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The Effectiveness of the ILO's Conventions Concerning Trafficking for Forced Labour in Conflict Settings: Libya as a Case Study

Thesis presented by

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Declaration

This is to certify that the work I am submitting is my own and has not been submitted for another degree, either at University College Cork or elsewhere. All external references and sources are clearly acknowledged and identified within the contents. I have read and understood the regulations of University College Cork concerning plagiarism and intellectual property.

Nedaa Yousef

Acknowledgement

I dedicate this thesis to my husband, Nidal, who supported me throughout this journey with his love and care. To my daughter, Carmel, whose presence is the most precious thing in my life. To my family and friends. To my homeland, Palestine and its resilient people.

I would like to thank my supervisors, Dr. Dug and Prof. Aoife, without whom this thesis could not have seen the light. I appreciate their effort, dedication, and guidance throughout the journey.

To the oppressed, voiceless, and those suffering in the dark, dreaming of a more just and compassionate world. This thesis is a very humble attempt to raise the standards of international law and to develop its means of protection and security for the most vulnerable.

List of Abbreviations

UN	United Nations
ILO	International Labour Organization
ILC	International Law Commission
U.S.	United States of America
Trafficking Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
OPCAT	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
ICC	International Criminal Court
NGOs	Non-Governmental Organisations
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
Slavery Convention	Convention to Suppress the Slave Trade and Slavery
Palermo Convention	The United Nations Convention against Transnational Organised Crime
UNODC	United Nations Office on Drugs and Crime
IOM	International Organisation for Migration
UNICEF	United Nations Children's Fund
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	The Organisation for Security and Cooperation in Europe
Smuggling of Migrants Protocol	Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organised Crime
CAS	Conference Committee on the Application of Standards
ICJ	International Court of Justice
GB	The ILO Governing Body
The Office	International Labour Office
CC	Credentials Committee
CEACR	Committee of Experts on the Application of Conventions and Recommendations
COI	Commission of Inquiry
Convention No. 29	Forced Labour Convention of 1930
Convention No. 105	Abolition of Forced Labour Convention of 1957

1998 Declaration	Declaration on Fundamental Principles and Rights at Work of 1998
Convention No. 182	Convention on the Worst Forms of Child Labour
FIDH	The International Federation for Human Rights
ICFTU	International Confederation of Free Trade Unions
LRA	Lord's Resistance Army
ICMPD	International Centre for Migration Policy Development
PCA	The Peace and Conflict Analysis
NATO	North Atlantic Treaty Organisation
TNC	Transitional National Council
GNC	General National Council
HoR	House of Representatives
UNSMIL	United Nations Support Mission in Libya
GNU	Tripoli-based Government of National Unity
GNS	Government of National Stability
UPR	Universal Periodic Review
DCIM	Department for Combating Illegal Migration
RSD	Refugee Status Determination
UNHCR	United Nations High Commissioner for Refugees
GDP	Gross Domestic Product
GI-TOC	Global Initiative Against Transnational Organized Crime
ICCPR	International Covenant on Civil and Political Rights
UDHR	Universal Declaration of Human Rights
AU	African Union
ACHPR	African Charter on Human and Peoples' Rights
CAT	Convention on the Prohibition of Torture
CRC	Convention on the Rights of the Child

IHL	International Humanitarian Law
IOs	International Organisations
GCM	UN Global Compact for Safe, Orderly, and Regular Migration
INGOs	International Non-Governmental Organisations
IGOs	Inter-Governmental Organisations

Abstract

This thesis explores the concept of effectiveness in international law by examining the implementation of the International Labour Organization's (ILO) conventions relating to forced labour in conflict settings, where effectiveness is most challenged by the absence of a sovereign state in the traditional sense. It tackles Libya as a case study where armed conflict is ongoing and where different actors are at play in what contributes to a situation of legal pluralism. The thesis adopts Harold Koh's framework of transnational legal process as a means of understanding the effectiveness of international law. In particular, the thesis argues that effectiveness includes norm internalisation, in other words the law can become effective when it is internalised in the domestic realms of the state regardless of the absence of a unified sovereign authority. In Libya, where authority is dispersed among different actors, the ILO can utilise legal pluralism to contribute to norm internalisation, which would eventually lead to the law being effective. This thesis offers a theoretical innovation by expanding Harold Koh's theory of transnational legal process to conflict settings and legally pluralist contexts. Through the study of Libya, it provides empirical insights into the operation of international law in conflict setting, i.e., a stress test for effectiveness. Furthermore, it pushes forward a normative critique of the ILO by highlighting its institutional and ideological strengths and limitations.

Chapter 1: Introduction

1.1 Context and Background

Human trafficking stands as one of the most persistent violations of human rights throughout human history. The crime of trafficking in persons refers to the coercion and exploitation of an individual, either under the guise of sexual exploitation, labour exploitation or trafficking for human organs.[1] Transformations in political and cultural structures have had little effect on the elimination of human trafficking; on the contrary, the evolution of the crime has presented additional challenges to the continuous attempts to eradicate the phenomenon. The severity of human trafficking lies not only in its widespread impact and its varying contributing factors, but also in the uncertainty surrounding this phenomenon due to the high numbers of unaccounted cases of human trafficking.[2] Despite the huge efforts in recording cases of human trafficking on a global scale, the statistical approach falls short in depicting the gravity of the crime. However, recent studies have shown that the latest statistical analysis from different sources estimate around 40 million victims of human trafficking around the world.[3] One of the recent studies on the categorisation of victims of human trafficking reported a majority of female victims (>54%), reflecting the prevalence of trafficking for sexual exploitation, of which more than 54 percent reported different types of violence.[4] Meanwhile, another study conducted in 2023 revealed that forced labour was the second most common form of exploitation reported by 21 percent of all trafficked victims involved in the study.[5]

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[1] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319, art 3(a)–(b).

[2] International Organization for Migration, *Human Trafficking: New Directions for Research* (IOM 2008) https://www.iom.int/sites/g/files/tmzbdl2616/files/2018-07/human_trafficking_new_directions_for_research.pdf accessed 20 August 2025; Amy Farrell, Monica J DeLateur and Stephanie Fahy, *'Gaps in Reporting Human Trafficking Incidents Result in Significant Undercounting'* (National Institute of Justice, 4 August 2020), 2 https://nij.ojp.gov/topics/articles/gaps-reporting-human-trafficking-incidents-result-significant-undercounting accessed 20 August 2025.

[3] Alaa Al-Tammemi and others, 'Are we seeing the unseen of human trafficking? A retrospective analysis of the CTDC k-anonymized global victim of trafficking data pool in the period 2010–2020' (2023) 18 *PLOS ONE* e0284762, 2.

[4] Heidi Stöckl and others, 'Human trafficking and violence: Findings from the largest global dataset of trafficking survivors' (2021) 4 *Journal of Migration and Health* 100073, 2.

[5] Al-Tammemi and others, 'Are we seeing the unseen of human trafficking? A retrospective analysis of the CTDC k-anonymized global victim of trafficking data pool in the period 2010–2020' (n 3).

In addition to its human cost, the persistence of trafficking for forced labour weakens the credibility and effectiveness of international legal frameworks, particularly those designed to protect vulnerable populations during and after conflict. International efforts to abolish forced labour practices are frequently hindered and weakened by state fragility, legal pluralism, and normative fragmentation, conditions which are particularly acute in conflict and post-conflict environments.[6] These realities raise serious questions about how international legal norms are supposed to function when state institutions are incapable or unwilling to implement them.

In recent decades, the global community has made significant progress in improving international legal standards to combat forced labour and human trafficking. Among the primary institutional actors in this field, the International Labour Organization (ILO) has long played an important normative role in furthering labour rights and monitoring state compliance. However, despite the ILO's extensive standard-setting mechanisms, its instruments often fail to produce the desired outcomes in fragile or conflict-affected states. The deficiencies of the ILO, similar to other international organisations, lies not in the legal framework, but rather in the tools of application. For decades, the application of international law has always been a challenge, mainly due to the lack of feasible tools for applying laws and recommendations. The criticism of international legal tools expands towards a lack of trust in the concept of international law and international cooperation. Particularly, this arises in areas of conflict, where sovereign settings of governance, social cohesion and legal frameworks are interrupted. International law conventions and tools were originally designed to function between fully functional states in standard conditions of governance and control over territory. Even in the cases of occupation and military interventions, the structure of international law revolves around defining solutions involving state actors and recognised legal and executive tools. However, studies have shown that over the last century, more than two civil wars erupt on a yearly basis around the world.[7] In particular, countries from the Global South (i.e., Asian, African and Latin American countries) were found to experience higher rates of civil war eruptions during the last decades. Around 65% of active civil wars around the world

[6] Laura Grenfell, 'Legal Pluralism and the Rule of Law in Timor Leste' (2006) 19(1) *Leiden Journal of International Law* 305, 335.
[7] Barry R Posen, 'Civil Wars & the Structure of World Power' (2017) 146(4) *Daedalus* 167, 167.

take place in Islamic countries in Asia and Africa.[8] The nature of these civil wars, as explained by Walter, tend to induce deep societal divisions, leading to extended conflict durations involving multiple groups in an endless cycle of violence. This type of civil war is often noted as the "new new civil war", and it can be detected in Iraq, Syria, Yemen, Mali, Sudan, Nigeria and Libya.[9] Another aspect of this type of civil war is the rise of extremist groups, which fuel civil violence and the dissecting of states and the rule of law. In such cases, the rule of central governments is either dissipated among different actors or is diminished to small territories where the central government is still in control. In both cases, civil wars eliminate the "standard" condition of governance and legal execution, thus creating a non-standard situation of governance and legitimacy. Based on this situation, a gap rises between the standard settings upon which international law is set up, and the non-standard conditions of power dissipation and legal pluralism. This gap intensifies the lack of efficiency experienced by international organisations in terms of applying recommendations and laws. Nowhere is this gap between norm and reality more pronounced than in Libya, where conditions of legal fragmentation, political instability, and institutional collapse have rendered ILO standards largely ineffective in practice.

At the same time, this gap creates an opportunity to reconsider the very concept of legal effectiveness. What does it mean for international legal norms to be 'effective' in a state where formal governance mechanisms have collapsed? Can compliance still take place through informal channels or non-state structures? Such considerations are central to this thesis, which seeks to move beyond narrow conceptions of effectiveness as compliance with state reporting obligations, and towards a broader understanding rooted in the internalisation of international legal norms across legal, political, and social domains.[10]

The following thesis examines the effectiveness of the ILO's Forced Labour Conventions in conflict settings, with a special focus on Libya as a case study. The study adopts and builds upon Harold Koh's theory of transnational legal process to

[8] Barbara F Walter, 'The New New Civil Wars' (2021) 24 *Annual Review of Political Science* 469, 470.
[9] ibid.
[10] Harold Hongju Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (1996) 75 *Nebraska Law Review* 181.

argue that effectiveness must not be solely measured through state ratification or formal compliance, but rather through a deeper process of norm internalisation across legal, political, and social levels.[11] Within this framework, the thesis tackles compliance not as a binary metric, but as a dynamic and context-sensitive process shaped by dynamic interactions between state and non-state actors and international legal institutions.

The choice of Libya as a case study stems from the complex political and social situation that engulfs Libya's civil war and its aftermath. Libya presents a particularly instructive case: despite being a signatory to the core ILO Conventions on forced labour (Nos. 29, 105, and 182),[12] the country's fractured political landscape and widespread human rights violations, specially against migrants, indicate a profound failure to internalise these conventions.[13] However, Libya also exemplifies how legal pluralism, far from being merely a barrier, might offer a critical space through which international norms could be localised and sustained in the absence of a centralised state.[14]

1.2 Research Problem and Questions

While the ILO has invested significant normative and technical resources into the global abolition of forced labour, its approach has been predominantly geared for stable, sovereign states. In conflict settings like Libya, where competing authorities and militias rule, and donor-driven agendas predominate, such frameworks fail to engage with the political and legal complexity on the ground. For a better understanding of the ineffectiveness of the ILO's approach, it is necessary to address the gap between the theoretical framework of international law and the complexities

[11] ibid; Harold Hongju Koh, 'Review: Why Do Nations Obey International Law?' (1997) 106 *Yale Law Journal* 2599.
[12] International Labour Organization, *Ratifications for Libya* (ILO, 2024) https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103130 accessed 5 August 2025.
[13] Human Rights Council, *Report of the Independent Fact-Finding Mission on Libya*, UN Doc A/HRC/52/83 (27 March 2023).
[14] Daniel Ronald Ruhweza, *Situating the Place for Traditional Justice Mechanisms in International Criminal Justice: A Critical Analysis of the Implications of the Juba Peace Agreement on Reconciliation and Accountability* (PhD thesis, University of Kent 2016), 163. https://kar.kent.ac.uk/56646/1/172Situating%20the%20Place%20for%20Traditional%20Justice%20Mechanisms%20in%20International%20Crimi.pdf accessed 05 August 2025.

rising from conflict settings in countries such as Libya. For this reason, the thesis proposes to answer the following central research question:

> To what extent are the ILO's Forced Labour Conventions effective in conflict settings, and how can effectiveness be reconceptualised through the transnational legal process in such legally pluralist contexts?

From this, several subsidiary questions arise:

- How does Koh's theory of transnational legal process help explain the limits of formal compliance-based assessments of international law?
- In what ways does legal pluralism in Libya obstruct or facilitate the internalisation of forced labour norms?
- What role do international organisations, including the ILO and non-state actors, play in shaping behavioural change in the absence of state-centred enforcement?
- Can the ILO reform its supervisory functions to better support internalisation in conflict and post-conflict environments?

These questions are not only conceptual but deeply practical. They speak to a larger dilemma within international law, how to ensure the implementation of human rights norms in states where sovereignty is dispersed, institutions are weak, and legal systems are fragmented. In this context, understanding effectiveness as internalisation provides a more realistic and responsive metric than compliance alone.[15]

1.3 Theoretical Framework

This thesis draws primarily on Harold Koh's theory of transnational legal process, which conceptualises international law not as a static body of rules imposed upon states, but as a dynamic process through which international norms are made, interpreted, internalised, and ultimately obeyed.[16] According to Koh, effectiveness is

[15] Benedict Kingsbury, 'The Concept of Compliance as a Function of Competing Conceptions of International Law' (1998) 19 *Michigan Journal of International Law* 345, 359-364.

[16] First set out in: Koh, 'Transnational Legal Process' (n 10); and expanded upon in: Koh, 'Why Do Nations Obey International Law?' (n 11) and Harold Hongju Koh, 'Transnational Legal Process After September 11th' (2004) 22 Berkeley Journal of International Law 337.

not merely a question of enforcement but is evidenced when international norms become internalised within the domestic legal system and embedded in state and social behaviour. The significance of Koh's theory lies in introducing a novel approach to assessing effectiveness. Contrary to the traditional view of understanding the application of international law as a projection of laws onto the society, Koh suggested an alternative approach where the local legal framework of applying international law stems from the base (i.e., social and political context of the targeted society) up to redefining the legal framework itself. In other words, the way international law becomes effective depends first on how it resonates with the society's political realities and social practices, and only then does it impact and reshape the formal legal system. For this reason, internalisation accepts an additional dimension that extends beyond the straightforward "measurement" of effectiveness as merely the implementation of the conventions and treaty body recommendations.

In this thesis, internalisation is understood in a threefold manner: legal, political, and social, and is framed as a multi-dimensional measurement of effectiveness that differs from the typical formal ratification or occasional state reporting. Furthermore, the thesis tailors Koh's framework to the particular challenges of conflict settings and legal pluralism, arguing that in fragmented states such as Libya, international norms must navigate a complex terrain of informal power structures, militia rule, and normative hybridity.

Furthermore, Koh's framework allows the thesis to move beyond the positivist paradigm which evaluates international law through textual compliance and institutional reporting. Instead, it focuses on norm internalisation as a process of sustained normative interaction involving diverse actors, NGOs, international institutions, local authorities, and civil society. These actors are instrumental in shaping how norms are received, translated, and implemented in practice. Therefore, effectiveness is not simply the product of legal obligation but of repeated participation in a process of norm diffusion and contestation.[17]

[17] Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law' (2004) 54 *Duke Law Journal* 621, 630-639.

1.4 Methodology and Case Selection

The research adopts a socio-legal and transnational methodology, combining doctrinal analysis of ILO Conventions and supervisory mechanisms with a case study approach focused on Libya. In general, doctrinal research is considered the most prominent methodology in legal research, and despite having different conceptualisation attempts, most studies define doctrinal research as a means of synthesising the legal norms, rules and principles of a particular portion of the law within a wider legal system.[18] In other words, doctrinal legal research relies mainly on legal material and aims at explaining, criticising and predicting the outcomes of existing laws. The main critique that faces the doctrinal methodology is the lack of political and social significance of the legal material provided by this methodology. For this reason, it is necessary to complement the doctrinal analysis of any legal framework with an in-depth analysis of the political and social context influencing the legal framework and the effectiveness of international law application in a specific context.[19] This is why a socio-legal and transnational methodology is needed. What a socio-legal methodology does is that it situates legal norms within their wider social, political, and institutional contexts, recognising that law is shaped by and in turn shapes social relations, overcoming the restrictions of doctrinal analysis.[20] Whereas transnational methodology extends this perspective beyond the state, and as per Koh's framework examines the interaction between international and domestic actors and tracing the processes through which global norms are debated, contested, and internalised across different legal orders.[21]

The Libyan case was selected due to its persistent crisis of governance, the high prevalence of forced labour and human trafficking, and its symbolic and strategic position in global migration governance. Libya has been known as a major hub and transit point for human trafficking, and cases of forced labour among trafficked

[18] Nasir Majeed and others, 'Doctrinal Research in Law: Meaning, Scope and Methodology' (2023) 12 *Bulletin of Business and Economics* 559, 559; Suzanne Egan, 'The Doctrinal Approach in International Human Rights Scholarship' *UCD Working Papers in Law, Criminology & Socio-Legal Studies*, Research Paper No 19/2017, 2-3.
[19] Pradeep MD, 'Legal Research: Descriptive Analysis on Doctrinal Methodology' (2019) 4(2) *International Journal of Management, Technology and Social Sciences* 95, 98.
[20] Judith Hahn, *Foundations of a Sociology of Canon Law* (Springer Nature 2022), 11.
[21] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10).

individuals have been a prominent subject in Libya.[22] The eruption of the Libyan civil war led to the dissipation of power among different non-state actors influenced by regional powers. These actors, along with the official state, have contributed to the growing crisis of human trafficking and forced labour in Libya, which has become a significant case study that combines between the severity of the crime and the inefficiency of international organisations in protecting vulnerable individuals and restricting the effects of this crime and its aftermaths.[23]

The analysis commences by studying primary legal sources. Primary sources include ILO supervisory documents (such as observations by the Committee of Experts on the Application of Conventions and Recommendations (CEACR)), other UN reports (such as from human rights treaty bodies), NGO publications, and official Libyan legislation. These are analysed in the context of Koh's theory, with attention paid to both the top-down diffusion of norms by international institutions and the bottom-up resistance or adoption by domestic and non-state actors. In other words, the study develops around analysing these documents and assessing the gap between the situation in the conflict setting (Libya in this case) and the standard-setting legal framework of the International Labour Organization (ILO). A socio-legal understanding of the context of the primary sources is performed via Koh's framework

This approach allows for an iterative understanding of law as process, where norms are not merely enforced but interpreted, recontextualised, and, at times, resisted. In doing so, the thesis takes into account the agency of different actors operating within informal structures, whether armed groups, tribal authorities, or humanitarian NGOs. These non-state actors, though often excluded from formal compliance metrics, play a decisive role in shaping the outcomes of international legal norms on the ground.

[22] United Nations Support Mission in Libya (UNSMIL) and Office of the High Commissioner for Human Rights (OHCHR), *Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya* (20 December 2018) https://www.ohchr.org/sites/default/files/Documents/Countries/LY/LibyaMigrationReport.pdf accessed 5 August 2025.

[23] Amnesty International, *Libya: "Between Life and Death": Refugees and Migrants Trapped in Libya's Cycle of Abuse* (2021) https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE1930842020ENGLISH.pdf accessed 5 August 2025

1.5 Original Contribution

This thesis provides three core contributions to legal scholarship. First, it offers a theoretical innovation by expanding Harold Koh's theory of transnational legal process to conflict settings and legally pluralist environments. In doing so, it provides a richer conceptualisation of norm internalisation in situations where traditional state actors are weak or entirely absent. By testing Koh's framework against the case of a prominent country marked by multidimensional complexities, the research not only evaluates the accuracy of the framework in analysing such conditions but also contributes to its further development by reflecting on the outcomes that arise when international legal instruments prove inefficient.

Second, the thesis provides empirical insight through a detailed case study of Libya. This analysis exposes the structural, legal, and political challenges that hinder the effective implementation of international standards on forced labour. Examining Libya through this lens allows for a more precise understanding of the interplay between social, political, and legal factors that shape the dynamics of human trafficking and forced labour, thereby strengthening the empirical basis for evaluating the effectiveness of international law in such contexts.

Third, the thesis advances a normative critique of the International Labour Organization (ILO) by highlighting its institutional limitations. Particular attention is given to its lack of conflict-sensitive mechanisms and its detachment from local actors in fragmented states. In response, the thesis advocates for a reimagined supervisory approach rooted in transnational engagement and greater contextual responsiveness. This critique moves beyond identifying the ineffectiveness of existing international legal instruments to call for a more proactive redefinition of the strategies employed by international organisations such as the ILO in their efforts to abolish trafficking for forced labour and to secure protection for its victims.

Moreover, this thesis contributes to an expanding body of literature that examines the role of international law in non-Westphalian contexts.[24] It proposes that effectiveness

[24] "Non-Westphalian" can be defined as contexts of fragmented or contested state sovereignty, and where authority is shared with non-state actors such as armed groups, tribal leaders, or international organisations. Unlike the classical Westphalian model, these contexts lack a centralised and unified

in such environments is best understood not through legal formality, but through transnational interactions that sustain normative authority in the absence of centralised enforcement. By doing so, the thesis provides a framework that is both analytically robust and practically applicable for policy reform.

1.6 Structure of the Thesis

This thesis is divided into seven chapters. Chapter 2 introduces the key theoretical and legal concepts of effectiveness in international law and situates them within competing compliance theories. It concludes with the adoption of Harold Koh's transnational legal process as the central framework for analysis. By elaborating on Koh's approach, the chapter establishes the methodological pathway through which compliance with international law is examined in the thesis.

Chapter 3 provides a historical and institutional overview of the ILO. It traces the organisation's development and explores its tripartite structure, supervisory systems, and the challenges posed by its universal reach. In doing so, the chapter clarifies the institutional architecture of the ILO and the actors that influence its decision-making and policy formation.

Chapter 4 turns to the ILO's role as a standard-setting body, with particular attention to its engagement with soft law, technical assistance, and the diffusion of norms. This discussion highlights the gap between the ILO's normative framework in conditions of stable governance and the realities of conflict settings. The chapter emphasises that the ILO's standard-setting function carries added responsibilities, requiring it to address the vulnerabilities created by conflict in the design and implementation of its legal instruments.

Chapter 5 focuses specifically on the ILO's forced labour instruments, tracing their evolution and analysing their limitations, especially in conflict environments. Since forced labour continues to constitute a major driver of human trafficking, this chapter

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legal system. Or in the words of Krasner, Westphalian sovereignty is "the exclusion of external actors from domestic authority configurations." See Stephen D Krasner, *Sovereignty: Organized Hypocrisy* (Princeton University Press 1999), 16; see also: Luke Glanville, 'The Myth of "Traditional" Sovereignty' (2013) 57 *International Studies Quarterly* 79, 85-86.

evaluates the capacity of the ILO's tools to address the problem while also exposing the constraints that hinder their effectiveness in practice.

Chapter 6 applies the analytical framework of the thesis to the case of Libya. It offers a critical account of how forced labour norms have been obstructed, manipulated, or disregarded by both state and non-state actors. Through this case study, the chapter provides an in-depth assessment of the extent to which the ILO's conventions and recommendations have been effectively implemented in a conflict setting.

Finally, Chapter 7 serves as the conclusion. It revisits the central conceptual debates, criticises the limitations of the ILO, and advances recommendations for embedding international labour norms through legal pluralism and sustained transnational engagement.

This structure represents the multidimensional methodology of the thesis, which moves from abstract legal and theoretical debates towards grounded empirical analysis. Each chapter builds on the preceding one, moving from theory to practice and from global norm-setting to local norm reception. In this way, the structure reflects the transnational legal process itself, a continuous, iterative dialogue between international institutions and fragmented domestic realities.[25]

1.7 Concluding Remarks

By reconceptualising effectiveness as internalisation, the thesis departs from traditional state-centric, compliance-based metrics. It argues that to understand whether international labour law *works*, especially in conflict settings like Libya, one must examine how norms are received, resisted, and potentially embedded through complex social and legal processes. In doing so, this research aims to bridge the gap between global norm-making and local norm reception, offering both theoretical and practical insights for international law in fragmented and conflict-affected states. Furthermore, the thesis tackles international law through a realistic approach, focusing on the combination between doctrinal analysis and socio-legal examination of the circumstances surrounding human trafficking for forced labour in conflict settings.

[25] Koh, 'Transnational Legal Process After September 11th' (n 16), 339.

The need to address conflict settings adds an extra dimension to the critique of international law, encouraging an in-depth discussion around the approach for formulating international law itself and the necessary tools that facilitate the application of international law in non-standard settings of governance.

This thesis, which embraces Harold Koh's theory of transnational legal process, strives not only to critique the ILO's shortcomings, but to contribute to an evolving understanding of international law's transformative potential. Effectiveness, as argued here, is not a matter of binary compliance, but of layered and often contested internalisation. This internalisation must occur across legal, political, and social domains, and it must be supported by sustained interaction among international organisations, state institutions, and civil society actors. Only through this kind of engagement, grounded in a pluralistic, participatory legal process, can international law hope to realise its emancipatory promise in the world's most vulnerable contexts.

At the same time, this thesis situates the ILO's limited impact in Libya within a broader critique of how international organisations function in donor-dominated contexts. In Libya, humanitarian and development interventions have often reflected the strategic priorities of external states, particularly EU Member States seeking to curb irregular migration through externalisation of border control.[26] This donor-driven model, focused on capacity-building for migration management and containment, has contributed to the normalisation of practices that expose migrants to trafficking and forced labour. International organisations have operated within these constraints, sometimes inadvertently reproducing state and non-state structures that exploit migrant labour under the guise of stabilisation or migration governance. The trafficking for forced labour nexus cannot be separated from this broader political economy of mobility control, where legal pluralism, institutional collapse, and fragmented authority intersect with external migration policies. As such, internalisation of labour norms cannot occur in isolation from the structural conditions created by these transnational and geopolitical dynamics. Koh's framework demands

[26] Roderick Parkes, 'Border Management: The Line between Internal and External Security' in European Union Institute for Security Studies, *Nobody Move!: Myths of the EU Migration Crisis* (EUISS 2017), 54.

a closer examination not only of how norms are transmitted, but also of the global actors shaping the domestic spaces into which they are expected to be internalised.

Chapter 2: Effectiveness Measurements in International Law

"Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time."

Louise Henkin, 1979[27]

The codification and systematisation of international law were historically perceived by academic scholars as controversial and revolutionary, as they brought about a paradigm shift by theorists[28] who advocated for a new world order.[29] This paradigm shift marked a departure from the theoretical reasoning of positive law as established within the confinements of national legal systems.[30] It transitioned from the understanding of law as mere theology and morals towards defining a branch of jurisprudence, with its distinct set of characteristics and capabilities. This shift ultimately led to the development of transnational organisations and instruments. Thus, international law, at least from a traditional positivist perspective, was indeed a revolutionary process against the understanding of the law of nature as well as the understanding of national law and the role of sovereign states. To this day, there remain doubts, especially in the field of international relations, about the efficacy of international law.[31] As will be discussed below, there are different schools of thought

[27] Louis Henkin, *How Nations Behave: Law and Foreign Policy* (Columbia University Press 1979) 47.
[28] Hugo Grotius, for example, and his writings on international law such as De jure belli ac pacis (On the Law of War and Peace). See: Hugo Grotius, *De iure belli ac pacis*, vol 2 (Bousquet 1751). Also, Johann Jakob Moser, Von Martens, and Jean-Jacques Burlamaqui. See: Edwin Maxey, 'Development of International Law' (1906) 40 *American Law Review,* 188.
[29] Law codification had its origins in ad hoc conferences such as Vienna 1814-1815, The Hague 1899/1907, and Paris 1856. Within Europe, it also occurred within private institutions (Institut de Droit International and International Law Association, both established in 1873; Harvard Research in International Law, published 1929-1939). It persisted with the establishment of the Permanent Court of International Justice in 1922, which examined the law to apply under its jurisdiction. Also, the League of Nations' systematic intergovernmental efforts resulted in the work of the Committee of Experts for the Progressive Codification of International Law in 1924 and the Hague Codification Conference in 1930. In 1931, the League Assembly adopted a resolution which supported the role of Governments in the codification process. See: Michael Wood, 'Statute of the International Law Commission' (2009) United Nations Audiovisual Library of International Law https://legal.un.org/avl/ha/silc/silc.html accessed 30 June 2025.
[30] See: Roberto Ago, 'Positive Law and International Law' (1957) 51 *American Journal of International Law*, 691.
[31] Kenneth W Abbott, 'Modern International Relations Theory: A Prospectus for International Lawyers' (1989) 14 *Yale Journal of International Law* 335- 338; Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (Oxford University Press 2005) 217.

within both international relations and international law scholarship that are devoted to understanding the effectiveness of international law.

This chapter sets out the conceptual groundwork for how this thesis approaches the notion of "effectiveness" in international law. It begins by outlining the traditional sources and legal foundations of international law, including positivist perspectives and the role of formal mechanisms, before moving on to examine how effectiveness is understood, measured, and critiqued across different theoretical frameworks. In doing so, it identifies the limitations of a purely compliance-based or state-centric model and introduces Harold Koh's theory of transnational legal process as a more dynamic and suitable approach for assessing effectiveness, especially in conflict settings and legally plural contexts such as Libya. This framing is crucial to support the thesis's central argument: that effectiveness depends not merely on formal compliance but on the internalisation of norms through complex transnational interactions involving both state and non-state actors.

2.1 Formal Sources of International Law and the Positivist Framework

The origins of international law have traditionally been understood through the prism of legal positivism, which treats law as a set of binding rules derived from clearly identifiable sources based on state consent. The most authoritative modern expression of this framework is found in Article 38(1) of the Statute of the International Court of Justice, which identifies the primary sources of international law as: (a) international conventions or treaties, (b) international custom, as evidence of a general practice accepted as law, (c) the general principles of law recognised by civilised nations, and, subsidiarily, (d) judicial decisions and the writings of the most highly qualified publicists as means of interpretation.[32] These sources have been key to the traditional understanding of the legality, validity, and applicability of international norms, particularly in inter-state relations.

The International Law Commission (ILC) has played a central role in refining the understanding of these sources. For example, its 2018 Draft Conclusions on the

[32] *Statute of the International Court of Justice* (adopted 26 June 1945, entered into force 24 October 1945), art 38(1).

Identification of Customary International Law provides guidance on how to identify the two constitutive elements of customary law: state practice and opinio juris.[33] More recently, the ILC's continued work on general principles of law has highlighted new challenges about the origin, content, and role of non-treaty-based norms in a pluralist international legal system.[34] However, while this positivist framework provides clarity and formal authority, it remains state-centric and formalistic in nature. It tends to overlook informal norm creation, non-state actors, and the dynamic processes of interaction and socialisation that increasingly define international legal engagement, particularly in conflict settings.

As a result, while these formal sources remain vital in establishing legal validity, this thesis argues that they are insufficient for evaluating effectiveness, especially when international norms must function outside the formal structures of state consent and implementation. As will be discussed further in this chapter, the transnational legal process theory advanced by Harold Koh questions the sufficiency of positivist assumptions by moving the focus from the source of a rule to the process through which it becomes internalised and obeyed.[35] This shift in focus is crucial for evaluating the effectiveness of international law in complex and fragmented contexts such as Libya, where non-state actors, unofficial legal orders, and weakened state institutions play a decisive role in norm creation and enforcement.

While Article 38 of the ICJ Statute and the work of the International Law Commission elucidate the formal architecture of international law from a positivist standpoint, they do not fully account for how legal norms and standards gain authority and legitimacy in diverse political and institutional contexts. The following section thus turns to the concepts of legality and validity to further investigate how international law derives its normative force, particularly beyond the constraints of formal state consent.

[33] International Law Commission, *Draft Conclusions on Identification of Customary International Law with Commentaries* (2018) UN Doc A/73/10.
[34] International Law Commission, *First Report on General Principles of Law* by Marcelo Vázquez-Bermúdez, Special Rapporteur (2020) UN Doc A/CN.4/732; International Law Commission, *Fourth Report on General Principles of Law* by Marcelo Vázquez-Bermúdez, Special Rapporteur (76th sess, 2025) UN Doc A/CN.4/785.
[35] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 181.

2.2 Legality and Validity of International Law

In the traditional theory of authors such as Jeremy Bentham and Thomas Hobbes, positive law, posited by an authoritative will, derives its validity from that will's power to enforce obedience.[36] This law's efficacy stems from its validity and origin in recognised authority. Thus, for positive law, validation is the key. From this perspective, if a law is validly created it is by definition effective.[37] Positive international law, on the other hand, can be defined as "the part of law which is laid down by the tacit and expressed consent of the different states."[38] Back in 1938, Josef Kunz, a positivist legal academic, argued that the question of the legality of international law requires that international law corresponds to basic theoretical suppositions of law, and thus legality is identified by the minimum conformity of international law with the philosophical theory of law, in particular the theory of positive law.[39] Kunz argued that this basic theory is capable of explaining the normative nature of law, verifying that the target and aim of law is to regulate human behaviour in relation to other humans, and that the aim of the rule of law is to connect people with facts according to a "juridical nexus of imputation, and not according to causality."[40] This means that the law is meant to establish connections between people and facts, and thus to attribute legal liability for the reasons related to rules and regulations rather than casualty, i.e., the casual and direct relationship between the cause and its effects. Importantly, Kunz argued that the binding nature of the rule of law is an important element of the law's validity.[41] To Kunz, a law is valid only if it is binding. This traditional view, often described as a simple binary approach to legal validity, presents challenges for international law, particularly regarding the development and recognition of soft law, as explored in various international relations theories. Nonetheless, Kunz's understanding is restricted to the regulation of relationships between humans, which is not the case in international law which is primarily focused on relationships between states. However, Kunz was writing in 1938. Since then, not only have other relevant theories appeared, but also law,

[36] Jeremy Bentham, *Of Laws in General* (HLA Hart ed, Athlone Press 1970); Thomas Hobbes, *Leviathan* (first published 1651, Penguin 1985).
[37] Philippe Nonet, 'What is Positive Law?' (1990) 100 *The Yale Law Journal* 667, 668.
[38] Roberto Ago, 'Positive Law and International Law' (n 30) 693.
[39] Josef L Kunz, *The Theory of International Law* (Cambridge University Press 1938) 28.
[40] ibid 28.
[41] ibid 29.

especially international law, has experienced major developments through the creation of international institutions and the establishment of the human rights regime. Nonetheless, Kunz's description of law's validity remains relevant to the discussions of today's laws. For example, many years after Kunz's theory, Mortimer Sellers argued that in order for international lawyers to measure the effectiveness of international law, they should examine the validation of norms and their foundations in democratic discourse.[42]

To better understand the concept of legal validation, it is important to examine Hans Kelsen's theory of validity. Kelsen was one of the first legal theorists to explain that a legal norm becomes binding when the subjective meaning of a legal act, which refers to the intention of the person creating the rule, corresponds with its objective meaning, which refers to its role and function within the legal system. In his view, the validity of a norm does not come from the fact itself, but from its connection to a higher legal norm. Each norm must derive its authority from another, more fundamental norm within a hierarchical structure. At the top of this structure lies the Grundnorm, or basic norm, which provides the foundation for the entire legal system. Through this approach, Kelsen demonstrated how legal systems maintain coherence and authority through a chain of normativity that validates each rule through its place within the broader legal order.[43] Kelsen also believed that the reasoning of validity of a norm can be found in a higher norm. In other words, the answer to legal validity does not lie in facts, but in other norms of higher authority as "ought" to be. However, it has been argued that even though Kelsen's theory emphasises what the law ought to be, the act of creating legal rules also contains an implicit factual element. This means that for a rule to be considered valid, it must not only be posited within a legal system but must as well be effective to a certain degree in practice.[44] Therefore, to consider a legal rule as valid, there must be a higher norm of oughtness, a formal act of enactment or positing, and implementation on the ground, referred to as the "is". However, the "is" must be sufficiently efficacious for the rule to be considered valid.[45] This

[42] Mortimer Sellers, 'The Effectiveness of International Law' (1996) 2 *International Legal Theory* 32 35.
[43] Hans Kelsen and Stanley L Paulson, 'The Concept of the Legal Order' (1982) 27 *The American Journal of Jurisprudence* 64, 65.
[44] ibid 66.
[45] ibid 66.

understanding of validity can be explained through the distinction between *lex lata* and *lex ferenda*. *Lex lata* refers to the law as it currently stands, while *lex ferenda* reflects what the law ought to become. This distinction is especially relevant in international law where the line between obligation and aspiration is frequently blurred.[46] In this context, a legal rule lacking in compliance may be valid in form but ineffective in substance, while a norm once considered aspirational may gain authority through its internalisation into domestic practice and discourse. This supports the view that legal validity in international law must be evaluated in light of both its normative grounding and its behavioural impact in practice.

Moreover, it can be observed that many theories around validity were either developed based on an analysis of national law or drew a comparison between national and international law.[47] Indeed, if one is to look at the functionality of international law, some approaches appear to develop links between international and national law. It is well known that international law is influenced by many domestic rules and constitutions. One recent example is the work of André Nollkaemper, which analyses the continuous influence of national courts and customs on international tribunals.[48] Some scholars went even further in analysing this relationship and influence, such as Carl Schmitt, who established an analogy between international law and national constitutional law in his famous work "Forms of Modern Imperialism in International Law", only to argue against the legitimacy of international law and how it is mainly a political tool similar to national constitutions.[49]

One can argue that, despite their similarities, national and international legalities are substantially different. That is mainly because the legality of international law is afflicted by issues of legitimacy and enforcement. National law, in terms of

[46] Antonio Cassese and JHH Weiler (eds), *Change and Stability in International Law-Making* (Walter de Gruyter 1988) 72–74.
[47] For example, see: Conway W Henderson, *Understanding international law* (John Wiley & Sons 2009)
[48] Nollkaemper, for example, has argued that the International Criminal Tribunal for the former Yugoslavia (ICTY) was influenced by national courts' decisions. See: André Nollkaemper, 'Decisions of national courts as sources of international law: an analysis of the practice of the ICTY', *International Criminal law Developments in the Case Law of the ICTY* (Brill Nijhoff 2003).
[49] Carl Schmitt, 'Forms of modern imperialism in international law' (2011) as cited in Lars Vinx, 'Carl Schmitt and the analogy between constitutional and international law: Are constitutional and international law inherently political?' (2013) 2 *Global Constitutionalism* 91, 92.

sovereignty, is a coercive order that is limited in its validity to a certain geography, and which is mostly centralised. Whereas international law is not limited in its territorial validity and is relatively decentralised.[50] This characteristic is important to the understanding of the way enforcement mechanisms of international law should be approached, particularly because it challenges the assumption that law must operate through a centralised sovereign authority in order to be effective. In the context of this thesis, which adopts Koh's theory of transnational legal process, this decentralisation highlights the need to focus on the role of non-state actors, transnational organisations, and normative interactions that occur outside formal enforcement structures.

In addition to the decentralisation of laws, there is a wide range of different interpretations of agreed international rules and the process of reinterpretation that occurs through state practice.[51] According to Joost Pauwelyn, norms of international law could be interpreted in different ways, creating different norms for different actors, which would eventually create conflicts. For example, two conflicting norms potentially create conflicts with two or even more mutual obligations. Such conflicts could lead to the cancellation of one of the two norms thereby affecting its validity.[52] Interestingly, in modern international legal scholarship, considerable attention has been allocated to methods of interpretation, often more so than to questions of legal validity. This alteration in focus reflects a broader preoccupation with how international norms are applied rather than how their binding force is established.[53]

Also, the changing nature of international law, which refers to the way it increasingly evolves through informal mechanisms, soft law instruments, and the involvement of a

[50] Hans Kelsen, 'Sovereignty and International Law' in Michael W Dowdle and Jeremy Webber (eds), *Relocating Sovereignty* (Routledge 2018) 628.
[51] Tomasz Stawecki, 'Legal interpretation as a solution to disputes over the validity of laws' in Anne Lise Kjaer and Joanna Lam (eds), *Language and Legal Interpretation in International Law* (Oxford University Press 2022) 26.
[52] Joost Pauwelyn, 'Bridging Fragmentation and Unity: International Law as a Universe of Inter-Connected Islands' (2003) 25 *Michigan Journal of International Law* 903, 906–909. See also: Martti Koskenniemi, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission* (UN Doc A/CN.4/L.682, 13 April 2006, published 2014), 17-24.
[53] Odile Ammann, 'The Interpretative Methods of International Law: What Are They, and Why Use Them?' in *Domestic Courts and the Interpretation of International Law* (Brill 2020), ch 6, 191–2; Andrea Bianchi, 'The Game of Interpretation in International Law: The Players, the Cards, and Why the Game is Worth the Candle' in Andrea Bianchi, Daniel Peat and Matthew Windsor (eds), *Interpretation in International Law* (OUP 2015; online edn, Oxford Academic, 23 April 2015) 42.

wide range of non-state actors, is not only affected by states and their direct action, but also by the actions and dynamics of different stakeholders and actors within transnational organisations and the regional and national politics of states.[54] Furthermore, the enforcement features of the international system are different from that of national laws which are based on the notion of coercibility. International law enforcement is measured by other tools such as mutual accommodation, cooperation, and reciprocity, and ultimately by use of force.[55] The NATO intervention in Libya in 2011, authorised under UN Security Council Resolution 1973, offers a notable example of enforcement through military means, framed as a humanitarian intervention to protect civilians under the Responsibility to Protect (R2P) doctrine.[56] However, the aftermath of the intervention also raises critical questions about the legitimacy, effectiveness, and long-term consequences of using force as a mechanism of enforcing international legal norms in conflict settings.[57]

According to Oona Hathaway, the issue of enforcement is a core one for a comprehensive theory of international law.[58] In terms of sanctions, however, it is not traditionally conducted by 'superior third parties' but rather by other states that share the same interests of implementing the law. The nature of those sanctions differs from those applied domestically, e.g., sanctions in the realm of international law would revolve around reciprocal treatment such as potential losses of reciprocal privileges granted by other states and economic sanctions.[59] Therefore, compliance would stem from the fear of losing such benefits, which can be referred to as the compliance incentive. However, this incentive for compliance is not an adequate or consistent element to ensure enforcement or effective compliance with international standards

[54] Campbell McLachlan, 'The dynamic evolution of international law: Rise or decline?' (2018) 49 *Victoria University of Wellington Law Review* 419, 425.
[55] James S Watson, 'Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law' (1979) *University of Illinois Law Forum* 609, 618.
[56] United Nations Security Council, 'Resolution 1973 (2011)' (17 March 2011) UN Doc S/RES/1973.
[57] Alex J Bellamy and Paul D Williams, 'The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect' (2011) 87 *International Affairs* 825 843, 849.
[58] Oona A Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (2005) *The University of Chicago Law Review* 469, 492.
[59] Anu Bradford and Omri Ben-Shahar, 'Efficient Enforcement in International Law' (2011) 12 *Chicago Journal of International Law* 375, 380.

for different reasons, one of which is the auto-interpretation of international rules and obligations stated in international agreements.[60]

This means that the state party is the one that interprets the meaning of obligations that fall upon her according to a treaty/agreement, unless there is a supervisory committee assigned for adjudication[61] on the matters of obligation. For example, the ILO has a supervisory system that includes the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which reviews state reports, issues observations, and makes direct requests to ensure compliance with core labour standards.[62] The ILO also functions a tripartite Conference Committee on the Application of Standards (CAS), which engages with governments and social partners to promote enforcement.[63]

On the other hand, the International Court of Justice (ICJ) plays a narrower role in enforcement. While it may offer authoritative interpretations of international legal obligations when jurisdiction is accepted by the state in question, it does not operate as a general compliance body for treaty regimes like the ILO.[64] Thus, while the ICJ can adjudicate inter-state disputes, the day-to-day monitoring and promotion of compliance with international labour law rests primarily with specialised supervisory mechanisms like those established within the ILO, which furthers support the decentralisation of international law.

Due to the decentralised nature of international law, there is no superior entity to examine the validity of a legal rule, such as H.L.A. Hart's rule of recognition in domestic legal systems, which provides a foundational standard for identifying what

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[60] Antonios Tzanakopoulos, 'Domestic Courts in International Law: The International Judicial Function of National Courts' (2011) 34 *Loyola of Los Angeles International and Comparative Law Review* 133, 150.

[61] "Adjudication" is equivalent to "supervision" in ILO terminology, especially when it comes to the observations and suggestions made by CEACR and CFA. Due to the vague and frequently imprecise nature of the regime's "law," adjudication gives a great deal of discretion for these supervisory institutions.

[62] ILO, 'Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR): General Report and Observations' (International Labour Conference, 112th Session, 2024) ILC.112/III/Part A.

[63] ILO, 'Conference Committee on the Application of Standards' (*International Labour Organization*, https://www.ilo.org/international-labour-standards/ilo-supervisory-system-regular-supervision/conference-committee-application-standards) accessed 30 June 2025.

[64] *Statute of the International Court of Justice* (n 32) art 36.

counts as valid law within a particular legal order.[65] In international law, however, the absence of a centralised authority necessitates that validity be derived from the practices, interpretations, and conduct of states themselves, who compound function is as the makers, interpreters, and enforcers of international legal standards. This theoretical gap between domestic and international legal systems is especially important for the legal frameworks discussed later in this thesis, such as the ILO's supervisory mechanisms, which attempt to compensate for this decentralisation by providing authoritative but non-binding assessments of state compliance.

Furthermore, it is up to states to decide if international law is to be directly effective in their domestic legal space, or whether it requires a domestic process of enactment and incorporation of international rules (i.e. dualism vs. monism).[66] This leaves a great deal of choice to the state to self-execute international obligations, as it can be interested and self-motivated to apply international law, or the opposite. In both cases, however, the treaty (or the law) becomes irrelevant as explained by James Watson, who argues that by confusing international law with natural law and giving it political superiority over national law, a system of law that denies efficacy and validity as features of any existent normative order is created, and that "*Lex lata* and *lex ferenda* have thus become merged into an attractive, but futile, philanthropy".[67]

The nature of international law is controversial indeed – and has been for centuries. According to the logic of foreign policy realists such as Henry Kissinger,[68] the role of power and political interests surpasses the rule of law in international relations. Similarly, Thomas Hobbes, in his work "The Leviathan" published in 1651, argued that international law only succeeds to oblige states to the extent such states are

[65] Robert S Summers, 'Professor H L A Hart's Concept of Law' (1963) 12 *Duke Law Journal* 629 636; Jonathan I Charney, 'Universal international law' (1993) 87 *American Journal of International* Law 529, 532-533.

[66] Under dualism, a state is not bound by international law, unless it has recognised it and incorporated it into state law by means of legislation i.e., enactment– otherwise the international rules in question are non-binding to national courts. See: Johan G Lammers, 'The Monist or Dualist Approach to the Relationship between International Law and National Law' (2009) 3 *Nepalese Journal of International Law* 207.

[67] Watson, 'Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law' (n 55) 625. *Lex lata* means the law that came to exist i.e., ratified and enforced law. *Lex ferenda* is the law that is sought and ought to be proposed and thus established.

[68] Kissinger is an American politician, diplomat, and geopolitical consultant. One example supporting this perspective can be found in his book "A World Restored." See: Henry Kissinger, *A World Restored: Metternich, Castlereagh, and the Problems of Peace, 1812-22* (Pickle Partners Publishing 2017).

interested in abiding by its rules. In other words, Hobbes believed that powerful states are more or less unconstrained by international law. [69] This view underpins the notion that international law is a political instrument utilised by sovereign states which can eventually act against it when in favour of their interests. In 1861, John Austin argued that law in the traditional concept should be enacted by a legislative authority, something which international law clearly fails to meet, but also is clearly built on positive morality and not laws as described in his famous work on jurisprudence.[70]

However, in an endeavour to answer some of these doubts regarding the absence of a sovereign legislative body that enacts laws, Christian Wolff's theory of *civitas maximus*, first published in 1764, explains how international law is in fact enacted by an "imaginary collective sovereign."[71] Based on Wolff's theory, states create a joined imagined sovereignty (states as a collective) over each individual state.[72] According to Terry Nardin, this theory was subsequently developed by other scholars who contributed to what is called "consent theory" by which states consent to submit to this imagined sovereignty. This consent takes the form of either explicit or implicit agreement (treaties or custom).[73] Furthermore, the traditional view of law as completely different from divine law or morals (in other words, that legal rules do not rely on moral principles or their "consequential desirability")[74] can be refuted as the notion of legality itself in national law is derived from moral concepts and justice in particular. In international law, however, the rule of law is based on recognition of the authority of laws and institutions, not on moral rightness. Nonetheless, while rules of international law may be subject to morality checks, their legal authority does not stem from morality.[75]

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[69] David Dyzenhaus, 'Hobbes on the International Rule of Law' (2014) 28 *Ethics & international affairs* 53, 55.
[70] John Austin, *The Province of Jurisprudence Determined*, vol 2 (J. Murray 1861), 141. See also: Terry Nardin, 'The Rule of Law in International Relations' (1999) 5 *International Legal Theory* 2, 7-9.
[71] Contributing to studies on the voluntary nature of nations, Wolff's theory of *civitas maximus*, which translates to "the greatest citizenry," can be understood as the body of citizens who constitute the state. It is argued that this *civitas maximus*, like moral persons, shares a fictious aspect since there must be a "fictitious ruler of the supreme state" for it to adapt and have a mutual awareness of the "common good." See: Christian Wolff, *Jus Gentium Methodo Scientifica Pertractatum* (1934) as cited in Nicholas Greenwood Onuf, 'Civitas Maxima: Wolff, Vattel and the Fate of Republicanism' (1994) 88 *American Journal of International Law* 280, 286.
[72] Nicholas Greenwood Onuf, 'Civitas Maxima: Wolff, Vattel and the Fate of Republicanism' (1994) 88 *American Journal of International Law* 280, 286.
[73] Nardin, 'The Rule of Law in International Relations' (n 70) 8.
[74] Onuf, 'Civitas Maxima: Wolff, Vattel and the Fate of Republicanism' (n 72) 285.
[75] Nardin, 'The Rule of Law in International Relations' (n 70) 2

This distinction recalls the well-known Hart–Dworkin debate of the 1960s, which, while focussing on the validity of national law, highlighted similar concerns about the foundations of legal authority. Hart, a prominent positivist, argued that even immoral laws, such as those enacted under the Nazi dictatorship, could still be regarded as valid legal rules if they met the formal criteria of recognition within the system. In contrast, Dworkin contended that law and morality are inextricably linked, and that unjust laws lack true legal authority.[76]

While the debate emerged from concerns about domestic legal systems,[77] it provides important insight for international law, where questions of validity are also confounded by the lack of a sovereign authority and the growing reliance on soft law and moral persuasion. Thus, in international law, the question of whether a norm is legally valid cannot be answered solely in terms of its moral content or perceived justice but must instead be based on its recognition and acceptance by the international community, as shaped by state practice and institutional processes.

Thus, the rule of law in international relations can be understood as a mode of association between states, grounded in both instrumental and non-instrumental forms of cooperation. These forms include binding legal agreements and broader normative frameworks that, while not legally enforceable in the traditional sense, contribute to a shared understanding of acceptable behaviour.[78] In this sense, international law combines both authoritative legal standards and shared normative expectations that promote peaceful coexistence and the establishment of a rule-based global order. While legality in both national and international contexts aims to form a moral society, it remains distinct from purely moral or natural law.[79]

However, regardless of this debate around international law's legality and validity, and despite the fact that it is not adequately enforced, international law, largely and

[76] Scott J Shapiro, 'The "Hart–Dworkin" Debate: A Short Guide for the Perplexed' (2007*) Yale Law School Faculty Scholarship Series*, 5–9.
[77] ibid 5-9.
[78] Nardin, 'The Rule of Law in International Relations' (n 70) 3.
[79] ibid 11.

most of the time, is obeyed by states, but why?[80] According to Harold Koh's analysis of why states obey international law, transnational legal process is able to provide both a theoretical explanation of why nations obey and a strategic plan to ensure their obedience.[81] In explaining how the process works, Koh argues that transnational actors such as intergovernmental organisations, non-governmental organisations, and private business entities, provoke interactions with the targeted state actors leading to the interpretation and, eventually, to the internalisation of international norms into the targeted state's domestic system. This transnational legal process is constitutive, dynamic, and normative. It seeks to establish repeated participation of the state through these interactions.[82] Koh's concept of transnational legal process is important to our understanding of international law's effectiveness. However, before delving into this notion, an understanding of the concept of 'effectiveness' from a variety of different perspectives is needed to justify the adoption of Harold Koh's theory.

2.3 Effectiveness in the Context of International Relations

In their mission to understand why states comply with international law, different international relations theories touch upon the topic of effectiveness. It is worth mentioning that many of these studies, as will be explained in the following sections, engage with effectiveness through a discussion surrounding the distinction between soft and hard law, which has brought new analytical perspectives, particularly by criticising the "simple binary" of binding/non-binding division.[83]

Different international structures and relationships influence the behaviour of states and their compliance with international law. The international system as a highly institutionalised system might encourage states to comply with international law through cooperation and support. Other forms of international structure that reinforce compliance with international law are Bipolarity and Hegemonic systems which,

[80] Henkin, *How Nations Behave: Law and Foreign Policy* (n 27) 47.
[81] Koh, 'Why Do Nations Obey International Law' (n 11) 2655.
[82] ibid 2646.
[83] Gregory C Shaffer and Mark A Pollack, 'How Hard and Soft Law Interact in International Regulatory Governance: Alternatives, Complements, and Antagonists' in Robert M Stern (ed), *Systemic Implications of Transatlantic Regulatory Cooperation and Competition* (World Scientific Publishing 2011), 68.

through alliances or coercion, support the adoption of certain international rules.[84] Furthermore, some scholars, such as Martti Koskenniemi, view the issue of effectiveness not as a matter of international law but rather a topic of politics and anthropology. Conversely, at the legal level, effectiveness can be viewed as an issue of interpretation.[85]

Realists or rationalists, according to Oona Hathaway, adopt an interests-based approach in their view of international law. They view states as rational and autonomous actors who are always in pursuit of their self-interests.[86] International relations theories of realism, thus, consider international law, particularly human rights, to be of marginal impact on state behaviour – unless it was adopted by powerful states willing to follow international standards for political interests, or to use them as a way to push forward their foreign policies. However, it is worth noting that realism has undergone developments in its variant approaches which has allowed for a new perspective about the efficacy of legal regimes.[87] According to these new developments, legal regimes are capable of influencing states' policies and behaviours based on the cooperation that prompts states to think of shared long-term interests with other states, rather than short-term self-interests. However, according to all different approaches of realism, states engage in "consequentialist means-end calculations" where state interests can be determined from the state's "material characteristics" and the objective circumstances it handles. What is also common about this theory is that it only focuses on state level interactions while ignoring domestic dynamics.[88] Nonetheless, the theory is incapable of explaining states' compliance with human rights treaties. While it can be argued that human right treaties are mainly "cheap talk" that are ratified only to achieve other self-interests, Hathaway posits that such an argument is incapable of explaining why some powerful states do not join these treaties, and why they would join or need this "cover" if they are already powerful.[89] When comparing hard and soft law, realists argue that with the absence of centralised

[84] Kal Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance' in Walter Carlsnaes, Thomas Risse and Beth Simmons (eds), *The Handbook of International Relations* (Sage Publications 2002) 538, 548.
[85] Martti Koskenniemi, 'The Politics of International Law–20 Years Later' (2009) 20 *European Journal of International Law* 7, 13.
[86] Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (n 58) 478.
[87] ibid 479.
[88] ibid 479.
[89] ibid 480.

institutions, most international law is soft law in terms of its effectiveness.[90] They also contend that hard law (defined as formally binding rules) can transform into soft law in situations where it includes insufficient or vague obligations, thus dooming it to be ineffective in practice.[91] However, as Blutman argues, the concept of soft law itself is fraught with ambiguity and doctrinal inconsistency.[92] The term is frequently used to refer to norms that either lack legal form entirely or derive only limited authority from association with binding legal sources. Blutman warns that considering soft law as a distinct legal category risks blurring the distinction between law and non-law, since many so-called soft norms derive their influence not from legal obligation, but from political, moral, or sociological influences.[93] In this case, the alleged transformation from hard to soft law may indicate a loss of normative clarity, rather than a steady or reliable regulatory function.[94]

Institutionalism[95] also suggests that states participate and interact with the international system to gain self-interests, relying on large incentives for compliance.[96] However, within the same school of thought, the liberal theory of institutionalism emerged, placing significant emphasis on the effectiveness of international law. According to this theory, states comply with international law for the purpose of promoting the interests of private domestic non-state actors.[97] Their distinctive view of the international order and of the state is that it has a myriad of interactions among state and non-state actors that lead to shaping the relationship of the state with the international system.[98] The state in their view strategically reflects the interests of its domestic actors, as in interest groups. To them, compliance with international law is

[90] Shaffer and Pollack, 'Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance' (n 83) 69.
[91] ibid 714.
[92] László Blutman, 'In the Trap of a Legal Metaphor: International Soft Law' (2010) 59 *International and Comparative Law Quarterly* 605, 606–607.
[93] ibid 609–611.
[94] ibid 615–616.
[95] Institutionalism in International Relations theory views states' compliance with international law as a result of the cooperation maintained by international institutions in their relationship with states, and in their role facilitating interstate relationships. Those international institutions can then impact state behaviour through domestic 'political' mobilisation. See: Lisa L Martin and Beth A Simmons, 'Theories and Empirical Studies of International Institutions' (1998) 52 *International Organization* 729, 732.
[96] Dunoff and Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (n 83) 67.
[97] Kevin T Jackson, 'Collaborative Governance and International Economic Relations' (2012) 9 *Manchester Journal of International Economic Law* 235, 245.
[98] ibid 236.

linked to the degree of openness of domestic institutions, which channel internal preferences outward and create reciprocity among states. This helps elucidate why democratic states tend to comply more consistently, whereas in non-democratic contexts compliance often depends on external pressures or strategic considerations rather than internalised support for international legal norms.[99] However, such scholars stress the need to draw a line between "effectiveness" and "compliance". Thus, they second the notion that effectiveness and compliance are indicators for two different things, as a high level of compliance does not necessarily encourage effectiveness in the sense of social behavioural changes.[100]

Liberal theory of international law, on the other hand, suggests that state behaviour is determined by its relationship with domestic actors within the transnational social context they are embedded in, by influencing the social purposes underlying state preferences. According to this theory, the catalysts for effectiveness are societal actors who are capable of organising collective action to pressure states.[101] According to this theory, the catalysts for effectiveness are societal actors capable of organising collective action to influence state behaviour. Anne-Marie Slaughter argues that liberal theory requires attention to specific interactions between individuals and states, distinguishing among various institutions, each with distinct roles and interests.[102] Relevant to this thesis is the understanding generated by this theory of the role of private and non-state actors in influencing behavioural changes, eventually leading to effective implementation of international law. Particularly relevant to this thesis is the understanding that non-state and private actors, by influencing state preferences and behaviour, play a critical role in the effective implementation of international law. Slaughter identifies multiple sites where this influence takes place, arguing that international institutions may interact directly with individuals and societal groups, independently of government bodies.[103] This approach builds on her earlier work with

[99] ibid 252-255.
[100] W Bradnee Chambers, 'Towards an Improved Understanding of Legal Effectiveness of International Environmental Treaties' (2003) 16 *Georgetown International Environmental Law Review* 501, 514-517.
[101] Andrew Moravcsik, 'Taking Preferences Seriously: A Liberal Theory of International Politics' (1997) 51 *International Organization* 513, 516-517.
[102] Anne-Marie Slaughter, 'International Law in a World of Liberal States' (1995) 6 *European Journal of International Law* 503, 508–509; Anne-Marie Slaughter, *A Liberal Theory of International Law* (Cambridge University Press 2000), 241.
[103] Anne-Marie Slaughter, 'International Law in a World of Liberal States', 523–528.

Abram Chayes, which called for a dual agenda linking international law with international relations theory to better understand how legal norms influence state behaviour.[104] Slaughter's work is particularly relevant to the transnational legal process in conflict settings, as discussed in the following subsection 2.4 on transnational organisations.

