Combating Online Trafficking in Human Beings with the Help of Technology: Socio-Legal Perspectives on Improving the Implementation of the Palermo Protocol

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Trafficking in human beings is a serious crime, and it can also be challenging to identify the victims of it. Unfortunately, human trafficking is also a profitable business, particularly in the internet age: human traffickers have found new market platforms, while anti-trafficking forces are struggling with both the crime detection and the identification of its victims. This thesis focuses specifically on the fight against trafficking that takes place online and the online sexual exploitation. In terms of technology-assisted responses to trafficking in human beings, artificial intelligence and open-source intelligence have been selected as the most relevant tools in this thesis.

This thesis addresses human trafficking from both a legal and a societal perspective: it seeks to tell its reader the purpose of the legal instruments that are specifically designed to combat this challenging and multi-dimensional crime. On the other hand, this research also questions the adequacy of these legal instruments and looks at the fight against human trafficking from the point of view of responsibility of the various international actors. Above all, this thesis identifies the societal challenges involved in combating trafficking in human beings when there are multiple actors with competing interests on the international field.

This thesis is socio-legal, and the problems presented are approached from a multidisciplinary perspective. The method is hermeneutics. The research begins with an introduction to the legal framework, followed by a more detailed focus on the potential of artificial intelligence and open-source intelligence in the fight against human trafficking, using examples. In addition, the thesis will delve into the Palermo Protocol and the challenges and opportunities it presents from the perspective of the subject of the thesis. Finally, the responsibilities and approaches of states, companies, and international organizations in the fight against trafficking in human beings, are examined.

The conclusion of this thesis is that the Palermo Protocol in itself is not sufficient to combat trafficking in human beings globally: much depends on how states implement it into their national legislation. Artificial intelligence and open-source intelligence could offer good opportunities to fight trafficking more effectively, provided that ethical aspects are considered. International actors – states, companies and international organizations – have responsibilities and different possibilities to effectively combat trafficking, but holding a particular actor accountable can be challenging in the light of current regulation. International law offers the clearest possibilities for holding state parties to the Palermo Protocol accountable. States must adequately implement anti-trafficking legislation into their national law. However, the Internet environment poses challenges for states in understanding where trafficking offences can be considered to have taken place. Internet companies, for their part, can be considered as silently complicit in human trafficking that has been occurring on their platforms and when the company has not taken active steps to prevent it. The role of international organizations as monitoring organs is also recognized as a possibility.

Key words: International law, human trafficking, artificial intelligence, open-source intelligence, Palermo protocol

Pro gradu- tutkielma

Oppiaine: Kansainvälinen oikeus
Tekijä: Tuuli Rasilainen
Otsikko: Verkossa tapahtuvan ihmiskaupan torjunta teknologia-avusteisesti: oikeussosiologisia näkökulmia Palermon pöytäkirjan implementoinnin parantamiseksi
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Ihmiskauppa on laaja-alainen sekä vakava rikos, ja ihmiskaupan uhreja voi olla myös haastavaa tunnistaa. Ihmiskauppa on valitettavasti myös tuottoisa bisnes ja etenkin internetin aikakaudella ihmiskauppaajat ovat löytäneet uusien markkina-alustojen pariin, kun taas ihmiskauppaa torjuvat tahot kampailevat edelleen niin itse rikoksen kuin sen uhrien tunnistamisen kanssa. Tämä tutkielma keskittyy nimenomaan verkkoympäristössä tapahtuvaan seksiperäiseen ihmiskauppaan ja sen torjumiseen. Ihmiskaupan teknologia-avusteisen torjumisen kannalta merkittävimmiksi työkaluiksi on tässä tutkielmassa valittu tekoäly sekä avointen lähteiden tiedustelu.

Tämä tutkielma käsittelee ihmiskauppaa niin oikeudellisesta kuin yhteiskunnallisesta näkökulmasta: se pyrkii avaamaan lukijalle niiden oikeudellisten instrumenttien tarkoitusta, jotka on nimenomaan luotu torjumaan tätä haastavaa ja moniulotteista rikosta. Toisaalta tämä tutkielma myös kyseenalaistaa näiden oikeudellisten instrumenttien riittävyyden ja se tarkastelee ihmiskaupan torjuntaa myös eri kansainvälisten toimijoiden vastuun näkökulmasta. Tämä tutkielma tunnistaa ennen kaikkea ihmiskaupan torjumiseen liittyvät yhteiskunnalliset haasteet, kun kansainvälisellä kentällä on useita toimijoita, joiden intressit kilpailevat keskenään.

Tutkielma on oikeussosiologinen ja ongelmia lähestytään monitieteellisesti. Metodina on hermeneutiikka. Tutkielma alkaa oikeudellisen viitekehyksen esittelyllä, jonka jälkeen keskitytään tarkemmin tekoälyn sekä avointen lähteiden tiedustelun tuomiin mahdollisuuksiin ihmiskaupan torjunnassa esimerkkien avulla. Lisäksi tutkielmassa syvennytään Palermon pöytäkirjaan ja siinä piileviin haasteisiin ja mahdollisuuksiin tutkielman aiheen näkökulmasta. Lopuksi tarkastellaan valtioiden, yritysten ja kansainvälisten järjestöjen vastuuta ja lähestymistapoja ihmiskaupan torjuntaan.

Tutkielman johtopäätöksenä on, että Palermon pöytäkirja ei itsessään ole riittävä torjumaan ihmiskauppaa maailmanlaajuisesti: paljon on kiinni siitä, miten valtiot sen implementoivat osaksi kansallista lainsäädäntöä. Tekoäly sekä avointen lähteiden tiedustelu voisivat tarjota hyviä mahdollisuuksia ihmiskaupan tehokkaammassa torjumisessa, mikäli eettiset ongelmat on otettu huomioon. Kansainvälisillä toimijoilla, valtioilla, yrityksillä sekä järjestöillä, on vastuu sekä erilaisia mahdollisuuksia ihmiskaupan tehokkaassa torjumisessa, mutta tietyn toimijan vastuuseen asettaminen voi olla haasteellista nykyisen sääntelyn valossa. Kansainvälinen oikeus tarjoaa selkeimmät mahdollisuudet niiden valtioiden vastuuseen asettamiselle, jotka ovat Palermon pöytäkirjan osapuolia. Valtioiden tulee riittävissä määrin implementoida ihmiskaupan torjuntaan liittyviä säädöksiä osaksi kansallista lainsäädäntöä. Internet-ympäristö asettaa valtioille kuitenkin haasteita sen ymmärtämisessä, missä valtiossa ihmiskaupparikosten voidaan katsoa tapahtuneen. Internet-yritykset puolestaan voidaan katsoa hiljaisiksi rikoskumppaneiksi tapauksissa, joissa alustalla on ollut mahdollista harjoittaa ihmiskauppaa eikä tämä yritys ole ryhtynyt aktiivisiin toimiin tämän estämiseksi. Mahdollisuutena nähdään myös kansainvälisten järjestöjen rooli valvovana elimenä.

Avainsanat: kansainvälinen oikeus, ihmiskauppa, tekoäly, avointen lähteiden tiedustelu, Palermon protokolla

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List of Abbreviations

AI	artificial intelligence
ARSIWA	Articles on the Responsibility of State for Internationally Wrongful Acts
ASWs	Adult Service Websites
DARPA	Defence Advanced Projects Research Agency
EU	European Union
GDPR	European Union General Data Protection Regulation
GRETA	Group of Experts on Action Against Trafficking in Human Beings
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
IHRL	international human rights law
IR	international relations
ISP	Internet Service Provider
IO	international organization
NGO	non-governmental organization
OSCE	Organization for Security and Co-operation in Europe
OSINT	Open-Source Intelligence
THB	trafficking in human beings
UDHR	Universal Declaration of Human Rights
UNCTOC	United Nations Convention against Transnational Organized Crime
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNODC	United Nations Office on Drugs and Crime
VCLT	Vienna Convention on the Law of Treaties

1 Introduction

1.1 Background

> *'We battle the counterfactual forces warping society. We insist on evidence. And we show ordinary citizens how to expose wrongdoing and demand accountability from the powerful'*[1]

In September 2019 independent investigative collective of researchers called Bellingcat released an article on how they geolocated images that were originally published by Europol with the aim to find a child modelling studio producing child sexual abuse material by trafficking children from Moldova to Ukraine. The article was not only about Bellingcat's geolocating methods, but also to raise awareness of the Europol's campaign called "Stop Child Abuse- Trace and Object" which aims to stop the exploitation of children by tracing their location or country of origin.[2] Bellingcat has gained significant recognition for its investigations into conflicts, human rights abuses, and other geopolitical events by using publicly available information and online sources, such as social media, satellite imagery and videos.[3] The organization is specialized in open-source intelligence (OSINT) that is collection and analysis of information from publicly available sources.[4]

The global space is undergoing a fast period of evolution: both technology and the institutional structures have brought a change of human interrelations one of them being the mass movement of people [5], which has furthermore created new platforms and demand for criminal activities. Various social media platforms provide a favorable environment for human traffickers to ensnare victims into various forms of exploitation, ranging from forced labor to sexual exploitation, and everything in between.[6] Bellingcats' work is just one example of how technology, in this case OSINT, can be used in investigative -and thus preventative- means in the fight against trafficking in human beings (THB). In the realm of THB, technology stands out as a key industry sector with the capacity to contribute to both the challenges and the solutions in devising effective approaches to combat human

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[1] Higgins 2021, p.7.
[2] Gonzales et al. 2019.
[3] Bellingcat/Who we are.
[4] See e.g. European Commission/Publications/Data stories/Open-source intelligence; Moshirnia 2013, p. 385.
[5] Hernández 2019, p.28.
[6] Dixon 2013, p. 36–39.

trafficking.[7] Nevertheless, only little attention is paid to how technology can be utilized as an effective tool in the fight against human trafficking, especially when it comes to preventing trafficking and protecting the victims of it.[8]

Human trafficking is also referred to as modern form of slavery: a crime that violates the most fundamental rights and freedoms by exploiting victims in order of economic gain. Child abuse and sexual exploitation are just examples of how human trafficking can look like, but its victims can be of any age and it can appear in different forms such as forced labor, slavery, and organ removal.[9] United Nations Office on Drugs and Crime (UNODC) does not provide any specific number of the extent of the crime in their report, but their conclusions and estimates are rather based on revealed human trafficking cases.[10] There are only rough estimates of the number of victims of THB, yet the estimates vary excessively and significantly fewer victims of human trafficking are identified because of the information deficit about the extent of this crime.[11] The UNODC Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (later: The Protocol or Palermo Protocol), supplementing the UN's Convention against Transnational Organized Crime published in 2000, commits ratifying states to prevent and combat trafficking in persons, giving assistance and protection to the victims of trafficking and promoting cooperation between State Parties in order to meet the objectives.[12] UNDOC has later adopted "International Framework for Action, To Implement the Trafficking in Persons Protocol". The measures presented in the Framework do not, however, include the usage of contemporary technology tools, on which this research will be focusing.

The Protocol was taken into account when the specific provisions on trafficking in human beings were drawn up in the context of the 2002 Council Framework Decision on Combating Trafficking in Human Beings in the European Union. Later on in 2011, EU has legislated a directive on preventing and combating trafficking in human beings and protecting its victims

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[7] OSCE 2022, pp. 4,10.
[8] OSCE 2020, p.7.
[9] Crime Areas / Trafficking in Human Beings.
[10] UNODC Global Report on Trafficking in persons 2022; See also the previous UNODC reports from 2020, 2018 and 2016 where the number of the victims has been calculated similarly.
[11] UNODC 2006, pp.113,120.
[12] UN, General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, General Assembly resolution 55/25, 15 November 2000 [hereinafter "The Protocol"]: UN, General Assembly, Convention against Transnational Organized Crime, General Assembly resolution 55/25, 15 November 2000.

and replacing Council Framework Decision. In addition, Council of Europe has made Convention on Action against Trafficking in Human Beings, which entered into force in 2008. All the Member States of Council of Europe have signed and ratified the Convention and the Group of Experts on Action Against Trafficking in Human Beings (GRETA) is monitoring the enforcement measures in the Member States. It has been suggested that European directives and Conventions constitute the most prehensive regional legal system for trafficking in human beings, aiming to enhance the protection of victims of trafficking and safeguarding of their rights[13].

In the light of this thesis, it is vital to understand how significant a role technology plays in the field of anti-trafficking. It is also essential to acknowledge that there have not been any major changes in the international conventions regarding trafficking in human beings during the last decade. Neither the Protocol nor the Council of Europe Convention does not address the THB cases happening in the internet environment or any other technologically assisted forms of THB. Therefore, it is both relevant to understand the objectives of these international agreements, and to be able to apply the regulation regarding technology tools into the situations regarding anti-trafficking. OSINT has over time become an increasingly important part of the intelligence practice, making up around 80%[14] of all the intelligence material used by state agencies. Its role in creating new intelligence sources, such as satellite images, social media, public records and digital currencies, has also been noteworthy.[15] In this sense, information from open sources is particularly interesting from the point of view of the fight against human trafficking.

Another contemporary and current subject has been the usage of Artificial Intelligence (AI), that can also be used simultaneously with the OSINT. AI has already affected the retrieval and analysis of OSINT data, and together OSINT and AI can create quite powerful and effective machinery, also in the fight against THB. When used together, OSINT and AI can also tackle each other's limitations. Given for example data collection: while OSINT gathers data from public sources, that are in this case related to human trafficking, AI can develop automated algorithms that are able to process vast amounts of data and extract solely the most

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[13] Piotrowicz 2017, p. 49.
[14] Johnson 2010, p. 231. See also Ünver 2018, p.5.
[15] Ghioni – Taddeo – Floridi, *Open Source Intelligence (OSINT) and AI: The Informational Pivot of Intelligence Analysis*, 2023.

essential. As computational power becomes cheaper and algorithms more sophisticated, more data can be acquired and processed in almost real-time and the pre-trained intelligence models can help countering the information overload problem faced by intelligence analyst. In this research, the objective is to pay more attention specifically to the preventative and protection side of THB and the role that technology tools, specifically OSINT and AI, plays in the fight against it.[16]

This all being said, this thesis focuses on combating online human trafficking with the help of OSINT and AI. In addition, it will also discuss the responsibilities of international actors who play a major role in the fight against THB. Due to the complex nature of trafficking in human beings, this thesis cannot give sufficient attention to all dimensions of the crime, but it aims to provide the reader with new perspectives to identify the most essential challenges. At the same time, it provides different viewpoints on anti-trafficking work and hopefully also encourages readers across disciplines to consider different dimension of trafficking that may be unfamiliar.

1.2   Research Question and Theme

The significance of the subject matter for both present and future advancements regarding the Protocol serves a distinct foundation for this thesis. Nevertheless, in order for this research to provide meaningful insights and value to its audience, it is imperative to acknowledge that even though international legal specialists and organizations have recognized the potential benefits of leveraging technology in combating human trafficking, there are also concerns and debates regarding the ethical privacy implications of using certain technologies.

Safeguarding individual rights, data protection and ensuring responsible use of AI and OSINT remain important considerations in the discussions. The use of technology, particularly AI and OSINT, has the potential to enhance efforts in identifying and combating human trafficking by improving data collection, analysis, and information sharing. These technologies can be helpful with identifying patterns, detecting potential trafficking networks, and assisting law enforcement agencies and organizations involved in counter-trafficking initiatives.[17] The discussion has been mainly focused on the ethical aspects of the artificial intelligence tools,

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[16] ibid.
[17] Van der Watt 2023.

which also creates a challenge for this research since the approach is rather positive than critical. This tension between the possibilities and threats of the chosen technology tools makes this topic essential to research and thus it is crucial to contemplate all arguments against and in favor of these technologies. Furthermore, the subject of this thesis is intriguing as it seeks to navigate the intersection of the most successful and efficient human trafficking prevention and the ethical dilemmas posed by AI and OSINT, striving to achieve a balance between the two.

The objective of this research is firstly, to participate in the discussion and to bring through analysis, as the usage of technology tools is not that broadly research in the anti-trafficking field, perhaps because of the continuously developing nature of most technology tools. Secondly, the objective is to offer a basis for later discussion in developing for better solutions in the future. This thesis is essential as its intention is to question whether, in cases of implementing the Protocol, OSINT and AI tools are efficient or even possible way to better the implementation or on the contrary, if they create even more problems because of their ethically questionable nature. In this research, this matter will be discussed in a way that would preferably be of benefit to law students, lawyers, policymakers and all other practitioners in charge of advancing the Protocol implementation measures. Furthermore, this research could be of benefit to those developing, researching, and utilizing OSINT and AI methods and to provide them new ideas in the field of human trafficking prevention. Thirdly, I would like to highlight all the international actors who have an obligation under international law to combat trafficking in human beings and to address its various manifestations.

