Conceptual unclarity, human dignity and contemporary forms of slavery: An appraisal and some proposals

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1. *Introduction*

The aim of this article is twofold: first, it analyses the international concept of human dignity and assesses the role it might play in the field of contemporary forms of slavery; second, it formulates some proposals for redirecting the debate on the relevant international legal definitions in this field. The article argues that the operationalization of the concept of dignity as a general principle of law relevant to the suppression of contemporary forms of slavery might serve certain legal purposes that are examined in this study. However, a number of additional actions would be needed in order to clear the muddy waters in the field of 'contemporary forms of slavery'. As recently recognized by the present author in a Report requested by the Sub-Committee on Human Rights of the European Parliament, the concept of 'contemporary forms of slavery' – as well as similar concepts, such as modern forms of slavery, modern slavery, and contemporary slavery – is frequently used as a non-legal umbrella term, covering multiple exploitative practices 'while avoiding a careful scrutiny on whether or not they fit the legal concept of slavery as defined by the outdated 1926 Slavery Convention or those of some others exploitative practices defined under international treaty law'.[1]

Such actions include, first, assessing the existence under international customary law of a minimum core of practices constituting 'contemporary forms of slavery', second, redirecting the focus on the interpretation of the peremptory (*jus cogens*) norm prohibiting slavery, which so far has

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[1] S Scarpa, 'Contemporary Forms of Slavery' (European Union 2018) 14 <www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO_STU(2018)603470_EN.pdf >.

not received adequate attention by international law scholars who have instead dedicated much attention to interpreting the definition of slavery included in the 1926 Slavery Convention, and, third, promoting the adoption of a new treaty on contemporary forms of slavery that would fill in any remaining loopholes.

2. *The concept of human dignity and its international legal roots*

The concept of human dignity can be examined from, at the very least, ethical, political, philosophical and legal points of view. The analysis that follows does not claim to be comprehensive and will only focus on the international legal dimensions of the issue. As a legal principle, human dignity has been widely used in a number of international legal standards and an extensive body of jurisprudence – at the international, regional and national level – relies on it. Consequently, a relevant number of studies have been dedicated to it. At a general level, scholars who have studied the notion/concept of human dignity can be divided into two schools of thought: on the one hand, those who are critical of the use in international and national legal discourse of the concept of human dignity because of the difficulties in identifying its definitional boundaries, as well as in clarifying its scope and nature, and, on the other, those who have made an attempt to clarify and identify these basic features as a prerequisite for being able to rely on the concept. Among the scholars belonging to the former group, it is interesting to note that Rosen believes that there is 'a great deal of disagreement and sheer confusion' as to the concept of human dignity,[2] Schachter claims that its 'intrinsic meaning has been left to intuitive understanding',[3] Luban emphasizes that it 'is a vague and multiply ambiguous concept',[4] Staffen and Arshakyan consider it 'amorphous and metaphysical',[5] whilst Meltzer Henry even concludes that there is a certain degree of 'conceptual chaos' in the literature

[2] M Rosen, *Dignity: its History and Meaning* (Harvard UP 2012) 67.

[3] O Schachter, 'Human Dignity as a Normative Concept' (1983) 77AJIL 848, 849.

[4] D Luban, 'Human Rights Pragmatism and Human Dignity' in R Cruft, M Liao, M Renzo (eds), *Philosophical Foundations of Human Rights* (OUP 2015) 274.

[5] MR Staffen, M Arshakyan, 'About the Principle of Dignity: Philosophical Foundations and Legal Aspects' (2017) 75 Sequência 43, 44 <www.scielo.br/pdf/seq/n75/0101-9562-seq-75-00043.pdf>.

theorizing the meaning of human dignity.[6] Indeed, an interesting range of opinions exists in the other school of thought, focused on understanding 'whether human dignity is a basis for all human rights, whether it is [a] general principle of law, whether it is directly applicable subjective right or [whether] it serves as an interpretive tool assisting judges in their endeavour to solve constitutional value conflicts'.[7] Pasquale De Sena aligns himself with this second group and proposes the use of the concept of human dignity as a general principle of law and as a 'minimum standard to be observed for the treatment of individuals'.[8]

As a way to give the concept of dignity a sound legal meaning, De Sena relies on McCrudden's theory, which considers *inter alia* that consensus on the meaning of the concept of human dignity exists at least for a 'minimum core'[9] and emphasises that:

> 'This basic minimum content [of the principle] seems to have at least three elements. … The first is that every human being possesses an intrinsic worth, merely by being human. The second is that this intrinsic worth should be recognized and respected by others, and some forms of treatment by others are inconsistent with, or required by, respect for this intrinsic worth. The first element is what might be called the 'ontological' claim; the second might be called the 'relational' claim. The human rights texts have gone further and supplemented the relational element of the minimum core by supplying a third element regarding the relationship between the state and the individual. This is the claim that recognizing the intrinsic worth of the individual requires that the state should be seen to exist for the sake of the individual human being, and not vice versa (the limited-state claim).'[10]

[6] L Meltzer Henry, 'The Jurisprudence of Dignity' (2011) 160 U Pennsylvania L Rev 169, 176.

[7] MR Staffen, M Arshakyan, 'About the Principle of Dignity: Philosophical Foundations and Legal Aspects' (2017) 75 Sequência 43, 44 <www.scielo.br/pdf/seq/n75/0101-9562-seq-75-00043.pdf >.

[8] P De Sena, 'Slaveries and New Slaveries: Which Role for Human Dignity' (2019) 64 QIL-Questions Intl L 7, 10 and 12. While De Sena refers to 'slaveries' and 'new slaveries' in his article, these terms are uncommon in international law; therefore, the author opts for the more traditional reference to 'contemporary forms of slavery'.