Constructivists, however, look at the subject from a different point of view. They consider effectiveness to be achieved through compliance with the law. For them, to achieve compliance, states need to have knowledge and to participate in the implementation with detailed administrative regulations and comprehensive efforts targeted at non-state actors.[105] Their argument revolves around the comparison between laws in theory and in practice, and that even binding rules at the domestic level can differ between theory and practice. Their argument is relevant in showing how effectiveness is a component of legitimacy, as the absence of effective compliance undermines the legitimacy of the norm in the long run. This is particularly evident in the question of legitimacy of hard and soft law over time, and how it is impacted by practice, i.e., its effectiveness. To them, the whole point of establishing a clear distinction between soft and hard law based on their binding nature[106] is pointless since the law in practice will decide upon their efficacy. Some hard laws, due to their lack of effectiveness, can become of low legitimacy and relevancy prompting states to view them as more akin to soft law.[107] Socio-legal scholars, however, argue that focusing on the three elements of binding rules established by realists, i.e., i) precision about the rules; ii) obligation; and iii) delegation to a third-party decision-maker, diverts discussions away from the normative nature of law and consequently from the actual operation of law.[108] This realist focus on adjudicable rules echoes the formal structure of Article 38 of the ICJ Statute, which defines international law in terms of

[104] Abram Chayes and Anne-Marie Slaughter, 'International Law and International Relations Theory: A Dual Agenda' (1997) 87 *American Journal of International Law,* 205.
[105] Sylvia I Karlsson-Vinkhuyzen and Antto Vihma, 'Comparing the Legitimacy and Effectiveness of Global Hard and Soft Law: An analytical framework' (2009) 3 *Regulation & Governance* 400, 408.
[106] Hard law provides binding obligation, is precisely worded, and mandates some type of delegation in the implementation of the law. To Karlsson and Vihma, if one or more of these 'dimensions' are weakened, the law enters the realm of soft law. See: ibid 402.
[107] ibid 414.
[108] Shaffer and Pollack, 'Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance' (n 83) 65, 70.

treaty law, custom, and general principles applied by courts.[109] However, as Shaffer and Pollack argue, such an approach sidelines the broader normative and social dimensions through which international legal norms operate, especially in areas governed by soft law and informal transnational cooperation.

Constructivists and socio-legal scholars promote the efficacy of international law through transnational legal process theory, in which states are affected by the means of interaction, and persuasion happening at the international level. Hence, constructivists with a socio-legal background would advocate for the effectiveness of 'the law in-action' (as they call it) regardless of it being a soft or a hard law.[110] Therefore, effectiveness is what establishes the link between binding rules and behaviour. If non-binding rules (soft law) affect the behaviour of states, then it acquires the status of an effective and legitimate rule. A rule can only be effective if it causes a change in behaviour and leads to specific outcomes, which might not apply to a binding rule, meaning that it could be effective despite the fact that no legal procedures of assuring compliance being taken by the state. Constructivists focus on examining the effectiveness of the rule in practice and how it affects the behaviour of states, and advocate for soft law as a way of shaping states' behaviour through persuasion, interaction, and deliberation.[111]

Relevant to the discussion of soft law, international relation scholars, such as Abbott and Snidal focus more on the state's behaviour and choice of law, as well as factors such as uncertainty, cost, and sovereignty.[112] Toope, a scholar of international law, argues that the law, grounded in shared understandings, attempts to draw a distinction between law and politics. When states find common ground in their values, this convergence can enhance the authority and influence of international law. In the context of soft law, this process helps create a framework for meaningful dialogue and cooperation between states.[113] This conversation is a chance for states to develop new

[109] *Statute of the International Court of Justice* (n 32) art 38(1).
[110] Shaffer and Pollack, 'Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance' (n 83) 70, 72.
[111] ibid 69.
[112] Kenneth W Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance'(2000) 54 *International Organization* 421, 423.
[113] Stephen J Toope, 'Emerging Patterns of Governance and International Law' in Michael Byers (ed), *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford University Press 2001) 98.

conceptions of law and to negotiate their interests and identity that would lead later to the adoption of "hard law". Toope contends that this process of "pre-legal" norm development is even more effective than hard law from an international relations perspective.[114] This view supports the central argument of this thesis, which is that international legal norms can become effective not just through formal binding mechanisms, but also through processes of socialisation, negotiation, and normative alignment. It also emphasises the role of soft law as a critical stage in the internalisation of international norms, particularly within conflict settings where legal development is incremental and deeply political.

2.4 Compliance and Implementation vs. Effectiveness: An Overview of the Literature

2.4.1 Traditional Theories of International Law

According to traditional theories of international law, a state's consent to the adoption of international law makes the law binding. This theory builds its notions on the concept of validity that indicates the oughtness of legal norms as prescribed by Kelsen.[115] The only difference here is that validity of the legal norms is driven from the state's consent. According to this traditional view, this consent would guarantee the effectiveness of international law. This notion of effectiveness established its roots based on the hard nature of international law traditionally. The theory of formal sources of law suggests that rules of formal sources are effectively implemented because of their binding force, as codified in Article 38(1) of the Statute of the International Court of Justice, which identifies treaties, custom, and general principles as the principal sources of international law.[116] Compliance is secured as long as the rules are perceived to be legitimate by those to whom they apply. This is the main theory of Franck and others who view compliance as a natural consequence of rule legitimacy.[117] Legitimacy according to such theory has four elements, namely: i) textual determinacy which means clarity of the obligation (the ability to communicate

[114] ibid 98.
[115] Hans Kelsen, 'Sovereignty and International Law' (1960) 48 *Georgetown Law Journal*, 627.
[116] *Statute of the International Court of Justice* (n 32) art 38(1).
[117] Thomas M Franck, 'Legitimacy in the International System', *The Nature of International Law* (Routledge 2017) 712.

its intent);[118] ii) symbolic validation which refers to the authority practice that brings the obligation to its validation; iii) coherence which concerns the consistency with other rules and practices; and iv) adherence which is how the rule in question respects the hierarchy of rules on law-making. These elements together define what Franck calls the "right process" i.e., legitimacy, and thus lead to compliance with the rule.[119] However, the commonly held belief that legitimacy and legal validity inevitably lead to compliance is challenged in the context of soft law. As discussed earlier, and particularly in the work of Shaffer and Pollack, in the absence of formal binding force, it is the very act of compliance by states that confers legitimacy and a degree of normative validity upon soft law instruments.[120] In other words, soft law norms may acquire legal authority not because they are derived from recognised formal sources, but because states regard them as relevant and act in conformity with them over time.

Another assumption is that compliance is secured by the principle of reciprocity which suggests that if one party breaches their obligations, other parties are entitled to do the same, thus invoking the termination of such obligations.[121] However, this understanding of international law limits it to bilateral relations between states and does not account for the multilateral nature of the international community or the growing relevance of soft law. Furthermore, this approach fails to explain compliance with human rights treaties, where obligations are owed *erga omnes* and reciprocity is largely irrelevant.[122] Other areas of international law also challenge the reciprocity model. International humanitarian law requires humane treatment of persons regardless of the opposing party's conduct.[123] Multilateral environmental agreements aim to protect the global commons by establishing obligations that are not dependent on mutual enforcement.[124] Similarly, peremptory norms and obligations *erga omnes*

[118] ibid 713.
[119] ibid 706.
[120] Shaffer and Pollack, 'Hard vs. soft law: Alternatives, complements, and antagonists in international governance' (n 83) 75-76.
[121] Naoya Okuwaki, *The Changing Nature of International Obligations: Effectiveness of International Law and Compliance* (Cambridge University Press 1996), 350.
[122] ibid 350.
[123] See for example *Geneva Convention III Relative to the Treatment of Prisoners of War* (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135, art 13.
[124] *Paris Agreement* (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/L.9/Rev.1, preamble and art 4.

bind all states irrespective of reciprocal behaviour.[125] A further traditional view holds that international law functions as a self-contained legal system, in which enforcement mechanisms are expected to operate in a visible, uniform, and consistent manner across cases. Therefore, the burden of enforcement and application of the law is always on states. Based on this concept, the law is a mere stabilising social force that sustains the status quo.

Another positivist/statist conception, grounded in the traditional roots of international law, perceives it as a legal system solely dedicated to governing the foreign relations of sovereign states. These classical foundations reflect a period when international law was heavily influence by the concepts of non-intervention and state consent, and was primarily concerned with regulating matters such as war, peace, treaties, and diplomacy. Within this framework, international law is restricted to resolving interstate disputes and addressing minor disagreements that arise between governments. As a result, it excludes interaction with internal or domestic affairs, emphasising a clear distinction between national sovereignty and international legal authority.[126]

2.4.2 Regime Theory in International Relations

According to regime theory, compliance and implementation are two different concepts.[127] Furthermore, this theory distinguishes between "effectiveness" and "implementation", which can also be confusing to researchers. For example, Raustiala and Slaughter define "implementation" as the process in which commitments of international law are put into practice. The process of implementation, thus, includes "the passage of legislation, creation of institutions (both domestic and international) and enforcement of rules".[128] This process is seen as an important factor for treaty effectiveness in particular. The argument here is that implementation of the treaty is key for the creation of behavioural changes in the target society. Furthermore, implementation allows state parties to the treaty to evaluate and self-reflect on their

[125] *Vienna Convention on the Law of Treaties* (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 53.
[126] Okuwaki, *The Changing Nature of International Obligations: Effectiveness of International Law and Compliance* (n 121) 350.
[127] David G Victor, *The Early Operation and Effectiveness of the Montreal Protocol's Non-compliance Procedure* (International Institute for Applied Systems Analysis Laxenburg, Austria 1996) 3, 30, 37
[128] Raustiala and Slaughter, 'International Law, International Relations and Compliance' (n 84) 539.

participation in the regime and even use their non-compliance with some obligations as a way to reconsider and deepen their commitments.[129] The theory suggests that implementation is critical for achieving compliance. However, compliance can sometimes occur even when the government does not conduct any new or additional implementation steps. For instance, if an international obligation already reflects current domestic practice, the state may be considered compliant without any legislative or policy adjustments. Nevertheless, formal implementation remains crucial, as it assures that domestic practice remains aligned with international law, even if future circumstances or policies change.[130]

On the other hand, the theory defines compliance as "a state of conformity or identity between an actor's behaviour and a specified rule".[131] However, it also realises that international norms can be effective even if compliance is low as "high levels of compliance can indicate low, readily met and ineffective standards" and instruments with "significant non-compliance can still be effective if they induce changes in behaviour".[132]

There remains, however, a lack of conceptual clarity among scholars and practitioners regarding the distinction between implementation, compliance, and effectiveness in international law. If implementation means the enforcement of rules through their enactment and the creation of institutions, what would this mean in terms of these rules impact on states' behaviours? In other words, is effectiveness realised by implementation and compliance or does it require more indicators than the internalisation of rules and institutional building? Also, implementation and enforcement can have two different meanings. For example, Toope argues for the need to understand compliance in terms of implementation and not enforcement which is dependent on the threat of force usually exercised by the state government.[133] Implementation on the other hand provides the framework for conversations over the common meanings and value of certain norms and rules, which can be the role of

[129] ibid 539.
[130] ibid 539.
[131] ibid 539.
[132] ibid 539.
[133] Toope, 'Emerging Patterns of Governance and International Law' (n 113) 99.

transnational organisations.[134] Furthermore, the understanding of compliance as the conformity of a state's behaviour with a certain rule can be confused with the definition of effectiveness which focuses on the extent to which a rule stimulates behavioural changes in line with the rule's intended goals. Therefore, the need to distinguish compliance from effectiveness is key to a better understanding of the measurements through which this thesis can examine effectiveness.

2.4.3 Effectiveness vs. Compliance

Traditionally, many studies tackled effectiveness through the lens of compliance. For instance, according to Antony Allott, effectiveness can be measured through compliance, since compliance is capable of reflecting the success of the legal rule in practice.[135] Allott argues that effectiveness itself cannot be understood without an understanding of the legal system, as the purpose of the legal system is to regulate the behaviour of people in a society by deciding what is permitted and what is not.[136] Enabling these changes in behaviour requires establishing institutions and special processes. Thus, analysing the effectiveness of the legal rule means assessing how far it has achieved its objectives. Based on this understanding of the international legal system, Allott argues that compliance would succeed in reflecting the level of effectiveness. In the case of preventive law which aims at discouraging certain unacceptable behaviours, compliance examines the extent of behavioural change. [137] If the law under examination is curative (i.e., meant to work retrospectively to fix certain issues within societies), compliance can show how law works to achieve these ends. When the law is facilitative (i.e., providing formal recognition), compliance is capable of showing the extent to which measures are in fact regulated or taken up by eligible authorities.[138]

Among the many writings on compliance, the work of Harold Jacobson and Edith Brown Weiss presents a perspective that is worth exploring. In their study of compliance, they explain that there is the traditional concept of compliance which requires formal legal action by states as set out in the treaty (as per Article 38(1)(a) of

[134] ibid 99.
[135] Antony Allott, 'The Effectiveness of Law' (1980) 15 *Valparaiso University Law Review* 229, 235.
[136] ibid 235.
[137] ibid.
[138] ibid.

the ICJ Statute).[139] Such a form of action can be ratification, incorporation via domestic legislation, procedures, or sanctions. They also define implementation as the measures that states take to make international norms effective in their domestic law.[140] However, they contend that compliance goes beyond mere implementation of laws. Measuring compliance is more complicated than measuring implementation as it includes the assessment of the extent to which governments follow through on the measures they have adopted to implement international rules and norms.[141] Thus, compliance seeks to examine other forms of action that surpass procedural obligations explicitly set out in the treaty, taking into account engagement with the treaty in its entirety, as well as the spirit in which states are expected to approach their domestic implementation.[142]

However, on compliance's relationship with effectiveness, the authors argue that these are different concepts as, in some cases, countries may be compliant with a treaty, but the treaty is ineffective. Nonetheless, compliance and implementation are both steps leading to the achievement of effectiveness.[143] They urge researchers to look at factors that impact compliance and implementation including the characteristics of the international agreement (treaty); circumstances of drafting and negotiation; mechanisms of implementation; the role of international organisations; actors involved; nature of obligations; and clarity of objectives. Also, they suggest that there are other factors to include that concern the state party at domestic level such as political, social, and economic factors. All these factors impact compliance and implementation and thus could impact the effectiveness of a treaty/agreement.[144] However, this understanding insufficiently differentiates between the definitions of compliance and implementation. Compliance could be restricted to the formal accession and ratification of a treaty/convention. Implementation, on the other hand, is the internalisation of norms in the treaty into the domestic legal system. While Jacobson and Weiss's analysis is important to our understanding of the differences

[139] Harold K Jacobson and Edith Brown Weiss, 'Strengthening Compliance with International Environmental Accords: Preliminary Observations from Collaborative Project' (1995) 1 *Global Governance* 119 124; *Statute of the International Court of Justice* (n 32) art 38(1)(a).
[140] ibid 123.
[141] ibid 123.
[142] ibid 123.
[143] ibid 124.
[144] ibid 127.

between these concepts, their differentiation between compliance and implementation is lacking.

2.4.4 Sociolegal Analyses of Effectiveness

To some scholars, such as Asher Alkoby, the study of compliance requires paying attention to social processes including cultural, political, and economic conditions. These conditions are believed to impact the implementation of international law.[145] For example, compliance with the UN Framework Convention on Climate Change (UNFCCC) requires profound changes in political, individual, and social level of thinking as well as the behavioural changes of consumers.[146] Compliance is thus seen as a process that includes private actors along with governmental support. Such studies call for actual compliance that includes the active participation of the public as a condition that guarantees the implementation of international commitments. Alkoby's view of compliance, however, can be conflated with effectiveness, since it is not only concerned with ratification and the domestic incorporation of international rules, but also requires changes in the political and social domains.

Interestingly, Alkoby treats compliance/effectiveness as a norm-driven behaviour, drawing on the international relations theory of critical constructivism.[147] Critical constructivism focuses on the discursive interventions through which norms are constructed, and the meanings that they take on during that process. Based on Jurgen Habermas's 'discourse ethics', constructivism believes that states engage in a genuine dialogue or negotiation willing to be motivated and eventually persuaded by the better argument. Based on this view, norms will be complied with when they are constructed in a process of mutual persuasion and argumentation.[148] The critical constructivist model suggests that states are social entities that are encouraged to act according to their system of values and norms, and that they tend to negotiate what is appropriate as a legal norm. If an agreement on the norms to be adopted is reached, changes in behaviours are to be followed, and thus effectiveness can be achieved. In this sense, pre-existing social and political norms can play a constitutive role in shaping how

[145] Asher Alkoby, 'Theories of Compliance with International Law and the Challenge of Cultural Difference' (2008) 4 *Journal of International Law and International Relations* 151, 152.
[146] ibid 153.
[147] ibid 154.
[148] ibid 157.

international legal norms are interpreted, accepted, and internalised by states. However, it is important to realise that this form of acculturation[149] must not be restricted to the formal state actors such as diplomats, ambassadors and state's legal experts, but rather it should include different social groups and non-state actors. Furthermore, some cases require more than just normative acculturation, i.e., a high level of legitimacy,[150] to become effective on the ground.[151]

Based on the importance of social processes in achieving effectiveness, Oona Hathaway presents the concept of collateral consequences as an incentive that influences state's behaviour and compliance with international law. In addition to the enforcement incentive, Hathaway argues that collateral consequences are the reactions of different actors including states, organisations, and individuals to the state's official intent to commit itself to a specific treaty. These reactions occur at both domestic and transnational levels.[152] While Hathaway does not touch upon the differences between compliance and effectiveness, it can be implied that both incentives – namely enforcement and collateral consequences – are incentives for effectiveness. Interestingly, collateral consequences occurring at the transnational level include the reactions of international organisations,[153] which indicate their influence in achieving law effectiveness. However, to Hathaway, the role of transnational actors is somehow limited to dictating the state's decision to join a treaty, but not to effectively comply with it.[154] This view can be contrasted with their role according to Koh's theory of transnational legal process (or what Hathaway calls a "norm-based" approach), as will be further discussed in the next section.

[149] Acculturation refers to the process through which actors adopt the norms and behaviours of an international community not through persuasion or coercion, but through social pressure and the desire to conform. See: Goodman and Jinks, *Socializing States: Promoting Human Rights through International Law* (n 17) 4.
[150] Legitimacy in international law generally denotes the perceived rightfulness or justifiability of a rule, institution, or decision, which enhances voluntary compliance. In the words of Thomas Frank: "The perception of those addressed by a rule or a rule king institution that the rule or institution has come into being and operates in accordance with generally accepted principles of right process." See: Thomas M Franck, *The Power of Legitimacy among Nations* (Oxford University Press 1990) 19.
[151] Alkoby, 'Theories of Compliance with International Law and the Challenge of Cultural Difference' (n 145) 155-158.
[152] Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (n 58) 492.
[153] ibid 493.
[154] ibid 514.

2.4.5 Summary

For now, it can be concluded that the extensive literature on compliance has led to the emergence of two theories, one that treats compliance as equal to effectiveness and the other that treats them as two completely different concepts. On the relationship between these two theories, there are different scenarios, only one of which can show a positive impact of high compliance on effectiveness, whereas other scenarios reflect irrelevancy between the two concepts. For instance, rules that are embedded in regimes can be effective despite the low levels of compliance as long as they produce changes in the behaviours of actors.[155] Therefore, as long as the target of analysis is the state's formal behaviour, compliance becomes one of the means to study effectiveness, yet it does not cover all questions concerning effectiveness in international law, such as the law's capacity to produce specific policies and the extent of their implementation through domestic incorporation of the law, the reform of domestic institutions to behave in favour of the law, and domestic behavioural changes of both state and not-state actors. However, it can be observed that the over-analysis of compliance has led to the under-estimation of other studies on effectiveness. This over-analysis is attributed to the extensive interest of legal practitioners who are pressured to examine states' conduct in relation to prescribed legal standards. International law, however, is a system of negotiated law-making as argued by Timothy Meyer.[156] This fact indicates that most international obligations are negotiations among states, rendering compliance only a part of the ongoing negotiations (contest) over the nature and content of obligations. Thus, non-compliance can become a tool for negotiation. The true measurements of effectiveness in international law include its ability to influence state behaviour over time, even when there is low compliance with the exact legal standards.[157] States might join international regimes knowing that there will be limited compliance, but with the hope of gaining benefits from membership, e.g., assistance and funding or even political

[155] Par Engstrom, 'Effectiveness of International and Regional Human Rights Regimes' in Robert A Denemark (ed), *The International Studies Encyclopedia* (Blackwell Publishing 2010) 5.
[156] Timothy Meyer, 'How Compliance Understates Effectiveness' (2014) 108 *American Journal of International Law Unbound*, 93.
[157] ibid 94.

support. Therefore, non-compliance would still be beneficial if it leads to behavioural changes.

As already established, compliance and effectiveness are two distinct concepts. If one agrees with the definition of compliance as the formal conformity with prescribed legal rules, this conformity does not necessarily guarantee anticipated behavioural changes or impact on the living reality of societies and subjects, as argued by Chambers.[158] Compliance must not be confused with implementation or effectiveness. While implementation is considered part of the states' endeavours in realising compliance, effectiveness is analytically distinct from compliance despite being related to it. Implementation is a process that includes administrative measures that seek to incorporate international law into the domestic legal system. Such measures put international rules and standards into practice at the national level, and is concerned with legislative adaptation and the enforcement of rules, as explained by Meyer.[159] Although compliance may be impacted by implementation measures, implementation is not always necessary for compliance, as compliance can occur without implementation, as Chayes and Chayes have argued.[160] Effectiveness, on the other hand, can refer to the ability of the law/agreement to solve the issues or problems it addresses, as explained by Young and Levy.[161] The lack of active participation by different actors at different levels poses a challenge to the law's effectiveness.[162] Furthermore, an important measurement of effectiveness is the behavioural changes of both public and private, state and non-state actors. Therefore, in this thesis, effectiveness is distinguished from compliance and implementation. In the following sections, the thesis will strengthen this argument drawing on Harold Koh's understanding of obedience and transnational legal process while also providing measurements of effectiveness in conflict settings.

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[158] Chambers, 'Towards an Improved Understanding of Legal Effectiveness of International Environmental Treaties' (n 100) 514-517.
[159] Lars Thomann, *Steps to Compliance with International Labour Standards* (Springer 2012), 23.
[160] Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press 1998), 228.
[161] Oran R Young and Marc A Levy, *The Effectiveness of International Environmental Regimes* (MIT Press 1999) 3.
[162] Thomann, *Steps to compliance with international labour standards* (159) 23.

2.5 Harold Koh's Transnational Legal Process

2.5.1 Overview

Having reviewed a range of international law and international relations theories on compliance, implementation and effectiveness, the following section examines the understanding of effectiveness from the point of view of Harold Koh's theory of transnational legal process.[163] Koh's approach to 'obedience' and procedural approach to effectiveness is of particular relevance in the context of measuring the implementation on international law in the case of Libya. Transnational law recognises the importance of both public and private actors. It views international law from a "modern" and broad perspective that recognises new actors and dynamics, especially including private non-state actors.[164] Koh expanded upon this to develop his theory of transnational legal process in the 1990s to describe:

> "The theory and practice of how public and private actors, nation states, international organisations, multinational enterprises, non-governmental organisations, and private individuals interact in a variety of public and private, domestic and international fora to make, interpret, enforce, and ultimately, internalise rules of international law".[165]

In other words, it is the complex process of institutional interaction whereby global norms are not just debated and interpreted but ultimately internalised by domestic legal systems. Based on this definition, the ultimate goal of the process is the internalisation of international rules into the state's domestic legal system. Moreover, this understanding provides a different perspective on the actors at play in the implementation of international law. It gives weight to non-state actors and transnational organisations and focuses on their participation in the internalisation process of international law. It also defies traditional views which failed to explain the interactions between state and non-state actors, and between the public and the private

[163] Harold Hongju Koh is a legal scholar specialising in public and private international law, national security law, and human rights. Koh is currently working as the Professor of International Law at Yale Law School. Prior to that, Koh worked as a Legal Adviser of the U.S. Department of State. See: https://law.yale.edu/harold-hongju-koh

[164] Mathias Reimann, 'From the Law of Nations to Transnational Law: Why We Need a New Basic Course for the International Curriculum' (2003) 22 *Penn State International Law Review* 397, 411

[165] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 183.

sectors in a dynamic way that moves in all directions between such actors.[166] Through such strategies, transnational actors other than the states are empowered, which raises important questions regarding their legitimacy, accountability, and role in shaping compliance outcomes within domestic systems.[167]

Koh skips much of the philosophical question about why states choose to abide by the law and jumps to practical matters of internalisation. In other words, Koh's theory of obedience is of empirical inquiry about the incorporation of international norms into domestic laws and actions. Koh's experience as working in the U.S. Government could explain the pragmatic approach adopted in his writings.[168] It can also be noted that Koh's writings were influenced by the Louis Henkin's arguments in his book "How Nations Behave?".[169] Thus, Koh's endeavours were aimed at understanding how nations behave and why they obey international law. Koh's study adopts the same "optimistic" view of international law which posits that while the law may be under-enforced, it is, nonetheless, enforced and therefore has binding normative power. One of the examples that Koh uses is the Haitian refugees in the United States of America (U.S.).[170] In the early 1990s, the Bush administration began intercepting and returning Haitian refugees at sea, violating international norms, especially the *non-refoulement* principle as established in the 1951 Refugee Convention.[171] Similarly, the Clinton administration continued to breach this principle by preserving this policy, facing legal challenges and criticism from human rights groups. The UN High Commissioner for Refugees opposed such a policy, and domestic pressure increased, particularly from the African American community and Congressional Black Caucus. Following this pressure, in 1994 President Clinton changed course, implementing a "safe haven" policy for Haitian refugees. This shift, while imperfect, brought the U.S. closer to compliance with international refugee protection norms.[172]

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[166] ibid 184.
[167] Koh, 'Why Do Nations Obey International Law' (n 11) 2656.
[168] Koh worked as Assistant Secretary of State for Democracy, Human Rights and Labor during the Clinton presidency and as Legal Adviser to the State Department in the Obama administration. See: https://1997-2001.state.gov/about_state/biography/koh.html
[169] Henkin, *How Nations Behave: Law and Foreign Policy* (n 27).
[170] Koh, 'Reflections on Refoulement and Haitian Centers Council' (1994) Faculty Scholarship Series, Paper 2089.
[171] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.
[172] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 196-198.

This compliance, or enforcement as described by Koh, happened through a complex process that emerged in a diversity of public and private settings, under a variety of national and international laws, activated by a variety of governmental and non-governmental actors. Thus, Koh argued that international law is enforced by a transnational legal process.[173] Koh's theory can be seen as an endeavour to understand not only the reasoning of why states obey, but how to measure and ensure their obedience. In other words, Koh's writings are concerned with notions of compliance and effectiveness. Koh explains that, by ignoring these transnational legal processes, international relations theories dismiss the "evolutionary process" in which repeated compliance becomes habitual obedience over time.[174] Furthermore, in order to achieve obedience a "more internalised compliance" is thus required. Koh considers such an internalised compliance to be the essence of obedience. This obedience happens through the transnational legal process which in return requires three stages sequentially: reaction, interpretation, and internalisation. Most importantly, there must be repeated participation in the process which "reconstitutes" norms and participants' identities in the process.[175]

It should be recalled that there are two major theoretical camps disagreeing on whether state compliance is caused by coercion (sanctions) or by acculturation (normative coercion).[176] Koh's contribution of transnational legal process supports the latter, i.e., acculturation, which can be grasped through his definition of obedience. Much like Oran Young, who describes compliance as the extent to which a subject's conduct aligns with the rules it is expected to follow,[177] Koh suggests that obedience is behavioural conformity with the internalised and incorporated norms in the state's own value system.[178] Indeed, formal compliance and genuine behavioural change are not necessarily correlated. This is especially clear in the way realist approaches to compliance have traditionally prioritised formal indicators, such as whether a state has

[173] ibid 194.
[174] Koh, 'Why Do Nations Obey International Law' (n 11) 2646.
[175] ibid 2646.
[176] Alkoby, 'Theories of Compliance with International Law and Challenge of Cultural Difference' (n 145) 155-158.
[177] Oran R Young, *Compliance and Public Authority: A Theory with International Applications* (RFF Press 2013), cited in Beth A Simmons, 'Compliance with International Agreements' (1998) 1 *Annual Review of Political Science* 75, 3.
[178] Koh, 'Why Do Nations Obey International Law' (n 11) 2646.

signed or ratified a treaty or passed implementing legislation. However, real changes in behaviour on the ground may not always be reflected in these formal acts. By focusing narrowly on the behaviour of the state as a unitary actor, realist analyses often overlook the more profound question of whether international law has effectively influenced domestic social norms, institutional practices, or the behaviour of non-state actors. Consequently, they overlook the potential of international law to encourage broader participation and promote internalised change across multiple layers of society.

Furthermore, the distinction between these two forms of compliance (formal and internalised) is frequently approached differently across scholarly traditions, leading to diverging conclusions about what constitutes effective international law. Koh's understanding of obedience is crucial to a broader understanding of effectiveness, which is not limited to formal compliance but includes behavioural conformity resulting from internalised norms. Therefore, to reconcile these differing approaches, one can conclude that effectiveness must extend beyond mere formal compliance or implementation of legal rules. It also includes internalised compliance, which is influenced through the active participation of transnational actors in the normative processes of law-making and reflected in observable behavioural changes that lead states and societies toward meaningful engagement with international obligations.

Therefore, this thesis draws on Koh's understanding of habitual obedience as equivalent to effectiveness, which is the ultimate goal to be achieved through internalised compliance. Koh's framework introduces the internalisation of international norms as a central component in assessing effectiveness. Furthermore, the thesis argues that by achieving full internalisation, behavioural changes should be observable, and thus, effectiveness would most likely be realised. Full internalisation refers to the embedding of international norms within domestic legal, political, and social systems.[179] To avoid confusion between the different theories of compliance set out above, this understanding of "internalised compliance" based on Koh's work will henceforth be referred to simply as "internalisation".

[179] ibid 2656.

2.5.2 Internalisation

Internalisation suggests that the subject of analysis should include behaviour and interactions between transnational actors including state and non-state actors, both public and private. As transnational actors interact, they produce specific patterns of behaviour and create "norms of external conduct" which are in turn internalised.[180] Traditionally, however, the focus of compliance and effectiveness studies were states. States have generally been perceived as the primary actors in international law, while ignoring other important actors that actually influence the implementation and effectiveness of international law. While states pass/enforce international rules through formal channels, other non-state actors are expected to abide by these rules.[181] Therefore, the law can only truly be effective once individuals and other private actors interact with it and eventually act in accordance with its rules and standards. This is particularly relevant in the field of human rights law, where the primary duty-bearers have traditionally been states. Human rights treaties are grounded in the principle of state consent, and the obligations they impose are generally binding on states alone. However, this state-centric model has come under increasing scrutiny, particularly in contexts where non-state actors exercise de facto control or engage in widespread rights abuses, such as corporations, armed groups, or private military companies.[182]

Recognition of the importance of non-state actors does not negate the state's role in establishing the right circumstances for the effectiveness of the law. States work through formal compliance to establish an environment of enforcement through regulatory frameworks. Nonetheless, internalisation refers to how different transnational actors react to the environment of compliance established by the states.[183] If such reactions include changes in behaviours matching the legal standards in question, then effectiveness can be concluded. It is worth noting that while formal compliance is relatively easy to determine, such internalisation is difficult to identify

[180] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 204.
[181] UN Sub-Commission on the Promotion and Protection of Human Rights, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (26 August 2003) UN Doc E/CN.4/Sub.2/2003/12/Rev.2.
[182] UN Human Rights Council, 'Protect, respect and remedy: a framework for business and human rights' (7 April 2008) UN Doc A/HRC/8/5 (by John Ruggie, Special Representative of the Secretary-General).
[183] Shima Baradaran and others, 'Does International Law Matter?' (2012) 97 *Minnesota Law Review* 743, 760–770.

as it examines the behaviours of multiple subjects of the law.[184] Furthermore, formal compliance can be identified by the state's enforcement of the law through legislation, whereas internalisation would involve multiple interactions of transnational actors.

That being said, effectiveness requires extensive analysis.[185] Anne Gallagher explains how despite significant resources and efforts dedicated to counter-trafficking, there is little evidence to show which strategies are truly effective in combating the problem.[186] It could be argued that studies that adopt the analysis of effectiveness (including the concept of internalisation as presented and adopted by this thesis), rather than formal compliance could be more capable of providing the answer on which strategies to follow in order to ensure obedience. Also, the object of effectiveness analysis should not be restricted to obligations set by hard law through agreements and treaties, but also through soft law instruments and their domestic application that promotes the effectiveness of international law. Another important factor to consider while studying effectiveness is the recognition that developing countries often face context-specific challenges in implementing international law. These challenges may include limited institutional capacity, legal pluralism, and restricted access to justice, particularly for marginalised groups.[187] In conflict settings such as Libya, these difficulties are compounded by political fragmentation, weak state authority, and competing sources of legal legitimacy. Accordingly, measuring effectiveness in such contexts requires attention to how international norms are interpreted, negotiated, and internalised within diverse legal and social systems, rather than merely assessing formal compliance with treaties.

2.5.3 Formal Compliance

Formal compliance, on the other hand, includes ratification, a state's reporting obligations,[188] and implementation; and which is defined as the set of measures taken

[184] ibid 760-770.
[185] ibid 760-770.
[186] Anne T Gallagher, *International Law of Human Trafficking* (Cambridge University Press 2010), 390.
[187] For example, see: Nasir M Ali, 'Legal Pluralism, Obscure Reforms and Adjudication of Land Conflicts in Hargeisa, Somaliland' (2020) 52 *The Journal of Legal Pluralism and Unofficial Law,* 94; Horatia Muir Watt, 'Conflicts of Laws Unbounded: The Case for a Legal-Pluralist Revival' (2012) 1 *Transnational Legal Theory* 165, 316.
[188] This is specific to conventions as in the case of the ILO's forced labour conventions, which will be explained in more detail in Chapters 4 and 5 below.

by official state actors including "the passage of legislation, creation of institutions (both domestic and international) and enforcement of rules".[189] However, this thesis argues that measuring effectiveness involves more than assessing internalised compliance. Formal compliance remains essential, as it establishes the initial framework for interpretation and interaction between state and non-state actors, which is necessary for internalisation to take place. In the case of treaty/convention effectiveness, Oona Hathaway argues that commitment precedes compliance, which if analysed can imply that formal compliance through ratification is required first, i.e., a state's express commitment is key for internalised compliance.[190] Bradnee Chambers suggests that examining effectiveness through the analysis of treaty performance data in accordance with the treaty's objectives is more efficient than proving empirical connections between the treaty and behavioural changes in the targeted country. Chambers argues that while effectiveness and compliance are two different scales of measurements, compliance is still considered to be an essential source of data to measure effectiveness.[191] This opinion, despite appearing in conflict with the transnational legal process, supports this thesis' understanding of effectiveness as relying on compliance data is its first step.

By contrast, Timothy Meyer contends that effectiveness can be evaluated by comparing a state's behaviour before and after a legal norm is formally adopted, without relying on ongoing compliance indicators. In Meyer's approach, the moment of treaty adoption or entry into force serves as the reference point for assessing behavioural change.[192] But the question remains; how can one examine certain behaviours without an understanding of the law and a state's interaction with such a law? Such a view dismisses the law-making role of individual states through negotiations and ratification. This thesis also disagrees with the argument that, unlike compliance, the study of effectiveness does not require deep understanding of the legal rules or their specific conditions but simply requires information about the state's behavioural changes.[193]

[189] Raustiala and Slaughter, 'International Law, International Relations and Compliance' (n 84) 539.
[190] Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (n 58) 494.
[191] Chambers, 'Towards an Improved Understanding of Legal Effectiveness of International Environmental Treaties', (n 100) 525.
[192] Meyer, 'How Compliance Understates Effectiveness' (n 156) 94-96.
[193] ibid 94-96.

While it is true that the main difference between both concepts is that effectiveness extends to behavioural changes, that does not mean that the latter is not concerned with questions of legality and formal compliance. It is important to study formal compliance and the whole legal process to better understand effectiveness. However, it is worth noting that formal compliance is only part of law-making in international law. The law-making process is affected by states' formal interaction through negotiations and even through their choice of non-compliance.

2.5.4 Transnational Organisations

Development of international law resulted in the diversification of international arenas and actors. The two main actors as identified by traditional international law namely, states and international organisations, are growing by the day. Nonetheless, other actors are increasingly influencing the making and implementation of international law, such as NGOs, non-state actors, individuals, and corporations.[194] Now that this chapter has established the notion of effectiveness as a behavioural change happening within the domestic realms of the state, the question of how transnational organisations, such as the ILO or NGOs working in Libya, might impact this effectiveness, or work to influence it, must be addressed.

According to the theories of delegation and agency, states while establishing institutions grant them authority and power to promote solutions for "collective-action problems".[195] While it is often assumed that states have an interest in complying with international obligations to maintain legitimacy or avoid sanctions, this is not always the case. International obligations may limit a state's freedom of action, especially when those obligations conflict with domestic political priorities or sovereignty concerns. The management of compliance is therefore often delegated to international institutions, which employ facilitative mechanisms such as monitoring and evaluation to promote adherence. However, Oona Hathaway challenges the notion that treaty ratification alone results in meaningful changes in state behaviour. She argues that

[194] Reimann, 'From the law of nations to transnational law: why we need a new basic course for the international curriculum' (n 164) 403-404.
[195] Darren G Hawkins and others, *Delegation and agency in international organizations* (Cambridge University Press 2006).

many international human rights treaties have limited impact at the domestic level because they do not establish automatic enforcement mechanisms.[196] Rather, ratification is merely the first step in what must be a broader and more complex process of internalisation and implementation. In this sense, Hathaway's work refines and complicates the assumption that compliance necessarily aligns with state interest or that institutional oversight alone can guarantee effective implementation.

Therefore, compliance with international human rights treaties is a continuum which includes ratification; satisfying reporting and other evaluation procedures set by the treaties' special supervisory committees; implementing rules in the domestic legal system; and achieving consistent compatibility with rules through behaviour at the domestic level. Thus, ratification of treaties can only achieve a partial compliance and in such a case cannot meet effectiveness requirements.[197] According to Abram Chayes and Antonia Handler Chayes, the "fundamental instrument" for sustaining compliance with treaties at an acceptable level is a cyclical dialogue among the treaty organisation, the parties, and the wider public.[198] Indeed, normative discourse and recurring interactions between transnational actors, maintains human rights regimes. These interactions and normative discourse are sponsored by the human rights activism of NGOs and international networks that report on human rights violations and influence the public opinion to pressure domestic actors to internalise human rights regimes.[199]

2.5.5 The Specific Role of the UN

As the leading transnational organisation, Adam Chilton refers to the United Nations' effectiveness not only in shaping the politics of the whole world as a hegemonic structure but also in promoting the implementation of international norms and rules at domestic levels.[200] Engstrom mentions how various studies have established the key role of the different UN organs and agencies in shaping the world's current understanding of human rights and the way it should be applied in member states

[196] Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 *Yale Law Journal* 1935, 1989.
[197] Engstrom, 'Effectiveness of International and Regional Human Rights Regimes' (n 155) 9-10.
[198] Chayes and Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (n 160) 25-27.
[199] Hathaway, 'Do Human Rights Treaties Make a Difference' (n 196) 1975.
[200] Adam S Chilton, 'Experimentally Testing the Effectiveness of Human Rights Treaties' (2017) 18 *Chicago Journal of International Law* 164, 183.

through cooperation and institutionalisation of human rights regimes.[201] However, for international institutions to be truly effective, they must be embedded meaningfully within domestic societies. This reflects the strategy of *embedded internationalisation*, as articulated by Anne-Marie Slaughter, whereby international norms and institutions influence domestic actors not through coercion, but through networks of persuasion and cooperation. During his tenure, UN Secretary-General Kofi Annan promoted this approach by advocating for a transnational constituency composed of NGOs, corporations, and other civil society actors. He encouraged corporations to draw on UN expertise to become "good global citizens" and urged NGOs to hold them accountable.[202] While Annan's approach influenced early 21st-century human rights governance, it is crucial to recognise that both the UN system and the geopolitical landscape have changed dramatically since then. The emergence of multipolarity, shrinking civil society space, and digital transformations in governance indicate that strategies for effective internationalisation must now address new challenges and dynamics.[203]

So-called "UN law" can be defined as international rules that are mainly derived from multilateral conventions and other rules passed by the UN's operational agencies, General Assembly and Security Council. The aim here is to shed light on the key role of this organisation in shaping the structure of international law and its measurements of effectiveness. The distinctive nature of UN law is that it has a high level of legitimacy since it is adopted by most nations and is influenced by the hegemonic international system. The UN human rights law system operates according to the assumption that states opt into a particular treaty regime because they intend to commit to the purposes of certain treaties while, at the same time, sharing burdens and

[201] Engstrom, 'Effectiveness of International and Regional Human Rights Regimes' (n 155) 16.
[202] Slaughter, *A Liberal Theory of International Law* (n 102) 248.
[203] Richard Gowan, 'Transforming the United Nations for a Multipolar World Order' (CIGI, 14 March 2024) https://www.cigionline.org/articles/transforming-the-united-nations-for-a-multipolar-world-order/ accessed 3 July 2025; Forum Syd, *Shrinking Space: Challenges in Implementing the 2030 Agenda* (2017) https://forumciv.org/sites/default/files/2018-03/Shrinking-Space%20-%20Challenges%20in%20implementing%20the%202030%20agenda.pdf accessed 3 July 2025; OECD, *Digital Transformation and the Futures of Civic Space to 2030* (OECD 2020) https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/06/digital-transformation-and-the-futures-of-civic-space-to-2030_09a483cf/79b34d37-en.pdf accessed 3 July 2025.

attaining mutual objectives with other states.[204] This assumption suggests that the main reason behind a state's accession to specific treaty regimes is its willingness to commit to the treaty, regardless of other states' correspondence to these same obligations.[205] In other words, reciprocity is not as important as the element of "voluntary initiative" (or "voluntary obedience" as per Koh),[206] in order to achieve efficacy of the UN human rights treaty regimes. However, recent years have exposed the fragility of this premise. The withdrawal or open defiance of international agreements by powerful nations, like the United States under the Trump administration, has openly disregarded the long-term stability of consensus-based international cooperation.[207] This decline of multilateralism echoes a broader shift in global politics marked by rising populism, authoritarianism, and strategic disengagement from normative institutions.[208] Although these developments challenge the authority of international law, they also highlight its continued relevance. In an era of contested global order, international human rights law remains a vital site of resistance and accountability, particularly when norms are internalised by domestic actors and civil society, as this thesis argues. The primacy of international law today cannot rely on naive assumptions of universal state commitment, but rather on its ability to adapt, embed, and endure across borders through transnational legal processes.

Moreover, the trend in these treaties is that they only set the minimum standards for states' compliance. This means that these standards might not be enough for states to secure effective implementation of the treaty, and thus, states are expected to take more steps to ensure effectiveness of these treaties at the domestic level based on the individual state's capacity and circumstances. Therefore, states as lawmakers are expected to interpret international law in order to solve issues that arise in their domestic realm. Based on that, the state can take part in law-making through the adoption of unilateral measures which need to be positively justified as part of the international community's interests as a whole. If these measures are then approved by

[204] Based on the normative models as adopted by Chayes and Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* as discussed in Hathaway, 'Do Human Rights Treaties Make a Difference' (n 196) 1956.
[205] Hathaway, 'Do Human Rights Treaties Make a Difference' (n 196) 1961.
[206] Koh, 'Why Do Nations Obey International Law' (n 11) 2645.
[207] Harold Hongju Koh, 'The Trump Administration and International Law' (2017) 56 *Washburn Law Journal* 413, 419-421.
[208] Sandra Destradi and Johannes Vüllers, 'Populism and the Liberal International Order: An Analysis of UN Voting Patterns' (2024) *The Review of International Organizations*, 3.

other states, they could become a proposal for a new legal instrument.[209] However, if they are opposed by other states, they become conflicts between legitimacy and effectiveness and thus might lead to the creation of new different rules. Furthermore, negotiations among state parties to a particular treaty are considered an important part of international law-making as they are required to concern legal matters and to be deliberate. Another interesting aspect of the UN human rights treaty regime is that it focuses on the rights of individuals which diverts from the traditional concept of international law as a system of rules that is concerned with interstate relationships. UN human rights law promotes the dual function of states by which they are perceived as a subject of international law in their foreign affairs and as an authority in their domestic affairs at the same time. Based on that, states are required to coordinate their domestic rules with international norms to prevent normative conflict. This may involve the adoption of specific legislative, administrative, or judicial measures across various branches of international law. To achieve genuine effectiveness, states must demonstrate sustained compatibility with international standards within their domestic systems, not only through formal ratification but also through internalised legal and institutional practice.[210]

While the foundations of the United Nations human rights regime were laid in 1948 with the adoption of the Universal Declaration of Human Rights (UDHR),[211] it is particularly noteworthy how human rights have since become a central priority on the UN agenda. This prioritisation gained significant momentum following the establishment of the Office of the High Commissioner for Human Rights in 1997, alongside the efforts of other UN bodies. Since then, the regime has expanded considerably, giving rise to a global human rights infrastructure marked by the proliferation of non-governmental organisations (NGOs) dedicated to monitoring, promoting, and defending human rights worldwide.[212] Especially in the 1990s, during the UN reform process, human rights started to become "operational".[213] Thus, one of

[209] Okuwaki, *The Changing Nature of International Obligations: Effectiveness of International Law and Compliance* (n 121) 350.
[210] ibid 350.
[211] *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III)).
[212] Theo Van Boven, 'The United Nations High Commissioner for Human Rights: The History of a Contested Project' (2007) 20 *Leiden Journal of International Law* 767, 770.
[213] Joel E Oestreich, *Power and Principle: Human Rights Programming in International Organizations* (Georgetown University Press 2007) 57-58.

the most important developments to the human rights regime under the auspices of the UN was the expansion of human rights norms as well as the growing "intrusiveness" of international institutions for the protection of human rights.[214] According to such developments, the "professionalisation" of human rights occurs,[215] and multiple actors become involved in the creation of human rights norms and are granted authority to promote their enforcement at domestic levels. This role played by institutions varies in its effectiveness based on the kind of implementation mechanisms and whether they are based on agreements, recommendations, and peer review or based on legally binding rules and measures, sanctions, and referral to the Security Council.

David Kennedy suggests that for these institutions/human rights regimes to ensure better effectiveness, a clearer understanding is required of how the politics of decision-making regarding human rights is played. Kennedy refers to the role of different "decision makers" who consist of experts in the economy, and non-state actors, such as NGOs and private institutions, to pressure and negotiate with states over the actual implementation of international norms.[216] Kennedy's perspective supports Koh's theory of transnational legal process, as well as the position adopted in this thesis, in that they both recognise the importance of continuous interaction between state and non-state actors. Instead of viewing international law as effective only when enforced through formal mechanisms or state-centred compliance, both Kennedy and Koh emphasise the dynamic, multi-actor process through which norms are interpreted, internalised, and ultimately translated into practice. Kennedy's focus on the informal influence of expert networks and transnational actors echoes Koh's idea that effectiveness is achieved through repeated participation in norm-shaping interactions

[214] Regional human rights systems have also significantly contributed to this development, including the European Convention on Human Rights (ECHR), the American Convention on Human Rights under the Organisation of American States (OAS), and the African Charter on Human and Peoples' Rights established by the African Union (AU). Each of these regimes has developed judicial or quasi-judicial mechanisms to safeguard and enforce human rights within their respective regions. See: *European Convention for the Protection of Human Rights and Fundamental Freedoms* (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5; *American Convention on Human Rights* (adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No 36; and *African Charter on Human and Peoples' Rights* (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 International Legal Materials 58.
[215] David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press 2004) 27.
[216] ibid 349.

that lead to behavioural change; a central concept in this thesis's approach to measuring internalisation and effectiveness in conflict settings.

2.5.6 UN Human Rights Treaty Bodies: Mechanisms of Enforcement

As already established, compliance is part of the effectiveness measurements of international treaties. However, treaty bodies use compliance data, not only as an effectiveness measurement, but also as an enforcement mechanism. They rely on compliance data because it is a more easily accessible form of measurement.[217] Compliance data can be derived from a treaty's reporting obligations, supervisory mechanisms of implementation, learning mechanisms, along with other built-in systems which allow parties to review the status of a certain treaty or to learn about its main issues of interest. Other non-binding data sources to consider include capacity building programmes, financing, community projects, campaigns, training, and workshops that are key to help states in their implementation process.[218]

Moreover, most human rights treaty bodies require regular reporting by state parties. Yvonne Dutton has argued that states' commitment to regular reporting does not necessarily indicate any kind of obligation.[219] Treaty bodies or committees assigned to supervise states' submission of reports cannot force them to submit those reports. Treaty committees are incapable most of the time of guaranteeing the submission of these reports on time.[220]

Besides reporting, a state can commit to other enforcement mechanisms such as allowing committees to hear complaints from other treaty parties about the state's breach of the obligations.[221] While this enforcement mechanism seems stronger than self-reporting, it is still flawed by the fact that these committees are not granted the authority to order a remedy for the issue. Another mechanism is the committee's

[217] Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (n 58) 507.
[218] For example, the European Union, a strong proponent of the Kyoto Protocol, crafted its own policies to comply with the Protocol. Although viewed as leading to a diverse and fragmented international climate policy landscape, these policies and standards are considered important to the effectiveness of the Protocol in Europe based on the objectives set by the European Union. See: Victor, *The early operation and effectiveness of the Montreal Protocol's non-compliance procedure* (n 127) 15.
[219] Yvonne M Dutton, 'Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms' (2012) 34 *University of Pennsylvania Journal of International Law* 1, 12.
[220] ibid 12.
[221] ibid 12-13.

authority to receive individual complaints on any violation of their human rights under the treaty in question. This is conditioned on the applicant having exhausted all available domestic remedies.[222]

As an example of other mechanisms adopted, the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) requires states to allow a Subcommittee on Prevention of Torture and other Cruel, Unusual or Degrading Treatment to visit any place within the state's jurisdiction to oversee the implementation of the treaty and even to prevent the mistreatment of persons kept in detentions by the government.[223] However, although this provision is considered quite progressive in terms of granting the committee access onto sovereign territory, the committee's authority against governments remains limited to investigations and report-writing.

On the other hand, the International Criminal Court's (ICC) constituent treaty mandates the independent Prosecutor to commence investigations *proprio motu*, that is, on their own initiative without a referral from a state or the UN Security Council. [224] This mechanism, enshrined in Article 15 of the Rome Statute,[225] reflects a significant step forward in the evolution of international criminal law, illustrating a formal capacity to pursue accountability outside the scope of political discretion. However, the effectiveness of these *proprio motu* powers in practice remains highly contested. For example, while the Prosecutor successfully launched investigations in Kenya, the Philippines, and Georgia, these attempts have frequently encountered political opposition, official non-cooperation, and procedural delays. The Kenya cases, the first application of *proprio motu* powers, ultimately collapsed due to witness manipulation and lack of evidence.[226] Similarly, the probe into the Philippines' "war

[222] ibid 29.
[223] *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 18 December 2020, entered into force 22 June 2006) 2375 UNTS 237 (OPCAT) as cited in ibid 13.
[224] ibid 28-30.
[225] *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 15.
[226] *Prosecutor v Kenyatta* (ICC-01/09-02/11) International Criminal Court, Decision on the Withdrawal of Charges (5 December 2014).

on drugs" has been continually stalled by the government's refusal to cooperate.[227] Despite their symbolic significance, these enquiries have rarely resulted in convictions or sustained judicial outcomes. Thus, the ICC's reliance on state cooperation restricts the practical impact of such prosecutorial powers.

This reflects a greater issue within international law: the existence of formal mechanisms does not in itself guarantee effectiveness. According to Koh's theory of transnational legal process, true effectiveness is achieved not only through formal enforcement tools but through the internalisation of international norms into domestic political, legal, and social structures. Therefore, *proprio motu* powers, while crucial, highlight the limits of legal authority in the absence of deeper transnational engagement and behavioural change. Nonetheless, all other mechanisms help to promote respect for human rights, regardless of their weaknesses. Reports and comments made by the committees, despite lacking strong enforcement, can publicly shame states and lead them to improve their domestic practices, as will be discussed in Chapter 4, section 2 on The ILO's Special Supervisory Mechanisms. Furthermore, the experience of international environmental regimes shows that although their compliance mechanisms share many of the weaknesses of the human rights system, they nonetheless offer valuable lessons. Improvements have been achieved by requiring precise reporting deadlines, imposing costs on non-reporting states, offering financial and technical assistance, and exerting political pressure. In addition, differentiated reporting schedules, such as those under the Climate Change Convention which give developing states longer periods to submit their reports, have alleviated the reporting burden. Similar reforms have been proposed within the UN human rights treaty system to make state reporting more feasible.[228] This suggests that, with some improvements, reporting is not as ineffective as one might think.

[227] International Criminal Court, *Situation in the Republic of the Philippines: Public Redacted Version of "Request for Authorisation of an Investigation Pursuant to Article 15(3)"* (ICC-01/21, 24 May 2021) para 2; see also Pre-Trial Chamber I, *Authorisation Pursuant to Article 15 to Open an Investigation into the Situation in the Philippines* (ICC-01/21, 15 September 2021).
[228] Joanna Whiteman and Claire Nielsen, 'Lessons from Supervisory Mechanisms in International and Regional Law' (2013) 26 *Journal of Refugee Studies* 360, 380.

2.5.7 Additional Mechanisms of Enforcement: The ILO

In addition to committees and treaty bodies, there are other mechanisms of the UN institutions that provide guidance on the proper application of treaty provisions and thus promote the implementation of treaties at the domestic level. For example, advisory opinions of the International Court of Justice; general comments by the UN; and special procedures of the UN Human Rights Council. It is worth mentioning that Wisskirchen has argued that the ILO has the most effective monitoring system.[229] This argument is mainly based on the high volumes of reports and relative acceptance of reporting by almost all member states to the ILO. In addition, it is based on the different measures adopted by the ILO that are believed to have a cumulative effect.[230]

One of the key processes is the regular reporting system as per Article 22 of the ILO Constitution.[231] Reports are usually followed by comments and direct requests by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). There is also the ability of workers' and employers' organisations to submit petitions which are usually provided in order to pressure governments. Depending on the outcomes of those petitions and other supervisory mechanisms, the findings of the CEACR are produced and made available to the public which can generate political and moral pressure on the non-compliant state party.[232] According to Wisskirchen, the effectiveness of the ILO largely depends on the ILO's awareness and "its presence in the socio-political life" of the non-compliant country.[233] This is of specific importance to the analysis of effectiveness in light of the transnational legal process. Nonetheless, the ILO's reporting system has other advantages. One of the key advantages is that reports are examined by independent experts at the CEACR which has 20 distinguished jurists who are appointed every three years by the ILO Governing

[229] Alfred Wisskirchen, 'The Standard-Setting and Monitoring Activity of the ILO: Legal Questions and Practical Experience' (2005) 144 *International Labour Review* 253, 269.
[230] The reporting and monitoring processes within the ILO are discussed in more depth in Chapter 4 below.
[231] International Labour Organization, *Constitution of the International Labour Organizatio*n (adopted 28 June 1919, entered into force 10 January 1920) art 22: "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request."
[232] Wisskirchen, 'The Standard-Setting and Monitoring Activity of the ILO: Legal Questions and Practical Experience' (n 229) 270.
[233] ibid.

Body.[234] Also, the work of the CEACR is known to have a high degree of objectivity mainly because the ILO is one of the most participatory organisations in the UN since its tripartite structure is inclusive and representative of workers, employers, and government. Voting rights that are granted to NGOs of both workers and employers allow them to be actively involved in decision making. Another incentive that the ILO provides for states to commit to reporting is the wide dissemination of the committee's findings which can push states to solve problems in an attempt to avoid criticism that might come from the public.[235] Nevertheless, the ILO mechanisms have been criticised for difficulties concerning the assessment of compliance with the ILO standards. Some of which are: ambiguity concerning the definitions of specific obligations aiming at achieving key labour standards, the lack of identifying compliance indicators for key labour standards, and other methodological concerns about the way in which inferences are made from raw data.[236] Given that the ILO's effectiveness is the core of this thesis, more in-depth discussion on the ILO's structure and history is set out in Chapter 4.

2.6 Effectiveness in Conflict Settings

As established in section 1 on Legality and Validity of International Law, traditional views of law effectiveness argue that effectiveness is determined by the law's legality and validity. This validity, based on the theories of Hobbes, Kelsen, and others, is determined by and derived from a sovereign command. In other words, it is the state that validates the law and gives meaning to its existence. Based on this notion, state authority through its unified and hierarchical power is necessary for the validation of law and its effectiveness.[237] This legal centralism, according to Griffiths, is an obstacle to accurate observation of the legal reality. It is incapable of understanding that the identification of law and legal systems in modern states is not consistent and ideally organised but rather is inconsistent and unsystematic. This centralism, as Griffiths argues, indicates projecting an idealised model of law derived from modern Western

[234] Whiteman and Nielsen, 'Lessons from Supervisory Mechanisms in International and Regional Law' (n 228) 380.
[235] ibid 380-381.
[236] Theodore H Moran, 'Monitoring compliance with international labor standards: How can the process be improved, and what are the implications for inserting labor standards into the WTO?' (2005) 59 *Journal of Business Ethics* 147, 148-150.
[237] John Griffiths, 'What is Legal Pluralism?' (1986) 18 *The Journal of Legal Pluralism and Unofficial Law* 1, 3.

states onto societies with different legal realities.[238] In doing so, it disregards the complexity of law as practiced in everyday life, particularly in traditional or stateless societies where legal authority is dispersed and shaped by local social norms rather than centralised state institutions.

Conversely, legal pluralism provides that law is not just made by the state, but by other sources of authority that are socially recognised, and involves the overlap, and sometimes conflicts, between competing centres of power.[239] Law, therefore, is about social control, and thus requires an understanding of sociological and anthropological perspectives of social control mechanisms.[240] Contrary to legal centralism or non-Westphalian legal environments,[241] pluralism views law in terms of authority and institutions rather than states and sovereignty, and the social groups it is applicable to. Such an understanding gives importance to the agency of different social groups and components within a certain state or geographical territory.[242] This is especially important to effectiveness in Libya, where a traditional view of legal centralism would argue that the long-running armed conflict, which has severely weakened state institutions, has turned Libya to a failing state, and so a lost cause for the international rule of law. One could argue that such a pessimistic view only helps the situation of human rights violations in Libya to persist. It encourages international organisations to view Libya as a lost cause, and as an isolated entity/territory with a need for development aid at a maximum, and at a minimum to no efforts to establish international rule of law, i.e., to seek effectiveness and respect for international law in the country. This line of thinking was criticised by Griffiths who stated that the absence of a central political organisation is often concluded as a situation of "no law" or the absence of a rule of law, while ignoring the existence of organised sub-groups that have their set of rules and influence, and thus, societies are "misleadingly described as having no law just because they do not have it on the level of the whole society."[243]

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[238] ibid 4.
[239] Brian Z Tamanaha, 'The Rule of Law and Legal Pluralism in Development' (2011) *3 Hague Journal on the Rule of Law* 1, 4-5.
[240] Baudouin Dupret, Maurits Berger and Laila Al-Zwaini, *Legal pluralism in the Arab world*, vol 18 (Brill 1999), 383.
[241] Krasner, *Sovereignty: Organized Hypocrisy* (n 24) 16.
[242] Griffiths, 'What is Legal Pluralism?' (n 237) 14.
[243] ibid 15.

While non-state social organisations or groups often are either incapable of enforcing state legal norms or conversely employ inappropriate coercive power, they can, however, impose "vertical constraints" through alternative means.[244] For example, non-official urban settlements can develop norms that concern property transactions and social order that are more effective than state legal systems. This legal pluralism produces a myriad of potential combinations of legal interactions, showcasing the complexity of governance, especially in development contexts and the limitations of state-centric approaches to rule of law promotion.[245] In fact, major international organisations, by the mid-2000s, started to incorporate legal pluralism into their push for respecting the international rule of law. This came from their practical experiences working with state institutions for years trying to ensure an adequate effectiveness of international norms. Therefore, the significant role of non-state justice systems and limitations of top-down approaches was included in their policy documents and programmes. This was especially evident in the case of non-state justice systems in developing countries. This shift highlighted the need to incorporate legal pluralism in their programmes.[246] Interestingly, David Kilcullen suggests that especially in conflict and post-conflict settings, bottom-up approaches focusing on the role of civil society in peacebuilding and reconciliation is more effective than traditional top-down state-building strategies.[247] This indicates the importance of non-state governance structures and suggests a shift from centralised state-building to more community-based peacebuilding efforts.[248] Relevant to this thesis, this view emphasises the role of different social networks and non-state actors in the adoption of international norms and influencing behavioural changes on the ground in Libya.