Ultimately, the aim of this research is to offer an up-to-date compilation and analysis of the prevailing trends, considering the evolving landscape of innovations and opinions, especially what comes to the usage of the technology tools and are likely to evolve after the publication of this thesis. The discourse in this research will focus on the fundamental issues and the possible biases that could influence both the proper implementation of the Protocol and the use of AI and OSINT on the preventative side, but perhaps more importantly, the possibilities of these two working together. The aim of this thesis is not to provide a perfect solution to the issue at hand but instead to give a foundation that can help identifying the possible insufficiencies in the existing implementation guidelines and the actual implementation procedures. Based on these findings, I will consequently research how we could possibly

tackle them with the help of open tools, keeping in mind their limitations as well. Thus, it is desirable that this research will give valuable insights to both those in favor and those against of OSINT and AI technologies and hopefully even offer new contrasting perspectives.

Based on the preceding points, the research questions are as follows:

1. **How can the modern technologies, such as Open-Source Intelligence and artificial intelligence, be utilized to fight against online trafficking in human beings?**

    Supported by the following sub-question: How the incorporation of these technologies into anti-trafficking work could contribute to a more successful implementation of The UNODC Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children?

2. **Which international actors are responsible for combating online trafficking in human beings?**

    Supported by the following sub-question: Can multinational internet-based companies be considered as silent complicities in the trafficking of human beings that originate on their platforms?

As the technologies that I am mainly focusing on or the human trafficking as a concept might not be familiar to the reader, I will provide the detailed definitions in the Chapter 1.6 "Scope and Definitions".

1.3 Methodology and Approach

The cornerstone of this paper will consist of methodology and theoretical approach to the subject, in order to conduct good research. Alongside with the method and theory, suitable approach is also needed. My own approach to the chosen topic is that I see that there are insufficiencies in the implementation of the Palermo Protocol and the reason why I state this, is that the THB is still today a growing problem and sadly -a profitable business[18]. I furthermore see that OSINT and AI could be the solution for these insufficiencies and that legislators and law enforcement could and should learn about technology tools that could be

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[18] THB has been estimated to be 8.5-12 billion euro business to its organizers; Europol 2004, p.12.

helpful when identifying victims and traffickers[19] and when adopting new policies. I see these technology solutions in a positive light in the fight against THB, but in order to gain the best impact from the usage of these tools, we still need to analyse and overcome the existing threats. What comes to the different international actors, I would argue that their responsibilities regarding online environment and online THB and other human rights violations, should be clarified.

Since I deal with the topic that also concerns other aspects than law, such as society, politics, technology and ethics, my approach is multidisciplinary. More specifically, I am utilizing "law and"- approaches, which in the case of this thesis will be "law and sociology" and "law and technology". Law and sociology approaches are more focused on the "law in the action" and that takes the interest closer to understanding power relations and the ways that law and legal institutions/networks contribute those relations.[20] Chosen approach will assist the researcher to find the issues and biases sometimes unknown to the regulator, and in acknowledging the relevant link between the fight against THB and technology. It is essential to look for support from other scientific fields, since international law is a normative system that has evolved with social over centuries to address new challenges and the needs of states[21].

Because of the strong ethical and political dimension of my topic, I have decided to approach my subject using deconstructive theory, that can be also associated with postmodernism and post culturalism. I have found Koskenniemi's work helpful since it often challenges conventional perspectives and explores the ideological and political dimensions of legal discourse. Koskenniemi argues that it is impractical and unfeasible to engage with international law without considering both descriptive theories about the nature of social interactions among states and normative perspectives on the principles of justice governing international behaviour. Many international legal scholars acknowledge this necessity and highlight the importance of delving deeper into the social factors influencing State conduct, emphasising the law's role in realizing normative ideas of 'world order'. [22] Deconstructive theory emphasizes the role of language in constructing meaning[23] and in my thesis it vital to

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[19] OSCE 2020, p.2.
[20] Cryer et al 2011, pp.86-87.
[21] Feenan 2017, pp. 3-5. See also Hernández 2019, p.21.
[22] Koskenniemi 2006, p.1.
[23] According to Koskenniemi "What is relevant is not so much what arguments happen to be chosen at some particular time or in some particular dispute but what rules govern the production of arguments and the linking

analyse the language used in legal texts, treaties, and international agreements, especially what comes to the UN Protocol and other important instruments regulating human trafficking. Deconstruction also challenges binary oppositions and dualistic thinking, such as national security vs. human rights, since it is trying to prove that it is not durable to uphold these differentiations consistently, and it rather stresses the social nature of the legal argument.[24] The role of different actors and fields in THB arena as well as the historical aspects are also something that will be feasible to research with the help of deconstructivism.

I have also found theories from international relations and political sciences useful, the most important one being internationalism, especially what comes to the cooperation aspects, that also the Protocol emphasises and requires. Generally speaking, internationalism is a theory that recognizes the significance of international cooperation. More specifically, liberal institutionalism is based on individualism, manifested in the premise that human rights hold a superior status compared to assertions grounded in national sovereignty.[25] Globalization has affected both disciplines of international relations (IR) and international law, and according to Slaughter, Tulumello and Wood, it can be distinguished from "the increasingly important role of substate and nonstate actors, increasing international political interdependence, the perceived transformation or dissolution of state sovereignty, the dominance of difficult global issues that require coordinated responses, and the continuing financial and administrative crises of the UN." Therefore, more significance has been given to 'international governance' rather than 'international government', that is traditionally seen as liberal way of formal international institutions displacing domestic sovereigns in specific fields.[26]

IR theories are useful for international lawyers when trying to diagnose and resolve international problems, such as problems regarding international security, as it aids the researcher to understand the grounds of international problems and to recognize different institutional responses. The identification of the core issue carries significant consequences for determining the suitable regulatory approach. By clarifying these conceptual frameworks, research in this field enables the discovery of shared elements among substantive problems,

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of arguments together in such a familiar and a conventionally acceptable way and why it is that no definite resolution of standard problems has been attained", See; Koskenniemi 2006, p.8.

[24] Koskenniemi 2006, pp. 10-11.

[25] Heywood 2019, p.219.

[26] Also, according to authors "International governance is understood as the formal and informal bundles of rules, roles and relationships that define and regulate the social practices of state and nonstate actors in international affairs" See; Slaughter – Tulumello – Wood 1998, pp. 370-371.

suggesting alternative solutions, and facilitates the scrutiny of the underlying conceptual frameworks.[27]

The method used in this thesis will be hermeneutics, which will allow me a contextual interpretation of sources. Hermeneutics will allow me to ask questions of why the Protocol implementation has been insufficient, why the regulation of the online trafficking in human beings is not harmonized enough and what there is that the legislators can do about it.[28] To conduct a comprehensive analysis, I will be utilizing ideologies from hermeneutics, which will be supported with socio-legal methodologies to gain more in-depth analysis. Because of my 'law and sociology'- approach I will be needing socio-legal methodologies in order to properly provide a more contextual analysis by also looking at the role of politics and ethics. Sociolegal studies are a branch of legal studies that deploys one or more research methodologies that are mostly drawn from social sciences, and it is thus to be distinguished from doctrinal research [29]. The challenge of socio-legal methodologies is that the analysis and the focus of the law or legal doctrines can be rather insufficient[30] but I argue that it does not equal to ignoring the legal aspects, vice versa, it means even broader understanding of how traditional and primary sources of law are related to social. By involving sociological analysis of international law in this thesis, I will enrichen the understanding of the social aspects included in the interpretation and implementation of international law.

With the help of the chosen approach and method, I will be able to explain the current trends and interpretations of existing regulation in international law regarding THB, that will later help me to suggest better legal mechanisms and improvements for coping with contemporary challenges of THB regulation. Sociological analysis will help the researcher to understand international legal issues better and to understand the social factors and limitations involved in the implementation of international law. According to Hirsch "A sociological exploration of international law cannot limit itself to the analysis of official legal texts (such as treaties or decisions by judicial tribunals) and their interrelationships." [31]

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[27] *ibid*, pp.374-375.

[28] Kemmerer 2017, pp. 470-476.

[29] As an example, the authors describe that these methodologies "are applied to a wider range of materials that provide evidence of the underlying public policy dimensions underpinning doctrinal law, including interview data, records of direct observations, government methods and policy documents". See Salter – Mason 2007, p.132.

[30] Cotterrell 1998, pp.171-174.

[31] Hirsch 2015, p.2.

Since my analysis will consist of both legal and sociological factors, I find the traditional legal dogmatics[32] rather insufficient in the context of my thesis. Even though I am leaning on to other methodologies more, I wanted to mention legal dogmatics, since it is a decent way to analyse the chosen topic as it provides a systematic compilation of the principles, rules and concepts that guide a certain legal field or institution and analyses the relationship between them when trying to resolve the ambiguities in the existing law.[33] In legal dogmatics the law is looked at in a very positivistic, vacuum way, while the problems regarding THB guides the researcher to focus more on ethics, politics, international cooperation and multidisciplinary, which takes this research beyond legal dogmatics. In my eyes, the ultimate problem around implementing the Protocol is about balancing the states own interests and the protection of the most fundamental human rights. Even though the parties of the Protocol may find the problems involved in THB worrying and challenging, they are still choosing to implement the Protocol in ineffective ways or "as minimal as possible" since the enforcement of more effective mechanisms can be expensive or otherwise challenging. Also, if we look at the role of OSINT and AI tools on the macro (societal) level, the focus is also on the role of these tools and what are their position in shaping society as a whole.[34]

Personally, I see the problems related to human trafficking through different "dimensions", which are strongly interlinked. Underneath the graph is explained the relationship between all those dimensions as a circle: Politics influences society and legislation, but the ethical aspects influence legislation and so on. One could only focus on one "dimension" of human trafficking, but my objective is to keep them all with me as a kind of fundamental "assumption" throughout the thesis, in order to understand the problem better as a whole. The above-mentioned methodologies and theories help me to succeed in my objective and to address all these dimensions without ending up focusing only on jurisprudence, which would distract me too much from, for example, the social dimension.

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[32] In traditional jurisprudence i.e. legal dogmatics, the task of a legal practitioner conducting legal research is to organize the information from fragmented legal sources into a coherent whole. Interpretation, on the other hand, refers to explaining the linguistic meaning of the text that is being interpreted and therefore legal dogmatics interprets and systematizes legal regulations with the aim to find connections between them. See Venzke, Ingo, 'Sources in Interpretation Theories: The International Law-Making Process', in Samantha Besson, and Jean d'Aspremont (eds), The Oxford Handbook on the Sources of International Law (Oxford University Press 2017), pp. 402–403.

[33] Smits 2015, p.5.

[34] Ghioni – Taddeo – Floridi, *Open Source Intelligence (OSINT) and AI: The Informational Pivot of Intelligence Analysis*, 2023.
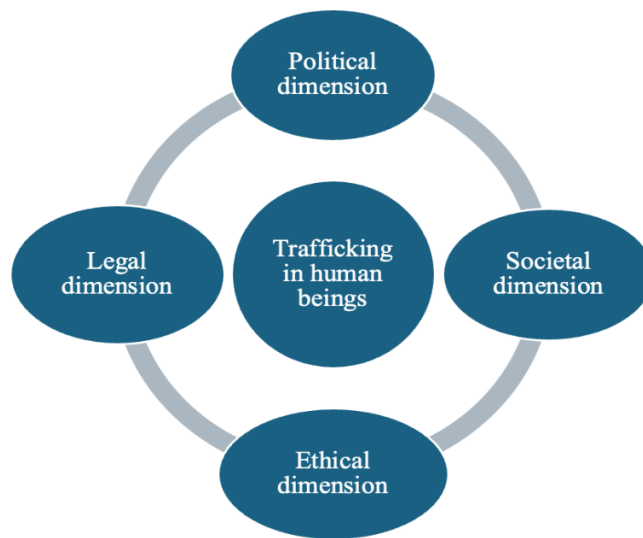
Figure 1. The different dimension of trafficking in human beings.

It is also necessary to address that I am subject to different set of biases regarding the approach of this thesis. Bias can occur in many ways, e.g. the way I have chosen to collect literature or how I have analyzed it. I therefore claim to be prone to researcher bias, which means that my own beliefs or expectations might influence the research design or data collection process.[35] I am very much aware of how my bias can have an influence on the reader and even though I am trying to pay special attention to this, the selection of specific sources is still affected my own bias. Thus, the reader of this paper should be aware of these biases and approach the chosen literature and conclusions critically. In addition, my goal with this approach and chosen research question is to make a point that solely ratifying human rights agreements and implementing them into national and international laws does not necessarily equate to genuine respect for these rights. Thus, I have a clear societal standing point when I state that the current human trafficking and/or anti-trafficking legislation is rather insufficient and by this statement I also want to convince my target audience: the legal practitioners and or/students working (or otherwise interested) in the anti-trafficking field and contemporary technologies.

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[35] Scribbr / Types of Bias in Research / Definiton & Examples.

1.4   Sources doctrine

In order to conduct good research, we need to examine the research questions by analysing relevant sources of international law and the sources doctrine. Sources doctrine is organized argumentative practice about the authority or the bindingness of various legal instruments. [36] The most logical way to begin is to look at the list of sources provided in the Statute of the International Court of Justice (ICJ). ICJ Statute Article 38 refers to international treaties, international custom, general principles of international law, and judicial decisions as the sources of international law.[37] One must keep in mind that even though Article 38 can be regarded as an authoritative as to the sources of international law, one could also regard it outdated since it excludes many newer sources that might now be regarded as binding rules of law but that did not exist during the time the Article was drafted in 1920.[38]

One question that would need clarification, is whether the sources of law not included in the Article 38 list, such as the acts of international institutions, fit within the classic forms [39]. For example, some commentators have found that the acts of certain international institutions, particularly resolutions of the U.N. General Assembly, are binding in a way that they can directly create special, usually UN law, but can only have indirect effects on general international law by acting on one of the constitutive elements of customary law and as a proof of states *opinio juris* [40].

In this research, relevant sources also consist of so-called soft law sources, that are for example the resolutions of international organizations (IO's) and other less formal sources [41]. Soft law is described to be as a type of international law that is still in the process of becoming a law, not yet fully established as binding law[42]. In this research, these soft law sources will be in connection to human trafficking, especially the documentation by the UN. The main and the most important hard law source in the light of this thesis is the Palermo Protocol, which highlights the international nature of trafficking in human beings. However, I

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[36] Kennedy 1987, p.20.
[37] United Nations, Statute of the International Court of Justice 1945, Art. 38.
[38] Hernández 2019, p.33.
[39] Kennedy 1987, p.10.
[40] As an example, Kennedy describes that the commentators' justifications "generally assimilate these acts to more traditional sources either by suggesting that similar thresholds of consent or intention are met or by indicating that while such resolutions may not themselves be authoritative, they are constitutive of more traditional sources, particularly of custom". See e.g. Kennedy 1987, p.10; Oberg 2005, p. 905.
[41] Hernández 2019, p.32.
[42] D'Aspremont – Besson 2017, p. 4.

will give meaning to soft law sources and *interpretivism* as well. Perhaps, the most relevant soft law instrument in this thesis are the Framework for Action and United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking (later: Trafficking Principles or Trafficking Guidelines). According to Gallagher:

> "Few commentators have appreciated the impact of the Principles and Guidelines on what was to follow. By affirming and extending the Protocol, rather than seeking to displace it, the UN Trafficking Principles and Guidelines provided a way forward for the evolution of a cohesive 'international law of human trafficking', which weaves together human rights and transnational criminal law."[43]

The prevailing limits of the interpretative discourse are shaped by the rule of interpretation. Article 31 of the Vienna Convention on the Law of Treaties (1969) spells out the general rule of interpretation: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". In international law, it is for the sources of law to prescribe how legal norms come into existence. The act of interpretation does not actively shape the process of law-making; rather, it extracts meaning from existing norms. It is generally recognized, however, that the practice of interpretation gives meanings to norms. Interpretations, at the very least, complement the role of sources in the law-making process in international law.[44]

Human rights doctrine becomes essential when we look at the roles of different international actors in the anti-trafficking arena. Trafficking in human beings is clearly violating the Article 3 of the 1948 Universal Declaration of Human Rights (UDHR) as well as the Articles 6, 8 and 9 of the International Covenant on Civil and Political Rights (ICCPR). These hard international human rights law (IHRL) sources form a core of human rights and even though I am not directly interpreting UDHR or ICCPR in this thesis, the violations of the rights in treaties are both a cause and consequence on trafficking in persons[45]. Thus, these sources are the driving force behind all agreements and standards relating to THB. As a soft human rights source, I will be interpreting United Nations Guiding Principles for Business and Human Rights (UNGPs) that encompasses concept such as the acknowledged corporate accountability to uphold human rights and conduct due diligence. These soft law sources

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[43] Gallagher 2018, p. 32.
[44] Venzke 2018, pp. 402-403, See also Hernández 2019, p.179-180.
[45] Office of the High Commissioner for Human Rights 2002, Guideline 1: Promotion and protection of human rights.

regarding Business and Human Rights are essential when discussing possible corporate complicity in trafficking in human beings.