[9] C McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19 European J Intl L 655, 679.

[10] ibid 679.

De Sena further supports this view by claiming that the roots of this core concept of human dignity are to be found: on the one hand, in a provision of international humanitarian law – namely, Common Article 3, para 1 of the four 1949 Geneva Conventions[11] – and, on the other, in the 'tendency to consider respect for dignity as the legal ground for both the ban on torture and cruel and degrading treatment and that of slavery' in international human rights law.[12] While it is agreed here that the principle of human dignity might provide a certain level of guidance when dealing with contemporary forms of slavery, it is nonetheless clear that this role should not be overestimated for the following reasons. First of all, the concept may be used with a certain degree of vagueness when supporting different claims. It is undoubtedly significant that, after the end of the Second World War and the Holocaust, the Preambles of both the 1945 Charter of the United Nations (UN) and 1948 Universal Declaration of Human Rights (UDHR) reaffirm 'faith … in the dignity and worth of the human person'.[13] However, the UDHR – which expressly refers to human dignity in Articles 22 and 23(3) – also uses the concept of human dignity to enhance the protection of economic, social and cultural rights and, in particular, the right to a 'just and favourable' remuneration. De Sena recognizes in this respect that the lack of a definition of the concept of dignity was fundamental for reconciling 'different political stances'.[14]

Second, it is worth noting that the concept of human dignity is not only used in the two above-mentioned branches of international law, namely international humanitarian law and international human right law, but also in others, such as international criminal law, and

[11] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 art 3; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 art 3; Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 art 3; Geneva Convention Relative to the Protection of Civilian Persons in Times of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 art 3.

[12] De Sena (n 8) 11.

[13] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) Preamble.

[14] De Sena (n 8) 8.

international slavery, trafficking and labour laws, so that its *contours* – in light of the possibility of fragmentation in international law[15] and the politicization of the notion – might be difficult to trace and to universalize in a manner going beyond the boundaries of particular sub-areas of international law.

Moreover, dignity is considered as a general principle of law in EU law[16] and it is assigned a very special place in the Charter of Fundamental Rights of the European Union. Interestingly enough, the EU Charter considers dignity as a value in its Preamble – together with freedom, equality and solidarity – and dedicates to it the first Title, containing five articles. Article 1 of the Charter is dedicated to dignity, which is considered 'inviolable' and 'must be respected and protected'. The other four provisions included in the Title are Article 2 on the right to life, Article 3 on the right to integrity of the person, Article 4 on the prohibition of torture and inhuman or degrading treatment or punishment and Article 5 on the prohibition of slavery, servitude, trafficking in human beings, and forced labour. In contrast to Article 4 of the European Convention on Human Rights (ECHR), the latter provision refers to human trafficking, which was derived by the drafters of the Charter directly from the principle of human dignity.[17] Human dignity thus constitutes the legal ground for the inclusion of a reference to human trafficking in Article 5 of the EU Charter of Fundamental Rights.

However, it should be noted that the concept of human trafficking - whose (much criticized)[18] first definition was introduced in international

[15] See: Study Group of the International Law Commission, 'Report on the Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' UN Doc A/CN.4/L.702 (18 July 2006) <https://legal.un.org/ilc/documentation/english/a_cn4_l702.pdf>. However, see as well Anne Peters' article with a proposal to bury the 'f' word and to favour harmonization and integration within international law: A Peters 'The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization' (2017) 15/3 ICON 671, 671 <www.mpil.de/files/pdf5/Peters_Refinement_of_IL1.pdf >.

[16] Case C–36/02 *Omega Spielhallen und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn* [2004] ECR I–9609 para 34.

[17] Praesidium, *Draft Charter of Fundamental Rights of the European Union – Text of the explanations relating to the complete text of the Charter as set out in CHARTE 4487/00 CONVENT 50, Doc. CHARTE 4473/00* (European Union 2000) (EU Charter of Fundamental Rights) 7-8 <www.europarl.europa.eu/charter/pdf/04473_en.pdf >.

[18] See: P Kotiswaran, *Revisiting the Law and Governance of Trafficking, Forced Labour and Modern Slavery* (CUP 2017); S Scarpa, 'The Definition of Trafficking in Adult

treaty law by the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children[19] annexed to the United Nations Convention against Transnational Organized Crime[20] – hides a profound disagreement among States and other relevant actors of the international community on the dichotomy between prostitution versus the exploitation of the prostitution of others and other forms of sexual exploitation.[21] In this respect, it is interesting to note the manner in which the concept of dignity is used in the Preamble of the treaty that preceded the adoption of the Trafficking Protocol, namely the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others as follows:

> '… prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.'[22]

Overall, the 1949 Convention adopts an abolitionist model against prostitution, even if there are some inconsistencies between its title, preamble and text: the title refers only to the traffic in persons and the exploitation of the prostitution of others, the preamble acknowledges that both prostitution and the traffic in persons for the purpose of prostitution are incompatible with human dignity whilst, finally, the text refers to prostitution as the form of exploitation connected with the traffic in

Persons for various Forms of Exploitation and the Issue of Consent: A Framework Approach that Respects Peculiarities' (2013) 1 Groningen J Intl L 154 <https://ugp.rug.nl/GROJIL/article/view/31137/28444 >; S Scarpa, 'UN Palermo Trafficking Protocol Eighteen Years On: A Critique' in J Winterdyk, J Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Springer International Publishing 2020) 623-640.

[19] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (adopted 15 November 2000, entered into force 29 September 2003) 2237 UNTS 319 (UN Trafficking Protocol).

[20] Convention against Transnational Organized Crime (adopted 15 November 2000, entered into forced 29 September 2003) 2225 UNTS 209.