2.7 Concluding Remarks: Adapting Transnational Legal Process to Conflict Settings through Legal Pluralism

Scholarly interests in transnational legal and political spaces have drawn attention to the transnational characteristic of international law institutions, in particular to the

[244] Tamanaha, 'The Rule of Law and Legal Pluralism in Development' (n 239) 9.
[245] ibid 9.
[246] Ronald Janse, 'A Turn to Legal Pluralism in the Rule of Law Promotion' (2013) 6 *Erasmus Law Review* 181, 183.
[247] David Kilcullen, *Counterinsurgency* (Oxford University Press 2010) as cited in Janse, 'A Turn to Legal Pluralism in Rule of Law Promotion?' (n 246) 185.
[248] Janse, 'A Turn to Legal Pluralism in the Rule of Law Promotion; (n 246) 185.

study of the impact of these transnational norms on the state and how they shape the concepts of compliance and enforcement. The expansion of international law, most notably human rights regimes and institutions, and the challenges they pose to states' sovereignty have led to growing academic engagement with transnational legal and political processes. At the same time, the institutional complexity of the international legal system has increased alongside the structural complexity of global governance itself.

In this evolving environment, non-state actors have become involved in the creation and diffusion of international norms. This is largely due to the support of international organisations which provide spaces through which non-state actors can challenge and engage with state authority. In this regard, examining international organisations such as the International Labour Organization (ILO) through a transnational perspective becomes essential to understanding how domestic political and legal actors influence the internalisation of international legal norms. These interactions show how this impact leads non-state actors, including NGOs and civil society organisations, to influence the effective internalisation of international law, and thus impact national political actors as explained by Koh. Furthermore, the repeated interaction between domestic actors and international institutions may affect the structure of the domestic state through politics and the process of socialisation. Therefore, to measure the effectiveness of international law it is necessary to tackle the role of domestic actors as well as political institutions, particularly in the internalisation of international norms.

In light of the foregoing, this thesis builds on the framework of transnational legal process to assess how international labour norms are internalised in conflict-affected contexts. It supports the position that legal pluralism in such settings offers a crucial pathway for transnational legal engagement, particularly by enabling interactions between non-state actors, including armed groups, tribal leaders, and informal networks, and international norms. This is especially relevant in the Libyan context, where the weakness or absence of central state institutions leaves a space for non-state actors to mediate or obstruct the application of international legal standards. While Koh's theory provides a strong conceptual framework for understanding how international law becomes effective through norm internalisation, it must be further

developed to address conditions of legal fragmentation and political instability.[249] Therefore, this thesis adopts Koh's understanding of effectiveness as habitual compliance through internalisation but adapts it to conflict settings through the lens of legal pluralism. In doing so, it aims to assess the effectiveness of the ILO's Forced Labour Conventions in Libya by examining the extent to which these norms are internalised through both formal legal channels and pluralistic, informal structures within the state. In particular, this thesis examines the specific challenge of trafficking of persons for forced labour and the international responses to such a crime– a topic which is explored in detail in the next chapter.

[249] Harold Hongju Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10).

Chapter 3: International Responses to Human Trafficking

"The lack of safe and regular migration pathways exacerbates vulnerabilities to trafficking, particularly among women and children."

Siobhán Mullally, 2022[250]

Human trafficking is widely recognised as one of the most challenging crimes of our time, primarily due to its complex and often concealed nature, which hinders detection and investigation.[251] While trafficking frequently occurs in the shadows, hidden from public view, it can also take place in plain sight, particularly when victims are exploited in sectors that appear lawful.[252] Compounding the difficulty of detection is the fact that victims are often individuals in vulnerable situations who lack adequate protection from both authorities and society at large. Furthermore, the challenge of responding to human trafficking stems from the lack of a comprehensive knowledge base due to the absence of reliable data.[253] The Global Reports on Trafficking in Persons, conducted within the UN Global Initiative to Fight Human Trafficking (UN.GIFT), point to different tangible explanations and factors that affect the statistics returned by different countries.[254] Among these factors is the variety of definitions of trafficking in persons used in these countries and the existing regional patterns in trafficking trends.[255] This chapter seeks to introduce the crime of human trafficking through an analysis of different international responses. Section 1 starts with a historical overview on the roots of trafficking in the slave trade and the development of the modern crime. Section 2 then moves to discuss the difference between

[250] Siobhán Mullally, *Report of the Special Rapporteur on Trafficking in Persons, especially Women and Children* (A/HRC/50/33, 2022) https://digitallibrary.un.org/record/4047623 accessed 07 July 2025.
[251] United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* (UNODC 2009) 18 https://www.unodc.org/unodc/en/data-and-analysis/glotip_2009.html accessed 11 March 2026.
[252] Irish Human Rights and Equality Commission, *Trafficking in Human Beings in Ireland: Identification, Protection and Support* (2023), 238 https://www.ihrec.ie/app/uploads/2023/09/Trafficking-in-Human-Beings-in-Ireland-2023_FA_web-Final.pdf accessed 11 March 2026.
[253] Raymond Saner, Lichia Yiu and Laurel Rush, 'The measuring and monitoring of human trafficking' (2018) 21 *Public Administration and Policy* 94, 97.
[254] See for example: United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* (UNODC 2009) 18 https://www.unodc.org/unodc/en/data-and-analysis/glotip_2009.html accessed 11 March 2026.
[255] Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (Routledge 2012), 10.

trafficking and smuggling as used in the context of migration. Section 3 focuses on the primary international legal instruments for tackling trafficking, particularly in the context of transnational organised crime. While the criminal justice approach dominates many international and national responses, section 4 of this chapter will also introduce the human rights-based approach which aims to centre the protection and agency of trafficked persons, especially in situations of exacerbated vulnerability such as conflict settings.

Building on the discussion in Chapter 2 concerning the effectiveness of international law, this chapter shifts from theoretical foundations to the substantive legal frameworks surrounding human trafficking. It sets the groundwork for later chapters by clarifying how the crime is legally constructed and historically rooted, and how this legal construction influences the framing of international responses, particularly in relation to forced labour in conflict settings.

3.1 The Origins of Human Trafficking: An Overview of Historical and "Modern-Day Slavery"

The terms "slavery" and "human trafficking" have been inherently linked in various studies and human rights reports.[256] Officials and UN agencies have used the term 'modern-day slavery' to refer to human trafficking, and the reason is to magnify the crime of trafficking by matching it with slavery, which has rightly been defined as the worst form of degrading exploitation of humans in history.[257] In this section, a comparison of the historic and modern-day slavery will be tackled to show both similarities and differences, as well as the reasons behind the intertwining of these terms. Importantly, the discussion seeks to understand the development of trafficking as a term and as a defined crime throughout history.

To better address the similarities and differences that shape today's understanding of human trafficking in the context of slavery, a historical approach adopted by Picarelli

[256] See for example: Kevin Bales, *Understanding Global Slavery: A Reader* (University of California Press 2005) 8.
[257] Roger Plant, *Modern Slavery: The Concepts and Their Practical Implications* (ILO 2014) 1 https://www.ilo.org/media/443241/download accessed 11 March 2026; United Nations, 'International Day for the Abolition of Slavery' (UN, 2 December 2023) https://www.un.org/en/observances/slavery-abolition-day accessed 11 March 2026.

reveals that the roots of forced labour extend back to ancient eras, as evidenced in the Code of Hammurabi (c. 1754 BC), which codified the use of forced labour and slavery as integral to the economic and legal order of Babylon.[258] Chattel slavery in Europe was also widely practiced during wars and conquests throughout history. For example, chattel slavery in ancient Greek and Roman history has been subject to early moral critiques by philosophers such as Antisthenes (c. 445–365 BC) and Epictetus (c. 50–135 AD), whose teachings emphasised the equality of human reason and inner freedom regardless of social status, thereby laying early philosophical foundations that would much later inform abolitionist thought.[259]

3.1.1 Historical Foundations of Slavery

Slavery was common and legal throughout the Roman Republic and Empire, and the development of the Law of Nations (*Jus Gentium*) from the 3rd century BC onwards institutionalised the enslavement of non-Romans. It recognised war capture, birth, and trade as lawful grounds for enslavement, thereby embedding chattel slavery into the legal and economic fabric of the Roman world.[260]

Following the decline of the Western Roman Empire, many of its legal codes, including those governing slavery, fell into disuse in Western Europe. During the Middle Ages, a new system of social and economic control emerged through feudalism, which gave rise to serfdom. Although serfs were not legally considered slaves, they were bound to the land and subject to the authority of the landowner, with limited personal freedom. This form of unfree labour shared characteristics with chattel slavery but was regulated through customary feudal obligations rather than codified law.[261] This form of enslavement was practiced by primarily Southern European powers, particularly Spain and Portugal, who began exploring and colonising parts of Africa and the Americas in the 15th and 16th centuries, which resulted in the colonisation of these continents and the exploitation of their economy through plantation and source extraction. The colonial plantation-and-extraction

[258] John T Picarelli, 'Historical Approaches to the Trade in Human Beings', *Human Trafficking* (Willan 2013), 28.
[259] ibid.
[260] Edgar S Shumway, 'Freedom and slavery in Roman law' (1901) *American Law Register* (Philadelphia, PA: 1898) 636, 641.
[261] Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Harvard University Press 1982) 29-30, 40, 139, 243, 270; Picarelli, 'Historical Approaches to the Trade in Human Beings' (n 258) 29.

economy was based on chattel slavery, i.e., forced labour of indigenous people, which opened the door for a worse form of exploitation, which is the trade in humans culminating in the transatlantic slave trade between the 16th and 19th Centuries. Throughout this period, the legal and moral justification for enslavement was often grounded in racist/supremacist ideologies such as Aristotle's notion of 'natural slaves', which was revived to legitimise the subjugation of non-European peoples.[262] Some researchers, such as David Eltis, have implicitly suggested that certain schools of thought during the Renaissance and Enlightenment periods began to question the legitimacy of slavery, particularly in parts of northern Europe.[263] Some researchers such as Sebastian Conrad[264] and Zainab Olaitan[265], however, disagree with this view, as Conrad and Olaitan's writings prove how European philosophers and intellectuals justified slavery based on supremacist thoughts of white Europeans and their relationship with other races. However, this tendency to question slavery, if existent, diminished as changes in economy and technology emerged from the 17th Century onwards. Economic transformations developed a need for labour, and with the help of the naval technology Europeans had at that time, the trade in chattel slaves returned with more intensity. That is when Europeans started to enslave large numbers of Africans and transport them across the Atlantic in what is known as the transatlantic slave trade.[266] It is worth noting that it is reliably estimated that over 10 million slaves were forcibly transported across the Atlantic between 1660 and 1867, primarily by European merchants operating under the authority or protection of their respective states. This period accounts for roughly 65 per cent of the total transatlantic slave trade before its abolition. Spain and Portugal were the earliest and among the most significant participants, while Britain emerged as the dominant slave-trading nation during the 1700s, with approximately 3 million Africans transported by British vessels.[267]

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[262] ibid 29.
[263] David Eltis and Stanley L Engerman, 'The Importance of Slavery and the Slave Trade to Industrializing Britain' (2000) 60 *The Journal of Economic History* 123 as cited in Picarelli, 'Historical Approaches to the Trade in Human Beings' (n 258) 29.
[264] Sebastian Conrad, 'Enlightenment in global history: A historiographical critique' (2012) 117 *The American Historical Review* 999, 1011.
[265] Zainab Monisola Olaitan, 'Enlightenment Ideas and Colonialism', *Africa's Radicalisms and Conservatisms* (Brill 2022), 320.
[266] Picarelli, 'Historical Approaches to the Trade in Human Beings' (n 258) 29.
[267] David Richardson, 'The Slave Trade, Sugar, and British Economic Growth, 1748-1776' (1987) 17 *The Journal of Interdisciplinary History* 739, 741.

3.1.2 Anti-Slavery Rhetoric and Colonial Legitimacy

The abolitionist movement started by condemning the slave trade and moved to target slavery itself. The efforts of the movement were first seen in countries like the UK, US, Spain, and then spread in most countries within the Western hemisphere. Despite some coordination between European powers in curbing the transatlantic slave trade, the abolition of slavery did not occur solely out of humanitarian or human rights concerns. National interests, particularly those tied to shifting economic imperatives, played a significant role, as seen in the case of the United Kingdom. The British abolition of the slave trade in 1807 and of slavery itself in 1833 resulted not only from sustained humanitarian advocacy but also from the economic transformations brought about by the Industrial Revolution, which reduced the profitability of slave-based economies.[268]

However, the same states continued to depend on forced labour practices, particularly in support of their colonial economic interests. For example, following the abolition of slavery in 1833, the British Empire founded the Indian indenture system as a replacement labour scheme. Under this system, approximately 1.2 million Indian labourers were transported to British colonies such as Mauritius, British Guiana, Trinidad, and Fiji, primarily to work on plantations.[269] The indenture system prompted the development of detailed colonial regulatory regimes and welfare provisions, which contributed to the early structuring of labour governance in imperial contexts. Scholars have long debated whether indenture constituted a form of free labour or a continuation of slavery by other means. [270] Recent research by Rachel Sturman has connected the system to broader debates on labour relations and state authority,

[268] Picarelli, 'Historical Approaches to the Trade in Human Beings' (n 258) 36.
[269] Usha Mahajani, 'Review: Slavery, Indian Labour and British Colonialism' (1977) 50(2) *Pacific Affairs* 264, reviewing Hugh Tinker, *A New System of Slavery: The Export of Indian Labour Overseas, 1830–1920* (Oxford University Press 1974).
[270] Free labour is generally understood either as the condition of wage workers who are "free" to sell their labour to different employers and are not personally dependent on a master, or as a voluntary contractual exchange between self-proprietors in the market. In this context, free labour refers to work undertaken voluntarily and with the right to withdraw one's labour as opposed to slavery or forced labour. See discussion around the definition of free labour: Judy Fudge, '(Re)Conceptualising Unfree Labour: Local Labour Control Regimes and Constraints on Workers' Freedoms' (2019) 10 *Global Labour Journal* 1, 110.

particularly in relation to colonial law and governance. Its legacy includes the formalisation of legal infrastructure around contracts, recruitment, and worker discipline, laying groundwork for later international discourse on labour standards. Although colonial authorities framed the system as a humane and lawful alternative to slavery, it functioned primarily to serve economic interests and remained deeply exploitative, revealing persistent challenges in safeguarding labour rights under imperial rule.[271]

In the 1920s, accusations of the labour exploitation by France of colonised people in Africa using violence and imprisonment surfaced. Similar accusations were targeted towards British farmers in Kenya, and at the hands of British industrial companies in Barbados, as well as the tragedies documented in the Belgian Congo.[272] Interestingly, colonial powers (such as Italy and France) not only engaged in slavery-like practices and forced labour, but also used evidence of such practices to prove and justify their territorial control over those countries, such as the invasion of Ethiopia by Italy in 1935 which was justified by showing evidence of the Italian army freeing slaves. Therefore, scholars such as Picarelli argue that during the 1920s anti-slavery became a policy tool that states abused for national interests. Another abuse of anti-slavery as a policy tool for national interest was the tightening of border-controls under the pretext of combatting the slave trade.[273] This can be seen reflected in today's anti-trafficking efforts that focus on strict border controls and the externalisation of border management in other countries, such as Libya, which will be discussed in more detail in Chapter 5.

3.1.3 Conceptual Ambiguities and the Historical "End" of Slavery

Nonetheless, the confusion between slavery and trafficking or 'slavery-like practices' due to the imprecise use of terms has contributed to the imprecise understanding of the end of slavery. The use of the term 'slavery' to describe practices that include human trafficking and other similar acts has created a confusion among researchers

[271] Rachel Sturman, 'Indian Indentured Labor and the History of International Rights Regimes' (2014) *119 The American Historical Review* 1439, 1440-1442.
[272] Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa* (Picador 2019), 296.
[273] Picarelli, 'Historical Approaches to the Trade in Human Beings' (n 258) 38.

about the time when slavery ceased to exist in its original forms.[274] Most importantly, slavery, as defined as chattel slavery and serfdom, is understood to be narrower than today's forced labour where humans are employed against their will or without payment or under the threat of violence. Also, chattel slavery includes legal ownership of labourers and thus, trading in human beings was allowed, whereas forced labour has shifted the way workers are perceived since they are no longer a precious property to their owners, but rather a disposable commodity.[275] Furthermore, chattel slavery is thought to have ended in the 1800s due to the pressure of international abolitionist groups as well as the changes in states' policies and interests. Unlike chattel slavery, forced labour in the broader sense is still on-going as a major human rights issue.[276]

Examining the concept of slavery, one could remark that the difference might be the legal ownership of a human by another which used to happen in the past and that is no longer happening in the legal sense of ownership but as domination through fear and exploitation such as debt bondage, forced labour, child marriage, and child labour.[277] However, the 'ownership' feature that differentiates slavery from other trafficking remains debatable, especially since the League of Nations definition of slavery in the 1926's Convention to Suppress the Slave Trade and Slavery (Slavery Convention) is: 'the status or conditions of a person over whom any or all of the powers attaching to the right of ownership are exercised'.[278] This definition explains slavery as a 'status' or 'condition' in which the legal classification of people as properties is prohibited. However, Nicole Siller argues that by referring to the 'condition' and not just the 'status', commodification could become a form of slavery (slavery as a condition).[279] Thus, it is not only restricted to the legal ownership of humans (slaves) but also includes other acts in which humans are commodified, such as debt bondage, forced marriage, or sexual exploitation, where individuals are treated *as if* they are property and subjected to control that reflects ownership. However, this broader

[274] Picarelli, 'Historical Approaches to the Trade in Human Beings' (n 258) 27.
[275] ibid 27.
[276] ibid.
[277] Jean Allain and Kevin Bales, 'Slavery and its definition' (2012) 14 *Global dialogue* 6, 8.
[278] Convention to Suppress the Slave Trade and Slavery (signed 25 September 1926, entered into force 9 March 1927) 60 LNTS 254, art 1(1).
[279] Nicole Siller, ''Modern Slavery' Does International Law Distinguish between Slavery, Enslavement and Trafficking?' (2016) 14 *Journal of International Criminal Justice* 405, 408.

conceptualisation of slavery remains contested among legal scholars and practitioners.[280]

Over the past 100 years, a number of different international instruments have tackled slavery and enslavement but without addressing the definition or expanding on what had already been adopted in the 1926 Convention. In 1957, the supplementary instrument to the Slavery Convention came into force,[281] which aimed at the strengthening of national and international efforts concerning the abolition of slavery. It mentioned various practices similar to slavery such as serfdom, child exploitation, and debt bondage. However, it only confirmed the definition of the Slavery Convention which revolves around the exercise of the power relating to the ownership over another human being.[282] Consequently, there was little engagement with the exact meaning of "power" or with deeper investigation of the property-based paradigm that had long been used to describe the master-slave relationship. This traditional understanding failed to provide legal authorities a clear and consistent framework for determining whether slavery existed in specific cases, which often required a nuanced, case-by-case qualitative analysis by judges to assess whether the alleged powers exercised over a person amounted to slavery.[283] Although the 1926 Slavery Convention defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised",[284] it did not elaborate on what those powers might be. Greater clarity was offered in 1953, when the UN Secretary-General published a report identifying six indicative powers typically associated with slavery: i) the ability to treat individuals as property; ii) unrestricted control over their labour; iii) appropriation of the fruits of their labour; iv) transferability; v) the involuntary and permanent nature of their condition; and vi) the heritability of that status.[285] These indicators provided an interpretive tool for

[280] ibid 408.
[281] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 266 UNTS 3.
[282] Siller, ''Modern Slavery' Does International Law Distinguish between Slavery, Enslavement and Trafficking?' (n 279) 409.
[283] ibid 409.
[284] League of Nations, *Slavery Convention* (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253, art 1(1).
[285] United Nations Secretary-General, *Slavery, the Slave Trade and Other Forms of Servitude* (UN Doc E/2357, 1953).

assessing slavery in practice, and preceded the adoption of the 1956 Supplementary Convention, which addressed slavery-like practices but without clearly defining these powers.[286]

3.1.4 Modern Exploitation and the Problem of Legal Categorisation

The definition given by the Slavery Convention clearly does not draw a line between slavery and other similar practices based only on the right of ownership, as argued by Orlando Patterson in his understanding of slavery as a 'relation of domination'.[287] Since other forms of (semi-)ownership can be practiced through patriarchal relationships in some societies (e.g. father-son/ husband-wife), it does not completely differentiate the master–slave relation from every other social relationship. However, it is common that slavery includes a continuum of economic exploitation and can be distinguished from free wage labour based on the voluntary nature of the labour. Free labour happens by offering labourers a choice to reject their job offers/conditions; although it can be argued that free wage labour does not actually give the freedom of choice given that the other option is likely to be economic impoverishment, especially in the capitalistic world we live in.[288] Furthermore, Paul Craven and Douglas Hay argue that it is not sufficient to distinguish slavery based on the subjugation of a human's will by another, especially since there were forms of slavery that had elements of freedom enjoyed by non-slaves.[289] For instance, in some slave societies such as those in the Caribbean and Brazil, enslaved individuals were at times allowed to engage in limited economic activities, such as small-scale trading or personal enterprises, which provided them a degree of autonomy in managing their daily lives and resources, despite their overall status as property.[290]

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[286] Siller, ''Modern Slavery' Does International Law Distinguish between Slavery, Enslavement and Trafficking?' (n 279) 409.
[287] Orlando Patterson, *Slavery and social death: A comparative study, with a new preface* (n 261) 2, 334-335.
[288] Robert J Steinfeld, *Coercion, Contract and Free Labor in the Nineteenth Century* (HeinOnline 2003), 899.
[289] Paul Craven and Douglas Hay, 'The Criminalization of 'Free' Labour: Master and Servant in Comparative Perspective' (1994) 15 *Slavery and Abolition* 71 as cited in Julia O'Connell Davidson, 'New Slavery, Old Binaries: Human Trafficking and the Borders of 'Freedom'' (2010) 10 *Global Networks* 244, 246.
[290] Davidson, 'New Slavery, Old Binaries: Human Trafficking and the Borders of 'Freedom'' (n 289) 246.

Although there is no international legal definition that is clear and unanimous on modern-day slavery, the UK adopted the UK Modern Slavery Act in 2015 which became the first national legislation to adopt the term 'modern slavery' while referring to human trafficking. The focus on trafficking was renewed in the mid-1990s which can be explained in connection to the growing international interest in organised crime, especially after the murder of two Italian judges by an organised criminal gang in 1992.[291] Another contributing factor to the focus on trafficking was the growing anxiety concerning the market for illegal migration that prospered after the fall of the Berlin Wall and the end of the Cold War.[292] However, this interest in human trafficking led to a confused international policy, especially since it lacked in-depth research to measure the feasibility of anti-trafficking policies within different national contexts.

Over the past 25 years, national responses have resulted from global awareness-raising on trafficking, in particular the establishment of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing UN Convention against Transnational Organised Crime (Trafficking Protocol).[293] The Protocol has formed the cornerstone of the current international anti-trafficking policy. Thus, the issue of human trafficking was shaped through a combination of legislation and political pressure from state and non-state actors both on the national and the international level. Afterwards, another structuring of the issue took place through policy making at the hands of activist groups and national political actors who advocated for a new conceptualisation of trafficking, and thus the term was often replaced with the term 'modern slavery' both in national legislation and political discourse. This shift at the domestic level can be partly explained by domestic political activism, but a significant global driver has been the rise of the 'new abolitionist' discourse.[294] This modern anti-slavery movement has framed trafficking and forced labour as global moral crises, frequently influenced by increasing scepticism towards the effects of globalisation and shaped by anti-immigration rhetoric in both Europe

[291] Rose Broad and Nick Turnbull, 'From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK' (2019) 25 *European Journal on Criminal Policy and Research* 119, 123.
[292] ibid 123.
[293] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (n 1).
[294] Julia O'Connell Davidson, *Modern slavery: The margins of freedom* (Springer 2015) 6-7.

and the United States.[295] Scholars such as Julia O'Connell Davidson have argued that while new abolitionist narratives draw attention to serious abuses, they tend to simplify the complex socio-economic and political structures that underpin exploitation, especially in the context of migration and global inequality.[296]

Different UN attempts, according to Suzanne Miers, have insisted on expanding the definition of slavery to include different modern-day practices of commodification and exploitation of vulnerable humans.[297] However, the insistence on using the term 'slavery' to describe human trafficking is justified as a tool to draw public and political attention to the element of exploitation through the act of violence; as it secures more attention from a wider audience.[298] On the other hand, some researchers such as Bridget Anderson[299] refused to build upon "sensationalism", and thus advocated for the adoption of the term 'slavery-like practices' instead, for it is capable of showing both similarities and differences between slavery and, for example, forced labour.[300] The reference to 'modern' slavery while addressing trafficking is a way of creating an illusional political consensus, especially that slavery is considered unacceptable and would lack any supporters in modern days. The question, then, is if modern slavery is a legal or political concept. One might argue that modern slavery does not exist as a legal status and is interpreted through judgments and contextual understanding of each case on its own to examine where 'inappropriate' exploitation begins or ends. This makes the concept of modern slavery a political identification of an urgent political task.[301] Dealing with trafficking as equivalent to modern slavery can shut down possibilities for effective political struggle against the broader injustices, restrictions, and structural exploitation faced by migrants. This understanding contributes to the

[295] Harold Clarke and others, 'Modelling the dynamics of support for a right-wing populist party: The case of UKIP' (2016) 26 *Journal of Elections, Public Opinion and Parties* 135, 136; Broad and Turnbull, 'From human trafficking to modern slavery: The development of anti-trafficking policy in the UK' (n 291) 126.
[296] Davidson, *Modern slavery: The margins of freedom* (n 294) 110.
[297] Suzanne Miers, *Slavery in the twentieth century: The evolution of a global problem* (Rowman & Littlefield 2003), 415- 417.
[298] Christien Van Den Anker, 'Contemporary Slavery, Global Justice and Globalization', *The political economy of new slavery* (Springer 2004), 19.
[299] Bridget Anderson, 'Migrant Domestic Workers and Slavery' in Christien van den Anker (ed), *The Political Economy of New Slavery* (Palgrave Macmillan 2003) 19.
[300] See also: Maggy Lee, 'Introduction: Understanding human trafficking', *Human Trafficking* (Willan 2013), 4.
[301] Davidson, 'New slavery, old binaries: human trafficking and the borders of 'freedom'' (n 289) 258.

depoliticization of the issue, diverting attention from the systemic causes of exploitation and migration control policies that reinforce vulnerability.[302]

The shift in language from 'trafficking' to 'slavery' resulted in a different perception of the issue and thus induced different policy responses. For instance, the issue that once would have concerned specific populations in specific parts of the world is now one of international concern with global media coverage. A famous example on this change was the case of Qatar during the preparations for the football World Cup competition in 2022, where the case against labour exploitation received huge media attention in Europe and elsewhere.[303] This shows how the intertwining of the two terms triggers more attention from the world. One could argue that this intertwining occurred because 'slavery' is an emotive term that serves political functions, yet it is not frequently considered the correct term, especially to legal scholars who find the term to be heavily weighted.[304] On the other hand, the term 'trafficking' is not a flawless one, as it can lack conceptual clarity.[305] Furthermore, the term 'slavery' holds an emotional impact that would attract the attention of the public to the issue of trafficking based on the 'moral' perspective of the matter and not the robust evidence base. Some researchers, such as Deborah Gorham,[306] drew similarities between morals evoked by the term 'slavery' and the purity movements in the 1800s-1900s in which women and girls were abused through punitive measures.[307]

Moreover, Kamala Kempadoo argues that such campaigns reflect neoliberal white ideologies that led to the depiction of the North as superior and the saviour of the developing global South and East.[308] Similarly, Makau Mutua argues that the western

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[302] Bridget Anderson and Rutvica Andrijasevic, *'Sex, Slaves and Citizens: The Politics of Anti-Trafficking'* (University of Leicester 2008) research paper, 142.
[303] Gary Craig, 'The Global Markets in Modern Day Slavery' (2014) 97 *Criminal Justice Matters* 6, 6.
[304] Alex Balch, 'Understanding and Evaluating UK Efforts to Tackle Forced Labour' in Judy Fudge, Shahin Yaqub and Kendra Strauss (eds), *Vulnerability, Exploitation and Migrants: Insecure Work in a Globalised Economy* (Springer 2015) 88–92.
[305] Janie A Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law' (2014) 108 *American Journal of International Law* 609, 24.
[306] Deborah Gorham, 'The" Maiden Tribute of Modern Babylon" Re-Examined: Child Prostitution and the Idea of Childhood in Late-Victorian England' (1978) 21 *Victorian Studies* 353, 367.
[307] Jon Spencer and Rose Broad, 'The 'Groundhog Day'of the Human Trafficking for Sexual Exploitation Debate: New Directions in Criminological Understanding' (2012) *18 European Journal on Criminal Policy and Research* 269, 270-271.
[308] Kamala Kempadoo, 'The Modern-day White (Wo)man's Burden: Trends in Anti-trafficking and Anti-slavery Campaigns' (2015) 1 *Journal of Human Trafficking* 8, 18.

human rights movement views the 'undemocratic' world as 'savage' and 'uncivilised' that needs the white man's supremacy to be saved.[309] This also applies to western neoliberal ideologies and policies and how they are seen and viewed as the norm to be followed and respected, regardless of the drawbacks imposed on other peoples. Based on this view, many of the anti-slavery policies throughout history have had a negative impact on migrants and vulnerable groups, which also raises the question of whether neoliberal policies to combat trafficking are actually effective and provide sustainable justice.[310]

While the term "modern slavery" is widely used by United Nations agencies and many researchers to refer to contemporary human trafficking, an increasing body of critical scholarship challenges this conflation, arguing that trafficking and slavery should be treated as distinct legal and conceptual categories.[311] This thesis adopts the term "trafficking" rather than "modern-day slavery" in order to remain consistent with its legal approach to defining and analysing the crime. Nonetheless, understanding the history of slavery is key to understanding how the West shapes the international responses to trafficking and on which ideological basis these responses are formed. This will particularly be relevant in Chapter 5 on Libya which examines how Western/European countries have reacted in the fight against illegal migration at the expense of allowing trafficking for forced labour.

The historical conflation of trafficking and slavery, as explained above, shows how modern legal frameworks have inherited conceptual ambiguities that continue to impact anti-trafficking efforts today. The following sections shift focus from the historical and political use of these terms to the formal legal instruments that define and regulate trafficking for the purpose of forced labour in international law.

[309] Makau Mutua, 'Savages, victims, and saviors: The metaphor of human rights' (2001) 42 *Harvard International Law Journal* 201, 244.
[310] Kempadoo, 'The Modern-day White (Wo)man's Burden: Trends in Anti-trafficking and Anti-slavery Campaigns' (n 308) 18.
[311] Siller, ''Modern Slavery' Does International Law Distinguish between Slavery, Enslavement and Trafficking?' (n 279) 407.

3.2 Trafficking vs. Smuggling in the Context of Migration

Transnational trafficking in persons is a lucrative organised crime that relies on frequent transportation of victims to many different service sites for the purposes of sexual or labour exploitation or for the removal of organs.[312] This can translate into legal or illegal border crossings and collaboration with corrupt local officers in border management and in the coercive exploitation of trafficked victims.[313] While someone can be trafficked within the borders of their own country, transnational trafficking involves the (illegal) transportation of persons across borders, including through means such as the use of fake identification or the confiscation of travel documents, thus rendering such individuals also vulnerable as undocumented migrants. Cross-border trafficking can also occur without the need for an illegal border crossing – for example, EU nationals have the right to travel within the EU but can still be victims of trafficking between different EU member states.

It is also important to note that smuggling of migrants and trafficking in persons are distinct legal concepts, the former being a consensual act of irregular border crossing, while the latter inherently includes a component of exploitation. However, situations may arise in which smuggling evolves into trafficking when irregular migrants are subjected to coercion, deception, or exploitation during or after their journey.[314] Moreover, even when traffickers do not rely on corrupt officials to facilitate entry, the irregular movement of people across borders is often conducted covertly and illegally as part of the trafficking process itself. Migrants become vulnerable due to their physical and psychological stress, and fear of repatriation or detention. This vulnerable situation of migrants makes them dependent on their smugglers or traffickers.[315] Understanding the complex push and pull migration factors at play during human trafficking can best be observed through the examination of trafficking for forced labour in transit countries.[316] This is due to the fact that transit countries often highlight

[312] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (n 1) art 3.
[313] Andreas Schloenhardt, 'Trafficking in Migrants: Illegal Migration and Organized Crime in Australia and the Asia Pacific Region' (2001) 29 *International Journal of the Sociology of Law* 331, 343-346.
[314] ibid 346.
[315] L Jones and others, 'Globalization and Human Trafficking' (2007) 34 *Journal of Sociology and Social Welfare* 107, 112-115.
[316] Cross-border trafficking in persons often involves at least three different countries: the country of origin, one or more transit countries the victim is passed through during the trafficking process, and the final country of destination.

the interplay between migrants' initial motivations for movement and the structural vulnerabilities that are exploited along their journeys. In such settings, both migration motives and the conditions conducive to exploitation are vividly visible, allowing researchers to examine and trace how socio-economic and political factors impact the dynamics of trafficking.

However, and as a result of the transnational aspect of one form of trafficking, i.e., cross border trafficking, a confusion between trafficking and smuggling has always been an issue at both the theoretical and practical levels. It is important to draw the line between these two crimes since both phenomena are at play in the case of Libya. The definition of smuggling includes the transportation, transferring, and/or facilitating the illegal entry of migrants across an international border. According to the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organised Crime (Smuggling of Migrants Protocol), smuggling of migrants is the "procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."[317] In other words, migrant smuggling is about facilitating illegal entry or residence in another country on a transactional basis, i.e. "I will help you illegally cross a border, and you will pay me or provide some other form of benefit." Once the illegal border crossing has been achieved or attempted, the relationship between the smuggler and the migrant is completed. Smugglers use false hopes of high living standards and work opportunities abroad to attract people and prey on people's willingness to pay large sums of money to achieve these hopes in the destination countries. As a result, smugglers often control migrants in multiple ways before and during their travel, which might lead to abusing them or causing their death through dangerous routes.[318] For smuggling, the requirement of consent in this illegal transaction by the person being smuggled is a core component of the Smuggling of Migrants Protocol.[319]

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[317] *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organised Crime* (adopted 15 November 2000, entered into force 28 January 2004), art 3

[318] Sonika Yadav, 'Human Trafficking as a Violation of Human Right' (2022) 3 *Jus Corpus Law Journal* 697, 701–702.

[319] Protocol against the Smuggling of Migrants by Land, Sea and Air (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507.

However, the most distinctive characteristic differentiating the two offences is that while smuggling concerns the illegal crossing of state borders with the voluntary consent of migrants, trafficking on the other hand happens either through crossing an international border or within the territory of a state for the purposes of exploitation. A central component of the crime of trafficking is a recognition that a person's consent to being exploited is not accounted for, so by definition traffickers must use some form of force, trickery, misrepresentation and/or fraud.[320] Nonetheless, smuggling can turn into trafficking the same way trafficking can include illegal border crossing. For instance, if at some point during the transactional process smugglers change to holding the migrants as captive and decide to exploit them in some kind of a debt bondage, then those smugglers are in fact traffickers, and those migrants are no longer victims of smuggling but of trafficking.

So, while trafficking and smuggling are distinct legal concepts and criminal acts, there may be crossover between the two in some situations. For example, in the U.S., it has been shown that traffickers and smugglers often work hand in hand to provide the labour market with migrant workers.[321] As a result, the issue of human trafficking is seen as an issue of labour and migration, and thus, anti-trafficking endeavours should be directed towards providing access to safe labour migration and protection from exploitative environments. In addition, such endeavours should consider the comprehensive understanding of the labour structures that lead to the exploitation of humans, especially women and girls.[322] It should be stressed that a person may be trafficked within the borders of their state of nationality and so does not necessarily entail a legal or illegal border crossing. However, perceiving human trafficking also as a migration issue calls for examination and potential reform of immigration laws in order to allow migrant workers a safe passage into countries of destination and to be able to work legally in domestic markets.

[320] Rhacel Salazar Parreñas, Maria Cecilia Hwang and Heather Ruth Lee, 'What is human trafficking? A review essay' (2012) 37 *Signs: Journal of Women in Culture and Society* 1015, 1015-1016.
[321] Thomas B Cole, 'Modern slavery a hidden crime in the US' (2005) 294 *Journal of the American Medical Association* 541, 541.
[322] Parreñas, Hwang and Lee, 'What is human trafficking? A review essay' (n 320) 1026.

Consequently, both trafficking and smuggling have been conceptualised as a side effect of the humanitarian crisis of illegal migration and refugees. Also, it is important to note that both smugglers and traffickers target refugees as a profitable group (commodity). In the case of smuggling, the absence of practical and legal means of fleeing their countries of origin to other countries prompts refugees to resort to smugglers. Thus, smugglers may be the only option left to escape war and humanitarian crises.[323] In fact, most refugee flows are in developing countries due to the high level of border-restrictions imposed by most developed countries, ostensibly to protect their economy and society, as refugees are seen as an economical threat/burden.[324] On the other hand, in the case of trafficking, the disproportionate efforts of the international community to solve refugee humanitarian crises, and the way that many hosting or transit countries are unable to provide refugees with adequate protection but rather have them confined in detention camps, make them more vulnerable to traffickers.[325] Many refugees in hosting or transit countries stay in refugee camps for undetermined periods. They also live in unofficial camps where they cannot fit inside the officially recognised camps. Refugees in such humanitarian crises are more vulnerable to be considered as commodities, even at the national/political level between states.[326] Alvaro Ballesteros argues that refugee camps have turned into a breeding ground for criminal activities that put vulnerable refugees at risk of being smuggled, exploited, and forced to work or engage in combat in civil wars, especially unaccompanied minors.[327] Of note, difficulties and challenges faced by refugees in such camps may lead them to adopt negative coping mechanisms, including those who become brokers working with traffickers and criminals who pressurise victims to trap them into survival sex.[328]

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[323] Claire Brolan, 'An analysis of the human smuggling trade and the Protocol Against the Smuggling of Migrants by Land, Air and Sea (2000) from a refugee protection perspective' (2002) *14 International Journal of Refugee Law* 561, 577.
[324] Merita H Meçe, 'Human Trafficking and Human Rights in Humanitarian Crises: The Case of Refugee Camps' (2020) 15 *Balkan Social Science Review* 177, 180, 185.
[325] ibid 177.
[326] ibid 182.
[327] Alvaro Ballesteros, 'Trafficking in human beings and international peacekeeping missions: The 2004 NATO THB policy' (2007) 6 *Connections* 121, 128.
[328] Meçe, 'Human Trafficking and Human Rights in Humanitarian Crises: The Case of Refugee Camps' (n 324) 183.

Trafficking and smuggling are different concepts but are interconnected especially in the context of migration. Trafficking can be perceived and analysed within a broader migration framework, which can help to develop policies that are both trafficking- and migration-sensitive. Such policies should therefore work to combat trafficking and labour exploitation in which migrants and refugees are victims. The question remains if this approach is, paradoxically, what allows states to use trafficking as a justification of their tough and inhumane treatment of migrants, especially through strict border-control measures as Jennifer Chacon has argued.[329] Alternatively, the conflation of trafficking and migration may steer anti-trafficking policies towards a criminal justice or policing approach which mainly targets and limits irregular immigration.[330] These questions mainly concern the enforcement of anti-trafficking measures as equal to anti-migration measures, and thus the enforcement of certain policies would lead to the treatment of trafficked humans as mere irregular migrants, which in turn underestimates and simplifies the complex crime of trafficking. These questions raise the importance of enforcement of immigration laws and policies in the study of the effectiveness of anti-trafficking policies,[331] which will be discussed in depth in the coming chapters.

Furthermore, it is important to be aware that this link between migration and human trafficking should not lead to treating trafficked victims the same way illegal migrants are treated. In other words, immigration laws should not apply to trafficked victims in the sense of punishment, instead they should be supported in the identification process and allowed access to safety through different referral procedures.[332] Repatriation/deportation should not be the default response in dealing with trafficked victims. Instead, individual victims should be granted the right to remain for a reasonable and adequate period during which their physical and mental health needs are met, as well as legal aid provided to them. However, if a victim freely and voluntarily expresses the wish to return to their country of origin, such return should

[329] Jennifer M Chacón, 'Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement' (2010) 31 *Immigration and Nationality Law Review* 277, 1642–1644.
[330] Sarah H Krieg, 'Trafficking in human beings: The EU approach between border control, law enforcement and human rights' (2009) 15 *European Law Journal* 775, 790.
[331] Nadejda K Marinova and Patrick James, 'The tragedy of human trafficking: Competing theories and European evidence' (2012) 8 *Foreign Policy Analysis* 231, 236.
[332] Ann D Jordan, 'Human rights or wrongs? The struggle for a rights-based response to trafficking in human beings' (2002) 10 *Gender & Development* 28, 34.

be facilitated in a safe, dignified, and informed manner, with appropriate measures against re-trafficking.[333] Unfortunately, the Trafficking Protocol is weak in this regard as it leaves the decision of repatriation or voluntary return to governments, and thus they can refuse to provide trafficked victims a temporary stay.[334] This could leave trafficked victims deprived of their right to access justice, for example to participate as a witness in the criminal trial of their traffickers, as well as their right to protection since they might be at risk of abuse and/or retribution back home.

While the Trafficking Protocol does encourage states to consider offering permanent residency to victims 'in appropriate cases', this discretionary language falls short of what is required to guarantee robust post-trafficking protection.[335] Ann Jordan suggests that governments establish certain procedures to provide information to migrant workers, especially women and girls. For example, migrants should be informed upon arrival about their legal rights in the destination countries, through the support of NGOs. In addition, a policy should be adopted to ensure the cancellation of any existent diplomatic immunity that might be used to facilitate trafficking into the countries.[336] Governments should also agree to provide all required services to trafficking victims such as food, clothing, housing, and healthcare. However, it is observed that such services are neglected in many cases, especially in poor countries, which leaves this as a financial burden on the NGOs who are providing help to those victims.[337]

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[333] Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2002) Guideline 6; *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (n 1), art 8(2).

[334] Jordan, 'Human rights or wrongs? The struggle for a rights-based response to trafficking in human beings' (n 332) 34.

[335] ibid.

[336] Domestic workers trafficked into diplomatic households is a widely acknowledged global concern. Diplomats have been known to exploit immunity provided by the Vienna Convention on Diplomatic Relations to avoid prosecution for trafficking-related abuses, especially in relation to domestic servitude. See: Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95; UNODC, 'Diplomatic Immunity' in *Challenges to an Effective Criminal Justice Response* (UNODC, E4J, Module 9: Trafficking in Persons), which highlights that diplomatic immunity can obstruct prosecutions in cases involving exploitation of domestic servants by foreign diplomats. https://www.unodc.org/e4j/en/tip-and-som/module-9/key-issues/challenges-to-an-effective-criminal-justice-response.html accessed 8 July 2025; *Basfar v Wong* [2022] UKSC 20.

[337] Jordan, 'Human rights or wrongs? The struggle for a rights-based response to trafficking in human beings' (n 332) 34-35.

Additionally, the strict enforcement of the crime of smuggling can lead to an undesired result, i.e., an increase in human trafficking cases, since it escalates the vulnerability of illegal migrants attempting to escape their poor living conditions by forcing them to pay for much more expensive routes.[338] In other words, migrants become more reliant on smugglers, and unwittingly to traffickers, to escape their countries because of the strict entry and border-controls on refugees and migrants, as discussed in more detail in section 6.2.2. Migration & Displacement: Overview of Migration & Displacement Pre- and Post-Conflict of Chapter 6 on Libya. This approach raises human rights concerns, since the focus on transnational (cross border) movement is problematic and provides "privileges'' to only a small category of persons who are victims to trafficking and who are trapped within the borders of their own country.[339] The focus on criminalising smuggling somehow exacerbates humanitarian crises and human rights abuses as it pushes people to resort to more dangerous and risky routes which in turn puts them at risk of being trafficked and exploited. In addition, intensified border control measures may risk undermining the protections granted under international refugee law, particularly the immunity from penalties for irregular entry guaranteed by Article 31 of the 1951 Refugee Convention.[340] While this protection is intended for refugees, not all victims of trafficking meet the legal definition of a refugee and thus may not benefit from this provision. This distinction necessitates careful legal consideration, particularly where anti-trafficking efforts intersect with restrictive migration controls.[341]

The interconnections between both crimes are more apparent in conflict settings, especially those that are also transit stations for both refugees and migrants such as Libya. For now, understanding the difference between smuggling and trafficking is key to understanding the international responses to trafficking in the context of transnational organised crime, as will be discussed in the following sections.

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[338] James C Hathaway, 'The Human Rights Quagmire of Human Trafficking' (2008) 49 *Virginia Journal of International Law* 1, 5.
[339] ibid 6.
[340] Article 31(1) of the 1951 Convention Relating to the Status of Refugees provides that states shall not impose penalties on refugees on account of their illegal entry or presence, provided they present themselves without delay and show good cause for their entry. Nonetheless, this protection does not apply to migrants or trafficking victims who do not meet the criteria for refugee status. See Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 31(1).
[341] Hathaway, 'The Human Rights Quagmire of Human Trafficking' (n 338) 6.

3.3 Transnational Organised Crime

3.3.1. Defining "Transnational"

The phrase *transnational* refers to activities or legal processes that cross national boundaries. In the context of international law, particularly the UN Convention against Transnational Organised Crime (also known as the Palermo Convention), an offence is considered transnational if it is committed in more than one state, or if it has significant connections to or effects in another jurisdiction.[342] This legal conception encompasses the territorial reach of crimes such as human trafficking. However, under Harold Koh's theory of transnational legal process, the term takes on a broader normative dimension. *Transnational* refers to the dynamic interplay between public and private actors, including states, international organisations, and civil society, that interpret, advocate for, and internalise international legal norms within domestic systems.[343] Thus, the transnational dimension of trafficking not only describes the movement of victims or the structure of criminal networks, but also the complex legal and institutional responses involving different actors from several jurisdictions.

3.3.2. Defining "Organised Crime"

Organised crime is defined as structured, continuous criminal activity carried out by a group pursuing financial or material gain through illegal means. The Palermo Convention legally defines an organised criminal group as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences… in order to obtain, directly or indirectly, a financial or other material benefit".[344] This concept encompasses the fundamental qualities of such groups, namely structure, continuity, and purpose, and is critical in separating organised crime from sporadic or individualised acts of illegality. In the Libyan context, organised crime has thrived in the void left by institutional breakdown and ongoing armed conflict. Human trafficking for forced labour has grown into a lucrative business for armed groups and organisations, many

[342] United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209, art 3(2)
[343] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 203-205
[344] United Nations Convention against Transnational Organized Crime (n 342) art 2(a)

of which operate with impunity or in collaboration with state-affiliated actors. These groups profit from systemic abuse, such as the recruitment, detention, extortion, and exploitation of migrants in detention centres and informal slavery sites.[345]

3.3.3 The UN Convention against Transnational Organised Crime

Based on the UN Convention against Transnational Organised Crime (Palermo Convention),[346] the crime of trafficking has been established within the framework of organised crime. This approach reflects the understanding that trafficking often involves structured criminal groups operating across national borders. Importantly, the *Interpretative Notes to Article 34(2)* of the Convention states that transnationality and the involvement of an organised criminal group are not necessary conditions for the prosecution of offences under domestic law.[347] However, these two features are important for the determination of when the Convention applies, specifically in relation to the facilitation of international cooperation. In this context, international cooperation relates to mechanisms such as mutual legal assistance, extradition, and joint investigations between states. Thus, while a purely domestic trafficking case can and should be prosecuted at the national level, it will only be covered by the Convention's international cooperation obligations if it incorporates a cross-border dimension and involves an organised criminal group. Furthermore, the Note only focuses on the crimes of corruption, the laundering of proceeds of crime, and the obstruction of justice as per Articles 5, 6, 8, and 23.[348]

Scholars have argued that Article 34(2),[349] which requires the adoption of certain crimes from the Palermo Convention into domestic systems regardless of their

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[345] Amnesty International, *Libya: New Evidence Shows Refugees and Migrants Trapped in Horrific Cycle of Abuses* (Press Release, 4 September 2020) https://www.amnesty.org/en/latest/press-release/2020/09/libya-new-evidence-shows-refugees-and-migrants-trapped-in-horrific-cycle-of-abuses/ accessed 18 August 2025.

[346] United Nations Convention against Transnational Organized Crime (n 342) art 2(a).

[347] Interpretative Notes for the Official Records (Travaux Préparatoires) of the Negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, UN Doc A/55/383/Add.1 (3 November 2000) para 4 (re Article 34).

[348] Article 5 of the Palermo Convention addresses the criminalisation of participation in an organised criminal group. Article 6, on the other hand, concerns the criminalisation of the laundering of proceeds of crime. Article 8 covers criminalisation of corruption. Whereas Article 23 concerns the criminalisation of obstruction of justice. See: United Nations Convention against Transnational Organised Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209, art 5, 6, 8, and 23.

[349] Article 34(2) states that "the offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the

transnationality, should also apply to the crime of trafficking in order to guarantee prosecution to all traffickers under national laws.[350] This has reflected how the crime has been depicted as one of criminal sophistication and its transnational nature which mostly relies on a network of organised criminals who profit off the smuggling and trafficking of vulnerable communities, such as migrants and asylum seekers. This international perspective has impacted national policies in their fight against human trafficking. In the UK, for instance, the issue of trafficking has been depicted as one that is instigated by organised criminal groups, and thus should be dealt with within the framework and strategy to combat organised crime, and so it was considered as one of the top priorities for the Serious and Organised Crime Agency.[351] This approach that deals with trafficking as a transnational organised crime has received scholarly responses, such as stipulated in the writings of Taylor and Jamieson explaining how foreign gangsters and the danger they impose on the state's sovereignty have led to heightened border control policies.[352] This approach indeed pushed states to focus on stricter border-control policies.[353] Furthermore, it led to increased surveillance and anti-immigration discourse, and thus is believed to increase concerns about national security that contribute to the "militarising of social problems".[354] This is particularly relevant in the case of Libya where heightened border control negatively impacts the situation of trafficking for forced labour rather than working towards controlling this issue which is a great human rights violation.

It is important to understand how the discourse on human trafficking has developed at the global level under the theme of transnational organised crime, and to understand why other themes, such as human rights and the rights of migrant workers, have not

transnational nature or the involvement of an organised criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organised criminal group". See: United Nations Convention against Transnational Organised Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209, art 34.

[350] Dominika Borg Jansson, *Modern slavery: A comparative study of the definition of trafficking in persons* (Brill 2014), 71.

[351] Michael Levi, 'The impacts of organised crime in the EU: some preliminary thoughts on measurement difficulties' (2016) 11 *Contemporary Social Science* 392, 11.

[352] Ian Taylor and Ruth Jamieson, 'Sex trafficking and the mainstream of market culture' (1999) 32 *Crime, Law and Social Change* 257, 258, 261-262.

[353] Penny Green and Mike Grewcock, 'The war against illegal immigration: State crime and the construction of a European identity' (2002) 14 *Current Issues in Criminal Justice* 87, 89.

[354] Margaret E Beare, 'Illegal migration: Personal tragedies, social problems, or national security threats?' (2012) *Illegal Immigration and Commercial Sex* 11, 14.

enjoyed the same level of legal development, institutional support, or political prioritisation. This disparity has repercussions for how states conceptualise trafficking, frequently prioritising and emphasising criminal justice responses over victim-centred or rights-based approaches. Research on the matter has concluded some important observations, the first of which is the failure of the anti-trafficking framework to remove the impunity of perpetrators due to different factors including the lack of empirical research and accurate statistical data, in addition to the inconsistency of the approaches adopted in criminalising trafficking and identifying its victims. Furthermore, the second important observation is that countries struggling with trafficking have shown that the issue is far more complex than expected by policymakers.[355] Furthermore, the current framework of the Palermo Convention, and the two supplementing Protocols has proved that the focus on trafficking can exacerbate anti-immigration responses to international migration. It is also noticeable that there is an excessively gendered focus; that is, males, domestic workers and labour migrants are experiencing marginalisation.[356] Marginalisation here refers to both their under-representation in international and national data, as well as the failure of legal and institutional frameworks to meet their special vulnerabilities and protection needs. Male victims, for example, are regularly trafficked for forced labour in construction, agriculture, and mining. However, they are less likely to be identified, helped, or officially recognised as victims of trafficking.[357] The Palermo framework along with its supplementary protocols focuses on criminal justice and the collaboration/cooperation between member states, and despite some references to human rights, the main purpose of the framework is to foster cooperation between states to effectively combat transnational organised crime.[358]

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[355] Kneebone and Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (n 255) 10.
[356] ibid 11.
[357] Siobhán Mullally, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Strengthening accountability for trafficking in persons in conflict situations* (13 July 2023) UN Doc A/78/172, para 10; United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020* (United Nations 2021) 33-35; United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022* (UNODC 2023) 251 https://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf accessed 8 July 2025; European Parliamentary Research Service, *Human Trafficking: The Gender Dimension* (Briefing, European Parliament 2024) https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/766265/EPRS_BRI(2024)766265_EN.pdf accessed 8 July 2025.
[358] Kneebone and Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (n 255) 11

The view that the Convention is an instrument of criminal justice is strengthened by the fact that the Trafficking Protocol is sponsored and promoted through the UN Office on Drugs and Crime (UNODC), whose goal is to coordinate international efforts aiming at the achievement of security and justice by fighting crime, drugs, and terrorism. Moreover, the provisions of the Trafficking Protocol focus on prevention and cooperation in the criminal justice framework, whereas less attention is given to ensure the protection of victims of trafficking.[359] There is a lack of understanding of why and how trafficking happens, and a failure to recognise or identify illegal migrant victims of trafficking as such. The root cause of the issue is that the Convention's emphasis on criminal justice responses results in trafficked persons being identified in contradictory ways within law and policy. On one hand, trafficked persons are viewed as free agents who are liable for the breach of migration law; on the other, they are treated as victims of crime, instead of viewing them as bearers of human rights and viewing their migration choice as the responsibility of states who failed to protect them.[360] This dual approach obscures their status as rights-bearers and dismisses states' structural failures to offer safe and legal migration channels, shifting responsibility onto the victims themselves. According to Susan Marks, human rights institutions often end their investigations at a superficial level, disregarding the deeper systemic and structural conditions she refers to as "planned misery".[361] This conceptual gap in the Convention's framework led to trafficked persons being framed through a narrow and restricted criminal justice lens, rather than as rights-bearers whose migration choices often emerge from structural deprivation. By failing to investigate the political economy that renders individuals vulnerable to exploitation, the Convention risks reproducing the very conditions it seeks to eliminate.

In a nutshell, criminal justice and border control responses to trafficking have not alleviated the problem. The criminal justice approach pushes for stricter border control which has been proved to induce a negative impact on the migrant victims of trafficking, as evidenced by the case of Libya. Furthermore, the framing of trafficking in the context of transnational organised crime could be used to enhance collaboration between states to prosecute perpetrators, rather than weaponizing this framework

[359] ibid 13.
[360] ibid.
[361] Susan Marks, 'Human Rights and Root Causes' (2011) 74 *Modern Law Review* 57, 76-78.

against migrants and putting them at further risk of trafficking as will be shown in the case study of Libya.

3.3.4 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (Trafficking Protocol)

Human trafficking as a legal term has gone through a conceptual evolution throughout history. It has evolved as a legal construct over the last 120 years. The offence which was intertwined with slavery and sometimes confused with it, has finally appeared as the acquirement and/or transportation of all persons – including women and girls – for the purpose of exploitation. Despite all the previous unsuccessful attempts to clearly define the offence, a legal framework was finally formed to tackle trafficking and provide an internationally recognised definition. This framework is mainly based on the Convention against Transnational Organised Crime and Trafficking Protocol of 2000.[362]

The UN Convention against Transnational Organised Crime (also known as the Palermo Convention and Protocols) was the result of the growing global interest in combating organised transnational crime.[363] The UN aimed to create an international counter strategy to fight transnational organised crime, and so a group of experts from seven major industrialised countries formed the Lyon Group which held several meetings to discuss the issue. Later on, the UN General Assembly established an ad hoc Committee which came up with the draft of the Convention which was later adopted in Palermo in 2000.[364] The Convention's main purpose is to encourage international cooperation in terms of combating transnational organised crime and stipulates definitions of different terms related to the crime such as "organised criminal group", as well as the scope of jurisdiction and application of the convention.[365]

The main elements of human trafficking definition according to the Trafficking Protocol are: (i) the act of recruitment, transportation, transfer, harbouring, or receipt of persons; (ii) the use of means such as force, fraud, coercion, abduction, abuse of

[362] Siller, ''Modern Slavery' Does International Law Distinguish between Slavery, Enslavement and Trafficking?' (n 279) 416.
[363] Jansson, *Modern slavery: A comparative study of the definition of trafficking in persons* (n 350) 62.
[364] ibid 68.
[365] ibid 69.

power, or deception; and (iii) the purpose of exploitation, which includes forced labour, sexual exploitation, slavery-like practices, and organ removal. It is important to note that, under Article 3 of the Protocol, the consent of a victim is considered irrelevant when means of coercion or deception have been used. In the case of children, the definition of trafficking does not necessitate any element of force or coercion at all, meaning that a child's apparent consent is not legally recognised under international law. This mirrors the understanding that both adults and children cannot meaningfully consent to exploitation, especially where systemic vulnerability or power imbalance is evident.[366] However, things are more ambiguous when it comes to the implementation on the ground. The Protocol treats exploitation as 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."[367] Silvia Scarpa argues that such a definition limits the crime of human trafficking to organised criminal networks, leaving out regulations concerning individual perpetrators.[368] Conversely, the Council of Europe Trafficking in Persons Convention states that its provisions apply to any form of human trafficking, 'whether national or transnational, whether or not connected with organised crime,'[369] and so addresses trafficking regardless of how many people are involved in the trafficking activity.[370]

On the other hand, researchers such as Jo Doezema argue that the Protocol lacks some key voices such as that of sex workers, and that the Protocol adopts certain concepts about 'white slavery' which are considered problematic to sex workers and others.[371] Doezema also criticises the treatment of sexual exploitation in the same police departments that handle other sexual offences. Conversely, cases of labour

[366] Parreñas, Hwang and Lee, 'What is human trafficking? A review essay' (n 320) 1015.
[367] Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) UNGA Res 55/25, art 3(a).
[368] Silvia Scarpa, 'The International Abolition of Slavery and the Slave Trade and the Action against Trafficking in Human Beings', *Trafficking in Human Beings: Modern Slavery* (Oxford University Press 2008), 60-63.
[369] Council of Europe Convention on Action against Trafficking in Human Beings (adopted 16 May 2005, entered into force 1 February 2008) CETS No. 197, art 2.
[370] Silvia Scarpa, 'The Fight against Trafficking in Persons and Victims' Protection in the Council of Europe' in *Trafficking in Human Beings: Modern Slavery* (Oxford University Press 2008), 148.
[371] Jo Doezema, *Sex Slaves and Discourse Masters: The Construction of Trafficking* (Bloomsbury Academic & Professional 2010), 146, 147.

exploitation are usually handled by other state agencies such as the border control, and thus, responses to trafficking are separated.[372] This shows that the choice of the enforcement mechanism responsible for dealing with the cases of trafficking is left for each state to decide in the absence of a universal procedure. Usually, most states place the responsibility on border control departments that also are meant to deal with illegal migrants. Tackling the subject from a criminal justice perspective rather than a human rights perspective is problematic, especially since personnel who work on border control are usually trained to investigate smuggling and detain illegal migrants as criminals, rather than potential victims of trafficking.