Concluding this chapter, it is important to emphasise the role of the unofficial sources of "living international law". In socio-legal research, vast amount of sources is to be considered important, and according to Hirsch, it includes also "informal normative processes (such as social control or socialization) which motivate and constrain actors in the international legal system".[46] In addition, when highlighting the importance of governance over government it can lead to the situation where "soft law" is considered more advantageous than "hard law". While multinational institutions might not consistently establish and enforce laws, they often generate norms that are disseminated by non-governmental organizations to exert influence on political actors.[47]

1.5 Structure

Prior to conducting a through and valid examination of the present legislative practice and impact, the initial focus must be on exploring the fundamental regulatory norms and principles. Introducing first The UNODC Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, will set down an effective foundation for this research. Only after imposing the fundamental regulatory norms, principles and the past discussions that have been held regarding the Protocol and its implementation policies, we can start expanding our understanding of open tools and consider their possibilities as supplementary implementation tools.

After this first, introductory, and scientific part of this thesis, **the second chapter** will focus on the phenomenon itself with the help of some clear examples: trafficking in human beings that takes place in the online environment. In the chapter two we will focus more on the technological side of the thesis and the objective is to gain ideas from the examples, where technological tools have played significant role in exposing illicit trafficking networks. I will be also looking at the most interesting technology tools (OSINT and AI) more closely and examine their potential in the anti-trafficking field.

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[46] Hirsch 2015, p.2.
[47] Slaughter – Tulumello – Wood 1998, p.371.

The third chapter will focus on the legal side of the thesis: it introduces us the most relevant parts of the Trafficking Protocol and related implementation guidelines in connection to technological assistance tools. Most importantly, it focuses on the most relevant articles of the Protocol (9 and 10) regarding the implementation of such measures that are relevant in the light of technology-facilitated fight against THB.

In the fourth chapter the reader will be finally introduced to all relevant actors, that are also mentioned in the Protocol, meaning the states, companies, and organizations. All these actors have different responsibilities under international law, and the chapter 4 will show the reader how these responsibilities turn out in the anti-trafficking context. Here I will be looking at the responsibility doctrine more closely, when focusing on the principles of responsibility in international law, and how does it effect on different actors. I will also try to find answers with the help of my second sub-question of whether such online companies could potentially be silently complicit in online human trafficking carried out on their platforms.

In the final chapter, I summarize the conclusions I have drawn from all the previous chapters.

1.6 Scope and Definitions

Trafficking in Human Beings (THB): The League of Nations, created in 1919, was the first international body to explicitly address the issue of slavery and 'traffic in women and children'. [48] According to the Covenant of the League of Nations, Article 23, the League has "the general supervision over the execution of agreements with regard to the traffic in women and children".[49] Later in the 1926, the League adopted a Slavery Convention that ended up being one of the earliest international treaties aiming to combat slavery and related practises and it aimed to prevent and suppress slavery and slave trade by creating concrete measures that states parties agreed to undertake to abolish all forms of slavery in their territories.[50] Even though the Slavery Convention primarily focused on traditional forms of slavery, it has had a significant impact on the regulation of THB.[51] Trafficking is distinct from slavery and they

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[48] Metzger 2007, pp. 54-57.
[49] The Covenant of the League of Nations, League of Nations – Official Journal, February 1920, Art.23.
[50] Convention to Suppress the Slave Trade and Slavery, Art 2.
[51] As an expression "white slavery" might sound classifying to a reader. However, it resembles the thinking patterns in the early 20th century, when the victimization of whites alone was embattled, meaning that the

each have their own history, but the Slavery Convention laid the basis for subsequent legal instruments by expanding the focus to address new forms of exploitation and human trafficking while upholding the principles of human rights and international cooperation.[52]

As we can see from the history recap, the explanation of trafficking has been rather narrow and it remained almost the same until the 1990's, when a new legal instrument, outside the human rights framework, was being developed. United Nations General Assembly adopted two treaties in 2000; United Nations Convention against Transnational Organized Crime (UNCTOC) and the Protocol against trafficking in persons, especially women and children, that supplemented the Convention.[53] UNCTOC is first and foremost an instrument for international cooperation, which purpose is to combat transnational organized crime by obligating states to take measures against it.[54] What also happened in the late 90s and early 00s, was that the internet use started to expand around the world so that it now provided traffickers with a completely new platform for recruiting and transmitting victims with the help of online advertisement [55].

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, adopted in 2000, supplements the United Nations Convention against Transnational Organized Crime, providing a comprehensive framework for addressing and combating human trafficking. The fact that the Protocol provided an international legal definition of "trafficking in persons" was a vast establishment in the creation of a normative framework.[56] Article 3 of the Protocol provides the first common international definition of 'trafficking in persons':

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exploitation of non-white women was normalized. The racialized nature of this fight against 19th and early 20th century THB helped challenging the functioning of the international instruments adopted to combat human trafficking by targeting only the sexual exploitation of a single racial group. White slavery has not only played a significant role in shaping the legal framework of both international and domestic laws aimed at combating the forced sexual exploitation of women but also maintains its impact on contemporary discussions surrounding human trafficking in various settings. See; E.Bravo 2020, pp. 21-23.

[52] Allain 2017, *Genealogies of human trafficking and slavery*, p.8.

[53] According to Gallagher "The catalyst for change was the link established between trafficking and the newly identified international threats of 'migrant smuggling' and transnational organised crime." Gallagher 2017, pp. 21-22.

[54] United Nations, General Assembly, Convention against Transnational Organized Crime, 15 November 2000, General Assembly resolution 55/25, Article 1.

[55] Meyer – Shelley 2020, p. 90.

[56] The Protocol, Preamble; The Convention; Preamble. See also, e.g., Gallagher, 2018, p. 30., Where Gallagher describes how the obligations that were set and taken for granted before "would be meaningless without the anchor of an agreed definition […] the definition was also critical in forging a common vision between States."

For the purposes of this Protocol:

"trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability 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;

The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph a) of this article shall be irrelevant where any of the means set forth in subparagraph a) have been used;

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph a) of this article;

"Child" shall mean any person under eighteen years of age.[57]

Despite this definition, it is still challenging to distinguish who is the actual victim of human trafficking and on the other hand, sometimes the victims of human trafficking are being treated as illegal or smuggled immigrants. Due to this, the number of identified THB victims is in fact lower than the estimated extent of the crime. This indicates that the definition is insufficient and unclear to adequately identify the THB victims and separate them from smuggled migrants, illegal immigrants or other similar groups that are different from THB victims. [58]

Because of the scope of this thesis, I won't be paying closer attention to the controversies of this definition. I will also limit my thesis in many parts to cover only the problematic nature of trafficking for sexual exploitation[59] happening in the online environment and thus, leaving out many other forms of THB such as trafficking for forced labour. By choosing this scope and definition regarding THB, I potentially ignore some other relevant factors, which I will shortly mention in the limitations chapter.

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[57] The Protocol, Art. 3.
[58] Roth 2012, pp.153-154.
[59] "Trafficking for sexual exploitation may consist of coercing a person into prostitution, exploitation a person in the sex industry, or subjecting them to other forms of sexual abuse." See; Jokinen – Pekkarinen, 2023.

Open-source intelligence: The traditional understanding of intelligence is the methodical collection, process and analysis of such critical information that produces relative advantage to decision makers[60] and it is a key and continually changing practice of State administration. Information is rather public or otherwise available and there is no need using undercover operations to obtain such information.[61] According to European Commissions definition, Open-Source Intelligence is:

> "The practice of collecting and analysing information gathered from open sources to produce actionable intelligence. This intelligence can support, for example, national security, law enforcement and business intelligence. OSINT investigates open data collected for one purpose and repurposes it to shed light on hidden topics."[62]

Nevertheless, this definition is still not a comprehensive definition of OSINT. In contrast to traditional intelligence-gathering fields, OSINT is influenced by the evolution of the digital landscape, and its scope grows in tandem with these advancements.[63]

Artificial intelligence: As a term and discipline "artificial intelligence" stabilized in 1956 in the United States Dartmouth College when a group of researchers held a seminar to their like-minded researchers. The roots of the term derive from the idea that the computer would behave human-like "intelligently". Today, the idea that we could measure the quality of the artificial intelligence compared to human intelligence, is outdated. Nowadays, a better definition would be that artificial intelligence is an appropriate operation of computer programs. The objective is to produce such computer programs that would work appropriately as required by the situation.[64]

If we look at this definition in parallel with the topic of this thesis, it would mean such computer programs that would work to combat trafficking in human beings. The narrower the purpose of the program, the easier it is to make it work appropriately. On the other hand, the narrower the program's purpose, the more limited the program's appropriateness. In this thesis, we will look at the functioning of artificial intelligence mainly in the context of image recognition.[65] Thus, the program's purpose in this sense would be narrow but appropriate and

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[60] Johnson 2010, p.5.
[61] Ünver 2018.
[62] European Commission/Publications/Data stories/Open-source intelligence.
[63] Ghioni – Taddeo – Floridi, *Open source intelligence and AI: a systemic review of the GELSI literature* 2023, p.3.
[64] Toivonen 2023, Chapter 9.
[65] ibid, Chapter 10

efficient, especially when used together with the open-source intelligence in the context of trafficking in human beings.

1.7 Limitations

Like all rigorous studies, mine has some limitations that should be briefly mentioned and justified. Firstly, what in general should always be considered in any use of technology, is the ethical aspects, which I am not paying that much attention to in this thesis. This doesn't mean that ethical aspects are any less important of additional research and attention. It is, nevertheless, important to note while reading this research and when putting it into a broader context. Ethical issues are being discussed briefly in the second chapter of this thesis alongside other challenges in the application of technology-assisted mechanisms. Technology solutions are only one alternative to the question of *how we can advance the implementation of the Protocol* and the problems regarding these technology solutions are peculiar, and perhaps, this thesis is not to take adequate stance to those problems.

If we seek to justify the reasons why applying and advancing these technological tools for "social good", simultaneously, we need to be able to pinpoint the existing risks and loopholes for possible misuses and interferences. Only then we are able to weigh the pros and cons of these tools, such as different AI models and surveillance technologies, and decide, if it is even necessary to reach certain objectives with the help of these technologies or without.[66] I will be approaching my research questions with this in mind, and I am willing to weigh objectively whether certain methods are adequately safe in order to achieve the objectives mentioned in the Protocol or whether the risks are too high compared to achieved benefits. To preserve this idea through my research, I must ponder the benefits with the help of principles such as principles of objectivity and proportionality and even though I am aiming for objectivity, I still want to emphasise that coming from an EU country, I might take Eurocentric viewpoints unconsciously, even though I am aiming for complete objectiveness.

As far as the limitations of dealing with human trafficking in this thesis are concerned, I would like to give meaning to the anti-trafficking discourse, which, if misunderstood, can even undermine the fight against human trafficking. If we use the anti-trafficking discourse to tackle prostitution in all its forms, even where consensual, it diminishes the resources targeted

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[66] Birhane 2020.

at forced prostitution and THB for the purposes of sexual exploitation.[67] Sine I will be focusing on online sexual exploitation in this thesis, I am fully aware of the risk that it can also create a falsely image of trafficking: that it is something completely exploitative of sexuality of bodies of women and children, ignoring other systematic exploitation of which THB is a part. This merging of issues and the emphasis solely on sex overlooks the power imbalances in relationships, the exploitation of labor and economically disadvantaged individuals, and the disparities between "developing" and "developed" nations that underpin modern trafficking.[68] Therefore, deciding to exclude the forced labor aspects of trafficking from this thesis, I am taking a conscious risk of undermining the significance of that phenomena. In addition, structural inequalities, often perceived as "natural" due to historical or biological factors, are evident in modern THB dynamics: gender disparities, socioeconomical dividends, global developmental gaps, racial inequalities and conflicts between states/corporate interests and individual and human rights[69]. I have tried to pay attention to these inequalities in my writing, and even address some of them more closely (e.g. conflicts between interests and global development gaps), but these inequalities could be given more attention than thesis is able to give.

Lastly, the biggest limitation to this paper is not only the continuous development of technology tools themselves but also the regulation regarding the usage of these tools. One essential problem is that there is lack of knowledge about existing technologies in the anti-trafficking field and it can be reflected in inequalities between countries. There is also a risk that technology might be perceived as the sole solution rather than as a tool for problem-solving.[70] It is crucial to recognize that technology alone cannot replace the array of essential elements required to effectively address trafficking, including political determination, sufficient resources, and engagement from diverse stakeholders possessing the necessary expertise and authority in this field.[71] It is also important to note that while AI and OSINT can be powerful tools, they should always be used in conjunction with human expertise. Notwithstanding, I hope that my paper still brings value to the existing problems in the anti-THB field and that I can provide new insights for further research, and more importantly, to contribute to the fight against THB.

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[67] E.Bravo 2020, p.26.
[68] ibid.
[69] ibid.
[70] OSCE 2020, p.7.
[71] ibid, p.30.

2 The Role of Technology in Combating Trafficking in Human Beings Online

2.1 The Online Environment and The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, one of the key elements in the fight against trafficking human beings is the international cooperation and in addition, legal and other measures on the national level. Also, according to the Trafficking Guidelines:

> "Trafficking is a regional and global phenomenon that cannot always be dealt with effectively at the national level: a strengthened national response can often result in the operations of traffickers moving elsewhere. International, multilateral, and bilateral cooperation can play an important role in combating trafficking activities. Such cooperation is particularly critical between countries involved in different stages of the trafficking cycle."[72]

Thus, it is clear that the international law sources regarding trafficking give a lot of meaning to international cooperation and national legislation. However, when the internet is involved, it is especially the question of international law of how the internet environment is regulated and not only on the level of collaboration – or at least it should be this way. National legislation is not directly applicable in the internet context, because the internet environment is cross-border and cannot be adequately regulated at national level alone. But even if there is international regulation, it is easy to bypass when user views the content published by foreign internet service providers (ISPs). Therefore, it is essential to weigh the existing legislative framework and analyze its adequacy in the age of the internet. Although the Protocol as well as the Framework for Action proposes concrete measures to prevent human trafficking, they are still relatively old when considering all new forms of human trafficking in the online environment. The Protocol does not explicitly address the THB cases happening in the online environment or any other technologically assisted forms of THB.

Multiple states have acted regarding their domestic THB framework in order to combat the problem, but it doesn't diminish the insufficiencies that have existed in the Protocol in the first place. One great problem, as mentioned earlier in this thesis, is the insufficient definition of human trafficking and not that much attention has been paid to the aid and protection of

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[72] Office of the High Commissioner for Human Rights 2002, Guideline 11, p.13.

victims either. The Protocol highlights the significance of crime control and international cooperation regarding border control. Despite the number of already existing international legal instruments that are aiming to prevent and combat THB, there are some significant barriers that need to be overcome in order to achieve desired results.[73] Gaps in victim assistance schemes and in the definition of human trafficking also make it very difficult to identify and combat online THB, especially if we are talking about OSINT and algorithms that should be excellent at identifying victims and directing help to where it is needed.

The efforts have been made for decades to combat trafficking in human beings, yet the accomplishments have been remaining insufficient, even though these accomplishments are also challenging to measure precisely. Human trafficking preserves to be a profitable, well-organized and first and foremost, an international crime and sadly, not that many drastic changes have been made to the international framework regarding THB after the Protocol. Because of the international nature of the crime, more than half of the victims identified in the EU are citizens of non-EU countries. The victims are mainly from Africa, the countries of the Western Balkans and Asia.[74] The position of children is also worrying, since the reports show that in low-income countries, more than half of the victims of human trafficking are children and most of them have been subjected to forced labour [75]. The Covid-19 pandemic is a good example of how human trafficking always finds new forms as social structures change, and the pandemic only accelerated the ongoing shift of human trafficking online. Once again, the children were the most vulnerable ones and therefore, the most potential victims of online sexual exploitation.[76] The pandemic is now history, but the new methods adopted during the pandemic regarding online sexual exploitation, are here to stay.