[21] On the drafting history of the Protocol and this disagreement, see: S Scarpa, *Trafficking in Human Beings: Modern Slavery* (OUP 2008) 59-62.

[22] Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted on 2 December 1949, entered into forced on 25 July 1951) 96 UNTS 271 (Traffic in Persons Convention) Preamble <www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>.

persons. However, the passage from the preamble quoted above demonstrates how the concept of human dignity is used, at least in that part of the Convention, to promote a moral condemnation of prostitution. The Convention is in fact the first attempt to consider the issue of prostitution as a matter of international law and not of domestic jurisdiction. This issue will also be discussed *infra* in section 3, while presenting the dissenting opinion of Judge Koskelo of the European Court of Human Rights (ECtHR) in *S.M. v Croatia*.

Moreover, within international humanitarian law, 'outrages upon personal dignity, in particular humiliating and degrading treatment' are prohibited not only by Common Article 3, para 1, of the 1949 Geneva Conventions, but also by Article 75, para. 2(b) of Additional Protocol I, which also contains a reference to enforced prostitution and to any form of indecent assault,[23] and Article 4 of Additional Protocol II, which also includes rape.[24] The statutes of various *ad hoc* international criminal tribunals and of the International Criminal Court (ICC) include similar references, thus considering 'outrages upon personal dignity, in particular humiliating and degrading treatment' as acts which may, under certain circumstances, constitute war crimes. In this respect, it is impossible to take stock of all the relevant jurisprudence in this short study. However, two judgements of the Special Court for Sierra Leone (SCSL) stand out for their relevance and deserve to be mentioned. The first is *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu*, in which Trial Chamber II discussed the crime of outrages upon personal dignity, concluding that its formulation allows for a 'broad and flexible' interpretation, with the list of offences subsumed under this crime being non-exhaustive.[25] Moreover, in *Prosecutor v Charles Gankay Taylor*, the

[23] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted on 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Additional Protocol I) <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470 >.

[24] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted on 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (Additional Protocol II) <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD575D47CA6C8C12563CD0051E783 >.

[25] SCSL, *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (the AFRC Accused)* SCSL-04-16-T (Judgment, 20 June 2007) <www.refworld.org/cases,SCSL,467fba742.html >.

Trial Chamber stated that 'sexual slavery including the abduction of women and girls as "bush wives", a conjugal form of sexual slavery, is humiliating and degrading to its victims and constitutes a serious attack on human dignity, falling within the scope of outrages upon personal dignity', thus constituting a war crime under Article 3 of the Statute of the Court.[26] However, while on the one hand the concept of human dignity might lend itself well to being interpreted in a way that includes relevant contemporary forms of slavery, on the other it is important to emphasize that such flexibility must be used in full respect of the principle *nullum crimen sine lege* (principle of legality).

In addition, in international human rights law the concept of human dignity has been widely used to support the promotion of a multitude of human rights and is not specific to the prohibitions of torture and inhuman and degrading treatment or punishment and of slavery. In this respect, McCrudden identifies in his study a long list of human rights that either in international legal texts or in interpretations provided in the jurisprudence of a multitude of national and international courts are closely connected with the concept of human dignity. By way of example, it suffices here to refer to the significant conclusion reached by the ECtHR in *Pretty v United Kingdom* that 'The very essence of the Convention is respect for human dignity and human freedom.'[27] The African human rights system, however, provides support for De Sena's conclusion, since Article 5 of the African Charter of Human and Peoples' Rights includes both the right to the respect for human dignity and prohibitions of slavery, torture and cruel, inhuman or degrading treatment or punishment.[28]

Finally, human dignity is often used in conjunction with other relevant principles, including *inter alia* equality, the protection of human rights and fundamental freedoms and the integrity of the human being.[29] While the jurisprudence of the ECtHR discussed in the following section provides evidence of this issue, it is also worth noting here – by way of

[26] SCSL, *Prosecutor v Charles Gankay Taylor*, Case no SCSL-03-01-T (Judgement, 18 May 2012) para 432 <www.rscsl.org/Documents/Decisions/Taylor/1283/SCSL-03-01-T-1283.pdf >.

[27] See: *Pretty v United Kingdom* App no 2346/02 (ECtHR, 29 April 2002) para 65.

[28] African Charter on Human and Peoples Rights (adopted on 27 June 1981, entered into force on 21 October 1986) 1520 UNTS 218 <https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf>.

[29] See below Section 3.

example – that the Preamble of the 2014 Protocol to the 1930 Forced Labour Convention considers that forced and compulsory labour violates both human rights and human dignity.[30]

3. *Does the concept of human dignity play a special role in the jurisprudence on Article 4 ECHR?*

This section examines the jurisprudence of the ECtHR in order to understand whether the concept of human dignity plays a special role in judgements on Article 4 ECHR.[31] The ECtHR considers that – together with Article 2 ECHR on the right to life and Article 3 ECHR on the prohibition of torture and other inhuman and degrading treatment – Article 4 ECHR containing the prohibitions of slavery, servitude and forced and compulsory labour enshrines one of the fundamental values common to democratic societies.[32]

The case of Ms Siwa-Akofa Siliadin was the first in which the ECtHR found itself confronted with a request to examine not only Article 4(2) and (3) on forced and compulsory labour but also Article 4(1) on the prohibition of slavery and servitude. Indeed, in this case the Court's references to human dignity are scarce. The Court referred in particular to the differing positions of the parties as to whether Ms Siliadin's working and living conditions were (in)compatible with human dignity,[33] given that one of the two relevant provisions of the French legislation under which the domestic criminal proceedings had been brought – Article 225-14 of the French Criminal Code, in both the version existing before a 2003 amendment and after this change – referred to respect for dignity as a way to criminalise relevant forms of exploitation of labour.[34] Indeed, it is worth remembering that - notwithstanding ratification by France of,

[30] Protocol of 2014 to the Forced Labour Convention, 1930 (adopted on 28 May 2014, entered into force 9 November 2016) <www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029>.

