

The question:

From chattel slavery to ‘modern slavery’: The role for human dignity in the struggle against contemporary forms of human exploitation

Introduced by Silvia Borelli and Maria Chiara Vitucci

The eradication of slavery, forced labour and other forms of exploitation of humans by humans has been on the international agenda for well over a century. Indeed, 2019 marks the centenary of both the creation of the International Labour Organisation (ILO), founded, inter alia, on the premise that ‘all human beings […] have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity […]’, and the adoption of the Convention of St Germain-en-Laye, in which the victors of World War I undertook to ‘endeavour to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea’ in the African territories under their control.¹

Thereafter, the 20th century saw the adoption of several other international instruments aimed at eliminating slavery and so-called slavery-like practices, notably the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted under the auspices of the League of Nations and the United Nations, respectively.² In a parallel development, international agreements for the abolition of forced and compulsory labour were adopted under the auspices of the

² Slavery Convention (Geneva, 25 September 1926) 60 LNTS 253; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Geneva, 7 September 1956) 266 UNTS 3.
International Labour Organisation (ILO), namely the 1930 Forced Labour Convention and the 1957 Convention on the Abolition of Forced Labour. In addition to those specialised treaties, all human rights and international humanitarian law instruments of general scope contain prohibitions of slavery, servitude and forced labour, which are applicable both in times of peace and in international and non-international armed conflict.

Whilst those instruments still represent the cornerstones of the international framework against slavery and forced labour, the first decades of the 21st century have seen the adoption of a further set of instruments aimed at tackling human trafficking and dealing with those ‘emerging’ forms of exploitation which are often grouped together under the shorthand of ‘modern slavery’, ‘new forms of slavery’ or ‘contemporary slavery’. Those instruments include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the 2000 United Nations Convention on Transnational Organized Crime, and, at the European level, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings and the 2011 EU Anti-trafficking Directive. Also of note is the 2014 Protocol to the 1930 Forced Labour Convention, aimed at ‘addressing gaps in the implementation’ of the Convention by providing specific guidance on effective measures to be taken to eliminate all forms of forced or compulsory labour. The Protocol entered into force in 2016, although with several States postponing its full implementation to 2020; therefore its impact still remains to be assessed.

In addition to these binding texts, and the corresponding customary prohibitions of slavery and forced labour, a wealth of other soft-law

---


4 Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16 May 2005) CETS No 197.


instruments, declarations and reports adopted in recent years attest to the continued international focus on the eradication of slavery and other forms of exploitation. For instance, a commitment to take ‘immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking’ is contained in the United Nations’ Sustainable Development Goals,\(^8\) whilst in its Centenary Declaration for the Future of Work, the ILO reiterated the need to continue to direct its efforts towards ‘eradicating forced and child labour and promoting decent work for all and fostering cross-border cooperation, including in areas or sectors of high international integration’.\(^9\) The work of the Special Rapporteur on contemporary forms of slavery and the 2012 Bellagio-Harvard Guidelines on the Legal Parameters of Slavery also bear testimony to the fact that many legal aspects remain unclear or unresolved, both as regards definitional matters and as to the mechanisms best suited to eradicate contemporary forms of slavery and forced labour.

Notwithstanding the existence of this wealth of relatively detailed rules at the international level, and the extensive standard-setting and monitoring activities undertaken by global and regional international organisations, the most recent report produced by the ILO on the dimensions of the phenomenon estimates that over 40 million people were in a situation of modern slavery in 2016, including almost 25 million people in forced labour.\(^10\)

As with any human rights issue, the role played by national legal systems, both individually and in cooperation with each other, is crucial. The existence of effective domestic provisions criminalising various forms of exploitation is clearly essential in order to give some real teeth to the relevant international prohibitions. Most States have within their domestic criminal law a prohibition of slavery; however, the way in which the relevant criminal offences are defined is not necessarily apt to deal

---

\(^8\) UN Sustainable Development Goals, Goal 8, Target 8.7 available at <www.un.org/sustainabledevelopment/economic-growth>.


\(\)
with new forms of exploitation. In the last decade, a number of States, having taken note of the problem, and in implementation of their international obligations, have adopted legislation criminalising human trafficking and other forms of exploitation.¹¹

Apart from these notable exceptions, in a number of States the only way to prosecute those involved in such practices remains to try to make them ‘fit’ within either the classical definition of slavery as characterised by the exercise of ‘any or all of the powers attaching to the right of ownership’, or one of the other slavery-like practices listed in the 1956 Supplementary Convention. Whilst domestic courts (and international courts and tribunals) have been particularly alert to the need to interpret that definition in a flexible manner so as to encompass forms of exploitations which may not have been envisaged by the drafters of those instruments, some authors have been critical of the ‘watering down’ of the notion of slavery, which, in their view, risks trivialising one of the oldest and most widely supported norms of modern international law.¹²

QIL asked Silvia Scarpa, who has considered these questions extensively in her research, including in a study on contemporary forms of slavery commissioned by the European Parliament; and Pasquale De Sena, a scholar who has over the last few years studied the implications and possible uses of the concept of human dignity in international law, to advance some thoughts on the best approaches for tackling new forms of exploitation. The two authors chose different perspectives.

De Sena focuses his contribution on the pivotal role that the notion of ‘human dignity’ may play in the suppression of new forms of slavery. He suggests that human dignity should be regarded as a general principle of human rights law which can be – and indeed has been – used in order to bring forms of exploitation which do not involve an element of ownership over the individual within the scope of the prohibition of slavery.

Scarpa, while not denying that the concept of human dignity might serve certain purposes, highlights the ‘conceptual unclarity’ surrounding the umbrella notion of ‘modern slavery’, and argues that additional actions are needed in order to ensure that the international legal system is

¹¹ See, eg, the UK Modern Slavery Act 2015.

effectively equipped to deal with contemporary forms of exploitation. In this regard, she makes the case, first, for a renewed focus on the scope of the existing and long-established norm prohibiting slavery under customary international law; in addition, she emphasises the lack of clear content of the notion of ‘contemporary forms of slavery’, the need for care in evaluating the relevant international practice and *opinio juris* in assessing the existence of a prohibition in this regard, and the importance of not diluting the legal definition of the offence. Lastly, she proposes the adoption of a new treaty on contemporary forms of slavery with the aim of filling any existing loopholes through black letter international obligations.

The two opinions show the richness of the debate in Europe and the multiple possible perspectives which exist, and eloquently illustrate the difficulties in finding the most effective way to better tackle old and emerging forms of exploitation.