When undertaking the duty to implement strategies for reducing demand for THB, it is essential to take into account the internet infrastructure, the ecosystem of online sexual exploitation, and the myriad technological tools that users employ to explore the vast realms of the surface, deep and dark web.[77] However, there are some examples within UN's and EU's recent activity that highlights the inadequacy of current measures, pointing to the need for more effective actions in the future. For example, on 15 December 2022, UN resolution 77/194 reiterated the call upon governments to intensify their efforts to "prevent and address,

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[73] Roth, 2012, pp.152-153.
[74] European Commission 2020, p.30.
[75] UNODC Global Report on Trafficking in Persons 2022, p.89.
[76] See, e.g. UNICEF 2022, p.2, p.11.
[77] Van der Watt 2023.

with a view to eliminating, the demand that fosters the trafficking of women and girls for all forms of exploitation", and it implored countries to inculcate or amplify measures geared towards prevention, "including legislative and punitive measures to deter exploiters of trafficked persons, as well as ensure their accountability".[78] Correspondingly, EU's Strategy on Combating Trafficking in Human Beings 2021-2025 acknowledges the importance of international cooperation and consolidation of the companionship in order to advance the exchange of intelligence information regarding crimes and the functioning of the criminal networks.[79] Because our lives have increasingly shifted to the web, online risks should be addressed in a technology-assisted manner.

UN resolution 77/194 and the EU's Strategy on Combating Trafficking in Human Beings 2021-2025, are both examples of clear recognition in the international arena of the inadequacy of the current measures. However, the constantly changing web environment is still something that these organisations need to acknowledge and respond earlier and more sufficiently. EU is also willing to strengthen early identification, assistance, and support of victims of human trafficking, as well as cross-border cooperation between authorities. On 19.12.2022 European Commission gave a proposal for a directive of the European parliament and of the council amending directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The amendment would demand that advanced national control mechanisms and national focal points could support victims and that Member States should criminalize any use of the services of victims in relation to THB, which is currently at the discretion of Member States. The amendment would also enhance the capabilities of national authorities in investigating and prosecuting offences conducted either entirely or partially online.[80] This underscores the EU's emphasis on the digital dimensions of crimes such as human trafficking and effective investigations and information exchange would help also e.g. the gathering of digital evidence related to these offences. A similar legislative trend would also be desirable in the UN.

Since technological advances have enabled new forms of human trafficking, of which online trafficking and sexual exploitation is a good and clear example, technology tools should also

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[78] United Nations General Assembly, Seventy-Seventh Session, *Trafficking in women and girls,* UN Doc. A/RES77/194 (15 December 2022), p.8.
[79] Communication from the Commission to the European Parliament 2021, p.4.
[80] European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims 2022, pp. 2, 5, 6, 8, 9, 12.

be used to combat human trafficking to the same extent as the traffickers are using them to commit these crimes. Significant problems arise, when those who have signed the Protocol do not interpret the agreement as mandating the regulation of trafficking on the Internet. Consequently, the Internet continues to serve as an optimal platform for traffickers to engage in illicit activities with little or no surveillance from the law enforcement side.[81] I argue that there are at least two major factors in the successful implementation of the Protocol, one of which is the instructions given for implementation and the other is the non-existent sanctions imposed on the states in cases of unsuccessful implementation. Once a state becomes a party to a treaty, it is legally obligated to adhere to its provisions. States are bound to fulfill these obligations in good faith under international law and the binding nature of international agreements reflects the principle of *pacta sunt servanda* in international law.[82]

Only by signing and ratifying international agreements, the state parties are not creating measures that would prevent, in this case, trafficking in human beings. Also, as can be seen in the Framework, although the Protocol has been increasingly ratified into national legislations since its entry into force, there is little evidence of effective implementation measures.[83] Member States can also take minimal legislative measures, so to speak, leaving it to the Member States themselves to decide the extent to which the Protocol is to be implemented. Therefore, a more precise tool such as the Framework makes sense, as it gives concrete proposal to Member States to improve implementation. However, the Framework was adopted in 2009, and as we know today, there are still challenges in implementation of the Protocol. Personally, I would not think it impossible that a new kind of international agreement would soon be considered, the Protocol being already more than 20 years old.

Next, I will present a case study of how the United States has been able to identify and investigate a large network of human trafficking in an online environment with the help of Open-Source Intelligence. With this case study I would like to first and foremost highlight the possibilities that OSINT could provide in the anti-trafficking field and, the link between online advertising and human trafficking. One single online advertisement may contain indications of THB, and I see lurking threats in online advertising as one of the most important bridges between human trafficking and the online environment. The next sub-

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[81] Vitale 2012, pp.95-96.
[82] VCLT, Art. 26.
[83] UNODC 2009, p.4.

chapter also argues for the creation of more systematic international legislation on the online environment.

2.2   Trafficking in Human Beings in the Age of the Internet: Examples from Darpa Memex

United States government funded computer research program on human trafficking conducted by Defence Advanced Projects Research Agency (DARPA) with the aim to understand the impressions of THB in online environment, both in the dark web and open web. The researchers gathered open-source intelligence e.g. from sex buyer review forums and the collected intelligence was stored in a searchable database that would equip investigators with otherwise inaccessible information and thus, inform the investigators' more effortlessly. The project was known as Memex, and it was providing well-organized methods for examining large and diverse types of content that could not be investigated manually. The gathered information was often altered by the poster to avoid exposure. The gathered and accessible open-source intelligence offered extra chances to cross-check data generated from leads, comprehend the components of the network, and furnish a broader context for contextualizing the activities of individuals and groups engaged in the commercial sex trade.[84]

Before the use of more advanced technologies, complex human trafficking networks have been hard to distinguish and investigate on a law enforcement level.[85] Technological development has had a direct impact on human trafficking enabling opportunities for traffickers to recruit victims, advertise and disseminate online material related to exploitation, among other things. Like in the case of DARPA Memex project, the researchers found how sites like Craiglist and Backpage work, leading potential customers of sex services to the deep web, Craiglist and Backpage being the surface-level site to such customers that are unknown to more specialized browsers that are needed in order to access the deep web, such as Tor. Backpage was a website developed to compete with Craiglist -website that offered a platform for erotic classified advertisement. Because these platforms provided anonymity of its users, the advertisement on these sites was being used to sell sex with minors. When the concerns started to arise, Craiglist took down such ads, whereas Backpage continued making profit

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[84] Meyer – Shelley 2020, p. 93.
[85] ibid.

with the help of these ads and thus, being the dominant platform on the internet for such activities.[86]

Traffickers can also take advantage of technology to make it more difficult to detect crimes, identify offenders, and trace the funds used to commit crimes and the profits generated by the crime.[87] Criminals have managed to take advantage of the latest opportunities in the digital age, while law enforcement agencies face major challenges in trying to keep up with continuous progress.[88] This proves, that while technology increases opportunities for THB and its new forms, the use of technology can also bring significant benefits to those who seek to prevent and control the crime. However, without tools to provide large-scale analysis, offenders have a disproportionate advantage.[89] What was achieved with Memex, was that it was able to identify these complex THB networks and supply chains by combining relevant data and information in Backpage advertisements on the internet and thus detect the connections between them. The examination of images exposed a common practice of image manipulation using software within this network, which included, for example, obscuring facial features of the individuals depicted. The details surrounding the utilization and alteration of these images offered further proof of the interconnection among the advertisements.[90]

Open-source intelligence can be employed to map the activities of organized crime networks as they recruit victims from particular source countries, as well as to monitor the advertising, transportation, and exploitation of these victims in destination countries.[91] The researches participating in Darpa Memex found, that two persons possessed these web domains, and with the help of OSINT it was possible to further discover that the identified network was linked to hundreds of thousands of escort advertisements and 55 websites in approximately 25 cities in the US, Canada and Australia.[92] Ultimately, all the Backpage escort advertisements were identified with "facilitators" [93] who were mainly Chinese, as were the victims of THB.[94] The

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[86] Graff 2022.
[87] European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims 2022, p.2.
[88] Europol 2021, p.14.
[89] Meyer – Shelley 2020, p. 94.
[90] ibid, p.97.
[91] ibid, p.95.
[92] ibid, p.97.
[93] ibid, p.98.
[94] ibid, p.99.

facilitators enabled the spreading of these advertisements across continents with the sale of victims contained within this closed network. Advanced network analysis of the supply chain revealed a direct connection between overseas commercial sex sales and the central node of the network in China.[95]

Eventually, Backpage was seized and taken down in 2018. This example of the Darpa Memex project shows that an investigation using solely OSINT can almost completely recognize and locate THB networks and to recognize certain individuals, which surpasses the previous expectations of its capabilities. The open-source intelligence network analysis offered researchers a complete outline to connect seemingly distinct trafficking operations formerly known to law enforcement in various locations to a more extensive organized THB network working at global level.[96]

Despite the seizure of Backpage, the issue of trafficking for sexual exploitation via online advertisements for sexual services persists, and in fact, appears to be a popular way of recruit victims.[97] Since the use of Adult Service Websites (ASWs) has become more popular among sex workers, it has also provided new advertising space for human traffickers and on such pages, it is easy for human traffickers to disguise the sale of sex as consensual.[98] Some countries [99] use legislation in order to restrict where advertisements can be published but, according to Meyer and Shelley: "exploiters will continue to migrate to new escort advertisement sites, hide behind sites with paywalls, and move to social media and encrypted communication platforms given the profitability of human trafficking".[100] One good example is the case R v Byron, which is a good illustration of the effectiveness of a single advertisement: individual trafficker managed to sexually exploit and connect one victim with over hundred sex byers approximately in two months by using online advertisement.[101] All this suggests that OSINT would continue to be used to expose human trafficking since both traffickers, and the technology they employ evolve over time.

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[95] ibid, p.99-100.
[96] ibid, p.99.
[97] In 2020 UNODC had examined the descriptions of 79 court cases of THB including an element of internet technology in which 44 cases included some form of online advertisement. See; UNODC Global Report on Trafficking in Persons 2020, pp.119-121.
[98] L'Hoiry 2024, 1-9.
[99] See e.g. United States FOSTA-SESTA, the Australia Online Safety Act or EU Digital Services Act.
[100] Meyer – Shelley 2020, p. 94.
[101] United Nations Office on Drugs and Crime, CAN016, 2013.

2.3 Technological tools combatting trafficking in human beings

2.3.1 Analysis of the Darpa Memex case

When government entities and non-governmental organisations collect data in order to detect human trafficking activities, they often do that with the help of sources that are unstructured and diverse in nature. Nevertheless, the intelligence accumulated by these actors is usually limited to specific sites, disintegrated and incoherent, since they collect data for their internal targets and there is hesitancy in the data allocation. Because of these challenges, the pivotal role of open-source intelligence becomes evident, as it serves a crucial step in leveraging machine learning technologies to enhance the effectiveness of combating human trafficking on a broader, more interconnected scale.[102]

What can then be derived from the case Darpa Memex? Firstly, it helps one to understand how complex it is to detect human trafficking crimes and the networks behind them. These networks are often well organized and developed and they are up to date about the newest technologies. Secondly, it shows how beneficial it can be to utilize technologies such as OSINT in the fight against human trafficking. Trafficking in human beings in the age of the internet does not look the same as it was only 20 years ago. DARPA Memex was a good example of how a single advertisement or image can contain indications of a vast network of organized crime seeking to profit from human trafficking. The advertisement activity may also be disguised as legal, which makes it harder for a single investigator to draw conclusions about possible human trafficking connections of the advertisement. The online sex advertisements that the researchers found in DARPA Memex have served as a valuable resource for numerous researchers seeking indicators of THB within online advertisements.[103] The possibilities that OSINT and other machine learning solutions can provide in this field can be significant.

To sustain proactive and network-oriented investigations, the ongoing investments in cutting-edge technologies are essential for technology enterprises, law enforcement agencies, and governmental entities. Continuous advancements in technology are necessary to combat criminal networks effectively and furnish law enforcement with critical intelligence. Both technology enterprises and law enforcement, alongside legislators and policymakers, should

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[102] Upadhayay – Zeeshan – Behzadan 2021, p.1.
[103] ibid.

anticipate the dynamic nature of criminal activities related to THB. Being ready to respond to rapid and inventive criminal companies requires vigilance and adaptability in this evolving landscape.[104] Darpa Memex also illustrates the complex nature of human trafficking, one example being that trafficking is rather a long-term process than a one singular event that usually consist of a range of offenders from one single perpetrator to enormous international organizations and organized criminal networks.[105]

2.3.2 Open-Source Intelligence and Artificial Intelligence working together to combat Trafficking in Human Beings

According to the UN resolution 77/194, United Nations recognizes "the potential of information and communications technologies, including the Internet, social media and online platforms, to prevent and combat trafficking in persons, in particular trafficking in women and children, and to assist victims".[106] It has been proven that solely OSINT can identify specific individuals and far more illicit activity than previously thought.[107] As in the DARPA Memex case, the effortless utilization of online advertisement allowed these criminal businesses to grow with rapidity. Technology-focused approach was necessary because analyzing illicit advertisement on such a large scale was beyond the capabilities of manual methods employed by law enforcement.[108] Europol's and Bellingcat's work is also a good example of the functioning of OSINT in the anti-THB field. Europol's "Stop child abuse, trace an object" campaign is based on clues that can be hidden almost anywhere: a shampoo bottle or a t-shirt. These hidden clues can be crucial, if recognized, and they can even lead to victim's identification.[109] The primary factors contributing to the ineffectiveness of counter-trafficking strategies and the low number of identified human trafficking victims are the absence of sufficient support and protection for these victims, as well as a limited understanding of the dynamics of victimization and the associated trauma. This situation arises because trafficking victims often have little motivation to come forward and to be recognized.[110] Because one of the greatest problems regarding the fight against human trafficking appears to be the

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[104] Meyer – Shelley 2020, p.100.
[105] van der Watt – van der Westhuizen 2017, p. 219.
[106] United Nations General Assembly, Seventy-Seventh Session, *Trafficking in women and girls,* UN Doc. A/RES77/194 (15 December 2022), p.5.
[107] Meyer – Shelley 2020, p.88.
[108] ibid, p.90.
[109] Europol 2017.
[110] Roth 2012, pp.153.

identification of the victims, OSINT or AI could come to help when trying to identify both potential victims and criminal networks.

Thus, the desired outcome could be found with the help of OSINT or AI, or by using the OSINT and AI together of which there are already positive examples[111]. In Bellincat's case, when the child modelling studio was located with the help of OSINT, the researchers suggested in their conclusions that in cases involving child abuse, all images containing child sexual abuse material processed by law enforcement should be added to a centralized database. This would enable law enforcement agencies to utilize internal image reverse search algorithms for future geolocation and investigation purposes. By doing so, the algorithms would be able to compare the information within these images and thus create new leads for cases[112] as the AI-driven tools have the capability to promptly address information requests round the clock and efficiently handle a substantial volume of inquiries simultaneously.[113]

OSINT, on the contrary, is collection and analysis of the information gathered from open sources and the information is used in producing actionable intelligence. Therefore, intelligence is far more than just the information that has been collected. When a researcher finds raw data with the help of OSINT, the obtained information can become intelligence only when it is critically analysed and found to be relevant.[114] OSINT has for long been a part of the security and investigative mechanisms of state and non-state actors, and now that technology continues evolving, OSINT can provide more and more ways to detect and identify certain security threats. For example, during the Russian war of aggression against Ukraine, OSINT has been utilized as an analytical tool to forecast and understand the course of the war. Open sources and available sources can look very different; relevant information can be collected from Instagram posts to press conferences and speeches and the entire idea behind OSINT may appear paradoxical, as it involves utilizing publicly available data to uncover information that governmental or non-governmental entities aim to conceal. The key factor when operating with OSINT, is to measure the quality of collected data. The processor

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[111] For example, non-profit organization "Thorn" has united technology experts, NGO's, government, and law enforcement to combat sex THB. Thorn, Digital Reasoning the McCain Institution and Google have produced an application called "Spotlight" that offered law enforcement with information of suspected THB networks, and it helped them with victim assistance and identification. It utilizes machine learning to analyse millions of advertisements to proactively recognize questionable advertisements. See; Bryant – Larsen – Gordon 2019, p.180.
[112] Gonzales et al. 2019.
[113] OSCE 2020, p.41.
[114] Gill 2023.

of open data must take into account the uncertainties related to its use, as the collected data can't be compared to any objective truth that would show that the data is necessarily of high quality and correct.[115] As in the case of Darpa Memex, it was not only about the vast amount of data and clues that the researchers found, but the quality and the relevance of the discovered data.