[31] De Sena optimistically concludes that 'it is precisely by having recourse to dignity that … the bans on slavery and forced labour … have been extended to factual hypotheses which are not expressly covered by the corresponding rules'. See De Sena (n 8) 11.

[32] *Siliadin v France*, App no 73316/01 (ECtHR, 26 October 2005) para 112.

[33] ibid para 25.

[34] Both versions of art 225-14 of the French Criminal Code are available at: Legislationline <www.legislationline.org/documents/section/criminal-codes/country/30/France/show >.

inter alia, the 1926 Slavery Convention,[35] the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,[36] and of the International Covenant on Civil and Political Rights[37] - at the time when Ms Siliadin denounced her exploiters, Mr and Mrs B, and domestic criminal proceedings were initiated, the country did not have effective legislation in place prohibiting slavery and servitude, since neither was classified as a criminal offence under French criminal law.[38] Moreover, Mr and Mrs B were not convicted and the provisions of the Criminal Code applied by the French courts were open to differing interpretations. This was demonstrated by the fact that the case of Ms Siliadin had been considered by the joint taskforce of the French National Assembly on the various forms of modern slavery as an example in which a court of appeal had refused to apply *inter alia* Article 225-14 of the Criminal Code, because the working and living conditions in which the complainant had been kept were not considered by the judicial body to be incompatible with human dignity.[39] Moreover, the ECtHR placed particular importance on the fact that Ms Siliadin was a minor and that 'children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity'.[40] Thus, it would appear that, instead of dignity, the core value that the ECtHR used in this case was that of 'personal integrity', which – according to the judges – might be of particular relevance for minors and other vulnerable individuals.[41]

[35] France ratified the 1926 Slavery Convention on 28 March 1931. See: United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-3&chapter=18&clang=_en>.

[36] France ratified the on 26 May 1964. See: United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=_en>.

[37] France acceded to the ICCPR on 4 November 1980. See: United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en>.

[38] *Siliadin* (n 32) para 141.

[39] ibid paras 147 and 40.

[40] ibid para 143.

[41] While the concept of 'personal integrity' has not yet received the same attention as the one of human dignity, it is equally difficult to identify its definitional contours in the ECtHR jurisprudence. In *Siliadin v France*, the ECtHR referred to personal integrity to emphasise the lack of an appropriate criminal law framework that would have guaranteed

Even if the link between the concept of human dignity and servitude as being the condition in which the ECtHR believed that Ms Siliadin had been kept cannot be inferred from the above-mentioned facts, it is worth remembering that the case positively attempted to provide a definition of the concept of servitude as being 'an obligation to provide one's services that is imposed by the use of coercion', and noted that it 'is to be linked with the concept of "slavery".'[42] As already noted elsewhere, it is instead regrettable that the Court interpreted the concept of slavery as implying a 'genuine right of legal ownership'[43] and that it did not comment on the situation of Ms Siliadin, a victim of transnational child trafficking, who had been brought from Togo to France by Mrs D, who first exploited her in domestic work and subsequently 'lent' her to Mr and Mrs B.[44] Indeed, the facts of the case clearly indicate the presence of the relevant elements included in both the definition of child trafficking contained in the 2000 Protocol on Trafficking in Persons[45] and of *de facto* slavery through the exercise of 'any or all of the powers attaching to the right of ownership' as indicated by Article 1(1) of the 1926 Slavery Convention,

an 'effective deterrence […] against such serious breaches of personal integrity'. The Court also referred to previous jurisprudence on art 8 ECHR – *X and Y v The Netherlands*, App no 8978/80 (ECtHR, 26 April 1985) and *Stubbings and Others v The United Kingdom*, App no 22083/93 and 22095/93 (ECtHR, 20 October 1996) – and art 3 ECHR – *A. v The United Kingdom*, App no 100/1997/884/1096 (ECtHR, 23 September 1998) – as well as arts 19 (on protection from forms of abuse and neglect) and 37 (on torture, and other cruel, inhuman or degrading treatment or punishment and deprivation of liberty) of the Convention on the Rights of the Child. See *Siliadin* (n 32) para 81.

[42] *Siliadin* (n 32) para 124.

[43] ibid para 122. The interpretation of this definition has generated much controversy among international legal scholars. There is general agreement that the definition of slavery applies not only to *de jure* slavery but also to *de facto* slavery, thus justifying the reference in the text to both the status and conditions of individuals. However, disagreement exists on whether such a definition of slavery covers all or only some of the contemporary exploitative practices that exist today in the world. See: S Scarpa, 'The Nebulous Definition of Slavery: Legal versus Sociological Definitions of Slavery' in J Winterdyk, J Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Springer International Publishing 2020) 131-144.

[44] The section of the judgment dedicated to the facts recognizes this element. See: *Siliadin* (n 32) para 12.