Thus, one of the most common critiques of the Protocol is that it is highly focused on prosecution and criminality but fails to adequately protect the victims of trafficking. In fact, it provides victims with minimal protection as per their access to discretionary relief, which is often governed by vague criteria and lacks uniform application. More importantly, drafters of the Protocol rejected a proposal that conditioned the repatriation of trafficked victims on their informed and freely given consent, and rather they emphasised the responsibility of the countries of origin to receive victims without any delay. However, this has been criticised as it fails to address the root cause of the vulnerability of the trafficked victims in their countries in the first place, which is most likely related to economic and social hardships. This again echoes Susan Marks's argument that international legal frameworks frequently obscure or dismiss the structural and socio-economic root causes of human rights violations.[373]

James Hathaway argues that, instead of combating trafficking, the Protocol only promotes partial perspectives of the issue.[374] According to Hathaway, the Protocol's definition of trafficking only covers 3 percent of 'modern slavery', primarily because it dismisses other deeply rooted structural issues such as exploitative labour conditions, poverty, and economic inequality. This restricted focus mirrors the political convenience of disregarding challenges to globalised trade and the prevailing neoliberal economic order.[375] To Hathaway, slavery as a concept is wider than

[372] Broad and Turnbull, 'From human trafficking to modern slavery: The development of anti-trafficking policy in the UK' (n 291) 126.
[373] Marks, 'Human Rights and Root Causes' (n 361) 76-78.
[374] Hathaway, 'The Human Rights Quagmire of Human Trafficking' (n 338) 4.
[375] ibid 4.

trafficking, and dealing with trafficking as per the Protocol is more convenient to states as they benefit from sustaining certain forms of slavery. This perspective from Hathaway relates to the previous discussion in section 3.1.4 Modern Exploitation and the Problem of Legal Categorisation. Modern Exploitation and the Problem of Legal Categorisation above which formed the basis of this thesis' approach of treating trafficking as distinct from slavery. As stated previously, trafficking, as defined in the Protocol, is narrower in scope than the broader concept of slavery. As a result, conflating the two terms may lead to an interpretation of the Protocol that limits slavery to only certain forms of exploitation, which include at the 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."[376] These forms of exploitation, however, are conditioned on the act of transporting, transferring, harbouring, recruitment or receiving of such exploited persons in addition to the use of any means of force, threat, fraud, or coercion.[377]

Furthermore, Marie Vlachová argues that the Protocol's definition of human trafficking appears to reinforce a stereotypical portrayal of trafficked persons as passive and helpless, which generates significant barriers for those who do not conform to this depiction. This portrayal not only risks marginalising individuals who show agency or resistance but may also cause further harm by denying them recognition or protection.[378] Therefore, women trafficked for sexual exploitation are often blamed if they practiced any form of agency in their relationship with the perpetrators in the earlier stages, for example if they were originally engaged in prostitution/sex work which is then transformed into trafficking in the place of destination. In other words, the trafficker must be aware of the victim's vulnerability and abuse it knowingly by means of force, coercion or deception in order to force victims into committing certain deeds. Indeed, the use of the term "victim" often reproduces a narrative of vulnerability and passivity, whereas framing individuals as "survivors" acknowledges their agency, resilience, and capacity for self-determination. Similarly, while vulnerability remains a key legal and social lens through which trafficking is understood, an overreliance on this framework can mask

[376] ibid.
[377] ibid 9-11.
[378] Marie Vlachová, 'Trafficking in Humans: The Slavery of Our Age' (2005) 4 *Connections* 1, 8-9.

the strength and adaptability that many trafficked persons demonstrate. Emphasising resilience alongside vulnerability may allow for a more inclusive and nuanced comprehension of the experiences of those subjected to trafficking and thus support more effective and rights-based protection procedures.[379]

Dominika Borg Jansson has questioned the definition of trafficking as per the Protocol for its sensitivity to the dynamics and mechanisms of human trafficking. [380] In this context, the UN Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, has criticised the Protocol's implementation for frequently failing to properly identify or support trafficked persons. This concern is starkly illustrated by the 2024 finding that fourteen individuals at the Samos asylum centre, showing clear signs of trafficking, were left without adequate care or recognition.[381]

The Protocol's definition of trafficking has been challenged for its complexities and the difficulties it poses for law enforcement in practice. It necessitates proof of several elements, including the act, the means, and the purpose of exploitation, all of which are often difficult to prove, particularly in cases with a transnational dimension. When a trafficking operation involves several jurisdictions, relevant evidence may be dispersed across multiple states, further complicating investigations and prosecutions. Furthermore, the requirement to demonstrate that the perpetrator employed means such as force, coercion, or deception adds another evidentiary burden, particularly in situations where such means are subtle or indirect. In response to these limitations, Jansson argues that trafficking should be recognised where there is abuse of a person's vulnerable situation and the intent to exploit, regardless of whether the individual may have appeared to consent or played a role in their own recruitment, such as fleeing

[379] Valerie M. Meredith, 'Victim Identity and Respect for Human Dignity: A Terminological Analysis' (2009) *International Review of the Red Cross* 91(874) https://international-review.icrc.org/sites/default/files/irrc-874-3.pdf accessed 18 August 2025.
[380] Jansson, *Modern slavery: A comparative study of the definition of trafficking in persons* (n 350) 120.
[381] Office of the High Commissioner for Human Rights, 'Greece: UN Expert Alarmed by Failures in Identification and Protection of Victims of Trafficking' (2 December 2024) https://www.ohchr.org/en/press-releases/2024/12/greece-un-expert-alarmed-failures-identification-and-protection-victims accessed 9 July 2025; Siobhán Mullally, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Trafficking in persons in the context of mixed migration and the protection of victims at sea* (26 June 2024) UN Doc A/HRC/56/60 https://www.ohchr.org/en/documents/thematic-reports/ahrc5660-trafficking-persons-mixed-migration-and-protection-sea-report accessed 9 July 2025.

poverty or conflict.[382] This would help avoid the unequal protection provided to some victims based on their initial interaction with the perpetrators prior to exploitation.[383] Jansson also argues that the Protocol's overarching focus on exploitation ignores the fact that there could be other motivations linked to the trafficking, such as the hope on the part of the victim to receive remuneration, and thus national efforts fail to tackle the issue from the victim's perspective. For instance, in countries like Russia and Poland, if there is no evidence implying the existence of such a purpose to exploit the victim then the acts committed by the victim will not qualify as trafficking but might be considered as complicity.[384]

While a uniform definition of human trafficking is crucial for establishing international collaboration and coordinated responses to cross-border trafficking, one of the reasons for its ambiguity is its international scope. The Protocol had to be drafted in such a way that could be globally recognised and capable of being internalised into diverse national and regional legal frameworks, each with its own different legal traditions and capacities. As a result, this universality may come at the expense of clarity and precision, especially when applied in practice. The international discourse on trafficking recommends that all victims of trafficking be treated according to international standards such as the ones stipulated in the Protocol. These international standards call for providing protection at the legal, medical, psychological, and social levels. Thus, to implement such standards into national legislation is far from an easy task. The weaknesses of the definition remain a challenge to the harmonisation of national legislation with these international standards. This challenge is even more visible in conflict settings, where legal systems are fragmented, state authority is weakened, and the capacity for effective implementation is often restricted or compromised. As this thesis argues, the internalisation of international norms in such contexts requires not only formal legal adoption, but also the transformation of political and social structures to enable meaningful enforcement and behavioural change. In this sense, international organisations and transnational actors play a key role in assisting states by developing

[382] Jansson, *Modern slavery: A comparative study of the definition of trafficking in persons* (n 350) 120.
[383] ibid 13.
[384] ibid 92-95.

conflict-sensitive legal and institutional frameworks that are customised to local realities, while remaining consistent with international standards.

3.3.5 An Overview of the African Union Initiatives to Combat Trafficking for Forced Labour

Since Libya is the chosen case study for this thesis, it is relevant to also include the responses of the African Union (AU) to the issue of human trafficking for forced labour in the African continent. One key instrument is the African Charter on Human and People's Rights which explicitly states, in its Article 5, that all forms of exploitation and degradation of humans, including slavery and the slave trade, are prohibited.[385] On forced labour, Article 15 states that every individual has the right to work under equitable and satisfactory conditions. Whereas Article 17 sets the foundation for the right to education for all individuals.[386] Additionally, Article 6 and 20 of the Protocol to the Charter relating to the Rights of Women in Africa protects women and girls against forced marriage.[387]

Specific to child labour, the African Charter on the Rights and Welfare of the Child necessitates child protection from all forms of economic exploitation and exaction of any hazardous work or any type of work that might interfere with the child's physical, mental, or social development. It prohibits child marriage and other harmful social and cultural practices. Importantly, it provides protection of children in armed conflict, especially against their recruitment into such conflicts. Also, it protects children from sexual exploitation and trafficking for other purposes such as begging.[388]

In response to the emerging concerns about forced labour in the African continent, in 2020, the AU with the help of the ILO, launched the Ten Years Action Plan to Eradicate Child Labour, Forced Labour, Human Trafficking and Modern Slavery in Africa (2020 - 2030). This Action Plan adopts a rights-based approach focusing on promoting decent work in different formal and informal sectors, with measures

[385] *African Charter on Human and Peoples' Rights* (adopted 01 June 1981, entered into force 21 October 1986) art 5.
[386] ibid arts 15 and 17.
[387] *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (adopted 11 July 2003, entered into force 25 November 2005) arts 6 and 20.
[388] *African Charter on the Rights and Welfare of the Child* (adopted 11 July 1990, entered into force 29 November 1999) arts 15, 21, 22, 27, 28, and 29.

addressing, minimum age, fair recruitment, occupational safety and health, protection of labour rights, and extension of social protection.[389]

Importantly, the outcome expected includes addressing issues of forced labour and human trafficking in humanitarian and development efforts of the AU Charter, Regional Economic Communities and other stakeholders tackling emergencies, armed conflict, state fragility, and post-crisis recovery and state fragility in Africa (Strategic Intervention Areas as per the Plan) which are all relevant to the situation in conflict-torn Libya. This focus would centre refugees and migrants at the heart of such an initiative. Interestingly, the implementation plan suggests one important factor which is the relevancy of the proposed actions to the national context which indicates an understanding of the different context within which forced labour exists and in the different mechanisms that can be at play. Additionally, the plan has created opportunities for several continental programmes combatting forced labour and human trafficking. Among these programmes is the Migration Policy Framework for Africa and Plan of Action (2018 – 2030) which focuses on international migration management policies and standards and provides comprehensive guidelines on issues relevant to the Action Plan, including migration and border governance, labour migration, and forced displacement.[390]

However, the Plan and other instruments are state-centric which would limit their impact in areas governed by non-state actors, such as in parts of Libya. Nonetheless, the role of the AU remains important in the fight against forced labour in the continent and can be seen as a key contributor to the process of norms internalisation as discussed in Section 2.5.2 Internalisation.[391] The ILO can work with the AU in order to ensure the inclusion of different actors in the process which would direct more efforts towards the internalisation of labour standards and human rights.

[389] African Union, *The African Union Ten Year Action Plan on Child Labour* (2020) 7-9 <https://au.int/sites/default/files/newsevents/workingdocuments/40112-wd-child_labour_action_plan-final-english.pdf> accessed 22 April 2026.
[390] ibid 13.
[391] Chapter 2, p. 56.

3.4 Reframing Anti-Trafficking Responses: A Human Rights-Based Approach for Conflict-Affected Contexts

The current criminalisation/criminal justice approach of anti-trafficking laws and regimes prioritise certain categories of trafficked persons such as victims of sexual exploitation compared to other categories such as victims of forced labour. This results in a narrow view of trafficking based on the Trafficking Protocol's definition which is heavily focused on transnational and organised human trafficking. Furthermore, this approach ignores asylum seekers and refugee victims of trafficking because it is difficult to identify them by authorities, and because of the strict laws that not only deprive undocumented migrants from protection but also place them at the risk of detention and repatriation. This also leads to unnecessary confusion between the crimes of smuggling of migrants and trafficking in persons. Thus, it can be concluded that an approach which is overly focused on criminalisation fails to tackle all the complex issues raised by human trafficking. Reports, such as the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) Report of 2023, have shown that the prosecution of human traffickers is low compared to the high numbers of trafficked persons.[392] This proves the inadequacy of the criminal justice approach, thus boosting the need for adopting a human rights-based approach.

A human rights-based approach leads to the treatment of trafficked victims as equals in their entitlement to human rights regardless of the purposes of exploitation they were subjected to, and irrespective of their background, ethnicity, gender, immigration status or age. It calls for equal protection to all victims of trafficking but also ensures that no type of prejudice or bias is practised against the victims. Hence, anti-trafficking policies should safeguard the rights of victims and protect them from any potential jeopardy due to the implementation of migration laws and criminal prosecutions. A human rights-based approach pays special attention to the trafficking of minors and thus addresses the issue in compliance with children's rights. It also sheds light on migrant victims and suggests that no migratory regulations should jeopardise the safety of trafficking victims. Thus, repatriation should only be pursued when it aligns with the informed and voluntary consent of the trafficked person, and never as a

[392] Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), *13th General Report on GRETA's Activities* (Council of Europe 2024) 25.

mandatory or presumed course of action. Any other coercive or arbitrary measures implemented by the state must be avoided, as they risk further harming individuals and violating their rights.

Furthermore, a human rights-based approach extends beyond examining the degree of coercion to which victims of trafficking experience towards supporting the rights of these victims regardless of the trafficking conditions.[393] Under this framework, trafficking is understood both as a result of pre-existing human rights violations, such as poverty, discrimination, and lack of access to education or legal protection, and as a cause of further violations, including forced labour, sexual exploitation, and denial of freedom and dignity. This understanding can be observed through some key international jurisprudence. For example, in the European Court of Human Rights (ECtHR) judgment in the case *Siliadin v. France*,[394] the court examined the situation of Siliadin, a girl under the age of 18 from Togo, who was exploited for servitude as a housemaid in France. The judgment tackled the French criminal law framework that failed to prosecute this act of servitude along with other forms of slavery and forced labour.[395] Importantly, the court emphasised the positive obligation of states to provide protection to the victims as well as working towards the prevention of trafficking within their jurisdictions. Taken as a whole, the Court's judgment means that individuals have the right to protection against trafficking, and such a right shall be provided by states.[396]

A human rights-based approach will strengthen and widen the range of protection for the trafficked victims. It will also offer an effective strategy for combating trafficking. Nevertheless, there should be a positive and effective interplay between human rights law, transnational criminal law, and international refugee law in order to protect victims of trafficking who are in many cases treated as criminals or illegal migrants. Only a progressive development of both criminal justice and refugee and migrant justice can create a just and effective fight against human trafficking. Moreover, the human rights-based approach embeds a detailed assessment of the whole trafficking

[393] Patricia Hynes, 'Exploring the interface between asylum, human trafficking and/or 'modern slavery'within a hostile environment in the UK' (2022) 11 *Social Sciences* 246, 703-704.
[394] *Siliadin v France* App no 73316/01 (ECtHR, 26 October 2005).
[395] ibid 122, 124.
[396] Jansson, *Modern slavery: A comparative study of the definition of trafficking in persons* (n 350) 57.

situation, thus providing the option for a just treatment and protection of the victims of human trafficking in humanitarian crises rising in conflict settings, such as the case of Libya.[397]

3.5 Concluding Remarks: Reassessing International Responses to Trafficking through a Human Rights Lens

This chapter demonstrated how legal and institutional responses to trafficking have disproportionately focused on certain categories of trafficked persons, particularly those subjected to sexual exploitation, while marginalising others such as victims of forced labour, migrants, asylum seekers, and persons affected by conflict. These limitations are especially present in contexts like Libya, where the fragmentation of legal institutions and widespread instability have left trafficked persons without effective protection or recourse as will be discussed further in Chapter 6 on Libya as a case study.

As such, the criminal justice approach has been found to fall short in terms of scope and impact, especially in conflict settings where accountability and enforcement mechanisms are weakened. To bridge these gaps, this chapter advocated a transition to a human rights-based approach that recognises all trafficked persons as rights-holders deserving equal protection and support. Such an approach prioritises dignity, agency, and non-discrimination, while also ensuring that migration policies and prosecution mechanisms do not further jeopardise those they are designed to protect. This approach provides a more comprehensive and context-sensitive response, especially in situations of conflict where vulnerabilities are exacerbated and conventional legal remedies may not be accessible.

Applying this argument to Harold Koh's theory of transnational legal process, this chapter has demonstrated that the internalisation of international anti-trafficking norms requires more than formal ratification. It involves dynamic processes of interaction, interpretation, and internalisation through which international norms are translated into effective national practices that are tailored to the specific national

[397] Idil Atak and James C Simeon, 'Human Trafficking: Mapping the Legal Boundaries of International Refugee Law and Criminal Justice' (2015) 12 *Journal of International Criminal Justice* 1019, 1038.

circumstances. In conflict settings such as Libya this process is especially complex but remains essential for ensuring meaningful compliance and behavioural change. International organisations and transnational actors therefore play a key role in supporting the development of conflict-sensitive legal and institutional frameworks that enable the embedding of human rights-based norms.

In a nutshell, for international responses to be truly effective, they must adopt a transnational legal process that encourages sustained interaction across legal, political, and social domains. This requires a deliberate transition away from narrow criminal justice strategies and towards inclusive, rights-based frameworks that address the unique challenges of conflict and forced labour. Only through such an approach can the promise of international law be achieved in practice, and the protection of trafficked persons be meaningfully secured.

As a key organisation in the global struggle against forced labour, the International Labour Organization has a central role in advancing such measures, particularly through its supervisory mechanisms. The following chapter therefore tackles the ILO's history, structure, and monitoring mechanisms in order to assess their potential for supporting the meaningful protection of trafficked persons and for realising the promise of international law in practice.

Chapter 4: History and Structure of the ILO

"*The unique feature of the ILO is its tripartism. When the ILO was first established in 1919, its founders determined that it should be tripartite in the belief that social justice and, with it, universal and lasting peace could only be achieved with the involvement of the social partners at all stages. Ever since, it has been the fundamental role of the ILO to promote and facilitate social dialogue and negotiation at all levels."*

Juan Smavia, 2002.[398]

This chapter will introduce the International Labour Organization (ILO) through a historic overview since its establishment. It will explore its unique tripartite structure and shed light on the main criticisms concerning its universality and efficacy. Through such an introduction, it will advance the central argument of this thesis by explaining the importance of studying the ILO to understanding how international organisations operate in their regulatory functions, especially considering that the ILO is widely recognised for its standard-setting role,[399] and so contributes significantly to the international legal order.

The chapter will then move on to discuss the ILO's supervisory system, including both its regular and special mechanisms. This discussion is essential to understand how compliance is evaluated and encouraged within the ILO framework. Since this thesis investigates the effectiveness of the ILO's standards on forced labour, with a specific focus on conflict settings, analysing the structure and operation of the supervisory system is a vital step. It helps to assess whether the mechanisms in place are fit for purpose when applied to complex national contexts such as Libya.

Moreover, this chapter further establishes the conceptual basis of the thesis. The ILO's institutional structure, while unique in terms of inclusivity and dialogue, has also been criticised for lacking enforcement mechanisms. These structural configurations must be understood in order to properly evaluate the ILO's ability to influence state behaviour, particularly through normative pressure, technical cooperation, and social

[398] Juan Somavia, 'Report of the Director-General: Decent Work: Agenda of the International Labour Organization' (International Labour Conference, 90th Session, Report I(A), ILO 2002) 3.
[399] Elena Sychenko, 'ILO Contributions to the Jurisprudence of International Human Rights Bodies' (2021) 71 *Zbornik Pravnog fakulteta u Zagrebu* 897, 902-905.

dialogue. It is within this context that the thesis engages with Koh's transnational legal process theory, which offers a more dynamic and process-oriented lens through which the effectiveness of international labour standards can be examined.

As such, the ILO's effectiveness is not only measured by whether states officially ratify conventions or submit reports, but by the extent to which international labour norms become internalised within domestic legal, political, and social systems. This internalisation process, as Koh explains, develops through repeated interaction between international institutions and domestic actors, resulting in normative interpretation, socialisation, and ultimately behavioural change. Therefore, the historical evolution of the ILO, its institutional dynamics, and its supervisory mechanisms must be understood as the starting point of this transnational process.

Chapter 5 will build on the institutional and normative foundation laid in this chapter by presenting a focused discussion of ILO instruments on forced labour, particularly those that intersect with conflict and post-conflict settings. The subsequent analysis will illustrate how these standards are intended to operate and how their implementation and internalisation can be observed and measured in practice. Ultimately, this trajectory will lead to the in-depth case study of Libya in Chapter 6, where the challenges of applying and enforcing international labour standards in conflict settings will be critically assessed.

4.1 The ILO's Establishment

First established in 1919, and currently with 187 member states, the International Labour Organization (ILO) provides an important case study on the effectiveness of international organisations in their law making and enforcement. The reasons behind this interesting position of the ILO stem from its structure as well as its legitimacy and authority in standard-setting and labour law-making. In terms of its structure and configuration, the ILO is the only international organisation to integrate private actors in its governance structure. In general, there are three essential organs of the ILO: the International Labour Conference (ILC) which can be seen as the ILO's general assembly; the Governing Body (GB) which can be described as the ILO's executive;

and the International Labour Office (The Office) which is the ILO's permanent Secretariat. Both the ILC and GB are constituted of representatives from governments, labour unions, and employer associations. Labour unions (workers) and employers each have a quarter of seats, i.e., 25 seats in both the ILC and GB. The remaining seats (50 seats) are held by government representatives. The Office is responsible for management of ILO's global activities and is based at the headquarters in Geneva, Switzerland. It is also worth noting the decentralisation of the organisation's work and activities as there are field offices in 40 different countries.[400]

The ILO, established in 1919 as part of the Treaty of Versailles, was created alongside the League of Nations. While the League eventually dissolved following the Second World War, the ILO continued to operate and, in 1946, became the first specialised agency of the newly formed United Nations. This historical continuity renders the ILO one of the oldest international organisations still in existence, and notably the only major institution from the League of Nations system to have survived both World Wars as well as the Cold War.[401] The talks about its establishment started alongside the peace negotiations that took place at Versailles, which, according to Van Daele, laid the foundations for an international legal and security system.[402] The negotiations led to the establishment of the Versailles Treaty, which was described as a "peace treaty". Regardless of what scepticism might now be thrown at this description,[403] the treaty marked the end of the First World War and the beginning of an important era of international cooperation surrounding demands for "social justice" and "security".

This new era cannot be fully understood without an understanding of the evolving political economy at that moment in time. The treaty came to mark the end of the war which resulted in the defeat of Germany and the Central Powers[404] in the context of

[400] Lucio Baccaro and Valentina Mele, 'Pathology of Path Dependency? The ILO and the Challenge of New Governance' (2012) 65(2) *Industrial and Labor Relations Review* 195, 196; International Labour Organization, 'Structure' (ILO, undated) https://www.ilo.org/about-ilo/structure accessed 18 August 2025.
[401] International Labour Organization, 'ILO, Origins and History' (International Labour Organization) https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm accessed 23 June 2025.
[402] Jasmien Van Daele, 'Engineering Social Peace: Networks, Ideas, and the Founding of the International Labour Organization' (2005) 50 *International Review of Social History* 435, 449.
[403] Sally Marks, 'Mistakes and myths: the Allies, Germany, and the Versailles Treaty, 1918–1921' (2013) 85 *The Journal of Modern History* 632.
[404] National Geographic Society, 'Jun 28, 1919 CE: Treaty of Versailles' (2023) https://education.nationalgeographic.org/resource/treaty-versailles-ends-wwi/ accessed 4 June 2025.

an emerging clash between the theories of communism vs. capitalism. The three leaders of the Allies who won the war, namely Wilson, Lloyd George, and Clemenceau, demanded that a ‘‘social chapter’’ be included in international treaties as a way to reward workers for their sacrifices during the war.[405] That, however, was not the sole or even actual reason, as communism was advancing and attracting more workers since 1917 and the Bolshevik Revolution, and so their motive was to somehow constrain these revolutionary trends. On 25 January 1919, Woodrow Wilson[406] proposed that an expert commission (Paris Commission) be handed the responsibility of developing an international labour regulation. This commission of experts consisted of fifteen members from nine countries including the five great powers, namely Britain, Italy, France, Japan, and the US. These five powers each sent two representatives as members to the commission, and the remaining members came from Cuba, Poland, Belgium, and Czechoslovakia. Belgium had double representation as it persuaded the commission that the Belgian war achievements merited such double representation. As per the British perspective, the commission was supposed to include representatives with high expertise and experience related to social politics, thus, they should come from the fields of politics, academe, or certain high level national labour administrations.[407] Representatives chosen for the commission, therefore, had some experience in labour law. The existence of legal experts, workers, and government representatives in the commission and around the same table of negotiations can be viewed as the first move towards the development of ILO’s tripartite structure. This tripartite structure would later bring together governments, workers, and employers to address labour issues and contribute to the creation of international labour standards.[408]

The establishment of the ILO marked a new era in the development of international organisations from being passive actors, that received tasks and authority, to proactive actors that contributed to the creation and expansion of tasks. It also challenged the

[405] See: https://avalon.law.yale.edu/imt/partxiii.asp
[406] Woodrow Wilson, a leader of the Progressive Movement, was the 28th President of the United States (1913-1921). After a policy of neutrality at the outbreak of World War I, Wilson led America into war in order to “make the world safe for democracy.” See: https://www.whitehouse.gov/about-the-white-house/presidents/woodrow-wilson/
[407] Van Daele, ‘Engineering Social Peace: Networks, Ideas, and the Founding of the International Labour Organization’ (n 402) 449-451.
[408] ibid.

ability of states to act unilaterally to tackle specific problems beyond their borders and sovereignty.[409] Whereas Robert Cox has argued that this characterisation dismisses the strategic motivations of powerful states. Instead, Cox argues, that it was not mainly the inability of states that led to the establishment of the ILO, but rather the interests and influence of dominant political powers who, in granting the ILO a measure of autonomy, sought to institutionalise a system that would empower their own political and economic objectives, including the restraining of socialist ideologies and the stabilisation of capitalist labour markets.[410] Seen through the modern lens of Koh's transnational legal process, the creation of such institutions contributes to the establishment of international norms via iterative interactions between global and domestic actors, with the aim of shaping state behaviour through internalisation and normative engagement.[411]

In fact, one cannot ignore political influences on the creation of international organisations and their agenda – both then and now. This will be proven important in assessing the work of the ILO and its ever-changing focus and strategies. The following sections will give focus to the main components of the ILO and the role it plays in the law-making of labour laws, especially when it comes to the central topic of this thesis, namely forced labour. The ILO, which was created as a response to war and workers' demands for social justice, has built its empire on the promise of protecting, promoting, and achieving "social justice". The ILO's history was thus shaped by the development of the notion of social justice as a means to achieve peace, as well as the political competition between different world economic structures and ideologies. What makes the ILO an interesting case study is that it indicates the hegemony of certain political economies. It functions as a microcosm of broader global struggles, where tensions between capitalism and socialism, between employers and workers, or even between imperial powers and the exploited global south can be detected.[412]

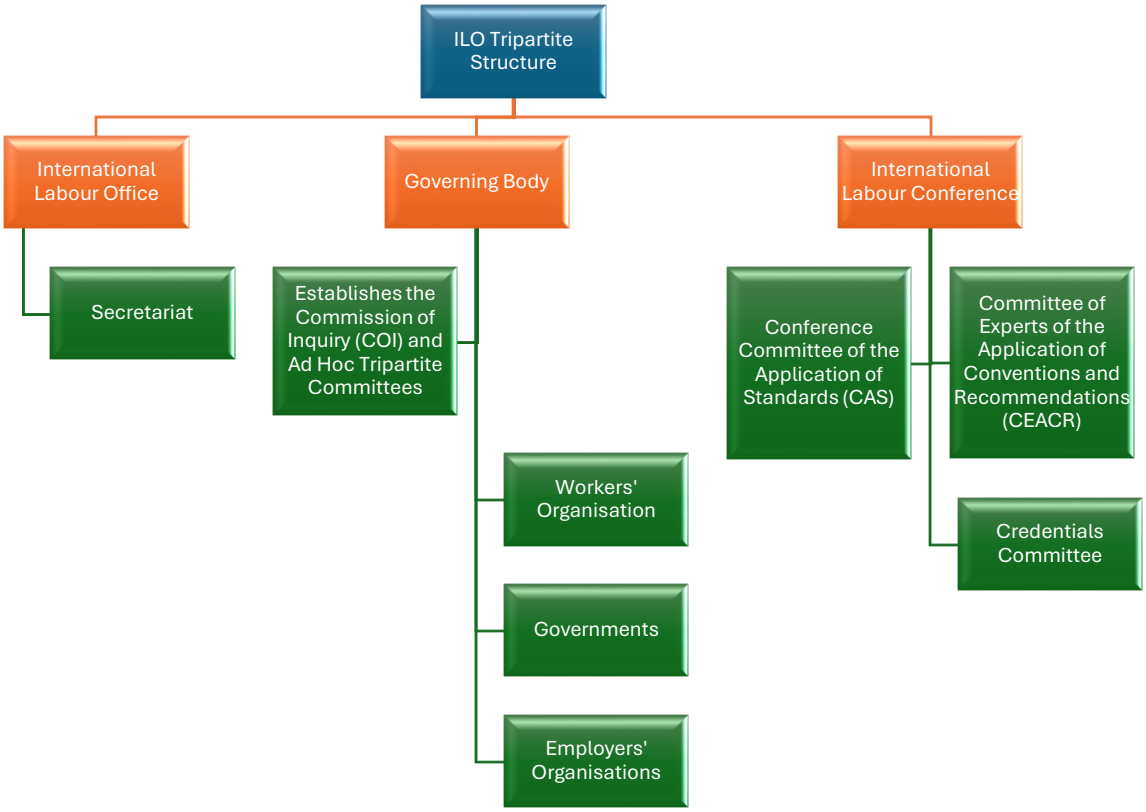
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[409] Jasmien Van Daele, 'The International Labour Organization (ILO) in Past and Present Research' (2008) 53 *International Review of Social History*, 499.
[410] Robert W Cox, 'Labor and hegemony' (1977) 31 *International Organization* 385, 499.
[411] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 181.
[412] Andrew Howard, 'Global capital and labor internationalism in comparative historical perspective: A Marxist analysis' (1995) 65 *Sociological Inquiry* 365, 369-371; Daniel E Bender and Jana K Lipman, *Making the empire work: Labor and United States imperialism*, vol 13 (NYU Press 2015) cited in Thierry Drappeau, 'The Work of Empire: Current Directions in Transnational Labour History' (2017) 80 *Labour* 289, 301.

There are three key periods of the ILO's history as per Guy Ryder, who is the ILO's current director-general. The first period marked the creation of the ILO in 1919 until the Second World War, which the ILO barely survived as it had to move its headquarters from Geneva to Canada. In that first period, the ILO's main challenges were the economic, political, and social consequences of the new world order resulting from the aftermath of World War I. It was also when authoritarianism rose in many European countries along with the global depression, and ultimately with the beginning of the Second World War.[413] However, these challenges did not hinder the establishment of the ILO, on the opposite they contributed to the organisation's raison d'être. The tripartite structure of the organisation was surprisingly effective, as representatives of governments, workers, and employers were willing to work together, and thus established many of the core international labour standards which still underpin today's global regulatory framework. In the second period starting from the end Second World War until 1990, the ILO faced different challenges, not least the start of the decolonisation movements in the post-colonial era. Furthermore, it was during this era that the ILO expanded to achieve a more universal membership in contrast to its original membership of only 44 countries. Therefore, the ILO offered its expanding technical aid and cooperation capacity to emerging independent states, especially in the developing world. Especially during the Cold War, the ILO's main work was influenced by the East-West conflict. In 1990 and onwards, the ILO entered another key period of history which can be argued as its most difficult period. According to Ryde, the post-1990 period is when questions about the need for the ILO started to appear. Some argued that the main purpose of the ILO was originally to fight back against the advance of communism, and so there was no more legitimate basis for the ILO to remain in existence. Concerns were also raised during the post-Cold War era regarding the ILO's ability to reproduce a new raison d'être. Yet at the same time, the rise and impact of globalisation has appeared as the main challenge that the ILO is faced with.[414]

[413] Antony Alcock, 'The ILO and the Economic Depression' in *History of the International Labour Organization* (Springer 1971), 100-112.
[414] Guy Ryder, 'The International Labour Organization: The next 100 years' (2015) 57 *Journal of Industrial Relations* 748, 749-750.

4.2 The ILO's Tripartite Structure



(Figure 1: ILO Tripartite Structure)

The tripartite structure of the ILO (i.e. workers, employers and governments) endorses its legitimacy and capability to fulfil its regulatory functions, and that is specifically through the structure's ability to truly reflect the interests of the diverse communities of workers and employers concerned.[415] Therefore, it can be said that the ILO's tripartite structure, in its uniqueness, is a key contributing factor to the legitimacy and effectiveness of the ILO as an international organisation with standard-setting authority. Francis Maupin used the term "persuasiveness" to reflect the contribution that this unique structure has on the organisation's capabilities. Nonetheless, according to Maupin, ILO's tripartism is faced with two main challenges related to the ILO's claim of universality and the concerns of employer groups at the ILO about the "benefits" they are able to gain from their participation in such a tripartite organisation.[416] In the following sections, we will try to understand in detail how the challenges of establishing and enforcing universal standards has impacted the tripartite

[415] Francis Maupain, 'A Second Century for What?' (2020) 17 *International Organizations Law Review* 291, 297.
[416] Francis Maupain, 'Revisiting the future' (2015) *154 International Labour Review* 103, 111.

structure in particular, in addition to understanding how the employers' representatives became sceptical of the organisation's role and relevancy, and how this has impacted the organisation.

4.2.1 Universality and Representation

Returning briefly to the ILO's formative years in the immediate post–First World War period, one of the earliest major challenges to its tripartite structure emerged in the 1920s with debates over the claim of universality. This issue was closely tied to concerns about representation, particularly in relation to the participation and voting rights of workers', employers', and government delegates from different regions and political systems. Any claim of universality entails both diversity and inclusion. In the tripartite structure, diversity and inclusion refer to the active independent participation of state members in their governments as well as their independent employers' and workers' organisations. However, there were issues of debate in the ILO regarding the decision-making and weight to be given to each representative of these three components of tripartism. During the 1919 Paris Peace Conference, Britain suggested that two votes should be given to the government representative, and one vote each for the employers and workers. Such an idea precipitated the disagreement between Emile Vandervelde[417] and Samuel Gompers[418] at the Labour Commission. Vandervelde suggested that governments should have two representatives each with one vote, and since those representatives ought to represent different interests of consumers, this designation of votes would somehow provide an equal balance between those interests and the interests of producers represented by two votes – one for the workers and one for employers.[419]

The double representation of the government was argued to ensure a majority of votes on the adoption of conventions and other instruments. This proposal was promoted because it was anticipated that governments would represent workers properly through

[417] A leading figure in the Belgian Labour Party and in international socialism and was a part of the Labour Commission.
[418] Samuel Gompers, President of the American Federation of Labor from 1886 until his death in 1924, who served as Chairman of the Labour Commission during the 1919 Paris Peace Conference.
[419] Van Daele, 'Engineering Social Peace: Networks, Ideas, and the Founding of the International Labour Organization' (n 402) 455.

democratic means, although this was not the case for all members. On the other hand, Gompers was working to minimise government representation, and participation in the ILO in general. Gompers suggested that government representatives should have one vote equal to that of workers and employers each, which according to Gompers, would prevent governments and employers from coalescing against workers' rights.[420] Gompers was the President of the American Federation of Labour (AFL), and their argument against government double representation contributed to the hesitation of the US government in joining the ILO. The US's main concerns were related to its sovereignty or, in other words, its ability to unilaterally meet its needs and solve its international issues. It was also sceptical of the government's role in improving labour standards through legislative power. However, the U.S joined the ILO with the support of its Democratic president, Franklin D. Roosevelt in 1934. Roosevelt along with his Secretary of Labour, Frances Perkins, joined the ILO as part of their effort to combat the Great Depression and to help achieve certain social reforms.[421]

Contrasting the American mistrust in the legislative capabilities of governments, there was a strong level of trust among European countries such as Britain and Belgium towards this structure. The European governments believed that authorities in all members states were willing to participate in positive legal reforms and viewed the ILC as a diplomatic conference by which governments could agree to minimum labour standards. However, this vision was limited in its inclusivity, as it was based on a Eurocentric and colonialist approach to the ILO. To compromise between both proposals, as epitomised by the positions of Vandervelde and Gompers, it was proposed that three votes should be given for each group with one representative (government, workers, and employers), while the government preserves a double vote only in the final voting round in the plenary conference related to conventions. Later on, other suggestions regarding delegations' composition and voting were advocated for by different governments, especially from newly independent states in Africa, Asia, and Latin America following decolonisation, as well as from socialist countries such as the USSR. These states defied the assumptions of the tripartite structure,

[420] ibid 454.
[421] ibid.

arguing that it reflected a Western liberal democratic model that was not universally relevant.[422]

Following these debates, the final and remaining composition adopted was the one proposed by Vandervelde which includes the government double representation.[423] This again sheds light on the Eurocentric nature of the ILO's establishment, and it does so by showing that the tripartite structure was dominated by trade unionists from Europe, who deeply influenced the adoption of Western values while excluding the conditions and framework of workers from developing countries. The idea that Vandervelde had in mind was related to social democracies, which, according to Sivan Milman, dealt with class as the privileged form of organisation, by which only the typical full-time organised male worker is represented. However, not all workers in the world are organised, which leaves many of them under-represented in the ILO. It has also been argued that such a structure excluded the voices of some vulnerable groups, such as migrants, women, temporary workers, workers in the informal sectors, and the unemployed.[424]

Recognising the neglect faced by these categories of workers is essential to understanding the flaws of the ILO's system, which is mirrored by its historic and on-going lack of effectiveness in proposing and applying solutions regarding labour rights in relation to these vulnerable groups. Since its beginnings in the 1920s, the ILO's tripartite structure has been based on a Eurocentric model of industrial relations, which assumes organised, male, industrial labour within functioning liberal democratic states. As a result, the structural design excludes huge elements of the global labour force, including informal workers, women, migrants, the unemployed, and, increasingly in recent decades, workers situated in conflict and post-conflict zones. This foundational design, while creative at the time, established a representational model that fails to convey the diversity and precarity of global labour. Although this issue has been raised numerous times, especially during the post–Second World War

[422] Daniel Maul, *The International Labour Organization: 100 Years of Global Social Policy* (De Gruyter Oldenbourg 2019) 142–145.
[423] Van Daele, 'Engineering Social Peace: Networks, Ideas, and the Founding of the International Labour Organization' (n 402) 456.
[424] Sivan Milman, 'Representativity, Civil Society, and the EU Social Dialogue: Lessons From the International Labor Organization' (2009) 16 *Indiana Journal of Global Legal Studies*, 327.

decolonisation period and by socialist regimes during the Cold War, efforts to modify the tripartite structure have been mostly incremental and limited in scope. Therefore, it can be concluded that the first cause behind the ILO's ineffectiveness in conflict settings is of a structural nature. Structural flaws are usually tough to change, especially when factors such as political and financial influence play an important role in sustaining or changing these structures. This combines with the previously addressed issue of incomplete universality in the ILO's approach, to produce a continuous dilemma which manifests itself in the ILO's lack of power and inclusivity to address the issues of most relevance for the weakest links in the chain of workers around the globe.

4.2.2 Adaptability and Representation

The second challenge faced by the ILO refers to the political interference of governments within the ILO's member states in the membership and autonomy of workers' and employers' organisations, which was exacerbated during the Cold War era. The economic ties linking unions and organisations to their local governments mean that the condition of autonomy in the decisions and voting of these unions is often absent. In other words, instead of advising what is best for the groups they represent (employers or workers) on a universal scale, many of these unions and organisations continue to reflect the political interests of their governments rather than act independently. However, the fall of the Soviet Union released some of the pressure imposed by the revolutionary social justice model advocated by the USSR and other socialist governments. However, the end of the direct rivalry between the capitalist and socialist models in the 1990s did not end the contradictions between different views on social justice within the ILO.[425]

The first clash of priorities was witnessed in the ILO's challenge to consolidate its tripartite structure with its universal character or competence, especially in its claim to include all types of work, and not simply industrial work and industrial workers.[426] To achieve that, the ILO needed to increase its adaptability, i.e. its capacity to include

[425] Maupain, 'Revisiting the future' (n 416) 111.
[426] Kari Tapiola, *The Driving Force: Birth and Evolution of Tripartism-the Role of the ILO Workers' Group* (ILO 2019), 34.

diverse types and forms of work relations within its mandate. This adaptability is impacted by the willingness and abilities of both workers' and employers' organisations within the ILO, as it falls under their mission to mobilise, represent, and advocate for workers and employers, respectively. In addition, it depends on the knowledge and view of the workers regarding the ILO's capacity to address their issues and help solve them, and thus, their ability to trust the organisation and seek representation within.[427] A central element of this adaptability lies in how the ILO interprets and promotes the right to freedom of association, including the right to strike, particularly under Convention No. 87.[428] These interpretations are guided by the Committee on Freedom of Association (CFA), a supervisory body established in 1951 to examine complaints regarding violations of this fundamental right, even when the state concerned has not ratified the relevant conventions. This understanding of the organisation's jurisdiction was contested by the employers' organisations. Such contestation stems from a much more problematic position of the employers, i.e., their position towards their participation in the ILO and what they expect as an outcome of this participation. It raises concerns about these expectations and what they mean to the future of tripartism in the ILO. This situation of tension has hindered the development of international labour law and posed a challenge to the tripartite structure in which the employers may act in obstruction to future endeavours to secure social justice in an age of globalisation. In order for the ILO to overcome this challenge, it adopted a cooperation strategy in which it works not to battle or contest globalisation but rather seeks a "fair" globalisation where it can achieve coherence between economic, social, and environmental considerations. This strategy can be found in the ILO Declaration on Social Justice for a Fair Globalisation in 2008.[429] However, despite its normative ambition, this strategy has had minimal practical use. Its influence has mostly been limited to the agenda of the International Labour Conference, with little meaningful impact on the broader institutional practices of the ILO or addressing deeper structural issues within the tripartite system. Nonetheless,

[427] Maupain, 'Revisiting the future' (n 416) 111-112.
[428] International Labour Organization, *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)* (adopted 9 July 1948, entered into force 4 July 1950).
[429] International Labour Organization, *ILO Declaration on Social Justice for a Fair Globalisation* (adopted 10 June 2008).

the declaration may still offer a useful normative framework for revitalising tripartite dialogue and tackling representational issues in the global economy.[430]

4.2.3 The 2005 Reform Process

The ILO, in response to these two challenges, started in the late 1990s to engage in a discourse with non-governmental civil society organisations, seeking to expand the inclusiveness of its work and representation. While this discourse was nothing close to formal representation in the tripartite structure, it impacted the focus on certain issues and promoted ensure effectiveness on the ground. For instance, in 1999, Juan Somavia, the ILO's former Director General, advocated for the need to work with actors from outside the tripartite structure, i.e., external to the ILO.[431] Since then, non-governmental organisations (NGOs) have been contributing to the ILO in the form of consultation and ad hoc cooperation. However, NGOs have always been denied any formal role in the standard-setting work. It was Somavia who advocated for their inclusion aiming at allowing the ILO, via its International Labour Office, more control over the workers' and employers' organisations, while at the same time providing space for civil society organisations.[432]

This approach to strengthen the International Labour Office's control started with reforms aimed at expanding the work of the Credentials Committee (CC) which is tasked with ensuring full participation in the organisation's deliberations. Prior to the reforms, the CC was mostly concerned with technicalities, i.e., the examination of members' nomination documents and their internal procedures. However, the 2005 reforms tasked the CC with referring complaints regarding violations of the right to freedom of association to the specialised Committee on Freedom of Association.[433] Another task that was handed to the CC was the follow-up on repeated violations of freedom of association, meaning that it can request governments to provide

[430] Maupain, 'Revisiting the future' (n 416) 112.
[431] International Labour Organization, 'Juan Somavia Sworn in as ILO Director-General' (4 March 1999) https://www.ilo.org/resource/news/juan-somavia-sworn-ilo-director-general accessed 14 July 2025.
[432] Milman, 'Representativity, Civil Society, and the EU Social Dialogue: Lessons From the International Labor Organization' (n 424) 327.
[433] International Labour Organization, *Report of the Governing Body: 297th Session (Geneva, November 2006) – Tenth Item on the Agenda: Committee on Freedom of Association* (ILO GB.297/10, 20 November 2006).

supplemental information on such matters. In addition to that, the CC can unanimously propose to monitor matters relating to the appropriate nomination procedures of prospective members. This means that the CC has the powerful authority to look into situations where governments deliberately avoid submitting qualifications to certain delegates of functional groups. [434]

The relation between these reforms and the ILO's response to critics regarding representation in the tripartite structure is that by adopting such reforms, the ILO provides for the possibility of modification of its expectations from members in the tripartite structure. The ILO tried to set new expectations from its members relating to the freedom of association, which can be seen through such reforms.[435] It aimed at strengthening its internal functioning by accommodating further guidance to its members in relation to their tripartite structure. The 2005 reforms were seen as a departure from the ILO's position which rejected the link between the criteria for acknowledging functional groups and the freedom of association.[436] This link between the CC's work and freedom of association presented a new complex understanding of representation at the ILO, in which representativity depends on the organisations' internal functioning which should ensure representation and the freedom of association within the respective organisation.[437] Such a review of the internal processes of prospective members affects the participation of workers' organisations that do not meet norms of representation and freedom of association relating to their constituents, as such organisations will be deemed incapable by the CC of being able to advocate for the interest of its members.[438] By doing so, the ILO monitors and scrutinises governments' nominations for workers' and employers' organisations, in a way that ensures their autonomy and efficient representation.[439]

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[434] Milman, 'Representativity, Civil Society, and the EU Social Dialogue: Lessons From the International Labor Organization' (n 424) 327-328.
[435] International Labour Organization, *Report of the Governing Body: 297th Session* (n 433)
[436] ibid.
[437] International Labour Organization, *Reports on Credentials Committees* (ILO 2021) https://www.ilo.org/media/253391/download accessed 14 July 2025.
[438] ibid.
[439] Oxford Public International Law, 'Supervisory and Review Procedures: Committee on Freedom of Association' (OPIL) https://opil.ouplaw.com/display/10.1093/law-mpeipro/e1617.013.1617/law-mpeipro-e1617 accessed 14 July 2025.

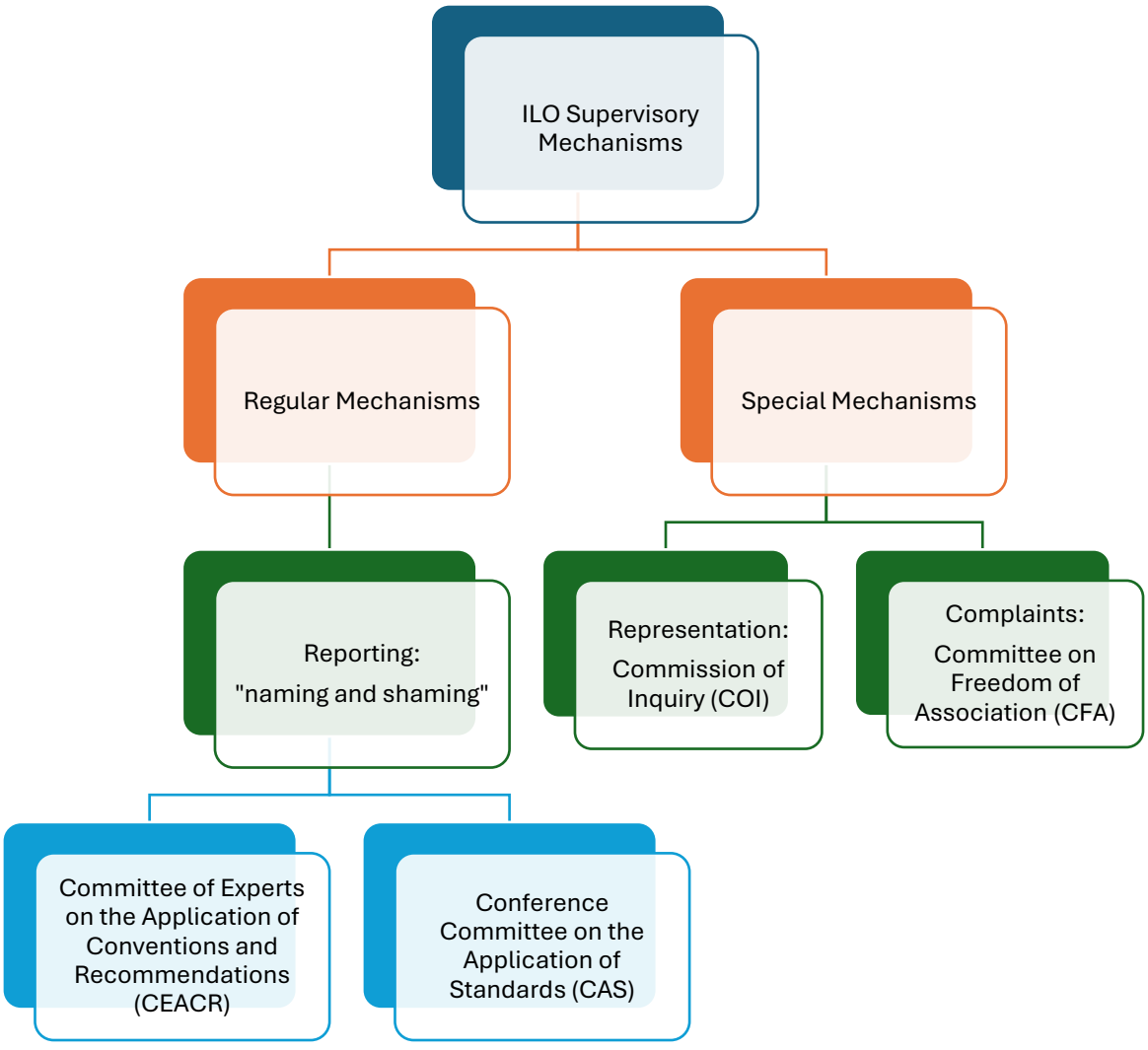
In a nutshell, the tripartite structure of the ILO provides it with many advantages including the ability to coordinate efforts between the three concerned actors (governments, workers, and employers) in matters of labour and social justice. It also facilitates discussions of important matters, which lead to the establishment of minimum labour standards. Those labour standards are credited with and promoted by the same tripartite structure. In other words, tripartism offers the organisation the credibility to enhance its authority and thus, enhance its effectiveness. According to Maupain, it also grants the organisation a "comparative advantage". This advantage concerns the organisation's ability to "reconcile the conflicting but legitimate interests" in relation to labour matters. However, this advantage needs to be protected against the practices that help to aggravate corporatist tendencies,[440] as well as against the ever-growing challenges of the globalised economy and cross-border production. Maupain suggests that such protection could come from an amendment to the ILO Constitution to include sufficient possibilities for adaptation to such new challenges through the inclusion of modern yet challenging modes of work, and to allow for more institutional flexibility.[441] On the other hand, the flaws of the tripartite structure persist, and most of them are connected to specific flaws in the early structure relating to the corresponding roles of governmental and other stakeholders, particularly obvious in the debates in 1919 onwards between Gomper and Vandervelde,[442] and the lack of flexibility in absorbing the waves of globalisation. However, these flaws did not hinder the ILO from expanding its thematic scope and evolving its normative agenda during the 1990s, particularly as it responded to globalisation and the renewed contest between neoliberal and social justice models of political economy following the Cold War. Yet, the organisation's lack of inclusivity and limited flexibility in adapting to different national contexts persists to undermine the effectiveness of the tripartite structure. This is particularly evident in conflict settings, fragile states, or contexts where informal economies dominate and where independent employers' or workers' organisations are weak or non-existent. Examples such as Libya, Sudan, and

[440] By "corporatist tendencies" Maupain refers to the risk that the ILO's tripartite structure, instead of balancing interests, can create exclusionary arrangements through organised interest where dominant groups (whether governments, employer organisations, or unions) entrench their power, limiting genuine pluralism and adaptability and excludes partners from the civil society. See Francis Maupain, *The Future of the International Labour Organization in the Global Economy* (Hart Publishing 2013), 241.
[441] Maupain, 'A Second Century for What?' (n 415) 301.
[442] See page 114, Section 4.2.1 Universality and Representation.

Iraq illustrate how the ILO's structure struggles to address political instability and fragmented labour representation, thereby limiting its effectiveness on the ground.

4.3 ILO Supervisory Mechanisms

Effectiveness of the ILO concerns the ability of member states and the organisation itself to translate its labour standards and normative discourses into tangible outcomes at the domestic level. This ability is mediated through a complex system of supervisory mechanisms, which are broadly classified into regular and special procedures, as set out in Figure 2 below.



(Figure 2: ILO Supervisory Mechanisms)

According to the Handbook of Procedures Relating to International Labour Conventions and Recommendations,[443] regular supervision is carried out primarily through the reporting obligations imposed on member states under Articles 19 and 22 of the ILO Constitution.[444] Article 22 requests states to submit periodic reports on the measures taken to give effect to ratified Conventions, while Article 19 allows the ILO to gather information from non-ratifying states regarding the obstacles to ratification and the influence of unratified Conventions on national law and practice.[445] These reports are examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which issues observations and direct requests. Its findings are then submitted to the Conference Committee on the Application of Standards (CAS), a tripartite body that reviews the most serious cases during the annual International Labour Conference.[446]

In addition, the ILO's supervisory framework includes special procedures, such as the representation procedure under Article 24 and the complaints procedure under Article 26, both of which may result in the formation of a Commission of Inquiry in exceptional cases. Furthermore, where breaches concern freedom of association, complaints may be directed to the Committee on Freedom of Association (CFA), which investigates allegations regardless of ratification status.[447] The ILO Governing Body plays a key role in initiating these special procedures and in overseeing the follow-up to recommendations. These institutional and procedural mechanisms, as described in the Handbook, are part of a broader normative strategy that links standard-setting with implementation.[448] By facilitating sustained interaction between domestic governments, workers' and employers' organisations, and international supervisory bodies, the ILO system exemplifies Harold Koh's transnational legal process, in which norms are internalised through institutional engagement, repeated participation, and legal interpretation over time.[449]

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[443] International Labour Organization, *Handbook of Procedures Relating to International Labour Conventions and Recommendations* (ILO 2019) paras 19–22.
[444] International Labour Organization, *Constitution of the International Labour Organization* (n 231) arts 19, 22.
[445] International Labour Organization, *Handbook of Procedures Relating to International Labour Conventions and Recommendations* (n 443).
[446] ibid paras 28–35, 53, 64, 127
[447] ibid paras 85–86, 91.
[448] ibid paras 1–4, 84-85.
[449] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10).

4.3.1 The ILO's Regular Supervisory Mechanisms

To ensure the implementation of their conventions, the ILO has in place a system of supervision that examines the process of implementation. This is known as the ILO's supervisory system, and through which a dialogue between the organisation, via its supervisory bodies, and its member states take place. According to the ILO Constitution, there are two cases in which member states are asked to report to the International Labour Office on the effect that a certain Convention has on their domestic law, and the extent to which they are abiding by the standards embedded in that convention. The first case concerns member states who ratified the Convention(s) in question, and thus they become obliged as per Article 22 of the ILO Constitution to report on their obligations. The second case concerns member states who are not parties to the Convention in question but are asked to report on the effect that such Convention has on labour matters and practices at the national level, and the changes anticipated, as well as on the challenges hindering the adoption of the Convention by the state, as per Article 19 of the Constitution. The information provided in these reports should include changes to both the law and practice and should be submitted to workers' and employers' organisations inside the state to have them reflect on such information and provide their comments.[450]

The central premise of the reporting mechanism is that it is handled by the supervisory bodies in the ILO. However, it is important in the context of this thesis to understand how such a system contributes to the robustness of the reporting framework, especially given the fact that the whole international legal system, including the work of the ILO, lacks the means to enforce the implementation of legal obligations. Numerous cases of neglecting international law and diverting from its application have been recorded throughout the years. Most recently, Israel has been condemned by UN experts as "assaulting the fundamentals of international law" due to its intentional targeting of civilians and civil infrastructure in Gaza since October 2023.[451] Therefore, the

[450] Tanja Joona, 'International Norms and Domestic Practices in Regard to ILO Convention No. 169 - with Special Reference to Articles 1 and 13-19' (2010) 12 *International Community Law Review* 213, 229.

[451] UN Human Rights Office, 'Israel's assault on the foundations of international law must have consequences: UN experts' (Press release, 30 December 2024) https://www.ohchr.org/en/press-

ineffectiveness of legal instruments is not exclusive for the ILO, but rather a feature of international organisations, which share the same issues with the ILO in terms of structural flaws and political influence. The ILO does not apply legal nor financial sanctions to ensure compliance with its standards but rather depends on its monitoring mechanisms. This gives significant weight to the supervisory bodies as represented in the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Conference Committee on the Application of Convention and Recommendations (CAS). The CEACR is mainly concerned with reporting, whereas the CAS is concerned with naming and shaming as a tool and strategy that complements reporting.[452] The following sections touch upon the work of each Committee, as well as the efficacy of naming and shaming as two separate tools.

4.3.2 The CEACR and CAS Committees

The CEACR is an independent committee that consists of 20 independent and distinguished jurists, who are carefully appointed by the ILO's Governing Body to represent a wide range of states for three-year terms. The committee was first established in 1926, and is in charge of establishing both factual and legal decisions, and of ensuring that the requirements for application of conventions are constant and uniform for all states regardless of the differences in implementation methods.[453] It is important to note that its work requires objectivity and impartiality, and therefore it is expected to deliver its conclusions based on the standards and requirements laid down in the Conventions, but it is also expected to take into account different modes of implementation in different countries.[454] Interestingly, the CEACR stated in a report in 1987 that its evaluation could not be impacted by the domestic social or economic conditions of countries under examination, and more specifically stated "in its evaluation of national law and practice in relation to the requirements of international labour Conventions, its function is to determine whether the requirements of a given

releases/2024/12/israels-assault-foundations-international-law-must-have-consequences-un accessed 4 May 2025.

[452] Faradj Koliev, Thomas Sommerer and Jonas Tallberg, 'Compliance without coercion: Effects of reporting on international labor rights' (2020) 58 *Journal of Peace Research* 494, 498.

[453] Faradj Koliev and James H. Lebovic, 'Selecting for Shame: The Monitoring of Workers' Rights by the International Labour Organization, 1989 to 2011' (2018) 62 *International Studies Quarterly* 437, 438.

[454] Joona, 'International Norms and Domestic Practices in Regard to ILO Convention No. 169 - with Special Reference to Articles 1 and 13-19' (n 450) 230.

Convention are being met, whatever the economic and social conditions existing in a given country".[455] This can be seen as contradictory in nature, because for the Committee to be mindful of different modes of implementation, it has to also bear in mind the specific economic, social, and political context.

However, the fact that this report was published in 1987 hints to the fact that the inclusion of such a statement targeted the universality of the conventions regardless of the nature of the political and economic system in the country, and this was meaningful due to the presence of two conflicting systems (capitalist and socialist). Despite that, it is the duty of the CEACR to ensure that the universality of application stems from a setting-specific approach, where the unique economic, social and political conditions are at the core of the convention's application.