International organizations such as UN and OSCE have done a few comprehensive studies of how technology can be utilized in the fight against THB. According to the OSCE report:

> "OSCE participating States should take into account sector-specific challenges and risks. For example, standards and measures vis-á-vis adult services or escorts websites, where the risks of THB are high, may be different than in the case of search engines or online payment systems".

This, and other instructions provided in the report are given in regards of such regulation that has to do with technology-facilitated THB and not necessarily how states and law enforcement units could utilize technology for their advantage when investigating THB cases. These recommendations given by the OSCE can still be viewed in reverse for the purposes of this research. What OSCE's report suggests is that states should adopt effective police measures to prompt online platforms to reduce the likelihood of their services being exploited for human trafficking and to make these platforms responsible for any failure to comply. To maintain fairness and prevent places where offenders can operate without repercussions, these policy measures should mandate adherence across the industry and consider the unique challenges and risks within specific sectors. [116]

The above-mentioned means and examples can be seen, for example, in the United States' FOSTA-SESTA sex trafficking law, which is a good example of such a legislative initiative, which was intended to eradicate online trafficking in human beings, including by banning cites like Craiglist that could enable online exploitation on their platforms. However, critics have been questioning the efficacy of these laws[117] – Backpage.com was shut down prior to the enactment of FOSTA-SESTA, rather than as a consequence of it. I too question whether such bans alone can eradicate and completely prevent technology-assisted trafficking in human beings, or whether the solution would be to try to combat it more effectively in technology-assisted manner. What comes to the prevention strategies, the Trafficking

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[115] European Commission/Publications/Data stories/Open-source intelligence.
[116] OSCE 2022, p.53.
[117] Chapman-Schmidt 2019, pp.172-87.

Principles also speak for strategies that would address demand as a "root cause of trafficking".[118] Therefore, the legislative acts like FOSTA-SESTA should be seen as solutions as last resort if it has not been possible to reduce demand as required by the Principles. In addition, FOSTA-SESTA has been widely criticized for it being potentially harmful for those who are already in a vulnerable position.[119]

I therefore claim that efforts should rather be made to prevent and identify technology-assisted THB, rather than just passing laws that can be very fragmented and even counterproductive because it could be argued that the closure of these websites has increased the difficulty of monitoring human trafficking and has restricted law enforcement's access to identifying potential victims. Many of the online forums and sites that were shut down had previously served as tools for law enforcement to identify victims, or they were actively sharing information on concerning cases.[120] As it is also recognized in the EU's directive amendment proposal, criminal law measures alone are not enough to reduce the demand for human trafficking[121]. In addition to criminal law measures such as prohibitions and penalties, other measures against THB should be introduced on a large scale, and other preventative measures, such as measures used to identify crime, should be increased. What comes to technology assisted THB prevention, as artificial intelligence becomes more incorporated into everyday OSINT analysis, it is obvious that those who can teach contemporary AI algorithms can completely utilize the benefits of publicly available data and construct better intelligence mechanisms.[122]

2.4 Challenges

As has already been discussed earlier in this chapter, technological development can both benefit and hinder the fight against human trafficking. This is, because the perpetrators are usually way ahead of the law enforcement, and they are eligible to utilize more complex tools. The use of OSINT and AI technologies is usually associated with ethical problems, some of them which are, unfortunately something that this thesis is not able to discuss with greater

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[118] Office of the High Commissioner for Human Rights 2002, para 4., p.1.
[119] Chapman-Schmidt 2019, pp.172-87.
[120] Green 2019.
[121] European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims 2022, p.3.
[122] Ghioni – Taddeo – Floridi, *Open Source Intelligence (OSINT) and AI: The Informational Pivot of Intelligence Analysis*, 2023.

focus. It is nevertheless relevant to mention few of them, since it may help one to narrow the conclusions by the end of this thesis.

One of the greatest ethical issues regarding the use of OSINT and AI in the fight against trafficking in human beings has to do with the privacy of trafficking victims. According to the Trafficking Principles the primacy of human rights "shall be at the center of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims"[123] and the Protocol Article 6 requires measures be taken to protect the privacy and identity of victims of trafficking in persons[124]. Thus, human trafficking must be combatted with this in mind, and a positive approach to technology cannot ignore privacy and other essential rights of the victims. For example, as in the previous chapter I gave an example of the Bellincat's case where the researchers suggested in their conclusions that in cases involving child abuse, all images containing child sexual abuse material processed by law enforcement should be added to a centralized database. However, such a database could be very risky in terms of the privacy of victims and their right to their own image.[125] Because OSINT involves collection of enormous amounts of data, the hopes about the common database that was suggested in Bellingcat's case, might be only wishful thinking. Despite these concerns, all data that an individual publishes on a public platform can still be possibly utilized in OSINT investigations.[126] However, there are regulations, such as the European Union General Data Protection Regulation (GDPR), that is mandatory to consider when OSINT activities involve personal data processing (which it almost always does).[127] The regulation of personal data processing is global, and similar trends in regulation can be seen in United Kingdom, Japan, Brazil, Turkey, United States etc.[128]

In addition to privacy concerns, AI systems may inherit biases present in the training data, even though the one developing the algorithm had no intention to train biased AI. Ensuring that these biases do not disproportionately impact specific demographic groups is crucial

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[123] Office of the High Commissioner for Human Rights 2002, para 1.

[124] The Protocol 2000, Art.6, para 1.

[125] See e.g. United Nations General Assembly, Human Rights Council, 28/16. The right to privacy in the digital age, Twenty-eight session. 2015; European Court of Human Rights 2023.

[126] Böhm – Lolagar 2017, pp. 331-334.

[127] For example, if the OSINT investigations are targeted to individuals, persons' consent is needed. The personal data collection has to be for specified, explicit and legitimate purposes. See; Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Article 6: Lawfulness of processing.

[128] How is OSINT affected by GDPR/ What is GDPR 2023.

when making sure there is no discrimination in the fight against THB. These biases could be, for example, assumptions that victims of THB are from certain countries or that the victims are mostly women and children. Such bias-based discrimination can also be seen when we talk about the international cooperation: ethical considerations include respecting different legal frameworks and cultural norms while sharing information to combat trafficking effectively. To tackle this relevant limitation, the algorithms behind anti-THB work should be analyzed, trained, and examined by as diverse socio-legal groups as possible.[129]

Based on all the above, the possible OSINT and AI applications in the fight against human trafficking should be reviewed regularly. This can also be a monetary question, since the reviewing and developing procedures of these tools can be expensive, as well as the usage of these tools in the first place. It can also widen the gap between those who have the feasible access to these tools and those who cannot afford to use these tools or the possibility to use them in ethically acceptable manner. Like in the case of Darpa Memex, the connections were to be found in Canada, Australia and even in China. In that case it was the government of United States that funded this project to discover the enormous web of criminal activity that extended far beyond the United States. But can we hold these expectations for countries to conduct such vast technology-assisted investigations? The Backpage website was American, which could argue in favor of the responsibility remaining with the state itself, but can this also be the situation for cases of human trafficking that originate entirely online, and when the origin of the victims and the crime itself is international? I find the question regarding state responsibility particularly interesting in this respect, and I will discuss it in more detail in chapter 4.

In addition to ethical challenges, the use of OSINT and AI tools to prevent human trafficking inevitably has social consequences. Diverse understanding and knowledge of different technologies can also increase power of certain international actors: data collection described above becomes an asset, as intelligence gathered through OSINT can reveal and tell a lot about different kinds of activities, also governmental ones. On the other hand, the risk of spreading misinformation is high, especially when there is no regulation for the processing and publication of the information thus collected. Deliberate efforts of those who want to

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[129] Kharitonova – Savina 2021, pp.490–491.

harm the OSINT process will inject misleading information into OSINT analysis and it can lead to the unwarranted exposure of the information of innocent citizens.[130]

Stories can also be manipulated in a way that twists the actual truth since the processors of OSINT data have the power to choose the angle where the data is being presented. Manipulating data adds complexity to the challenge of ensuring the accuracy of collected data, ultimately shaping its overall value. Furthermore, it is not about the number of OSINT data that matters the most, but the precise processing of the relevant and authenticated data.[131] Thus, the moderator of the OSINT data should always be able to answer the questions of "why is this data collected" and "how is this data relevant". With the increasing automation, there arises greater need for a robust framework for AI-powered OSINT, addressing concerns related to issues of reliability and transparency. Failure to establish such framework could exacerbate the opacity of traditional intelligence, making it challenging to distinguish truth from misinformation and assign responsibility for intelligence decision-making.[132]

Additionally, the synchronous use of AI tools and OSINT analysis favors those, who are already eligible to utilize e.g., more developed algorithms. I see, that this can cause conflict of interest between governmental and non-governmental actors, and those who can utilize the information better, has a certain kind of advantage, especially if we think about the development of OSINT. Governmental entities like DARPA typically have substantial funding and resources, allowing for large-scale and technologically advanced OSINT projects, like DARPA Memex was. They also have better legal authority to collect intelligence, providing with access to classified information and the ability to cooperation. Same may not apply to NGOs that may face resources constrains compared to government agencies, limiting the scale and scope of their activities. On the other hand, NGOs can operate globally without the constraints of national borders, enabling them to access and analyze information from various regions and without the bureaucratic obstacles.

A specialist law enforcement response to human trafficking has had a positive impact on investigations[133] and there are certain techniques how the specialist law enforcement should be trained. For example, proactive techniques include undercover operations, human and

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[130] Ghioni – Taddeo – Floridi, *Open Source Intelligence (OSINT) and AI: The Informational Pivot of Intelligence Analysis*, 2023.
[131] European Commission/Publications/Data stories/Open-source intelligence.
[132] Ghioni – Taddeo – Floridi, *Open Source Intelligence (OSINT) and AI: The Informational Pivot of Intelligence Analysis*, 2023.
[133] See e.g., UNODC 2008.

financial surveillance and intelligence collection, which can be efficient regarding the investigations, but on the other hand, intelligence-led investigative techniques might diminish the role and significance of victim testimonies. In cases where law enforcement agencies possess adequate resources, specialized units have greater capacity to proactively investigate THB cases as well as develop, test and enhance standard operating procedures and training methods more effectively.[134]

If we look at these arguments from the international law and state perspective, we can conclude that the parties to the Protocol all have, as a matter of fact, different possibilities for the successful implementation. The Protocol will be presented more in detail in the chapter 3, and when reading the chapter, it is important to keep in mind the technology perspective of this legal instrument and the fact that the utilization of expensive technology tools can perhaps complicate otherwise more effortless implementation of the Protocol. If excessive and financially burdensome measures are expected from the parties to the Protocol at the implementation stage, states may be increasingly reluctant to successfully implement the Protocol. For example, OSINT methods are very expensive and should be continuously developed as the flood of information increases and changes. In addition, there should be enough educated specialists that are specialized at OSINT and AI tools specifically.

Can this complex nature of human trafficking as a crime, especially when happening in the online environment, diminish what can be expected from a certain state? And can this place states in an unequal position when comparing the actual possibilities of different states to take advantage of expensive technologies and train specialist? These questions regarding states will be examined more closely in the chapter 4. In the next chapter, the reader will be introduced to the most important legal instrument that regulates trafficking in human beings today. After the subsequent chapter, it is desirable for the reader to think how the technology-assisted fight against human trafficking could sit to this legal framework.

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[134] Gallagher – Holmes 2008, p.326.

3 Legal Framework: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

> "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

Citation is taken from the Article 4 of Universal Declaration of Human Rights of 1948.[135] Although today the regulation of human trafficking arises from other human rights norms as well, the roots of the Protocol are precisely in this notion of the Declaration. Today, trafficking in human beings is often referred to as "modern slavery" because of the similarities with historical forms of slavery, but it occurs within contemporary contexts and legal frameworks. However, one could think "modern slavery" as an umbrella term and trafficking in human beings as its sub-term.[136]

In the preceding chapter, we conducted an analysis of the potential contributions of advanced technologies such as OSINT and artificial intelligence, in addressing human trafficking. To thoroughly address the initial research question concerning the effective integration of OSINT and AI tools in implementing the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, it is imperative to comprehend the structures of existing anti-trafficking legislation. Furthermore, an exploration of how this legislation can be adapted to novel situations that were not anticipated during its formulation, is necessary.

The Protocol is the most important international legal instrument in the light of trafficking in human beings and it obligates state parties to adopt such means that will prevent THB and to intensify international cooperation. UNODC's Framework for Action is also worth mentioning since it assembles all effective implementation measures of the Protocol. The Framework is a technical assistance tool designed for the UN Member States so that they can effectively and congruently implement the Protocol. The Framework identifies main topical challenges in prevention, protection, and prosecution efforts are knowledge and research, capacity building and development and monitoring and evaluation.[137] The Framework for Action is also useful in that it demonstrates how international agreements such as the Protocol

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[135] United Nations 1948, Art.4.
[136] What is modern slavery? / Types of slavery today 2024.
[137] UNODC 2009, pp. 3-5.

can even be too open, especially if they are insufficiently implemented. The Framework therefore seeks to fill any gaps that the Protocol may leave for the legislator.

More specifically, in the Articles 9-13 the Protocol obligates states to adopt adequate preventative, cooperative and other measures. In the light of this thesis, the most relevant Articles are the Articles 9 and 10 since they are applicable with the regulation regarding technology assisted preventative measures. The aim is to take more of an innovative angle when looking at Articles 9 and 10 together, and simultaneously keeping in mind the core ideas presented in the chapter 2. Because Articles 11-13 of the Protocol already provide more concrete regulation regarding e.g. border measures, security and control of documents, Articles 9 and 10 on the other hand, are more open, leaving more room for the State parties to establish such preventative measures where technological tools could be utilized.

3.1 Article 9 in the Age of the Internet

Article 9 paragraph 1 suggests that in order to prevent and combat trafficking in persons and to protect victims, State Parties shall establish comprehensive "policies, programmes and other measures". Thus, this paragraph gives room for State parties to select such policies, programmes and measures most suitable for them.[138] Framework recommends the states to "review the gaps between existing legislation" and the "obligations and national needs" of the UNTOC and the Protocol[139]. However, Article 9 (1) does not explicitly require states to establish legislative policies for the regulation of the Internet. As already mentioned earlier in this thesis, the Protocol does not actually address the THB cases happening in the online environment or any other technologically assisted forms of THB, and it can have negative consequences.

The Darpa Memex case underscored the global nature of online trafficking, emphasizing that the discussions must happen at a global level as well. While Darpa Memex case provides an insight into the regulatory landscape within the United States, it serves as just one example. As aptly noted by Vitale, "National regulation cannot reach or be applied to Internet content hosted in other countries. -- Failing to take international action is a failure to effectively remove a factor that makes women and children vulnerable to trafficking and, therefore, a violation of Article 9 (4)."[140] Article 9 includes the obligations regarding prevention of

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[138] The Protocol, Art.9, para 1.
[139] UNODC 2009, pp. 3-5.
[140] Vitale 2012, p.118.

trafficking in persons and it is particularly relevant as it mandates states to take measures, including international cooperation, to eradicate the elements contributing to the vulnerability of women and children to trafficking. Disregarding international action not only impedes the effective removal of these factors but also constitutes a violation of the responsibilities outlined in the Article 9 (4).

Vitale's conclusions can also be derived to international cooperation between states and between different governmental and non-governmental actors, since Article 9 (3) of the Protocol states that "Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society"[141]. This paragraph is essential if we look at the role of NGO's or "other relevant organizations", that are aiming to reveal gross violations with the help of technology, such as OSINT and AI-driven tools. If we look at the Internet era where we live today, one could argue that it makes women and children more vulnerable to trafficking and that gives even more significance to international cooperation, and that it should be taken into consideration more when trying to establish effective preventative THB regulation. Moreover, to be able to fully follow the rules set in Article 9(4), internet environment should be regulated on a broader scale. Article 9(5) strengthens the argument, since it requires states to adopt legislation to "discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking".