[45] Art 3(c) of the UN Trafficking Protocol defines child trafficking as 'The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation'. According to art 3(d) of the Protocol, a child is 'any person under eighteen years of age'.

including in this specific case the lending of a person for domestic services.[46]

With regard to another judgement of the ECtHR, namely *Rantsev v Russia and Cyprus*,[47] while the principle of human dignity did play a role in guiding the ECtHR's reasoning, it is also to be acknowledged that it was not the only one. The Court concluded that:

> 'There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention in light of present-day conditions, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes "slavery", "servitude" or "forced and compulsory labour". Instead, the Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.'[48]

Therefore, in addition to the consideration that human trafficking violates human dignity, as well as fundamental freedoms - both considered as fundamental principles and values existing in democratic societies - other relevant elements identified in the judgement are: the consideration that the ECHR is to be interpreted in light of present-day conditions, that it is a living instrument and international anti-trafficking legislation existence at the relevant time – with references to, *inter alia*, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[49] the 2000 Protocol on Trafficking in Persons and the Council of Europe Convention on Action against Trafficking in Human Beings.[50]

The Court subsequently reached similar conclusions in *Chowdury and Others v Greece*,[51] *L.E. v Greece*[52] and *S.M. v Croatia*.[53] It is worth

[46] See: Scarpa (n 21) 140-141.
[47] *Rantsev v Russia and Cyprus*, App no 25965/04 (ECtHR, 7 January 2010).
[48] ibid para 282.
[49] ibid paras 147-148 and 282.
[50] ibid paras 160-174.
[51] *Chowdury and Others v Greece*, App no 21884/15 (ECtHR, 30 March 2017) para 93.
[52] *L.E. v Greece*, App no 71545/12 (ECtHR, 21 January 2016) para 58.
[53] *S.M. v Croatia*, App no 60561/14 (ECtHR, 19 July 2018) para 54.

mentioning that in the last judgement the Court broadened the scope of its reasoning so as also to include the exploitation of prostitution within the realm of the prohibition of Article 4 ECHR, without the need to classify it as either 'slavery', 'servitude' or 'forced labour'.[54] The inclusion *per se* of 'the exploitation of prostitution' within Article 4 ECHR resulted in the opposition of judge Pauliine Koskelo, who, in her dissenting opinion, criticized the Court's move in the direction of 'an enlargement of the scope of … Article [4] that is both significant and obscure.'[55] In this regard, Judge Koskelo noted that there is a general disagreement among States on the interpretation of the concept of the exploitation of prostitution.[56]

Finally, for the purpose of providing a full overview of the jurisprudence of the ECtHR on Article 4(1) ECHR and its relationship with the principle of human dignity, it is worth emphasizing the absence of any reference to the latter concept in *C.N. v United Kingdom*,[57] *C.N. and V. v France*[58] and *M. and Others v Italy and Bulgaria*.[59] Indeed, the last case only includes a clear reference to the fact that, according to the Court, racial discrimination constitutes an affront to human dignity.[60] However, it is interesting to note that in *Stummer v Austria*[61] - a case concerning the non-inclusion in old age pension schemes of prisoners who worked while in detention - the concept of human dignity was mentioned in both the Joint Partly Dissenting Opinion of Judges Tulkens, Kovler, Gyulumyan, Spielmann, Popović, Malinverni and Pardalo, who considered social

[54] ibid.

[55] *S.M. v Croatia*, App no 60561/14 (ECtHR, 19 July 2018) Dissenting Opinion of Judge Koskelo para 18.

[56] ibid paras 19-23.

[57] *C.N. v The United Kingdom*, App no 4239/08 (ECtHR, 13 November 2012). The only two references are made by the applicant and the Court to refer to *Siliadin v France* and to the French legislation relevant in that case, namely arts 225-13 and 225-14 of the French criminal code concerning exploitation through labour and subjection to working and living conditions incompatible with human dignity. However, they have no effect whatsoever on the final conclusion reached by the judges.

[58] *C.N. and V. v France*, App no 67724/09 (ECtHR, 11 October 2012).

[59] *M and Others v Italy and Bulgaria*, App no 40020/03 (ECtHR, 31 July 2012).

[60] ibid para 175.

[61] *Stummer v Austria*, App no 37452/02 (ECtHR, 7 July 2011).

security to be part of human dignity,[62] and the Partly Dissenting Opinion of Judge Tulkens, who added that equitable remuneration for prisoners subjected to forced labour is also an issue of human dignity.[63]

4. *Solving the conceptual (and other) problems in the field of 'contemporary forms of slavery': Some relevant proposals*

The 'gap-filling function'[64] supposedly performed by the principle of human dignity is, unfortunately, of limited help when the aim is to clarify the contours of the multiple overlapping legal concepts – including slavery, servitude, forced and compulsory labour, debt bondage, serfdom, sexual slavery, enslavement, the worst forms of child labour, etc. – included under the non-legal umbrella term of 'contemporary forms of slavery' and belonging to various areas of international law. It is evident that all these odious practices could easily be said to be in violation of human dignity.

Indeed, no research has so far been conducted on the possible existence of a customary rule of international law (whether at the universal or regional level) setting obligations for States in the field of 'contemporary forms of slavery'. While it is evident that a trend exists in terms of the adoption of national legislation on contemporary/modern slavery – including the United States of America's 2000 Trafficking Victims Protection Act,[65] the 2015 United Kingdom of Great Britain and Northern Ireland (UK) Modern Slavery Act 2015,[66] and the Australian Modern

[62] *Stummer v Austria*, App no 37452/02 (ECtHR, 7 July 2011) Joint Partly Dissenting Opinions of Judges Tulkens, Kovler, Gyulumyan, Spielmann, Popović, Malinverni and Pardalo para 10.

[63] *Stummer v Austria*, App no 37452/02 (ECtHR, 7 July 2011) Partly Dissenting Opinion of Judge Tulkens para 6.

[64] De Sena (n 8) 12.

[65] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, H.R. 7311, 110th Cong., 2008, <www.govtrack.us/congress/bills/110/hr7311>. Under this Act, the 2019 Trafficking in Persons Report considers 'trafficking in persons', 'human trafficking' and 'modern slavery' as synonymous concepts and labels them 'umbrella terms'. See: US Department of State, 'Trafficking in Persons Report' (US Department of State 2019) 3 <www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf >.

