Egypt has securitized the migration issue. Further, the difficulty to distinguish smuggled migrants from trafficking victims could result in the possibility of trafficking victims being criminalized. The world of today remains globalized and thus the political order that follows and its accompanying conceptual and subsequent legal framework of human trafficking as an organized crime contributes to the trafficking situation in Sinai as well as to human trafficking in general.

Key words: *human trafficking, Sinai, Egypt, ransom, extortion, securitization, Arendt, conceptual framework*

For those who suffered and perished in the Sinai

List of Abbreviations

ILC	International Law Commission
ILO	International Labour Organization
IOM	International Organization for Migration
NCC	National Coordinating Committee on Preventing and Combating Human Trafficking
NCCM	National Council for Childhood and Motherhood
OHCHR	Office of the High Commissioner for Human Rights
UNCHR	United Nations High Commissioner for Refugees
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
UPR	Universal Periodic Review

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1. Introduction

1.2 Introduction and background

Since 2009 thousands of Eritreans, as well as other, sub-Saharan migrants have become victims of human trafficking in the Sinai Peninsula.¹ In 2010, reports to the UNHCR and Israeli NGO's revealed a new trend in which smugglers who had made an agreement with migrants to harbor and smuggle them from refugee camps, mostly located in eastern Sudan, to Israel turned on their clients and abducted their victims in a hostage situation.²

Not long after this, the phenomenon escalated and Sudanese traffickers started kidnapping migrants from UN-refugee camps in order to sell them to traffickers in Egypt. These migrants have then ended up detained by organized human traffickers in Egypt's Sinai Peninsula, which is located around the border between Egypt and Israel.

The Egyptian traffickers, known to belong to the Bedouin tribe, extort the victims' and their families for ransoms, ranging from 3000 USD up to as much as 40 000 USD, in exchange for their family members freedom.

There have been reports that the detained migrants whose families lack funds to pay the traffickers ransom have been tortured, disappeared or killed.³ Further, it has been found that Sudanese traffickers also torture and abuse their victims for ransom before they hand them over to the Egyptian traffickers.⁴

Reports and testimonies from released victims also reveal that the detainees are subjected to cruel human rights violations, inter alia, various forms torture, mutilation, rape and other sexual violence, during the course of their detention in order to extort the victims' families for larger ransoms and instill a sense of fear and urgency.

According to the Human Rights Watch report "I Wanted to Lie Down and Die: Trafficking and Torture of Eritreans in Sudan and Egypt" as well as a US Department of State report, released or escaped victims have witnessed and disclosed information regarding collusion between traffickers and Egyptian security forces, including police and military.

Further, regarding prosecution of human traffickers in Sinai; Egypt has not prosecuted a single trafficker. Similarly, regarding prosecution of official's for collusion with

¹ Van Reisen, Mirjam & Rijken, *Sinai Trafficking: Origin and Definition of a New Form of Human*

² Human Rights Watch, *"I Wanted to Lie Down and Die": Trafficking and Torture of Eritreans in Sudan and Egypt*, Human Rights Watch, 2014, p. 22.

³ Ibid. p. 5.

⁴ Ibid. p. 22.

traffickers, Egypt has not prosecuted any government officials for suspected involvement in human trafficking in the Sinai.

Further, there have been reports that escaped or released victims of trafficking in Sinai are put in detention centers, prisons and police stations in Egypt are held under poor conditions for long periods of time. Often they are not informed of the charges against them and denied legal process and aid.⁵ Moreover, trafficked persons in Egypt are often detained, charged or prosecuted for crimes committed in their capacity as trafficking victims.⁶

Although Egypt is bound to respect and uphold its international law obligations as well as its own national criminal law concerning human trafficking, the continuation of the situation in Sinai has demonstrated an unwillingness or inability to prevent, suppress and punish the crime.

1.3 Problem, purpose and research questions

As specified in Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime⁷ (hereinafter the Anti-Trafficking Protocol), the crime of human trafficking includes a range of severe human rights violations such as, inter alia, forced labour and slavery or practices similar to slavery for the purpose of gaining monetary benefits.

Despite reports on human trafficking and pressure from the international community the situation in the Sinai desert has been going on for several years.⁸ Egypt is bound by national and international anti-trafficking laws, international human rights law and its own national criminal law to prevent, suppress and punish the crime of human trafficking, which raises the question as to how the situation in Sinai has persisted for so long and why no Sinai traffickers have been prosecuted.

Consequently, the purpose of this thesis is to examine and interpret international law as well as Egypt's national criminal legislation and policies, pertaining to human

⁵ Van Reisen, Mirjam & Rijken, 2015, p. 122.

⁶ Gallagher, Anne T., *The International Law of Human Trafficking*, Cambridge University Press, New York, 2010, p. 283.

⁷ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

⁸ See, e.g., European Parliament, European Parliament Resolution on Security and Human Trafficking in the Sinai (2014/2630(RSP), 13 March 2014.

trafficking, to determine if there are any inadequacies or gaps in the international legal framework or if it's rather Egypt's implementation of the law that is faulty.

Moreover, in furtherance of a clarification on the possible deficiencies in the international legal framework and its implementation a human rights perspective as well as relevant theories and literature related to the conceptual framework of human trafficking, the status and treatment of non-nationals and securitization of migration will be applied.

The following research questions are constructed to fulfill the purpose of this thesis.

1. Are there any inadequacies in international law or national legislation concerning human trafficking with regards to Egypt?
 - Or is it rather Egypt's application of existing law that is insufficient?

2. Has the issue of migration been securitized?
 - If so, what are the possible ramifications for victims of human trafficking?

3. How can human trafficking in the Sinai Peninsula be linked to Arendt's perception of a new political order?

1.4 Materials, scope and limitations

1.4.1 Materials

1.4.1.1 Primary and secondary sources

The primary sources that will be used for this thesis mostly consist of relevant international law including several conventions and protocols. Moreover, relevant Egyptian national criminal law and policies will also be reviewed and incorporated through the case study.

The secondary sources will include commentaries to the selected conventions and protocols. Further, relevant reports from organs of the United Nations such as the United Nations High Commissioner for Refugees (hereinafter the UNCHR) and the Office of the High Commissioner for Human Rights (hereinafter the OHCHR) as well as reports from non-governmental organizations (NGO's) and intergovernmental-organizations (IGO's) such as the International Organization for Migration (hereinafter the IOM) and the Human Rights Watch will be included.

Non-binding “soft law” such as, United Nations General Assembly resolutions (hereinafter UNGA resolutions), relevant action plans and guidelines are also to be included in this thesis. The “soft law” is not to be mistaken for traditional binding law and will rather be incorporated as a tool for prediction of potential future developments of norms and principles concerning human trafficking into codified “hard law” or customary international law.⁹

Selected doctrines from legal scholars on the topic of human trafficking will be examined and utilized in order to be able to answer the research questions. Further, selected articles and literature pertaining to the subject of human trafficking will also be included in order to gain a wider perspective in furtherance of the purpose of this thesis.

With regards to the case study of Egypt, domestic anti-trafficking laws and policies, additional efforts, measures and official statements, such as national action plans, reports and other documented endeavors related to human trafficking in general and to the situation in Sinai will be included.

Additionally, selected literature on relevant theories will be incorporated and applied when reviewing and analyzing the legal material and empirical findings of this thesis.

1.4.1.2 Criticism of Sources

Official documents have been utilized for this thesis, to the extent possible, to ensure credibility. Further, in addition to legal sources, articles and literature by various scholars and authors have been used. All materials utilized contain clear references and citations and firsthand sources have been selected to the extent possible. Moreover, sources with the same subject matter have been compared in similarity in order to facilitate determination of credibility.

Human trafficking is a widely debated and highly politicized issue, hence, States, IGO's, NGO's and scholars may have vested interests on the subject matter, and thus it is of importance to attempt separation of possible political interests and objective research.

With regards to the case study of Egypt, audit reports from United States Department of State and the Swedish Foreign Ministry have been included. In order to assess credibility of the material obtained from the audit reports, the information has been crosschecked with reports from Amnesty International and Human Rights Watch.

⁹ Dixon, Martin, *Textbook on International Law*, Sixth Edition, Oxford University Press, Oxford, 2007, p. 50.

Further, Egypt may also have vested interest on the subject matter, hence, a critical perspective is of the essence when reviewing statements as well as documents provided and produced by the State.

1.4.1.3 Prior Research

As previously mentioned, human trafficking is a widely debated topic and considerable research has been done on the subject. However, most of the research available is centered on certain forms of human trafficking, such as trafficking in persons for the purpose of prostitution or forced labour. Human trafficking for the purpose of extortion or ransom is a fairly unexplored research area and thus materials are slim. Further, a considerable amount of the research is focused on trafficking in women and children.

Moreover, research on human trafficking in Sinai is virtually non-existent aside from a study conducted by Prof Dr Mirjam Van Reisen, Professor of International Social Responsibility at Tilburg University, and Dr Conny Rijken, Associate Professor of European and International Law at the International Victimology Institute Tilburg at Tilburg University, on the subject matter labeled “Sinai Trafficking: Origin and Definition of a New Form of Human Trafficking”.¹⁰ In the article Van Reisen and Rijken highlight the characteristics of the newly coined term of “Sinai Trafficking”. Further, Van Reisen and Rijken describe the specific nature of the phenomenon that distinguishes “Sinai Trafficking” from other more established forms of human trafficking.¹¹

In addition to this, Van Reisen and Rijken have, together with journalist and human rights activist Meron Estefanos, written two reports on human trafficking in Sinai titled “Human Trafficking Cycle: Sinai and Beyond”¹² and “Human Trafficking in the Sinai: Refugees between Life and Death”¹³.

1.4.2 Scope and Limitations

Human trafficking is a complex and multifaceted crime that can be linked to various human rights violations codified in several human rights treaties. However, due to the purpose and

¹⁰ Van Reisen, Mirjam & Rijken, Conny, *Sinai Trafficking: Origin and Definition of a New Form of Human Trafficking*, In The Journal of Social Inclusion, Perspectives on Human Trafficking and Modern Forms of Slavery, Volume 3, No. 1, pp. 113-124, 2015.

¹¹ Ibid. p. 113.

¹² Van Reisen, Mirjam, Rijken, Conny, & Estefanos, Meron, *the Human Trafficking Cycle: Sinai and Beyond*, Nijmegen: Wolf Legal Publishers, Brussels, May 2014.

¹³ Van Reisen, Mirjam, Rijken, Conny, & Estefanos, Meron, *Human Trafficking in the Sinai: Refugees between Life and Death*, Wolf Legal Publishers, Brussels, October 2012.

scope of this thesis focus will rest solely on human trafficking in accordance with its definition stated in Article 3(a) of the Anti-Trafficking Protocol. Any references made to other human rights violations will only serve as a tool in furtherance of a hypothetical reasoning regarding potential future developments of the current definition of the crime. For this purpose emphasis within international human rights law will be placed on “Soft law” explained below in Section 1.4 Methodology.

As was presented in Section 1.1. Introduction and Background, the situation in Sinai is highly connected to Sudan pertaining to the Sudanese trafficker’s and its security force’s involvement in the human trafficking chain. Moreover, refugee camps located in eastern Sudan are targeted by traffickers as places of abduction of migrants. However, for the purpose of this thesis, only Egypt will be included in the case study.

Human trafficking is a transnational crime that involves numerous countries. With regards to the situation in Sinai, this is further demonstrated by the fact that, both Ethiopia and Israel are related to the crime as returning and destination countries respectively.

However, for the purpose of this thesis, emphasis will rest solely on the obligations and involvement of Egypt due to the fact that the victims are being held within its borders and the perpetrators of the crime mostly consist of its nationals.

In addition to the above-mentioned, the countries limited involvement in relation to Egypt and due to the scope of this thesis; Sudan, Ethiopia and Israel are excluded from the case study.

Further, with regards to limitations, the only international human rights treaties that specifically refer to human trafficking are conventions related to certain groups such as women and children, namely Article 35 of the UN Convention on the Rights of the Child¹⁴ (UNCRC) and Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women¹⁵ (CEDAW).

Acknowledging that women and children are part of especially vulnerable groups in need of greater legal protection, not least concerning human trafficking for the purpose of prostitution and child soldiers. Notwithstanding, this thesis aims to examine and analyze the general protection against human trafficking under international law. Hence, an understanding of the international legal framework and its implications for all victims,

¹⁴ UN General Assembly, *Convention on the Rights of the Child*, done November 20, 1989, United Nations, Treaty Series, vol. 1577, p. 3, entered into force September 2, 1990.

¹⁵ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, done December 18, 1979, United Nations, Treaty Series, vol. 1249, p. 13, entered into force September 3, 1981.

including but not limited to women and children, is therefore the essential focus of this thesis. Further, related to this topic, concerning the situation in Sinai, there have reports of women and minors being held captive by human traffickers, however, the majority of the victims are men.

With regards to human trafficking as a crime under international criminal law some scholars and legal practitioners claim that is possible to define human trafficking as a crime against humanity. They hold that enslavement as a crime against humanity includes trafficking in persons.¹⁶ However, some scholars maintain that though enslavement and human trafficking are closely linked and sometimes coincide, they are not the same.¹⁷ Professor Harmen van der Wilt, claim that it is neither possible nor desirable to equate the two notions and include human trafficking as a crime against humanity under the crime of enslavement.¹⁸

The topic of human trafficking as a crime against humanity is relevant for this thesis for the purpose of assessing the legal implications of categorizing human trafficking as an international criminal law offense and how it would affect a state's responsibility to prevent, suppress and punish the Crime. However, due to the scope of this thesis, an examination and analysis of this subject will not be included.

1.5 Methodology

As mentioned above in Section 1.3.1 Materials, the chosen primary material for this thesis largely consists of international legislation, thus, the Vienna Convention on the Law of Treaties¹⁹ (hereinafter the VCLT) will be utilized as an interpretational standard, as it is the applicable tool for interpretation of treaties.

According to Article 31 para. 1 VCLT, a treaty must be interpreted 'in good faith', meaning to be read reasonably and fairly, giving consideration to how it was meant to be

¹⁶ See e.g. Obokata, Tom, *Trafficking of Human Beings as a Crime Against Humanity: Some Implications for the International Legal System*, International and Comparative Law Quarterly, Vol. 54, pp. 445-457, 2005 p. 445; *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Trial Judgment)*, IT-96-23-T & IT-96-23/1-T, International Criminal Tribunal for the former Yugoslavia, February 22, 2001, para. 542.

¹⁷ See e.g. Van der Wilt, Harmen, *Trafficking in Human Beings, Enslavement, Crimes Against Humanity: Unravelling Concepts*, *Chinese Journal of International Law*, pp. 297-334, Oxford University Press, 2014, p. 297.

¹⁸ *Ibid.* p. 334.

¹⁹ United Nations, *Vienna Convention on the Law of Treaties*, Treaty Series, Volume 1155, p.331, done at Vienna May 23, 1969, entered into force January 27 1980.

understood.²⁰ Further, a treaty must be interpreted in accordance with its ordinary meaning considering the treaty as a whole including its preamble and annexes. The terms of a treaty can only be understood fully in light of its context. Lastly, the meaning of a treaty is to be determined by its object and purpose including its “aims, its nature and its end”. A treaty can comprise in a variety of objects and purposes, one of which is to uphold the core terms and values for which it was created.²¹

The travaux préparatoires of a treaty as well as “the circumstances of its conclusion” are, according to Article 32 of the VLTC, to be regarded as supplementary means of interpretation only invoked when application of the above-mentioned methods results in an ambiguous interpretation. In such cases the travaux préparatoires of a treaty and “the circumstances of its conclusion” may be used for further clarification.

According to Mark Villiger, “the circumstances of its conclusion” are to be understood as including “the political, social and cultural factors – the milieu – surrounding the treaty’s conclusion.”²²

This thesis will be based on the international sources of law recognize in Article 38 of the Statute of the International Court of Justice (hereinafter the ICJ Statute).²³ According to Article 38.1(d) the ICJ Statute “judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law”. Hence, the selected case law and doctrines included in this thesis will be utilized as supplementary methods for determining and interpreting established law.

In order to fulfill the purpose of this thesis a case study of Egypt will be included. The case study will be focused on determining and analyzing relevant national criminal law and international law concerning human trafficking to determine possible inadequacies or gaps in the legislation as well as application of the law.

Further, statements and measures concerning prevention, suppression and punishment of the crime of human trafficking will be included to further shed light on the situation in Sinai and Egypt’s position on the issue.

The victims of human trafficking in the Sinai desert consist exclusively of displaced people. These are people whom, for various reasons, have left their homes and countries of

²⁰ Villiger, Mark E., *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Koninklijke Brill NV, 2009, p. 425- 426.

²¹ Villiger, 2009, p. 427.

²² Ibid. p. 445.

²³ United Nations, *Statute of the International Court of Justice*, 18 April 1946.

origin and are therefore lacking their rights as citizens of a nation state. Consequently, a theory that problematizes and analyzes what happens to an individual's inalienable human rights in a vulnerable situation where there is no nation state obliged to guarantee these rights will be included. Accordingly, Hanna Arendt's theory regarding who has the right to human rights and the importance of citizenship in order to access these rights will be incorporated in this thesis as part of the theoretical framework.