The fight against online human trafficking relies on a somewhat unclear demand outlined by the UNODC. Neither Article 9(5) nor the Framework for Action explicitly mandates implementation measures to eradicate the demand for THB. Nonetheless, countries must undertake some action to adhere the Protocol. All in all, Article 9 fully endorses internet regulation to safeguard against THB, yet it does not specify the approach states should take in regulating the internet at the international level. [142] As an example, European Union Strategy to Combat Trafficking in Human Beings 2021-2025 sets another example for the online regulation and the extract from the Strategy states that:

> "Further to the already existing obligations for platforms to remove illegal content under the e-Commerce directive, the Commission will conduct a dialogue with

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[141] The Protocol, Art 9, para 3.
[142] Vitale 2012, pp.116-119.

relevant internet and technology companies to reduce the use of online platforms for the recruitment and exploitation of victims."[143]

The strategy also acknowledges the role of internet service providers and related companies in this matter and how their anti-trafficking efforts are vital in common success in the fight against THB.[144] In my opinion, the Protocol should also explicitly identify the human trafficking in the online environment and the relevant actors responsible for combating it.

3.2 Article 10 in the Age of the Internet

Unlike Article 9, Article 10 regulates about the guidelines concerning states obligations to communicate with each other to work towards tracing and prohibiting the means utilized by human traffickers. It sets forth the obligations regarding information exchange and more specifically, Article 10 (1) sets obligations and grounds for cooperation by exchanging information between the state parties and it particularly mandates states to share essential information with the idea that a state would be alert of certain means used by traffickers. This is essential especially in the situations where international borders are crossed, and Article 10 emphasises the importance of cooperation in these situations.[145]

Furthermore, Article 10 (2) regulates how the state parties should provide or strengthen training for law enforcement, immigration, and other relevant officials in the prevention of trafficking in persons and it mandates law enforcement to receive training on the methods used by traffickers[146]. As discussed earlier, those combatting THB are often lagging with experience and means compared to human traffickers, and therefore, it would be vital for the whole international community to be able to effectively share and compare information. Especially online platforms are widely used to traffic victims, and at the moment the international community is not prepared enough to the volume nor the means of online trafficking. According to Article 10, failing to cooperate internationally to identify the methods used in trafficking victims and failing to provide law enforcement with training to combat these methods constitute violations of the Protocol.[147] Currently, there is no such global forum where the states could decide about the content regulation and how they could enforce existing regulations. Nonetheless, the UNODC serves as an impartial intermediary

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[143] Communication from the Commission to the European Parliament 2021, p.11.
[144] ibid
[145] The Protocol, Art 10, para 1.
[146] The Protocol, Art 10, para 2.
[147] The Protocol, supra note 18, Art 10, para 1.

and could be leveraged for this purpose, as it collaborates with policymakers and law enforcement agencies worldwide.[148]

When we look at the Protocol, and in particular its Articles 9 and 10, they leave a lot of discretion to states in deciding such "measures" that they should take in order to prevent trafficking in human beings. The Protocol, however, obligates states to cooperate internationally and with NGO's but it is up to the states themselves of how they decide to conduct this international cooperation and cooperation with the NGO's. Thus, one can conclude that utilizing OSINT and AI technologies will sit well in the legal Framework of the Protocol *if the state parties themselves are willing to utilize them.* In this sense, state parties could use as much and as progressive technology as they will and as they can afford to, not forgetting tackling all the challenges involved, in order to fulfill the obligations, set by the Protocol. Given that the Protocol is inadequate and too open to provide complete guidelines to combat online THB, solutions must also be found elsewhere. The problems arise, however, when we ponder how willing the states are to use these progressive technologies, update them and educate officials who are able utilize them. Therefore, in the next sub-chapter we will look at the implementation of the Protocol so far, which helps one to make assumptions of the willingness of states to commit to international agreements, that leave them a lot of discretion of how they should be implementing those agreements.

Because the problems related to the implementation of the Protocol are not unambiguous, I wanted to address the responsibility of different international actors in the implementation of the Protocol as my second research question. We have now mapped out what the technology-assisted fight against human trafficking may look like at its best, but on the other hand we have also identified the challenges that lie behind it. Although the Protocol is not complete and the technology-assisted fight against THB is not yet fully enforced globally, there is much that can be done by various international actors to prevent online human trafficking from becoming even worse as a phenomenon. Who these actors are and what can be expected of them – that is what we will take a closer look in Chapter 4.

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[148] Vitale 2012, p.120.

4 Divergent Responsibilities for Preventing Online Trafficking in Human Beings

An important aspect in the dialogue regarding the combatting efforts of trafficking in human beings, can be discovered by looking at the most relevant international actors. The roles and responsibilities have changed and varied over time, especially when trafficking has moved to the online environment, almost entirely. In 2020, according to the United States Department of Justice, 80% of sex trafficking involved online advertising for the benefit of the crime.[149] Who can we hold accountable for the insufficiencies in the Protocol implementation? Is it the organizations like United Nations, that have established the Protocol in the first place? Or is it the fact that the Protocol has been insufficient already from the beginning and if so, who is responsible for that? Or is it the states that have not showed any remarkable evidence of successful implementation of the Protocol? Or is it the multinational internet companies and platforms that have by passive action allowed human trafficking networks to expand to the online environment? What can history teach us? The questions are difficult, which means that the answers cannot be unambiguous. Let us investigate the varying viewpoints and responsibilities on the prevention of online trafficking in human beings from the standpoint of a few relevant subjects.

4.1 State Responsibility

According to the Recommended Principles on Human Rights and Human Trafficking, "States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons".[150] The responsibility to respect, protect and fulfill human rights is derived from international human rights law, that lays down obligations to states but it is questioned, however, whether the framework relates to IHRL[151]. In any case, states have an obligation to protect the rights of individuals and this obligation, as well as the prohibition of slavery, is enshrined in international treaties such as the UN Charter, UDHR, ICCPR. However, the primary responsibility for enforcing human rights is above all the responsibility of each state which is obligated to sincerely adhere to the norms of customary international law and the treaties it

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[149] UNODC / Good use and Abuse: The Role of Technology in Human Trafficking 2021.
[150] Office of the High Commissioner for Human Rights 2002, para 2.
[151] Sheeran – Rodley 2013, p.4.

has ratified.[152] The Vienna Declaration and Programme of Action confirmed that "the promotion and protection of human rights and fundamental freedoms is the first responsibility of government". [153] In a situation where a state fails to meet this obligation, international law sets the underlying rules of state responsibility that are defined in the Articles on the Responsibility of State for Internationally Wrongful Acts (ARSIWA). The basic rule set in the Article 1 is that every internationally wrongful act of a state entails responsibility. The Article 2 embodies what can be held as an 'internationally wrongful act':

> There is an internationally wrongful act of a State when conduct consisting of an action or omission:
>
> a) is attributable to the State under international law; and
> b) constitutes a breach of an international obligation of the State.[154]

The rule has long been recognized in judicial and arbitral decisions as customary international law and thus, a State may be liable for an omission.[155] Therefore, according to the customary international law, states can be held liable if they breach the international obligations so for example, when signing a Convention like the Protocol, states are responsible for their actions and omissions when acting through its organs or agents.[156] In the case of online trafficking, this may involve activities occurring within or outside the state's jurisdiction, including those carried out by private entities, individuals or criminal organizations operating within the state.

4.1.1 The countries of destination and the countries of origin

The adoption of the Convention on Suppression of Traffic in Women of Full Age in 1933 widened the scope of existing international law by dealing with the issue of trafficking without beyond the destination State. The 1937 Draft Convention for the Suppression of the Exploitation of the Prostitution of Others did no longer require the crossing of international

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[152] Vienna Convention on the Law of Treaties, Article 26; Human Rights Committee, General Comment 31, The Nature of the General Legal Obligations Imposed on States Parties to the Covenant, 2004.
[153] Vienna Declaration and Programme of Action 1993, para.1.
[154] ARSIWA, Art 2.
[155] Hernández 2019, p.249.
[156] Factory at Chorzów, Jurisdiction, 2001, Arts 1 and 18-31. According to the Court "the State Parties have the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention". The Court added- "An illegal act which violates human rights and which is initially not directly imputable to a state (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because the act itself, but because the lack of due diligence to prevent the violation or to respond to it as required by the Convention". See; Velásquez Rodríquez v Honduras 1988, paras 164, 172.

borders to establish criminal offence, but because of the Second World War the draft Convention was never adopted. The draft nevertheless formed the core of one of the earliest human rights instruments adopted by the General Assembly of United Nations, the UN Convention for the Suppression of the Traffick in Persons and the Exploitation of the Prostitution of Others' in 1949.[157]

Through the history of THB, situations in which states have been only indirectly involved in the breach, or if the state has failed to act in accordance with its due diligence, are particularly difficult. In the cases of trafficking in human beings it is often discussed of the countries of origin and countries of destination and that is also an important factor in our discussion regarding state responsibility. According to scholars, there should be different expectations for countries of origin and for countries of destination, especially what comes to victim identification[158] and it is even more challenging to apply these different requirements for the countries of origin and destination to the online environment. When we think about the Protocol implementation and the unsuccessful results of it from the state perspective, one major issue is the actual potential of different states to implement the Protocol. One could argue that wealthier countries of destination have greater legal and moral responsibility to combat THB[159] and I also believe that poorer countries do not have the same capacity to respond crimes like trafficking, especially when happening online, and thus, wealthier countries have greater opportunities to fulfil their responsibilities under international law.

Usually, the investigation procedures take place in the country of destination, where the crime itself occurs. This method nevertheless can leave some crucial information in the countries of origin or transit.[160] Therefore, it is not only a work of a one state to conduct these transnational investigations. According to Gallagher and Holmes "national criminal justice agencies must understand the limits of their own influence and not be tricked into believing that they alone have the power to curb or even substantially disrupt this [sex] trade". The authors are still encouraging states to strong criminal justice responses,[161] but we need to emphasize that no country can prevent human trafficking alone, especially when it is taking

[157] Metzger 2007, pp. 71-74. See also Allain 2017, *Genealogies of human trafficking and slavery*, p.8.
[158] Gallagher – Holmes 2008, p.329.
[159] The author's mention for example North America, Western Europe, Australasia and certain countries of Middle East and Asia being such countries of destination, See; Gallagher – Holmes 2008, p.321.
[160] David 2007.
[161] Gallagher – Holmes 2008, p.321.

place in an online environment. In the online context, the transnational nature of the internet also makes it more challenging to resolve the question of which country is the country of destination and which is the country of origin, if for example, the crime is fully carried out online.

However, there is evidence of collaboration between the countries, for example, cooperation agreements on THB issues at bilateral and multilateral level. As a matter of fact, each country in the world is part of some regional response that takes counter-trafficking action.[162] The law of state responsibility was established to have an effect in the cases of mutual interstate obligations, but in the cases of THB, another state seldom suffers direct injury due to a state's failure to prevent trafficking. The absence of mutual obligations has resulted in characterizing human rights duties as "unilateral", meaning they are focused internally on safeguarding individuals and groups within the state's territory and jurisdiction, rather than serving other interests of other states. Thus, *erga omnes* obligations are vital in the framework of state responsibility since it establishes that states owe certain human rights duties to the international community collectively, eliminating the necessity for an affected state to formally raise concerns about a violation. According to Shelton "the obligation of *erga omnes* serves in part to maintain the framework of state responsibility by establishing that at least some human rights duties are owed to the international community."[163] I would argue that in the cases of online human trafficking, the harm caused to another state is often indirect. The interconnected and transnational nature of online activities, including human trafficking, certainly requires a revaluation of existing legal paradigms regarding state responsibility.

4.1.2 Corfu Channel case

The Corfu Channel case, as decided by the International Court of Justice (ICJ), provides a precedent that highlights the principle of state responsibility for certain omissions and actions within its territory. The ICJ held Albania liable for the repercussions of mines being placed within its territorial waters, resulting in damage to United Kingdom warships, even though Albania had not laid the mines itself. However, the factual scenario indicated that mines could

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[162] Minderoo Foundation / Walk Free / The Global Slavery Index 2023.
[163] Shelton 2013, p.663-664.

not have been placed without Albania's awareness.[164] Therefore, Albania's failure to notify the UK represented a significant omission, implicating its international liability.[165]

Corfu Channel can be instructive in examining how a state's knowledge, actions and omissions may contribute to its international responsibility. Firstly, in the context of online human trafficking, a state may be held responsible if it possesses knowledge of such activities taking place within its jurisdiction and fails to take appropriate measures or notify other affected states. Secondly, lack of transparency and cooperation in addressing online trafficking issues may engage a state's international responsibility, particularly if the trafficking activities have transnational implications. Lastly, the Corfu Channel case involved events within Albania's territorial waters that had consequences beyond its borders. Similarly, online human trafficking often transcends national boundaries, and a state may be responsible not only for activities occurring within its jurisdiction but also for the extraterritorial effects of these activities, especially if they harm individuals in other countries.

It is difficult for states to conduct measures that would make actual difference in the anti-trafficking field: According to Nadelmann solely violations that show a strong transnational dimension have become the subject of international prohibition regimes. Nadelmann also argues that "the primary motivation behind the establishment of international prohibition regimes is the ineffectiveness of unilateral and bilateral law enforcement measures in addressing criminal activities that extend beyond national borders." Governments lack the resources to adequately police vast areas or address and investigate a range of transnational crimes. Additionally, there is reluctance to pursue criminals unilaterally, especially when it involves violating another state's external sovereignty. International prohibition regimes aim to address these challenges by minimizing potential havens for criminal activities and establishing standardized cooperation among governments. They go beyond cumulative impact of unilateral acts, bilateral relationships and international conventions, creating a framework that promotes cooperation and sets expectations for governments, which they challenge at the risk of international bad publicity because of the failure to do so.[166]

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[164] Hernández 2019, p.249-250.
[165] Corfu Chanel 1947, (n 1) 22-3.
[166] Nadelmann 1990, p.481.

4.1.3 Interim Conclusions

This all being said, could one assume that the states have different amounts of responsibility what comes to effective implementation of the Protocol, depending on whether the country in question is the country of origin or the country of destination? If we conclude that countries of destination often have better capacity to investigate these crimes, and at the same time those are the countries that simultaneously profit from these crimes, one could argue that *more can be expected from the countries of destination*. Even though this does not liberate poorer countries from taking required action, a failure on the part of countries of destination to improve criminal justice responses will without doubt have more significant negative impact on international efforts to end impunity.[167] But how these differences would go hand in hand with international law and what does that say about state responsibility?

According to the international law, in relation to penalties for trafficking there must be provisions for sanctions that take account of and are proportionate to the gravity of the offence [168]. However, as brought up in the earlier chapters, the successful and effective national legal frameworks are rare. Current provisions are not necessarily the clearest or most precise, which is obviously not a good thing when we are talking about combating a crime that is itself very complex. Of course, an additional challenge is that the regulations should be adopted by the international community as a whole and the guidelines should be uniform, while at the same time being able to consider of different criminal justice systems. It is therefore not helpful to provide countries with a ready-made, standard legal framework that can be copied and pasted into the legal system of each country.[169] What is needed instead are models that are sufficiently in line with international standards, while taking account of the national criminal justice system.

Human rights were initially considered to focus on the "obligations of state towards individuals, either in guaranteeing their freedom or in providing services for the achievement of rights". Today, however, it is evident that the prevailing injustices in the world are primarily caused by private actors.[170] In the following sub-chapter we will focus on these

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[167] Gallagher – Holmes 2008, p.321.
[168] United Nations, General Assembly, Convention against Transnational Organized Crime, 15 November 2000, General Assembly resolution 55/25, Art.11.1.
[169] Gallagher – Holmes 2008, p.323.
[170] Coomaraswamy 2013, p.137.

private entities more closely and will take a closer look of the responsibilities of multinational internet-based companies and their responsibilities regarding online THB.

4.2 Multinational Internet-based Companies on Trafficking in Human Beings

Internet-based companies form an essential group of main actors what comes to trafficking in human beings happening in the online environment. By "internet-based" I refer to companies such as Meta, Tiktok and other social media platforms and also other online platforms like Backpage and Craiglist, that were discussed in the previous chapters. It is favourable for internet companies to have some strategy and understanding of human trafficking related issues even if it is only for the sake of their own public imago. Simultaneously, it gives their users the feeling that they are using safe and responsible websites or apps so that they don't have to feel the moral distress about using sites, that may violate the most fundamental human rights.