[66] See: <www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf>.

Slavery Act[67] – still it is considered early to conclude that any obligations might have already emerged in this way at supranational level.[68] However, it is considered likely that this might happen in the near future.

Moreover, while some international decisions and judgements adopted in the field of contemporary forms of slavery – including the decisions in *Prosecutor v Katanga* adopted by the ICC,[69] *Prosecutor v Dragoljub Kunarac et al.* of the International Criminal Tribunal for the former Yugoslavia,[70] and *Trabajadores de la Hacienda Brazil Verte v Brazil* of the Inter-American Court of Human Rights (IACtHR)[71] – set forth lists of factors that might be of help in identifying some relevant practices falling within this category, their value should not be over-estimated. It is evident that, from a legal and judicial point of view, those factors might play a function similar to that of the lists of indicators recently promoted by some global governance actors for the purpose of identifying victims of human trafficking and forced labour.[72] Similarly, the 2012 Bellagio-Harvard Guidelines on the Legal Parameters of Slavery – unanimously adopted by a group of renowned experts in this field – were adopted for the purpose of guiding the interpretation of the definition of slavery in the 1926 Convention. They include, in particular, a recommendation to interpret the exercise of 'powers attaching to the rights of ownership' as including 'control over a person in such a way as to significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit, transfer or disposal of that person

[67] See: <www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6148>.

[68] Scarpa (n 1) 15.

[69] *Situation in the Democratic Republic of The Congo in the Case of The Prosecutor v Germain Katanga*, ICC-01/04-01/07 (7 March 2014) <www.icc-cpi.int/CourtRecords/CR2015_04025.PDF >.

[70] *Prosecutor v Kunarac et al.*, Case Nos. IT-96-23 & IT-96-23/1-A (Judgment of 22 February 2001) <www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>.

[71] *Trabajadores de la Hacienda Brasil Verte v Brasil* (IACtHR, 20 October 2016).

[72] See, for instance, the ones developed by the United Nations Office on Drugs and Crime (UNODC) and by the International Labour Organization (ILO) and the European Commission on human trafficking and by the ILO on forced labour: UNODC, 'Human Trafficking Indicators' <www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf>; ILO and European Commission, 'Operational Indicators of Trafficking in Human Beings' (ILO 2009) <www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf>; ILO, 'Indicators of Forced Labour' (ILO 2012) <www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf >.

(Guideline 2), and an element of indeterminate duration of the practice of slavery in the eyes of the person subjected to it (Guideline 3).[73] However, the fact that the offence of subjection to slavery is connected with the intent of exploitation raises doubts, since this reading of the definition in the 1926 Convention adds an element that is not included in the original text.[74] Moreover, it is worth noting that some of the above-mentioned elements had already been taken into consideration in the Report on 'Abolishing Slavery and its Contemporary Forms' commissioned by the United Nations Working Group on Contemporary Forms of Slavery (UNWGCFS) and prepared by Weissbrodt and Anti-Slavery International. The Report indicated three criteria that should inform the analysis of the practices, so as to be able to assess whether they constitute modern slavery or not.[75] The three criteria are: the degree of restriction of the individual's inherent right to freedom of movement; the degree of control of the individual's personal belongings; the existence of informed consent and a full understanding of the nature of the relationship between the parties.[76]

In addition to this, it is relevant to emphasise that in *Prosecutor v Kunarac et al.*, the Trial Chamber of the International Criminal Tribunal for Former Yugoslavia (ICTY) concluded that:

> 'this [...] definition [of enslavement, as a crime against humanity for the purposes of Article 5, para. 3 of the Statute of the ICTY)] may be broader than the traditional and sometimes apparently distinct definitions of either slavery, the slave trade and servitude or forced or compulsory labour found in other areas of international law. This is evidenced in particular by the various cases from the Second World War [...], which have included forced or compulsory labour under

[73] 'Bellagio-Harvard Guidelines on the Legal Parameters of Slavery' in J Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (OUP 2012) 375.

[74] S Scarpa, 'Book Review Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (OUP 2012)' (2014) 27 Leiden J Intl L 551, 555-556; Scarpa (n 45) 7.

[75] D Weissbrodt and Anti-Slavery International, *Abolishing Slavery and Its Contemporary Forms* (United Nations 2002) <www.ohchr.org/Documents/Publications/slaveryen.pdf >.

[76] ibid 7.

> enslavement as a crime against humanity. The work of the [International Law Commission] [...] further supports this conclusion.'[77]

The ICTY Statute did not include a definition of 'enslavement' as a crime against humanity.[78] However, the Trial Chamber concluded that under international customary law in force at the time of the indictment, the concept was defined as the 'exercise of any or all of the powers attaching to the right of ownership over a person'.[79] Therefore, the ICTY emphasized the existence of a fragmented system in which the definition of enslavement under international criminal law does not necessarily correspond to that of slavery under international human rights law and the treaties relating to slavery.

Indeed, scholars have so far mostly concentrated their attention on the definition in the 1926 Slavery Convention and on its drafting history; while Allain has been the leading scholar in this respect, his methodology is defective insofar as he refers only to Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (VCLT) on the interpretation of treaties. However, according to Article 4 VCLT, the VCLT and its rules cannot be applied retroactively to treaties concluded prior to its entry into force, but still they would not infringe upon any equivalent pre-existing customary international rule; moreover, they only bind the States Parties to the VCLT. However, it should be noted that the International Court of Justice has concluded on various occasions that both Articles 31 and 32 VCLT today reflect international customary law.[80]

Consequently, on the basis of the intertemporal doctrine,[81] for the States Parties to the 1926 Slavery Convention, the definition of slavery included in this treaty should be interpreted on the basis of customary rules covering the interpretation of treaties that existed in the 1920s,

[77] *Kunarac* (n 70) para 541.