Arendt's theory will further be utilized in order to obtain a greater understanding of Egypt's reasoning and actions concerning the people affected by human trafficking in Sinai. Moreover, Securitization, which is a theory within international relations, will be included in this thesis. The Securitization model elaborates on how States act and what happens with an issue, in this case human trafficking, when it is securitized.

In addition to the above-mentioned theories, different possible conceptual frameworks for the crime of human trafficking will be included. These conceptual frameworks will help determine how human trafficking is perceived and the prevailing view of the concept of the crime as well as the effects of its implementation.

For the purpose of this thesis, an examination of established law with regard to the crime of human trafficking will be conducted. Further, soft law created by international and regional institutions will be utilized to examine the potential ramifications and possibilities of a more extensive interpretation of human trafficking as a human rights violation in itself.

1.6 Outline

This thesis will consist of five parts with the first part serving as an introductory chapter. In the second part, the theoretical framework for the thesis will be accounted for. The third part will include a description and examination of the subject matter of human trafficking with emphasis on the international legal framework for the Crime. The fourth part will focus on an examination of human trafficking with a human rights-based approach. The fifth part of this thesis will be a case study of the chosen country, Egypt. The emphasis will rest on the country's international and national obligations pertaining to human trafficking and its anti-trafficking measures and efforts. An analysis and discussion and conclusion will be accounted for in a final chapter. The findings from all the above-mentioned parts will be gathered and analyzed in order to answer the set out research questions and fulfill the intended purpose of this thesis.

2. Theory

2.1 Conceptual Frame of Human Trafficking

The term of human trafficking is a highly debated and contested term and there are various understandings of the crime.²⁴ There is also a lack of knowledge of the crime in some regions. Further, purely traditional or historical perceptions of human trafficking have resulted in some contemporary forms of trafficking going unseen.²⁵

Five of the most commonly used conceptual understandings of trafficking include human trafficking, as modern-day slavery; as an issue of transnational organized crime; as synonymous with prostitution; as a migration issue; and as a human rights concern.

Contemporary trafficking in persons can be viewed through different lenses and thus be tackled from various angles depending on how one perceives the crime. Consequently, it is of great importance to understand the conceptual framework of human trafficking and how the prevailing view of the concept of the crime affects joint anti-trafficking efforts such as international legislation as well as other actions. This endeavor also facilitates analysis of various concepts in order to further understand whether changes are needed in the framework in order to eradicate the crime.²⁶

As mentioned above, some scholars argue that human trafficking can be viewed as a contemporary form of slavery. According to these scholars the crimes are parallel in the exploitation and treatment of people as commodities. Further, they claim that the main distinguishing elements of the crimes is the pervious form of permanent ownership in contrast to the current types temporary ownership through, inter alia, forced labour or debt bondage. As part of this concept human trafficking or “new slavery” is regarded as the exploitation and treatment of people as disposable commodities for economic gain.

According to the proponents of the notion that human trafficking can be viewed as modern slavery there is a value of using the term slavery for human trafficking in order to stress the similarities of the crimes and thus underscore the severity of human trafficking.²⁷

Other scholars claim that human trafficking can be conceptualized as a transnational crime. This approach is part of the current prevailing framework of human trafficking. Through the United Nations Convention against Transnational Organized

²⁴ Lee, Maggy, *Trafficking and Global Crime Control*, Sage Publications Ltd, London, 2011, p. 3.

²⁵ Lee, 2011, p. 6-7.

²⁶ Ibid. p. 7.

²⁷ Lee, Maggy, *Human Trafficking*, Willan Publishing, Cullompton, 2007, p. 3-4.

Crime²⁸ (hereinafter the Organized Crime Convention) and the Anti-Trafficking Protocol the crime of human trafficking is dealt with as an issue of organized crime orchestrated by criminal groups and networks. However, critics of the organized crime-conceptual framework claim that the approach is an inefficient strategy in the fight against trafficking. Further, criticism has been directed at the enforcement-centered focus of the framework resulting in de-prioritization of the victims of human trafficking.²⁹

Equating human trafficking to prostitution can be traced back to the notion of “white slave trade or traffic” originating in the early twentieth century.³⁰ “White slave trade or traffic” was understood as systems of regulated prostitution of white women and girls in Europe. In response to the phenomenon, several international instruments to combat the crime were adopted.³¹

Prostitution of women and children is still today highlighted as a main conceptual framework of human trafficking and thus considerable research and resources have been focused on human trafficking as prostitution. Accordingly, trafficking in persons for other purposes than prostitution or sexual exploitation, such as forced labour, slavery or debt bondage, have received less attention.³²

Moreover, human trafficking can be viewed as a migration issue. Migration research has indicated increased migration flows due to; inter alia, civil war, poverty and socioeconomic inequalities. Simultaneously, immigration laws and policies have become increasingly restrictive forcing people to resort to smugglers and traffickers to flee.³³

If human trafficking is understood as a migration problem the responses related to the crime focus on illegal immigration. Within this concept, trafficked persons are, when crossing national borders, primarily regarded as offenders of immigration laws. The realization of this this conceptual framework can be seen through States adoption and implementation of increasingly restrictive immigration laws, policies and counter-measures.³⁴

Critics of the framing of human trafficking as a migration issue claim such an understanding of the crime is inadequate. According to these critics, trafficking and migration

²⁸ UN General Assembly, *United Nations Convention against Transnational Organized Crime: resolution/adopted by the General Assembly (Organized Crime Convention)*, A/RES/55/25, January 8, 2001.

²⁹ Lee, 2007, p. 5-6.

³⁰ Ibid. p. 4.

³¹ Gallagher, 2010, p. 55.

³² Lee, 2007, p. 4.

³³ Ibid. p. 7.

³⁴ Lee, 2011, p. 9.

flows have to be understood in the light of global inequalities and division. As mentioned above, resorting to smugglers and traffickers is a last resort, used when other options are virtually non-existent due to current conditions created by wealthy States fighting to keep non-nationals out.³⁵

The final common conceptual framework of human trafficking is based on a human rights perspective or approach. The human rights-based approach includes norms and standards derived from international human rights law. According to this framework, protection and promotion of human rights and a victim-focused perspective should be the main focus when tackling human trafficking.³⁶ Further elaboration on a human rights based-approach in relation to trafficking in persons will be presented in Chapter 4.2 A Human Rights-Based Approach to Human Trafficking.

2.2 Hanna Arendt

Hanna Arendt describes World War I as the beginning of a new era that destroyed the fabric of society in pre-war Europe that has lingered and spread long after its conception. The end of World War I was followed by several years of civil wars, domestic turbulence and economic instability throughout Europe, which was followed by large flows of migration. Arendt described the situation for immigrants as following,

Once they had left their homeland they remained homeless, once they had left their state they became stateless; once they had been deprived of their human rights they were rightless, the scum of the earth.³⁷

Arendt expands on the idea that the foundation of human rights and the perceived inalienable character of these rights crumble in regards to refugees. She claims that in reality human rights are only granted and safeguarded through citizenship leaving the migrant without human rights protection in a particular vulnerable situation where they are needed the most.³⁸

³⁵ Lee, 2011, p. 12.

³⁶ HRBA Portal, UN Practitioners' Portal on Human Rights Based Approaches to Programming, 10. – What is a human rights-based approach?

³⁷ Arendt, Hannah, *The Origins of Totalitarianism*, First Edition, Harcourt Brace and Company, New York, 1951, p.266.

³⁸ Ibid. p. 267-268.

In her theory, *The Right's of Man*, Arendt mainly refers to stateless persons; however, she claims that there are no practical distinctions between a refugee and someone that is stateless with regards to the state of rightlessness.³⁹

Arendt describes the loss of rights as twofold. The first loss suffered was the loss of home, which included being forced to leave a place of familiarity and upbringing, a place where roots had been established. This was then followed by an extreme difficulty to find a new place to settle down due to massive restrictions being imposed by states everywhere.⁴⁰

According to Arendt, rightlessness can be linked to a new political order, which derives from an increasingly globalized world and not from a lack of civilization. She elaborates further by claiming that only in a globalized world, a loss of position or political status within a society or nation could mean the loss of one's human rights or humanity altogether.⁴¹

Hanna Arendt's theory brings forth a perspective highly relevant to the crime of trafficking and trafficking victims. Although her references date back to the end of World War I and the European post-war era, the prevalence of conflict, war, poverty, inequalities, increasingly restrictive immigration laws and large migration flows remains the same, thus Hannah Arendt's theory on refugees and the loss of rights and its ramifications is as relevant today as it was when first published.

2.3 Securitization

Securitization is a model within international relations developed by the Copenhagen School. The model aims to provide a broader perspective on matters of security and entails a framework of how to understand the concept of securitization. According to scholars of the Copenhagen School, a matter of security is to be construed as an issue that threatens the existence and wellbeing (traditionally) of a state.

Within the model not only military issues are established as threats, "environmental, economic, societal, and political security" are also included.⁴²

According to the model, an issue is first perceived and treated as non-politicized, standing outside the political arena and then subsequently transforms into a matter that is

³⁹ Arendt, 1951, p. 280.

⁴⁰ Ibid. p. 290-291.

⁴¹ Ibid. p. 294.

⁴² Emmers, Ralf, *Chapter 10: Securitization*, In Collins, Alan, *Contemporary Security Studies*, Third Edition, pp. 131-144, Oxford University Press, Oxford, 2013, p. 137.

politicized and thus included in the political agenda as an issue requiring government action. Lastly, specific actors can securitize a politicized issue through certain actions.

The securitizing actor within the model can be the government or a similar entity but also military or even civil society is established as a sufficient actor. The securitizing actor then publicly articulates a statement ('speech act') to signal that a politicized issue is threatening the existence of the state, its ideal or economy. This is regarded as a referent object; a value, entity or group in need of protection.

The statement is directed at, and must be accepted by, a relevant audience consisting of the people of a nation or a group with a high level of influence such as politicians or an elite. The purpose of the statement or action is to persuade the audience that the politicized issue is an imminent security threat to the referent object and therefore requires imposing extraordinary measures.⁴³

As demonstrated above, a certain issue must go through several stages before it can be considered as securitized. When an issue has gone through the process and reached the final stage certain extraordinary measures are considered acceptable in order to tackle the perceived security threat at hand. These measures include circumventing public opinion or debate and the standards of democratic practices. The extraordinary measures are a direct response to a specific threat to the referent object, thus different measures will be deemed appropriate depending on the present circumstances and nature of the threat.⁴⁴

2.3.1 Securitization and undocumented migration

Some States claim that undocumented migration poses a threat to national security on various levels. Firstly, and maybe most obvious, undocumented migration defy national borders and thereby, according to some, threatens the national sovereignty and territorial integrity of a state.⁴⁵ Further, it can be deemed that undocumented migration has an adverse affect on society through decreased social order and increased crime rates. Additionally, it is believed that a high degree of migration can affect a society by groups of immigrants contributing to altering the culture or lifestyle and the racial composition of a nation.

Moreover, it is perceived that migration can have a negative effect on economic security. This is based on the belief that immigrants are granted benefits and given jobs at the expense of nationals. It is cheaper for an employer to hire an undocumented immigrant,

⁴³ Emmers, 2013, p. 138-139.

⁴⁴ Ibid. p. 141.

⁴⁵ Ibid. p. 144.

however, it has been established that immigrants often get low-skilled jobs that are discarded by nationals thus refuting the notion of competition of employment opportunities.⁴⁶

There have been cases where a state has securitized undocumented migration by declaring that the issue is a threat to the referent object, which in such instances would be national sovereignty, territorial integrity (political security) as well as societal and economic security referring to the above-mentioned perceived threats of immigrants and migration.

Consequently, a securitizing actor can securitize an issue that is perceived as a threat whether this notion is correct or not so long as the relevant audience is successfully convinced. This subsequently approves employing extraordinary measures in response, which can have dire consequences on immigrants.

Australia is a country that has securitized the issue of undocumented migration. The Prime Minister John Howard was re-elected in the fall of 2001 on a political platform focused on issues of terrorism in a post-9/11 environment and migration. He linked the two issues together by expressing concern that terrorists could be amongst undocumented migrants smuggled in to Australia. Further, Howard delegitimized undocumented migration by claiming that illegal immigrants would benefit on the expense of recognized asylum-seekers. In addition to this, Howard declared that smuggling posed a threat to Australia's national sovereignty and territorial integrity.

In the case of Australia's securitization of undocumented migration, the securitizing actor was the Australian government lead by John Howard, the referent object was Australia's national sovereignty and territorial integrity, society as a whole as well as the domestic security and economy. The relevant audience consisted of the Australian public who generally supported a firm approach towards undocumented migration.

Following the process of securitization, the John Howard administration implemented a series of extraordinary measures including interception of ships of the coast of Australia containing asylum-seekers, automatic detention of asylum-seekers, building detention facilities for asylum-seekers and refugees awaiting application processes and increasing national security and border controls.⁴⁷

⁴⁶ Emmers, 2013, p. 145.

⁴⁷ Ibid. p. 145-146.

Securitizing the issue of migration may have effects on victims of trafficking. If migration is securitized, the securitizing actor will be able to implement extraordinary measures in response to the perceived threat, which in this case would be migration and migrants.

Until a victim of trafficking is identified as such it is not possible to distinguish a trafficking victim from other migrants such as irregular migrants entering the State unlawfully. Thus securitizing migration can result in trafficking victims being labeled and subsequently treated as criminals.

3. Human Trafficking

3.1 Introduction

According to estimates from a report presented by the International Labour Organisation released in 2012, approximately 20.9 million people are victims of forced labour worldwide, which also includes human trafficking victims as the crime can be regarded as forced labour.⁴⁸ Human trafficking is a crime that affects all nations of the world as countries of origin, transit or destinations. Trafficking is not a new phenomenon; it is rather an occurrence that has existed under various forms and names since time immemorial.⁴⁹

3.2 International Legal Framework

3.2.1 Trafficking and ‘white slave trade’

The origins of the term “white slavery” can be traced back to the abolitionist movement. The focus of the movement was to combat white slave traffic, which was meant to be understood as systems of regulated prostitution of white women and girls in Europe.⁵⁰ The anti-white slave traffic movement has been linked to the British abolitionist movement which sought to eradicate African slave trade therefore the two notions are often paralleled.⁵¹

However, “white slavery” and African slave trade was compared and the latter was considered a less immoral phenomenon. They were considered different on two levels, firstly, female sexual slavery was supposedly worse than African slave trade, which was enslavement of Africans for the purpose of forced labour. Secondly a moral comparison was made, placing higher value on the sufferings of the women subjected to “white slavery”. Distinguishing between white female sexual slavery and the enslavement of Africans, labeling the latter as less horrific placed a lesser human value on black people and also blatantly disregarded the issues of sexual exploitation of black women.⁵²

⁴⁸ International Labour Organisation, ILO 2012 Global Estimate of Forced Labour: Results and Methodology, 2012, p. 13.

⁴⁹ Lee, 2007, p. 1.

⁵⁰ Gallagher, 2010, p. 55.

⁵¹ Jones-Pauly, C.C., *Report on anti-trafficking laws in six European countries (Austria, Belgium, Czech Republic, Federal Republic of Germany, Italy, Poland) and compliance with the International Conventions against trafficking*, 1999, p. 147.

⁵² Irwin, Mary Ann, “White Slavery” As Metaphor: Anatomy of a Moral Panic, *Ex Post Facto: The History Journal* 5, 1996, p. 3.

In the early twentieth century, in connection to the “white slavery” movement, States formed an international alliance for a joint unprecedented effort against trafficking.⁵³

Between 1904 and 1933 a total of four treaties were adopted to suppress “white slavery”.⁵⁴ The first convention, the International Agreement for the suppression of the “White Slave Traffic”⁵⁵ (hereinafter the 1904 Convention), was finished 18 May 1904 and solely covered cases of prostitution or “debauchery” in foreign countries by means of force or deception.⁵⁶ Exploitation for labour purposes was excluded in the convention.⁵⁷ Domestic matters of prostitution were also excluded due to the belief that domestic issues were best solved within the jurisdiction of the own State.⁵⁸ Hence a main focus within the 1904 Convention was the cross-border nature of the crime along with the criteria of compulsion.⁵⁹ The protection of victims was also an integral part of the 1904 Convention. States parties were to ensure the protection of victims related to their wellbeing.⁶⁰

The second agreement, the White Slave Traffic Act⁶¹ (hereinafter the 1910 Convention) contained some new developments. Firstly, due to the difficulty proving force, the scope of the crime was extended to include situations of non-aggravation stipulating “enticement and procurement” as possible means of coercion.⁶² Further, the jurisdiction of the crime was also extended to include cases within a State, removing the cross-border requirement. Moreover, the more socially oriented nature of the 1904 Convention shifted with the 1910 Convention to focusing more on criminalization, prosecution and punishment of the crime.⁶³ Lastly, a significant change made through the 1910 Convention, which is still present today, was the introduction that consent of the victim was rendered irrelevant if “coercive or fraudulent” means had been used.⁶⁴

The third and fourth Conventions were created under auspice of the League of Nations. In the International Convention for the Suppression of the Traffic in Women and

⁵³ Jones-Pauly, C.C., *Report on anti-trafficking laws in six European countries*, p. 147.