In traditional international relations theory, states are viewed as rational actors seeking to maximize utility. Similarly, Internet businesses, as private entities, prioritize profit maximization. The relationship between states and transnational Internet companies mirrors state-to-state interactions, as both aim to mazimize utility. According IR scholars, even powerful states engage with international organizations to establish rules and standards in various domains. Failure to participate in such institutions could result in powerdul states forfeiting potential benefits and facing isolation. Therefore the states, and even the ones that have been reluctant of regulating speech, should be motivated to find some type of international agreement regarding the Internet.[171] However, it is challenging to come up with solutions, or even viable alternatives, to problems where there are many different, competing interests. I personally find the role of internet companies the most challenging from all of these actors, because the conflict of competing interests is challenging but obvious: since the purpose of business is to make a profit, very often this purpose overrides everything else, even human rights. The legal framework for companies is also largerly voluntary and there is little clear guidance on corporate responsibility in the field of international law. However, I have found a few cases for this sub-chapter that can be used to exmine the guestion of corporate responsibility.

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[171] Przybylski 2007, pp. 947-948.

4.2.1 Soft law sources to corporate accountability

The UN Global Compact, launched in 2000, is a voluntary framework, and compliance is essentially driven by the commitment of participating companies. It includes initiatives for human rights, labour standards, environment and anti-corruption within companies' business endeavours. While trafficking is not explicitly mentioned in the Compact[172], the commitment to uphold human rights is implicit, suggesting that companies subscribing to the Compact are expected to address issues related to trafficking as part of their broader commitment to human rights.[173] Therefore, it is also voluntary for internet-based corporations to participate and commit to incorporating principles related to human rights into their business practices. According to the Compacts' Human Rights part:

> Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
>
> Principle 2: make sure that they are not complicit in human rights abuses.[174]

Because these principles and standards are voluntary, they are sources of soft international law. There have been discussions about a new international instrument that would regulate the activities of transnational corporations and other business enterprises.[175]

To give one concrete example, the case Doe v Unocal set a notable precedent what comes to the corporate responsibility under international law and whether a corporation is eligible to be liable for violations of international law. Even though the parties ended up settling before the court's ruling, the case marks the first time when a human rights lawsuit against a multinational corporation resulted in compensation for the survivors.[176] In the case a group of Burmese citizens were allegedly suffering from human rights abuses such as forced labour, rape, and other violations, during the construction of a gas pipeline in former Burma. The defendant, a multinational oil corporation called Unocal, was complicit in the human rights abuses committed against Burmese villagers. Unocal hired the Burmese military for security matters that occurred during pipeline constructions. The military forced villagers to labour, and if the villagers refused, they were facing punished with rape or even murder or torture.

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[172] More trafficking-specific frameworks for business has also been adopted, See e.g, the Athens Ethical Principles against Human Trafficking (2006) and ILO Protocol on Forced Labour (2014).
[173] Joutsen – Ollus 2019, p.84.
[174] The United Nations Global Compact 2004, Human Rights.
[175] See e.g. United Nations Human Rights Council, Ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights 2023.
[176] EarthRights International.

The Court held that "the successive military governments of first Burma and now Myanmar have a long and well-known history of imposing forced labour their citizens." Thus, Unocal should have been aware of the fact that their activities were enabling these human rights violations. The timing is interesting in the cases of complicity, because the assistance occurs before the actual human rights violations. In this case, Unocal acknowledged the level of risk and decided to disregard the fact (Court: "recklessly disregarded that known risk").[177]

Doe v Unocal was significant because it raised the issue of corporate responsibility for human rights abuses in a transnational context. This precedent also shows how the corporations can be held responsible for their involvement in projects that lead to human rights violations, even if those violations occurred in another country. Hence, company's awareness is the criteria for complicity, and this can be proven directly or indirectly e.g. based on the general atmosphere and conditions of a company.[178] Corporations can justify their ignorance with the globalization of information, but risk assessments and human rights due diligence play an important role and as was the case with Unocal, the risk analysis did not exonerate the company from its responsibility. Risk analyses carried out by the company can even speak out against the company if the company, despite its risk perceptions, had decided to take risky action in terms of human rights, as Unocal did.[179]

If we look at the case Doe v Unocal in the light of trafficking in human beings, it could be argued that internet-based companies, given their global reach and influence, should be aware of the potential human rights impacts associated with their platforms. In addition, internet companies could be held accountable if they are found to be complicit in or supporting human trafficking activities on their platforms and the "lack of awareness" is not an adequate claim from companies to avoid the accountability if there is evidence of their involvement or support for human rights abuses. In these cases, the companies could be guilty of "reckless disregard" if the company has had an actual knowledge that THB activities might take place on their platforms and despite of that, it has continued to provide certain services even though there are evidence of international law abuses.

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[177] United States Court of Appeals, Doe v Unocal 2001.
[178] ibid.
[179] ibid.

To continue this discussion, the silent complicity of companies is also an option to ponder companies' involvement to human rights violations, and especially in the context of trafficking in human beings in the online environment.

4.2.2 Silent complicity

Companies may be guilty of silent complicity if they are choosing silence instead of active action in order to curb the human rights violations. The essential factor is that the company *de facto* has the capacity to interfere these violations.[180] Therefore, Wettstein argues that for a company to avoid being silently complicit, they must actively take a stance against the violation: silent complicity stems from neglecting to speak out against human rights violations but simultaneously, silent complicity presupposes a duty to speak out.[181] However, not all corporations have the same possibility to influence. For a company to be deemed to be guilty of silent complicity it must be in a position where it: can effectively influence the perpetrator, can speak out without having to fear its situation would worsen to an unreasonable degree, is morally connected to the human rights violations, and has some degree of social or political status. [182]

Promoting a form of silent complicity suggests anticipating a politically engaged role for corporations, potentially involving interference in the national policies. Nevertheless, when looking at the victims' point of view, choosing silence is a politically biased action. Furthermore, corporations exhibit active and vocal involvement in areas like tax regulation, demonstrating that their corporate actions are far from neutral.[183] Such involvement is seldom characterized by the business sector as an inappropriate political intervention, and as Hsieh argues "if the objection is that multinational enterprises should not be involved in politics, then this would rule out any form of political involvement by multinational enterprises". [184]

According to the international case law, silent complicitly is referred to as the "approving spectator"[185] scenario and these spectators bear responsibility if these elements are present: knowledge, intent, and an important contribution.[186] It is based in the notion that "liability is

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[180] Wettstein 2013, p.248.
[181] ibid, p.250.
[182] Wettstein 2012, pp. 37–61, p.39.
[183] ibid, p.53.
[184] Hsieh 2024, pp.251-273.
[185] Criminal liability requires at least presence in the immediate locality of the scene of the crime, See; International Criminal Tribunal for Rwanda, Prosecutor v. Mpambara 2006.
[186] Cassese 2008, p. 195.

not automatic, even for a person of high office, and must be proven by showing that the accused's inaction had an encouraging or approving effect on the perpetrators; that the effect was substantial; and that the accused knew of this effect and of the perpetrator's criminal intention, albeit without necessarily sharing the perpetrators "criminal intent".[187] Thus, it can be concluded that silent complicity may be involved in situations where the accused has been present and holds a level of authority that can be construed as providing moral backing for the crime. When we think about these definitions set by the international criminal tribunals in the context of online human trafficking, the requirement that the accused has to be present, could cause some troubles for the interpretation. One might think that site administrators and creators are always "present" or that they should be, and in addition that they are aware of all the purposes for which the sites are used.

To summarize, in matters of human rights violations, remaining silent is never impartial; instead, it consistently favours the perpetrators. However, the concept of silent complicity may seem contradictory since it assumes that companies have, at minimum, a moral obligation to not to stay silent in cases of human rights abuses, but the UNGPs and the generally accepted neutral role of companies says otherwise. As has been pointed out earlier in this thesis, trafficking in human beings is a profitable business, but who are the actors behind this all, who gain these profits? Even though the online companies are not necessarily in direct contact with these human trafficking networks, they still profit indirectly, for example by having users on the site and thus generating advertising revenue. Therefore, it could be even disadvantageous for some companies to voluntarily address human rights abuses on their websites, which is problematic.

4.2.3 Human trafficking related examples from Facebook

In 2018 a non-profit organization called Polaris published a report that revealed that approximately 250 potential victims of human trafficking were recruited with the help of Facebook.[188] Later in 2018 and 2019, three human trafficking survivors filed their own separate lawsuits in the United States, both criminal and civil, against Facebook for "negligence, negligent undertaking, gross negligence, and products liability based on Facebook's alleged failure to warn of, or take adequate measures to prevent, sex trafficking

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[187] International Criminal Tribunal for Rwanda, Prosecutor v. Mpambara 2006.
[188] According to the report "The data is collected from January 2015 through December 2017 records 845 potential victims recruited on internet platforms", See Brittany 2018, p.19.

on its internet platforms" . In 2021, Facebook sought writs of mandamus from the Texas Supreme Court directing the dismissal of these lawsuits since, according to Facebook, the plaintiffs' claims were inconsistent with section 230 which states that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider".[189]

Plaintiffs' criminal lawsuits were dismissed, but the court held that "plaintiffs' statutory human-trafficking claims may proceed" which meant in this case, that civil liability may be imposed on websites that violate state and federal human-trafficking laws. The Court held that the section 230 did not grant Facebook immunity against lawsuits for users who use its platform to lure minors into sex trafficking. According to the Court the section 230 did not "create a lawless no-man's land on the Internet in which states are powerless to impose liability on websites that *knowingly or internationally* participate in the evil of online human trafficking". [190]

This case is a good example of internet-based company's reluctancy to take responsibility over violations happening on its platform. Even though this example is only focused on human trafficking because of the scope of this thesis, THB is only one manifestation of how the Facebook enables such violations happen on its platform because of the lack of governance over successful monitoring. In her article "Monitoring Facebook" Hillary A.Sale contemplates the internal monitoring practices of Facebook and compares those as ones Fox News had before it was able to change its monitoring practices in a way that HR partnered with the board and the monitors, and eventually they worked better together than as separate entities. According to A.Sale:

> "Fox has a group of monitors thus enhancing accountability and decreasing potential capture issues. Facebook would need a similar structure, but because the problems extend well beyond user privacy concerns, the monitors need internal participants who manage election, human trafficking and other issues."[191]

 A.Sale suggests that in Facebooks case it might be that "achieving effective internal controls might require an outside governance model."[192] In the case of Facebook, conclusions can also

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[189] The Supreme Court of Texas No.20-0434, 2021, pp.4-5.
[190] ibid, p. 2.
[191] Sale 2022, p. 468.
[192] ibid, p.471.

be drawn in relation to other similar platforms, and one can ask, whether these platforms can ever operate responsibly enough if there is no external governance model.

What is also known from Facebooks monitoring, is that they are using AI-assisted monitoring in their practices.[193] Even though AI can be a huge asset in the fight against THB, the COVID-19 pandemic showed some warning examples of how reducing people's role in monitoring can be counterproductive and therefore artificial intelligence should not be blindly relied upon only in terms of efficiency. Some social media companies, including Facebook, [194] decreased their on-site moderators and temporarily amplified their dependence on monitoring algorithms to oversee and manage content on their sites. Delays and accuracy issues in the monitoring and the presence of even younger children online made it possible for traffickers to utilize new means of online exploitation. These examples highlight that artificial intelligence tools are not flawless, independently functioning solutions and therefore human eye should always be used as a major tool in monitoring.[195] What comes to the corporate responsibility over successful monitoring, especially regarding combating THB, Facebook is a good example of the lack of the needed monitoring and active action against human rights violations. Facebooks case could also play an example of a silent complicity, because it chose to remain silent even when facing human rights violations, albeit it had the competency to intervene these violations[196].

4.3   International Organizations as Monitoring Organs

In the field of social sciences, institutionalism highlights the significance of institutions, and it is often distinguished by its focus on historical aspects.[197] The history of regulation helps to understand how long the efforts have been made to perceive and regulate the various manifestations of human trafficking. History also helps to accept the fact that as society changes, regulation must also change, but it takes time. Today, the regulation of human trafficking should better respond to challenges such as those posed by the technology

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[193] According to Facebooks help center: "Artificial intelligence technology is central to our content review process. AI can detect and remove content that goes against our Community Standards before anyone reports it."
[194] According to Dwoskin and Tiku "While Facebook, Youtube, Twitter and other companies have long touted artificial intelligence and algorithms as the future of policing problematic content, they've more recently acknowledged that humans are the most important line of defence", See; Dwoskin – Tiku 2020.
[195] OSCE 2022, p.15.
[196] Wettstein 2013, pp. 243-68, p.248.
[197] Barkanov 2016.

environment, but it is unfortunate to note that regulation tends to lag reality. Therefore, I ask, what can the institutions do about this?

From a historical perspective, the role of international organizations in the fight against human trafficking has been significant. When we look at the efforts of international organizations from before the United Nations, we can see significant advances in the regulation of trafficking in human beings at that time. For example, an International Agreement for the Suppression of White Slave Traffic, ratified in 1904, and supplemented by the 1910 International Convention for the Suppression of the White Slave Traffic, remain essential to this day in understanding the evolution of what is today understood as human trafficking and especially trafficking related sexual exploitation. Both Conventions highlighted the ongoing division within those striving to combat human trafficking, which revolved around the contrast between suppressing prostitution and suppressing forced prostitution, particularly in cases involving minors where consent was deemed irrelevant.[198] In 1921, the Second Assembly of the League of Nations adopted an International Convention on the Suppression of Traffic in Women and Children and that allowed the League to act as a monitoring organ. From that on the League put significant efforts into fulfilling its mandate by urging states to address the issue and take actions to restrain the international THB.[199]

As we can see, international organizations have through the history expected to uphold various monitoring responsibilities to address THB and one of the key aspects of their responsibilities is the effective monitoring and evaluation operations. The legacy of the League of Nations has now passed to the United Nations, but we also live in a very different world, where the responsibilities of international organizations have also changed and even increased. Would the capacity of existing international organizations be sufficient to control a whole new world, including the online environment and the various forms of human trafficking taking place there?

One cannot draw a parallel between state's responsibility and international organizations responsibility. States that have undertaken to comply with the Protocol shall be responsible for its adequate implementation and thus non-compliance with the Protocol can also be

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[198] The International Convention for the Suppression of the White Slave Traffic, 4 May 1910, Art. 1-2. See also; Allain 2017, *White Slave Traffic in International Law*, pp.1-40.
[199] Metzger 2007, pp. 54-59.

considered a violation of the State. The United Nations, as an organization, cannot be responsible under international law for how well or badly states choose to implement the Protocol and how they carry out their work against trafficking in human beings.[200] However, the UN could act as a monitoring body in the fight against THB and lead the way for states in how to effectively combat human trafficking, also online. Insufficient framework of state responsibility has given rise to other means of enforcing human rights obligations and providing remedies to groups whose rights have been violated. Global and regional agreements have mandated the establishment of independent monitoring bodies, which have been increasingly bestowed with investigatory functions and jurisdiction to adjudicate complaints brought by non-state actors[201].

Currently, there are numerous intergovernmental and nongovernmental organization working in the anti-trafficking field and they all approach the problems of human trafficking from their own perspectives, depending on their own interpretation and stance of the problem, as well as their expertise and interest.[202] As an example, an organization like Bellingcat that operates as an independent organization contributing to investigative journalism and exposing various human rights related issues, has a different perspective than organization like UN that has a broad international mandate covering various aspects of human trafficking. Despite these differences, all kinds of organizations with a anti-trafficking focus play different spheres and contribute to the broader goal of combating human trafficking through their respective methods and mandates.

According to Nadelmann, one can also see different efforts of nongovernmental and transnational organizations functioning as "transnational moral entrepreneurs". These entities garner public sentiment and political backing both domestically and internationally. They encourage and facilitate the establishment of similar organizations in foreign nations, actively participating in extending the reach of their objectives beyond mere alignment with their government's national interests. While not all the activities they denounce necessarily cross

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[200] However, according to the Principles and Guidelines on Human Rights and Human Trafficking paragraph 5 "States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination." It can therefore be said that states and international organizations have at least somewhat similar expectations when it comes to addressing THB although perhaps not the same obligations. See; Office of the High Commissioner for Human Rights 2002, para 2.

[201] Shelton 2013, p. 664.

[202] Gallagher – Holmes 2008, p.336.

international boundaries, those that do provide the advocate with a transnational catalyst, often essential for inciting and rationalizing international intervention in the internal affairs of other states.[203] Since international organizations monitor the implementation of anti-trafficking measures by Member States, they should be conducting assessments to ensure compliance with international standards.