[78] Updated Statute of the International Criminal Tribunal for Ex-Yugoslavia (adopted on 25 May 1993, last amended on 7 July 2009) <www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf>.

[79] *Kunarac* (n 70) para 539.

[80] See, among others: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion 9 July 2004) [2004] ICJ Rep 136 at 174 (para 94).

[81] *The Island of Palmas/Miangas Case (United States of America v The Netherlands)*, Permanent Court of Arbitration (Award 4 April 1928) RIAA, vol II 829 at 845 <https://legal.un.org/riaa/cases/vol_II/829-871.pdf >.

when the treaty was drafted and adopted.[82] However, as reported by Cassese – who refers to a publication of Anzilotti of 1912 – no customary rules on the interpretation of treaties existed at that time, with some States preferring an approach based on subjective interpretation and others instead favouring the objective interpretation. Therefore, 'the criteria for construing treaty law were merely 'rules of logic', … or 'those very general criteria which could be inferred from the nature and character of the [international] legal order'.'[83] Consequently, the prevailing criterion was *in dubio mitio*, meaning that limitations to States' sovereignty 'must be strictly construed'.[84]

This conclusion is without prejudice to possibilities for the States Parties to the 1926 Slavery Convention, as amended by the 1953 Protocol, as well as for those that are Parties to the 1956 Supplementary Convention *inter alia*: collectively to agree that Articles 31 and 32 of the 1969 Vienna Convention on the interpretation of treaties apply retroactively; to add identical declarations on the interpretation of the definition of slavery, clarifying their views on the extent of the concept; to consider in a group of two or more the issue to be a disputed one and, therefore, after unsuccessful direct negotiations, submit it for consideration to the International Court of Justice (ICJ), in accordance with Article 8 of the 1926 Slavery Convention as amended by its 1953 Protocol, or Article 10 of the 1956 Supplementary Convention.[85]

Moreover, it is suggested that attention should be re-directed towards the contours of the peremptory norm (*jus cogens*) prohibiting slavery determined by two elements, which have so far not been accurately investigated: the *diuturnitas* and the *opinio iuris sive necessitatis*. Unfortunately, the only commendable study in this area that consistently followed such a path was drafted by Yasmine A. Rassam at the end of the 1990s; the author conducted an assessment of national laws and judicial decisions, recitals of treaties and practice within relevant organs of the UN and recognised that the evidence of *opinio iuris* and State practice led to contradictory conclusions as to the boundaries of the definition of slavery in

[82] Scarpa (n 1) 18.
[83] A Cassese, *International Law* (2nd edn OUP 2005) 178.
[84] ibid 178-179.
[85] Scarpa (n 1) 18-19.

customary international law.[86] Accordingly, Rassam resolved this ambiguity by employing principles of non-discrimination on the basis of gender and increased participation of traditionally disadvantaged groups to the benefit of international legal discourse. For this reason, Rassam believes that the customary rule of international law prohibiting slavery should be regarded as having evolved so as to include sex trafficking, forced prostitution, debt bondage, forced labour and the exploitation of immigrant domestic workers. She also recognised, however, that such an expansion should not be considered to be a 'panacea for these looming global problems'; they should instead primarily be fought by enacting (and, the present author believes, properly implementing) relevant domestic legislation, providing another chance to generate respect for the human rights of individuals belonging to these vulnerable categories.[87] Similarly, more recently Anne T. Gallagher concluded that the customary prohibition of slavery has undergone changes, which might, according to the author '*potentially* include contemporary forms of exploitation such as debt bondage and trafficking'. However, it remains unclear whether or not Gallagher took into consideration the two relevant elements of customary rules of international law in reaching this conclusion.[88]

Furthermore, given the *jus cogens* status of the prohibition of slavery under international law, if a State were to violate it, then according to Articles 40 and 41 of the Articles on Responsibility of States for Internationally Wrongful Acts adopted in 2001 by the International Law Commission (ILC), a system of aggravated responsibility and additional consequences would emerge.[89] In particular, Article 41 provides that the International Community's States shall lawfully cooperate to put an end to the violation of such a fundamental rule of international law. Additionally, they shall refrain not only from recognising as lawful the situation generated by the wrongful act, but also from aiding the responsible State in permitting the continuance of such a situation. These conclusions are

[86] YA Rassam, 'Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law' (1998-1999) 39 Virginia J Intl L 342.

[87] ibid 351-352.

[88] AT Gallagher, *The International Law of Human Trafficking* (CUP 2010) 190-191.

[89] International Law Commission, *Responsibility of States for International Wrongful Acts* (United Nations 2001) <http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf>.

very much pertinent if one considers the recent 'slave auctions' that took place in Libya from November 2017[90]; this case would certainly and perfectly be fit for classification as slave trade and slavery, but it would hardly meet requirements for the other two regimes of forced labour and human trafficking.[91]

Finally, an issue that would deserve further consideration is the relationship between the sociological concept of 'contemporary forms of slavery' and the international legal concept of 'slavery'. In this respect, some scholars have expressed the fear that the international legal concept of slavery, if conflated – as is done by some global governance actors – with that of *contemporary slavery*, might end up being diluted;[92] as stated by Suzanne Miers it would 'cover such a wide range of practices as to be virtually meaningless'.[93] In this case, as stated elsewhere:

> 'a tension between a victim-centred, human rights approach focused on rendering the existing framework on slavery as inclusive as possible and a criminal law approach founded on the strict legality doctrine,[94] should be noted. However, there is no agreement yet on how to solve such a dilemma.'[95]

[90] CNN correspondent Nima Elbagir posted online a video of men being sold by their smugglers. At a night-time slave auction conducted in a village close to the Libyan capital, Tripoli, a salesman shouts: '[D]oes anybody need a digger? This is a digger, a big strong man, he'll dig' and then adds '[B]ig strong boys for farm-work. 400? 700? 800?'. The auctioneer also called the migrants 'merchandise'. While Elbagir states that a dozen men were sold that night for approximately USD 400 each, it seemed that one or two slave auctions were taking place every month. The video is available at: <https://edition.cnn.com/videos/world/2017/11/29/libya-slave-trade-cnntalk-lon-orig-mkd.cnn>.