The CEACR is known for its key role in the condemnation of forced labour practices by state parties to the Forced Labour Convention.[456] It is tasked with reviewing reports submitted by governments, and workers' and employers' organisations. The CEACR meets every year, and its findings are sent in writing to governments in the form of comments, and sometimes as observations or direct requests for information.[457] Direct requests are requests for additional information that are meant to help the Committee to reach its findings and make its observations. While not officially termed "criticisms," observations have often been perceived as such by member states, particularly when they highlight serious non-compliance with ILO standards.[458] A notable example is Belarus, which has been repeatedly subjected to this process due to serious and longstanding violations of the right to freedom of association and the repression of independent trade unions.[459] The Belarus case was discussed extensively

[455] CEACR 'Information and Reports on the Application of Conventions and Recommendations: Summary of Reports' (1987) 09661(1987-73).
[456] Abolition of Forced Labour Convention, 1957 (No 105) – General observation (2024) https://www.ilo.org/publications/abolition-forced-labour-convention-1957-no-105-general-observation accessed 4 May 2025
[457] Joona, 'International Norms and Domestic Practices in Regard to ILO Convention No. 169 - with Special Reference to Articles 1 and 13-19' (n 450) 230.
[458] Beate Andrees, 'Defending Rights, Securing Justice: The International Labour Organization's Work on Forced Labour' (2016) 14 *Journal of International Criminal Justice* 343, 351; International Labour Organization, *Handbook of Procedures Relating to International Labour Conventions and Recommendations* (ILO 2019) para 61.
[459] International Labour Organization, 'Observation (CEACR) – Belarus, Forced Labour Convention, 1930 (No. 29)' (adopted 2022, published 111th ILC session, 2023).

at the 2023 International Labour Conference drawing significant international attention. This was followed-up by the ILO which offered technical assistance to address the shortcomings.[460]

While observations touch upon fundamental issues of application, and are published in the Committee's annual report, direct requests concern technical issues and requests for more detailed information, and since they are direct, they are only directed to the government concerned and are not published in the annual report.[461] All members of the ILO are obliged to give information to the Committee, including workers' and employers' organisations which submit their reports either directly or through their governments, and who can also comment on the government's report.[462] While the Committee does not impose legal sanctions, it highlights the most serious violations in its annual reports and may refer these cases to the Conference Committee on the Application of Standards (CAS) for public discussion during the International Labour Conference. This approach, informally referred to as the "double footnote," increases pressure and exposes the member state to criticism by the international community.[463] Reports on most conventions that are regularly supervised have to be submitted every three years. However, the CEACR can request reports outside the reporting cycle.[464] After the CEACR issues its recommendations, only a select group of cases is further discussed by the CAS at the International Labour Conference. Although CEACR observations and direct requests carry significant authority and influence, they are not legally binding. Similarly, recommendations that emerge from CAS discussions do not have binding force but serve to put public and political pressure on states to comply

[460] Esther Lynch, 'ILO condemns Belarus violation of union rights' *Social Europe* (2 February 2023) https://www.socialeurope.eu/ilo-condemns-belarus-violation-of-union-rights accessed 15 July 2025.
[461] Andrees, 'Defending Rights, Securing Justice: The International Labour Organization's Work on Forced Labour' (n 458) 351.
[462] International Labour Office. International Labour Standards Department, *Handbook of Procedures Relating to International Labour Conventions and Recommendations* (The Office 1998), 28.
[463] Koliev and Lebovic, 'Selecting for Shame: The Monitoring of Workers' Rights by the International Labour Organization, 1989 to 2011' (n 453) 438.
[464] Reports are due every three years for fundamental and governance Conventions and every six years for all other Conventions. See: International Labour Organization, 'Reports on ratified Conventions are due every three or six years depending on the Convention and the alphabetical order of the country's name' (ILO Supervisory System) https://guide-supervision.ilo.org/reporting/reports-on-ratified-conventions-are-due-every-three-or-six-years-depending-on-the-convention-and-the-alphabetical-order-of-the-countrys-name/ accessed 15 July 2025; International Labour Organization, 'The Governing Body calls on member States to consider measures they take to implement Conventions they have not ratified and Recommendations' (ILO Supervisory System) https://guide-supervision.ilo.org/reporting/the-governing-body-calls-on-member-states-to-consider-measures-they-take-to-implement-conventions-they-have-not-ratified-and-recommendations/ accessed 15 July 2025.

with international labour standards. The process for selecting cases for CAS discussion has attracted criticism for being politically influenced. National trade unions, employers, and governments play crucial roles in deciding which cases are raised, resulting in concerns about selectivity and unequal scrutiny. As such, some countries face repeated examination, while other serious cases may be overlooked or dismissed. This reliance on non-binding recommendations and political processes reflects the ILO's broader reliance on dialogue and persuasion rather than legal enforcement, contributing to the lack of effectiveness of labour standards across member states.[465]

Nonetheless, the issue of reporting and effective compliance with this obligation has been identified as a crucial part of the ILO's standards strategy.[466] The CAS which meets once a year engages non-compliant governments in a dialogue and provides recommendations for the application of standards in question. This engagement could, in some cases, lead to sending an ILO direct mission to the non-compliant country or providing technical assistance to it.[467] Thus, the work of the CEACR is crucial to the ILO's supervisory system, specifically in providing the evidentiary and legal basis for "naming and shaming" strategies deployed by the CAS in publicising non-compliance, as described by academics such as Faradj Kolieve and Lars Thomann;[468] while also contributing to the interpretive process that may eventually inform authoritative but rarely issued general legal interpretations by the International Labour Conference. This layered interaction reflects Koh's understanding of how sustained interpretive engagement can facilitate and prompt the internalisation of international norms which is not always the automatic response from states.

The reporting obligation to the CEACR, which can be seen as the Committee's compulsory jurisdiction, helps to establish CEACR as a quasi-judicial body. This view is supported by the independent and expert structure of the CEACR itself, and the fact

[465] Simon Pahle, 'What difference does the International Labour Organization make? Freedom of association, norms, supervision and promotion vis-à-vis Brazil' (2014) 55 *Labor History* 465, 468.
[466] International Labour Office, *The Committee on the Application of Standards of the International Labour Conference: A Dynamic and Impact Built on Decades of Dialogue and Persuasion* (International Labour Organization 2011), 106.
[467] Andrees, 'Defending Rights, Securing Justice: The International Labour Organization's Work on Forced Labour', (n 458) 351.
[468] Faradj Koliev, *Naming and Shaming: The Politics and Effectiveness of Social Pressure in the ILO* (PhD thesis, Stockholm University 2018); Thomann, *Steps to compliance with international labour standards* (n 159).

that its deliberations are conducted in private without the presence of governments and in a "depoliticised setting".[469] In terms of the legality of the CEACR comments, while they are not given a legal status per se, they are authoritative and relevant to the work of national bodies, especially to national courts. Conclusions made by the CEACR are important because they come from a quasi-judicial body, and thus should be applied and considered, and any case of non-conformity should be justified.[470] However, it is clear that the ILO Constitution does not grant the interpretations made by CEACR a definitive and final power. In contrast, it exclusively gives such a power to the International Court of Justice (ICJ) as per Article 37. In addition, the International Labour Office stated in a note, during the 8th session of the International Labour Conference in 1926, that the functions of the CEACR are technical in nature, and are "in no sense judicial", and that the CEACR's role is to bring attention to the different interpretations in different countries.[471]

Moreover, the Committee is not required to give definitive interpretations of conventions through its observations, since such a task is exclusive to the ICJ.[472] Although, in practice, the Committee can find itself having to give interpretations on certain provisions without contestation or resort to the ICJ.[473] On an interesting note, the ICJ has very rarely been requested to provide an interpretation of provisions within ILO Conventions as per Article 37, ILO Constitution. While Article 37 permits such referral, there has been no incidence in which the ICJ has been requested to deliver an authoritative interpretation of a substantive provision of an ILO Convention. The few cases involving the ILO before the ICJ, such as the Judgment No. 2867 of the Administrative Tribunal of the ILO concerning the International Fund for Agricultural Development in 2012, or the IMCO Advisory Opinion in 1960, have addressed

[469] Thomann, *Steps to compliance with international labour standards* (n 159) 104-105.
[470] ibid 110-111.
[471] International Labour Conference, *Record of Proceedings of the 8th Session of the International Labour Conference, Geneva, 1926*, Appendix V, Article 408 of the Treaty of Versailles, (3) 'Note on the Composition and Functions of the Proposed Committee of Experts to Examine the Annual Reports on the Application of Ratified Conventions', prepared by the International Labour Office, 405.
[472] International Labour Organization, *Constitution of the International Labour Organization* (n 231) art 37; International Labour Organization, 'Interpretation' (ILO) https://www.ilo.org/resource/interpretation accessed 15 July 2025.
[473] Joona, 'International Norms and Domestic Practices in Regard to ILO Convention No. 169 - with Special Reference to Articles 1 and 13-19' (n 450) 231.

administrative or procedural issues rather than substantive treaty norms.[474] This absence of judicial interpretation by the ICJ may, in fact, speak to the effectiveness and perceived legitimacy of the ILO's supervisory system, especially the work of the CEACR, in resolving interpretive issues without the need for the ICJ's judicial intervention.[475] However, the CEACR has repeatedly claimed that by not giving an interpretation, the CEACR would undermine its functions and effectiveness, especially when states are not seeking the help of the ICJ on that matter, which might lead to a legal gap or uncertainty. Thus, the CEACR promotes the implementation of its interpretation as the possible way to avoid such uncertainty.[476]

4.3.3 Naming and Shaming

Unlike the CEACR, the CAS is considered a political body which consists of representatives from governments, workers', and employers' organisations. It is tasked with the mission of examining CEACR reports and selecting specific cases of serious violations for discussion[477] or, as Faradj Koliev has described it, public shaming.[478] It is worth noting that the ILO itself does not officially use the term "naming and shaming" to describe the work of the CAS, instead it refers to the process as public discussion or scrutiny of individual cases. Also, in the ILO, naming and shaming, i.e., the process of publicly exposing and condemning states for violating international norms,[479] are separate processes; while reporting comes first, it is not always followed by shaming. In fact, only 70 states were "shamed" out of 154 reports during the period 1989-2001. While no more recent statistics have been published,

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[474] *Judgment No. 2867 of the Administrative Tribunal of the ILO upon a Complaint Filed against the International Fund for Agricultural Development* (Advisory Opinion) [2012] ICJ Rep 10; *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization* (Advisory Opinion) [1960] ICJ Rep 150.

[475] Joona, 'International Norms and Domestic Practices in Regard to ILO Convention No. 169 - with Special Reference to Articles 1 and 13-19' (n 450) 231-232.

[476] International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR): General Report*, Report III (Part A), International Labour Conference, 102nd Session (2013) paras 26–35.

[477] International Labour Office, *The Committee on the Application of Standards of the International Labour Conference: A Dynamic and Impact Built on Decades of Dialogue and Persuasion*, 12.

[478] Koliev, *Naming and Shaming: The Politics and Effectiveness of Social Pressure in the ILO* (n 468); Faradj Koliev, 'Shaming and Democracy' (2020) 41(4) *International Political Science Review* 538; Faradj Koliev and James H Lebovic, 'Shaming into Compliance? Country Reporting of Convention Adherence to the International Labour Organization' (2021) 48(2) *International Interactions* 258.

[479] Koliev, *Naming and Shaming: The Politics and Effectiveness of Social Pressure in the ILO* (n 468) 1.

qualitative interpretations suggest that the number of shamed countries has narrowed further in recent years due to internal shifts in the CAS's selection approach and political sensitivities within the tripartite structure.[480]

The CAS meetings occur under the umbrella of the ILC, and governments that are targeted with shaming are invited to answer before the committee. Furthermore, proceedings and conclusions are briefly included in the CAS annual report.[481] States selected for shaming are shortlisted to 25 cases at a time. While CEACR works to flag all violations and non-compliant states, the CAS choses only few cases for shaming. Thus, it is up to the CAS to decide which countries get to be publicly shamed. It can shame countries for their persistent violations by putting them under a special paragraph, which, according to the ILO, means that such countries are especially bad in terms of their respect to labour rights and standards A recent example is Belarus, which in 2023 was placed in a special paragraph of the CAS annual report, an explicit act of 'public shaming' under the ILO's Article 33 procedure.[482] This was a result of decades of persistent violations of freedom of association and collective bargaining rights, refusal to implement Commission of Inquiry recommendations, and non-cooperation in follow-up meetings, resulting in the ILO's decision to naming it publicly as a severe violator of international labour standards.[483] It is worth noting that since its establishment nearly one hundred years ago, the CEACR's scope of work has been increasing in a reflection of the growing ratification of labour conventions by countries. The CAS's scope of focus, on the other hand, which largely depends on the CEACR double-footnote, has narrowed in recent years, reflecting a growing consensus within the ILO to prioritise the scrutiny of fundamental labour standards over less critical technical matters. Thus, in the 1990s, the CAS pressured the CEACR to reduce its issuing of double footnotes with the aim of reducing the number of potential countries to be included for shaming. It has also worked to shed more light on the less-severe violations relating to technical conventions, and by doing so it has

[480] Koliev, Sommerer and Tallberg, 'Compliance without coercion: Effects of reporting on international labor rights' (n 452) 498.
[481] ibid 498.
[482] International Labour Conference, *Resolution concerning the measures recommended by the Governing Body under Article 33 of the ILO Constitution on the subject of Belarus* (adopted 22 June 2023) UN Doc ILC.111/Resolution I.
[483] Kjeld Jakobsen, 'ILO Condemns Belarus' Violation of Union Rights' *Social Europe* (15 June 2023) https://www.socialeurope.eu/ilo-condemns-belarus-violation-of-union-rights accessed 18 August 2025.

reduced the number of countries shortlisted for more serious violations relating to major conventions.[484]

In cases of countries constantly violating recommendations of application, the CAS can apply special measures against them. For example, as per the ILO Constitution, Articles 26 and 34 in specific, a procedure of complaints can be adopted. This complaint is submitted by a country that is party to the same convention, or by a delegate of the ILC or the Governing Body. The Governing Body then decides, if the complaint is eligible, to set up a Commission of Inquiry, which is the highest-level investigative body in the ILO supervisory system. Only 13 Commission of Inquires have been held throughout the history of the ILO, the most recent in 2018 concerning Venezuela.[485] Notably, many of these inquiries were in relation to forced labour. The Commission of Inquiry produces its own recommendations directed to the country in breach of its obligations. If the country dismisses this recommendation, then the Governing Body can, under Article 33 of the Constitution, recommend an expedient action to the International Labour Conference against the country in question to secure its compliance. This action was only conducted once in the whole history of the ILO – against Myanmar in 2000 over cases of forced labour.[486]

Since its establishment, the ILO has obliged ratifying states to report to its supervisory bodies.[487] This reporting framework was further reinforced by the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998,[488] which introduced a

[484] Koliev and Lebovic, 'Selecting for Shame: The Monitoring of Workers' Rights by the International Labour Organization, 1989 to 2011' (n 453) 438.
[485] International Labour Organization, 'ILO Governing Body decides to appoint a Commission of Inquiry for Venezuela' (International Labour Organization, 21 March 2018) https://www.ilo.org/resource/news/ilo-governing-body-decides-appoint-commission-inquiry-venezuela accessed 16 July 2025; International Labour Organization, 'ILO Commission of Inquiry issues report on complaint against the Bolivarian Republic of Venezuela' (International Labour Organization, 21 March 2019) https://www.ilo.org/resource/news/ilo-commission-inquiry-issues-report-complaint-against-bolivarian-republic accessed 16 July 2025.
[486] International Labour Organization, *Provisional Record 4: Special sitting to examine developments concerning the implementation of the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)* (88th International Labour Conference, Geneva, June 2000) https://webapps.ilo.org/public/english/standards/relm/ilc/ilc88/pr-4.htm accessed 16 July 2025.
[487] International Labour Organization, *Constitution of the International Labour Organization* (n 231) arts 19, 22.
[488] International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (adopted 18 June 1998) https://www.ilo.org/declaration/lang--en/index.htm accessed 16 July 2025.

follow-up mechanism mandating all member states, irrespective of ratification status, to report on their efforts to respect and promote core labour standards, including freedom of association, the elimination of forced and child labour, and non-discrimination in employment.[489] Furthermore, the ILO's investment in technical assistance and dialogue has been a crucial and expanding aspect of its mandate since the mid-20th century and has further contributed to the strengthening of its supervisory system and the effectiveness of its monitoring and enforcement powers. Therefore, as Andrees argues, reporting mechanisms and technical assistance go hand in hand to make up for the lack of an enforcement mechanism to ensure effectiveness.[490]

4.3.4 The Effectiveness of Reporting

The work of the CEACR and CAS together constitute the naming and shaming procedure in the ILO. This procedure, if non-compliance remains consistent by a state, can ultimately lead to the loss of ILO membership. Beside these quasi-judicial mechanisms, i.e., monitoring and reporting, there are other managerial and legitimacy mechanisms that ensure technical cooperation and tripartism. However, the institutionalist approach[491] to compliance focuses on the efficiency of a monitoring mechanism, and thus the examination of the functionality and effectiveness of the ILO supervisory system.[492]

Moreover, reporting is argued, particularly by Koliev et al., to have positive and durable effects on a state's compliance, especially in cases of serious violations of labour rights. It also has an immediate and direct impact on state behaviour. Notably, the positive effects of reporting do not depend on the ILO strategies of naming and/or

[489] ibid.
[490] Andrees, 'Defending Rights, Securing Justice: The International Labour Organization's Work on Forced Labour' (n 458) 352.
[491] The institutionalist approach to compliance suggests that international institutions/organisations play a key role in facilitating state cooperation by reducing uncertainty through information and by creating stable expectations of behaviour. The approach emphasises the importance of structured monitoring mechanisms such as those deployed by the ILO. See Robert O Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press 1984), 243-259; Kenneth W Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54(3) *International Organization* 421, 448.
[492] Thomann, *Steps to compliance with international labour standards* (n 159) 66, 69.

shaming, nor on broader trends in targeted states such as economic openness or globalisation.[493]

The impact of reporting on state compliance can be traced on more than one level. At the political level,[494] reporting can impact state compliance by provoking politicians' and state officials' fear for their reputation and status, which might affect their professional and political standing. Reporting threatens those responsible for law and policymaking by publicly exposing violations, and thus pressures them to comply.[495] Domestically, reporting may impact state compliance by providing domestic non-state actors with adequate knowledge and information on certain political interests and the moral weight of promoting compliance with international standards and encouraging contestation to government practices in breach of those standards.[496] Such pressure on the government from these actors may lead to the change in government policy.

The reporting mechanism impacts state compliance by interacting with several dimensions of political and social pressure. At the domestic level, it provides civil society actors and trade unions with authoritative information that legitimises their demands and allows them to challenge government practices that contravene international labour standards.[497] Among political elites, the fear of reputational harm or loss of legitimacy may motivate governments to alter their conduct. Internationally, transnational advocacy networks and international organisations also employ external pressure on states to enhance compliance with ILO obligations. In this way, reporting becomes a channel through which both internal and external actors drive behavioural change in states. [498] This dynamic mirrors the core logic of Koh's transnational legal

[493] Koliev, Sommerer and Tallberg, 'Compliance without coercion: Effects of reporting on international labor rights', (n 452) 495.
[494] Janine R Wedel, 'From power elites to influence elites: Resetting elite studies for the 21st century' (2017) 34 Theory, *Culture & Society* 153, 170.
[495] Judith G Kelley and Beth A Simmons, 'Politics by number: Indicators as social pressure in international relations' (2015) 59 *American Journal of Political Science* 55, 58-59.
[496] The reference to "moral weight" does not negate the legal status of international labour standards. Instead, it highlights the normative influence such standards exert at the domestic level, particularly in mobilising civil society actors where formal legal enforcement mechanisms may be weak or inaccessible.
[497] Koliev, Sommerer and Tallberg, 'Compliance without coercion: Effects of reporting on international labor rights', (n 452) 496.
[498] Margaret E Keck and Kathryn Sikkink, 'Transnational advocacy networks in the movement society' in David S Meyer and Sidney Tarrow (eds), *The Social Movement Society: Contentious Politics for a New Century* (Rowman & Littlefield 1998) 217–219.

process, where repeated interaction with international norms leads to their interpretation and eventual internalisation by domestic actors, which is central to this thesis's understanding of effectiveness.

Regarding the efficacy of the CEACR reporting, such a procedure is effective only to limit the worst situations of non-compliance, [499] but it does not help to achieve full compliance with labour standards. Various studies have focused on the effects of different factors on states' compliance with international labour standards when combined with reporting such as democracy, economic growth, and active labour NGOs. Koliev et al. demonstrate that undemocratic settings negatively impact the implementation of international labour standards, and that 80% of countries where improvements occur are democracies.[500]

In relation to the economic growth rate, the previously cited study by Koliev et al., found that there are no significant results to show the correlation between GDP growth and the ratification of ILO conventions. However, when it comes to the impact of active labour NGOs accompanied with reporting on the ratification of conventions, the study shows that there is a positive and significant impact. It concludes that while poorer and undemocratic states are more likely to improve labour rights protection because of their low starting point, the effectiveness of reporting as a mechanism is more positive in rich and democratic countries. Nonetheless, shaming too has varying effects in different settings and under the influence of those same factors. For example, shaming when combined with the existence of active labour NGOs exerts more pressure on governments to ratify ILO conventions. Another example is when shaming is accompanied by trade dependence, then the effect on the ratification of labour conventions is negative. Whereas the more the country's trade is independent, i.e., not depending on foreign trade, the more likely it is to improve its behaviour after being shamed by the ILO.[501]

[499] Koliev, Sommerer and Tallberg, 'Compliance without coercion: Effects of reporting on international labor rights', (n 452) 507.
[500] ibid.
[501] ibid 503-505.

Interestingly, a separate study by Koliev and Lebovic on procedural compliance[502] noted that there is some level of resistance by governments against reporting on domestic social issues related to exploitation and discrimination; yet the same governments respond more readily to reporting obligations when they relate clearly to the ILO's core mandate, namely, ratified Conventions, where state responsibilities are explicit. Moreover, despite this selective engagement, the study noted that shaming boosts procedural compliance.[503] This resonates with the realist literature, which is explained thoroughly in chapter 2,[504] particularly the work of Jack Goldsmith and Eric Posner, who argue that states are generally resistant to compliance with rules that conflict with national interest, and tend to ratify treaties only when they are aligned with their preferences or impose minimal costs.[505] This means that states are not normally persuaded to abide by transnational obligations that demand deep structural changes to domestic legal or political settings, especially where such obligations are seen to interfere with sovereignty. However, where enforcement is weak or non-coercive, states may engage with those obligations more willingly, albeit superficially.[506] From the perspective of Koh's transnational legal process, this demonstrates the importance of sustained interaction, interpretation, and internalisation as a pathway to genuine behavioural change. Without internalisation through legal, political, and social outlets, such engagement remains formalistic and fails to achieve effectiveness as defined in this thesis.

In the case of reporting as a tool for influencing state behaviour, states' compliance can be understood as the view that commitment to reporting is harmless in itself as there are no enforcement mechanisms. Therefore, the rate of reporting does not necessarily indicate the willingness of states to comply with labour standards in their

[502] As discussed in Chapter 2, above, in international relations, 'compliance' is understood as a situation in which state behaviour is in conformity with an international legal rule prescribing that behaviour. As such, compliance is related to but different from questions of implementation or effectiveness. Furthermore, compliance has two dimensions referring to the nature of the obligation at hand: procedural compliance relates to formal obligations arising out of an agreement, whereas substantive compliance refers to those obligations intended to give effect to a regulation. See: Raustiala and Slaughter, 'International Law, International Relations and Compliance' (n 84) 538–558.
[503] Faradj Koliev and James H. Lebovic, 'Shaming into compliance? Country reporting of convention adherence to the International Labour Organization' (2021) 48 *International Interactions* 258, 261.
[504] See: Chapter 2, section 3. Effectiveness in the Context of International Relations.
[505] Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (Oxford University Press 2005), 39.
[506] Kal Raustiala, 'Form and substance in international agreements' (2005) 99 *American Journal of International Law* 581, 608.

essence.[507] Perhaps understandably, states tend to react more positively towards reporting that holds mild sanctions than they do when there are stronger sanctions and pressures.

Naming and shaming are considered to be mild sanctions according to Koliev and Lebovic, and therefore there is a high rate of states reporting to the ILO. However, the effects of reporting rely on the centrality of the subject to the ILO's core mandate, the ability to hold non-compliant states accountable for their violations, and the state's chosen level of resistance towards compliance. Based on these variables, Koliev and Lebovic conclude that the ILO reporting is ineffective in influencing state compliance, in particular on conventions relating to discrimination and gender inequality among other "politically sensitive" issues. On forced labour conventions, the authors argue that states are relatively less likely to report on forced labour conventions despite the recognition of such conventions as fundamental to the objectives of the ILO and the international community. This can be explained with the fact that naming and shaming of states violating such conventions holds a larger negative stigma in relation to slavery which is an abhorrent crime that states do not want to attach themselves to it; therefore, they become reluctant to report on such a sensitive topic. However, Koliev and Lebovic also argue that when states are reporting on forced labour and if they are shamed, they tend to react positively to that shaming by increasing their commitment to reporting, although not necessarily to preventing the underlying violations.[508]

Reporting is not necessarily followed by shaming but is certainly more effective when combined with one. In fact, shaming as a mechanism complements reporting as a means of promoting effectiveness. While reporting only concerns the identification of non-compliant states, shaming on the other hand subjects those states to social pressure through public blame. Thus, it increases the social cost of labour violations. Shaming also gives the same leverage to domestic and transnational sources of pressure on non-complying states.[509]

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[507] Koliev and Lebovic, 'Shaming into compliance? Country reporting of convention adherence to the International Labour Organization' (n 503) 264.
[508] ibid 283-284.
[509] Koliev, Sommerer and Tallberg, 'Compliance without coercion: Effects of reporting on international labor rights' (n 452) 497.

However, Koliev et al. have argued elsewhere that only in certain circumstances does shaming lead to further improvements.[510] They emphasise that for reporting to work effectively it has to be done in liberal democracies where there are active labour NGOs and movements, as well as adequate resources for development.[511] In general, active figures in liberal democracies are considered more sensitive towards maintaining an image of compliance with international law compared to undemocratic political systems.[512] However, it is worth noting that recent developments in some democratic contexts suggest that this responsiveness may be weakening. Instances where leaders openly dismiss international criticism or double down on non-compliant practices indicate that reputational concerns do not always result in behavioural change, even within liberal systems.[513] On the other hand, undemocratic/autocratic and poor states suffer the absence of both domestic pressure to abide by international regulations, and the lack of tools for non-binding commitments to be applied. Therefore, it can be concluded that the effectiveness of the ILO's tools for enforcing members to abide through social and political pressure is highly dependent on the status of the political system in the targeted country, as well as the means to achieve the required changes in the context of labour rights.

These factors become highly crucial when it comes to conflict settings, which tends to create situations of political vacuum and legal uncertainty or even legal pluralism as is the case in Libya with the existence of two concurrent governments and the nature of the tribal regime. Thus, challenging the main pathways through which the ILO's tactics for achieving effective compliance usually proceed. The effect of conflict settings on the effectiveness of compliance will be closely examined in the case study of Libya in Chapter 6. In many academic studies, compliance is defined as depending

[510] ibid.
[511] ibid.
[512] Julia Samwer, *'The Effect of ILO Conventions on Labor Standards: The Structural Change'* (2017) https://doi.org/10.2139/ssrn.3051130 accessed 17 July 2025, 13.
[513] See for example: Reuters Staff, 'Erdogan tells international election observers to "know your place"' *Reuters* (Istanbul, 17 April 2017) https://www.reuters.com/article/world/erdogan-tells-international-election-observers-know-your-place-idUSKBN17J1D7 accessed 16 July 2025; Philip Alston, 'Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights' (United Nations Human Rights Office, 15 December 2017) https://www.ohchr.org/en/statements/2017/12/statement-visit-usa-professor-philip-alston-united-nations-special-rapporteur accessed 16 July 2025; see also *United States Withdraws from the UN Human Rights Council, Shortly After Receiving Criticism About Its Border Policy* (2018) 112 *American Journal of International Law* 745, 747–748 (detailing the U.S. withdrawal from UNHRC in June 2018 following criticism of its border policies).

on measurements of effectiveness (i.e. the impact of international law on domestic law and policy), and a state's ratification rate is considered as an adequate indicator of compliance with labour standards. Thus, some studies adopt ratification as having positive impact on domestic worker rights, such as the study by Wonik Kim which tackled the positive impact of ratification on unemployment benefits,[514] while others like Peksen and Robert's conclude that ratification exerts a negative impact on worker rights.[515] However, interestingly, Koliev et al. recognise the ILO's supervisory system as an independent source of compliance with labour standards. In other words, the ILO's system has its own distinct effects on ratification since it has distinct mechanisms for evaluating, monitoring, and comparing state compliance.[516] Therefore, their argument is that this supervisory system is quite effective when it comes to ensuring that ratification in itself is followed by actions and thus is reflected by positive changes on the ground.

Conversely, Thomann has argued that the effects of reporting do not exert real impact on the domestic situations of labour standards for "free riding" countries. Member states that ratify conventions as "free riders", do so to show themselves as law-abiding countries. Such countries show their good will to the international community by ratifying conventions, while at the same time their ratification does not necessarily intend or lead to improving labour conditions locally, especially when ratifying states do not comply with their reporting obligations.[517] Nevertheless, the reporting mechanism in the ILO promises the possibility for states to monitor other states' actions. Furthermore, the effects of naming and shaming are also different in their weight and outcomes. Many countries do not believe that reporting has any harm on their reputation, because they can explain the reasons behind non-compliance and because the high number of cases makes it difficult to flag a certain state's non-compliance. However, shaming in this sense can only influence member states that actually care about their reputation within the international community.[518]

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[514] Wonik Kim, 'The ratification of ILO conventions and the provision of unemployment benefits: An empirical analysis' (2010) 63 *International Social Security Review* 37, 51.
[515] Dursun Peksen and Robert G Blanton, 'The impact of ILO conventions on worker rights: Are empty promises worse than no promises?' (2017) 12 *The Review of International Organizations* 75, 77; see also: Samwer, *'The Effect of ILO Conventions on Labor Standards: The Structural Change'*(n 512) 13.
[516] Koliev, Sommerer and Tallberg, 'Compliance without coercion: Effects of reporting on international labor rights' (n 452) 507.
[517] Thomann, *Steps to compliance with international labour standards* (n 159) 81.
[518] ibid 41.

Furthermore, ratifying states which deliberately violate the Convention in question are less likely to improve labour conditions and change behaviours after naming and shaming.[519] Oona Hathaway summarises the question of state compliance with international human rights law, by arguing that the dynamics of state compliance are influenced by two main factors, the first of which is the capacity of domestic legal enforcement, while the second is the collateral consequence of application.[520] In other words, regardless of the nature of the state (democratic/undemocratic), it is the economic and political means that are available within the state which dictate its reaction to international law. For instance, if a state theoretically accepts an ILO regulation, yet it lacks the capacity to enforce it due to a political vacuum or governance pluralism, then this state's compliance with the regulation will be void. On the other hand, if a state analyses a regulation regarding labour rights of, say, migrants and concludes that the outcome of applying this regulation will negatively affect the economy of the state, then it is highly possible that the state will not comply with the regulation despite all the pressure applied from the ILO. Another important notice on the shaming tactic by the ILO is the influence of political power, or the "geographical criterion", on the effectiveness of this tactic. However, this same criterion can also result in the perception that powerful states like the US and China are subject only to mild scrutiny, with their non-compliance regarded as less severe or less worthy of public criticism.[521]

Based on all of the above, it can be concluded that reporting is effective to a certain limit and its efficacy depends on other domestic factors. Efficiency of reporting can be considered a measurement of the general effectiveness of labour standards in domestic settings. However, this form of effectiveness is only one of a range of measurements that need to be considered to reach a conclusion on the overall labour standards' effectiveness. For the purposes of this thesis, responses to reporting in conflict settings will be taken into consideration for the general assessment of the

[519] ibid 103.
[520] Oona A Hathaway, 'Why do countries commit to human rights treaties?' (2007) 51 *Journal of Conflict Resolution* 588, 6.
[521] Thomann, *Steps to compliance with international labour standards* (n 159) 103.

effectiveness of forced labour laws but are not determinant of the overall effectiveness of international standards.

4.3.5 The ILO's Special Supervisory Mechanisms

Representation and the Commission of Inquiry

Aside from reporting to CEACR and the shaming that takes place at the CAS, there are two dedicated special supervision procedures. As per Article 24 of the ILO Constitution, national or international workers' or employers' organisations can make representations in which they claim a violation by a member state to a certain convention.[522] This representation procedure abides by special rules of Standing Orders established by the Governing Body (GB). One of these Orders establishes the need to set up an ad hoc tripartite committee to look into the claim/issue. However, if the matters of violation are related to trade union rights, the GB refers the issue to the Committee on Freedom of Association (CFA) for investigation.[523]

Moreover, both the government under examination and the organisation that requested the representation can follow-up, comment, and contribute with information. After the ad hoc committee is established and the parties allowed to contribute and comment, the GB publishes the representation report on the ILO website accompanied with the comments of the concerned parties.[524] Once the publication is publicly available, the procedure is completed. However, the member state in question is expected to take steps to address the findings, and the ILO may continue follow-up through its regular supervisory bodies or, if necessary, by initiating a complaint under Article 26 of the ILO Constitution.[525] Such a complaint can be lodged by other state parties to the convention in question, and by any representative at the ILC. After a complaint is

[522] International Labour Organization, *Constitution of the International Labour Organization* (n 231) art 24.
[523] International Labour Organization, *The ILO Supervisory System: A Guide for Constituents* (International Labour Standards Department 2021) 99.
[524] See for example: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:4063178,en:NO.
[525] International Labour Organization, *Constitution of the International Labour Organization* (n 231) art 24–26; International Labour Organization, *Handbook of Procedures Relating to International Labour Conventions and Recommendations* (ILO 2019) 50.

lodged, the GB will decide if a Commission of Inquiry (COI) to investigate the case is needed or not. The COI needs to obtain the government's consent to initiate its on-the-spot investigation. The findings of the COI along with its recommendations and a timeframe for implementation are directed to the government concerned, which should then apply them; unless they do not agree with the findings, in which situation they can bring the case before the ICJ. However, if the government complies, it can request another Commission of Inquiry to confirm that they are now compliant with the recommendations made.[526]

In criticism of the existing representation procedures, Thomann argues that such a mechanism is only independent to a certain limit. Although the committee members are independent, the procedure in practice is controlled by the GB. In fact, it is the GB that decides whether to accept the representation in the first place, and it also decides whether to publish the final report, and/or to lodge a complaint. This control by the GB largely impacts the independence of the committee. Furthermore, the committee's role in reviewing the representation is absent. Given the political composition of the GB and its influence on the representation, it can be concluded that the jurisdiction of such a procedure is primarily political, and not legal. The procedure has almost no legal effects, unless the committee's recommendation is referred to the CEACR, or if the GB decides to lodge a complaint. Meanwhile, if the GB decides only to publish the report of the committee, no legal effect stands. Although representation as a mechanism is considered to be the most accessible to non-state parties within the ILO, it is a political procedure rather than an adjudicatory one. In terms of its impact on state compliance, Thomann has argued that this would be difficult to evaluate since the outcomes do not necessarily call for a follow-up by the CEACR, and so their impact can only be assessed when followed up by the committee of experts.[527]

Commission of Inquiry

As previously mentioned, if the GB or any other member of the ILO decides to complain about the non-compliance of one state, the GB has four options to deal with such a complaint: i) reject the complaint; ii) request further information; iii) commence the representation procedure as per Article 24 ILO Constitution; or iv) it can establish

[526] Thomann, *Steps to compliance with international labour standards* (n 159) 60.
[527] ibid 119-120.

a Commission of Inquiry (COI).[528] According to Article 26 of the Constitution,[529] the procedure can be conducted against any non-compliant member state party to the Convention in question. This procedure can be brought about by the GB, or by any of the delegates in the ILC.[530] The complainant, which can be states or non-state representatives, does not have to be directly affected by the non-compliance of the government concerned.[531] This sheds light on the fact that implementation of ILO Conventions is not based of reciprocity, so occurs regardless of reciprocal treatment between states as discussed in Section 2.4 Compliance and Implementation vs. Effectiveness: An Overview of the Literature in Chapter 2. The COI applies its own procedural rules in compliance with the Constitution as well as the rules adopted by the first Commission of Inquiry in 1961.[532] It comprises three independent legal experts who are nominated by the Director General and appointed by the GB.[533] The COI starts its investigation and obliges states to cooperate in order to collect the information needed to make its case. It also conducts on-the-spot visits when required, but these visits have to be agreed by states and so are not obligatory.[534] The outcome of the Commission's investigation is a report including the COI's findings, recommendations, and a timeframe for implementation. The report is then communicated to the government concerned and published by the Director General, without interference from the GB. Afterwards, the concerned government is provided an opportunity to react to the report by accepting or rejecting it.[535] In the case of rejection, governments and the contesting parties can refer the case to the ICJ (although in reality this rarely happens). If governments remain non-compliant to the

[528] International Labour Organization, *The ILO Supervisory System: A Guide for Constituents* (n 523) 73, 80.
[529] International Labour Organization, *Constitution of the International Labour Organization* (n 231) art 26.
[530] International Labour Organization, *The ILO Supervisory System: A Guide for Constituents* (n 523) 74.
[531] ibid 76.
[532] International Labour Organization, *Report of the Commission Appointed under Article 26 of the Constitution of the International Labour Organization to Examine the Complaint Filed by the Government of Ghana Concerning the Observance by the Government of Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105)* (ILO 1962) para. 9 https://labordoc.ilo.org/discovery/fulldisplay?docid=alma993926403402676&vid=41ILO_INST:41ILO_V1 accessed 18 July 2025.
[533] Oksana Wolfson, Lisa Tortell and Catarina Pimenta, *Colonialism, Forced Labour and the International Labour Organization: Portugal and the First ILO Commission of Inquiry* (ILO 2021) 4 https://www.ilo.org/media/333801/download accessed 18 July 2025.
[534] ibid 10.
[535] ibid 5.

recommendations of the COI or even a decision of the ICJ, the GB can provoke the Article 33 'sanctions' procedure.[536]

According to Article 33,[537] if the government does not comply with the recommendations made within the timeframe given for implementation, the GB can ask the ILC to take actions against the country in question. It effectively calls for imposing sanctions against the government for not complying with the recommendations of the Commission of Inquiry. The ILC then looks into the request as submitted by the GB and may or may not approve to take special actions. However, if such actions are approved by the ILC, it has to recommend the form of measures via a resolution. Only if the government complies with the recommendation will such measures/sanctions be removed.[538]

However, there is a tendency towards centralisation of the sanctioning procedures, which appeared in the original draft of Article 33 that was to grant the COI the authority to decide on the forms of sanctions against the country in breach of its obligations. This was most obvious in the case of Myanmar, which is the only case in which Article 33 procedure was provoked.[539] This case sheds light on the confusion of the ILO in terms of its attempt to combine cooperation and confrontation in its relationship with states. In order to fix this situation, the ILO included judicial bodies and the ICJ in its sanctioning measures against Myanmar. The measures taken included the suspension of technical assistance, a call on member states and international organisations to review their relations with Myanmar to ensure they did not contribute to sustaining forced labour, and an appeal to the wider UN system to act. [540] More recently, in June 2025, the International Labour Conference adopted a landmark Article 33 resolution against Myanmar's military junta, only the third such

[536] ibid 5. Although, as noted in section 4.3.3 'Naming and Shaming' above, this procedure has only been invoked once in all of the ILO's history.
[537] International Labour Organization, *Constitution of the International Labour Organization* (n 231).
[538] Thomann, *Steps to compliance with international labour standards* (n 159) 61.
[539] International Labour Organization, *Constitution of the International Labour Organization* (n 231) art 33; Commission of Inquiry on Forced Labour in Myanmar, *Forced Labour in Myanmar (Burma): Report of the Commission of Inquiry Appointed under Article 26 of the Constitution of the International Labour Organization to Examine the Observance by Myanmar of the Forced Labour Convention, 1930 (No 29)* (1998) para 203.
[540] International Labour Conference, *Resolution on Myanmar Adopted under Article 33 of the ILO Constitution* (88th Session, Geneva, 2000) https://webapps.ilo.org/public/english/standards/relm/ilc/ilc88/pr-4.htm accessed 19 February 2026.

invocation in the history of the ILO, calling on governments, trade unions, and companies to review investments, supply chains, and other forms of collaboration that might support the regime in Myanmar, demand the release of detained trade unionists, and condemn acts of violence and repression.[541] However, one could argue that the Myanmar case showed how minor the consequence of violating labour standards is, and that the sanctions applied were not something that states would fear. Also, the post-Cold War hegemony of industrial powers is mirrored in the political character of the ILC and the Conference Committee, which hinders the initiation of such measures against more powerful members.[542]

Furthermore, experimental findings by Baldassarri and Grossman suggest that centralised systems of sanctioning, particularly those perceived as legitimate, are substantially more effective in promoting compliance and cooperation than decentralised or peer-based punishment structures.[543] Their study illustrates that in complex societies, cooperation is more sustainable when sanctions are administered by a legitimate central authority rather than dispersed, uncoordinated peer punishments which tend to fail in larger, more anonymous groupings. While not explicitly examining the ILO, their findings highlight a broader institutional insight that may be applied analogously to the ILO's lack of enforcement capabilities and decentralised supervisory system, potentially contributing to its perceived ineffectiveness in some contexts.[544] Therefore, the ILO appears to have no meaningful sanctions system and the procedure in Article 33 lacks important elements of effectiveness, thus rendering the organisation toothless.

Committee on Freedom of Association (CFA)

Another supervisory body is the Committee of Freedom of Association (CFA), which is a tripartite body consisting of nine members, that is responsible for reviewing complaints concerning violations of the right to freedom of association and to collective bargaining. Since its establishment in 1951, the CFA has supported the Fact-

[541] International Labour Conference, 'Resolution under Article 33 concerning Myanmar's Military Junta' (113th Session, Geneva, June 2025) https://www.ilo.org/sites/default/files/2025-06/ILC113-Resolution-I-%5BRELMEETINGS-250604-007%5D-EN.pdf accessed 19 March 2026.
[542] Thomann, *Steps to compliance with international labour standards* (n 159) 103.
[543] Delia Baldassarri and Guy Grossman, 'Centralized sanctioning and legitimate authority promote cooperation in humans' (2011) 108 *Proceedings of the National Academy of Sciences* 11023.
[544] ibid 11024-11026.

Finding and Conciliation Commission (FFCC). However, the FFCC's dependence on the consent of the concerned government deemed it practically ineffective in most cases. As such, the CFA took over and effectively supplanted the FFCC's routine investigatory function, doing so with fewer procedural hurdles and better accessibility. The FFCC is currently a residual mechanism, invoked only for rare, serious issues needing inquiry and mediation.[545] It is important to note that since the conventions relevant to the freedom of association and collective bargaining, i.e., Conventions 87[546] and 98,[547] became part of the ILO core conventions, it is not necessary for the government under review for violation to have ratified those conventions. As previously mentioned, core conventions according to the ILO Declaration on Fundamental Principles and Rights at Work are obligatory against all member states to the ILO regardless of their ratification.[548] If the complaint is initially accepted, the government in question is obligated to cooperate and provide any additional information for examination by the CFA. Some aspects of the investigation can be handled by the CEACR, in particular legislative aspects.[549] The outcome of the procedure is a report, including findings and recommendations, that is submitted to the GB.

4.4 Enforcement & Effectiveness of the ILO Standards

One could argue that the effectiveness of international law largely depends on its dissemination, application, and enforcement at the domestic level. Joona, for instance, argues that it is important for the measurement of effectiveness to consider the activities of international organisations and bodies responsible for ensuring state compliance with their international obligations as per international law and treaties.[550] This resonates with the transnational legal process theory by which the study of

[545] International Trade Union Confederation, *The Right to Strike in International Law* (2014) 109 https://www.ituc-csi.org/IMG/pdf/ituc_final_brief_on_the_right_to_strike.pdf accessed 18 April 2026.
[546] International Labour Organization*, Freedom of Association and Protection of the Right to Organise Convention, 1948* (No 87) (adopted 9 July 1948, entered into force 4 July 1950) (Convention No 87).
[547] International Labour Organization, *Right to Organise and Collective Bargaining Convention, 1949 (No 98)* (adopted 1 July 1949, entered into force 18 July 1951) (Convention No 98).
[548] International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (n 488).
[549] Thomann, *Steps to compliance with international labour standards* (n 159) 61.
[550] Joona, 'International Norms and Domestic Practices in Regard to ILO Convention No. 169 - with Special Reference to Articles 1 and 13-19' (n 450) 228.

effectiveness would encompass interactions between state and non-state actors, including the work of transnational and civil society organisations.

For scholars, the study of the ILO presents the possibility of examining compliance mechanisms in practice. The ILO case provides adequate details on how such mechanisms function on the ground, as well as on when and how it applies different mechanisms. The ILO's structure and supervisory system allow the examination of how complementary mechanisms interconnect and interact in practice. Most importantly, the ILO provides insight into the effectiveness and settings of the mechanisms and theories proposed by the different compliance schools.[551] Effectiveness, as explained in Chapter 2, is a behavioural question that interacts with compliance, and so in the case of the ILO standards, they become effective once disseminated and implemented in domestic and transnational settings. One could argue that without the ILO as a powerful international organisation behind the implementation of those standards they might become undermined.[552] Petra Olsson, for instance, found that the treatment of migrant workers' rights at the ILO is different to their treatment elsewhere within the international community since they are more likely to be monitored and discussed.[553] However, there appears to be an issue concerning enforcement, and that there has to be more effective engagement from the ILO's supervisory bodies, especially in relation to comments and recommendations directed to member states. In the context of migrant workers' rights, it has been noted that while the ILO's general labour standards have had some influence on the UN Committee of Migrant Workers, they have not had the anticipated positive impact in relation to the ILO's specific conventions on labour migration largely due to their low ratification and limited implementation.[554]

[551] Thomann, *Steps to compliance with international labour standards* (n 159) 65.
[552] Franz Christian Ebert and Tonia Novitz, 'Introduction: International Institutions, Public Governance and Future Regulation of Work' (2020) 17 *International Organizations Law Review* 1, 6.
[553] Petra Herzfeld Olsson, 'The role of effective enforcement in international law on labour migration' (2020) 17 *International Organizations Law Review* 206, 221, 231.
[554] Ebert and Novitz, 'Introduction: International Institutions, Public Governance and Future Regulation of Work', (n 552) 7; International Labour Organization, 'Ratifications of C097 – Migration for Employment Convention (Revised), 1949 (No 97)' https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312242 accessed 19 March 2026.

Describing the shortcomings of the enforcement of labour standards, Maupin explains that it is, first of all, the voluntary nature of the incorporation of labour standards into national legal systems that hinders effective enforcement.[555] The second shortcoming identified by Maupin concerns the state centric character of the implementation of labour standards as established by international instruments, which is challenged by the growing number of transnational organisations and non-state actors.[556] Moreover, the ILO's normative framework also contributes to its enforcement shortcomings. Rather than offering a unified and binding legal regime, the ILO employs a fragmented approach in which multiple instruments, often ambiguously phrased, tackle the same objective in a non-hierarchical manner. This juxtaposition of norms, although intended to promote flexibility, has resulted in ambiguity and weakened the enforceability of ILO standards.[557] Also, the fact that there exists no recognised scale or benchmark that would help determine the severity of violations, shows how the ILO fails to set measures of implementation beyond legal measures.[558]

Additionally, the legalised adjudication[559] process as adopted by the ILO fails to exert direct legal effects in domestic realms. It is left to the member states to decide whether they implement conventions and recommendations or not. According to Thomann, the work of the supervisory system in the ILO primarily concerns the labelling of non-compliant cases rather than ensuring that implementation of labour standards is taking place domestically.[560] Moreover, managerial approaches such as dialogue with non-compliant governments occurs during open discussions of the Conference Committee. This means that direct and private communications with concerned governments are conducted only to answer technical questions or a specific case of non-compliance. These restricted exchanges often lead to the submission of proposed legislative amendments or regulatory reforms by the non-compliant states, aimed at aligning their domestic law with ILO standards as interpreted by the CEACR. Importantly, this process is cooperative rather than confrontational. That is exactly why critics, such as Thomann and Koliev, see that such communication bears no impact on state

[555] Maupain, 'A Second Century for What?' (n 415) 301.
[556] ibid 301.
[557] ibid 303.
[558] Pahle, 'What difference does the International Labour Organization make? Freedom of association, norms, supervision and promotion vis-à-vis Brazil' (n 465) 468.
[559] See footnote (n 61).
[560] Thomann, *Steps to compliance with international labour standards* (n 159) 177.

behaviour. On the contrary, direct contact puts the regular supervisory process on hold, and so it can be seen to have a positive feature in terms of maintaining dialogue and avoiding confrontation, rather than effectively promoting behavioural changes. Indeed, public discussions happening in the Conference Committee are considered to be cooperative in nature since they allow states to provide information on its stance and allow elaborations on the CEACR comments.[561]

Furthermore, the effectiveness of these supervisory mechanisms remains highly dependent on the presence of active domestic institutions and a stable political environment. In conflict settings, such as Libya, the ILO's dependence on periodic state reporting, tripartite consultations, and technical cooperation encounters significant obstacles. Where governments lack territorial control, or where domestic political actors are themselves involved in forced labour practices, the ILO's mechanisms can struggle to prompt meaningful compliance. These restrictions, which will be explored in detail in Chapter 6, demonstrate how the absence of cohesive state authority undermines the interactive and interpretive processes that are essential to internalising international labour norms as understood by Koh's transnational legal process framework. However, this also raises fundamental questions about the ILO's ability to actively engage and interact with different domestic actors in Libya and similar contexts of legal pluralism and concurrency of governments.

A study by Garcia-Muñoz Alhambra, Ter Haar and Kun proposed a solution that would improve the effectiveness of the ILO's supervisory system.[562] Their proposal calls for the relocation of labour law enforcement from the national realm to the international one. They argue that globalisation contributed to the dissociation between national labour laws and transnational economic players. Therefore, there occurred a regulatory gap that can be filled through a publicly rooted transnational inspectorate system. This system can, thus, cover the gap in the national labour inspection concerning transnational instruments and agreements. However, Garcia-Muñoz Alhambra et al. note that such a system is unlikely to be adopted in light of the

[561] ibid 177.
[562] Antonio Garcia-Muñoz Alhambra, Beryl Ter Haar and Attila Kun, 'Harnessing Public Institutions for Labour Law Enforcement: Embedding a Transnational Labour Inspectorate within the ILO' (2020) 17 *International Organizations Law Review* 233.

opposition it would likely receive from the employers' organisations who would oppose any effective implementation of the ILO standards.[563]

Another suggestion comes from constructivists who argue that the socialisation of international norms would ensure the effectiveness of labour standards in domestic settings. This socialisation approach, as promoted by Risse et al., calls for the internalisation of norms for the endorsement of human rights. They argue that by ensuring norms are internalised in the society, there is no need for external pressure to ensure compliance. Risse et al explain how socialisation works through five stages of human rights change: i) state repression which stimulates transnational networks; ii) denial by the oppressive state; iii) tactical concessions by the oppressive state; iv) prescriptive/enforceable status through different means including signing treaties; and v) rule-consistent behaviour.[564] For the socialisation to occur, three processes should be completed: 1) adaptation and strategic bargaining' 2) moral consciousness-raising, argumentation, and persuasion; and 3) institutionalisation and habitualisation.[565]

Furthermore, Faradj Koliev argues that, in order for the ILO to impact national polices there are three mechanisms at play during the adoption process of labour standards, namely elite socialisation, learning, and domestic mobilisation.[566] It is worth noting that the adoption process begins with the decision to create new conventions and the discussions that follow, and it ends with the adoption of the new convention. In terms of the elite socialisation, it is the process in which the individual representatives of the state become receptive to the norms of the ILO, and it occurs through the active participation of the state in the making of norms and standards in the ILO. This process of law-making can include consultations and dialogues. This mechanism operates through persuasion and social influence.[567] On the one hand, the ILO, with its normative power, can persuade elites to adopt certain norms and changes in their attitudes; on the other hand, peer pressure among states, represented through praising and shaming, can change elite behaviour by encouraging conformity through

[563] ibid 257-260.
[564] Thomas Risse, Stephen C Ropp and Kathryn Sikkink, *The power of human rights: International norms and domestic change*, vol 66 (Cambridge University Press 1999), 20.
[565] ibid 11.
[566] Faradj Koliev, 'Promoting international labour standards: The ILO and national labour regulations' (2021) 24 *The British Journal of Politics and International Relations* 361, 364-367
[567] ibid.

reputational incentives and disincentives. According to such a mechanism, social pressure is viewed to have a positive impact on the behaviour of states which can eventually lead to the internalisation of norms and standards in the domestic legal system.[568]

The second mechanism, learning, influences domestic policy through producing new ideas, information, and good practices relating to the implementation of labour standards. It starts at the vertical level, i.e., within the government elites through dialogues and communication between those elites and the ILO. Such interactions between governments and representatives of the ILO generate "policy uncertainty", meaning that officials begin to doubt the adequacy and efficiency of their existing domestic laws and policies. This uncertainty motivates governments to seek out further knowledge, technical assistance, and comparative practices, which in turn may gradually push them to adapt their laws and policies in compliance with international labour standards. [569]

The third mechanism, domestic mobilisation, may be triggered by the discussions happening in the ILO and involving the government. These discussions can, thus, trigger domestic interests in the standards under discussion. Such an interest pressures governments into the implementation of the concerned ILO Conventions. In fact, many international organisations oblige governments to inform their parliaments about international instruments which would open up spaces for discussions at the domestic level, and thus provide national actors, such as workers and businesses, with adequate information to pressure their own governments into legal and behavioural changes.[570] Nonetheless, it is essential to distinguish between the adoption of an ILO Convention as an international treaty, which follows the rules of public international law, and the process of incorporating or implementing that convention into domestic law, which is governed by national constitutional frameworks. In monist states, ratification may itself render a treaty enforceable in domestic law, whereas in dualist systems, national legislation is typically required to give legal effect to international obligations. Thus, the effect of negotiations resulting in the adoption process as part

[568] ibid.
[569] ibid.
[570] ibid.

of domestic mobilisation is far more relevant in the monist systems than in the dualist systems. The ILO's influence is therefore not fully realised unless the convention is not only adopted internationally, but also effectively internalised and applied at the national level. Moreover, in cases where a state actively opposed the adoption of a convention during its negotiation, early engagement is unlikely to result in any meaningful normative impact.[571] According to Risse et al. adoption of Conventions by states, i.e., ratification, is only one step of the norm socialisation process. Thus, it should be followed with other steps to ensure complete internalisation of norms in domestic contexts leading to effective behavioural changes.[572]

This dynamic closely aligns with Koh's theory of transnational legal process, wherein global norms are internalised through institutional interaction, interpretation, and repeated engagement. In this thesis, such internalisation, particularly when observable in domestic legal and political behaviour, is treated as a key indicator of effectiveness.

4.5 Concluding Remarks: Beyond Compliance and Towards Internalisation – Rethinking the ILO's Supervisory Gaps

This chapter tackled the ILO's effectiveness from different angles, starting with a comprehensive overview of the structural faults that weaken the inclusivity and responsiveness of the organisation. One of the critical challenges identified lies in the institutional configuration, where the dominance of state actors and the enduring influence of political interests continue to undermine the organisation's ability to create equitable deliberative spaces and to exert effective compliance pressure on member states. Despite procedural improvements and innovations in normative tools, such as supervisory dialogue, the actual rate of meaningful compliance with ILO conventions and recommendations remains low, particularly in politically sensitive or unstable contexts. Therefore, we can argue that the ILO's weaknesses in terms of effectiveness are generated from both sides of the process, starting from the policy making configuration that lacks the power of sensitivity to specific settings such as

[571] ibid 369.
[572] Risse, Ropp and Sikkink, *The power of human rights: International norms and domestic change* (n 564) 12.

conflict, through to the lack of proper techniques to achieve compliance through setting specific tools.

Building on Harold Koh's transnational legal process theory and based on the nature of the ILO as a standard-setting international (transnational) organisation, this thesis views "effectiveness" as one that is not restricted to formal compliance, but that incorporates the internalisation of international labour standards at the domestic level. It requires interactions between the ILO and domestic state and non-state actors in the process of norm internalisation. Therefore, for the purposes of this thesis, the study of the effectiveness of ILO labour standards is measured through:

1) The degree of formal compliance, as reflected in state ratification of ILO conventions and regular reporting obligations;
2) The implementation of these standards at the domestic level, measurable through legislative reform and administrative practices; and
3) The occurrence of behavioural change among state and non-state actors, facilitated by norm socialisation and internalisation, including the influence of transnational advocacy networks.

These measurements move beyond static legal measures and instead reflect a process-oriented, dynamic understanding of how labour standards can gain traction within national contexts. The thesis will explain in detail what each of these measurements means and how they are reflected in the case study of Libya. However, before examining the situation in trafficking in persons for forced labour in Libya, the following chapter will explore the range of ILO conventions dealing specifically with forced labour and conflict settings.

Chapter 5: ILO's Forced Labour Regulations in Conflict Settings

"It is essential to support a re-tuned ILO that can respond with subtleness to the different ways in which the same problem can manifest itself in different societies. Solutions cannot be proposed simply because they work in other countries. We need a richness of outlook, an ability to differentiate, to respond to real problems and propose new solutions."

Juan Somavía, ILO Director General, 1999[573]

Building upon the previous chapter's examination of the history and institutional structure of the International Labour Organization (ILO), this chapter delves deeper into the ILO's legal instruments addressing forced labour, with a specific focus on their relevance and application in conflict settings. Central to this investigation is the question of how international labour standards, particularly those governing forced labour, are operationalised and internalised within states facing armed conflict and institutional breakdown.

The first section of this chapter examines the evolution of the ILO's legal and normative framework on forced labour, which includes Conventions Nos 29, 105, and 182, as well as the associated recommendations and protocols.[574] It investigates how these instruments have been understood and adapted to handle various contexts, as well as their relationship to other international frameworks aimed at prohibiting forced labour and associated types of exploitation. The second section examines the ILO's conflict-sensitive approaches, assessing existing policy tools and remedies to prevent forced labour in settings of violence, displacement, and legal pluralism.

[573] Juan Somavía, 'Address to the 87th International Labour Conference' (Geneva, 1 June 1999) https://webapps.ilo.org/public/english/standards/relm/ilc/ilc87/a-somavi.htm accessed 30 March 2026.
[574] International Labour Organization, *Forced Labour Convention, 1930 (No 29)* (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55; International Labour Organization, *Abolition of Forced Labour Convention, 1957 (No 105)* (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291; International Labour Organization, *Worst Forms of Child Labour Convention, 1999 (No 182)* (adopted 17 June 1999, entered into force 19 November 2000) 2133 UNTS 161; International Labour Organization, *Protocol of 2014 to the Forced Labour Convention, 1930* (adopted 11 June 2014, entered into force 9 November 2016) ILO P029; International Labour Organization, *Recommendation concerning the Prohibition and Elimination of Forced Labour (Supplementary Measures), 2014 (No 203)* (adopted 11 June 2014).

Grounded in Harold Koh's theory of transnational legal process, the chapter adopts an understanding of effectiveness that goes beyond formal ratification or compliance.[575] In this framework, international legal norms become effective only when they are internalised and integrated into a state's domestic legal, political, and social structures. This process necessitates ongoing interaction between international and domestic actors, the normative interpretation of international rules within local contexts, and their eventual internalisation in a way that changes and alters behaviour. In conflict settings, where the rule of law is often weak or contested, this process of internalisation becomes more complex, yet it remains critical to achieving the kind of habitual obedience to international norms that Koh identifies as the true measure of effectiveness.

By situating the ILO's work within a transnational legal process framework, this chapter highlights the ways in which international law interacts with conflict-affected societies through legal instruments, institutional practices, and transnational advocacy. It assesses the ILO's engagement with fragmented governments and civil society actors and its attempts to influence legal outcomes on the ground. The chapter also considers whether the ILO's current policy and supervisory mechanisms are adequate to address the specific challenges posed by conflict settings, particularly where state power is restricted or contested.

This chapter thus contributes to a broader understanding of the ILO's ability to promote the internalisation of forced labour standards in contexts where formal compliance is unlikely and where transnational engagement becomes the primary means through which behavioural change may be achieved. In doing so, it sets the groundwork for the case study that follows, i.e., Libya, which will examine these dynamics in greater detail.