⁵⁴ Boister, Neil, *An Introduction to Transnational Criminal Law*, Oxford University Press, Oxford, 2012, p. 39.

⁵⁵ *International Agreement for the Suppression of the White Slave Traffic (1904 Convention)*, 1 L.N.T.S. 83, done May 4, 1904, entered in to force July 18, 1905.

⁵⁶ Gallagher, 2010, p. 57.

⁵⁷ Jones-Pauly, C.C., *Report on anti-trafficking laws in six European countries*, p. 157.

⁵⁸ Ibid 162.

⁵⁹ Ibid 142.

⁶⁰ Gallagher, 2010, p. 57.

⁶¹ *International Convention for the Suppression of the White Slave Traffic (1910 Convention)*, 3 LNTS 278, done May 4, 1910, entered in to force August 8, 1912.

⁶² Jones-Pauly, C.C., *Report on anti-trafficking laws in six European countries*, p. 142.

⁶³ Gallagher, 2010, p. 57.

⁶⁴ Article 1 of the 1910 Convention.

Children⁶⁵ (hereinafter the 1921 Convention) the term of “white slavery” was avoided and replaced by the notion of “immoral trafficking”. At the time of conception of the 1921 Convention, a feminist wave influenced a development of the scope to include both sexes (under the age of 21). Further, the criminal law focus persisted and more restrictive emigration and immigration policies were enforced.⁶⁶

The International Convention for the Suppression of the Traffic in Women of Full Age⁶⁷ (hereinafter the 1933 Convention) was the last in the series and resulted in some major changes. The purpose of the crime of trafficking was expanded to include, in addition to prostitution, “immoral purposes”.⁶⁸ The requisite consent, which was amended in the 1910 Convention, was completely removed as an element of the crime in the 1933 Convention. The purpose of eliminating consent was to facilitate prosecution of perpetrators. Moreover, it was established that trafficking also included domestic cases, which resulted in a groundbreaking development of international controls on the Sovereign state.⁶⁹ The 1933 Convention, similar to the three prior Conventions, emphasized protection of victims as well as interstate cooperation through information sharing.⁷⁰

3.2.2 1949 Trafficking Convention

In December 1949 the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others⁷¹ (hereinafter the 1949 Trafficking Convention) was created by the UN General Assembly to consolidate all previous agreements on “white slavery” and trafficking. The aim of the 1949 Trafficking Convention was to control and criminalize trafficking as well as procurement and exploitation. However, with regards to trafficking, the 1949 Trafficking Convention only covered trafficking for the purpose of prostitution.⁷² However, the Convention does not criminalize prostitution as such. It only requires States to attempt to prevent prostitution and assist in rehabilitation of victims

⁶⁵ *International Convention for the Suppression of Traffic in Women and Children (1921 Convention)*, 9 LNTS 415, done September 30, 1921, entered in to force June 15, 1922.

⁶⁶ Gallagher, 2010, p. 58.

⁶⁷ *International Convention for the Suppression of the Traffic in Women of Full Age (1933 Convention)*, 150 LNTS 431, done October 11, 1933, entered in to force August 24, 1934.

⁶⁸ Article 3 of the 1933 Convention.

⁶⁹ Jones-Pauly, C.C., *Report on anti-trafficking laws in six European countries*, p. 142.

⁷⁰ Gallagher, 2010, p. 58.

⁷¹ *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949 Convention)*, 96 UNTS 271, done December 2, 1949, entered in to force July 25, 1951.

⁷² Gallagher, 2010, p. 58-59.

through social and economic measures.⁷³ The purpose is stipulated in the preamble of the 1949 Convention and reads as following,

Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community,⁷⁴

The 1949 Trafficking Convention preserved some features from its preceding agreements, such as, gender neutrality, the consent-criteria rendered irrelevant, the cross-border and domestic elements remained as well as trafficking constituting as “enticement, procurement and leading away”.⁷⁵ Further, no definition of trafficking or prostitution was established in the 1949 Trafficking Convention.⁷⁶

According to Article 5 of the 1949 Trafficking Convention, non-nationals are to be granted the same right as nationals to partake in proceedings against offenders. This regulation could open up for non-nationals receiving retribution otherwise only granted to nationals, reaffirming that protection and rehabilitation of victims are key elements of the Convention. Further, the 1949 Trafficking Convention obliges State parties to care for victims of both trafficking and prostitution prior to repatriation by providing social services.⁷⁷

However, the 1949 Convention has received criticism on several grounds. Firstly, the 1949 Trafficking Convention has been deemed inefficient in the protection of trafficked women. As previously mentioned, the Convention only applies to trafficking for the purpose of prostitution. Consequently, a great number of women who are trafficked for other purposes, such as marriage and domestic or industrial labour are left with no protection under the 1949 Trafficking Convention. Further, as mentioned above, the 1949 Convention does not prohibit prostitution as such; rather it only criminalizes practices related to prostitution. The 1949 Convention has also been criticized for not applying a human rights approach. Moreover, the Convention does not take into account human rights violations committed during the process of trafficking. It has also been claimed that the 1949 Trafficking Convention is flawed with regard to its attitude towards women. Women are

⁷³ Article 16 of the 1949 Convention.

⁷⁴ Preamble of the 1949 Convention.

⁷⁵ Jones-Pauly, C.C., *Report on anti-trafficking laws in six European countries*, p. 142.

⁷⁶ *Ibid.* p. 175.

⁷⁷ Gallagher, 2010, p. 60.

depicted as dependent and vulnerable in need of saving instead of being perceived as actors whose rights have been violated.⁷⁸

3.2.3 Transnational Criminal Law

The UN has described the concept of ‘transnational crime’ as offenses “which transcend national jurisdictions...” “offences whose inception, prevention and/or direct or indirect effects involved more than one country”.⁷⁹

Judge Philip Jessup coined the generally accepted definition of transnational law in 1956. He describes it as “to include all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories”.⁸⁰

The legal framework of transnational criminal law consists of so called ‘suppression conventions’. Suppression conventions are jointly designed by States to suppress a certain conduct and are aimed at creating legal obligations for States to criminalize said conduct.⁸¹

It has been said that some transnational crimes, such as human trafficking, can be seen as stronger catalysts for development of suppression conventions on moral grounds. However, ties to the development of transnational crimes have also been made to States self-interest to reach beyond national borders.

A prerequisite for a functioning transnational legal system is reciprocal cooperation. States must be willing to mutually agree to circumvent certain limitations imposed by sovereignty arising when dealing with interstate relations. If a non-state actor poses a threat to a State across national borders cooperation is crucial for suppression of said threat.⁸²

⁷⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44 , E/CN.4/2000/68 29 February 2000, para 22.

⁷⁹ Ninth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Interim Report by the Secretariat: Results of the Supplement to the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, on Transnational Crime*, UN Doc. A.CONF.169/15/Add.1, Cairo, April 4, 1995, p. 4.

⁸⁰ Jessup, Philip, *Transnational Law*, New Haven: Yale University Press, pp. 113, 1956, p. 113.

⁸¹ Boister, 2012, p. 14.

⁸² *Ibid.* p. 17.

Some legal scholars claim that the direction of the development of transnational law has been influenced and controlled by powerful Western States driven by self-interest.⁸³ However, this is refuted by others maintaining that there was a large number of States participating in the creation of the transnational legal framework.⁸⁴

Nonetheless, some scholars still proclaim that there are forces influencing the development of norms in certain directions in explicit and implicit manners. These forces can consist of governments, international legal scholars, moral proponents or religious groups.

The process of the development of suppression conventions includes several stages where the perception of an act or conduct gradually alters from being perceived as legitimate to an illegitimate and deviant act or conduct. When this occurs the pressure on States increases to conform to the hegemonic belief that a certain act or conduct, preformed by a State or non-state actor, is immoral and that criminalization of said act or conduct is required.⁸⁵ States that resist or fail to conform to these established norms are condemned and viewed as deviant by other nations as well as by individuals and communities.⁸⁶

Transnational criminal law can in some ways be seen as a part of international criminal law; however, they hold fundamental differences and are as such easy to distinguish from each other.⁸⁷

Crimes covered by international criminal law are criminalized in the Rome Statute.⁸⁸ These crimes⁸⁹ have been recognized as international customary law, which creates obligations for States to uphold and respect the regulations stipulated in the Rome Statute regardless of the existence of any conventional obligation or opposing national law.

Some transnational criminal law may be found in international criminal law, however, the actual criminalization of certain acts or conducts are always regulated in national criminal law. The international community has chosen not to extend international jurisdiction over transnational crimes, consequently, transnational criminal law hinges on “reciprocity, equality and sovereign consent”.⁹⁰

⁸³ Boister, 2012, p. 18; Hathaway, C. James, *The Human Rights Quagmire of ‘Human Trafficking’*, Virginia Journal of International Law, Volume 49, No. 1, pp. 1-59, 2008.

⁸⁴ Gallagher, 2010, p. 69.

⁸⁵ Nadelmann, Ethan A., *Global Prohibition Regimes: The Evolution of Norms in International Society*, International Organization, Vol. 44, No. 4, pp. 479-526, The MIT Press, 1990, 485.

⁸⁶ Ibid. p. 479.

⁸⁷ Boister, 2012, p. 18.

⁸⁸ UN General Assembly, *Rome Statute of the International Criminal Court (the Rome Statute) (last amended 2010)*, 17 July 1998.

⁸⁹ Crimes include, Genocide, Crimes against Humanity and War Crimes, Articles 6-8 of the Rome Statute.

⁹⁰ Boister, 2012, p. 18-19.

3.2.4 The Transnational Organized Crime Convention and the Anti-Trafficking Protocol

As previously mentioned, “white slavery” and trafficking has far-reaching history within international law. During the 1990’s, some significant changes were made to the international framework. Human trafficking was linked to transnational organized crime and ‘migrant smuggling’ and a criminal law perspective emerged. These changes eventually led to the development of the Organized Crime Convention.⁹¹

The Anti-Trafficking Protocol is one of three protocols supplementing the Organized Crime Convention. In addition to the Anti-Trafficking Protocol there are two other protocols that regulate smuggling of migrants, the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (hereinafter the Anti-Smuggling Protocol)⁹² and the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime⁹³ (Trafficking in Firearms) and together they are known as the Palermo Protocols.⁹⁴

The drafting process of the Organized Crime Convention and the Palermo Protocols were concluded in 2000 and by 2003 all instruments had been entered into force.⁹⁵ The rules governing the Organized Crime Convention are set forth in the Convention itself. A State must have ratified the Organized Crime Convention to be able to ratify the Palermo Protocols.⁹⁶ Further, a State is not automatically bound to the Palermo Protocols; they have to be ratified in addition to the Organized Crime Convention.⁹⁷

The Organized Crime Convention and the Palermo Protocols represents groundbreaking work by the international community in creating an elaborate international legal response to transnational organized crime and human trafficking. These efforts have been

⁹¹ Gallagher, 2010, p. 68.

⁹² UN General Assembly, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (Anti-Smuggling Protocol)*, November 15, 2000.

⁹³ UN General Assembly, *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime*, May 31, 2001.

⁹⁴ Gallagher, 2010, p. 70.

⁹⁵ Ibid. p. 69-70.

⁹⁶ Article 37 para. 2 of the Organized Crime Convention.

⁹⁷ Article 37 para. 3 of the Organized Crime Convention.

linked to derive from a human rights concern, however, as previously mentioned, there are opponents claiming that the efforts are fuel by self-interest relating to issues of national sovereignty, security and a perception that transnational organized criminal groups are linked to migrant smuggling and human trafficking.⁹⁸

The Anti-Trafficking Protocol and its accompanying definition have been described by its contracting parties as “the principal legally binding global instrument to combat trafficking in persons”⁹⁹ reaffirming its importance.

The Anti-Trafficking Protocol has received criticism for focusing more on criminal investigation and prosecution of criminals rather than on the protection of human trafficking victims. James C. Hathaway refers to a mere minimal and provisional protection for victims of human trafficking implemented by only a few numbers of states. Hathaway also holds that the Anti-Trafficking Protocol lacks in practical efforts to resolve underlying causes that contribute to peoples vulnerability to human traffickers.¹⁰⁰

3.2.5 Definition of Trafficking in Persons

The crime of human trafficking is stipulated in Article 3(a) of the Anti-Trafficking Protocol and defines trafficking in persons as following,

“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.”¹⁰¹

The definition of human trafficking contains three core elements, the act, the means and the purpose. Each of the elements must all be present for it to constitute as human trafficking. The acts or action means “the recruitment, transportation, transfer, harbouring or receipt of

⁹⁸ Gallagher, 2010, p. 70-71.

⁹⁹ Conference of Parties to the United Nations Convention on Transnational Organized Crime, Decision 4/4, “Trafficking in Human Beings”, Report of the Conference of Parties to the United Nations Convention on Transnational Organized Crime, fourth session, Vienna 8 to 17 October 2008”, UN Doc. CTOC/COP/2008/19, December 1, 2008, p. 12, para. (d).

¹⁰⁰ Hathaway, 2008, p. 3.

¹⁰¹ Article 3(a) of the Anti-Trafficking Protocol.

persons”, the element of means includes “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”. The final key element of human trafficking is the purpose of the crime, which is always exploitation. This element includes, “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”.¹⁰²

Article 3(b) of the Anti-Trafficking Protocol stipulates that it is not possible for a victim to consent to the crime of human trafficking. The consent of a victim is irrelevant in a situation where any of the core elements listed above is present.

3.2.6 Human Trafficking and Smuggling

Human trafficking and smuggling of migrants are different crimes; yet, their distinctions are often confused and the terms are often used interchangeably. However, it has been recognized that the generally accepted definition of human trafficking provided for in Article 3 of the Anti-Trafficking Protocol has facilitated in clearing up this confusion.¹⁰³

The definition of smuggling is established in Article 3(a) of the Anti-Smuggling Protocol and is described as following,

“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;¹⁰⁴

When reviewing the definitions of human trafficking and smuggling it is clear that they differ. The purpose of human trafficking is to exploit the victim and, as mentioned above, consent to the crime is not possible thus when combatting trafficking the victim’s individual rights are being protected. In the case of smuggling, the purpose of the crime is to facilitate the illegal crossing of borders for unlawful entry into a state. Consequently, the primary focus when dealing with smuggling is the protection of the state, its national sovereignty and territorial integrity. Thus, a key distinguishing element between human trafficking and smuggling is the existence of a victim, a person whose individual rights have been

¹⁰² Article 3(a) of the Anti-Trafficking Protocol.

¹⁰³ Council of Europe Experts Group, *Report of the Experts Group on Trafficking in Human Beings*, Brussels, 2004, p. 47.

¹⁰⁴ Article 3(a) of the Anti-Smuggling Protocol.

violated.¹⁰⁵ Nonetheless, it is difficult to determine whether a person has been smuggled or trafficked in practice. Furthermore, there are also instances where a person is willingly smuggled but is in fact being trafficked or in some situations smuggling can during the process turn in to trafficking. Consequently it is difficult to determine whether the purpose of the movement is the facilitation of border crossing or exploitation of a victim until the journey is completed and the person has reached the final destination. Hence, the outcome of the crime is the determining factor when distinguishing between the two.¹⁰⁶

Further, with regards to movement, another distinguishing element between the crimes of human trafficking and smuggling is that smuggling is always transnational in character whereas trafficking also occurs within a state, never crossing any borders.¹⁰⁷

Many States focus on the movement element when combatting trafficking due to the political effects illegal entry has on a country. In such instances anti-trafficking efforts mainly consist of increased border controls or more restrictive immigration policies. However, such efforts do not consider situations of trafficking that commence following entry into the country.¹⁰⁸

As mentioned above, with regards to human trafficking, the purpose element is always exploitation whereas with smuggling the aim is solely to facilitate border crossing for monetary gain and the smugglers task, usually, end when the person has reached the final destination. However, there have been many reports of smuggled migrants being abused, left stranded or been killed both during the journey and after they have reached their destination. Thus, the crimes of human trafficking and smuggling of migrants sometimes overlap or transform during the process of movement.¹⁰⁹

Although the Palermo Protocols stipulate clear definitions of both smuggling and human trafficking many claim that it is not possible to draw a line between them. Some even go further in claiming that the Palermo Protocol definitions themselves do not provide a distinguishing precise meaning of the crimes even in theory.

Research on the topic matter has shed further light on the fact that the crimes of smuggling and trafficking are difficult to differentiate in practice due to, as mentioned above, that the crimes can overlap and transform. Some legal practitioners have thus

¹⁰⁵ Council of Europe Experts Group, *Report of the Experts Group on Trafficking in Human Beings*, p. 48.

¹⁰⁶ Lee, 2007, p. 11.

¹⁰⁷ Council of Europe Experts Group, *Report of the Experts Group on Trafficking in Human Beings*, p. 48

¹⁰⁸ *Ibid.* p. 49.