[91] Scarpa (n 1) 31-32.

[92] Scarpa (n 43); E Decaux, *Les formes contemporaines de l'esclavage* (Martinus Nijhoff 2009); R Vijeyarasa, J-M Bello y Villarino, 'Modern-Day Slavery? A Judicial Catchall for Trafficking, Slavery and Labour Exploitation: A Critique of *Tang* and *Rantsev*' (2013) 38 J Intl L Intl Relations 39.

[93] S Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem* (Altamira Press 2003) 453.

[94] The *strict liability* doctrine is founded on the principle of the *favor rei* (or, in favour of the accused) and it is opposed to the doctrine of *substantive justice*, which is instead based on the principle of the *favor societatis* (or, in favour of society). The *strict liability* doctrine is founded on four basic rules, including: the principle *nullum crimen sine lege scripta* (or, criminal offences must be spelled out in written law), the principle of specificity, and the prohibitions of retroactive application of criminal law and of the use of analogy. See: A Cassese, *International Criminal Law* (OUP 2008) 36-52.

[95] Scarpa (n 1) 19.

Miers, for instance, claims that 'only a new clear definition in international law could untangle the morass, set clear standards, and allow governments to prosecute offenders, and victims to seek redress through the courts'.[96] This conclusion is not considered appropriate, on the basis that a new definition of slavery under international law is not needed.

However, the drafting of a new legal overarching human rights-based framework on contemporary forms of slavery, in which the latter concept would be defined at a minimum by making reference to a relevant core number of exploitative practices would be advisable. The new treaty could also provide an explanation of relevant concepts that have not so far been defined in international law (including, for instance, servitude) and might be used to advance human rights together with other relevant international standards (including, *inter alia*, a mandatory minimum age for marriages) and dealing with practices that might not fit clearly into the human trafficking or forced labour frameworks (such as, for instance, certain forms of child, early and forced marriages). The new treaty could also contribute to re-aligning the standards contained in the international law on slavery with those on forced labour and human trafficking. The promotion of a human rights victim-centred approach, of gender mainstreaming, child protection and non-discrimination would be fundamental. An intersectional analysis – based on gender, belongingness to specific ethnic or indigenous groups, disability, age, etc. – should be rendered mandatory as part of the identification process for victims, thus maintaining consideration of structural factors that determine contemporary forms of slavery and how they could be eliminated. A monitoring mechanism should be established ideally based on the positive example provided by the Council of Europe's Convention on Action against Trafficking in Human Beings. In addition to this, it would be important to guarantee that the new treaty is without prejudice to existing international standards in this field.[97] While drafting another treaty might bring with it numerous problems, it is also considered as the best way for eliminating loopholes within the system of international law and guaranteeing a better coordination with the existing instruments in this field. Given the difficulties surrounding the creation, proof of existence and unwritten form of customary rules of international law, drafting a treaty is

[96] Miers (n 93) 453.
[97] Scarpa (n 1) 53.

perceived as the most viable alternative for introducing new legal obligations for States. However, it must also be acknowledged that the drafting process of a new treaty might indeed be burdensome and lengthy; especially at the universal level, initially high standard levels might risk being degraded to the lowest common denominator during the negotiations, and even after adoption of the final text, sufficient ratifications by States would be necessary to guarantee the entry into force of such a new instrument.[98]

5. *Concluding remarks*

This study assessed the guiding role that might be provided by the principle of human dignity when dealing with contemporary forms of slavery. While certain elements confirm the existence of such a relationship between the principle of human dignity and contemporary forms of slavery, it is nonetheless clear that this connection should not be overestimated. The concept of human dignity may well be referred to in an unclear way while supporting different politicised claims; moreover, it is used in multiple areas of international law – including international humanitarian law, international human right law, international criminal law, and treaties concerning slavery, trafficking and labour – so that it is not always apparent whether its *contours* are clearly identifiable. In particular, in international human rights law, the concept of human dignity has not only been used to support the prohibitions of torture and inhuman and degrading treatment or punishment and of slavery, but also in conjunction with many other human rights. Additionally, the jurisprudence of the ECtHR on Article 4(1) ECHR confirms the lack of a clearly defined relationship between the concept of human dignity and some relevant forms of contemporary slavery.

Given these conclusions, this piece makes several proposals for solving the conceptual and other related problems in the field of contemporary forms of slavery. The latter concept is frequently used as a non-legal umbrella term, covering multiple exploitative practices; however, no research has been conducted so far on the possible existence of a universal or regional customary rule of international law setting obligations for

[98] ibid 33.

States in this specific area and including at least a minimum core of practices. Scholars have so far mostly concentrated their attention on the definition included in Article 1(1) of the 1926 Slavery Convention and on its drafting history, reaching nonetheless questionable conclusions. Therefore, it is proposed that attention should be re-directed towards studying the contours of the peremptory norm of international law prohibiting slavery to assess whether – and in what ways – the concept might have evolved in a way that would fundamentally expand the boundaries of the 1926 definition of slavery. Finally, the drafting of a new legal overarching human rights-based framework treaty on contemporary forms of slavery would fill-in eventual remaining loopholes in this field.