[575] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10)

5.1 ILO's Instruments in the Fight Against Forced Labour

5.1.1 An Overview of the Evolution of the ILO's Work on Forced Labour

Shortly after the establishment of the ILO, the Convention to Suppress the Slave Trade and Slavery (Slavery Convention) was adopted by the League of Nations in 1926. As previously explained in Chapter 3,[576] the convention prohibited slavery but allowed certain forms of forced labour practiced by state governments or colonial administrations for "public purposes." These included military service, civic obligations, minor community services, emergencies, and prison labour as a form of sanctions and taxes.[577] In the same year, the ILO established the Committee of Experts on Native Labour and tasked it with the mission of analysing systems of forced labour especially those affecting indigenous and native communities in colonial territories. Based on the outcomes of the Committee, the ILO adopted its first Forced Labour Convention in 1930 (Convention No. 29) where the issue of forced labour for public purposes was further discussed and regulated.[578] Thus, one could argue that the ILO's standard-setting practices have evident colonial roots. The ILO became embroiled in a difficult process of developing a 'native labour code' (often referred to as a 'coloured' labour code) that was largely shaped by colonial authorities and which deeply influenced the forced labour instrument.[579] However, it was in the 1930 Convention that the ILO first defined forced labour as "all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[580] Years later, in 1957, the ILO adopted the Abolition of Forced Labour Convention in 1957 (Convention No. 105) aiming to prohibit certain forms of forced labour.[581] These two conventions became part of the core ILO Conventions as

[576] See: Chapter 3, section 3.1.3 'Conceptual Ambiguities and the Historical "End" of Slavery', p. 79.
[577] League of Nations, *Convention to Suppress the Slave Trade and Slavery* (1926) League of Nations Treaty Series, vol 60, 253.
[578] International Labour Organization, *Forced Labour Convention (No 29)* (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55.
[579] Adelle Blackett and Alice Duquesnoy, 'Slavery Is Not a Metaphor: US Prison Labor and Racial Subordination Through the Lens of the ILO's Abolition of Forced Labor Convention' (2020) 67 *University of California at Los Angeles Law Review* 1504, 1512.
[580] Andrees, 'Defending Rights, Securing Justice: The International Labour Organization's Work on Forced Labour' (n 458) 346.
[581] International Labour Organization, *Abolition of Forced Labour Convention, 1957 (No 105)* (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291.

per the 1998 Declaration on Fundamental Principles and Rights at Work (1998 Declaration),[582] which makes them binding on all member states in the ILO.[583]

In discussing the ILO's approach to forced labour, it can be said that its first efforts were directed towards the abolition of slavery.[584] Also, it is worth noting that the context in which these conventions originated was when debates on colonisation and decolonisation started taking place. In fact, in the late 1920s, the ILO was leading the international alliance advocating for a solution to the issue of colonisation. Therefore, the goal was to abolish slavery in colonies, particularly prompted by responses to forced labour in Belgian King Leopold II's 'free state' of Congo, which presented 'free labour' as the goal of the ILO.[585]

However, the colonial reality in that age was reliant on its economic expansion of forced labour especially in the 1920s.[586] Interestingly, the debate around the need for forced labour in colonial rule was based on the justification that such labour was necessary to the mission of colonial powers to educate the "natives" in those colonies. Consequently, the 1930 Convention did not result in the immediate and absolute abolition of all forms of forced labour but rather positioned this as an eventual objective to be achieved over time. The convention primarily prohibited the use of forced labour for private purposes within colonial territories while providing a regulatory framework for its application in public contexts. This approach received support from the British government yet faced opposition from other colonial powers, such as France, Belgium, the Netherlands, Portugal, and South Africa. Maul has argued that while the ILO's inaugural convention succeeded in drawing attention to the prevalence of forced labour within colonial systems, it simultaneously perpetuated

[582] International Labour Organization, *Declaration on Fundamental Principles and Rights at Work* (n 488).
[583] Anne Posthuma and Arianna Rossi, 'Coordinated governance in global value chains: supranational dynamics and the role of the International Labour Organization' (2017) 22 *New Political Economy* 186, 192.
[584] Arjuna Naidu, 'The right to be free from slavery, servitude and forced labour' (1987) *20 Comparative and International Law Journal of Southern Africa* 108.
[585] Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (n 272) 440–450.
[586] Daniel Roger Maul, 'The International Labour Organization and the Struggle against Forced Labour from 1919 to the Present' (2007) 48 *Labor History* 477, 479.

colonial ideologies that upheld a dichotomy between the "civilised" coloniser and the "subject" native, thereby rationalising systems of exploitation.[587]

Following the 1930 Convention and its relevant recommendations, in the period between 1956-59 the ILO Committee on Forced Labour highlighted the use of forced labour as a means of political coercion. The Committee's findings, among other drivers, contributed to the adoption of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1956[588] and then the Abolition of Forced Labour Convention (Convention No. 105) in 1957.[589] This initial work by the ILO further encouraged calls for decolonisation, and the need to adopt principles of universality within the organisation itself. Universal adoption of forced labour conventions was called for in the 1998 Declaration, in which the abolition of forced labour was finally included as part of the ILO's core labour standards that are binding on all member states regardless of their ratification status.

The significant gap between 1957 and 1998 in the evolution of forced labour conventions and related international efforts can be attributed to several key factors. Firstly, the geopolitical landscape during this period was heavily influenced by the Cold War, which dominated global politics and economic priorities.[590] Issues like forced labour often took a backseat to the broader ideological conflict between the capitalist and socialist blocs. International organisations, including the ILO, faced challenges in navigating these polarised dynamics, as their actions could be perceived as aligning with one side or the other.[591] Secondly, the immediate decades following the adoption of the Abolition of Forced Labour Convention in 1957 (Convention No. 105) were a time of global decolonisation. With numerous former colonies gaining independence, newly established nations were primarily focused on nation-building and addressing internal economic and social challenges. Many of these states lacked the capacity or resources to enforce international labour standards effectively. The

[587] ibid 481-483.
[588] *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (adopted 7 September 1956, entered into force 30 April 1957) 266 UNTS 3.
[589] International Labour Organization, *Abolition of Forced Labour Convention* (n 581). See also: Thomann, *Steps to compliance with international labour standards* (n 159) 187-191.
[590] Maul, 'The International Labour Organization and the Struggle against Forced Labour from 1919 to the Present' (n 586), 484.
[591] ibid 488.

ILO, as an international body, was also preoccupied with integrating these new member states into its institutional and legal frameworks and addressing their unique concerns.[592]

Furthermore, the international community's understanding of forced labour during this time was somewhat limited. While Convention No. 105 addressed certain forms of forced labour, such as those used for political coercion or as punishment for strikes, it did not fully encompass the evolving realities of forced labour in the context of economic development, migration, and globalisation. This gap in coverage meant that the ILO's efforts were confined to addressing more traditional forms of forced labour, leaving modern challenges largely unaddressed until later years.[593]

By the late 20th century, globalisation and industrialisation had transformed the nature of labour markets. Issues such as human trafficking, exploitation of migrant workers, and domestic servitude became more prominent, prompting the need for a renewed focus. This shift, coupled with growing international awareness, led to the 1998 Declaration. The Declaration on fundamental principles and rights marked a turning point, as it not only reaffirmed the commitment to abolishing forced labour but also introduced a broader framework for addressing modern forms of exploitation.[594] In summary, the gap between 1957 and 1998 reflects a combination of geopolitical, economic, and institutional factors, alongside the evolving nature of forced labour itself.[595] The gap underscores the challenges faced by international organisations like the ILO in adapting to changing global realities while maintaining their foundational principles.[596]

[592] See: UN General Assembly, *Plenary Meeting 869* (15th Session, 7 December 1960) para 46, in which the Portuguese colonial system's use of forced labour in colonies in Africa.
[593] International Labour Organization, 'Evolution of Forced Labour Regulations in the 20th Century' (ILO 1998).
[594] International Labour Organization, *Declaration on Fundamental Principles and Rights at Work* (n 488).
[595] UN Commission on Human Rights, *Report of the Working Group on Contemporary Forms of Slavery* (27 June 1999) UN Doc E/CN.4/Sub.2/1999/17.
[596] Guy Standing, 'The ILO: An Agency for Globalisation?' (2008) 39(3) *Development and Change* 355, 363, 380.

Nonetheless, the 1998 Declaration also reinforced the principles outlined in the ILO's landmark Philadelphia Declaration of 1944,[597] which emphasised the importance of human rights and social justice in labour practices.[598] The Philadelphia Declaration affirmed several fundamental principles, including the belief that labour is not merely a commodity, the recognition of freedom of association, and the commitment to ensuring equal opportunities for all individuals to pursue their material well-being in conditions of freedom and dignity. By situating forced labour as both a violation of human rights and an obstacle to achieving economic and social justice, the ILO established a framework that underscored its dedication to combating exploitative practices and promoting fair labour standards worldwide. In the period that followed Conventions Nos. 29 and 105, there was little regulatory development until the late 1990s when a new regulation concerning forced labour appeared. Thus, the ILO adopted the Convention on the Worst Forms of Child Labour (Convention No. 182) in 1999,[599] which identified trafficking of children as one of the worst forms of child labour.[600]

The emergence of human trafficking as a critical aspect of forced and child labour gained prominence following the 1998 Declaration. This shift was particularly evident in the findings of two significant global reports by the ILO published in 2001[601] and 2005,[602] which highlighted the evolving connection between forced labour and human trafficking, a dimension inadequately addressed in earlier ILO Conventions. These global reports exposed the fact that the existing forced labour conventions were no longer sufficient in the fight against the worst forms of forced labour, namely sexual exploitation and servitude in the context of industrialisation and globalisation. Globalisation, in this context, refers to the increasing interconnectedness of economies and labour markets across borders, which resulted in the expansion of informal,

[597] International Labour Organization, *Declaration of Philadelphia* (adopted 26 May 1944).
[598] Maul, 'The International Labour Organization and the Struggle against Forced Labour' (n 586) 493-495.
[599] International Labour Organization, *Convention on the Worst Forms of Child Labour* (No. 182) (adopted 17 June 1999, entered into force 19 November 2000) 2133 UNTS 161.
[600] Thomann, *Steps to Compliance with International Labour Standards* (n 159) 187-191; Andrees, 'Defending Rights, Securing Justice' (n 458) 348.
[601] International Labour Organization, *Stopping Forced Labour* (Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work, 2001).
[602] International Labour Office, *A Global Alliance Against Forced Labour* (Report I(B), International Labour Conference, 93rd Session, ILO 2005) https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf accessed 23 April 2026.

deregulated, and precarious forms of employment, notably for migrant workers. As manufacturing and supply chains became increasingly transnational, exploitative labour practices were shifted into less regulated jurisdictions, often outside the reach of domestic enforcement mechanisms.[603] The ILO's response to the challenges posed by globalisation began with the 1998 Declaration on Fundamental Principles and Rights at Work, which emphasised the centrality of four core labour standards, including the elimination of forced labour and child labour. [604] This was followed by the creation of the Decent Work Agenda in 1999, which linked workplace rights with broader concerns such as employment, social security, and social dialogue.[605] In the early 2000s, these efforts were further articulated through the ILO's "fair globalisation "paradigm, particularly after the 2004 World Commission report, which positioned decent work as the ILO's fundamental approach for forging a more equitable globalisation.[606]

In 2005, the ILO acknowledged the inadequacies of relying solely on national legislation to address the growing complexities of forced labour in a globalised society.[607] In response, it launched the Global Alliance Against Forced Labour, a coordinated campaign aiming to engage states, employers, workers, and civil society organisations in a collaborative effort to confront and eradicate forced labour practices.[608] The alliance marked a transformative effort to address forced labour in its many forms, including modern issues such as human trafficking, bonded labour, and child labour, which thrive in the shadows of globalisation and economic disparity.[609] The 2005 Global Alliance placed particular emphasis on enhancing cooperation across borders through transnational frameworks.[610] It aimed to establish robust mechanisms

[603] International Labour Office, *A Fair Globalisation: The Role of the ILO* (International Labour Conference, 92nd Session, Report I(A), ILO 2004) https://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-i-a.pdf accessed 23 April 2026.
[604] Maul, 'The International Labour Organization and the Struggle against Forced Labour' (n 586) 495.
[605] International Labour Office, *Decent Work* (Report of the Director-General, International Labour Conference, 87th Session, ILO 1999) https://webapps.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm accessed 23 April 2026.
[606] World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All* (ILO 2004) https://www.ilo.org/public/english/wcsdg/docs/report.pdf accessed 23 April 2026.
[607] International Labour Office, *A Global Alliance Against Forced Labour* (n 602) 6.
[608] Maul, 'The International Labour Organization and the Struggle against Forced Labour' (n 586) 493-495.
[609] International Labour Office, *A Global Alliance Against Forced Labour* (n 602).
[610] ibid 80-82.

for collaboration between political entities, economic stakeholders, and civil society groups. An important aspect of this initiative was the integration of forced labour concerns into broader socio-economic policies, thereby ensuring that the abolition of forced labour became intrinsically linked to achieving the UN Sustainable Development Goals.[611] These Goals, adopted by all UN Member States in 2015, provide a common framework for peace and prosperity through a series of interconnected objectives tackling poverty, inequality, environmental sustainability, and human rights.[612]

One of the key milestones of the Global Alliance was a well-resourced and comprehensive international report on forced labour published in 2005.[613] This report shed light on the plight of vulnerable groups, particularly migrant workers and domestic workers, who often find themselves outside the protection of labour laws.[614] The report revealed that domestic labour, typically taking place in private households, frequently subjected workers to exploitative conditions, depriving them of their rights and making them susceptible to trafficking. Similarly, migrant workers, due to their tenuous legal status, often faced deplorable working conditions, further exacerbating their vulnerability to forced labour and human trafficking.[615] Alongside these efforts, the ILO established the Special Action Programme to Combat Forced Labour, which focused on publishing detailed surveys, monitoring practices, and recommending actionable reforms to member states.[616] The Alliance also catalysed the formation of a network of international instruments and frameworks beyond the ILO's remit, further underscoring its leadership in global efforts to combat forced labour.[617]

[611] ibid 41, 67.
[612] UN General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development* (21 October 2015) UN Doc A/RES/70/1, paras 2–3.
[613] International Labour Office, *A Global Alliance Against Forced Labour* (n 602).
[614] Virginia Mantouvalou, 'Servitude and Forced Labour in the 21st Century: The Human Rights of Domestic Workers*' (2006) 35 *Industrial Law Journal* 395, 397.
[615] International Labour Office, *A Global Alliance Against Forced Labour* (n 602) 50.
[616] International Labour Office, *Eradicating Forced Labour: General Report* (Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 96th Session, ILO 2007) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_142837.pdf accessed 23 April 2026.
[617] International Labour Office, *A Global Alliance Against Forced Labour* (n 602) 67.

However, criticisms have been levied against the ILO's approach, particularly regarding its reluctance to challenge the underlying economic systems, such as certain aspects of capitalism, that perpetuate forced labour. The 2005 report itself highlighted the role of globalisation and free market policies in intensifying exploitative practices but stopped short of directly addressing governmental complicity through economic policies.[618] Thus, only certain modes of modern capitalism were tackled by the report, but capitalism as a system was left unquestioned. The depoliticization of the ILO's forced labour reports reflects an approach that isolates the issue of forced labour from broader systemic structures such as capitalism and other political frameworks. This approach is arguably justified by the ILO's role as an international tripartite organisation, which necessitates maintaining a neutral stance to facilitate cooperation and engagement with governments around the world.[619] Nevertheless, this raises significant questions regarding the effectiveness of these reports in addressing and ultimately abolishing forced labour, particularly in light of the exacerbating issues of illegal migration and human smuggling, which are often byproducts of armed conflicts and the economic disparities that persist between the Global North and Global South. Within the context of this thesis, which focuses on conflict settings, it is important to acknowledge that while the ILO has historically adopted a depoliticised approach in its reports, such an approach may face inherent limitations when dealing with conflicts that are deeply rooted in political dynamics. In this aspect, the ILO's inclination to frame forced labour as a technical, rather than political, issue runs the risk of producing a conflict-insensitive normative framework. By detaching forced labour from its ideological and structural causes, the ILO may impair the potential for its norms to be meaningfully internalised in settings where power, governance, and rule of law are contested. According to Koh's theory of transnational legal process, such depoliticization may impair the interactional and interpretive pathways that allow international norms to be internalised at the domestic level. Without addressing the political realities that shape forced labour, particularly in conflict-affected or authoritarian contexts, the ILO's standards may fail to influence the behavioural change that constitutes genuine internalisation. As a result, the ILO may need to reconsider and adapt its strategies to more effectively address the political conditions

[618] ibid 63.
[619] Jens Lerche, 'A Global Alliance against Forced Labour? Unfree Labour, Neo-Liberal Globalization and the International Labour Organization' (2007) 7 *Journal of Agrarian Change* 425, 431.

that allow forced labour to persist, especially in conflict-affected countries and states with fragile governments due to foreign interventions.

Following this general overview of the ILO's work on forced labour, the following sections provide an analysis of some of the ILO's core conventions and legal instruments on forced labour.

5.1.2 The Forced Labour Convention, 1930 (Convention No. 29)

Following the establishment in 1926 of the Committee of Experts on Native Labour, which was tasked with examining forced labour in colonial territories, the ILO faced challenges stemming from the diverse legal frameworks governing forced labour among the different colonial powers. To address these discrepancies, the ILO adopted a comprehensive definition of "native labour" that encapsulated various types of native employment, and identifying the specific characteristics that delineated forced labour. Debates within the International Labour Conference revealed that colonial powers maintained distinct legislative approaches regarding the treatment of forced labour, particularly concerning whether native labour employed for public-sector purposes under the colonial authority should be classified as forced labour or regarded as a civic duty or tax obligation. Different definitions of forced labour were argued; however, it can be concluded that, in general, colonial powers distinguished between forced labour undertaken for governments, which was allowable, and that which was undertaken for private companies, which was not.[620]

The ILO's position on such legislation and the general atmosphere of accepting the exploitation of the local population for general purposes, was to gradually work on the abolition of such practices. Therefore, the ILO suggested rules that were set out in a report submitted before the International Labour Conference of 1929 that accepted some forms of compulsory labour for general public purposes but put strict conditions and emergency elements to such practices, age restraints, and medical conditions restraints. Regarding forced labour for local public purposes, "the general tendency of

[620] Jean Goudal, 'The Question of Forced Labour Before the International Labour Conference' (1929) 19 *International Labour Review* 621, 636.

legislation seems to be that forced labour for local purposes should be permitted only for the maintenance and cleaning of local roads, but not for main roads and metalled roads."[621]

Forced labour for private purposes was generally prohibited through direct interventions; however, regulating indirect coercive actions that remained legally permissible posed significant challenges. As a result, recommendations were established to prevent such forms of indirect compulsory forced labour for private purposes.[622] Furthermore, the outcomes of the conference included an initial draft agreement between the colonial powers. The ILO, in collaboration with the Committee of Experts, formulated detailed regulations addressing various forms of forced labour. These efforts culminated in the conceptualisation of a convention of forced labour, which was subsequently presented in a report to the conference.[623] The report outlined general provisions aimed at ensuring the abolition of all instances of compulsory labour. These provisions encompassed four key criteria: the essential nature of the labour or service to be rendered, the urgency of the circumstances, the impossibility of securing voluntary labour, and the necessity of carefully evaluating whether the proposed work or service would impose an undue burden on the present generation, considering the availability of labour and its capacity to undertake the work.[624]

Following this report, the first Forced Labour Convention was adopted by the ILO in 1930 to complement international efforts aimed at abolishing slavery. The ILO built a system of legal instruments that was concurrent to the work of the League of Nations and subsequently the United Nations.[625] However, the 1930 Convention came to specifically answer issues of forced labour during the time when colonisation was almost normalised, in a first attempt to denounce slavery and forced labour, except that it regulated forced labour for public purposes in the forms of military service, civic obligations, minor community services, emergencies, and prison labour as a form

[621] ibid.
[622] ibid 684.
[623] International Labour Office, *Report of the Committee on Forced Labour*, International Labour Conference, 12th Session (ILO 1929).
[624] Goudal, 'The Question of Forced Labour Before the International Labour Conference' (n 620), 684.
[625] Patrick Bollé, 'Supervising labour standards and human rights: The case of forced labour in Myanmar (Burma)' (1998) 137 *International Labour Review* 391, 393.

of sanctions and taxes as per Article 10 of the original text.[626] This gave an exception to forced labour practiced by governments in their colonial territories.

The Convention provided a broad definition of forced labour in Article 2 as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[627] During the original negotiations in the 1920s, some governments suggested removing the original suggested phrasing "under the threat of any penalty for non-performance", but the Committee of Experts on Native Labour deemed it important. The debates focused on situations where individuals did not willingly give themselves for employment, which could therefore be classified as coerced or compelled.[628] However, this broad definition has allowed the ILO over time to build a strong normative connections with other related international instruments, such the Slavery Convention of 1926,[629] the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956,[630] the International Covenant on Civil and Political Rights (ICCPR),[631] the Convention on the Rights of the Child (CRC),[632] and more recently, the Palermo Protocol of 2000.[633] These instruments collectively reinforce the prohibition of forced labour, trafficking, and exploitation, particularly in contexts involving migration, armed conflict, or systemic discrimination. Furthermore, the definition presents three elements/criteria for the crime of forced labour, which are: i) the concept of "work or service"; ii) the involuntary nature of the work; and iii) the consequences/punishment faced by the worker victim for not obeying and conducting the work/service. These elements are distinct from each other, and all have to be met. However, it is worth noting that they

[626] International Labour Organization, *Forced Labour Convention* (n 578).
[627] ibid.
[628] Natalia Ollus, 'Regulating Forced Labour and Combating Human Trafficking: The Relevance of Historical Definitions in a Contemporary Perspective' (2015) 63 *Crime, Law and Social Change* 221, 228.
[629] League of Nations, *Slavery Convention* (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253.
[630] United Nations, *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (adopted 7 September 1956, entered into force 30 April 1957) 266 UNTS 3.
[631] *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).
[632] *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).
[633] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (n 1)

might overlap in some cases, such as when consent is given under threat and in fear of punishment.[634] Nonetheless, the Convention is important since it obliged states to abstain from forced labour practices and undertake actions to prevent such violations from occurring. Most importantly, Convention No. 29 required state parties to punish the crime of forced labour and to treat it as a criminal offence. In Article 25, the Convention states that: "the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced".[635]

In addition to treating forced labour as a criminal offence, Article 25 obliges state parties to ensure the efficiency of penalties and punishments against offenders. However, the fact that the Convention was adopted at a time when the most common form of forced labour was state-sanctioned by colonial states, makes it sometimes quite difficult for this normative structure to hold up against modern-day challenges and different contexts. Therefore, the need for new standards on forced labour became compelling.[636] Also, the need for a more inclusive definition of forced labour to reflect the modern context was urged, since legal practitioners had argued that the existing 1930's definition was difficult to apply in cases of trafficking of migrant workers.[637]

5.1.3 The Abolition of Forced Labour Convention, 1957 (No. 105)

While the primary goal of Convention No. 29 was to suppress forced labour enforced by colonial powers within indigenous populations, the instrument's scope of applicability expanded over time. It became clear in the early 1950s that some practices that were common in many countries were not covered by the scope of Convention No. 29, as the legal definition of forced labour it established and as interpreted by the ILO supervisory bodies, primarily or even exclusively addressed the use of forced labour for economic purposes. By the early 1950s, it was determined that international intervention was required since new forced labour systems were emerging as a tool of political coercion or economic development. Reflecting the Cold

[634] Max Kern and Carmen Sottas, 'The Abolition of Forced or Compulsory Labour' in International Labour Office, *Fundamental Rights at Work and International Labour Standards* (ILO 2003), 34-37
[635] International Labour Organization, *Forced Labour Convention* (n 578).
[636] Thomann, *Steps to Compliance with International Labour Standards* (n 159) 191.
[637] Ollus, 'Regulating Forced Labour and Combating Human Trafficking' (n 628) 223.

War tensions of the era, it was argued that such practices were occurring in socialist settings,[638] and had not yet been completely eradicated despite Convention No. 29's restrictions. As a result, in 1954, the ILO Governing Body (GB) placed the subject of forced labour on the International Labour Conference's agenda and decided that any future instrument building on Convention No. 29 should address activities and forms of forced labour that were not covered by the previous instrument. Subsequently, in 1957, the Abolition of Forced Labour Convention (Convention No. 105), whose provisions relied on the findings in the Report of the Ad Hoc Committee on Forced Labour,[639] was adopted.[640]

Even though Convention No. 29 forbids forced labour in the general sense, it still gave exceptions and managed to only suppress some forms. However, Convention No. 105 specifically forbid the use of forced labour and demanded its immediate elimination in the following five situations: (a) as a tool for political coercion, education, or punishment for expressing political opinions that are ideologically at odds with the status quo in the political, social, or economic sphere; (b) as a way to organise labour for economic development; (c) as a way to maintain labour discipline; (d) as a way to punish someone for taking part in a strike; and (e) as a way to discriminate on the basis of race, social class, nationality, or religion.[641]

Notably, Convention No. 105 was not intended as a reform of Convention No. 29, but rather to supplement it. Consequently, the exceptions stated in Convention No. 29, particularly those relating to prison labour, do not automatically apply to the later instrument.[642] Of particular note is Article 5(1) of Convention No. 105, which permits a member state to denounce the Convention ten years after it first comes into force. This clause has been exercised by certain states. For example, Singapore ratified the Convention in 1965, shortly after gaining independence, but denounced it in 1979,

[638] George Benedict Baldwin, *Beyond Nationalization: the Labor Problems of British Coal* (Harvard University Press 1955) cited in Thomann, *Steps to Compliance with International Labour Standards* (n 159) 195-196.
[639] International Labour Organization, *Report of the Ad Hoc Committee on Forced Labour* (International Labour Office 1955).
[640] Thomann, *Steps to Compliance with International Labour Standards* (n 159) 195-196.
[641] Odiljon Sulaymanov and Jurabek Rasulov, 'Abolition Of Forced Labour: Case Of Uzbekistan' (2021) 12 *Turkish Journal of Computer and Mathematics Education* 1078, 1079.
[642] Thomann, *Steps to Compliance with International Labour Standards* (n 159) 195-196.

during the Cold War period. By contrast, Malaysia ratified the Convention in 1964 but did not denounce it until 1990, with the denunciation taking effect in 1991, effectively aligning with the post–Cold War era. Other countries, including Myanmar, Japan, South Korea, China, and Vietnam, have never ratified the Convention.[643] The fact that such key Asian states either renounced or declined to ratify Convention No. 105 reflects not only Cold War geopolitical dynamics but also lingering concerns among some governments about the Convention's perceived interference with internal political or economic arrangements, particularly those involving state-directed labour schemes.[644] However, the Convention initiated discussions regarding a worker's economic dependency on their employer, their inability to cease working, and non-payment of wages which are still pertinent to a modern understanding of forced labour and trafficking. In fact, Convention No. 105 can be seen to have helped in raising awareness of the subtle types of control utilised in forced labour settings, even though the global economic context has changed considerably since the late 1950s.[645]

Nonetheless, the phrasing and interpretation of subsequent international instruments have culminated in an absolute prohibition on the use of forced labour. The 1998 Commission of Inquiry on forced labour in Myanmar summed up the evolving international legal position and stated that "...there exists now in international law a peremptory norm prohibiting any recourse to forced labour and that the right not to be compelled to perform forced or compulsory labour is one of the basic human rights...".[646] The Commission also noted that any person who violates this peremptory

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[643] International Labour Organization, *Abolition of Forced Labour Convention* (n 581), art 5(1); ILO NORMLEX, 'Ratifications of C105 – Abolition of Forced Labour Convention, 1957 (No. 105): Singapore' https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250 accessed 25 April 2026; ILO NORMLEX, 'Ratifications of C105 – Abolition of Forced Labour Convention, 1957 (No. 105): Malaysia' https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250 accessed 25 April 2026; ILO NORMLEX, 'Ratifications of C105 – Abolition of Forced Labour Convention, 1957 (No. 105)' https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250 accessed 25 April 2026 (see entries for Myanmar, Japan, Korea, China, and Vietnam).

[644] Alina-Paula Larion, 'Regulation of International Labour Organization on Forced Labour' (2017) 4 *European Journal of Law and Public Administration* 5, 8.

[645] Ollus, 'Regulating Forced Labour and Combating Human Trafficking' (n 628) 231.

[646] Commission of Inquiry on Forced Labour in Myanmar, *Forced Labour in Myanmar (Burma): Report of the Commission of Inquiry Appointed under Article 26 of the Constitution of the International Labour Organization to Examine the Observance by Myanmar of the Forced Labour Convention, 1930 (No 29)* (1998) para 203.

norm is guilty of a crime under international law and thus bears individual criminal responsibility.[647] More specifically, "enslavement" was defined by the International Law Commission in Article 21 its Commentary to the 1996 Draft Code of Crimes against the Peace and Security of Mankind as "establishing or maintaining over persons a status of slavery, servitude or forced labour contrary to well-established and widely recognised standards of international law." Moreover, "enslavement" is classified as a crime against humanity in Article 18(f) of the same Draft Code when committed in a widespread or systematic manner.[648]

5.1.4 The Forced Labour Recommendations

The Forced Labour Convention of 1930 was followed by two supplementary instruments the same year: the Forced Labour (Indirect Compulsion) Recommendation (No. 35) and the Forced Labour (Regulation) Recommendation (No. 36). The latter was withdrawn in 2014 by decision of the International Labour Conference at its 92nd Session.[649]

The legal status of the forced Labour Recommendations, specifically Recommendation Nos. 35 and 36, must be understood within the broader normative framework of the ILO. These instruments, like other ILO recommendations, do not bind member states in the same manner as ILO conventions. Instead, they serve as non-binding guidance, providing policy advice and interpretive detail on the implementation of binding treaty obligations. The goal of such recommendations is to elaborate and support the objectives of corresponding conventions, in this case Convention No. 29, by guiding governments in translating those standards into domestic law and practice. While not legally binding, these recommendations can have a substantial normative impact. The ILO Constitution requires member states to convey adopted recommendations to competent national authorities for possible action. The ILO's supervisory bodies, namely the CEACR, often rely on recommendations such as No. 35 to interpret and examine compliance with ratified

[647] ibid.
[648] International Law Commission, *Draft Code of Crimes against the Peace and Security of Mankind with commentaries* (1996) UN Doc A/51/10, arts 18(f), 21.
[649] International Labour Organization, *Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35)* (adopted 28 June 1930) ILO R35; *Forced Labour (Regulation) Recommendation, 1930 (No. 36)* (adopted 28 June 1930, withdrawn 2014) ILO R36; International Labour Conference, *Provisional Record No. 19, ILC 92nd Session* (2014) para 22.

conventions. As such, they function as authoritative guidance, shaping legislative reform and influencing the development of customary international labour standards.[650]

Recommendation No. 35, which remains in effect, advised governments to avoid indirect methods of increasing economic pressure on populations to seek wage-earning employment. Examples provided include: (a) imposing taxes on populations that compel them to seek wage-earning employment with private enterprises; (b) imposing restrictions on land possession, occupation, or use, making independent cultivation difficult; (c) broadly interpreting vagrancy laws; and (d) adopting pass laws that advantage some workers over others.[651]

On the other hand, the Forced Labour (Regulation) Recommendation established a number of additional restrictive provisions on government-sanctioned forced labour.[652] These provisions included the suggestion that laws should be publicised, even in native languages; that "recourse to forced or compulsory labour should be regulated so as not to imperil the community's food supply",[653] and that, in the event that recourse to forced labour is needed, all reasonable steps should be taken to ensure that the imposition of such labour in no way leads indirectly to the illegal employment of women and children for forced or compulsory labour.[654] When this Recommendation was withdrawn in 2014, no direct replacement was issued. However, its substantive concerns were later addressed through the adoption of the 2014 Protocol to the Forced Labour Convention and its accompanying Recommendation No. 203. These instruments modernised the ILO's approach by focusing on prevention, victim protection, and access to remedies, while offering updated guidance on safeguarding against abuses such as the exploitation of women

[650] International Labour Office, *Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35)* (adopted 28 June 1930) ILO R35; International Labour Office, *Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR): General Survey on the Fundamental Conventions concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization* (2012) ILC.101/III/1B, paras 27–30.
[651] International Labour Office, *Forced Labour (Indirect Compulsion) Recommendation* (n 650).
[652] International Labour Office, *Forced Labour (Regulation) Recommendation, 1930 (No. 36)* (adopted 28 June 1930, withdrawn 2014) ILO R36.
[653] ibid II.
[654] ibid III.

and children. In this way, the normative content of Recommendation No. 36 was effectively integrated into a broader and more contemporary legal framework.[655]

However, Recommendation No. 35 is of greater significance as argued by Christopher Roberts, since the Recommendation's provisions point the way towards a more progressive and extensive interpretation of the scope of the boundaries of forced labour, with the exception of its inclusion of the old-fashioned term "vagrancy".[656] Although adopted in 1930 alongside Convention No. 29, this Recommendation was not withdrawn in 2014, unlike Recommendation No. 36, and is still formally in force. Despite its age, Recommendation No. 35 remains as an important interpretive tool within the ILO's supervisory practice. Its emphasis on indirect forms of economic coercion, such as forced migration for work due to regressive tax schemes, land dispossession, or discriminatory labour pass systems, anticipates many of the structural concerns addressed in modern instruments like the 2014 Protocol to the Forced Labour Convention and Recommendation No. 203.[657]

Roberts contends that the Recommendation laid out essential parameters for rethinking the legal and social conditions required to prevent forced labour, especially in post-colonial contexts.[658] Its enduring relevance stems from its capacity to enable a larger conceptualisation of coercion beyond overt physical compulsion, helping to shape contemporary understandings of structural exploitation, particularly in informal labour economies. Today, while newer instruments provide updated guidance, Recommendation No. 35 remains embedded in the normative landscape of the ILO. It works with Convention No. 29 and supplements modern instruments by reinforcing

[655] International Labour Conference, *Protocol of 2014 to the Forced Labour Convention, 1930 (P029)* (adopted 11 June 2014, entered into force 9 November 2016); International Labour Office, *Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)* (adopted 11 June 2014).
[656] Christopher M. Roberts, 'The Historical Development of the Concept of Forced Labor and the Open Boundaries of its Definition Today' (2024) 54 *New Mexico Law Review* 225, 243.
[657] International Labour Office, *Eradication of Forced Labour: General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)* (Report of the Committee of Experts on the Application of Conventions and Recommendations, 2007) ILC.96-III(1B); International Labour Office, *Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)* (adopted 11 June 2014); International Labour Conference, *Protocol of 2014 to the Forced Labour Convention, 1930 (P029)* (adopted 11 June 2014, entered into force 9 November 2016).
[658] Roberts, 'The Historical Development of the Concept of Forced Labor and the Open Boundaries of its Definition Today' (n 656) 250.

the need to address socio-economic policies that may lead to de facto compulsion in labour relations.[659]

5.1.5 Protocol of 2014 to the Forced Labour Convention, 1930 and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)

The Protocol to Convention No. 29/1930 on Forced Labour was adopted by the International Labour Conference in 2014 to resolve various gaps in the implementation of the Convention's provisions. As a result, the Protocol enlarged the responsibilities of states and governments. Larion describes the Protocol as unique since it does not provide a "one-size-fits-all" strategy, but instead allows states and governments the responsibility to establish their own plans to abolish forced labour based on their particular situation.[660] The Protocol "provide[s] non-binding practical guidance in the areas of prevention, protection of victims and ensuring their access to justice and remedies, enforcement and international cooperation." [661] In addition, the Protocol repealed the Convention's expired transitional provisions which allowed member states, especially colonial powers at the time, to delay immediate implementation of certain Convention obligations due to "practical difficulties," particularly in relation to abolishing forced labour used for public purposes such as infrastructure or military service.[662] These provisions effectively acknowledged the colonial context in which forced labour persisted and permitted gradual abolition rather than immediate prohibition. They reflected a political compromise aimed at achieving consensus among colonial powers that still heavily relied on forced or "native" labour systems.[663]

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[659] International Labour Office, *Eradication of Forced Labour: General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)* (Report of the Committee of Experts on the Application of Conventions and Recommendations, 2007) ILC.96/III/1B, paras 73–80; see also International Labour Office, *Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)* (adopted 11 June 2014); and International Labour Conference, *Protocol of 2014 to the Forced Labour Convention, 1930 (P029)* (adopted 11 June 2014, entered into force 9 November 2016).

[660] Larion, 'Regulation of International Labour Organization on Forced Labour' (n 644) 9.

[661] ILO, *Strengthening the Global Fight Against All Forms of Forced Labour: The Protocol to the Forced Labour Convention* (2014), 2.

[662] International Labour Organization, *Forced Labour Convention* (n 578) arts 1(2)–1(3); International Labour Conference, *Protocol of 2014 to the Forced Labour Convention, 1930 (P029)* (adopted 11 June 2014, entered into force 9 November 2016); Roberts, 'The Historical Development of the Concept of Forced Labor and the Open Boundaries of its Definition Today' (n 656) 241.

[663] International Labour Office, *Eradication of Forced Labour: General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)* (Report of the Committee of Experts on the Application of Conventions and Recommendations, 2007)

Furthermore, the adoption of the Protocol and Recommendation No. 203 is important because it represents a major shift in perspective on how to combat extreme forms of exploitation, including forced labour. Rather than focusing largely on criminalisation, the Protocol and Recommendation No. 203 prioritise prevention, protection, and remedies. These are not novel ideas, but their specific inclusion and connection to the Convention's fundamental commitment to prohibit all forms of forced labour reflects an understanding that more comprehensive remedies are required. For example, Article 2(3) of the Protocol calls on nations to implement preventive measures to enhance due diligence by the public and private sectors in responding to the possibility of forced labour.[664] Provisions in the instruments addressing the role of business and labour administration are also noteworthy for broadening the range of key actors with responsibility for prevention measures beyond criminal law enforcement, as are provisions highlighting the process of law and policymaking through a requirement that national policies be produced in consultation with employers and workers.[665]

5.1.6 Worst Forms of Child Labour Convention, 1999 (Convention No. 182)

Convention No. 182, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, was adopted by a substantial majority at the International Labour Conference on June 17, 1999. The Convention defines a child as someone under the age of 18. It is worth mentioning that the Convention is not the ILO's first effort to prohibit harmful types of child labour. The ILO Minimum Age Convention (No. 138) was adopted in 1973 with the goal of eliminating various forms of child labour based on age and category,[666] with progressive implementation dependent on member states' development levels. Initially, however, its uptake was limited: in the first 26 years following adoption, it received only 72 ratifications.[667] This slow rate is largely attributed to the Convention's stringent requirements, particularly the obligation to align the minimum

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ILC.96-III/1B, para 10; and International Labour Office, *Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)* (adopted 11 June 2014)

[664] International Labour Organization, *Protocol of 2014 to the Forced Labour Convention No. 29* (adopted 11 June 2014, entered into force 9 November 2016) art 2(3).

[665] Andrees, 'Defending Rights, Securing Justice' (n 458) 350.

[666] International Labour Organization, *Minimum Age Convention, 1973 (No. 138)* (adopted 26 June 1973, entered into force 19 June 1976) 1015 UNTS 297.

[667] Michael J Dennis, 'The ILO Convention on the Worst forms of Child Labor' (1999) 93 *American Journal of International Law* 943, 943.

age for employment with the completion of compulsory education. For many developing states, where child labour contributed significantly to household and national economies, such a standard proved difficult to implement.[668] Although the Convention allows for progressive implementation, many countries faced significant challenges in meeting its provisions due to limited resources, inadequate infrastructure, and reliance on informal labour systems.[669]

Cultural norms and traditional reliance on child labour further impeded the adoption of the Convention.[670] The absence of robust enforcement mechanisms also discouraged ratification, as governments hesitated to commit without the capacity to ensure compliance. Furthermore, political resistance to external standards and prioritisation of other domestic issues contributed to the Convention's low adoption rate in the beginning.[671]

By mid-2025, however, Convention No. 138 had been ratified by approximately 176 states, reflecting a significant shift in global political will and technical capacity.[672] As of 2025, Convention No. 138 remains in force, widely ratified, and recognised as one of the ILO's eight fundamental Conventions under the 1998 Declaration on Fundamental Principles and Rights at Work. It sets the minimum age for admission to employment or work, generally at 15 years (or 14 in developing countries under certain conditions), and higher minimum age for hazardous work (18 years).[673]

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[668] OECD, *Child Labour: Causes, Consequences and Policies to Tackle It* (OECD 2019), 10-11 https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/11/child-labour_07b38f93/f6883e26-en.pdf accessed 18 April 2026.

[669] Christophe Grootaert and Ravi Kanbur, *Child Labor: A Review*, World Bank Policy Research Working Paper No. 1464 (1995), 4.

[670] Kaushik Basu and Pham Hoang Van, 'The Economics of Child Labor' (1998) 88(3) *The American Economic Review* 412, 422.

[671] ILO, Child Labour and the 2030 Agenda for Sustainable Development: A Guide for Action (International Labour Organization 2017); Roberta D. Rehner, 'The Political Economy of Child Labour and the Globalization of the International Labour Organization' (2005) 56(2) *International Studies Quarterly* 247.

[672] ILO, 'Ratifications of C138 – Minimum Age Convention, 1973 (No 138)' (NORMLEX, 2025) https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283 accessed 25 April 2026.

[673] International Labour Organization, *Minimum Age Convention* (n 666); International Labour Organization, *Declaration on Fundamental Principles and Rights at Work* (n 488); see also ILO NORMLEX, 'Ratifications of C138 – Minimum Age Convention, 1973' https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283 accessed 25 April 2026.

However, Convention No. 182, which came into force in 2000, prohibits four types of child labour that no government should tolerate: (1) modern slavery, debt bondage, and forced recruitment for armed conflict; (2) sex work, including pornography and prostitution; (3) illegal activities, such as drug trafficking; and (4) any other work that may harm children's health, safety, or morals. [674] The ILO explains that the first three forms are "unconditional worst forms of child labour", meaning that they are illegal in their essence regardless of the working conditions, and that improving such conditions will never make them legal. Whereas the fourth form namely, hazardous work, is considered as one of the worst forms of child labour under certain conditions. The conditions of this type of job can be enhanced by changing the circumstances under which it is performed. An example is a child working in a workplace without safety guards. This work may pose a risk to the child's health or safety. By adding a protective device to the machine, the labour becomes less or non-hazardous and no longer falls under the 'worst types of child labour' as described in Article 3.[675]

However, Smolin criticises this classification. He argues that certain practices listed in Article 3, such as child prostitution and child pornography, while undoubtedly harmful, are not traditionally understood as labour issues but rather as criminal or vice offences.[676] This, he argues, throws an unexpected strain on the child labour movement, which must now deal with concerns traditionally addressed by criminal justice systems rather than by labour standards enforcement. According to Smolin, law enforcement authorities often struggle with vice crimes because they tend to involve hidden, informal economies, organised criminal networks, and victims who are often unable or unwilling to come forward.[677] As a result, the child labour movement is tasked with combatting forms of exploitation that go well beyond traditional labour law violations, such as regulating working conditions or minimum wage, and instead involve addressing systemic criminality and transnational abuse. He suggests that this expansion of scope, while morally compelling, risks diluting the movement's concentration and placing it in an area where effective enforcement mechanisms are

[674] Dennis, 'The ILO Convention on the Worst forms of Child Labor' (n 667) 943.
[675] RA Mavunga, 'A Critical Assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999' (2013) 16(5) *Potchefstroom Electronic Law Journal*, 145.
[676] David M. Smolin, 'Strategic Choices in the International Campaign Against Child Labor' (2000) 22 *Human Rights Quarterly* 942, 961.
[677] ibid 963.

already proven to be inadequate.[678] Furthermore, Estacio and Marks raise concerns about potential conflicts of interest in the execution of Convention No. 182. They criticise the involvement of companies that may have previously employed children in hazardous conditions in the development of monitoring systems. Such companies may have a vested interest in minimising or concealing violations, thereby undermining the integrity of enforcement efforts.[679]

One of the major issues debated during the adoption of Convention No. 182 was the involvement of children in armed groups and their participation in armed conflicts. Several representatives, including workers and African government representatives, advocated that the Convention should outright prohibit the employment of children in all military activities. They contended that activities like military training and participation in armed conflict inevitably endanger children's health and safety and hence should be classified among the worst types of child labour. Other representatives cited the ILO's limited experience with military concerns, arguing that members should exercise prudence and ensure compliance with the 1949 Geneva Conventions,[680] which normally apply to children under the age of fifteen. The United States and other Western governments proposed including "forced or compulsory recruitment of children for use in armed conflict" in the final phrase, which was eventually adopted. The new provision significantly improved existing international standards. In particular, Article 77 of Protocol I to the 1949 Geneva Conventions,[681] and Article 38(2) of the Convention on the Rights of the Child which require nations

[678] ibid 964-965.
[679] Emee Vida Estacio and David F. Marks, 'Child Labour and the International Labour Organization's Convention 182: a Critical Perspective' (2005) 10 *Journal of Health Psychology* 475, 482.
[680] *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 (First Geneva Convention); *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 (Second Geneva Convention); *Geneva Convention relative to the Treatment of Prisoners of War* (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (Third Geneva Convention); *Geneva Convention relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Fourth Geneva Convention).
[681] *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts* (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) art 77.

to take "all feasible measures" to prevent children under 15 from directly participating in hostilities.[682]

Convention No. 182, by raising the age limit for forced or compulsory recruitment for armed conflict to eighteen, can help states address the root cause of the issue: young children are often forced to join militias or paramilitary groups at gunpoint or through kidnapping.[683] On the other hand, one could argue that the mention of child labour in armed conflict was rather inadequate. Critics suggest that military regimes may use the voluntary enlistment loophole to achieve international legitimacy.[684] This loophole relates to the fact that Convention No. 182 does not prohibit voluntary recruitment of children under the age of 18, but only concerns forced or compulsory recruitment. According to Mavunga, children as young as 15 may still be recruited voluntarily, a gap which can be exploited by governments and armed groups to justify the use of child soldiers under the guise of consent.[685]

Furthermore, ILO Convention No. 182 requires ratifying states to prioritise eliminating the worst forms of child labour and create suitable monitoring systems to ensure compliance with the Convention. Ratifying States must take time-bound prevention measures, support the removal and rehabilitation of children from child labour, provide access to free education or vocational training, identify children at risk, and consider the unique circumstances of girls. As one of its novel aspects, the Convention calls for international collaboration or aid in order to put its provisions into action, such as support for social and economic development, poverty eradication, and education. This can be interpreted as resonating with principles of international cooperation and solidarity found in the UN Charter.[686] Thus, it allows for broad consultations among governments as well as among the ILO's "social partners" – governments, workers, and employers.[687]

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[682] *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 38(2).
[683] Dennis, 'The ILO Convention on the Worst forms of Child Labor' (n 667) 394.
[684] Mavunga, 'A critical assessment of the Minimum Age Convention' (n 675) 147.
[685] ibid.
[686] *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 1(3).
[687] Yoshie Noguchi, 'ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child' (2002) 10 *The International Journal of Children's Rights* 355, 356.

5.1.7 Other Relevant Instruments: The Palermo Protocol

The preamble of the 2014 Protocol to the Forced Labour Convention references several key international instruments,[688] including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), commonly known as the Palermo Protocol. As discussed in the section titled "Defining Organised Crime" in Chapter 3, the Palermo Protocol is a treaty supplementing the UN Convention against Transnational Organized Crime, and it plays a significant role in the international legal framework for combating human trafficking and related forms of forced labour.[689] Exploitation, as the most critical element to the definition of trafficking, is defined as the sexual exploitation, forced labour, slavery-like services, servitude, or the removal of organs.[690]

Specifically in the context of forced labour, the Palermo Protocol is based on ILO Conventions Nos. 29 and 105 so consequently the Protocol gives the ILO an almost exclusive role to tackle forced labour. However, according to the ILO's Guidance for Legislation and Law Enforcement on Human Trafficking and Forced Labour Exploitation, the definition of trafficking set out in the Protocol raises some challenges in terms of producing a legal definition of the crime in practice. While the Protocol does provide a formal legal definition of trafficking, including for the purpose of forced labour, the issue raised here is not that there is no definition, but rather that applying that terminology consistently and effectively, particularly in national criminal law, remains challenging. The term "recruitment", for instance, makes it difficult to distinguish exploitative acts from commercial activities. Therefore, legislators must consider that the early stages of a recruitment may be voluntary, but coercive techniques may emerge later to keep individuals exploited. Apart from defining and prosecuting trafficking activities, the Palermo Protocol places an important emphasis on victim protection, as well as preventative and cooperation measures against trafficking. Even though Article 5, paragraph 1 of the Protocol

[688] International Labour Organization, *Protocol of 2014 to the Forced Labour Convention No. 29* (n 664).
[689] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (n 1).
[690] International Labour Organization, *Protocol of 2014 to the Forced Labour Convention No. 29* (n 664).

demands the criminalisation of human trafficking, the ILO acknowledges that it is difficult to give a model criminal code on forced labour.[691]

5.1.8 Cooperation: The work with Civil Society

The ILO treaties prohibiting forced labour and child labour are practically universally ratified. While only ratifying states are subject to formal legal reporting obligations under these instruments, all ILO member states are required to report on their efforts to uphold the core principles enshrined in these conventions under the 1998 Declaration on Fundamental Principles and Rights at Work, regardless of their ratification status.[692] In addition, the ILO's complaint procedures can be applied in cases of non-compliance. The ILO's supervisory system, in theory, is effective not only through legal obligation, but also because it combines normative standard-setting with development cooperation, dialogue, and persuasive engagement. While this approach may at times seem divorced from pressing issues on the ground, ILO standards frequently serve as essential reference points for states, employers, workers, and civil society actors. In doing so, they are expected to contribute to the broader transnational legal process, whereby international norms are internalised through repeated interaction, interpretation, and socialisation.[693] It is thus expected that the ILO's framework, by fostering such interaction, should complement more formal enforcement mechanisms in international law, including those linked to criminal prosecution, and lay the normative groundwork for long-term behavioural change.[694]

However, the ILO may require some external assistance before it can demonstrate its effectiveness. Workers' and employers' organisations, which frequently cooperate with civil society, play an important role in promoting global awareness and mobilising action.[695] In fact, when they take coordinated action, as they frequently do on the issue of forced labour, it becomes much harder for governments to remain mute. And while the supervisory system acts as a catalyst for change, the ILO's presence on

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[691] ILO- Special Action Programme to Combat Forced Labour, *Human Trafficking and Forced Labour Exploitation- Guidelines for Legislation and Law Enforcement* (2005), 9-13.
[692] International Labour Organization, *Declaration on Fundamental Principles and Rights at Work* (n 488); see also ILO, *Follow-up to the Declaration* (2022) https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/WCMS_716641/lang--en/index.htm
[693] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 203–204.
[694] Andrees, 'Defending Rights, Securing Justice' (n 458) 361.
[695] International Labour Office, *A Global Alliance Against Forced Labour* (n 602) 82.

the ground can be even more effective. Deeply ingrained traditions and socio-economic structures require years, if not decades, to change, and political or economic interests must align with the goal of eradicating forced labour.[696] Therefore, implementing international and national standards requires interventions on the ground, such as community-based empowerment programmes, strengthening institutions and building the capacity of governments and other actors, facilitating the exchange of good practices, and maintaining positive and negative incentives to stimulate change.[697]

Non-governmental organisations (NGOs) participate in the ILO at two levels: policymaking and operations. However, as mentioned in the previous chapter,[698] it is important to note that NGOs' access to policymaking, namely the International Labour Conference and supervisory procedures, is limited and marginalised. In the International Labour Conference and other meetings, a designation policy divides NGOs into four categories: the first two consist solely of international or regional employers' and workers' organisations that have been awarded general or regional consultative status. The third category is the so-called special list, which includes international NGOs other than employers' and workers' organisations that are interested in the ILO's work, such as Amnesty International, Human Rights Watch, the International Commission of Jurists (ICJ), and the International Federation for Human Rights (FIDH).[699] Being on the special list allows NGOs to be invited to the annual International Labour Conference, where they can make statements and present documents but do not have voting rights. The fourth category is called ad-hoc arrangements, which allows international NGOs to attend specific meetings whose topics fall under the interests and scope work of these organisations, and thus arrangements for their attendance can take place on a case-by-case basis.[700]

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[696] Andrees, 'Defending Rights, Securing Justice' (n 458) 361.
[697] International Labour Office, *A Global Alliance Against Forced Labour* (n 602) 82.
[698] See section 4.3.4 'The Effectiveness of Reporting' in Chapter 4 above.
[699] ILO, *Special List of Non-Governmental International Organisations* (ILO) https://www.ilo.org/partnering-development/civil-society-ilo-partnership/relations-ngos/ilo-special-list-ngos accessed 26 April 2026.
[700] International Labour Conference, 'International NGOs at the International Labour Conference' (2012) https://www.ilo.org/media/38811/download accessed 21 March 2026.

It can be said that the function of NGOs in the ILO is limited to lobbying at the policy-making level, with no possibility of influencing the agenda. The sole major exception to NGOs' ability to exert influence was the negotiation and adoption of the Indigenous and Tribal Peoples Convention No. 169 in 1989. [701] In this case, international and regional indigenous organisations and NGOs acted in an unusually influential role in forming the Convention's text and normative content. Their contribution was facilitated by the ILO's prior engagement with indigenous rights since the 1950s, fused with growing international recognition of indigenous peoples as legal and political actors in their own right. These NGOs and grassroots coalitions provided expert testimony, submitted written proposals, and were regularly consulted by ILO officials and state delegations throughout the revision process of the earlier Convention No. 107 (1957).[702]

This episode clearly demonstrates transnational legal process in action. NGOs engaged in norm advocacy through sustained involvement with the ILO and other national delegations, resulting in the interpretation and ultimate internalisation of enhanced protections for indigenous rights in international labour law. Their impact on the negotiation of Convention No. 169 illustrates how non-state actors, when effectively integrated into institutional processes, can contribute meaningfully to the shaping of international norms and their eventual embedding in domestic legal systems through iterative engagement.[703]

However, such influence is the exception rather than the rule. At the practical level, the situation is more nuanced, with NGOs frequently encountering institutional and political constraints when formalising their participation in the ILO. Nonetheless, in areas such as the informal economy, NGOs have grown increasingly involved in organising and indirectly representing informal labourers, particularly where trade unions have limited reach.[704] Yet this growing presence has sometimes provoked pushback, especially from organisations such as the International Confederation of

[701] ILO, *Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169)* (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383.
[702] Lee Swepston, 'Indigenous and Tribal Peoples and International Law: Recent Developments' (1989) 30(2) *Current Anthropology* 259, 259-260.
[703] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 203–204.
[704] Bernhard Ebbinghaus, 'Globalization and trade unions: a comparative-historical examination of the convergence thesis' (2002) 55 *Économie Appliquée* 121, 24.

Free Trade Unions (ICFTU), which see greater NGO participation as a potential challenge to the traditional tripartite structure of the ILO.[705] While NGOs highlight the unique vulnerabilities of informal labourers, many of whom are outside trade union structures, some trade unions are concerned of weakening their institutional influence. This tension underscores the uneven and contested nature of the transnational legal process within the ILO: although NGOs can facilitate internalisation of norms in specific cases, their broader function is nonetheless shaped by institutional boundaries and power dynamics within the tripartite system. Worthy of note that this dynamic has shifted in recent years. Growing recognition of the sheer scale and persistence of informal employment, especially in the Global South, has led to more constructive alliances. The adoption of the ILO's Recommendation No. 204 (2015) on the Transition from the Informal to the Formal Economy provided a normative turning point. This instrument not only acknowledged the informal economy as a legitimate space for rights-based intervention but also encouraged inclusive dialogue involving civil society organisations beyond traditional social partners.[706]

Furthermore, in the absence of functioning state institutions, local communities and civil society actors often play a central role in responding to conflict-related challenges. These actors, which may include informal networks, grassroots initiatives, and, in some cases, established NGOs, contribute to addressing urgent needs such as access to food, shelter, protection, and communication.[707] Their intimate knowledge of the local context and their embeddedness within affected populations allow them to act swiftly and with a degree of trust that external organisations may lack. While their effectiveness varies depending on the severity of the conflict and the operational constraints, such responses can be critical in contexts where international actors are limited or absent.

In Libya and Syria, for instance, much of the immediate assistance and early documentation of human rights violations came not from international NGOs, but

[705] Dave Spooner, 'Trade Unions and NGOs: the Need for Cooperation' (2004) 14 *Development in Practice* 19, 30.
[706] ILO, *Recommendation concerning the Transition from the Informal to the Formal Economy (No. 204)* (adopted 12 June 2015) ILO R204.
[707] Eleni Karampini, 'The Role of NGOs in Conflict Management' (2023) 2 *International Journal of Non-Profit Sector Empowerment* e34182, 3.

from local volunteer groups, community leaders, and informal civil society networks. These actors help monitor conflict dynamics, support grassroots dialogue, and promote early forms of peacebuilding. Although not all of these initiatives qualify as formal NGOs, their contribution highlights the importance of local agency in contexts of institutional collapse.[708]

At the same time, established NGOs, both local and international, have often played a complementary role by documenting human rights violations, offering technical expertise, and providing evidence to international mechanisms. In such contexts, NGO engagement may partially compensate for the failures of governance and contribute meaningfully to post-conflict reconstruction and political stabilisation.[709]

A closely linked dimension of NGO activism in conflict settings involves engagement with decision-makers at both the national and international levels. In some instances, well-established human rights NGOs have successfully mobilised action by presenting rigorously documented evidence of violations to international bodies, including UN special procedures and treaty-monitoring mechanisms. For example, NGOs working on Syria and Libya have played a role in shaping the agendas of the UN Human Rights Council by submitting shadow reports, providing witness testimonies, and assisting in mandate formation for investigative missions.[710] However, the effectiveness of such engagement is not uniform. While certain NGOs possess the expertise, networks, resources, and credibility to influence policymaking, others may lack sufficient capacity, coordination, or methodological rigour. Particularly in conflict zones, where access is limited and information is fragmented, the quality of documentation and the ability to communicate findings persuasively can vary significantly. Therefore, while NGOs can act as vital intermediaries between affected populations and international

[708] Syrian Justice and Accountability Centre, 'Documenting Violations' (SJAC, 2024) https://syriaaccountability.org accessed 26 April 2026; United Nations Support Mission in Libya (UNSMIL), *UNSMIL Civil Society Report 2023* (UN 2024) https://unsmil.unmissions.org accessed 26 March 2026.
[709] Physicians for Human Rights, *Syria* (PHR) https://phr.org/countries/syria/ accessed 26 April 2026; International Development Law Organization, *Somalia* (IDLO) https://www.idlo.int/where-we-work/sub-saharan-africa/somalia accessed 26 March 2026; Henry F Carey and Oliver P Richmond, *Mitigating conflict: the role of NGOs* (Routledge 2004), 16.
[710] OHCHR, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* (A/HRC/49/73, 2022); Human Rights Watch, *Libya: Apparent War Crimes in Tripoli* (2019) https://www.hrw.org/news/2020/06/16/libya-apparent-war-crimes-tripoli accessed 26 April 2026.

institutions, their impact is shaped by contextual constraints, institutional receptiveness, and the quality of their advocacy strategies.[711]

Nonetheless, it is important for the ILO to work with NGOs in conflict settings to ensure the effectiveness of its development and human rights advocacy programmes, particularly in relation to forced labour.[712] Such collaboration should reflect the broader localisation agenda within international law and humanitarian governance,[713] which emphasises a strategic shift toward empowering local NGOs by recognising their contextual knowledge, cultural fluency, and sustained community presence.[714] Unlike international NGOs, which tend to dominate funding and decision-making structures, local NGOs play a crucial role in promoting the legitimacy, responsiveness, and sustainability of interventions.[715]

In light of the aforementioned, there are a number of explanations for the rise in non-state actors' involvement in policymaking in the field of forced labour. However, the social partners, i.e., trade unions and employers, will most likely continue to oppose such a development. Indeed, the sheer presence of NGOs on the ILO's operational level has already sparked talks about an expanding tripartite situation. According to Spooner, the fall in trade union membership, typical low levels of organisation in specialised industries, and an increasingly broad range of NGOs with common issues provide at least the theoretical prospect of increased cooperation between trade unions and NGOs.[716] In recent years, trade unions and NGOs have started to work more closely together, especially on shared issues like workers' rights, social justice, and sustainable development. Although they have different priorities and ways of working, growing global challenges have encouraged stronger cooperation. This partnership

[711] Henry F. Carey and Oliver P. Richmond, *Mitigating conflict: the role of NGOs* (Routledge 2004), 76.
[712] ILO, *The ILO's Role in Conflict and Disaster Settings* (ILO 2010), 52, 63https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_emp/documents/instructionalmaterial/wcms_141275~3.pdf accessed 4 March 2026.
[713] United Nations Office for the Coordination of Humanitarian Affairs, *Localization* (OCHA 2024) https://www.unocha.org/localization accessed 4 April 2026.
[714] ILO, *Eradicating Forced Labour: Partnering Strategically with the ILO* (ILO 2023) https://www.ilo.org/media/480601/download accessed 4 March 2026.
[715] HPN Network Paper 83, *Localising Humanitarianism: Improving Effectiveness through Inclusive Action* (ODI 2018) https://odi.org/en/publications/localising-humanitarianism-improving-effectiveness-through-inclusive-action/ accessed 26 April 2026.
[716] Spooner, 'Trade Unions and NGOs: the Need for Cooperation' (n 705), 21.

illustrates how both groups are adapting to the shifting world of work and the need for broader social advocacy.[717]

5.2 Conflict-Specific Policies

5.2.1 Overview of Trafficking in Conflict Settings

An important thematic paper by the United Nations Office on Drugs and Crime (UNODC) investigates the impact of armed conflict on counter-trafficking efforts.[718] It emphasises how conflict not only increases individuals' vulnerability to human trafficking but also fosters an enabling environment in which exploitative practices thrive.[719] Armed groups often capitalise on these conditions to advance their control through corruption, violence, and terror, and trafficking becomes a means of maintaining operations.[720] In conflict settings, organised trafficking structures can be used to finance armed activities, to smuggle people across borders, or to forcibly recruit individuals, including children, into armed groups.[721]

In this respect, forced recruitment into armed groups, especially during armed conflict, has been recognised as a form of forced labour under international labour law. ILO Convention No. 29 defines forced labour as "*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*."[722] This wide definition encompasses coercive conscription and other non-consensual service in armed operations. The ILO has confirmed that the recruitment of children under the age of eighteen into armed forces or armed groups constitutes a worst form of child labour under Convention No. 182[723]

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[717] ILO, *How Are Trade Unions Adapting to Changes in the World of Work?* (ILO 2023) https://www.ilo.org/resource/news/how-are-trade-unions-adapting-changes-world-work accessed 4 April 2026.
[718] United Nations Office on Drugs and Crime (UNODC), *Countering Trafficking in Persons in Conflict Situations* (2018).
[719] ibid.
[720] Nazli Avdan and Mariya Omelicheva, 'Human Trafficking-Terrorism Nexus: When Violent Non-State Actors Engage in the Modern-Day Slavery' (2021) 65 Journal of Conflict Resolution 1576, 1581.
[721] ibid.
[722] ILO, *Convention concerning Forced or Compulsory Labour (No. 29)* (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55, art 2(1).
[723] ILO, *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)* (adopted 17 June 1999, entered into force 19 November 2000) 2133 UNTS 161, art 3(a); CEACR, *Observation adopted 2008, published 98th ILC session (2009), Worst Forms of Child Labour Convention, 1999 (No. 182) – Central African Republic (ratification: 2000)* https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000%3A13100%3A0%3A%3ANO%3A13100%3AP1310

and may also qualify as forced labour under Convention No. 29.[724] Combat tasks, logistical support, intelligence gathering, and similar roles are all considered "work or service" when imposed under coercion. Framing forced recruitment as forced labour allows a clearer legal and institutional response by the ILO and encourages the application of supervisory mechanisms in conflict contexts.