¹⁰⁹ Lee, 2007, p. 11.

expressed a desire to narrow the definition of human trafficking. This would include requisites and elements, in addition to those stipulated in the Anti-trafficking Protocol, resulting in a higher threshold for the crime of human trafficking.¹¹⁰

The obligations imposed on States with regards to victims in cases of human trafficking are significantly different than cases of smuggling. In cases of smuggling the concerning State does not have to consider permitting the smuggled migrant to remain. Further, both the returning State and the receiving State are not required to guarantee the smuggled migrants safety in the process of repatriation. Moreover, in contrast to trafficking victims, smuggled migrants are not awarded any special protection or any entitlements with regard to legal proceedings against suspected smugglers.¹¹¹

3.2.7 Treatment of Victims and Victim Protection and Support

The topic of victim protection and support in the context of trafficking is a matter that is somewhat unclear and has evolved throughout the years. In the past, States have generally opposed extensive sets of legal obligations concerning victim protection and support, however, more recent changes in the perception of trafficking and anti-trafficking efforts has led to some loosening of this reluctance. This is partly due to States increased understanding and acknowledgment of the grievances of human trafficking. Also, from a criminal law perspective, States have realized that victim protection and support are crucial elements in the combat against human trafficking with regards to assistance in prosecution of traffickers.¹¹²

The preamble of the Anti-Trafficking Protocol underscores victim protection as an integral part of its core obligations. This is further elaborated in the purpose statement of the Anti-Trafficking Protocol where it is stated that a key aim of the Protocol is “to protect and assist the victims of such trafficking, with full respect for their human rights;”¹¹³

However, as previously mentioned, the Anti-Trafficking Protocol has been criticized for overly focusing on criminal investigation and prosecution of criminals rather than on the protection of human trafficking victims.¹¹⁴ It has been reported as commonplace that victims of trafficking are mistaken for criminals and treated as such, resulting in a denial of

¹¹⁰ Lee, 2007, p. 86-87.

¹¹¹ Gallagher, 2010, p. 92.

¹¹² Ibid. p. 276.

¹¹³ Article 2(b) of the Anti-Trafficking Protocol.

¹¹⁴ Hathaway, 2008, p. 2.

protection and support granted to victims.¹¹⁵ In the same vein, identification of trafficking victims has been proven difficult for States and law enforcement. This is especially problematic since identification of a trafficking victim is a prerequisite for accessing victim-related rights and for States to be able to uphold the conventional obligations set forth in the Anti-Trafficking Protocol.¹¹⁶

The Anti-Trafficking Protocol does not establish any positive obligations for States to impose measures to identify trafficking victims. Although the importance of victim identification was stressed by some NGO's during the drafting process of the Organized Crime Convention and the Palermo Protocols, the contracting parties deliberately chose not to include victim identification as a requirement. Additionally, some observers to the drafting process highlighted that the fine line drawn between human trafficking and smuggling could create incentives for States to identify possible trafficking victims as illegal migrants, since the protection and support awarded to smuggled migrants is basically non-existent in relation to benefits granted to trafficking victims.¹¹⁷

However, some claim that an obligation to take measures to identify victims is present in the Anti-Trafficking Protocol. The proponents of this notion maintain that the rights granted to trafficking victims in the Anti-Trafficking Protocol are hollow if there is not a corresponding obligation for States to identify the trafficking victims or right holders. Thus, identification of trafficked persons creates conditions that make it possible for trafficking victims to access their rights.¹¹⁸

Trafficked persons are often detained, charged or prosecuted for crimes committed in their capacity as trafficking victims (status-related offenses). Such criminalization of trafficking victims is common even in instances where it would appear clear that the person has in fact been trafficked. Criminalization of obvious trafficking victims is related to a States failure to properly identify the victim. Further, criminalization of trafficking victims is contrary to a victim-oriented approach and such treatment will inevitably result in the denial of the rights granted to victims under international law.¹¹⁹

The Anti-Trafficking Protocol is silent on the topic of prosecution for status-related offenses. Suggestions for an inclusion of non-prosecution for status-related offenses in Anti-Trafficking Protocol were denied during the drafting process. However, there is an emerging

¹¹⁵ Boister, 2012, p. 43.

¹¹⁶ Gallagher, 2010, p. 278-279.

¹¹⁷ Ibid. p. 280.

¹¹⁸ Ibid. p. 282.

¹¹⁹ Ibid. p. 283.

consensus forming on a normative standard, that trafficking victims are not to be criminalized or held responsible for status-related offenses. The notion of non-criminalization has been reaffirmed by the United Nations General Assembly (hereinafter the UNGA) and other relevant UN bodies¹²⁰ and is explicitly articulated in the OHCHR Recommended Principles on Human Rights and Human Trafficking (hereinafter the OHCHR Recommended Principles and Guidelines).¹²¹

As mentioned above, detention of trafficked persons are commonplace all over the world. Domestic immigration laws often allow immediate incarceration of illegal immigrants pending repatriation, which can include trafficked persons if they have not been identified as such. In some cases even persons who have been identified as trafficking victims end up detained for status-related offenses. Some trafficking victims who are placed in shelters are often restricted from leaving. Further, other victims of trafficking who are unwilling or not able to cooperate in legal proceedings against suspected traffickers are detained in immigration facilities pending repatriation.¹²²

The Anti-Trafficking Protocol is silent on the matter of victim detention arguably due to the contracting parties desire to preserve the option of dealing with irregular migration as they see fit. Accordingly, there is no specific prohibition for victim detention articulated in the Anti-Trafficking Protocol.¹²³

The OHCHR Recommended Principles and Guidelines, in contrast to the Anti-Trafficking Protocol, provide a clear position on victim detention by declaring that States should ensure “that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.”¹²⁴

As mentioned above, the subject of victim protection and support in relation to human trafficking is a rather unclear. However, State parties to the Organized Crime Convention and the Anti-Trafficking Protocol are obliged to protect and care for all victims of human trafficking on its territory in situations when the State knows or should have known that the person had been trafficked.

¹²⁰ Gallagher, 2010, p. 284-286.

¹²¹ United Nations Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, Addendum, E/2002/68/Add.1.*, Geneva, 2002, p.1, para. 7.

¹²² Ibid. p. 288.

¹²³ Ibid. p. 288-289.

¹²⁴ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 2.6 & Guideline 6.1.

In many countries victim protection and support is conditioned on victim's participation and cooperation in criminal investigation and legal proceedings. Such conditions contradict States obligations to ensure protection of and support to trafficking victims and thus may result in a denial of trafficking victims rights.

The Anti-Trafficking Protocol makes no explicit reference to victim cooperation as a condition for assistance and support, which could be explained by the fact that all regulations on assistance and support in the Protocol are non-compulsory.¹²⁵ However, the OHCHR Recommended Principles and Guidelines is clear on the matter that provision of support and assistance to trafficking victims should not be conditioned on victim cooperation,¹²⁶ a view that has been linked to an emerging acceptance to separate the two.¹²⁷

According to Article 6 para. 3 of the Anti-Trafficking Protocol, contracting parties "shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking". Article 6 para. 3 of the Anti-Trafficking Protocol then refers to, inter alia, the provision of housing, medical and psychological support, legal counseling, employment and education. Due to the language used in the provision, provision of these measure is not mandatory, however, consideration of implementation is.

Further, in Article 6 para. 5 of the Trafficking-Protocol, it is stipulated that State parties "shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory". Accordingly, States are only obliged to attempt to safeguard the physical safety of trafficking victims. In contrast, the Organized Crime Convention stipulate an explicit obligation to provide protection for witnesses in criminal proceedings.¹²⁸

Moreover, State parties are obligated to "ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons" information and assistance relating to legal proceedings concerning the trafficking victims and the possibility to receive compensation for suffered damages.¹²⁹

With regard to the right of trafficking victims to remain the Anti-Trafficking Protocol encourages State parties to "consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or

¹²⁵ Gallagher, 2010, p. 299.

¹²⁶ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 6.1.

¹²⁷ Gallagher, 2010, p. 299.

¹²⁸ Article 24 of the Organized Crime Convention.

¹²⁹ Article 6 para. 2 & Article 6 para. 6 of the Anti-Trafficking Protocol.

permanently, in appropriate cases”.¹³⁰ The Anti-Trafficking Protocol also urges State parties to take into account “humanitarian and compassionate factors” when considering whether to allow a trafficking victim to remain.¹³¹

As demonstrated above, the Anti-Trafficking Protocol does not impose extensive obligations on States to protect and support trafficking victims. However, some scholars claim that there is an emerging development of a higher standard in relation to protection and support of victims seen in the jurisprudence of the Anti-Trafficking Protocol and more recent policies.¹³²

3.3 State Responsibility

‘State Responsibility’ is the term used for the set of principles governing a States responsibility “for its internationally wrongful acts”.¹³³ In 2000, these principles were codified by the International Law Commission (hereinafter the ILC) into the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentaries (hereinafter the ILC Draft Articles).¹³⁴

The focus of the ILC Draft is not defining the legal obligations (primary rules) established under international law rather, its aims to identify whom is responsible for a wrongful act and remedies available in international law. The principles of ‘State Responsibility’ do not create any substantive rules; they only clarify responsibility and consequences and are therefore deemed as ‘secondary rules’.¹³⁵

Although the ILC Draft Articles have been generally well received, they are not universally accepted and it is unclear whether the ILC’s work will eventually lead to a multilateral treaty.¹³⁶

As mentioned above, ‘State Responsibility’ depends on the existence of internationally wrongful act.¹³⁷ According to the ILC Draft Articles there are two key elements for it to constitute as an internationally wrongful act. Firstly, the “action or omission” must be attributable to the State under international law, and secondly, the State action must

¹³⁰ Article 7 para. 1 of the Anti-Trafficking Protocol.

¹³¹ Article 7 para. 2 of the Anti-Trafficking Protocol.

¹³² Gallagher, 2010, p. 336.

¹³³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, Supplement No. 10 (A/56/10), chp.IV.E.1 (ILC Draft Articles with Commentaries), Adopted by the International Law Commission at its Fifty-Third Session’, November 2001, Article 1.

¹³⁴ Gallagher, 2010, p. 221.

¹³⁵ Ibid. p. 220.

¹³⁶ Ibid. p. 221-222.

¹³⁷ Article 1 of the ILC Draft Articles with Commentaries.

constitute a breach of an international law obligation.¹³⁸ Further, States may not invoke national law to claim that a recognized internationally wrongful act is in fact lawful.¹³⁹

A certain internationally wrongful act can, according to the general rule, only be attributable to the State by its own conduct through its organs or individuals acting in their official capacity on behalf of the State.

With regards to cases of trafficking, some governments have referred to domestic law that criminalizes and prohibit the crime to avoid State responsibility in instances where public sector involvement has been revealed. However, according to the ‘attributable criteria’, such arguments are deemed as inadequate defense.¹⁴⁰

Further, with regards to State responsibility in the context of trafficking, it has been determined that State practice of trafficking or acts related to trafficking constitutes a breach of the States international legal obligations. However, action or conduct committed by private individuals or entities are, according to the general rule, considered as non-attributable to the State with regard to State responsibility.¹⁴¹

When considering the general rule of attribution, the ILC have through the Commentary to the ILC Draft Articles clarified that a State can, in some instances, be held responsible for actions committed by private persons or groups, if it is shown that, the State has failed to implement the necessary measures to prevent said actions.¹⁴²

In the context of human rights obligations, a generally accepted and commonly used standard is “due diligence” which includes a States responsibility to prevent and respond to wrongful conduct committed by third-party actors. Similarly, in the context of international law, failure to prevent foreseeable violations or abuses invokes legal responsibility for the State.¹⁴³

If State responsibility has been determined there are consequences stipulated in the ILC Draft Articles. According to Article 30 of the ILC Draft Articles, a States must immediately cease the internationally wrongful act (if it has not yet ceased) and offer adequate reassurance that the act will not be repeated.¹⁴⁴ Further, it is required that the State must compensate the damages caused by the internationally wrongful act.¹⁴⁵

¹³⁸ Article 1 of the ILC Draft Articles with Commentaries.

¹³⁹ Article 3 & 32 of the ILC Draft Articles with Commentaries.

¹⁴⁰ Gallagher, 2010, p. 226.

¹⁴¹ Ibid. p. 235.

¹⁴² Chapter II, para. 4 of the ILC Draft Articles with Commentaries.

¹⁴³ Gallagher, 2010, p. 241-242.

¹⁴⁴ Article 30 of the ILC Draft Articles with Commentaries.

¹⁴⁵ Article 21 of the ILC Draft Articles with Commentaries.

4. Human Trafficking and Human Rights

4.1 Introduction

As discussed above, human trafficking is established as a crime under transnational criminal law, which differs from international criminal law and international human rights law. However, in past years, trafficking in persons or “white slave traffic” was viewed as a human rights issue and dealt with as such. Some legal scholars claim that when human trafficking belonged in the international human rights system, not much was accomplished in the combat against trafficking.¹⁴⁶

However, as mentioned above, some maintain that the development and the subsequent classification of human trafficking as a criminal offense under transnational law overly focused on investigation and prosecution of the crime has adversely affected victim-related rights and obscured the human rights elements of the crime.¹⁴⁷

In recent years, there has been a kind of renaissance in the link between human rights and trafficking in persons. UN Human Rights Chief Navi Pillay expressed that,

The global momentum against human trafficking should be encouraged while at the same time focusing on a human rights approach in tackling it. We shouldn't allow the agenda to be diverted to distinct concerns such as clamping down on irregular migration, without addressing illegal migration avenues that keep migrants out of the reach of smugglers and human traffickers.¹⁴⁸

There is even an emerging general agreement forming, labeling human trafficking, as a human rights violation in itself, not dependent on human rights violations occurring during the process of trafficking.¹⁴⁹

4.2 A Human Rights-Based Approach to Human Trafficking

A human rights-based approach is a conceptual framework, which, consists of norms deriving from international human rights standards. The purpose of a human rights-based approach is the promotion and protection of individual human rights.¹⁵⁰

¹⁴⁶ Gallagher, 2010, p. 4.

¹⁴⁷ Hathaway, 2008, p. 3.

¹⁴⁸ United Nations Human Rights, Office of the High Commissioner for Human Rights, News and Events, Human Rights based approach to trafficking, Quotation of Human Rights Chief Navi Pillay, November 29, 2011.

¹⁴⁹ United Nations Human Rights Office of the High Commissioner (OHCHR), *Human Rights and Human Trafficking*, Fact Sheet No. 36, New York & Geneva, 2014, p. 5.

The OHCHR Recommended Principles and Guidelines are centered on a human rights-based approach to human trafficking, which is elaborated through the assertion of four core elements. The first element is the primacy of human rights, which involves that States must protect victims of trafficking and that the fight against human trafficking should never adversely affect these victims, placing human rights in the forefront of all trafficking related measures and efforts.¹⁵¹

The second element is the appeal to prevent trafficking and contains an elaboration on significant matters to consider in the combat against trafficking. The OHCHR emphasizes the importance of addressing underlying issues that cause trafficking and request that States and IGO's implement measures to eradicate these causes. Further, government complicity to the crime of trafficking is brought up as a problematic issue and State responsibility to eliminate such conduct is requested.¹⁵²

The third core element involves protection and assistance of victims. It is stated that no trafficking victims should be subjected to criminalization due to crimes, such as immigration offenses or prostitution, committed in their capacity as victims of trafficking.

Further, States are to guarantee victim safety by protecting trafficking victims from further harm and exploitation. The third core element also calls for State providence of medical care and support, not conditioned on the victim's willingness or ability to assist in legal proceedings against suspected trafficking perpetrators. During potential legal proceedings against suspected trafficker, States are to provide legal assistance and allowing victims to remain is advocated to the extent it is possible, in other cases safe return should be guaranteed by all States involved.¹⁵³

The final element includes criminalization, punishment and redress for the crime of trafficking. It is stated that States should legislate (under national law) and implement the necessary measures to combat trafficking, which includes effective and proportionate sanctions directed at guilty traffickers.¹⁵⁴

¹⁵⁰ HRBA Portal, UN Practitioners' Portal on Human Rights Based Approaches to Programming, 10. – What is a human rights-based approach?

¹⁵¹ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, p. 1, para. 1-3.

¹⁵² OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, p. 1, para. 4-6.

¹⁵³ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, p. 1, para. 7-11.

¹⁵⁴ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, p. 1, para. 12-16.

The Anti-Trafficking Protocol refers to a human rights perspective in its preamble by including the importance of victim protection and recognition of their human rights established under international human rights law.¹⁵⁵ This view is reaffirmed as a main purpose of the Protocol in Article 2 of the Anti-Trafficking Protocol.¹⁵⁶

Further, a human rights perspective is highlighted with regards to law enforcement and other relevant officials. It is declared that States must consider and include human rights in their efforts against trafficking by providing necessary training and promote cooperation with relevant NGO's and civil society.¹⁵⁷

Lastly, it is affirmed that nothing stipulated in the Anti-Trafficking Protocol "shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law,".¹⁵⁸

In relation to the above-mentioned, Tom Obokata claims that the expression of a human rights perspective in the Anti-Trafficking Protocol represents the international community's recognition that human trafficking is indeed a human rights concern.¹⁵⁹

As previously mentioned, in the introduction of this chapter, some legal scholars claim that during previous years, when human trafficking was dealt with within the international human rights system, not much was accomplished in the fight against trafficking. In relation to this, Ann Gallagher proclaims that the Anti-Trafficking Protocol and related efforts has provided the human rights systems with new and much needed tools and methods to eradicate trafficking and that success lies within the effectiveness of implementation of these tools and methods.¹⁶⁰

Hathaway opposes the view that the Anti-Trafficking Protocol and its attached efforts have provided anything of substance with regards to the human rights of trafficking victims. On the contrary, he claims that the contemporary anti-trafficking framework is cause for major human rights concerns. He refers to the trans-border oriented focus as particularly troubling.¹⁶¹ Hathaway claims that the current anti-trafficking framework has created a platform in which it is possible for States to assert moral and human rights-related

¹⁵⁵ Preamble of the Anti-Trafficking Protocol.