According to Przybylski: "an international organization monitoring the Internet is the only way to effectively regulate the Internet on an international scale because of the localized expertise and resources an organization can obtain". He sees UNODC as a potential monitoring body that could successfully regulate the Internet in a global sense. [204] . An international organization like the UNODC has the potential to leverage collaboration among governments, citizens, and ISPs on a global scale and that has the potential to facilitate effective communication and allocate resources to regulate trafficking in human beings happening online worldwide. Scholars see a lot of potential in having organization like UNODC to act as a monitoring body, since it would be able to provide, for example, a neutral forum for discussion, a body to observe and regulate the internet activity and knowledge what comes to uniting countries towards more uniform approach to Internet regulation.[205] I personally share my views with Przybylski and Vitale what comes to the UNODC acting as a monitoring organ due to its several potential benefits it could give to the international community. My own perception has also strengthened because of learning about the history of international organizations, and I acknowledge their significance in monitoring practices as well. However, a realist could question the effectiveness of international organizations e.g., what comes to ISP monitoring according to each country's national legislation and maintaining consistency in such monitoring.

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[203] Nadelmann 1990, p.481.
[204] Przybylski 2007, p 943.
[205] See e.g., Przybylski 2007, p.951; Vitale 2012, pp.125-128.

5   Conclusions

I approached this thesis with the hypothesis that in order to solve problems related to the implementation of the trafficking Protocol, as well as to prevent human trafficking online, we have to options: approach online human trafficking with the help of technology and to find out the responsibilities of various international actors in the fight against human trafficking. Of course, it is possible to approach online anti-trafficking efforts in other ways, but it was clear to me that technology-assisted human trafficking should also be combated by technology-assisted means. In addition, I started from the idea that if we do not have a well-functioning control mechanism, either at the level of states, internet-based companies or organizations, then we cannot assume that measures to prevent THB will be very successful. If no actor has a clear responsibility to prevent online human trafficking, why would any actor do any more than another if passivity does not even result in sanctions?

With these hypothesis and thoughts in mind, this thesis started with the following questions:

1. **How can the modern technologies, such as Open-Source Intelligence and artificial intelligence, be utilized to fight against online trafficking in human beings?**

   Supported by the following sub-question: How the incorporation of these technologies into anti-trafficking work could contribute to a more successful implementation of The UNODC Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children?

2. **Which international actors are responsible for combating online trafficking in human beings?**

   Supported by the following sub-question: Can multinational internet-based companies be considered as silent complicities in the trafficking of human beings that originate on their platforms?

To return to these questions, this thesis has sought reasons and suggestions for the implementation of the Protocol and what should be done in order to improve the implementation of the Protocol and furthermore how the technology solutions could be helpful in this matter. To answer my first research question of *how can the modern technologies, such as Open-Source Intelligence and artificial intelligence, be utilized to fight*

against online trafficking in human beings, I find that contemporary technologies, especially OSINT and AI, can offer us various of options that could help states, internet-based companies and organizations to tackle the problems of THB. International organizations have also recognized the importance and the fundamental value of technology in the fight against THB.[206] Up to the present, technological solutions encompass mobile applications that aid in the identification of sex trafficking victims and web scraping tools that gather child abuse images to support law enforcement in their efforts to locate trafficking victims, and especially children, in distress.[207]

The sub-question *how the incorporation of these technologies into anti-trafficking work could contribute to a more successful implementation of the UNODC Protocol to Prevent Suppress and Punish Trafficking in Persons Especially Women and Children* supports the findings to the first research question, since successful identification of victims and detection of criminal networks would be favorable also from the Protocol implementation perspective. However, the problem with the Protocol now is that it does not mandate the states explicitly to combat online THB, and here I see a risk in the long run. When I look at this question with *de lege ferenda* approach, I would say that the Protocol should be replaced or, at least, updated to this day. Although I believe that the current international legal framework is not necessarily a sufficient tool for effectively combat trafficking in human beings online, especially the further technological developments go, it would still be very lax to say, as my sole conclusion, that the Protocol should be replaced. In fact, it is far more useful to look at the means that we have available now.

Since I examined the use of OSINT and AI more closely, I speak specifically for these technology solutions, although I would also like to draw a broader conclusion that the use of all kinds of technologies are necessary when the crime itself has been carried out in a technology-assisted manner. However, OSINT and AI can serve us various opportunities in terms of victim identification, detection and tracing of criminal networks, and the extraction of other essential data from a large pool of information. Because of the various limitations and the privacy concerns that e.g., a common database would bare, I am more in favor of individual projects aimed at detecting wider trafficking networks. Darpa Memex project was a useful example of a project at national level that helped to identify an internationally

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[206] OSCE 2020, p.2.
[207] Tech Against Trafficking, / Why Tech Against Trafficking?

significant trafficking network. It would be highly desirable to have more such projects also at international level, and I believe that a new legal framework would be needed as an incentive to make such activities mandatory. Europol's Trace and Object -campaign[208] is a positive example of an action that can be helpful in the victim identification but without risking the privacy of THB victims. These types of mechanisms that utilize image recognition and OSINT while also safeguarding the privacy of victims, are more than welcome even on a more global level.

Even though I already addressed some of the issues related to OSINT and AI usage in the fight against THB, I still want to highlight some risks regarding these tools. I see that one of the major challenges in the technology-assisted combatting efforts is the algorithmic bias. I didn't think of this as a very significant challenge before writing this thesis, or even when writing about the challenges, but because my thesis also later brought up a lot of the inequality in how THB is treated and combatted depending on the state. This is why I feel that algorithmic biases are a very essential and challenging problem when the goal is to successfully and equally combat human trafficking through technology-approach. However, it is not an insurmountable problem, but one that requires a very broad understanding of algorithm training to overcome. Also in training situations, conscious or unconscious discrimination against a particular group can occur, and research into this problem would be very welcome in the future. It requires multidisciplinary cooperation, which I believe emphasizes a broad understanding of technology, law, society, and ethics.

The utilization of OSINT and machine learning has showed us significant results, and despite the challenges that come with the usage of these technologies, I still argue that the benefits are greater. With increasing automation across various stages of the intelligence cycle, it's evident that a robust framework is necessary to validate AI-driven OSINT, ensuring reliability and transparency. Without such measures, the opacity of traditional intelligence will become even worse, making it challenging to discern facts from misinformation and unilaterally assign responsibility for intelligence decisions. [209]

This thesis has also highlighted the challenges of the Protocol implementation and one of the key challenges seems to be the problems of identifying victims of human trafficking. The

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[208] Europol 2017.
[209] Ghioni – Taddeo – Floridi, *Open Source Intelligence (OSINT) and AI: The Informational Pivot of Intelligence Analysis*, 2023.

parties that have ratified the Protocol do not have the same access to different technologies that could contribute to a more successful implementation of the Protocol. This may discriminate between states, firstly, in terms of what technologies governments can adopt in the fight against human trafficking and secondly, in terms of how these technologies will end up being utilized. Eventually, this is reflected in the economic, social and political damage suffered by different countries as a result of trafficking. This thesis highlighted these differences between countries of destination and countries of origin, from which the countries of origin usually suffer more losses and they are usually poorer than they countries of destination. This problem is paradoxical, because states that cannot afford to intervene effectively in the fight against THB, may even show reluctance to take effective measures, and ultimately suffer even greater losses. Partly because of this paradox, I found my second research question, *which international actors are responsible for combating online trafficking in human beings,* relevant.

Finding answers to my second research question was not easy because the responsibility regulation of international law is not unambiguous. States, internet-based companies and organizations each have their own obligations what comes to combatting trafficking in human beings. States that are parties to the Protocol are obliged under international law to comply with the terms of the Protocol to prevent and combat THB. The wording of the Protocol, however, leaves much to the states themselves to decide how the Protocol should be implemented nationally. The outcomes vary, but the fact that the Protocol does not explicitly cover the internet infrastructure is surely a problem, especially from this thesis' point of view. Regardless of some insufficiencies in the Protocol, states can be held liable for their omissions according to customary international law. This could be the case for example when a State possesses knowledge of wrongful activities taking place within its jurisdiction and fails to take appropriate measures or notify other affected states. In addition, lack of transparency and cooperation in addressing online trafficking issues may engage a state's international responsibility, particularly if the trafficking activities have transnational implications. Online human trafficking often transcends national boundaries, and a state may be responsible, not only for activities occurring within its jurisdiction, but also for the extraterritorial effects of these activities, especially if they harm individuals in other countries.

An illegal act which violates human rights, and which is initially not directly imputable to a state can lead to responsibility of the state, not because the act itself, but because the due

diligence to prevent the violation or to respond to it adequately.[210] Therefore, a state can be responsible for company's violation if the violation is attributable to a State under international law. This might be the case also when we are talking about multinational internet-based companies and THB. However, the attributability requires state involvement or a connection between the state and the actions of the internet-based company. States are expected to exercise due diligence in ensuring that activities within their jurisdiction or under their control do not violate international law. If a state fails to take reasonable measures to prevent or stop wrongful activities by an internet-based company operating within its territory, it could be held responsible.[211]

Furthermore, I would argue that companies can be held liable of violations related to online trafficking in human beings, even in cases when the violation is not attributable to a State. Multinational internet-based companies, given their global reach and influence, should be aware of the potential human rights impacts associated with their platforms, and this argument is supported by the examples given in this thesis. In addition, internet companies could be held accountable if they are found to be complicit in or supporting human trafficking activities on their platforms and the "lack of awareness" is not an adequate claim from companies to avoid the accountability if there is evidence of their involvement or support for human rights abuses. The UN Global Compact provides multinational internet-based corporations a possibility to participate and commit to incorporating principles related to human rights into their business practices. The UN Global Compact is nevertheless a soft law instrument. If we think about the silent complicity of internet-based companies, one could argue that the *mens rea* criteria for companies should be lower, especially in terms of trafficking in human beings and other human rights law related cases. Silent complicity is not easy to prove, and this is primarily influenced by the position of the company and its actual potential to make a difference. However, corporations have a prevailing expectation, or in case of a new Treaty on Business and Human Rights, even an obligation, to evaluate the possible human rights risks on their activities. The proposed Treaty on Business and Human Rights[212] has the potential to establish a foundation for effective corporate responsibility in cases of human rights violations under international law and pave the way for the evolution of customary law regarding corporate complicity in such abuses. It could also have a pivotal role

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[210] Velásquez Rodríquez v Honduras 1988, paras 164, 172.
[211] ibid.
[212] United Nations, General Assembly 2014.

in advancing the integration of human rights due diligence for companies. Corporations have a prevailing expectation, or in case of a new Treaty on Business and Human Rights, even a responsibility, to evaluate the possible human rights risks on their actions.

What was also discussed about regarding internet-based companies' responsibility was the problem of competing interests. When comparing internet businesses to states, there are lots of similarities that can be found when thinking about the power structures. Even the most powerful states are relying on international organizations what comes to international standards and rules in certain areas and the benefits of such cooperation have been pointed out by international relations theorists. Without this participation, powerful states may lose out on the potential benefits of international institutions and risk isolating themselves.[213] States are participating in the work of international organizations, so why shouldn't the companies show the same willingness in terms of cooperation? If the states could lose out potential benefits or even be excluded from the international community when failing to cooperate with IO's, the companies should be facing the same consequences. Therefore, the attitudes towards IO – private sector cooperation should be something similar to states. As it is more about attitudes than legislation, this can only be done by raising awareness. I hope that this thesis did its work at least in this respect, and that it was able to prove that the passivity and unwillingness of online companies to actively cooperate and prevent human trafficking crimes is unacceptable.

One of the main notions in this thesis, and it can't be emphasized enough, is the need for international cooperation because the problem of online human trafficking is impossible to solve in a vacuum. Based on all the above, we can conclude from the responsibility of different international actors that it always requires situational analysis and, in the case of states, a clear link to the violation, if the act is to be attributed to the State. Online human trafficking typically transcends national borders, making it difficult to attribute responsibility to a single state. States must cooperate and coordinate efforts to address online human trafficking and the good practices should be shared among states and organizations.[214]

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[213] Przybylski 2007, p.946.

[214] For example, according to the EU's Strategy, at the "policy and operational level, it is crucial to ensure cross-border, regional and international cooperation, for example by developing and sharing knowledge and information, and by exploiting the interoperability of information systems. Criminal networks move across borders between countries of origin, transit, and destination, while the investigation and prosecution of criminal offences falls within the competence of the Member States in their jurisdiction. Cross-border cases of THB are difficult to investigate because they require resources and coordination and good communication between the relevant authorities. Law enforcement agencies also need capabilities, tools and structured cooperation to address

As the regulation of the internet environment continues to evolve, so will the regulation of responsibility for it. That is why I am primarily in favor of a solution in which an international organization (e.g. the UNODC) would act as a supervisory body when it comes to monitoring and developing more uniform regulation regarding ISPs, online advertisement, and other online content. It goes without saying that we need more uniform approach to Internet regulation in the long run, not only to curb trafficking in human beings but all other human rights violations that the cyberspace now enables. I also find Przybylski's arguments interesting, because he suggests that "instead of regulating the internet on a nationwide basis, countries should form an international organization to regulate internet content".[215]

I agree with Przybylski, but I do not think it is very likely that the existing international organizations could currently take care of monitoring the internet environment, let alone develop a common global framework to regulate the online environment. However, an essential first step in the fight against THB would be to designate or establish a specific international organization to monitor the crimes and investigate different manifestations of THB in the cyberspace. Such an organization could first and foremost promote a dialogue between states, foreign ISPs and international online companies and thus it would be easier to monitor and keep up with technological development. In order to make this type of arrangement function in the most ideal way possible, it will require an active involvement of online companies, since it would facilitate the work of the monitoring organ, as it could allow states to implement their national preferences what comes to Internet regulation.

Although I am strongly in favor of a monitoring organization to improve the effectiveness of monitoring online THB, I would add that state-led legal frameworks, which also have some obligatory compliance regimes, are necessary. OSCE's report argues that excessive differences in national practices can lead to a fragmented system that is hard for the companies to comply with, and even worse, it can create so called "safe havens" for perpetrators. Existing and proven systems could serve as models for other countries or as a basis for broader international standards. They could also confirm that regulatory frameworks are proper way of governing online platforms in the context of THB and exploitation.[216]

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the digital practices of human traffickers" See; Communication from the Commission to the European Parliament 2021, p.4.

[215] Przybylski 2007, p.942.

[216] OSCE 2022, p.54.

Nevertheless, with regard to the very pro-technology approach in this master's thesis, it is not my intention to argue or prove that technology can be used to transfer all anti-trafficking work to technology. My intention is also to highlight the role of human surveillance in the fight against THB and specifically in a way that technology would support human surveillance, thus making the already existing anti-trafficking surveillance even more effective. If monitoring control were entrusted solely to artificial intelligence, this would remove the burden of work on a person, but it would not be proven to be a sufficient means of fighting human trafficking alone[217]. One of the most significant limitations to this thesis was that there are a lot of ethical problems associated with using technology tools, OSINT and AI in particular, and that the regulation of technology is constantly evolving.

As a law student, I may not have been able to take into account, for example, all essential concepts in sociology or engineering, which would have been useful for this research -perhaps even more useful than the concepts I chose to focus on. I hope, however, that my thesis provoked a lot of thought in students who have had no contact with law or even with topics related to trafficking in human beings. Indeed, one of my greatest insights was that the problems of the future, and I am not just talking about the problems of human trafficking, will increasingly require interdisciplinary dialogue and cooperation. I will be very happy if my thesis inspires a student in another field to go into more detail about such question that I was not able to go into any greater detail because of my own limitations.

Since trafficking in human beings is a large-scale and organized crime, it would be naïve to assume that the work against it would be easy and ambiguous. On the contrary, the work against human trafficking should be even more organized than the crime itself. Although we are far from having a systematic, global, and fully functioning anti-trafficking mechanism, and although it is hard to change the legislation when there are so many actors with their own special interest, at least we can start by strengthening the existing legislation on the international law level, since the crimes are on the scale that national laws are insufficient to respond. Also, far too many variables and technologies are processing way faster than we can think of solutions, but here we can start by focusing on a few potential and safe technologies solely, perhaps OSINT and AI, and see how they could reform the fight against human trafficking as we know it today.

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[217] According to the OSCE:" automated monitoring is not a perfect, stand-alone solution" OSCE 2022, p.15.