Conflict-related exploitation can take many forms. Among the most common are the sexual exploitation of women and girls by armed or terrorist groups, the exploitation of children during hostilities, the removal of organs to treat wounded fighters or finance military campaigns, and the use of slavery as a tactic of terror, particularly against ethnic minorities. [725] Children are especially vulnerable in such settings and are often targeted for forced recruitment. They may be forced to plant explosives, carry out suicide attacks, or serve as human shields. The International Criminal Court's judgment in the *Dominic Ongwen* case exemplifies this vulnerability. The Court acknowledged that Ongwen was abducted as a child and forced to join the Lord's Resistance Army (LRA), where he himself was exploited before becoming an active participant in war crimes.[726] The case is a vivid example of how conflict-induced displacement exposes children to forced recruitment and forced labour, emphasising the necessity to view such practices not only through the lens of international criminal law but also through international labour law frameworks.

People forced to flee conflict or who are displaced are particularly vulnerable to forced labour. Furthermore, a report on global trafficking by UNODC from 2016, in the section on tackling the role of conflicts in the proliferation of human trafficking, highlights the impact of armed conflicts on trafficking due to the high state of vulnerability that conflicts cause to victims escaping dangerous areas in search for safety and better life conditions.[727] Humanitarian crises caused by conflict leave

0_COMMENT_ID%2CP13100_COUNTRY_ID%3A2297368%2C103381&utm_source=chatgpt.com accessed 26 March 2026.

[724] ILO, *Convention concerning Forced or Compulsory Labour (No. 29)* (n 722).

[725] UNODC, *Countering Trafficking in Persons in Conflict Situations* (n 107), 11.

[726] International Criminal Court, *Prosecutor v Dominic Ongwen: Summary of the Appeals Judgment* (15 December 2022) https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-15-ongwen-judgment-summary-eng.pdf accessed 4 April 2026.

[727] United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2016* (UNODC 2016) 57–61.

people with disparate needs to flee their homes even through illegal migration routes.[728] The UNODC report bases its information on a report published on the effects of the conflict on trafficking in persons in the Syrian Arab Republic and neighbouring countries by the International Centre for Migration Policy Development (ICMPD) in 2015, which focused on the increasing numbers of Syrian victims. According to that study, cases of trafficking increased from the eruption of war in 2011, as well as noting that a large number of cases remained unreported.[729] In conflict contexts, trafficking often begins either within the conflict zone or in transit or host countries, where traffickers exploit the heightened vulnerability of displaced persons, including asylum seekers and migrants, who may not yet be legally recognised as refugees under international law. Traffickers take advantage of the vulnerabilities that stem from displacement. However, it is worth noting that victims are not necessarily trafficked at the hands of highly organised criminal networks, but rather by family members, acquaintances, and neighbours.[730] While in many cases the purpose of trafficking, such as forced labour or sexual exploitation, is realised in the final destination country, there is growing evidence that trafficking processes often begin in transit countries, where traffickers first recruit or gain control over victims.[731] In conflict-affected transit contexts such as Libya, however, both the recruitment and the exploitation frequently occur within the same territory.[732]

Even where conflict does not directly endanger life, it often contributes to the erosion of livelihoods and the deterioration of social protections, disproportionately exposing vulnerable groups, especially women and girls, to economic hardship, discrimination, and gender-based violence.[733] Most importantly, traffickers exploit conflict settings for their interest in trafficking.[734] Traffickers in conflict zones are often immune due

[728] Susan Martin, Sanjula Weerasinghe and Abbie Taylor, 'Crisis migration' (2013) 20 *Brown Journal of World Affairs* 123, 124.
[729] International Centre for Migration Policy Development, *Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons - A Study of Syria, Turkey, Lebanon, Jordan and Iraq* (ICMPD 2015), 10, 71-85.
[730] See section 3.3 Transnational Organised Crime in Chapter 3.
[731] UNODC, *Global Report on Trafficking in Persons*; See also: Danielle Flanagan, 'Caught in the Crossfire: Challenges to Migrant Protection in the Yemeni and Libyan Conflicts' (2020) 8 *Journal on Migration and Human Security* 318
[732] UNSMIL and OHCHR, *Detained and Dehumanised: Report on Human Rights Abuses Against Migrants in Libya* (UNSMIL/OHCHR 2016), 3, 15, 21.
[733] UNODC, *Global Report on Trafficking in Persons 2018* (UNODC 2018) 35–38.
[734] Avdan and Omelicheva, 'Human Trafficking-Terrorism Nexus' (n 720) 1581.

to the absence of the rule of law and the political chaos in the country. Although human trafficking is widely documented in conflict settings, certain forms of exploitation become particularly prevalent in war zones. These include the forcible recruitment of individuals into armed groups and the sexual exploitation of civilians, with children being particularly at risk. Furthermore, trafficking of persons into conflict zones aims at exploiting victims to provide services at military worksites, for example, in the case of Asian workers trafficked to conflict areas in the Middle East as reported by the UN Special Rapporteur on trafficking in persons, especially women and children.[735] In Libya, where the conflict remains unresolved and the state continues to suffer from deep fragmentation, forced labour occurs in highly institutionalised forms. Migrants and asylum seekers are routinely subjected to exploitation in detention centres, where they are forced to work under threat of violence or in exchange for release. This reflects a broader pattern in protracted conflict settings, where the erosion of legal and institutional safeguards enables trafficking networks and armed actors to operate with near total impunity.[736]

5.2.2 ILO Special Policies in Conflict Settings

The ILO cannot simply ignore the impact of conflicts on trafficking for forced labour, and therefore, it is important to address how the ILO deals with and operates in conflict settings. The following sub-sections tackle the general policies adopted in cases of humanitarian crises and armed conflicts. However, it is noted that there are no specific ILO regulations in relation to the implementation of forced labour conventions in conflict settings or countries. It is also noted that these policies are mainly comprised of non-binding guides and toolkits for operations taking place on the ground, with the exception of Recommendation No. 205 which addresses the responsibilities of member states, employers, and workers' organisations in responding to situations of armed conflict and other large-scale crises. It provides guidance on promoting employment, decent work, and social protection as part of recovery and peacebuilding

[735] UN General Assembly, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children* (11 August 2016) UN Doc A/71/303, para 39.
[736] UNSMIL and OHCHR, *Detained and Dehumanised: Report on Human Rights Abuses Against Migrants in Libya* (UNSMIL and OHCHR 2016); International Organization for Migration, *IOM Libya's Displacement Tracking Matrix Round 48 Mobility Tracking Report* (IOM 2023); International Labour Organization Committee of Experts on the Application of Conventions and Recommendations, *Observation – Forced Labour Convention, 1930 (No 29) – Libya* (2023)

efforts, including within crisis-affected workplaces and labour markets.[737] However, none of the documents discussed below have adequately addressed responses to ongoing armed conflict in the aspect of the prevention of forced labour and ensuring the implementation of forced labour conventions by the state and other de facto authorities on the ground.

5.2.3 ILO's Role in Conflict and Disaster Settings: Guides

The ILO's engagement in conflict settings builds upon the strategic framework first articulated in *The ILO's Role in Conflict and Disaster Settings* (2012), which underscores the organisation's capacity to respond to crises through its mandate to promote decent work.[738] The Guides offers step-by-step practical guidance on how to develop decent work possibilities amid a crisis. Its content and structure are based on the ILO Crisis Response Strategy, the UN Humanitarian Reform, and the project cycle management framework. It promotes a conflict-sensitive approach in which a crisis response strategy is adopted. The crisis response strategy focuses on the organisation's fundamental mandate and competitive advantage in the areas of employment, social dialogue, social protection, and international labour standards. In post-crisis countries, ILO initiatives work to aid a society's return to a 'development path'. Furthermore, the primary objective of ILO's crisis response strategy is to bring decent work considerations front and centre in the design and implementation of internationally supported crisis response and reconstruction initiatives. To accomplish this, the ILO response focuses on influencing policy, ensuring that major national and international crisis response players incorporate the ILO decent work-based approach into their own crisis response. According to the Guides, this requires the ILO to create strategic collaborations with international bodies and donors involved in conflict and disaster response. The intricate and multi-sectoral character of crises and crisis management also need a comprehensive and substantial "Whole of ILO" strategy that directly engages ILO's technical units and senior executive management.

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[737] International Labour Organization, *Recommendation concerning Employment and Decent Work for Peace and Resilience (No 205)* (16 June 2017) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3330501 accessed 27 March 2026.

[738] ILO Programme for Crisis Response and Reconstruction (ILO/CRISIS), *ILO's Role in Conflict and Disaster Settings: Guides and Toolkit* (ILO 2010), 12.

The Guides promote three programming tracks that guide post-conflict employment creation, income generation and reintegration. For instance, through the development of policies and institutional capacity building, Track C targets national level institutions with a focus on creating decent work and sustainable employment. Track C activities also contribute to social dialogue and building consensus by establishing a framework for stating "the rules of the game". Track C's ultimate purpose is to foster long-term development that sustains "productive employment and decent work", protects fundamental human rights, promotes gender equality, and addresses the rights of marginalised populations. Social dialogue among tripartite constituents, namely the government, employers, and workers, as well as other pertinent stakeholders, is necessary to endorse and assess these programmes and foster agreement on labour market policies, legal reforms, and institutional changes.[739] Although the majority of the interventions in this track are longer-term in character, it is crucial that Track C actions begin right away following the crisis to guarantee a sufficient and long-lasting post-conflict response.[740] However, it can be noted that the Guides only concern immediate responses to humanitarian crises and the post-crisis or post-conflict setting, and so the intervention of the ILO during prolonged armed conflict is not covered. For instance, in response to child labour and the recruitment of child soldiers, the Guides speaks of the ILO's work with partners to enhance child soldiers' long-term socio-economic reintegration,[741] but not prevention techniques or technical assistance offered to state and non-state actors in order to ensure the implementation of forced and child labour conventions.

The ILO's 2021 guidance on *Employment and Decent Work in the Humanitarian-Development-Peace Nexus* highlights the importance of focusing on employment and adopting a conflict-sensitive approach, in line with the broader Humanitarian-Development-Peace framework and the ILO's Crisis Response Strategy. By integrating decent work into recovery procedures, the ILO aims to stabilise society and re-establish a path towards development in areas impacted by conflict.[742] The stress on institutional capacity building echoes Track C of the 2012 Guide, where

[739] ibid 12.
[740] ibid 76.
[741] ibid 106.
[742] International Labour Organization, *Employment and Decent Work in the Humanitarian-Development-Peace Nexus* (ILO 2021) 10–12.

national-level support is oriented toward sustainable employment creation and long-term development. Interventions in conflict-affected areas similarly emphases the need for inclusive labour governance, rule-setting, and the promotion of social dialogue, with particular attention to gender equality and the rights of vulnerable and marginalised populations. The ILO's role is thus not confined to short-term recovery but extends to shaping durable peace through employment-based reintegration, supported by strategic partnerships with governments, international agencies, and civil society actors.[743]

The ILO's operational guidance, both past and present, tends to focus on post-crisis or transitional phases. While attention is given to the reintegration of groups such as former child soldiers through livelihood support and skills training,[744] there is limited focus on preventive measures or direct technical assistance during ongoing armed conflict. The organisation's role remains strongest where it can apply its institutional expertise within the framework of recovery and development, rather than during active hostilities. This gap severely limits the effectiveness of the ILO's forced labour conventions in contexts of active hostilities, as the lack of preventive and enforcement mechanisms during conflict undermines the internalisation of international norms and allows trafficking for forced labour to continue unchecked.

5.2.4 Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)

The International Labour Conference adopted Recommendation No. 205 on Employment and Decent Work for Peace and Resilience in June 2017, after a two-year process of standard-setting and tripartite consultations to revise and replace 1944's Recommendation No. 71 on Employment (Transition from War to Peace).[745] The new standard establishes a novel normative framework that focuses on workplace-related strategies for preventing and responding to the catastrophic consequences of

[743] International Labour Organization, *Employment and Decent Work in the Humanitarian-Development-Peace Nexus* (n 742) 13–15.
[744] ibid 16–17.
[745] International Labour Organization, *Employment (Transition from War to Peace) Recommendation, 1944 (No. 71)* (12 May 1944) https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312409:NO accessed 27 April 2026.

crises on economies and societies. According to the ILO, Recommendation No. 205 expands its scope to include internal conflicts and disasters.[746] It also updates guidance on employment and other aspects of the Decent Work Agenda to reflect the evolving nature of contemporary crises and the ILO's experience in crisis response over the years. It addresses recovery and reconstruction in post-conflict and disaster scenarios, as well as tackling the core causes of fragility and implementing preventive actions to increase resilience of affected individuals, communities, institutions, and labour markets through preventive and inclusive employment strategies.[747]

According to the Recommendation's guiding principles, as stated in Article 7, when addressing employment and decent work measures in response to crisis situations caused by conflicts and disasters, members shall, while considering prevention measures, consider the following:

a. Promoting full, productive, and freely chosen employment and decent work is crucial for peace, crisis prevention, recovery, and resilience.
b. Respecting and promoting fundamental principles and rights at work, human rights, and international labour standards, and considering relevant international instruments and documents, as applicable.
c. Promoting good governance and combating corruption and clientelism.
d. Utilising local knowledge, capacity, and resources.
e. Assessing the crisis's impact on governments, employers' organisations, and relevant institutions to provide effective responses with international cooperation.
f. The need to combat discrimination, prejudice, and hostility based on race, colour, gender, religion, political opinion, national extraction, social origin, disability, age, sexual orientation, or any other grounds.
g. Ensure equality of opportunity and treatment for men and women without discrimination.

[746] International Labour Organization, *Resource Page on Recommendation No. 205* (2018) https://www.ilo.org/resource/resource-page-recommendation-no-205 accessed 21 March 2026.
[747] ibid.

h. Prioritise support for vulnerable populations, such as children, youth, minorities, indigenous and tribal peoples, people with disabilities, internally displaced persons, migrants, refugees, and others.
i. Identifying and monitoring negative consequences to avoid harm to individuals, communities, the environment, and the economy.
j. Transitioning to an environmentally sustainable economy for long-term economic growth and social progress.
k. Promoting social dialogue.
l. Prioritise national reconciliation where applicable.
m. Promote international solidarity, burden-sharing, and cooperation in accordance with international law.
n. Coordinate humanitarian and development assistance to promote full, productive employment and decent work opportunities, avoiding duplication of efforts and manpower.[748]

The measures establish a comprehensive framework for supporting employment and decent labour in conflicts settings, integrating human rights, governance, inclusivity, and sustainability. As Claire La Hovary notes, Recommendation No. 205 consolidates the ILO's existing crisis-response practice into a soft-law framework that enables governments and social partners to address not only post-conflict recovery but also crisis prevention and resilience, situating decent work as a central tool for legal and institutional reconstruction.[749] However, the measures' efficacy is frequently hindered by low institutional capacity, political barriers, and fragmented coordination among actors.[750] While normatively sound, the effectiveness of these measures is dependent on context-specific adaptation, political commitment, and improved accountability systems to avoid becoming merely aspirational.

[748] International Labour Organization, *Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No 205)* (adopted 16 June 2017) ILO R205.
[749] Claire La Hovary, 'The International Labour Organization and Disasters: The Contribution of ILO Recommendation No. 205 on Employment and Decent Work for Peace and Resilience to International Disaster Law' (2022) 3 *Yearbook of International Disaster Law* 274, 276.
[750] International Labour Organization, *The ILO in Fragile Situations: Supporting Transitions from Crisis to Decent Work* (ILO 2024) https://www.ilo.org/publications/factsheet-ilo-fragile-situations accessed 27 April 2026.

5.2.5 Peace and Conflict Analysis: Guidance for ILO's programming in fragile and conflict-affected contexts

In 2021, the ILO published guidance for the organisation's programming in conflict-affected and fragile settings.[751] The Peace and Conflict Analysis (PCA) provides a summary of key conflict and peace patterns and trends. It contains a detailed investigation of the causes and symptoms of peace and war, as well as their impact on decent work challenges.[752] The report provides a summary and recommendations for building peace through decent work initiatives, minimising conflict sensitivity risks, and focusing on new programmes and projects. The document mentions that the ILO should collaborate with in-country conflict sensitivity hubs, which help agencies manage peace and conflict interactions.[753] This reflects and reiterates the importance of collaboration with NGOs and other non-state actors that are sometimes way ahead in their work and understanding of the country-specific issues. It states that a two-pronged approach to crisis response involves collaboration with member states, tripartite constituents, international and national partners, and direct involvement of local populations and stakeholders. This approach prioritises immediate response that is focused on employment while also promoting long-term socio-economic development in an inclusive and rights-based manner.[754] Most importantly, the guidance emphasises peace responsiveness to assist ILO teams in steering their initiatives away from conflict insensitivity.[755] An example of peace responsiveness in relation to employment is value chain and skills training courses which target sectors that provide employment and entrepreneurial prospects for all ethnic groups, especially those marginalised in the economy. Skills training focuses on young men and women who are most likely to be recruited into violent extremist groups.[756]

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[751] ILO's Coordination Unit for Peace and Resilience, *Peace and Conflict Analysis: Guidance for ILO's Programming in Fragile and Conflict-Affected Contexts* (ILO 2021) 10 https://labordoc.ilo.org/discovery/delivery/41ILO_INST:41ILO_V1/1278329360002676 accessed 27 March 2026.
[752] ibid 21.
[753] ibid 27.
[754] ibid 2.
[755] ibid 8.
[756] ibid 9-10.

5.2.6 InFocus Programme on Crisis Response and Reconstruction

The ILO established the IFP/CRISIS Response in 1999 to address the social fragmentation and degradation of employment and poverty during different types of crises namely, post-conflict situations, disasters, abrupt financial or economic downturns, as well as social or political changes.[757] Therefore, the ILO responds to crises by promoting socio-economic reintegration and reducing poverty for individuals impacted. The programme aims to raise awareness of employment and social issues during crises through partnerships and lobbying, as well as strengthening ILO constituents' capacity to monitor, prevent, and manage harmful repercussions.[758] The programme stands out from others by prioritising rapid response and integrated action over technical expertise in a specific field. The IFP is based on the belief that traditional emergency humanitarian assistance is insufficient to meet the needs of millions of dispossessed and vulnerable populations during crises. Therefore, it maintains that there must be a clear strategy to transition as soon as feasible away from emergency relief work and to deliver what people most desire: dignity, security, and self-sufficiency. Thus, the IFP aims to improve socio-economic integration of crisis-affected individuals by developing and implementing initiatives that create jobs, generate income, and foster social integration.[759]

However, an independent evaluation of the IFP's work undertaken in 2003 by the Bureau of Programming and Management, included case studies of countries affected by armed conflict and its aftermath.[760] One such case study focused on Afghanistan and examined the ILO's role in supporting post-conflict recovery through employment-centred interventions. The main objective of the ILO's intervention in Afghanistan was to foster post-conflict reconstruction through technical assistance.[761] However, the evaluation criticised the IFP's work, noting that the ILO's lack of field presence and track record during the Interim Administration's tenure undermined its credibility and effectiveness from the outset. The programme struggled to persuade

[757] International Labour Organization, *An Independent Evaluation of the InFocus Programme on Crisis Response and Reconstruction* (October 2003) https://www.ilo.org/media/314066/download accessed 19 August 2025.
[758] Eugenia Date-Bah, *Crises and Decent Work: A Collection of Essays* (ILO 2001), 72-74.
[759] ILO, *An independent evaluation of the InFocus Programme* (n 757).
[760] ibid.
[761] ibid 40.

stakeholders that it was a reliable actor due to limited personnel, logistical capacity, and limited operational impact.[762] Notably, the ILO's involvement remained focused on short-term employment and vocational training, with no direct engagement in preventing or addressing human rights violations such as forced labour or child soldier recruitment, both of which were widespread during the early 2000s conflict period. Although these violations were documented by UN agencies and human rights groups,[763] the ILO did not adopt an enforcement or monitoring role in relation to its core labour standards. This reflects a broader institutional gap in the organisation's ability to intervene substantively in conflict contexts where its conventions are most at risk of violation.

Following the Taliban's return to power in August 2021, the ILO maintained its engagement in Afghanistan, focusing on employment and decent work within the humanitarian-development-peace nexus. A 2023 ILO report titled *Employment in Afghanistan in 2022: A Rapid Impact Assessment*, noted a 25 percent decline in both female and youth employment between mid-2021 and late 2022, attributing this largely to restrictions on women's labour market participation. Home-based self-employment emerged as a key coping strategy for women. [764] Overall employment was estimated to be 450,000 lower than levels prior to the 2021 transition to Taliban rule, with income volatility increasing amid rising living costs.[765] The ILO also implemented projects to support essential services and employment, including one evaluated in 2025 titled *Promoting Employment and Decent Work in Afghanistan through the Humanitarian-Development-Peace Nexus: Essential Services*.[766] While these interventions addressed urgent needs, they did not directly target systemic forced labour practices, such as forced domestic servitude, recruitment of boys into Taliban-controlled security structures, or coercion of displaced populations into informal work. Thus, as with earlier phases, the ILO's presence in Afghanistan has remained focused

[762] ibid 42.
[763] Human Rights Watch, *Killing You Is a Very Easy Thing for Us: Human Rights Abuses in Afghanistan's Armed Conflict* (HRW 2011) 29.
[764] International Labour Organization, *Employment in Afghanistan in 2022: A Rapid Impact Assessment* (7 March 2023) https://www.ilo.org/resource/news/women-bear-brunt-afghanistan-job-losses accessed 4 August 2025.
[765] ibid 1.
[766] International Labour Organization, *Promoting Employment and Decent Work in Afghanistan through the Humanitarian-Development-Peace Nexus: Essential Services* (Final Evaluation, 2025) https://webapps.ilo.org/ievaldiscovery/eval/2295322 accessed 4 August 2025.

on employment facilitation rather than on preventing or prosecuting violations of labour standards. This case illustrates the organisation's broader operational limits in conflict zones, where it continues to prioritise development-based assistance over normative enforcement, even in situations where forced labour is entrenched. As the next chapter will show, similar patterns are observable in Libya, where forced labour thrives under militia control and state fragmentation, yet the ILO's interventions remain institutionally constrained.

Unlike post-conflict contexts where the ILO can engage in structured employment programmes and institution-building, conflict settings pose challenges due to insecurity, shifting control of territory, and the absence of functioning state institutions. Nonetheless, the ILO has at times operated in active conflict environments by focusing on emergency livelihoods, vocational training, and partnerships with local actors. For example, in Somalia and parts of the Central African Republic, the ILO has implemented limited employment-based interventions alongside humanitarian actors. These efforts are typically framed within the Humanitarian-Development-Peace Nexus and depend on ad hoc coordination and access.[767] However, such interventions often stop short of addressing forced labour directly or ensuring the application of core ILO conventions. This institutional constraint will be explored further in the following chapter on Libya, where the ILO's absence and limited engagement illustrate the broader difficulties of enforcing labour standards during protracted conflict.

5.3 Concluding Remarks: Reimagining the ILO's Role through Transnational Legal Process

While the ILO is primarily a standard-setting body, its operations in areas afflicted by conflict usually prioritise development-oriented programming meant to combat

[767] International Labour Organization, *The ILO in Fragile Situations: A Compendium of Engagement 2001–2013* (ILO 2013) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40exrel/documents/publication/wcms_239406.pdf accessed 27 March 2026; ILO, *Employment and Decent Work for Peace and Resilience: ILO Recommendation No. 205 and the Humanitarian-Development-Peace Nexus* (ILO 2019) 11–13. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_emp/documents/instructionalmaterial/wcms_141275.pdf accessed 27 April 2026.

societal disintegration, unemployment, and poverty.[768] This echoes a pragmatic approach embedded in the organisation's broader Decent Work Agenda, aiming to stabilise societies and support recovery rather than signalling a shift away from its normative functions.[769]

However, the ILO's programmatic weight on employment creation and reintegration has, at times, led to a relative negligence of the direct promotion and enforcement of its core labour standards, particularly in conflict settings where violations such as forced labour are predominant.[770] Even though the ILO's mandate places a strong emphasis on advocating for social justice, decent work, and social dialogue, the actual execution of this advocacy role is still not well defined in settings of active conflict, particularly when it comes to fostering social dialogue and legal accountability.[771] For example, while the ILO engages in reintegration initiatives for former child soldiers, it provides little direct technical assistance to ensure compliance with international labour standards during ongoing armed conflicts.[772] This disengagement highlights a need to re-examine how the ILO can better leverage both its norm-setting authority and supervisory mechanisms, such as the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Commission of Inquiry, to monitor, prevent, and address forced labour in fragile and conflict-affected states.[773] It also raise questions about the ways in which the ILO can possibly coordinate with other international organisations with on-the-ground presence in conflict zones.

Drawing on Harold Koh's theory of transnational legal process, the ILO could adopt a more proactive role in facilitating the internalisation of international labour norms through sustained interaction, interpretation, and norm-internalising engagement with

[768] International Labour Organization, *Employment and Decent Work in the Humanitarian-Development-Peace Nexus* (n 742) 10–12.
[769] International Labour Organization, *Declaration on Social Justice for a Fair Globalization* (2008) para I(B).
[770] International Labour Organization, *The ILO's Role in Conflict and Disaster Settings: Crisis Response and Reconstruction* (2010) 18–20.
[771] International Labour Organization, *Strengthening Social Dialogue in Fragile and Conflict-Affected Settings* (ILO 2017) 6–8.
[772] International Labour Organization, *Guide to the Role of the ILO in the Reintegration of Combatants* (2000) 15–16.
[773] See CEACR reports: International Labour Conference, *Report of the Committee of Experts on the Application of Conventions and Recommendations* (2023) Report III (Part A); and ILO, *Commission of Inquiry: Forced Labour in Myanmar (Burma)* (1998).

both state and non-state actors.[774] In conflict contexts, this would mean not only delivering technical assistance but also fostering legal and political dialogue among the actors to promote habitual obedience to labour standards. As Koh argues, internalisation occurs when international norms are embedded within the domestic legal, political, and social frameworks of a state, resulting in observable changes in behaviour. As will be explored in the following chapter, legal pluralism offers a practical avenue for the ILO to navigate fragmented legal orders and engage meaningfully with the diverse actors operating in conflict-affected environments such as Libya. Such an approach would enhance the ILO's effectiveness by anchoring its normative agenda in local processes and facilitating the long-term internalisation of its core conventions.

[774] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 203–204.

Chapter 6: Libya as a Case Study

"Even resisting nations cannot insulate themselves forever from complying with international law if they regularly participate, as all nations must, in transnational legal interactions."

Harold Koh, 1994[775]

This chapter investigates the ineffectiveness of international labour standards in conflict settings, using Libya as a case study to assess the implementation and impact of the International Labour Organization's Forced Labour Conventions. Although Libya has ratified core instruments, including Conventions No. 29, 105, and 182, its compliance has remained largely symbolic. This is reflected in its persistent failure to meet reporting obligations, the absence of effective enforcement mechanisms, and a weak legal framework that lacks clarity and accountability. The chapter situates this non-compliance within the broader political and institutional fragmentation caused by Libya's prolonged conflict, arguing that such conditions have enabled the widespread trafficking of migrants for forced labour.

The chapter provides a multidimensional analysis of Libya's legislative context, institutional practices, and the broader socio-political dynamics that shape the reality of forced labour on the ground. It highlights how the breakdown of the rule of law, compounded by corruption, impunity, and the involvement of state-affiliated actors in trafficking, has entrenched conditions of exploitation, particularly for migrants and refugees. Attention is also given to the role of international organisations and international non-governmental organisations in this context. While these actors are often viewed as defenders of migrant rights, their involvement in migration management frameworks influenced by donor priorities and state agendas has, in many cases, undermined their protective functions.

This chapter concludes that formal compliance with international norms is insufficient without meaningful internalisation through legal, political, and social channels. However, it goes further by arguing that in Libya, the failure of internalisation has not only resulted from the absence of meaningful transnational interaction/engagement

[775] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 206.

and/or from the consequences of conflict on the state's functions but has been dynamically obstructed by donor-driven and state-influenced agendas channelled through international organisations. These dynamics have shaped a transnational legal environment that prioritises securitised migration control over rights-based protection. Drawing on Harold Koh's theory of transnational legal process, this chapter argues that effectiveness relies on sustained interaction and normative internalisation. In Libya, this has been obstructed by donor-driven and state-influenced migration agendas channelled through international organisations, which have sustained rather than reduced migrant vulnerability. The chapter calls for a rights-centred, independent approach to international engagement in conflict-affected contexts.

6.1 The Political Context of Libya



Figure 1: Map of Libya[776]

[776] Worldometer, 'Map of Libya (Political)' https://www.worldometers.info/maps/libya-political-map/ accessed 1 March 2026.

After the overthrow of Al-Qaddafi[777] regime in 2011, different parties started to compete for control in Libya. This struggle for control transcends ethnic, regional, political, and even religious boundaries. Each alliance has established administrative institutions and appointed military chiefs, but each has experienced internal fragmentation and conflict. One could describe the regime of Libya as a tribal regime which is governed by different fighting tribes.[778] There is also the intervention of foreign countries, whether through financial, diplomatic cover, or military aid to the armed groups on the ground, but most importantly the military intervention of the North Atlantic Treaty Organisation (NATO),[779] which still contributes to the instability in the country and the whole region.[780] This external intervention in Libya has exploited domestic vulnerabilities, leading to the creation of areas of limited statehood and a contested order or what could be described as a concurrency of governments.[781] Areas of limited statehood are defined as those parts of a country where governments or central authorities are unable to practice their rule of law, i.e., to implement and enforce rules, mainly due to the fact that their executive powers (means of enforcement) are lacking or contested by other parties or concurrent governments.[782] This situation is what defines conflict settings in which the implementation and effectiveness of international law is undermined. Specific to

[777] Muammar Al-Qaddafi was the political and military leader of Libya from 1969 to 2011. Al-Qaddafi was a military officer who took part in the coup that overthrew King Idris in 1969. He appointed himself Chairman of the Revolutionary Command Council in 1969 and outlined his political philosophy in *The Green Book*, published in 1975. In August 2011, a rebellion deposed Al-Qaddafi, who had ruled for more than four decades. After escaping capture for several weeks, he was assassinated by rebel troops in October 2011. See: Kristian Coates Ulrichsen, *A Dictionary of Politics in the Middle East* (Oxford University Press 2018) 1991.

[778] Wolfram Lacher, 'Families, tribes and cities in the Libyan revolution' (2011) 18(4) *Middle East Policy* 140, 142-143.

[779] Alan J Kuperman, 'A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign' (2013) 38(1) *International Security* 105, 105-106. The military activities in Libya that were previously under the direction of the United States, France, and the United Kingdom were formally taken over by NATO on the 27th of March 2011. The transfer of responsibility came after debates among NATO countries over the permitted scope of international military intervention; several countries argued that the coalition's aggressive targeting of pro-Qaddafi ground forces violated the mandate set by the UN Security Council in order to protect civilians. See also: Nicholas Watt, Nick Hopkins and Ian Traynor, 'Nato to take control in Libya after US, UK and France reach agreement' (23 March 2011) The Guardian, https://www.theguardian.com/world/2011/mar/22/libya-nato-us-france-uk.

[780] U.S Department of State, *2023 Trafficking in Persons Report: Libya* (2023) https://www.state.gov/reports/2023-trafficking-in-persons-report/libya accessed 10 April 2026.

[781] Matteo Capasso and others, *Libya Country Report* (EU-LISTCO, 2019) 4 https://eu-listco.net/libya-country-report/ accessed 17 March 2026.

[782] Thomas Risse, 'Governance in areas of limited statehood' in Thomas Risse (ed), *Governance without a State? Policies and Politics in Areas of Limited Statehood* (Columbia University Press 2011) 1, 4.

Libya, is the situation of a concurrency of governments and limited statehood with foreign intervention and the presence of several militias on the ground.

During the Libyan uprising, the former regime's harsh assault on dissidents resulted in the formation of city-specific local councils and armed paramilitary groups. In addition, the Transitional National Council (TNC) was formed in early March 2011[783] by exiled opposition members and high-ranking defectors to serve as the uprising's military leadership as well as the Libyan opposition's political representatives.[784] While the TNC eventually acquired widespread acceptance from the world community,[785] it failed to establish close links with local councils and military forces driving the uprising within Libya, which led to the eruption of armed clashes between them.[786] In August 2012, the TNC handed over authority to the newly elected General National Council (GNC), following elections in July. However, armed groups began to exercise influence over the work of the parliament and state institutions, obstructing the basic functioning of the government and jeopardising the existence of the new state institutions.[787] This was evident on multiple occasions between 2013 and 2014, when armed forces aligned with various political factions invaded the GNC offices and other government buildings, seeking political concessions.[788]

The violence worsened in mid-2014, when Ahmed Maiteeq, generally considered to be supported by Misrata-based Islamist organisations, was appointed Prime Minister. Around the same time, General Khalifa Haftar had commenced Operation Dignity

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[783] During this transitional period, the Constitutional Declaration, especially in its article 30, was set to govern Libya's transitional era, which runs from the time of the revolution until the ratification of a new constitution. It was adopted by the TNC in August 2011. See: https://constitutionnet.org/vl/item/libyas-transition-constitutional-declaration-basis-democracy-democracy-reporting.

[784] Ali Abdullatif Ahmida, 'The Libyan National Transitional Council. Social Bases, Memberships and Political Trends' (2011) 30.10 *Al Jazeera Centre for Studies,* 4-5.

[785] France officially recognised the TNC, stating on 10 March 2011 that it would treat the Council as Libya's legitimate government. On 15 September 2011, the UN General Assembly decided to acknowledge it as the Libyan people's representative in the UN. See: Stefan AG Talmon, 'Recognition of the Libyan National Transitional Council' (2011) 15(16) *ASIL Insights,* 2.

[786] Sari Arraf, 'The War Report 2017 – Libya: a Short Guide on the Conflict' (*Geneva Academy,* 2017) < https://geneva-academy.ch/wp-content/uploads/2025/09/Lybia-A-Short-Guide-to-the-Conflict.pdf > accessed 07 March 2026.

[787] Johan Franzen, 'The New Libya' (*Eastminster: a global politics & policy blog,* 2013) http://www.ueapolitics.org/2013/11/14/new-libya/ accessed 1 April 2026.

[788] The Netherlands: Ministry of Foreign Affairs, *Libya: Militias, Tribes and Islamists*, (2014), 7. Available at: https://landinfo.no/wp-content/uploads/2018/03/Libya-Militias-Tribes-and-Islamists-19122014.pdf

with the goal of eliminating Islamist militias from Benghazi. Two days after the appointment of Maiteeq, Zintani militants[789] allied with Haftar attacked the GNC, declaring it suspended.[790] Earlier that year, the GNC's decision to extend its term until December 2014,[791] which was highly contentious, had prompted Haftar to launch an unsuccessful coup. The ferocity of the clashes drove the newly elected parliament, now known as the House of Representatives (HoR), to flee to the city of Tobruk in the east of the country. In addition to being the recently elected administration, those who temporarily relocated the parliament and cabinet from Tripoli were also the legislative group closest to General Haftar. Consequently, the semi-official temporary capital was abruptly relocated from western to eastern Libya, placing it close to General Haftar's power base in Benghazi.[792]

Despite the intervention of the UN, through the United Nations Support Mission in Libya (UNSMIL) and other parties, to foster political talks and negotiations over power, there remain currently two rival administrations; the Tripoli-based Government of National Unity (GNU), and a parallel body in eastern Libya, the Government of National Stability (GNS), established by the eastern, Tobruk-based parliament, the HoR.[793] The official Libyan government controls less than one-third of the country's land, while the Libyan National Army, led by Khalifa Haftar, and other armed groups control the rest.[794]

As a result of this political unrest, Libya has been left without a permanent constitution, but with the 2011 Constitutional Declaration in force. The Libyan

[789] Local forces of Zintan, a city in the Nafusa Mountains in west Libya. They are in charge of a large area that connects west Tripoli, the capital, to the country's vast south. But those troops do not always act as one; during the turmoil in Libya in 2019, Zintani militias fought on different sides. They allied with Haftar to stand up against their rival Misrata militia. More recently, they appeared to be fighting by the side of Bashagha, the now suspended prime minister of the Government of National Stability. See: https://eismena.com/en/article/fragmented-libya-the-reign-of-militias-2026-01-20 accessed 1 March 2026.

[790] Arraf, 'Libya: A Short Guide on the Conflict' (n 786).

[791] Nigel Ash, 'GNC votes to extend its life another year' (*Libya Herald,* 2013) https://libyaherald.com/2013/12/gnc-votes-to-extend-its-life-another-year/ accessed 07August 2025.

[792] Bill Humphry, 'Theoretical implications of moving the Libyan government to Tobruk' (*Arsenal For Democracy,* 2014) https://arsenalfordemocracy.com/2014/08/24/theoretical-implications-of-moving-the-libyan-government-to-tobruk/ accessed 07 March 2026.

[793] Since the strong hold and influence of the Haftar's Libyan National Army (LNA), it is often referred to as the LNA instead of GNS when speaking about the opposing party to the GNU.

[794] Arab Center Washington DC, 'Libya's Deep Divisions Show No Sign of Abating' (11 April 2025) https://arabcenterdc.org/resource/libyas-deep-divisions-show-no-sign-of-abating/ accessed 12 August 2025.

Constitution Drafting Assembly proposed a draft constitution in 2017, but in order to be effectively adopted, it has to be put to a national referendum, which has not yet happened.[795] Furthermore, armed groups have filled the security gaps around the country, as well as resorting to illicit activities and violations of the human rights of vulnerable communities such as migrants and refugees. These violations include killing, torture, detention, and forms of human trafficking such as forced labour, forcible recruitment into armed groups, and trafficking for sexual exploitation. The occurrence of such human rights violations can be attributed to corruption and the impunity that these armed groups have.[796]

6.2 Trafficking for Forced Labour in Libya: Vulnerability Factors

There are different social and cultural trends that exacerbate trafficking globally and especially in conflict settings. For example, being HIV positive makes a child more susceptible to child trafficking because it makes them more likely to be abandoned, which undermines family support systems. A report by Human Rights Watch on children affected by AIDS in India found that these children are more likely to be targeted for child labour, trafficking, and prostitution, as the loss of parental protection frequently exposes them to danger.[797] Furthermore, human trafficking is more likely to occur for those who are poor, live in a nation with few resources, are homeless, have few options for education and employment, and/or have experienced maltreatment in the past.[798] People who are raised in households that experience various challenges, such as abuse, and who reside in areas that are vulnerable to violence, poverty, oppression, or crises are more likely to become victims of human trafficking on a global scale.[799] Also at the family level, poor families with too many children and uneducated parents are more likely to allow their children to live with

[795] Human Rights Watch, 'World Report 2023: Libya' 2023) https://www.hrw.org/world-report/2023/country-chapters/libya accessed 07 March 2026.
[796] U.S Department of State, *2023 Trafficking in Persons Report: Libya* (n 780); Abdulkader Assad, 'Libya's Constitution Drafting Assembly Urges Elections Commission to Hold Referendum on Draft Constitution' (ConstitutionNet, 10 April 2024) https://constitutionnet.org/news/libyas-constitution-drafting-assembly-urges-elections-commission-hold-referendum-draft accessed 19 August 2025.
[797] Human Rights Watch, *'Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India'* (Human Rights Watch, 28 July 2004) https://www.hrw.org/report/2004/07/29/future-forsaken/abuses-against-children-affected-hiv/aids-india accessed 20 March 2026.
[798] Thema Bryant-Davis and Pratyusha Tummala-Narra, 'Cultural oppression and human trafficking: Exploring the role of racism and ethnic bias' (2017) 40 *Women & Therapy* 152, 157-159.
[799] ibid 157-159.

others which makes them more vulnerable to trafficking.[800] Hence, human trafficking is a significant issue in impoverished communities, particularly among those living in intergenerational poverty, rural areas, and with limited education. Ethnically marginalised individuals, particularly women and girls, are more likely to experience homelessness, which is a significant risk factor for trafficking.[801] Additionally, demographic factors such as the increasing population growth in some countries, the imbalance between men and women, and the ever-growing urban-rural migration contribute to cases of human trafficking.[802] Gender-based violence such as rape, domestic violence, and harmful traditional practices that are influenced by social and cultural factors increase women and girls' vulnerability to trafficking. Cultural factors, including religion, caste, and traditions, play a significant role in promoting trafficking for sexual exploitation.[803]

Furthermore, by dehumanising individuals and assigning them blameworthy traits, cultures establish an environment in which the same individuals can be violated and victimised without a genuine public outcry.[804] However, this dehumanisation becomes more active in conflict settings. Indeed, countries with unstable political and economic systems, limited access to education and vocational training, and lack of anti-sex trafficking policies are more likely to resort to victimising their own residents, particularly in developing countries that have experienced long-term colonialism and neocolonialism.[805] In Libya, the dehumanisation of migrants and refugees largely contributes to their exploitation and to their lack of protection against trafficking for forced labour and other forms of abuse.[806] The existence of such dehumanisation can lead to the normalisation of the abuse of migrants and refugees in Libya.[807] This dehumanisation can be seen in the discrimination against certain groups especially

[800] Bonaventure N. Nwokeoma, 'Perception of demographic and cultural factors associated with the crime of human trafficking in Nigeria' (2018) 32 *African Population Studies* 4240, 4245.
[801] Bryant-Davis and Tummala-Narra, 'Cultural oppression and human trafficking' (n 798), 157-159.
[802] Nwokeoma, 'Perception of demographic and cultural factors associated with the crime of human trafficking in Nigeria' (n 800).
[803] Cindy J. Smith and Kristiina Kangaspunta, 'Defining human trafficking and its nuances in a cultural context' in Cindy J. Smith and Kristiina Kangaspunta (eds), *Human Trafficking: Exploring the International Nature, Concerns and Complexities* (CRC Press 2012) 19, 31.
[804] Bryant-Davis and Tummala-Narra, 'Cultural oppression and human trafficking' (n 798), 153.
[805] ibid 156.
[806] Klara Smits, '"Dead-dead": Trapped in the Human Trafficking Cycle in Libya', *Enslaved: Trapped and Trafficked in Digital Black Holes: Human Trafficking Trajectories to Libya* (Langaa RPCIG 2023), 645.
[807] ibid.

among migrants and refugees. The conflict in Libya exacerbated the risks faced by already marginalised and oppressed groups in Libya, specially making them susceptible to human trafficking and trafficking for forced labour. In this section, vulnerability factors in Libya will be examined under the effect of conflict in relation to the growing number of trafficking cases in the country.

6.2.1 Discrimination

Discrimination is a cause of vulnerability to certain groups in societies e.g., discrimination against women, racial supremacy, and xenophobia. These forms of discrimination can be exacerbated during humanitarian crises and conflicts, rendering certain groups vulnerable against crimes of all sorts including human trafficking. In Libya, groups that suffer discrimination the most are religious minorities and Black Africans.

Religious Minorities

Reports show that due to the country's unrest, religious minorities are affected and further discriminated against. For instance, Open Doors' 2025 World Watch List Report ranked Libya as the 4th worst place for Christians,[808] with Christian refugees facing harassment and abuse from detention centre guards. Furthermore, Muslims converting to Christianity face extreme prejudice, discrimination, and job loss, hindering their ability to publicly express their religious beliefs.[809] Besides Christians, other religious minorities faced persecution, including Muslim Sufis and Ibadis. In the most recent Universal Periodic Review (UPR) on Libya, a human rights organisation reported that Sufis and Ibadis' mosques were targeted by militias.[810] According to the 2022 U.S State Department report on religious freedom in Libya, the Libyan criminal code effectively prohibits conversion from Islam, and it bans the circulation of non-Islamic religious materials, missionary activities, and offensive speech to Islam or Muslims.[811] In 2023, a report on the release of six Egyptian Christians who had been

[808] Open Doors, a Christian religious NGO. See: Open Doors, 'World Watch List' (Open Doors, 2025) https://opendoors.fi/worldwatchlist/ accessed 10 April 2026.
[809] The European Centre for Law and Justice, *Religious Freedom in Libya*, (2020). Available at: https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7820&file=EnglishTranslation.
[810] UN High Commissioner for Human Rights, *Compilation on Libya- Report of the Office of the United Nations High Commissioner for Human Rights*, (2020), UN doc. A/HRC/WG.6/36/LBY/2, para 68.
[811] U.S Department of State, *2022 Report on International Religious Freedom: Libya*, (2022). Available at: https://www.state.gov/reports/2022-report-on-international-religious-freedom/libya/.

kidnapped in Libya highlighted that Libya was being condemned by human rights organisations for displaying a toxic blend of religious intolerance and racism towards Christians. The fact that they were Christians subjected them to more abuse and torture. Their release only came after a US$15,000 ransom was paid.[812]

In relation to trafficking for forced labour, there is a clear connection between vulnerability that is compounded by discrimination and the increasing victimisation of racial and religious minority groups.[813] However, none of the examined reports mention the deliberate targeting of Libyan religious minorities for forced labour. Rather, the main target of traffickers are migrants arriving in the country, while discrimination against certain groups could lead to worse treatment by traffickers.[814] Thus, the key distinction here is that traffickers do not target Libyan nationals (even if they are from a potentially vulnerable group), instead they target foreigners (i.e. migrants) who will be even more vulnerable.

Racial Discrimination against Black Africans

Some studies, such as that by Lucas Mafu, speak of the overwhelming injustice and discrimination in Libya against Black Africans coming from Sub-Saharan countries.[815] Libya does not have a national asylum law, and thus the Libyan authorities and the Department for Combating Illegal Migration (DCIM) guards do not have access to formal refugee status determination (RSD) procedures established by the state.[816] As a result, the United Nations High Commissioner for Refugees (UNHCR) is responsible for registering asylum seekers and conducting RSD under its mandate.[817] Therefore,

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[812] Ngala Killian Chimtom, 'Egyptian Christians in Libya face 'toxic mix of racism and religious hostility'' *CRUX* (23-02-2023) https://cruxnow.com/church-in-africa/2023/02/egyptian-christians-in-libya-face-toxic-mix-of-racism-and-religious-hostility accessed 18 April 2026.

[813] For example, see: Heidi Box, 'Human trafficking and minorities: vulnerability compounded by discrimination' (2011) 11 *Human Rights & Human Welfare* 16.

[814] As evident in human rights reports, the main vulnerability for exploitation is an individual's migration status, then discrimination on religious and racial basis. For example, Amnesty International tackled the religious discrimination against Christians in its report on migrants and refugees in Libya, but none of the testimonies mentioned religion as a determining factor in the trafficking for forced labour. See: Amnesty International, *EU Risks Fuelling Horrific Abuse of Refugees and Migrants in Libya*, (2016). Available at: https://www.amnesty.ie/eu-risks-fuelling-horrific-abuse-refugees-migrants-libya/.

[815] Lucas Mafu, 'The Libyan/Trans-Mediterranean Slave Trade, the African Union, and the Failure of Human Morality' (2019) 9 *SAGE Open*, 3.

[816] Human Rights Watch, 'IV. Denial of the Right to Seek Asylum' in *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees* (Human Rights Watch 2006).

[817] UNHCR, 'About UNHCR Libya' (UNHCR) https://help.unhcr.org/libya/about-unhcr-libya/ accessed 11 April 2026.

the refugee status of Sub-Saharan individuals is not acknowledged by many state bodies. This has attracted condemnation and further attention to the issue and the root causes of this treatment. Based on different social theories regarding xenophobia and otherness, Mafu argues that Sub-Saharan migrants traversing Libya while seeking Europe's shores have been subjected to worse treatment than those from other regions of Africa.[818] According to Mafu, there are many factors that resulted in this attitude towards Black Africans, such as the politically racist rhetoric adopted by Al-Qaddafi, which dealt with Black migrants as commodities that can be exchanged for money.[819] Additionally, Libya's historical cultural superiority complex is premised on their belief that they are part of a subgroup of the "more technologically superior" Caucasian race that settled in Africa created all valuable innovations.[820] However, the rest of the arguments made by Mafu seem to give extensive weight to the "Arabisation" movement in Africa, which, according to the analysis of this thesis, is not the case in Libya. This is evident in the ill-treatment and trafficking of other Arab migrants from Egypt and different minorities. Also, the fact that migrants in Libya are overwhelmingly from African countries, makes Black Africans the most targeted group by default.[821] As noted, discrimination can worsen injustices experienced by vulnerable migrants and refugees. However, the main reason behind these injustices is the vulnerability caused by situations of displacement and irregular migration, and not by discrimination against Black Africans per se.[822]

While racial discrimination indisputably worsens the treatment of Black African migrants in Libya, it is not, in and of itself, the root cause of their exposure to trafficking for forced labour. Rather, it compounds pre-existing vulnerabilities that

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[818] Mafu, 'The Libyan/Trans-Mediterranean Slave Trade, the African Union, and the Failure of Human Morality' (n 815) 3.
[819] ibid 4.
[820] ibid.
[821] The most recent data from the International Organization for Migration (IOM) shows that, as of early 2025, there are 858,604 migrants in Libya from 46 different nationalities with Sudanese, Nigeriens, and Egyptians together making up over 70% of the migrant population. See: ICMPD, *Migration Outlook 2025* (ICMPD 2025) https://www.icmpd.org/file/download/63373/file/ICMPD%2520Migration%2520Outlook%25202025.pdf accessed 11 March 2026. See also: Michele Di Maio, Valerio Leone Sciabolazza and Vasco Molini, 'Migration in Libya: A spatial network analysis' (2023) 163 *World Development* 106139, 3; Mustafa O Attir, 'North African Regular and Irregular Migration: The Case of Libya' (2018) 30 *New England Journal of Public Policy* 5, 3.
[822] ICMPD, *Migration Outlook 2025* (ICMPD 2025) https://www.icmpd.org/file/download/63373/file/ICMPD%2520Migration%2520Outlook%25202025.pdf accessed 11 March 2026.

develop primarily from circumstances of displacement and irregular migration. Similar patterns are apparent among other marginalised migrant groups, including women and religious minorities, whose layered identities further increase their risk of abuse. Discrimination undoubtedly influences the intensity and form of exploitation. Nonetheless, it is an individual's migrant status that remains the most consistent and decisive vulnerability factor. Therefore, being a Black African in Libya may render one more susceptible to abuse.[823] Yet it is the broader context of being a migrant, displaced, unprotected, and often criminalised, that places individuals most at risk of trafficking and forced labour.[824]

6.2.2 Migration & Displacement: Overview of Migration & Displacement Pre- and Post-Conflict

Libya has traditionally played an intricate role in regional migratory patterns. Prior to the 2011 uprising, it had the highest GDP in Africa and tolerated irregular migration from Sub-Saharan Africa, with many migrants working informally in sectors such as construction and agriculture.[825] However, shifting economic policies resulting in large-scale expulsions, particularly in the 1980s and early 2000s, indicated a change in strategy.[826] Following the 2011 civil war, Libya increasingly came to be viewed not only as a destination but also as a key transit country for individuals attempting to reach Europe.[827] The intensification of violence following 2011 exacerbated migrants' vulnerability,[828] exposing them to exploitation, forced labour, and smuggling networks

[823] Henry Kam Kah, ''Blood Money', Migrants' Enslavement and Insecurity in Africa's Sahel and Libya' (2019) 44 *Africa Development/Afrique Et Développement* 25, 30.
[824] ibid art 30-31.
[825] Emma Borgnäs, Linda Cottone and Tassilo Teppert, 'Labour migration dynamics in Libya' in F. Fargues, M. Rango, E. Börgnas and I. Schöfberger (eds), *Migration in West and North Africa and Across the Mediterranean: Trends, Risks, Development and Governance* (International Organization for Migration 2020) 298, 299.
[826] Nourhan Abdel Aziz, Paola Monzini and Ferruccio Pastore, 'The Changing Dynamics of Cross-border Human Smuggling and Trafficking in the Mediterranean' (New-Med Research Network, Istituto Affari Internazionali, 2015), 32; Sara Hamood, *African transit migration through Libya to Europe: the human cost* (American University in Cairo, Forced Migration and Refugee Studies Cairo 2006), 18.
[827] Migration Policy Centre, *MPC Migration Profile: Libya*, (2013), 1. Available at: https://migrationpolicycentre.eu/docs/migration_profiles/Libya.pdf See also: Aziz, Monzini and Pastore, 'The Changing Dynamics of Cross-border Human Smuggling and Trafficking in the Mediterranean' (n 826) 30.
[828] John Latham-Sprinkle, Fiona David, Katharine Bryant and Jacqueline Larsen, *Migrants and their vulnerability to human trafficking, modern slavery and forced labour* (International Organization for Migration 2019), 31.

established in local economies.[829] With an absence of governmental protection and growing reliance on armed groups and militias, trafficking has become a systemic feature of Libya's post-conflict migration scene.[830] Thus, displacement and irregular migration are not only by-products of conflict but have become structural aspects that fuel Libya's illicit labour economy.[831]

The rise of forced labour specifically in Libya's detention system is intimately linked to the country's post-2011 conflict, which has deeply fractured state institutions and enabled armed groups to embed themselves within migration governance. As the formal justice system collapsed, law enforcement became ineffective, and militias filled the resulting power vacuum. In this context, forced labour has become a strategy for armed actors not only to assert control but to fund their operations. Migrants, particularly from Chad, Niger, and Nigeria, have been recruited or coerced into working for militias in non-combat roles, such as logistics, construction, and domestic labour, often in exchange for the promise of onward movement or release.[832]

The distinction between smuggling and trafficking is increasingly blurred in this conflict-affected landscape. Migrants may initially engage smugglers to facilitate their journey but frequently find themselves subjected to trafficking practices once they enter Libya. This includes being detained without consent, forced into labour, or extorted for additional payments under the threat of violence. The existence of this overlapping economy of smuggling and trafficking reflects how armed conflict has

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[829] Walk Free, 'Modern slavery in Libya: Global Slavery Index 2023 Country Snapshot' (2023) https://cdn.walkfree.org/content/uploads/2023/09/28081802/GSI-Snapshot-Libya.pdf accessed 07 March 2026; Adesola Hamzah Dawood, 'Slavery, Human Trafficking and Forced Labour, International Law and Islamic Law: Matter Arising in Post-Gadhafi Libya' (2019) 15 *Journal of International Law and Islamic Law* 61; Mohammad Bitar and Benarji Chakka, 'Responsibility for Violation of Rights of Migrants in Libyan Detention Centre' (2023) 17 *Mizan Law Review* 315, 317.

[830] Global Dataset hosted on the Counter-Trafficking Data Collaborative, *Libya: Country of Exploitation* (CTDC). Available at: https://www.ctdatacollaborative.org/map#info-tab.

[831] See: United States Department of State, '2024 Trafficking in Persons Report: Libya' (2024) https://2021-2025.state.gov/reports/2024-trafficking-in-persons-report/libya/ accessed 11 April 2026; Matt Herbert, 'How potential US migrant expulsions to Libya could feed into the country's criminal economy and instability' (Global Initiative, 20 May 2025) https://globalinitiative.net/analysis/how-potential-us-migrant-expulsions-to-libya-could-feed-into-the-countrys-criminal-economy-and-instability/ accessed 11 April 2026.

[832] Jamille Bigio and Rachel Vogelstein, *The Security Implications of Human Trafficking*, (Council on Foreign Relations, 2019), 33. Available at: https://static.cfr.org/sites/default/files/report_pdf/Discussion_Paper_Bigio_Vogelstein_Security_Trafficking_OR.pdf; U.S Department of State, *2023 Trafficking in Persons Report: Libya* (n 780).

restructured Libya's migration routes into sites of exploitation.[833] Figure 2 below visually demonstrates the severe and overlapping forms of exploitation experienced by migrants and refugees along smuggler routes, in detention centres, and at slavery sites in transit countries like Libya. This data highlights the blurred lines between smuggling and trafficking, as migrants who initially seek the assistance of smugglers frequently become victims of trafficking and extreme abuse, particularly in conflict-affected settings like Libya. The context of conflict and lawlessness increases migrants' vulnerability, allowing armed groups and criminal networks to exploit them with impunity.[834] The figure thus powerfully illustrates how transit countries, especially those experiencing conflict, become hotspots for overlapping forms of exploitation and abuse against migrants and refugees.[835] This, as argued by Kuschminder and Triandafyllidou, begs the need to incorporate an understanding of the existence of a transit space where smuggled migrants are more vulnerable to trafficking.[836] It also highlights the importance of economic, social, and power dynamics in human trafficking and enslavement.

[833] Nadia Al-Dayel, Aaron Anfinson and Graeme Anfinson, 'Captivity, migration, and power in Libya' (2023) 9 *Journal of Human Trafficking* 280, 291.
[834] Alexandre Bish and others, *Soldiers of Fortune: The Future of Chadian Fighters After the Libyan Ceasefire* (Global Initiative Against Transnational Organized Crime, 2021), 18; UN General Assembly, *Report of the Secretary-General on Children and Armed Conflicts*, (2023) UN Doc A/77/895-S/2023/363, 16, para 112; UNHCR, *Compilation on Libya- Report* (n 810) 8, art 48.
[835] Al-Dayel, Anfinson and Anfinson, 'Captivity, migration, and power in Libya' (n 833) 291.
[836] Katie Kuschminder and Anna Triandafyllidou, 'Smuggling, Trafficking, and Extortion: New Conceptual and Policy Challenges on the Libyan Route to Europe' (2020) 52 *Antipode* 206, 222.

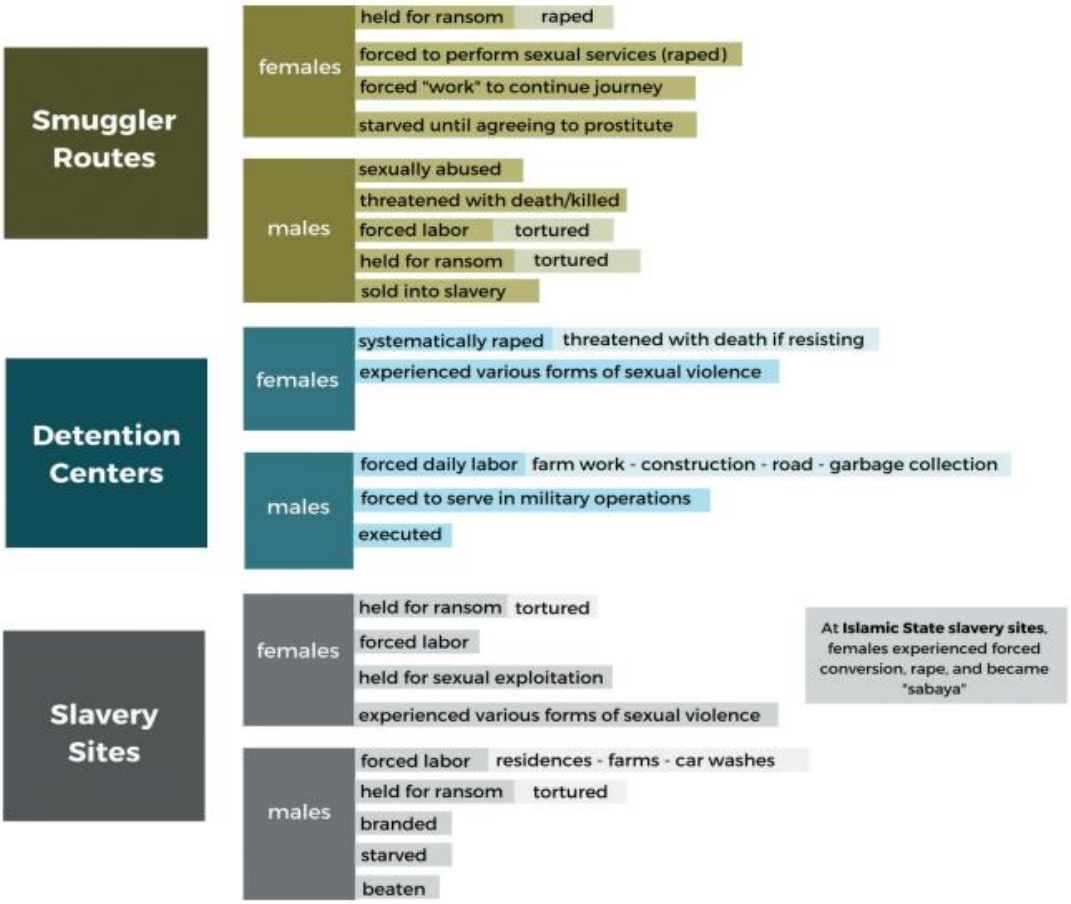


Figure 2: Trafficking and abuse of migrants in three spaces namely, smuggling routes, detention centres and slavery sites.[837]

These practices have emerged in an environment where political authority and territory have been fiercely contested by militias since the 2011 uprising, and where governmental institutions, the economy, and the rule of law have all mostly failed. Libya's civil war and ongoing instability have directly contributed to the collapse of state institutions and the decentralisation of the rule of law.[838] Since 2011, armed gangs and militias have entered the Libyan smuggling routes, frequently demanding payments for protection.[839] However, what appears to be smuggling in the beginning can quickly turn into trafficking for debt bondage and forced labour, such as the case in both official and non-official detention centres.[840]

[837] Al-Dayel, Anfinson and Anfinson, 'Captivity, migration, and power in Libya' (n 833) 291.
[838] Nuri Yeşilyurt, 'A New Balance between 'Local' and 'National'? Libya's Failed Security Sector Reform' (2023) 17 *Journal of Intervention and State Building* 456, 457-458.
[839] Marthe Achtnich, 'Accumulation by immobilization: Migration, mobility and money in Libya' (2022) 51 *Economy and Society* 95, 99.
[840] Al-Dayel, Anfinson and Anfinson, 'Captivity, Migration, and Power in Libya' (n 833) 283.