¹⁵⁶ Article 2 of the Anti-Trafficking Protocol.

¹⁵⁷ Article 10 para. 2 of the Anti-Trafficking Protocol.

¹⁵⁸ Article 14 para 1 of the Anti-Trafficking Protocol.

¹⁵⁹ Obokata, Tom, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach*, International Studies in Human Rights, Volume 89, Koninklijke Brill NV, Leiden, 2006, p. 34.

¹⁶⁰ Gallagher, Anne T., *Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway*, Virginia Journal of International Law, Volume 50, Issue 1, pp. 789-848, p. 847.

¹⁶¹ Hathaway, 2008, p. 6.

justifications for battling trafficking while disguising a self-interest agenda of increased border control.¹⁶²

Kristina Touzenis expresses a similar view to Hathaway in that the human rights language of the Anti-Trafficking Protocol is weak. She explains this by referring to the circumstances under which the Anti-Protocol was created and the fact that it is a law enforcement instrument. Accordingly, focus was put on combatting organized crime rather than on the protection of trafficking victims.¹⁶³ However, Touzenis claims, with reference to Article 14 of the Anti-Trafficking Protocol, that the Protocol is meant to be implemented in conjunction with other established international human rights obligations.¹⁶⁴

Further, Touzenis elaborates on a generally accepted view, that trafficking incorporates a number of human rights violations. Due to the complexity of the crime and the various human rights violations involved, Touzenis advocates for a multi-disciplinary approach with a human rights perspective in the centre of all prevention efforts.¹⁶⁵

Allison Brysk elaborates on a human rights-based approach in relation to trafficking and argues that it is a question of broadening the perception of the traditional human rights regime. Brysk claims that within contemporary human rights, violations can derive from State action as well as from the conduct of non-state actors, incorporating the crime of trafficking. Further, she states that human rights goes beyond the rescuing of victims and includes States responsibilities to provide protection and emancipation regardless of nationality as the striving objectives.¹⁶⁶

Obokata presents a view in which a human rights-based perspective is instrumental in the global combat against human trafficking. He claims that the human rights-based framework firstly includes an examining and analyzing the substantive human rights norms connected to the crime of trafficking. Obokata also refers to the element of action as a vital part of a human rights-based approach. The action element includes efforts to identify specific the legal obligations and responsibilities of States in relation to trafficking. These efforts include measures of criminalization and prosecution as well as addressing root causes and focusing on victim protection. Obokata claims that implementation of a human rights-based

¹⁶² Ibid. p. 57.

¹⁶³ Touzenis, Kristina, *Trafficking in Human Beings: Human Rights and Transnational Criminal Law, Developments in Law and Practices*, UNESCO migration studies 3, United Nations Educational, Scientific and Cultural Organization (UNESCO), Paris, 2010, p. 67.

¹⁶⁴ Ibid. p. 163.

¹⁶⁵ Ibid. p. 98.

¹⁶⁶ Brysk, Alison, *Chapter 4: Rethinking Trafficking: Human Rights and Private Wrongs*, In Brysk, Alison & Choi-Fitzpatrick, Austin, *From Human Trafficking to Human Rights*, pp. 73-85, University of Pennsylvania Press, 2012, p. 75.

framework could influence States to address the human rights dimensions of human trafficking more directly.¹⁶⁷

4.4 Human Trafficking as a Human Rights Violation

The European Council have clearly stated in the Preamble of its Convention on Action Against Trafficking in Human Beings (hereinafter the European Council Trafficking Convention) and its Explanatory Report¹⁶⁸ that in their view “trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being;”.¹⁶⁹ Further, the European Council therefore proclaims that increased victim protection is needed.¹⁷⁰

The notion that trafficking in persons constitutes a violation of human rights is reaffirmed in the EU Directive,¹⁷¹ referring to the prohibition of trafficking stipulated in Article 5 of the Charter of Fundamental Rights of the European Union.¹⁷² The Explanatory Report to the European Council Trafficking Convention underscore that the main value of the European Council Trafficking Convention is the applied human rights perspective and the increased focus on protection of trafficking victims.¹⁷³

In the same vein as the European Council, the OHCHR explicitly declare that “human rights are both a cause and a consequence of trafficking in persons” and hence, that human rights must be a centerpiece of all anti-trafficking efforts.¹⁷⁴

Moreover, in the case *Rantsev v. Cyprus and Russia*, the European Court of Human Rights (hereinafter the ECHR) declared in its judgment declared that “trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the

¹⁶⁷ Obokata, 2006, p. 35.

¹⁶⁸ Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings and its Explanatory Report (European Anti-Trafficking Convention and its Explanatory Report)*, CETS 197, Treaty Series, No. 197, Warsaw, May 16, 2005.

¹⁶⁹ Preamble of the European Anti-Trafficking Convention and its Explanatory Report.

¹⁷⁰ European Anti-Trafficking Convention and its Explanatory Report, para. 36.

¹⁷¹ European Union: Council of the European Union, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*, OJ L. 101/1-101/11; 15.4.2011, 2011/36/EU, April 15, 2011, para. 1.

¹⁷² European Union, *Charter of Fundamental Rights of the European Union*, 2012/C 326/02, October 26, 2012.

¹⁷³ European Anti-Trafficking Convention and its Explanatory Report, para. 46.

¹⁷⁴ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Guideline 1.

right of ownership”, linking human trafficking to the crime of slavery without elaborating further on whether these to crimes can be equated.¹⁷⁵

The UNGA, in its thematic debate on human trafficking, also discussed the links between trafficking in persons and human rights. They proclaimed the importance of implementing a human rights-based approach in anti-trafficking efforts. Additionally, the UNGA, similar to the international organs listed above, presented a view in which human trafficking constitutes a human rights violation in itself and a breach of human dignity.¹⁷⁶

¹⁷⁵ *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010, para. 281.

¹⁷⁶ The United Nations General Assembly, *Summary of the General Assembly Thematic Debate on Human Trafficking*, New York, 2008, p. 3, para 8.

5. Case Study of Egypt

5.1 Human trafficking in the Sinai Peninsula

As previously mentioned, in 1.2 Introduction and Background, trafficking of Eritreans, and other Sub-Saharan nationals in the Sinai Peninsula, emerged as a practice in 2009 and onwards.¹⁷⁷ Amnesty International has stated that they received several reports in 2011 regarding kidnappings from Sudanese refugee-camps and the surrounding areas. The camp is located in the eastern part of Sudan, close to the Eritrean border. From there the refugees have been abducted and trafficked into Egypt and most of them have ended up detained in the Sinai Peninsula. Most of the kidnappings have taken place in the Shagarab camps, which consists of three connected camps. There have also been reports of people being abducted near the UNHCR reception in the town of Kassala. Some people are kidnapped from their homes or the local areas within the refugee-camps while others are captured on their journey between the Eritrean border and the camps. The kidnapers are known to belong to a local tribe named Rashida.

Since 2011 there has been a growing sense of insecurity within the camps and the residents do not trust the Sudanese security forces and police due to reports of collusion with traffickers. Consequently, many leave the camps to avoid being kidnapped while others choose to leave in search of better conditions and opportunities than those provided for in the camp and are subsequently abducted while traveling to other cities.¹⁷⁸

Some refugees have hired smugglers to transport them to Egypt for passage to Israel or to other countries for transit to other regions such as Europe. These smugglers have then turned on the refugees and hold them for ransom while subjecting them to violence or torture while others sell the captives to traffickers.

There have been reports of people being held captive by criminal groups in Sudan and are subsequently sold to traffickers in Egypt. During the process of trafficking the victims are often sold numerous times both in Sudan and then later in the Sinai region. Some are even sold and re-trafficked after the ransom has been paid for the purpose of additional extortion.

The victims are transported under horrid conditions often for several weeks and according to victim testimonies many have died due to malnutrition, dehydration or ill-treatment.

¹⁷⁷ Van Reisen, Mirjam & Rijken, 2015, p. 114.

¹⁷⁸ Amnesty International, *Egypt/Sudan: Refugees and Asylum-Seekers Face Brutal Treatment, Kidnapping for Ransom, and Human Trafficking*, Amnesty International Publications, London, 2013a, p. 6-8.

When the victims reach Egypt most of them end up in the Sinai Peninsula located in the northeastern part of the region close to the Israeli border. In Sinai they are often kept in compounds or metal containers and are subjected to extreme violence and inhuman treatment in order to collect ransom payments from the victims families.¹⁷⁹

Victim testimonies from escaped or released victims portray numerous accounts of atrocious human rights violations taken place in the duration of their captivity. According to information received by Amnesty International, the ill-treatment includes extensive and severe beatings with wooden and metal rods, electric shocks, deprivation of food and water, burning with cigarettes and melted plastic or having their fingernails pulled out. The victims are chained to each other, forced to stand, sometimes naked, for extended periods of time. Further, many of the captives are often suspended to the ceiling by their hands or chained in contorted positions.¹⁸⁰

Victims, including both men and women, are subjected to grave sexual violence and are raped in front of each other. They are urinated on and sometimes set on fire after gasoline has been poured on their bodies.

Victim testimonials reveal that some captives are murdered, and used as deterring examples, for not being able to pay their ransoms while others have died due to ill-treatment, torture and violence or due to the poor conditions under which they are held captive.

According to Amnesty International, they have received information that the victims include young and sometimes unaccompanied children.

As previously mentioned, the abductions, the trafficking and the subsequent abuse of the victims are for the purpose of extortion. While the victims are subjected to severe abuse and torture they are forced to call their families and plead for them to pay the requested ransom amount which can as much as 40 000 USD.¹⁸¹

The Egyptian traffickers are reported to mostly belong to the Bedouin tribe. The perpetrators are reportedly part of criminal networks connected to groups in the United States, Israel, Saudi Arabia and Europe.¹⁸²

¹⁷⁹ Amnesty International, 2013a, p. 10-11.

¹⁸⁰ Ibid. p. 12-14.

¹⁸¹ Ibid. p. 15.

¹⁸² Ibid. p. 10-11.

5.2 "Sinai Trafficking"

As previously mentioned, in 1.4.1.3 Previous Research, in February 2015 Conny Rijken and Mirjam van Reisen published an article on human trafficking in the Sinai. In the article the authors refer to the newly coined notion of "Sinai Trafficking". Rijken and van Reisen have stated that "Sinai Trafficking" is a new form of human trafficking, which is distinguished from other more established types trafficking. Consequently, Rijken and van Reisen proclaim that a definition and subsequent further research are needed in order to understand and fight this specific practice of trafficking originating from the Sinai Peninsula.¹⁸³

The authors elaborate on a definition of "Sinai Trafficking" that entails four core elements deemed characteristic for the phenomenon. The elements include "(1) Involvement of Officials in the Smuggling, Abduction and Trafficking During the Route to Sinai; (2) the Captivity, Torture and Extortion in Sinai; (3) the Killing of Hostages in Sinai; and (4) the Organization of the Sinai Trafficking".

The "Involvement of Officials in the Smuggling, Abduction and Trafficking During the Route to Sinai" relates to reported collusion between traffickers and security forces, military and police.¹⁸⁴ According to the Human Rights Watch, numerous testimonies from victims reveal collusion between traffickers and Egyptian and Sudanese security forces, military and police. The collusion consist of turning a blind eye at checkpoints and not searching cars, victims being turned over from Sudanese traffickers to Egyptian police or military who then transfer them to Egyptian traffickers as well as escaped trafficking victims being returned to traffickers.¹⁸⁵ Further, a US Department of State report from 2013 maintain that Sinai police have accepted bribes and otherwise failed to investigate trafficking in the area.¹⁸⁶

The element of "Captivity, Torture and Extortion in Sinai" partly refers to the extreme violence, torture and abuse directed at the trafficking victims accounted for above in 5.1 Human Trafficking in the Sinai Peninsula. The manner of 'trafficking' used in "Sinai Trafficking" entails, victims being abducted and forcibly transferred to holding locations or deceived by either traffickers or smugglers.

¹⁸³ Van Reisen, Mirjam & Rijken, 2015, p. 113.

¹⁸⁴ Ibid. p. 116.

¹⁸⁵ Human Rights Watch, 2014, p. 42-43.

¹⁸⁶ United States Department of State, 2013 Annual Trafficking in Persons Report (TIP) – Egypt, 2013, p. 158.

In addition to the brutal physical abuse, the victims are subjected to inhumane and degrading treatment designed to instill fear and undermine their sense of dignity. Both the psychological and mental abuse is utilized to force their victims to initiate contact with their families for ransom and also functions as a driving force of pressure and urgency for the victims and their families to come up with the funds for payment. Hence, much of the torture is applied during telephone conversations to family members in order to increase their victim's pleas. Thus, using torture mechanisms are to a great extent functional, however, it is often excessive and appalling

The element of "Killing of Hostages in Sinai" relates to the reported deaths of hostages at the hands of the traffickers. As previously mentioned, victims have died due to the excessive and prolonged tortured endured while in captivity as well as due to the poor conditions, including deprivation of food, water and medical treatment. Further, there have been reports of murder by shooting, burning or cutting. The bodies are subsequently dumped in the dessert exposed to the elements and animals without a dignified burial.

The final element of "Sinai Trafficking" is the "Organization of the Sinai Trafficking". When arriving to Sinai the captives are taken to "warehouses" for the purpose of being sold to traffickers. In the "warehouses" prices are set for the hostages which vary depending on several factors such as, inter alia, nationality where Eritreans have the highest price. Due to these circumstances, Rijken and van Reizen claim that "Sinai Trafficking" can be paralleled to slavery. Subsequent to being sold the victims are taken by the traffickers to holding locations. The conduct, patterns and cruelty of torture vary between different groups of traffickers.¹⁸⁷

There are also reports of victims be forced to participate in forced labour as cleaners or on construction sites.¹⁸⁸ As mentioned above, collusion between traffickers and Egyptian public officials has been reported. The collusion and cooperation between these parties has contributed to impunity of trafficking offenders.¹⁸⁹

The four elements accounted for above, together constitute the definition of this new and distinguished form of human trafficking labeled "Sinai Trafficking". Primarily it is the combination of the severe violence, abuse and torture for the purpose of collecting ransom from the hostages that is different from traditional and well-known forms of trafficking, such as, trafficking for the purpose of prostitution or forced labour.

¹⁸⁷ Van Reizen, Mirjam & Rijken, 2015, p. 117.

¹⁸⁸ Human Rights Watch, 2014, p. 34.

¹⁸⁹ Van Reizen, Mirjam & Rijken, 2015, p. 118.

As mentioned above, the term “Sinai Trafficking” is used due to the practice originating in the Sinai. However, information of similar practices has more recently been reported, though it is unclear in what extent.¹⁹⁰

5.3 Treatment of Trafficking Victims

Escaped or released victims of trafficking in Sinai are put in detention centers, prisons and police stations in Egypt. They are often not informed of the charges against them and denied legal process and aid.¹⁹¹ The condition for the trafficking victims release is based on their ability to obtain funds to purchase return plane tickets to secure their own deportation.¹⁹²

As mentioned in 5.2 “Sinai Trafficking”, victims of trafficking whom have been held captive by traffickers in Sinai are subjected to brutal and severe violence. However, it has been reported that escaped or released victims kept in detention by Egyptian authorities are denied medical treatment, including physical or psychological support, for their injuries.¹⁹³

The reports of denied medical treatment is confirmed by the Human Rights Watch in their report “‘I Wanted to Lie Down and Die:’ Trafficking and Torture of Eritreans in Sudan and Egypt”. Information received by the Human Rights Watch states that some detainees are so severely injured due to the torture suffered that they have died in incarceration as a result of the lack of medical treatment.¹⁹⁴

According to information received by the Human Rights Watch, humanitarian organizations willing to provide medical care and identify asylum-seekers, refugees and trafficking victims are not allowed access to the police stations, prisons and detentions centers where they are held.¹⁹⁵ According to Egyptian authorities access is denied due to the fact that the detainees only consist of lawfully incarcerated economic migrants.¹⁹⁶

The detainees are often arrested and held in police stations for extended periods of time, sometimes lasting over a year without being formally charged with any crimes. Thus, it is often unclear what the legal basis for the detention is.¹⁹⁷ In some cases detainees have after being tried before military tribunals been unsure of the basis for the charges and whether they

¹⁹⁰ Van Reisen, Mirjam & Rijken, 2015, p. 122.

¹⁹¹ Ibid. p. 122.

¹⁹² Human Rights Watch, 2014, p. 67.

¹⁹³ Van Reisen, Mirjam & Rijken, 2015, p. 122.

¹⁹⁴ Human Rights Watch, 2014, p. 75.

¹⁹⁵ Ibid. p. 69-70.

¹⁹⁶ Ibid. p. 72.

¹⁹⁷ Ibid. p. 70.

have been convicted of a crime or not.¹⁹⁸ Others are charged for immigration offenses and are subsequently sentenced to prison or deported.¹⁹⁹

According to the US State Department in their 2013 “Trafficking in Persons Report”, victims of trafficking in the Sinai are treated as criminals rather than victims often charged with immigration offenses.²⁰⁰ The conditions at the Egyptian police stations are reportedly poor, inhuman and degrading.²⁰¹ The cells are small, extremely overcrowded and funds are low for food, water and medical treatment.²⁰²

According to Amnesty International’s annual report “The State of the World’s Human Rights”, there have been continuous reports since 2011 till present time of lethal violence being used by Egyptian border security forces on foreign migrants attempting to leave or entry Egypt.

During this time, Amnesty International received information with estimates of at least 48 people being killed around the Egyptian border while others have been shot and injured, sometimes severely.²⁰³ According to other estimates at least 107 people have been killed since 2007.²⁰⁴ The reports of border killings committed by border security forces have also been corroborated by the US Department of State in the 2012 and 2013 “Trafficking in Persons Report” and by the Human Rights Watch.²⁰⁵ Further, the US Department of State stated that the Egyptian authorities had made no efforts to identify victims of trafficking among the migrants intercepted at the borders.²⁰⁶ As of 2011 no official investigations had been launched with regards to the lethal force used by the Egyptian border security forces.

Egyptian police have reportedly arrested hundreds of migrants mostly originating from the Horn of Africa. In such cases, NGO’s such as UNCHR have been denied contact

¹⁹⁸ Human Rights Watch, 2014, p. 71.

¹⁹⁹ Ibid. p. 70.

²⁰⁰ United States Department of State, TIP 2013, p. 158.

²⁰¹ Human Rights Watch, 2014, p. 69.

²⁰² Ibid. p. 74.

²⁰³ Amnesty International, *Amnesty International Report 2011: The State of the World’s Human Rights*, Amnesty International Ltd, London, 2011; Amnesty International, *Amnesty International Report 2012: The State of the World’s Human Rights*, Amnesty International Ltd, London, 2012; Amnesty International, *Amnesty International Report 2013b: The State of the World’s Human Rights*, Amnesty International Ltd, London, 2013; Amnesty International, *Amnesty International Report 2014/15: The State of the World’s Human Rights*, Amnesty International Ltd, London, 2015.

²⁰⁴ Government Offices, Swedish Foreign Ministry, *Report on Human Rights in Egypt*, 2011, p. 19.

²⁰⁵ United States Department of State, TIP 2013, p. 157. ; Human Rights Watch, 2014, p. 68.

²⁰⁶ United States Department of State, 2012 Annual Trafficking in Persons Report (TIP) – Egypt, 2013, p. 158.

with the detained migrants.²⁰⁷ Some migrants who have been incarcerated are prosecuted before military tribunals for “illegal entry” and are sentenced to prison.²⁰⁸

In several documented cases migrants are faced with deportation to countries where there is an imminent risk of being subjected to grave human rights violations.²⁰⁹

The people subjected to the above-mentioned treatment and violence includes migrants, refugees, asylum-seekers as well as trafficking victims from Sinai.²¹⁰

5.4 Egypt’s Obligations under International and National Law

Egypt is state party to numerous international conventions pertaining to human trafficking. Egypt ratified the Organized Crime Convention in 2004²¹¹, while simultaneously adopting the Anti-Trafficking Protocol.²¹² Further, Egypt adopted the Anti-Smuggling Protocol the following year.²¹³

Further, with regard to national law, in 2007 Egypt established the National Coordinating Committee on Preventing and Combating Human Trafficking (hereinafter the NCC) through decree by the No. 1584. Prime Ministerial decision.²¹⁴ The primary aim of the establishment of the NCC was to function as an advisory to national institutions on the subject of human trafficking and to facilitate the coordination of national efforts against human trafficking. The focus of the NCC includes cooperation for “prevention, protection,

²⁰⁷ Swedish Foreign Ministry, 2011, p. 19.

²⁰⁸ Amnesty International, 2011, p. 134.

²⁰⁹ Amnesty International, 2012, p. 138.

²¹⁰ United States Department of State, TIP 2013, p. 157; Amnesty International, 2011, p. 134; Amnesty International, 2012, p. 138; Amnesty International, 2013b, p. 85; Amnesty International, 2014/15, p. 141; Amnesty International, 2013a, p. 17.

²¹¹ United Nations Office on Drugs and Crime, Signatories to the United Nations Convention against Transnational Crime and its Protocols, United Nations Treaty Collection, *United Nations Convention against Transnational Organized Crime*.

²¹² United Nations Office on Drugs and Crime, Signatories to the United Nations Convention against Transnational Crime and its Protocols, United Nations Treaty Collection, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*.

²¹³ United Nations Office on Drugs and Crime, Signatories to the United Nations Convention against Transnational Crime and its Protocols, United Nations Treaty Collection, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*.

²¹⁴ The Arab Republic of Egypt, The Prime Minister’s Decree, On the Establishment of the National Coordination to Combat and Prevent Trafficking in Persons, No. 1584 of 2007.

prosecution, participation and international cooperation”.²¹⁵

The work of the NCC on a draft bill criminalizing human trafficking was presented to the Parliament in 2009 and was subsequently approved by the People’s Assembly in 2010, creating the Law No. 64 of 2010²¹⁶ (hereinafter the Egypt’s Anti-Trafficking Law) in 2010. Egypt’s Anti-Trafficking Law criminalizes human trafficking and provides measures related to victims.²¹⁷ Parallel to the Anti-Trafficking Protocol, Egypt’s Anti-Trafficking Law has rendered consent of the trafficking victims irrelevant, if means stipulated in Article 2 of Egypt’s Anti-Trafficking Law were used. Further, international cooperation, through, inter alia, exchange of information and corroboration in investigations, is included in Egypt’s Anti-Trafficking Law for the purpose of facilitating the fight against human trafficking and prosecution of the crime.²¹⁸

With regards to victims, Article 21 of the Egypt’s Anti-Trafficking Law states that trafficking victims are not to be prosecuted or in other ways held liable for crimes committed in the capacity as victims of trafficking. The protection of trafficking victims is guaranteed in Article 22 of Egypt’s Anti-Trafficking Law and Egypt “shall work to create the appropriate conditions for his assistance, health, psychological, educational and social care; and rehabilitation and reintegration into the society, within the framework of liberty and human dignity,…” Further, victims whom are non-nationals or who have not been granted temporary residents are to be safely and promptly returned to their country of origin.²¹⁹

Article 23 of Egypt’s Anti-Trafficking Law places duty to attempt to identify victims to ensure protection from their traffickers.

In Egypt’s Anti-Trafficking Law, the NCC was reestablished through a new Prime Ministerial Decree. The mandate of the NCC was determined to include coordination of national trafficking efforts, such as policies and plans, aimed at the protection of victims.²²⁰ In addition to the above-mentioned, trafficking is included in Egypt’s new constitution, adopted through a public referendum in January 2014.²²¹ In Article 89 of the Egyptian

²¹⁵ The Arab Republic of Egypt, National Coordinating Committee on Preventing and Combating Human Trafficking, *National Plan of Action Against Human Trafficking (nap-ht 2011)*, (January 2011- January 2013), Cairo, December 2, 2010, p. 1.

²¹⁶ The Arab Republic of Egypt, The People’s Assembly, *Law No. (64) of 2010 regarding Combating Human Trafficking (Egypt’s Anti-Trafficking Law)*, Adopted May 9, 2010.

²¹⁷ Chapter Two: Crimes and Punishments & Chapter Five: Protection of Victims of Egypt’s Anti-Trafficking Law.

²¹⁸ Article 18 of Egypt’s Anti-Trafficking Law.

²¹⁹ Article 22 of Egypt’s Anti-Trafficking Law.

²²⁰ Article 28 of Egypt’s Anti-Trafficking Law.

²²¹ The Arab Republic of Egypt, *Constitution of the Arab Republic of Egypt (Dustur Juinhuriyat Misr al-Arabiyah)*, Cairo, January 18, 2014.

Constitution slavery, oppression and trafficking are declared as prohibited acts punishable by law.²²²

5.5 Efforts and Measures

In 2011 the NCC created the National Action Plan on Human Trafficking (hereinafter the 2011 NAP- HT) with reference to their mandate and to a “strong political will to effectively implement national anti-trafficking legislation”.²²³ The 2011 NAP-HT covered the period of January 2011- January 2013 and was then succeeded by the current NAP-HT stretching from January 2013 – January 2016 (hereinafter the 2013 NAP- HT).

The established purpose of the 2011 NAP- HT is based on four core elements including, the prevention human trafficking, the protection of trafficking victims and society as a whole, prosecution of trafficking offenders and participation meaning to promote international and national cooperation related to human trafficking.²²⁴

The NCC has reported that the implementation of the 2011 NAP-HT has been successful through the above-mentioned initiative. Further, the NCC has initiated campaigns, raising awareness, through advertisement and pamphlets and social media,²²⁵ for the crime of trafficking to the general public, promoted training initiatives and international cooperation. Further, the NCC has worked on the development of a database designed to track trafficking cases. However, identification of trafficking victims from Sinai has not been a priority for the NCC.

The Ministry of Health has reportedly cooperated with NGO’s to improve medical treatment for trafficking victims through capacity building and training of medical personnel and rehabilitation centers. Moreover, the Department for the Suppression of Illegal Immigration now also includes human trafficking.²²⁶

According to the 2014 “Trafficking in Persons Report”, the Egyptian authorities has made progress in the prevention of human trafficking. Further, the Egyptian government has provided anti-trafficking initiatives and programs for government officials, prosecutors and

²²² Article 89 of the *Constitution of the Arab Republic of Egypt*.

²²³ Nap-Ht 2011, p. 1.

²²⁴ Ibid. p. 2.

²²⁵ United States Department of State, 2014 Annual Trafficking in Persons Report (TIP) – Egypt, 2014, p. 165.

²²⁶ United Nations Human Rights Council, Universal Periodic Review, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1* - Egypt*, A/HRC/WG.6/7/EGY/1, 2009, p. 20.

judges; however, these were mostly funded and conducted by international and national NGO's together with the inter-ministerial anti-trafficking committee.²²⁷

5.6 Prosecution and Protection

5.6.1 Prosecution

According to the US Department of State, in its 2014 "Trafficking in Persons Report", the Egyptian government has made progress in the areas of investigation and prosecution of suspected trafficking offenders, however, no convictions were made in 2013, indicating a decrease from the previous year, with five convictions.²²⁸ Further, marginal progress was reported with regard to law enforcement efforts against traffickers.

Egypt's Anti-Trafficking Law establishes serious punishment for convicted traffickers with a possibility for imprisonment for three to 15 years, which is inline with the severity of penalties for other serious crimes under national criminal law.²²⁹

The Egyptian government has not presented any reports of investigation or prosecution related to trafficking in the Sinai. Further, NGO's provided information of law enforcement failing to search vehicles carrying migrants into Sinai, which may have contained victims of trafficking.

As previously mentioned in 5.2 Sinai Trafficking, there has been reports of police accepting bribes from traffickers attempting to avoid investigation of vehicles contain migrants and possible trafficking victims, yet, the government has not reported to launching any investigations or prosecutions and no convictions have been made. Further, the Egyptian government has reported no investigations or prosecutions of government officials suspected for complicity in human trafficking.

5.6.2 Protection

The government has still not effectively tackled the issue of identification and protection of trafficking victims though some minor progress has been reported. There is an absence of written instructions or guidelines for officials on the subject. Nevertheless, some progress was made through the work of the National Council for Childhood and Motherhood (hereinafter the NCCM) on a national referral mechanism launched in 2012 for the purpose of facilitating identification of trafficking victims and the subsequent referral to protection. Further, the

²²⁷ United States Department of State, 2014 TIP, p. 165.

²²⁸ Ibid. p. 165.

²²⁹ Ibid. p. 163.

NCCM has also utilized the systems for tracking of trafficking trends.

However, government officials have not efficiently employed the national referral mechanism for identification victims. Additionally, government identification and support has declined significantly compared to the previous year of 2012. The government has explained that the decline is due to law enforcement and officials, working in more rural regions of Egypt, lack of awareness on human trafficking.

Moreover, reports reveal that unidentified victims of trafficking have been mistreated by law enforcement and, as previously mentioned in 5.3 Treatment of Trafficking Victims, some are incarcerated for extended periods of time and often charged with status-related crimes, such as immigration offenses or prostitution.²³⁰ There have also been reports of law enforcement abusing trafficking victims sexually, verbally and psychologically.²³¹

Trafficking victims from the Sinai, are mostly labeled as irregular migrants or criminals treated as such by officials. Hence, identification, protection and support for trafficking victims held captive in Sinai is not considered a priority.

Further, support to trafficking victims through shelters and programs are mostly funded by NGO's and civil society. According to some NGO's, the government-run accommodations are often in poor condition and overcrowded.²³²

Moreover, Egypt has attempted to clampdown on terrorist groups and activities raging in parts of the Sinai region. Although some of the compounds holding trafficking victims were located in the near proximity to the crackdown, Egyptian authorities made no effective attempts to free the victims until the end of 2014 when the holdings were destroyed.²³³

5.7 Statements and Attitude Towards Trafficking in Sinai

According to the Human Rights Watch, government officials have consistently either denied reports of human trafficking taking place in the Sinai or claimed that they are unable to investigate the situation without specific and extensive information on the matter.²³⁴ Despite the fact that the trafficking has been brought up and highlighted by NGO's such as the Human Rights Watch and Amnesty International.²³⁵

Further, the European Parliament passed a resolution in March 2014 addressing the

²³⁰ United States Department of State, 2014 TIP, p. 164.

²³¹ Ibid. p. 165.

²³² Ibid. p. 164.

²³³ Van Reisen, Mirjam & Rijken, 2015, p. 118.

²³⁴ Human Rights Watch, 2014, p. 7.

²³⁵ Human Rights Watch, 2014; Amnesty International, 2013a.

situation in Sinai and calling for action to combat human trafficking in the region. The European Parliament considers the reports of abuses and trafficking in persons in Sinai to be credible and deeply concerning. The same applies to the information regarding the Egyptian security forces collusion with traffickers. According to the European Parliament, the Egyptian authorities have denied the existence of any cases involving collusion with officials²³⁶ and have in other instances maintained that they do not have enough information to launch investigations on the matter.²³⁷ Moreover, the European Parliament criticizes the Egyptian government for the lack of investigation and prosecution of officials suspected complicit in human trafficking in the Sinai.²³⁸

In the report “‘I Wanted to Lie Down and Die:’ Trafficking and Torture of Eritreans in Sudan and Egypt”, the Human Rights Watch interviewed Naela Gabr, who is the head of the NCC, regarding the situation in Sinai. In the interview Gabr partly acknowledged the trafficking-related abuses in Sinai,²³⁹ however, she claimed that the information available was neither sufficient nor detailed enough to initiate action in response to the trafficking in the Sinai. During the Human Rights Watch interview, conducted in November 2012, Gabr confirmed information that as of then, to her knowledge, no investigations or prosecutions related to the trafficking in Sinai had been launched.

Gabr told the Human Rights Watch that she received information from the Egyptian Public Prosecutor and the Ministry of Interior claiming that an investigation had been carried out on the subject matter of trafficking in Sinai and the conclusion was that the information was mostly false. According to the public prosecutor, the bodies found in the desert were migrants who died due to dehydration.²⁴⁰

According to a local NGO, Naela Gabr informed them, in September 2012, that information regarding the situation of trafficking in the Sinai had to be considered as propaganda unless she was provided the names of the trafficking victims.²⁴¹

The same month the NCC released a summary of a “Fifth Period Report”²⁴² stating that,

²³⁶ European Parliament Resolution on Security and Human Trafficking in the Sinai, para. G.

²³⁷ Human Rights Watch, 2014, p. 43.

²³⁸ European Parliament Resolution on Security and Human Trafficking in the Sinai, para. G.

²³⁹ Ibid. p. 31.

²⁴⁰ Ibid. p. 61.

²⁴¹ Ibid. p. 62.

²⁴² The Arab Republic of Egypt, National Coordinating Committee on Preventing and Combating Human Trafficking, *Executive Summary of the Fifth Annual Report*, September 2012.

Due to the growing number of African illegal migrants from Southern African countries, as well as the local and the foreign media's discussions of this issue, the Technical Secretariat of the National Committee prepared awareness flyers in Arabic and English to be provided to the African countries that export immigrants. Besides, enhancing technical cooperation, the flyers distribution has reached refugee's camps in order to raise the awareness of the illegal practices that expose African migrants to human trafficking, and its forms include which include forced labor, forced exploitation and financial extortion.²⁴³

Further serious challenge that has been highlighted by internal and international media along with the international reports is the issue of African migrants across Sinai toward Israel who are being severely exploited by the human trafficking gangs. The National committee is alert to this danger and its negative impact on the peace and security of the African migrants as well as the Egyptian image in the eyes of the outside world. In fact, some people claimed that the problem emanates from the lack of Egyptian control over Sinai. Currently, we hope that the ongoing work of the armed forces in Sinai eradicates the criminal outposts in the Sinai Peninsula.²⁴⁴

Notwithstanding, the statements made in the summary of a "Fifth Period Report", the NCC does not mention the situation in Sinai in the 2013 NAP-HT. In the 2013 NAP-HT the NCC only made a small reference to "African illegal infiltrators".²⁴⁵

5.8 Security Status in the Sinai Peninsula

President Hosni Mubarak was Egypt's Head of State for 30 years until 2011 when he was forced to hand over power to a transitional government due to mass protests.²⁴⁶ The transitional government had difficulties maintaining control over the Sinai region, which had become an area for criminal activities and was raging with Islamic militants.

After a referendum in 2012 the Muslim Brotherhood was awarded power and Mohammed Mursi became president, however, after protests from the Egyptian people, the military and the judicial organ, a military government overthrew President Mursi and the

²⁴³ The Arab Republic of Egypt, National Coordinating Committee on Preventing and Combating Human Trafficking, *Executive Summary of the Fifth Annual Report*, September 2012, p. 3.

²⁴⁴ *Executive Summary of the Fifth Annual Report*, p. 9-10.

²⁴⁵ The Arab Republic of Egypt, National Coordinating Committee on Preventing and Combating Human Trafficking, *2nd National Plan of Action Against Human Trafficking (2013-2016)*, Chapter One, p. 2.

²⁴⁶ The Swedish Foreign Ministerial Institute, Landguiden, Current Politics.

Muslim Brotherhood in 2013.²⁴⁷ These events resulted in decreased control in the Sinai region creating an environment for criminal gangs and Islamic militants to thrive in.

Since then, terrorist attacks and violence, committed by Islamic militants, directed at police, military and civilian targets, have become commonplace in the Sinai region.²⁴⁸ The military has placed the blame for the expansion of Islamic militants in the region on the former President Mursi who they claim was too lenient on the radical groups.²⁴⁹ The deteriorating security situation in the Sinai has created conditions for the crime of human trafficking to flourish.

As previously mentioned, the traffickers largely consist of armed individuals from the Bedouin community. The Bedouin tribe is a vulnerable and poor group subjected to socioeconomic marginalization. The Bedouin community's conditions have created a rift between them and the Egyptian authorities, which has contributed to increased instability in the Sinai region.²⁵⁰ Further, part of the Bedouin tribe has become radicalized adding to the deteriorating security situation.²⁵¹

²⁴⁷ The Swedish Foreign Ministerial Institute, Landguiden, Foreign Policy and Defense.

²⁴⁸ The Swedish Foreign Ministerial Institute, Landguiden, Calendar, July 2013.

²⁴⁹ The Swedish Foreign Ministerial Institute, Landguiden, Calendar September 2013.

²⁵⁰ European Parliament Resolution on Security and Human Trafficking in the Sinai, para D & H.

²⁵¹ Ibid. para A.

6. Analysis

6.1 Analysis and discussion

Are there any inadequacies in international law or national legislation concerning human trafficking with regards to Egypt or is it rather Egypt's application of existing law that is insufficient?

When reviewing the historic legal development and framework of human trafficking it is evident that the initiative to criminalize human trafficking, previously included in the concept of “white slave traffic”, was triggered by an urgency to respond to prostitution and sexual exploitation of white women. Accordingly, the focus of the international instruments created at the time only included human trafficking for the purpose of prostitution. This approach to human trafficking is still used today and is in line with the conceptual framework that treats trafficking as synonymous with prostitution.

In the 1904 Convention, victim protection was underscored as an integral part whereas its succeeding conventions introduced a criminal law focus resulting in a less victim-oriented perspective for the crime of human trafficking.

The culmination of human trafficking framed within a criminal law context was the realization of the Organized Crime Convention, the supplementing Palermo Protocols and the categorization of trafficking as a transnational crime. This development and categorization of the crime is in line with the prevailing conceptual framework that regards human trafficking as an organized crime issue. Within this framework human trafficking is mainly dealt with through a law-enforcement perspective, focused on investigation and prosecution of human traffickers while victim protection is treated as a secondary priority.

The prevailing framework and its accompanying lack of victim-oriented focus is visible through the regulations found in the Anti-Trafficking Protocol on protection and support of trafficking victims.

Victim protection is specified as a main purpose of the Anti-Trafficking, however, this it is not reflected in how the regulations regarding victim protection are constructed. The provisions concerning protection as well as support of trafficking victims do not contain any positive obligations that require the contracting states to provide measures to ensure protection of and support to trafficking victims. Further, the language of the Anti-Trafficking Protocol regarding protection and support of victims is weak in nature by merely

urging states to “endeavour to provide for the physical safety of victims”²⁵² or “consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking”.²⁵³ Further, the Anti-Trafficking Protocol is silent on the issue of criminalization and detention of trafficking victims, which facilitates continued vulnerability. Moreover, the provisions concerning protection and support of trafficking victims are of a non-compulsory nature and thus providing protection and support is optional for the contracting states.

The Anti-Trafficking Protocol refers to the importance of protecting trafficking victims human rights in several provisions and additionally it is stated that nothing stipulated in the Anti-Trafficking Protocol “shall affect the rights, obligations and responsibilities of states and individuals under international law, including international humanitarian law and international human rights law.”²⁵⁴ However, the lack of a human rights perspective embedded in Anti-Trafficking Protocol is evident through the above-mentioned.

With regards to Egypt, they are a state party to the Organized Crime Convention and the Anti-Trafficking Protocol and have enacted national legislation that corresponds to their conventional obligations. Further, the content of Egypt’s Anti-Trafficking Law is principally equivalent to the content of in the Anti-Trafficking Protocol on the subject matter, which might indicate that it is not Egypt’s national legislation that is inadequate and it is rather that the obligations set forth in the Anti-Trafficking Protocol that establishes a low threshold.

Referring to the silence of the Anti-Trafficking Protocol on the issues of criminalization and detention, Egypt’s detention of trafficking victims and prosecution for status-related crimes do not constitute a breach of their obligations imposed by the Anti-Trafficking Protocol or Egypt’s Anti-Trafficking Law.

As previously mentioned, the ILC Draft Articles are designed to determine the occurrence of internationally wrongful acts in order identify whom is responsible and remedies available under international law. In accordance with the standard of “due diligence”, states are obligated to prevent and respond to internationally wrongful acts committed by third-party actors and failure to prevent foreseeable violations or abuses invokes legal responsibility for the state.

²⁵² Article 6 para. 5 of the Anti-Trafficking Protocol.

²⁵³ Article 6 para. 3 of the Anti-Trafficking Protocol.

²⁵⁴ Article 14 para 1 of the Anti-Trafficking Protocol.

With regards to Egypt, government officials and authorities have in some cases denied the reports of human trafficking taking place in the Sinai Peninsula whereas in other cases the trafficking in the region has been partly acknowledged. Egypt's reluctance to admit to the trafficking and other abuses taking place in the Sinai may be due to the responsibilities arising from recognition of such offenses on their territory. If the human trafficking in Sinai is determined or acknowledged by Egypt they would be obligated to prevent and respond to the internationally wrongful act committed by the third-party actors, which in this case would be the traffickers. If established that Egypt knew or should have known of the human trafficking in the Sinai without attempting to prevent or respond to the internationally wrongful act they could be held responsible for breaching obligations under international law.

Further, with regards to state responsibility in the context of trafficking, it has been determined that State practice of trafficking or acts related to trafficking constitutes a breach of the states international legal obligations. Although Egyptian authorities have partly acknowledged human trafficking taking place in the Sinai, however, they have consistently and adamantly denied the reports of collusion between traffickers and officials, security forces and police. Furthermore, in addition to the Egyptian authorities reluctance to admit government collusion, no investigations or prosecutions have been launched on the subject matter. Egypt's reluctance to investigate the matter of collusion may be due to the fact that if reports are found to have merit the wrongful act of human trafficking can be attributable to Egypt by its own conduct through individuals acting in their official capacity on behalf of the state.

Has the issue of migration been securitized?

Increasingly restrictive immigration laws and policies and states conduct towards migrants indicate that the issue of migration has been securitized. Securitization of migration is in line with the conceptual framework of human trafficking as a migration issue. As previously mentioned, if human trafficking is understood, as a migration problem the responses related to the crime will focus on illegal immigration. Through increasingly restrictive immigration laws and policies people searching to escape, inter alia, civil war, poverty and socio-economic inequalities, are forced to resort to smugglers and traffickers. Consequently, states that have securitized the migration issue or that regard trafficking as migration problem exasperate the problem they are fighting to eradicate which in this case is human trafficking or smuggling of migrants.

In Chapter 2.3.1 Securitization and Undocumented Migration, Australia served as an example of a state that has securitized the migration issue. Following the securitization process, the Johan Howard government implemented a series of extraordinary measures in response to the perceived threat of migration including interception of ships of the coast of Australia containing asylum-seekers, automatic detention of asylum-seekers, building detention facilities for asylum-seekers and refugees awaiting application processes and increasing national security and border controls.

With regards to Egypt, border controls are heightened and numerous reports presented in the case study of Egypt revealed violence and lethal shootings of undocumented migrants and potential trafficking victims, refugees and asylum-seekers, around the Egyptian border used by Egyptian security forces. Further, undocumented migrants and potential trafficking victims, refugees and asylum-seekers that succeed in avoiding interception by security forces and enter Egypt are subsequently incarcerated and held in detention facilities or prisons and held for extended periods of time under poor conditions.

As previously mentioned, NGO's are prevented from entering the detention facilities or prisons to identify trafficking victims, asylum-seekers and refugees and to provide medical treatment. Egypt's explanation for restricting access to the facilities and prisons is that the detainees only consisted of lawfully incarcerated illegal immigrants.

Egypt's conduct and approach towards undocumented migration and migrants, accounted for above, is similar to that of Australia, which could indicate that Egypt has securitized the migration issue.

If the issue of migration has been securitized, what are the possible ramifications for victims of human trafficking?

As previously established, it is difficult to distinguish human trafficking from smuggling in practice and, according to some scholars, even in theory. Additionally, smuggling and trafficking can sometimes overlap or transform during the process of movement.

Measures to attempt to identify trafficking victims are not a requirement in the Anti-Trafficking Protocol. Further, the Anti-Trafficking Protocol provides a stronger protection for trafficking victims than that awarded to smuggled migrants which is virtually non-existent. Accordingly, measures to protect and support trafficking victims or to consider allowing trafficking victims to remain is more so expected of state parties in relation to human trafficking whereas such protection or consideration does not extend to smuggled migrants. Measures to protect and support trafficking victims would employ the need to

allocate financial resources and thus the circumstance presented above creates incentives for states to fail to identify trafficking victims as such or to misidentify victims of trafficking as smuggled migrants. Either of these scenarios results in the possibility of trafficking victims being labeled as criminals and prosecuted for status-related offenses.

Moreover, the above-mentioned is problematic due to the fact that smuggled migrants have reportedly been abused, left stranded or been killed both during and after they have reached their destination. Further, as mentioned above, increasingly restrictive immigration laws and policies people searching to escape, inter alia, civil war, poverty and socioeconomic inequalities, are forced to resort to smugglers and traffickers. Considering these circumstances, treating smuggled migrants as criminals omits the abuse and killing of smuggled migrants and the underlying causes of smuggling.

Based on the above-mentioned, the prevailing conceptual framework of human trafficking, which is focused on criminal law aspects and not on a victim-centered approach, in conjunction with the Anti-Trafficking Protocol, creates opportunities as well as incentives, for states that regard human trafficking as a migration issue to further a self-interest agenda of increased border controls, immigration laws and policies, for the purpose of keeping “others” out, through the “fight against human trafficking crusade”.

How can human trafficking in the Sinai Peninsula be linked to Arendt’s perception of a new political order?

The human rights-based approach in relation to human trafficking serves as a kind of response to the lack of victim-centered focus and human rights perspective in the Anti-Trafficking Protocol. If the Anti-Trafficking Protocol does not protect victims and a human rights-based approach is not applied trafficking victims are faced to dire consequences. As non-nationals present in a foreign country they are stand without the protection granted to citizens of a nation.

Egypt has presented a reluctance or indifference to take action against trafficking in Sinai. No effective measures to stop Sinai trafficking has been implemented apart from a more recent crackdown of some compounds containing trafficking victims held by Sinai traffickers. Previous to the crackdown Egyptian authorities attempted to clampdown on terrorist groups and activities in an area located in the near proximity of the traffickers compounds without attempting to free the trafficking victims.

As previously mentioned, reports of Sinai human trafficking in the Sinai Peninsula has either been denied or Egyptian authorities have claimed that they are incapable of taking

action against the trafficking due to lack of information on the victims or the locations where they are being held.

Further, no specific reference was made in relation to the human trafficking situation in Sinai in Egypt's latest national action plan, NAP-HT 2013, in spite of the fact that Egyptian authorities and the NCC have partly acknowledged the existence of the occurrence in the Sinai region. However, a reference was made to "African infiltrators" in the NAP-HT 2013, which indicates a lack of understanding or recognition of the trafficking victims as such.

Moreover, as previously stated, the Egyptian authorities have consistently and adamantly denied the reports of collusion between traffickers and officials, security forces and police and no investigations or prosecutions have been launched on the subject matter. Although, Egypt has reportedly made some progress on the prosecution of trafficking offenders no investigations or prosecutions have been launched with regards to Sinai traffickers. Within the definition of "Sinai Trafficking", collusion between traffickers and officials, security forces and police is established as a core element of the crime and as a feature that facilitates human trafficking in the Sinai. Consequently, Egypt's reluctance to investigate and prosecute collusion contributes to the continuation of human trafficking in the Sinai.

Based on the above-mentioned, Egypt has presented an unwillingness to address, prioritize, respond and effectively prevent the human trafficking taking place in the Sinai Peninsula. The trafficking victims of Sinai trafficking are thus left without protection in a particular vulnerable situation which in line with Arendt's theory on that the loss of nationality is a loss of human rights and humanity altogether.

The victims of trafficking in the Sinai Peninsula are unrecognized and mistreated, first by their captors and subsequently by Egyptian police or authorities. Additionally, many trafficking victims are detained, criminalized, prosecuted, convicted or deported.

Arendt described that the refugees of the European post-war era were regarded as the "scum of the earth" and treated as such. This perception and subsequent treatment of non-nationals, including trafficking victims, seems to be applicable even today.

According to Arendt, rightlessness can be linked to a new political order, which derives from an increasingly globalized world. The world today remains globalized which might explain why not much has changed with regards to Arendt's theory. Additionally, the current political order has facilitated the securitization of undocumented migration and the perception of human trafficking as a migration issue. The current political order and the

prevailing conceptual and subsequent legal framework of human trafficking as an organized crime has contributed to the trafficking situation in Sinai as well as to human trafficking in general.

As previously mentioned, there is a lack of victim-oriented focus and human rights perspective in the prevailing conceptual framework and thus in the Anti-Trafficking Protocol. However, emerging developments in the jurisprudence of the crime and growing acceptance of guiding instruments focused on a human rights-based approach and victim protection and support, such as the OHCHR Recommended Principles and Guidelines, indicate a higher threshold for protection of trafficking victims.

As mentioned above, the provisions regarding victim protection and support in the Anti-Trafficking Protocol are of a non-compulsory nature, however, emerging developments in the jurisprudence could result in higher expectations on states to provide protection and support and apply a human rights-based approach.

If a human rights-based approach is not applied, the implementation of the Anti-Trafficking results in increased vulnerability, minimum requirements for protection and optional support and assistance granted to trafficking victims at the discretion of states.

Human Trafficking has been referred to as a human rights violation as such by the European Council, the ECHR, the OHCHR and the UNGA. While declaring that human trafficking can be considered as human rights violation own its own they proclaim that as a consequence of this notion increased victim protection is needed and the fact that human rights must be a centerpiece of all anti-trafficking efforts.

6.2 Discussion

The topic of prior research in, relation to Sinai trafficking and trafficking for the purpose of extortion or ransom, was presented in the introductory chapter of this thesis. In 1.4.1.3 Prior Research it was established that certain forms of human trafficking, such as trafficking in persons for the purpose of prostitution or forced labour constitute widely recognized forms of trafficking and thus the field of research on such forms of the crime of trafficking is extensive and a considerable amount of the research is focused on trafficking in women and children. Human trafficking for other purposes such as extortion or ransom is a fairly unexplored research area and thus materials are slim. Further, it was established that research on human trafficking in Sinai Peninsula is virtually non-existent.

In this thesis it was established that trafficking in the Sinai is a relatively new practice and the phenomenon of “Sinai Trafficking” and its specific elements have recently been coined. However, one might think that, the severity of the occurrence and some recognition and attention directed at the situation in Sinai by the international community and NGO’s would have incited more legal scholars to conduct research on this generally unexplored specific phenomenon which concerns a more recent form of human trafficking.

The lack of more extensive attention and legal research on the field of “Sinai Trafficking” and human trafficking for the purpose of extortion and ransom could be linked to the early twentieth century and the initial criminalization and codification of the crime.

At that time in history, criminalization and codification of human trafficking or “white slave traffic” was spurred by exploitation and prostitution of white women mainly originating from European countries. Moreover, in the first legal instruments on human trafficking only trafficking for the purpose of prostitution was included, leaving out other forms of the crime. Further, human trafficking or “white slave traffic” of white women was compared and considered as more immoral than the enslavement of Africans for the purpose of forced labour. Thus, there has been a history of favoring and prioritizing certain forms of human trafficking. Additionally, history illuminates that fact that comparisons have been made in relation to who is the subject or victim of the crime of trafficking.

In the same way that the above-mentioned, historic de-prioritized enslavement exclusively consisted of Africans, the victims of trafficking in the Sinai originate from the Horn of Africa, which could indicate that such racist factors might still be present today.

The above-mentioned circumstances could serve as part of the explanation of why “Sinai Trafficking” and human trafficking for the purpose of extortion and ransom have not received more attention, which might have caused a lack of legal research in this field. So to conclude more research, attention and resources must be directed at “Sinai Trafficking” and trafficking in persons for the purpose of extortion and ransom in order to be able to effectively counteract and eradicate these two notions.

With regards to the above-mentioned circumstances concerning “white slave traffic” and human trafficking for the purpose of prostitution could be indicative that these issues have previously been securitized. In this instance, the securitizing actor would have been the international community and the governments of the states affected by “white slave traffic” and human trafficking for the purpose of prostitution. The referent object would have been national sovereignty, territorial integrity and the domestic security of the affected states due to

the transnational nature of the crimes as well as the society as a whole through the targeting, exploitation and prostitution of white women.

Further, the relevant audience to convince of the perceived threat would probably have been the public opinion of individuals residing in the affected states who were horrified by the nature of these crimes. The extraordinary measures implemented in response to the perceived threat could then have been the groundbreaking enactment of international legislation criminalizing the crimes and the increasingly restrictive immigration laws and policies.

If “white slave traffic” and human trafficking for the purpose of prostitution was indeed securitized it could explain why focus, research and resources has been, and still is, directed at the notion that human trafficking is synonymous with prostitution.

Moreover, a noteworthy difference between previous possible securitization of human trafficking as prostitution, as supposed to the current possible securitization of human trafficking as a migration issue is that in the latter instance, the victims of human trafficking are regarded as the threat to the referent object whereas in previous possible securitization of human trafficking as prostitution the victims would have been regarded as the referent object in need of protection.

In this thesis, it was established that Egypt has partly acknowledged the occurrence of human trafficking in the Sinai and that the notion has received some attention by international community and NGO’s. However, Egypt’s has not suffered any notable consequences or sanctions for not attempting to effectively respond to and combat the crime.

This lack of accountability might have contributed to Egypt’s attitude towards trafficking in the Sinai and the absence of effective prevention and suppression of the crime. Accordingly, enforcement of sanctions and pressure from the international community could contribute to the eradication of the phenomenon of “Sinai Trafficking”.

As addressed in this thesis, human trafficking was previously governed under international human rights law. Some scholars claim that during this time not much was accomplished in the fight against human trafficking and that thus the current legal framework and categorization of trafficking as a transnational crime tool serve as a more efficient tool to eradicate the crime. However, as presented in this thesis, the prevailing legal and conceptual framework has resulted in a loss of a human rights perspective and focus centered on the trafficking victims, elements that are in fact included in the Anti-Trafficking Protocol. Thus, the “failure” of human trafficking within a human rights framework under international human rights law should not render a complete disregard and de-prioritization of trafficking

victims human rights and does not mean that greater responsibility should not be imposed on the contracting parties to the Anti-Trafficking Protocol with regards to the protection and support granted to victims of trafficking.

6.3 Conclusion

With regards to the international law on human trafficking, it has been assessed that there are some inadequacies in relation to protection and support granted to trafficking victims and to the lack of a human rights-based approach in the Anti-Trafficking Protocol. The categorization of trafficking as a transnational crime and the prevailing conceptual framework of human trafficking as an organized crime has contributed to these inadequacies.

With regards to Egypt, they have adopted the relevant international instruments that regulate the crime of human trafficking. Further they have enacted national legislation that corresponds to the obligations set forth in the Anti-Trafficking Protocol, which might indicate that it is not Egypt's national legislation that is inadequate and rather that the international law concerning human trafficking and its accompanying obligations set a low standard.

The silence of the Anti-Trafficking Protocol on the issues of criminalization and detention, means that Egypt's detention of trafficking victims and prosecution for status-related crimes do not constitute a breach of their obligations imposed by the Anti-Trafficking Protocol or Egypt's Anti-Trafficking Law.

Increasingly restrictive immigration laws and policies and States conduct towards migrants indicate that the issue of migration has been securitized.

With regards to Egypt, border controls are heightened and the revealed violence and lethal shootings of undocumented migrants and potential trafficking victims, refugees and asylum-seekers, around the Egyptian border used by Egyptian security forces in conjunction with Egypt's conduct and approach towards undocumented migration and migrants could indicate that Egypt has securitized the migration issue.

As previously established, it is difficult to distinguish human trafficking from smuggling and measures to attempt to identify trafficking victims are not a requirement in the Anti-Trafficking Protocol. The difference in the protection and support granted to trafficking victims in relation to smuggled migrants creates incentives for states to fail to identify trafficking victims as such or to misidentify victims of trafficking as smuggled

migrants could result in the possibility of trafficking victims being labeled as criminals and prosecuted for crimes.

According to Arendt, rightlessness can be linked to a new political order, which derives from an increasingly globalized world. The world of today remains globalized and thus the political order that follows and its accompanying conceptual and subsequent legal framework of human trafficking as an organized crime contributes to the trafficking situation in Sinai as well as to human trafficking in general.

Bibliography

International Law

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 UNTS 271, done December 2, 1949, entered in to force July 25, 1951.

Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, Supplement No. 10 (A/56/10), chp.IV.E.1, Adopted by the International Law Commission at its Fifty-Third Session', November 2001.

International Agreement for the Suppression of the White Slave Traffic, 1 L.N.T.S. 83, done May 4, 1904, entered in to force July 18, 1905.

International Convention for the Suppression of the White Slave Traffic, 3 LNTS 278, done May 4, 1910, entered in to force August 8, 1912.

International Convention for the Suppression of Traffic in Women and Children, 9 LNTS 415, done September 30, 1921, entered in to force June 15, 1922.

International Convention for the Suppression of the Traffic in Women of Full Age, 150 LNTS 431, done October 11, 1933, entered in to force August 24, 1934.

UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, done December 18, 1979, United Nations, Treaty Series, vol. 1249, p. 13, entered into force September 3, 1981.

UN General Assembly, *Convention on the Rights of the Child*, done November 20, 1989, United Nations, Treaty Series, vol. 1577, p. 3, entered into force September 2, 1990.

UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, July 17, 1998.

UN General Assembly, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, November 15, 2000.

UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, November 15, 2000.

UN General Assembly, *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations*

Convention against Transnational Organized Crime, May 31, 2001.

UN General Assembly, *United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, A/RES/55/25, January 8, 2001.

United Nations, *Statute of the International Court of Justice*, 18 April 1946.

United Nations, *Vienna Convention on the Law of Treaties*, Treaty Series, Volume 1155, p.331, done at Vienna May 23, 1969, entered into force January 27 1980.

Case law

Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Trial Judgment), IT-96-23-T & IT-96-23/1-T, International Criminal Tribunal for the former Yugoslavia, February 22, 2001.

European Law

Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings and its Explanatory Report*, CETS 197, Treaty Series, No. 197, Warsaw, May 16, 2005.

European Union, *Charter of Fundamental Rights of the European Union*, 2012/C 326/02, October 26, 2012.

Resolutions

European Parliament, *European Parliament Resolution on Security and Human Trafficking in the Sinai* (2014/2630(RSP), 13 March 2014.

Directives

European Union: Council of the European Union, *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*, OJ L. 101/1-101/11; 15.4.2011, 2011/36/EU, April 15, 2011.

Case law

Rantsev v. Cyprus and Russia, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010.

Egyptian Law

The Arab Republic of Egypt, *The Prime Minister's Decree, On the Establishment of the National Coordination to Combat and Prevent Trafficking in Persons*, No. 1584 of 2007.

The Arab Republic of Egypt, The People's Assembly, *Law No. (64) of 2010 regarding Combating Human Trafficking*, Adopted May 9, 2010.

The Arab Republic of Egypt, *Constitution of the Arab Republic of Egypt (Dustur Juinhuriyat Misr al-Arabiyyah)*, Cairo, January 18, 2014.

Policy documents

The Arab Republic of Egypt, National Coordinating Committee on Preventing and Combating Human Trafficking, *National Plan of Action Against Human Trafficking*, (January 2011-January 2013), Cairo, December 2, 2010.

The Arab Republic of Egypt, National Coordinating Committee on Preventing and Combating Human Trafficking, *2nd National Plan of Action Against Human Trafficking (2013-2016)*.

The Arab Republic of Egypt, National Coordinating Committee on Preventing and Combating Human Trafficking, *Executive Summary of the Fifth Annual Report*, September 2012.

Secondary Legal Sources

United Nations Human Rights Office of the High Commissioner, *Human Rights and Human Trafficking*, Fact Sheet No. 36, New York & Geneva, 2014.

United Nations Commissioner for Refugees, *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, Addendum E/2002/68/Add.1.*, Geneva, 2002.

The United Nations General Assembly, *Summary of the General Assembly Thematic Debate on Human Trafficking*, New York, 2008.

Villiger, Mark E., *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Koninklijke Brill NV, Leiden, 2009.

Books and Articles

Arendt, Hannah, *The Origins of Totalitarianism*, First Edition, Harcourt Brace and Company, New York, 1951.

Boister, Neil, *An Introduction to Transnational Criminal Law*, Oxford University Press, Oxford, 2012.

Brysk, Alison, *Chapter 4: Rethinking Trafficking: Human Rights and Private Wrongs*, In Brysk, Alison & Choi-Fitzpatrick, Austin, *From Human Trafficking to Human Rights*, pp. 73-85, University of Pennsylvania Press, 2012.

Dixon, Martin, *Textbook on International Law*, Sixth Edition, Oxford University Press, Oxford, 2007.

Emmers, Ralf, *Chapter 10: Securitization*, In Collins, Alan, *Contemporary Security Studies*, Third Edition, pp. 131-144, Oxford University Press, Oxford, 2013.

Gallagher, Anne T., *Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway*, *Virginia Journal of International Law*, Volume 50, Issue 1, pp. 789-848, 2009.

Gallagher, Anne T., *The International Law of Human Trafficking*, Cambridge University Press, New York, 2010.

Hathaway, C. James, *The Human Rights Quagmire of 'Human Trafficking'*, *Virginia Journal of International Law*, Volume 49, No. 1, pp. 1-59, 2008.

Irwin, Mary Ann, *"White Slavery" As Metaphor: Anatomy of a Moral Panic*, *Ex Post Facto: The History Journal* 5, 1996.

Jessup, Philip, *Transnational Law*, New Haven: Yale University Press, pp. 113, 1956.

Lee, Maggy, *Human Trafficking*, Willan Publishing, Cullompton, 2007.

Lee, Maggy, *Trafficking and Global Crime Control*, Sage Publications Ltd, London, 2011.

Nadelmann, Ethan A., *Global Prohibition Regimes: The Evolution of Norms in International Society*, *International Organization*, Vol. 44, No. 4, pp. 479-526, The MIT Press, 1990.

Obokata, Tom, *Trafficking of Human Beings as a Crime Against Humanity: Some Implications for the International Legal System*, *International and Comparative Law Quarterly*, Vol. 54, pp. 445-457, 2005.

Obokata, Tom, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach*, *International Studies in Human Rights*, Volume 89, Koninklijke Brill NV, Leiden, 2006.

Touzenis, Kristina, *Trafficking in Human Beings: Human Rights and Transnational Criminal Law, Developments in Law and Practices*, UNESCO migration studies 3, United Nations Educational, Scientific and Cultural Organization (UNESCO), Paris, 2010.

Van der Wilt, Harmen, *Trafficking in Human Beings, Enslavement, Crimes Against Humanity: Unravelling the Concepts*, *Chinese Journal of International Law*, pp. 297-334, Oxford University Press, 2014.

Van Reisen, Mirjam, Rijken, Conny, & Estefanos, Meron, *Human Trafficking in the Sinai: Refugees between Life and Death*, Wolf Legal Publishers, Brussels, October 2012.

Van Reisen, Mirjam, Rijken, Conny, & Estefanos, Meron, *the Human Trafficking Cycle: Sinai and Beyond*, Nijmegen: Wolf Legal Publishers, Brussels, May 2014.

Van Reisen, Mirjam & Rijken, Conny, *Sinai Trafficking: Origin and Definition of a New Form of Human Trafficking*, In *The Journal of Social Inclusion, Perspectives on Human Trafficking and Modern Forms of Slavery*, Volume 3, No. 1, pp. 113-124, 2015.

Reports

Amnesty International, *Amnesty International Report 2011: The State of the World's Human Rights*, Amnesty International Ltd, London, 2011.

Amnesty International, *Amnesty International Report 2012: The State of the World's Human Rights*, Amnesty International Ltd, London, 2012.

Amnesty International, *Amnesty International Report 2013: The State of the World's Human Rights*, Amnesty International Ltd, London, 2013.

Amnesty International, *Amnesty International Report 2014/15: The State of the World's Human Rights*, Amnesty International Ltd, London, 2015.

Amnesty International, *Egypt/Sudan: Refugees and Asylum-Seekers Face Brutal Treatment, Kidnapping for Ransom, and Human Trafficking*, Amnesty International Publications, London, 2013.

Conference of Parties to the United Nations Convention on Transnational Organized Crime, Decision 4/4, "Trafficking in Human Beings", *Report of the Conference of Parties to the United Nations Convention on Transnational Organized Crime*, Fourth Session, UN Doc.CTOC/COP/2008/19, Vienna, 2008.

Council of Europe Experts Group, *Report of the Experts Group on Trafficking in Human Beings*, Brussels, 2004.

Government Offices, Swedish Foreign Ministry, *Report on Human Rights in Egypt*, 2011.

Human Rights Watch, *"I Wanted to Lie Down and Die": Trafficking and Torture of Eritreans in Sudan and Egypt*, Human Rights Watch, 2014.

International Labour Organisation, *ILO 2012 Global Estimate of Forced Labour: Results and Methodology*, 2012.

Jones-Pauly, C.C., *Report on anti-trafficking laws in six European countries (Austria, Belgium, Czech Republic, Federal Republic of Germany, Italy, Poland) and compliance with the International Conventions against trafficking*, 1999.

Ninth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Interim Report by the Secretariat: Results of the Supplement to the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, on Transnational Crime*, UN Doc. A.CONF.169/15/Add.1, Cairo, April 4, 1995.

UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44, E/CN.4/2000/68*, 2000.

United Nations Human Rights Council, Universal Periodic Review, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1* - Egypt*, A/HRC/WG.6/7/EGY/1, 2009.

United States Department of State, 2012 Annual Trafficking in Persons Report (TIP) – Egypt, 2012.

United States Department of State, 2013 Annual Trafficking in Persons Report (TIP) – Egypt, 2013.

United States Department of State, 2014 Annual Trafficking in Persons Report (TIP) – Egypt, 2014.

Web sources

HRBA Portal, UN Practitioners' Portal on Human Rights Based Approaches to Programming, 10. – What is a human rights-based approach? [Acquired April 20, 2015 at approximately 15.45 PM]

<http://hrbaportal.org/faq>

The Swedish Foreign Ministerial Institute, Landguiden, Current Politics (“Aktuell Politik”), March 15, 2015. [Acquired May 1, 2015 at approximately 11.00 AM]

<https://www.landguiden.se/Lander/Afrika/Egypten/Aktuell-Politik>

The Swedish Foreign Ministerial Institute, Landguiden, Foreign Policy and Defense (“Utrikespolitik och försvar”), September 16, 2014. [Acquired May 1, 2015 at approximately 11.00 AM]

<https://www.landguiden.se/Lander/Afrika/Egypten/Utrikespolitik-Forsvar>

The Swedish Foreign Ministerial Institute, Landguiden, Calendar (“Kalendarium”) located under Current Politics (“Aktuell Politik”), May 18, 2015. [Acquired May 1, 2015 at approximately 11.00 AM]

<https://www.landguiden.se/Lander/Afrika/Egypten/Aktuell-Politik/Kalendarium>

United Nations Human Rights, Office of the High Commissioner for Human Rights, News and Events, Human Rights based approach to trafficking, Quotation of Human Rights Chief Navi Pillay, November 29, 2011. [Acquired April 22, 2015 at approximately 10.00 AM]

<http://www.ohchr.org/EN/NewsEvents/Pages/HumanRightsbasedapproachtotrafficking.aspx>

United Nations Office on Drugs and Crime, Signatories to the United Nations Convention against Transnational Crime and its Protocols, United Nations Treaty Collection, *United Nations Convention against Transnational Organized Crime*. [Acquired May 8, 2015 at approximately 17.00 PM]

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en

United Nations Office on Drugs and Crime, Signatories to the United Nations Convention against Transnational Crime and its Protocols, United Nations Treaty Collection, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* [Acquired May 8, 2015 at approximately 17.00 PM]

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en

United Nations Office on Drugs and Crime, Signatories to the United Nations Convention against Transnational Crime and its Protocols, United Nations Treaty Collection, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime* [Acquired May 8, 2015 at approximately 17.00 PM]

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&lang=en