UN experts have particularly raised concerns about the treatment of migrants and refugees who were allegedly held captive and tortured before being released.[841] Those migrants are indiscriminately apprehended without charges or trials, often spending indefinite time in detention before being returned to their countries through the IOM Voluntary Humanitarian Returns programme,[842] UNHCR, or aggressively by the Libyan authorities. Detention conditions are generally inhumane, falling short of international standards, and may involve torture, slavery,[843] and sexual violence which is particularly dangerous for women.[844] International pressure led the Department for Combating Illegal Migration (DCIM) to shut down 26 facilities in 2018 and to issue instructions asking their official guards to treat detained migrants humanely and inform them of their rights. However, this action had little effect on halting abuse, as reports of beatings and torture continued. Some closed centres became "unofficial" sites operated by militias, further empowering militant and criminal actors in the region. [845]

The UNHCR estimates that thousands of migrants and refugees are held captive in undetermined locations by trafficking organisations that coordinate with both government and militia-run facilities.[846] These factors have contributed to what Achtnich refers to as a carceral economy, in which the vulnerable mobility of migrants is turned into a source of revenue.[847] Detention itself has become a lucrative

[841] Fredrick Wilson and others, 'The 21st Century Migrant: A Review of the Convention on the Protection of Rights of Migrant Workers and Members of their Families: A Case Study of Libya' (July-December 2022) 3(2) *Recent Trends in Data Mining and Business Forecasting* 21-29, 26. See also: Russell Rice Manzano, ''When I was in the Boat, I thought I was Already Dead': Human Trafficking and Exploitation of In-transit Migrants in Libya'' in Jayne Howell, Deborah Altamirano, Faedah Totah & Fethi Keles (eds.), *Porous Borders, Invisible Boundaries? Ethnographic Perspectives on the Vicissitudes of Contemporary Migration* (Committee on Refugees and Immigrants, Society for Urban, National, and Transnational/Global Anthropology & American Anthropological Association, 2018), 6.
[842] The number of flights and resettlement slots offered by those programmes is argued to be inadequate. See: Lucia Pradella and Rossana Cillo, 'Bordering the Surplus Population across the Mediterranean: Imperialism and Unfree Labour in Libya and the Italian Countryside' (2021) 126 *Geoforum* 483, 489.
[843] Fredrick Wilson and others, 'The 21st Century Migrant: A Review of the Convention on the Protection of Rights of Migrant Workers and Members of their Families: A Case Study of Libya' (n 841) 26.
[844] Laura Reques and others, 'Episodes of Violence Suffered by Migrants Transiting through Libya: a Cross-sectional Study in "Médecins du Monde's" Reception and Healthcare Centre in Seine-Saint-Denis, France' (2020) 14 *Conflict and Health* 12, 5.
[845] Al-Dayel, Anfinson and Anfinson, 'Captivity, migration, and power in Libya' (n 833) 284, 288. See also: Kiia Kela, 'Human Rights Violations in Libya: a Critical Assessment on the EU's Complicity and Migration Policies' (MA thesis, University of Oslo, 2018), 15; Flanagan, 'Caught in the Crossfire' (n 731).
[846] Al-Dayel, Anfinson and Anfinson, 'Captivity, Migration, and Power in Libya' (n 833) 285.
[847] Achtnich, 'Accumulation by Immobilization' (n 839) 96-97.

business,[848] with some migrants confined indefinitely and forced to perform unpaid or poorly compensated work.[849] Rather than being safeguarded by the state, migrants are frequently imprisoned by the very actors who intercepted or "rescued" them at sea, and who subsequently demand ransom or labour in return for improved conditions or release.[850] In such a context, the conflict has not only facilitated but actively sustained the widespread trafficking of migrants for forced labour. This reality highlights the Libyan state's failure to internalise anti-trafficking norms and reflects the broader breakdown of legal order in areas of limited statehood.

The Persistence of the Situation

Since 2011, the International Criminal Court (ICC) has been investigating the situation in Libya, involving charges of crimes against humanity such as murder, imprisonment, torture, and persecution.[851] While the ICC's original focus after 2011 was on crimes against humanity during the Libyan Civil War, more recent developments have specifically addressed crimes against migrants and refugees. In April 2022, the ICC Prosecutor reported to the United Nations Security Council that crimes committed against migrants in Libya, such as arbitrary detention, torture, murder, rape, forced labour, and forced conscription, may amount to crimes against humanity and war crimes, and thus fall under the ICC's jurisdiction.[852] However, enforcement remains exceedingly problematic. For example, in January 2025, Italian authorities briefly captured Libyan General Osama Elmasry Njeem, who is subject to an ICC warrant, but did not surrender him to the Court, citing procedural issues.[853] The ICC has since called on Italy to fully cooperate and explain its failure to comply with the surrender

[848] Lauren L Martin and Martina Tazzioli, 'Value Extraction through Refugee Carcerality: Data, Labour and Financialised Accommodation' (2023) 41 *Environment and Planning D: Society and Space* 191, 196.
[849] Al-Dayel, Anfinson and Anfinson, 'Captivity, Migration, and Power in Libya' (n 833) 284; Achtnich, 'Accumulation by Immobilization' (n 839) 96-97.
[850] Pradella and Cillo, 'Bordering the Surplus Population across the Mediterranean' (n 842) 488.
[851] PR Bertran, 'Aiding and Abetting: Assessing the Responsibility of European Union Officials for Crimes against Humanity Committed against Migrants in Libya' in Jasmin Lilian Diab (ed), *Dignity in Movement: Borders, Bodies and Rights* (Transnational Press London 2021) 302, 302-303.
[852] UpRights, 'The ICC Prosecutor Confirms That Crimes Committed Against Migrants in Libya May Amount to International Crimes and Fall Within the ICC Jurisdiction' (5 May 2022) https://www.uprights.org/2022/05/05/the-icc-prosecutor-confirms-that-crimes-committed-against-migrants-in-libya-may-amount-to-international-crimes-and-fall-within-the-icc-jurisdiction/ accessed 12 March 2026.
[853] Centro di Ateneo per i Diritti Umani, 'The International Criminal Court calls on Italy to fully cooperate after failing to arrest Libyan General Osama Elmasry Njeem' (UniPD, 24 January 2025) https://unipd-centrodirittiumani.it/en/topics/the-international-criminal-court-calls-on-italy-to-fully-cooperate-after-failing-to-arrest-libyan-general-osama-elmasry-njeem accessed 10 March 2026.

obligation, illustrating once more the limitations of international legal accountability, where state interests triumph over legal obligations.[854]

The joint report published in December 2016 by the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) provides the most authoritative and detailed reporting on the widespread abuses against migrants in Libya, including torture, arbitrary detention, rape, slavery, forced labour, and extortion. This research exposes a systematic pattern of human rights violations faced by migrants, characterising Libya as a location where migrants are exposed to arbitrary imprisonment, torture, unlawful killings, sexual exploitation, forced labour, and extortion by both state and non-state actors.[855]

In 2017, Agnes Callamard, the UN Special Rapporteur on extrajudicial executions, submitted a report on unlawful deaths of migrants and refugees, highlighting the threat posed by border externalisation policies.[856] Callamard detailed how these policies, including funding agencies in other countries to arrest, process, rescue, or disembark migrants, raised serious concerns where recipient states are alleged to be responsible for serious crimes.[857] In the same year, the ICC Prosecutor, Fatou Bensouda, announced that her office was considering opening an investigation into migrant-related crimes in Libya.[858]

In 2018, Nils Melzer, the UN Special Rapporteur on torture and other cruel, inhumane, or degrading treatment or punishment, echoed Callamard's findings, stating that these violations follow a programmatic pattern that can be described as systematic.[859]

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[854] *Prosecutor v Al-Werfalli and Others* (Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry / Almasri Njeem) ICC-01/11-162, Pre-Trial Chamber I, 17 February 2025 https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180ac3f7c.pdf accessed 10 April 2026.
[855] United Nations Support Mission in Libya (UNSMIL) and Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Detained and Dehumanised: Report on Human Rights Abuses Against Migrants in Libya' (13 December 2016) 1–2.
[856] UN General Assembly, 'Unlawful death of refugees and migrants: Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, Agnes Callamard' (15 August 2017) UN Doc A/72/335.
[857] ibid.
[858] Justice Info, 'ICC Prosecutor Sets Libya Priority, Including Gaddafi Regime and Crimes Against Migrants' (11 November 2016) https://www.justiceinfo.net/en/30560-icc-prosecutor-sets-libya-priority-including-gaddafi-regime-and-crimes-against-migrants.html accessed 12 March 2026.
[859] ibid 304.

Likewise in 2018, the IOM found 76% of migrants and refugees in Italy had encountered human trafficking and other exploitative practices when en route in Libya, while Oxfam found 84% had experienced inhumane treatment.[860] Graveyards containing the remains of at least 20 migrants were subsequently discovered near Tazirbu in 2023.[861]

The situation in Libya has not effectively changed over the last 10 years. In May 2023, the United Nations High Commissioner for Refugees (UNHCR) reported on Libya's situation affecting vulnerable communities, with 134,787 internally displaced (IDPs) and 695,516 returnees, 40,540 registered refugees, and 224 monitoring visits to detention centres.[862] Migrants in Libya still face severe conditions, including forced labour, violence, sexual exploitation, indefinite detentions, kidnapping, and extortion.[863] In March 2024, at least 65 migrant corpses were found in a mass grave in southwest Libya, as reported by the IOM.[864]

Root Causes: Libya's Political and Legal Framework

Libya's failure to prevent trafficking for forced labour is deeply rooted in its fragmented political and legal structures.[865] Libya's legal framework and rhetoric before 2011 did not recognise the existence of refugees on its territory, leading to refugees not receiving specific protection.[866] Indeed, Libyan officials of the former regime often described illegal immigration as an invasion, causing problems in health,

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[860] Global Initiative Against Transnational Organized Crime, *Responding to the Human Trafficking-Migrant Smuggling Nexus: With a Focus on the Situation in Libya*, 1-2.
[861] OHCHR, 'Libya: UN Experts Alarmed at Reports of Trafficking in Persons, Arbitrary Detention, Enforced Disappearances and Torture of Migrants and Refugees' (21 July 2023) https://www.ohchr.org/en/press-releases/2023/07/libya-un-experts-alarmed-reports-trafficking-persons-arbitrary-detention accessed 10 March 2026.
[862] UNHCR, *UNHCR Libya Update* (2023) https://data.unhcr.org/en/documents/details/100661 accessed 1 April 2026.
[863] UNHCR, *Compilation on Libya – Report* UN Doc A/HRC/WG.6/43/LBY/2, 2, art 10(d).
[864] IOM, 'Discovery of Mass Grave with 65 Migrants' Bodies in Libya' (IOM 2024) https://www.iom.int/news/discovery-mass-grave-65-migrants-bodies-libya accessed 10 April 2026.
[865] Wilson et al, 'The 21st Century Migrant' (n 841) 25.
[866] For example, in 2009, the Director of the Immigration Office in Libya said that individuals entering the country illegally are the only ones living there, not refugees. See: Human Rights Watch, *Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers* (2009) 10 https://www.hrw.org/report/2009/09/21/pushed-back-pushed-around/italys-forced-return-boat-migrants-and-asylum-seekers accessed 10 May 2026.

culture, social relations, and the economy.[867] The root causes of this failure date back to the early 2000s and are partly attributed to the European Union's (EU) restrictive migration policies towards Sub-Saharan Africans, and the commodification of migrants by Al-Qaddafi. In particular, the agreements between Libya and the EU, coinciding with an increase in boat migration from Libya to Europe. These agreements include providing funds for immigrant detention facilities, border monitoring training and maritime patrols, voluntary return initiatives, embassy cooperation, and heightened surveillance in the Sahara.[868] The risks and consequences of such policies were highlighted in the landmark case of *Hirsi Jamaa and Others v. Italy*, where the European Court of Human Rights concluded that Italy's practice of intercepting migrants at sea and returning them to Libya put those individuals at a real risk of inhuman or degrading treatment, in breach of the European Convention on Human Rights. The Court emphasised that even outside national territory, states must adhere to international human rights obligations, including the prohibition of collective deportation and the principle of non-refoulement, especially considering the well-documented abuses faced by migrants in Libya.[869]

Despite the formal recognition of refugee rights under the 2011 Constitutional Declaration,[870] and Libya's ratification of several key international instruments, it has not developed coherent national asylum legislation.[871] Its domestic legal framework remains largely shaped by Qaddafi-era laws, such as Law No. 6 of 1987,[872] and Law No. 19 of 2010,[873] which criminalise irregular migration and permit detention with forced labour.[874] These laws not only fail to meet international human rights standards,

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[867] Hamood, *African Transit Migration through Libya to Europe: The Human Cost* (n 826) 20-24.
[868] Achtnich, 'Accumulation by Immobilization' (n 839) 99.
[869] *Hirsi Jamaa and Others v Italy* App no 27765/09 (Grand Chamber, ECtHR, 23 February 2012) paras 113–114, 122–124, 131–133, 156–158 https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-109231%22]} accessed 10 April 2026.
[870] *Libyan Constitutional Declaration* (2011) art 10 https://security-legislation.ly/latest-laws/constitutional-declaration-of-2011-consolidated/ accessed 10 March 2026.
[871] UNHCR, *UNHCR Submission for the Office of the High Commissioner for the Universal Periodic Review – Libya – 3rd Cycle, 36th Session* (2019) https://www.refworld.org/policy/upr/unhcr/2019/en/123102 accessed 10 April 2026.
[872] *Law No 6 of 1987 Organising the Entry and Residence of Foreigners* art 2 https://security-legislation.ly/latest-laws/law-no-6-of-1987-organising-the-entry-and-residence-of-foreigners accessed 10 April 2026.
[873] *Law No 19 of 2010 on Combatting Illegal Immigration* art 6 https://security-legislation.ly/latest-laws/law-no-19-of-2010-on-combatting-illegal-immigration accessed 10 May 2026.
[874] Bitar and Chakka, 'Responsibility for Violation of Rights of Migrants in Libyan Detention Centre' (n 829) 320.

but they also facilitate forced labour under the pretence of immigration enforcement.[875]

Although Libya has ratified the ILO Forced Labour Conventions and the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention), which ensures non-refoulement,[876] there is no evidence of genuine normative engagement with their principles.[877] The state continues to rely on detention, expulsion, and punitive migration control measures, particularly through the Department for Combating Illegal Migration (DCIM), whose agents have been implicated in trafficking and abuse.[878] Migrants are often held without due process, and the legal ambiguity surrounding their status allows both state and non-state actors to exploit them with impunity. According to the U.S. Department of State's 2023 trafficking report on Libya, between 8,500-11,500 people were detained in official detention centres run by the DCIM,[879] and thousands more in unofficial facilities run by militias.[880]

Thus, it can be noted that Libya has failed to meet its obligation to criminalise human trafficking under the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol),[881] resulting in indefinite and arbitrary detention. Furthermore, no country has the right to detain refugees solely for being present without valid documentation, and that detention should not be the automatic response to irregular entry. Within the EU, for example, the detention of migrants and asylum seekers is strictly regulated as it must be a measure of last resort,

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[875] UN High Commissioner for Human Rights, *Compilation on Libya- Report* (n 810) 4, art 20.
[876] *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (adopted 10 September 1969, entered into force 20 June 1974) UN Treaty Series No.14691 (OAU Refugee Convention) art 2(3).
[877] UNHCR, *UNHCR Submission for the Office of the High Commissioner for the Universal Periodic Review – Libya – 3rd Cycle, 36th Session* (2019) https://www.refworld.org/policy/upr/unhcr/2019/en/123102 accessed 10 March 2026.
[878] Eugenie Deval, 'Trafficking and Exploitation of Migrants in Libya: Focus on the Legal and Administrative Framework, and Exploration of the International Responsibility of the State of Libya' (2018) 51 *Revue Belge de Droit International* 43, 52; See also: UNHCR, *Compilation on Libya* (n 810) 5, art 28,29; Pradella and Cillo, 'Bordering the Surplus Population across the Mediterranean' (n 842) 488.
[879] This department is run by the Stability Support Apparatus as established by the Presidential Council and is affiliated with the Government of National Unity. See: https://ssa.gov.ly/en/about-us/.
[880] U.S Department of State, *2023 Trafficking in Persons Report: Libya* (n 780).
[881] Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, *supplementing the* United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) UN Doc A/55/383 (Palermo Protocol) art 5.

used only after careful, individual assessment and when alternatives have been considered. Detention cannot be justified solely on the grounds of irregular entry or presence; such measures must be necessary, proportionate, and subject to judicial oversight, as clarified by the Court of Justice of the European Union and reflected in EU directives and international human rights law.[882] Arbitrary detention is forbidden by Article 9 of the International Covenant on Civil and Political Rights (ICCPR),[883] while asylum is mentioned as an international legal principle in Article 14 of the Universal Declaration of Human Rights (UDHR).[884] Arbitrary detention is common in Libya as it is practiced based solely on personal will of the coast guards at the DCIM rather than on reasoning or judgement. Whereas detention must be conducted in accordance with a procedure prescribed by law and in good faith, and it must pursue a legitimate aim. This understanding aligns with Diderot and Le Rond d'Alembert's view, which describes "arbitrary" as something not defined or constrained by law but left entirely to individual discretion. The term applies both to how decisions are made and to their outcomes.[885] Therefore, the detention of migrants or refugees is only allowed when there is a clear, lawful, and necessary reason. Additionally, international law, including the African Charter on Human and Peoples' Rights (ACHPR),[886] the Convention on the Prohibition of Torture (CAT),[887] the Convention on the Rights of the Child (CRC),[888] and the ICCPR,[889] absolutely prohibit inhumane treatment of detainees under any circumstances. There are no situations or justifications that permit inhumane treatment. All these international instruments obligate Libya to act in

[882] European Parliamentary Research Service, 'Detention of Migrants and Asylum Seekers in the EU: Setting the Right Standards' (Briefing, 2023). https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/753926/EPRS_BRI(2023)753926_EN.pdf accessed 12 March 2026.
[883] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 9.
[884] *Universal Declaration of Human Rights*, GA Res 217A (III), UN Doc A/810 (adopted 10 December 1948) art 14.
[885] Denis Diderot and Jean Le Rond d'Alembert, *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers* (1751–72) vol 1, s.v. 'Arbitraire', 578; Carla Ferstman, '2: Notions of the "Arbitrary"' in *Conceptualising Arbitrary Detention* (Bristol University Press 2024), 10.
[886] *African Charter on Human and Peoples' Rights* (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982).
[887] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.
[888] *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
[889] *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

accordance with human rights law.[890] Thus, Libya is responsible for the direct attribution of DCIM agents' actions, Libyan coast guards' actions, and militias' actions in detention centres.[891] Furthermore, the "due diligence" standard, as per the OHCHR's 2002 Recommended Principles and Guidelines on Human Rights and Human Trafficking, requires states to take positive action to prevent these violations, and Libya has clearly failed to do so.[892]

Moreover, international humanitarian law (IHL) protects migrants under the Geneva Conventions and their Additional Protocols, including those with civilian status, "protected person" status, and refugee status. Migrants who do not directly participate in hostilities are considered civilians in international armed conflicts, while those who participate in hostilities become combatants. In non-international armed conflicts, they are protected from the dangers of military operations as civilians unless they engage in hostilities or assume a continuous combat function on behalf of a party to the armed conflict. Migrants who qualify as "protected persons" may be granted special protection, including individual or collective relief, medical attention, the right to practice their religion, and the right to leave conflict-affected areas. Refugees are also protected under the Fourth Geneva Convention Article 44, Article 70(2),[893] and Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, in Article 73.[894] Migrants are

[890] Bitar and Chakka, 'Responsibility for Violation of Rights of Migrants in Libyan Detention Centre' (n 829) 319.
[891] Deval, 'Trafficking and Exploitation of Migrants in Libya' (n 878) 57.
[892] OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, (2002) UN Doc. E/2002/68/Add.1, principle 2. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/Traffickingen.pdf; Also, the "due diligence" standard is mentioned in the Responsibility of States for Internationally Wrongful Acts which is widely recognised as customary international law. See: International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001) UN Doc A/56/10, ch IV.E.1.
[893] Article 44 reads: "In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government." Article 70 reads: "Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace." See: *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entered into force 21 October 1950) UN Doc.34_AP-I-EN (Convention IV) art 44, 70(2).
[894] "Refugees and stateless persons: Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected

entitled to the right to move freely within territories, and to never be displaced from regular habitual places unless necessary for the security of the armed group/occupying power. They are entitled to the right to liberty, work only to the same extent as nationals of the Party to the conflict in whose territory they are, and not be required to perform forced or compulsory labour. In both international and non-international armed conflicts, migrants are entitled to the respect of family life, including maintaining family unity, facilitating contact, and sharing information about their whereabouts.[895] Therefore, the state of Libya, by not securing safety to migrants and refugees, is also in breach of international humanitarian law.

Furthermore, in relation to trafficking of migrants for forced labour, the Rome Statute of the International Criminal Court, in Article 7(1)(c), considers enslavement to be a crime against humanity when the perpetrator exercises ownership over a person or persons, such as purchasing, selling, lending, bartering them, or through depriving them of their liberty.[896] This act is considered a crime against humanity when committed with knowledge and as part of a widespread or systematic attack on civilian populations. Forced labour is considered a form of exercising ownership in the jurisprudence of the ICC.[897] UN reports show that a large number of migrants were subjected to forced labour in Libya, with half working without pay, Bitar and Chakka have argued that Libya is enslaving migrants in what amounts to a crime against humanity.[898]

Nonetheless, the responsibility for forced labour and other crimes committed against migrants and refugees in Libya is not only the responsibility of the state, but rather is the responsibility of both state and non-state actors, including non-state armed groups. While the Libyan government controls less than one-third of the country's land, the

persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction." See: *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts* (adopted 08 June 1977, entered into force 07 December 1978) UN Doc.34_AP-I-EN (Protocol I) art 73.

[895] Flanagan, 'Caught in the Crossfire' (n 731).

[896] *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute) Art.5(1).

[897] *Prosecutor v Dominic Ongwen* (Judgment) ICC-02/04-01/15-1762-Red (04 February 2021) para.2712.

[898] Bitar and Chakka, 'Responsibility for Violation of Rights of Migrants in Libyan Detention Centre' (n 829).

Libyan National Army, led by Khalifa Haftar, and other armed groups control the rest. Non-state armed groups, regardless of their affiliations, are obligated to treat civilians humanely and refrain from killing, mutilating, torturing, and other harmful treatment under IHL. They also have responsibility to compensate civilian damages in violation of Common Article 3 of the Geneva Conventions.[899] The conflict in Libya meets the threshold of Additional Protocol II for non-international armed conflicts (which Libya ratified in June 1978), and so non-state armed groups are obligated to protect migrants in detention centres, provide legal assistance, and provide a fair trial. UN Security Council Resolution 2174 assigns responsibility for crimes committed to non-state armed groups, including the Libyan National Army.[900] These crimes include human rights violations against migrants in detention centres.[901]

6.3 Measuring Effectiveness of the ILO's Forced Labour Conventions in Libya

This thesis devoted its first chapter to analyse the concept of effectiveness in comparison with concepts such as implementation and compliance. Resting on Harold Koh's theory of transnational legal process, in this section effectiveness is treated as a wider concept that encompasses compliance in the formal sense, i.e., formal compliance through ratification and meeting reporting obligations, as well as the concept of implementation which concerns the interpretation and the internalisation of international norms into the domestic legal system of the state, and behavioural conformity with the internalised norms into the state's own value system. It is worth noting that while cases of effectiveness can occur within cases of non-compliance, a need to examine the formal compliance of the state at the international level remains relevant as it sets standards and expectations for behavioural changes at the domestic level. The examination of the formal compliance will be conducted through analysis of the ratification of relevant international legal instruments and Libya's

[899] "…Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria…" See*: Convention (III) relative to the Treatment of Prisoners of War* (adopted 12 August 1949, entered into force 21 October 1950) Doc.32_GC-III-EN (Third Geneva Convention) art 3(1). Available at: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf.
[900] UN Security Council Resolution 2174 (27 August 2014) UN Doc S/RES/2174.
[901] Bitar and Chakka, 'Responsibility for Violation of Rights of Migrants in Libyan Detention Centre' (n 829) 336-337.

corresponding state reporting. Following the examination of the state's formal compliance, the research examines the implementation conducted by the Libyan government(s) at the domestic legal level. Behavioural changes will be examined through the role of transnational actors, and their policies, leading to various conclusions on the efficacy of Forced Labour Conventions.

6.3.1 The Examination of State Compliance

Libya's legal framework treats international law as binding, as stated in Article 13 of the unified Libyan draft constitution (2017). Although the Constitutional Declaration of 2011 does not explicitly state the binding effect of international law, the Libyan Supreme Court and previous authorities confirmed that international conventions have a higher status than domestic law. As a result, Libya is bound by all provisions of the conventions it is a party to, and in any conflict between domestic and international law, international law will prevail.[902]

Moreover, the Libyan legal framework which is embedded in both civil law and Islamic law traditions, provides for a formally monist approach to treaty incorporation. Once treaties are ratified and published in the Official Gazette, they are considered part of domestic law and, in theory, supersede ordinary legislation.[903] However, the judiciary seldom applies these international obligations in practice, showing a persistent gap between monist theory and dualist-like outcomes in enforcement.[904]

Libya has been a member to the ILO since 1952. Since then, it has ratified multiple Conventions. In relation to forced labour, Libya ratified ILO's Forced Labour Convention No. 29 in 1962, and a year before in 1961 ratified the Abolition of Forced Labour Convention No. 105. It also ratified the Convention on the Worst Forms of Child Labour No. 182 in 2000.[905]

While Libya has formally ratified all of the ILO's Forced Labour Conventions, its compliance has remained mostly symbolic and removed from any deeper normative

[902] ibid 318.
[903] International Commission of Jurists, *Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Access to Justice* (ICJ 2016) 21–22.
[904] ibid.
[905] International Labour Organization, *Ratifications for Libya* (n 12).

engagement. The failure to meet reporting obligations and to incorporate Convention standards effectively into domestic enforcement mechanisms suggests a shallow interaction with the international legal regime. According to Koh's theory of transnational legal process, compliance is not simply a matter of formal acceptance of treaty obligations but a dynamic process involving interaction, interpretation, and ultimately, internalisation of international norms within domestic legal and political systems.[906] Libya's lack of engagement with these processes suggests that internalisation has not occurred.[907] Thus, in Koh's terms, Libya's behaviour remains at the level of rhetorical commitment, falling far short of the habitual obedience that establishes true effectiveness in international law.[908]

6.3.2 The Examination of the Implementation at the Domestic Legal Level

National Legislation

The Libyan legal framework for combatting forced labour is poor. Laws and regulations are inadequate for the protection of trafficking victims. Moreover, there is a lack of special laws on the topic of forced labour. Nonetheless, in the following section, all relevant laws will be analysed.

Law No. (12) of 2010 on Issuing the Labour Relations Law and its Bylaw

In 2010 under Al-Qaddafi's rule, a new set of labour laws and regulations was adopted. The law that introduces the Labour Relations Law states that it repeals all previous labour laws. Article 2 mentions that an executive regulation will be issued to include executive provisions on different matters of labour relations including the determination of forced labour. The law was adopted in 2010 titled Law No. 12 on Labour Relations and its Bylaws and remains in force.

Under Article 1 of Libya's Labour Relations Law No. 12, labour relations between Libyan citizens must be based on free will, aiming to eliminate slavery and promote economic unity. While partnerships between Libyans and non-Libyans are generally permitted, paid work in public entities is restricted, and parties may opt out of the

[906] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10775) 203–205.
[907] ibid 204–205.
[908] ibid 206–207.

law's provisions. Article 5 defines forced labour as work imposed under threat and without consent, but exempts military or national service, civic duties, court-ordered labour under supervision, and work required during emergencies such as war or disasters.[909]

The definition of forced labour in Libya's Labour Law closely mirrors that of ILO Convention No. 29, including similar exceptions. However, it notably adds an exception for work imposed by national laws, a provision that lacks clarity and is vulnerable to abuse in Libya's ongoing conflict. Article 2 affirms labour as a right and duty for all citizens, based on equality, and prohibits forced labour and exploitation. Yet, protection for foreigners is conditional on legal residency, effectively excluding undocumented migrants from labour rights protections, including safeguards against forced labour.[910]

Article 9 requires non-Libyans to obtain a work permit before employment, and employers must secure prior approval from the relevant authorities, who determine the conditions and permitted professions.[911] While this aligns with common international practice and does not inherently permit forced labour, it creates significant barriers for migrant workers, especially in the absence of effective legal protections. These restrictions can expose migrants to exploitation and dependency on employers. Additionally, Article 21 guarantees equal pay regardless of gender, religion, race, or colour but omits nationality, suggesting that equality applies among Libyan citizens rather than extending fully to foreign workers.[912]

Libya's Labour Law includes several provisions that offer formal protections against exploitation. Article 50 limits wage deductions, reducing the risk of debt bondage, while Article 68 upholds the contractual nature of employment, allowing task changes only by mutual agreement—though exceptions for emergencies are vaguely defined and open to abuse. Article 71 recognises the right of both parties to terminate the employment contract, reinforcing the principle of free labour. Article 75 further allows

[909] Law No. (12) on Labour Relation and its Bylaws 2010, arts 1, and 5. Available at: https://security-legislation.ly/latest-laws/law-no-12-of-2010-on-labour-relations-and-its-bylaw/.
[910] ibid art 2.
[911] ibid art 9.
[912] ibid art 21.

workers to terminate without notice in cases of fraud, serious misconduct, or endangerment by the employer. Article 78 provides end-of-service bonuses for non-nationals not covered by social security, though access to these benefits is conditional.

Articles 90 to 99 afford domestic workers formal rights, including a binding contract approved by authorities, humane treatment, and equality in trade union membership, working conditions, and entitlements. However, these protections remain largely declaratory. Article 121 fails to specify penalties for forced labour, and the law overall lacks clear enforcement mechanisms or preventative measures.[913] While Law No. 12 of 2010 calls for further regulation through an Executive Regulation, the absence of implementation of either the primary legislation or secondary regulations renders protections for both local and migrant workers incomplete and ineffective, particularly in Libya's conflict-affected context.

Executive Regulations of Labour Relations Law No. 12 of 2010 (GPC Resolution No. 595 of 2010)

According to Article 37 of the General Popular Committee (GPC) Executive Resolution No. 595 of 2010, forced labour concerns all work and services that are carried and imposed on anyone under threat.[914] Article 38 states the exceptions to forced labour, namely work or service carried out according to military and national laws, or is part of the natural civic duty for nationals, societies, and community service for the public interest, or any work or service that is obligatory during emergency situations such as in wars, disasters, or in cases of threats of possible disasters such as wildfires, famine, and flooding.[915] Article 39 explicitly prohibits forced labour in situations where work is imposed through coercion or manipulation, including forced mobilisation for personal gain, the use of labour as a disciplinary measure, compelling individuals to continue working by rejecting their resignation, or discriminatory treatment in assigning labour.[916]

[913] ibid arts 50, 68, 71, 75, 78, 90-99, and 121.
[914] General People's Committee Resolution No 595 of 2010 on the Executive Regulations of Labour Relations Law No 12 of 2010, art 37.
[915] ibid art 38.
[916] ibid art 39.

It can be concluded that this regulation is very important in terms of defining forced labour and clarifying its limits by giving examples of what is considered forced labour and what is not, i.e., exceptions. The three Articles 37, 38, and 39, which are laid out under Chapter Eight (titled the determination of forced labour and other labour included), defines forced labour in alignment with the definition adopted by the Forced Labour Conventions. However, the wording does not include further examples of the means to force labour except for threat/menace. It does not, for example, mention physical violence and coercion. Nonetheless, the wording can be seen as generally positive since "menace" in itself can include both physical and psychological threat. The definition can also be seen as more progressive in the sense that it does not touch upon the involuntary nature of the job – thereby assuming that the existence of the threat by default deems the labour as involuntary.

Furthermore, Article 38 aligns with Article 2 of Convention No. 29. While the removal of work imposed by court rulings can be seen as progressive, the fact that the Article includes work imposed by national laws in addition to military laws is quite dangerous especially with the state of legal pluralism in Libya and the weak rule of law which can be easily manipulated to allow forced labour through laws and regulations. In relation to the cases of forced labour mentioned in Article 39, they align with the examples mentioned in Article 1 of Convention No. 105.[917] For instance, the prohibition of forced labour to discriminate between people can be seen as relevant to the situation of forced labour of migrants and refugees in the country as a result of the conflict. This regulation can provide some form of legal protection to migrants in Libya but does not help especially since no prevention and prosecution measures have been adopted. Moreover, the Article does not touch upon forced labour as a means of political coercion or as punishment for taking part in strikes. This exclusion disregards the primary aim of Convention No. 105 and highlights the potential for abuse of forced labour for political interests, which is of particular concern considering the complex and competing governance structures within Libya as a result of the ongoing conflict.

The Libyan Penal Code of 1954

[917] *ILO Convention (No 29) concerning Forced Labour* (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55.

When it comes to the prosecution of traffickers for the crime of forced labour, the Libyan Penal Code, in its articles 425 and 426, criminalises slavery and seeks to punish "anyone who deals in or traffics in slaves or any manner disposes of a slave or a person in a condition resembling slavery".[918] Nonetheless, the Libyan national law does not specifically criminalise forced labour or consider it a criminal offence.[919] This highlights the failure of the Libyan national system to comply with its obligations under Article 25 of the Forced Labour Convention No. 29 which states that "*the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced*",[920] and Article 2 of the Abolition of Forced Labour Convention No. 105 which states that "*each Member of the International Labour Organization which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention"*.[921]

Both of Libya's rival administrations, the Government of National Unity (GNU) in Tripoli and the Government of National Stability (GNS) in the east, continue to operate primarily under Qaddafi-era legislation, including Labour Law No 12 of 2010 and the Order of the Revolutionary Command Council of 26 September 1969 on the Prohibition of Trafficking in Labour.[922] While these frameworks remain in force, neither administration has introduced comprehensive legislation targeting forced labour or trafficking. The GNU has indicated plans to develop anti-trafficking laws, reportedly in cooperation with the United Nations Office on Drugs and Crime

[918] The Libyan Penal Code 2010, art 425, 426. Available at: https://security-legislation.ly/latest-laws/penal-code/.
[919] Bitar and Chakka, 'Responsibility for Violation of Rights of Migrants in Libyan Detention Centre' (n 829), 329.
[920] *ILO Convention (No. 29) concerning Forced Labour* (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55.
[921] *ILO Convention (No. 105) concerning the Abolition of Forced Labour* (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291.
[922] Revolutionary Command Council, *Order on the Prohibition of Trafficking in Labour* (26 September 1969), cited in Law No 58 of 1970 on Labour (Libya), which repealed earlier labour provisions. The Order formally criminalised trafficking in labour and served as a foundational legal basis integrated into Libya's 1970 Labour Law. Although enacted several years after Libya's ratification of ILO Forced Labour Conventions Nos 29 (1961) and 105 (1962), the 1969 Order's timing, content, and legislative history indicate that it was very likely a domestic response to Libya's commitments as prescribed in these ILO Conventions.

(UNODC), though no such legislation has been adopted to date.[923] The GNS and earlier transitional authorities have made no meaningful legislative progress in this area.

It can therefore be concluded that Libya's legal system remains non-compliant with its obligations under the Forced Labour Conventions or the Palermo Protocols. The current framework fails to ensure adequate protection against forced labour and provides no effective mechanisms for the prosecution of traffickers.[924] Importantly, however, Libya's failure to meet international anti-trafficking standards must be viewed in a broader global perspective. Almost every country in the world, even those with functional institutions and strong legal systems, falls short in some aspect of their response to human trafficking. Recent reporting, for example, has exposed how trafficked women in Ireland continue to be placed into direct provision centres, where they are vulnerable to further victimisation.[925] This comparative view does not justify Libya's failures but highlights the limitations of international norms and enforcement mechanisms across both weak and powerful states alike.

Nonetheless, this legal vacuum, compounded by the fragmentation of state institutions and prolonged conflict, exacerbates the risk of trafficking and exploitation. In the absence of meaningful criminal justice enforcement, forced labour has become a profitable and largely unchecked practice, especially among armed groups who continue to control detention centres and exploit migrants and refugees for economic gain.[926] In line with Koh's theory of transnational legal process, this echoes a failure

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[923] United Nations Office on Drugs and Crime, *UNODC supports Libya to develop its first National Strategy and Action Plan against Trafficking in Persons* (UNODC, 13 April 2022) https://www.unodc.org/unodc/en/human-trafficking/glo-act2/news/unodc-supports-libya-to-develop-its-first-national-strategy-and-action-plan-against-trafficking-in-persons.htm accessed 16 March 2026.

[924] International Labour Organization (ILO), *Observation (CEACR) - adopted 2023, published 112th ILC session (2024), Forced Labour Convention, 1930 (No. 29) – Libya* https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4438985 accessed 16 April 2026.

[925] UN Human Rights Office of the High Commissioner, 'UN Experts Urge Ireland to Strengthen Access to Housing and Assistance for Trafficking Victims' (28 September 2023) https://www.ohchr.org/en/press-releases/2023/09/un-experts-urge-ireland-strengthen-access-housing-and-assistance-trafficking accessed 22 May 2026; MECPATHS, 'Inadequate Services for Trafficking Victims – Report' (12 June 2024) https://mecpaths.com/inadequate-services-for-trafficking-victims-report accessed 22 March 2026.

[926] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Detained and Dehumanised: Report on Human Rights Abuses against Migrants in Libya* (13 December 2016) https://www.ohchr.org/en/documents/country-reports/detained-and-dehumanised-report-human-rights-abuses-against-migrants-libya accessed 16 April 2026.

of internalisation: while there has been formal interaction with international norms, these have not been meaningfully interpreted or embedded within Libya's legal and institutional system.[927] Without internalisation, there is no habitual obedience, and thus, no effectiveness, only a legal vacuum that permits forced labour to persist unchecked.[928]

Ratification & State Reporting: Formal Compliance without Internalisation

Observation on submission to competent authorities (CEACR) - adopted 2023, published 112nd ILC session (2024)

While Libya has ratified the three key ILO instruments on forced labour, namely Conventions Nos. 29, 105, and 182, its failure to meet basic reporting obligations under Article 19 of the ILO Constitution reflects a broader lack of engagement with the ILO supervisory system. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly noted Libya's non-responsiveness, highlighting an enduring disconnect between formal ratification and the normative expectations of compliance. [929] In Koh's terms, this failure represents a breakdown in the transnational legal process: interaction has occurred, but interpretation and internalisation are absent.[930] Libya's persistent failure to comply with ILO reporting obligations, despite ratifying the Forced Labour Conventions, reflects a deeper systemic issue, especially worrying in the context of ongoing conflict and Libya's role as a key transit point for migrants. The CEACR's repeated concerns emphasise how the lack of reporting undermines transparency and oversight, increasing the vulnerability of migrants and refugees to exploitation. In a fragile, conflict-affected state, such neglect effectively allows conditions that facilitate trafficking for forced labour to persist unchecked.[931]

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[927] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10775) 203–205.
[928] ibid 206–207.
[929] CEACR, *Observation on Submission to Competent Authorities (CEACR)*, (2024). Available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4365746,103130
[930] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10).
[931] International Labour Organization (ILO), *Observation (CEACR) - adopted 2023, published 112th ILC session (2024), Forced Labour Convention, 1930 (No. 29) – Libya*, available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4438985 accessed 16 April 2026.

C029 – Forced Labour Convention, 1930 (No. 29)[932]

The CEACR observation published in the 2023 ILC session restated Libya's failure to submit reports and reiterated earlier concerns under Articles 1(1), 2(1), and 25 of Convention No. 29, mainly regarding forced labour linked to armed conflict and human trafficking. Citing UN reports, including the 2016 investigation by the UN High Commissioner for Human Rights,[933] the CEACR referred to the widespread arbitrary detention and exploitation of migrants in Libya. It echoed calls for urgent government action against trafficking and noted UN Security Council Resolutions 2240 (2015)[934] and 2388 (2017)[935] which connect trafficking to Libya's instability and the strengthening of criminal networks. The CEACR also acknowledged Libya's 2018 report, which referenced the drafting of an anti-trafficking bill and the proposed establishment of a national Anti-Trafficking Committee. However, the Committee raised serious concerns about ongoing abuses, including indefinite detention and forced labour of migrants intercepted by the Libyan Coast Guard. It urged the government to criminalise trafficking, ensure effective prosecution and punishment of traffickers, and adopt protective measures for migrant workers. The CEACR welcomed the proposed legislation and conveyed hope it would soon be enacted and communicated to the ILO.[936]

In its 2023 direct request under Articles 1(1) and 2(1) of Convention No. 29, the CEACR raised concerns over the lack of freedom for members of Libya's armed forces to leave their posts voluntarily. Despite Libya's 2018 report referencing amendments to section 71 of Act No. 40 of 1974 (as modified by Act No. 7 of 2007), the CEACR noted that no copy of the law had been provided. It requested detailed information and a copy of the amendment to assess compliance and prevent situations that may amount to forced labour within the military. Similarly, the Committee

[932] Ratified by Libya on 13 Jun 1961. See: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103130
[933] Office of the United Nations High Commissioner for Human Rights, *Detained and Dehumanised: Report on Human Rights Abuses against Migrants in Libya* (13 December 2016) https://www.ohchr.org/en/documents/country-reports/detained-and-dehumanised-report-human-rights-abuses-against-migrants-libya accessed 16 March 2026.
[934] UN Security Council Resolution 2240 (9 October 2015) UN Doc S/RES/2240.
[935] UN Security Council Resolution 2388 (21 November 2017) UN Doc S/RES/2388.
[936] CEACR, *Libya – Observation on Forced Labour Convention, 1930 (No 29)* (2023) https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4325181,103130:NO accessed 10 April 2026.

reiterated concerns about the resignation rights of civil servants under section 173 of Labour Law No. 12 of 2010 and requested clarification regarding the status of the 2013 draft Labour Law, which excludes state employees. In relation to domestic workers, while the 2010 law afforded them protection, the 2013 draft law excludes them entirely, referring instead to separate legislation, about which no details have been provided.[937]

These gaps in legal clarity and protection are particularly alarming in the context of Libya's prolonged conflict, where institutional fragmentation and the breakdown of legal enforcement mechanisms have enabled conditions conducive to trafficking for forced labour. Restrictions on the right to freely leave employment, especially in the military and domestic sectors, when coupled with poor oversight, create a fertile environment for coercion and exploitation. In a setting where migrants, civil servants, and low-wage workers often fall outside effective legal protection, the absence of protections significantly increases the risk of forced labour, particularly within detention centres and among groups controlled by armed actors or militias. As such, the CEACR's concerns go further than legal technicalities as they speak to systemic vulnerabilities that enable trafficking in Libya's conflict-driven economy.

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)[938]

Despite Libya's ratification of the Convention No. 105, it does not abide by its reporting regulations. This is evident in the CEACR observations and direct requests directed to Libya. In 2023, the CEACR highlighted in its observation that since Libya's report was not submitted, previous comments were repeated. These comments concern Article 1(a) of the Convention on forced labour conducted as a punishment for expressing political views. According to the Publications Act No. 76 of 1972, persons expressing certain political and ideological views may be subject to different penalties amounting to imprisonment and including compulsory labour as per section 24(1) of the Penal Code. However, the Libyan government indicated the intention to amend the Publication Act to consider such a concern as expressed by the CEACR.

[937] CEACR, *Libya – Direct Request on Forced Labour Convention, 1930 (No 29)* (2023) https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4325178,103130:NO accessed 10 March 2026.

[938] Ratified by Libya on 13 Jun 1961. See: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103130

Thus, the CEACR urged the government to take necessary measures to ensure no prison sentences involving compulsory labour were imposed on individuals who expressed political opinions or views opposed to the established political, social, or economic system without resorting to violence. The Committee requested information on progress made in this regard and invited the Government to seek technical assistance to facilitate the implementation of the Convention.[939] However, it should be noted that there is no mention in their report of the forced labour of migrants in detention centres and the responsibility of the DCIM guards.

The 2023 Direct Request concerns Article 1(c) and (d) of Convention No. 29 and addresses the use of compulsory labour as a sanction for participating in strikes or breaching labour discipline. The CEACR highlighted sections 237 and 238 of the Libyan Penal Code, which prescribe imprisonment involving compulsory labour for public servants and employees of public administrations. Although Libya's transitional authorities had previously expressed an intent to suspend laws incompatible with democratic principles and draft new labour legislation, including a trade union act, such reforms remain stalled in the absence of a national constitution. The CEACR requested detailed information on the application of these Penal Code provisions, including relevant case law, prosecutions, and sanctions.[940]

In a conflict-affected setting like Libya, where legal safeguards are inadequate and state authority fragmented, such penal penalties may serve to legitimise exploitative practices under the guise of punishment. This legal ambiguity contributes to a broader environment in which trafficking for forced labour can occur undetected, specially within detention centres and public institutions where oversight is lacking.

[939] CEACR, *Libya – Observation on Abolition of Forced Labour Convention, 1957 (No 105)* (2023) https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4325193,103130:NO accessed 10 April 2026.
[940] CEACR, *Libya – Direct Request on Abolition of Forced Labour Convention, 1957 (No 105)* (2023) https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4325190,103130:NO accessed 10 March 2026.

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)[941]

In its 2023 observation on Convention No. 182, the CEACR noted Libya's continued failure to submit reports and reiterated previous comments. It referred to concerns raised by the International Organisation of Employers (IOE) in 2017 and follow-up from the Committee on the Application of Standards (CAS) regarding Libya's compliance with Articles 3(a) and 7(1), which prohibit slavery-like practices and the recruitment of children in armed conflict. Reports had previously documented the forced recruitment of children by armed groups. The CEACR urged Libya to take concrete, time-bound measures to prevent such recruitment, ensure effective investigation and prosecution of perpetrators, and provide information on progress under Article 7(2). While the government indicated some efforts to rehabilitate former child soldiers through medical, psychological, and educational support, the CEACR reiterated that child soldiers must always be treated as victims, not offenders.[942]

In the setting of Libya's ongoing conflict, the recruitment of children by armed groups is a form of trafficking for forced labour. These acts not only breach international law but also reinforce a cycle of violence and exploitation where vulnerable minors are coerced into service under threat or deception. In its 2023 Direct Request under Convention No. 182, the CEACR tackled Libya's narrow legal protections against child trafficking under Article 3. While the 1969 Order prohibits trafficking for forced labour,[943] it does not reference trafficking for sexual exploitation and the transportation of children. Sections 412, 413, and 426 of the Penal Code penalise abduction, unlawful detention,[944] and trafficking, yet they do not cover all forms of child trafficking outlined in Article 3(a). The GNU government's 2018 report

[941] Ratified by Libya on 04 October 2000. See: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103130
[942] CEACR, *Libya – Observation on Worst Forms of Child Labour Convention, 1999 (No 182)* (2023) https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4325199,103130:NO accessed 10 April 2026.
[943] Libya, *Order of the Revolutionary Command Council of 26 September 1969 on the Prohibition of Trafficking in Labour* (unofficial English translation, ILO-NATLEX Database, 1969) https://clr.africanchildforum.org/Legislation%20Per%20Country/libya/libya_trafficking_1969_en.pdf accessed 16 April 2026.
[944] Libyan Penal Code, arts 412, 413 and 426, (Abduction and trafficking offences; trafficking in slaves) (as consolidated in *Penal Code – Libya*, DCAF Legal Database) https://security-legislation.ly/latest-laws/penal-code/ accessed 16 April 2026.

referenced section 418,[945] which penalises forced prostitution of women through forced migration and includes minor girls. However, its application is limited to cross-border cases, excluding domestic trafficking.[946]

The CEACR urged Libya to adopt comprehensive legal provisions covering all forms of child trafficking and to include protection for children subjected to sexual exploitation. It also addressed Article 3(b) concerning child pornography. While existing laws—such as Act No. 56 of 1970, the 1955 Vagrant Young Persons Act, and section 409 of the Penal Code—target public indecency and incitement, they fall short of prohibiting the use or production of child pornography. Clarification was requested on whether section 409 extends to such offences.[947]

Regarding the use of children in illicit activities, particularly drug trafficking under Article 3(c), the CEACR noted a legal gap. While Libyan law prohibits drug offences generally, it lacks specific provisions banning the use of children for drug production and trafficking. The Committee requested further details on the application of sections 463 and 474 of the Penal Code,[948] which penalise exploiting vulnerable youth and employing minors in illegal trade, to assess whether they provide adequate protection.[949]

Compliance and Internalisation

While Libya has ratified key ILO Conventions on forced and child labour, its constant failure to submit regular reports challenges the credibility of its formal compliance. The CEACR itself acknowledges that Libya's reporting failures are shaped by ongoing

[945] Libyan Penal Code, art 418, (Abduction and trafficking offences; trafficking in slaves) (as consolidated in *Penal Code – Libya*, DCAF Legal Database) https://security-legislation.ly/latest-laws/penal-code/ accessed 16 April 2026.
[946] CEACR, *Libya – Direct Request on Worst Forms of Child Labour Convention, 1999 (No 182)* (2023) https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4325196,103130:NO accessed 10 May 2026.
[947] ibid.
[948] Libyan Penal Code, arts 463, and 474, (Abduction and trafficking offences; trafficking in slaves) (as consolidated in *Penal Code – Libya*, DCAF Legal Database) https://security-legislation.ly/latest-laws/penal-code/ accessed 16 May 2026.
[949] CEACR, *Libya- Direct Request on Worst Forms of Child Labour Convention, 1999 (No. 182)* (2023). Available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4325196,103130:NO.

conflict yet persists in treating ratification as a meaningful marker of commitment. In reality, without regular reporting, compliance remains uncertain and largely symbolic. As Harold Koh explains, ratification alone is insufficient; international legal norms must be interpreted domestically and embedded through sustained institutional practice.[950] In the absence of such internalisation, there can be no habitual obedience, and therefore, no true effectiveness in legal terms.[951] Libya's persistent negligence of its reporting obligations reflects not only non-compliance but a stalled transnational legal process where international standards fail to influence domestic behaviour. Moreover, CEACR observations expose deeper systemic failings: Libya has not taken satisfactory steps to address trafficking for forced labour, particularly in the context of armed conflict where legal protection is weak and criminal justice mechanisms are ineffective. Evidence of complicity by state-affiliated actors, such as DCIM officials involved in trafficking, raises serious concerns about the Libyan government's role in perpetuating these abuses.

Critically, the CEACR's responses fall short in acknowledging the complexity of forced labour in conflict settings. Its observations repeatedly fail to name the primary perpetrators, i.e., armed groups and militia factions, or tackle the exploitation of migrants in detention centres, a widely documented practice. Furthermore, by applying uniform standards to both stable and conflict-affected states, the CEACR overlooks the structural limitations of governance in Libya. The absence of any reference to external actors, including foreign governments providing material support to armed groups, reflects a limited understanding of the broader dynamics sustaining forced labour. While it is understandable that the CEACR focuses its requests on the recognised government (i.e. the GNU), this approach assumes a coherent sovereignty that does not reflect the fragmented and contested political landscape in Libya. To be effective, future observations must engage more critically with non-state and international actors (including the GNS) and translate the recognition of conflict into practical legal and technical support tailored to the realities on the ground.

[950] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 203–205
[951] ibid 206–207.

6.3.3 Internalisation: The Examination of Social Behavioural Changes

As established in the chapter 2, effectiveness measurements in international law include the law's ability to impact states' behaviour over time even with low compliance with the exact legal standards as prescribed in the law.[952] Thus, it is established that compliance and effectiveness are two separate scales of measurement, and so domestic laws' conformity with international instruments does not necessarily guarantee anticipated behavioural changes or impact on the living reality of societies and subjects. However, by joining international organisations and instruments, states hope to achieve certain benefits. Despite the non-compliance with the ILO regulations and reporting requirements, Libya's membership is still beneficial for both sides and is particularly helpful in advocating for behavioural changes in the country's treatment of human and labour rights. However, it is worth noting that the ILO's technical assistance is not utilised by Libya and that, currently on the ground, there are no active ILO projects in Libya.[953]

In terms of the examination of behavioural changes, given the absence of the ILO on the ground, an analysis of the work of other international organisations (IOs) and NGOs i.e., transnational advocacy networks, is helpful in determining the efficacy of the Forced Labour Conventions. These transnational networks are instrumental in Koh's theory of transnational legal process to the promotion and enforcement of law and thus are considered to be important tools of policy and norms making.[954] According to Barnett and Finnemore, IOs can be autonomous actors with power to influence world events due to their authority, which is an attribute generated from social relations.[955] Their authority is not a commodity but a result of the rationalisation processes of modernity and global liberalism. They believe that IOs are powerful both because of their form (as rational-legal bureaucracies) and their liberal goals, giving them a sphere of autonomy and a resource to shape states' behaviours.[956] It is worth noting that Barnett and Finnemore conceptualise liberal international organisations

[952] Chapter 2, section 2.7 Concluding Remarks: Adapting Transnational Legal Process to Conflict Settings through Legal Pluralism.
[953] ILO, 'Libya' (2024) https://www.ilo.org/media/162776/download accessed 10 April 2026.
[954] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 194.
[955] Michael Barnett and Martha Finnemore, 'The Power of Liberal International Organizations' in Michael Barnett and Raymond Duvall (eds), *Power in Global Governance* (Cambridge University Press 2004), 162.
[956] ibid.

primarily as inter-governmental bureaucracies constituted by states, such as the ILO, IOM, and UNHCR. These organisations are endowed with rational-legal authority and pursue liberal values, which together grant them a degree of autonomy and normative power in global governance. While they acknowledge the role of international NGOs in shaping global norms, their analysis centres on formal IOs that derive authority through delegation, expertise, and moral legitimacy. International Non-governmental Organisations (INGOs) are mentioned only briefly and are not treated as core actors within their theoretical framework.[957]

The following sections therefore seek to examine the role of both inter-governmental organisations (IGOs) and international non-governmental organisations (INGOs) in shaping behavioural responses and institutional practices related to the trafficking of migrants for forced labour. Drawing on the broader understanding of international organisations as actors constituted by rational-legal authority and liberal values, the analysis considers how these entities—whether state-based or civil society-driven—may influence migration governance in ways that contribute to anti-trafficking efforts in Libya. Despite the limited research on the anti-trafficking policies of IGOs in the Libyan context, the discussion that follows will focus on how the broader governance strategies employed by both IOs and INGOs may play a role in addressing forced labour and trafficking dynamics in the country.

Transnational Advocacy Networks: The Role of International Organisations in Eliminating Forced Labour of Migrants in Libya

There are a few studies that focus on the connection between migration governance and migration labour abuse. For instance, a study by Janie Chuang addressed the work that IOs specialising in migration issues undertake to prevent trafficking. The author believes that a human rights approach to migration is a necessary step towards the elimination of trafficking. A rights-based approach is crucial for migrant protection or otherwise, the work of IOs could potentially favour border control or labour market access over migrants' rights.[958] Resting on this notion, an understanding of the role that transnational advocacy networks have on migrant-related issues and the wider

[957] ibid 161–64, 173, 179.
[958] Janie A Chuang, 'Preventing Trafficking Through New Global Governance Over Labour Migration' (2019) 36 *Georgia State University Law Review* 1027, 1030.

migration governance is key to the determination of whether their work on the ground in Libya is positively impactful in the socialisation of the ILO's norms on trafficking for forced labour. This approach would show how counter-trafficking work has to simultaneously target migration policy.

At the EU–Libyan border, the interplay of governments, security forces, private actors, and militias shapes the mechanisms and structures governing border control. Since the late 1990s, Italy and the EU have pursued containment strategies, including the provision of training, equipment, and financial support to Libyan authorities to deter migration.[959] This cooperation intensified after Libya emerged as a key entry point into Europe. Operations such as Italy's *Mare Nostrum* (2013–2014) were initially framed as humanitarian search-and-rescue missions but were followed by stricter border control measures that prioritised interception and externalisation of asylum responsibilities.[960] The European Court of Human Rights' judgment in *Hirsi Jamaa and Others v Italy* (2012) further highlighted the human rights implications of such externalised border practices, ruling that Italy's pushback of migrants to Libya without proper asylum assessment constituted a violation of the European Convention on Human Rights.[961] The EU launched missions like EUBAM, Operation Sophia, and Operation Irini, focusing on training and capacity building of the Libyan Coast Guard and Navy. It launched the FRONTEX Joint Operation Triton in 2015 to prevent smuggling of migrants and human trafficking in the Mediterranean Sea. The operation aimed to support Italy with border control, surveillance, and search and rescue activities. According to reports, the mission saved over 400,000 people, disabled 303 vessels used by criminal networks, and transferred 89 suspected smugglers and traffickers to Italian authorities. The EU then launched the EU NAVFOR Med Operation Sophia in June 2015, with an ambitious mandate to identify and monitor migration networks, board, search, and seize high seas vessels, and, if necessary, take all necessary measures against vessels suspected of smuggling migrants and human trafficking in Libya, provided there was a relevant UN Security Council Resolution or

[959] Agnese Pacciardi and Joakim Berndtsson, 'EU Border Externalisation and Security Outsourcing: exploring the migration industry in Libya' (2022) 48 *Journal of Ethnic and Migration Studies* 4010, 4016-4017.
[960] Marina Tazzioli, *The Making of Migration: The Biopolitics of Mobility at Europe's Borders* (Sage Publications, 2020), 89-95.
[961] *Hirsi Jamaa and Others v Italy* (n 869)

Libyan consent, i.e., UNSC Resolution 2240/2015.[962] These dynamics reflect the increasingly securitised border regime in which Libya functions, not only as a transit state but as an outsourced buffer zone for EU migration control.

In 2017, the EU endorsed the Italy-Libya Memorandum of Understanding, which aims to prevent departure and manage returns through the EU Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa (EUTF).[963] The Memorandum outlines the specific roles of the EU and Libya in implementing the externalisation cooperation agreement. According to the agreement, the Libyan government is responsible for managing illegal migrants through interception, acceptance, and detention, while the EU and Italy provide funding, training, and logistics.[964] Since the enforcement of the Memorandum, Libya's crackdown on irregular migrants seeking EU entry has increased significantly. By December 2021, the total number of migrants intercepted and returned to Libya reached 30,990. [965] In 2023, over 17,000 migrants were intercepted, with nearly 1,000 deaths and 1,536 missing. In 2024, 21,762 migrants were intercepted and returned to Libya, with 665 deaths and over 1,000 reported missing. As of mid-2025, the IOM reports that 12,338 migrants have already been intercepted and returned to Libya.[966] Migrant rights advocates are concerned about the brutality of these interceptions and the human rights abuses they face, including extortion, torture, sexual violence, enforced disappearance, and slavery.[967] Furthermore, the memorandum fails to establish an independent monitoring mechanism.[968] It is also worth mentioning that Italy may be held responsible for human rights violations including trafficking for forced labour committed against migrants in detention centres in Libya, as it has

[962] Andrea De Guttry, Francesca Capone and Emanuele Sommario, 'Dealing with migrants in the central Mediterranean route: A legal analysis of recent bilateral agreements between Italy and Libya' (2018) 56 *International Migration* 44, 49.
[963] Pacciardi and Berndtsson, 'EU Border Externalisation and Security Outsourcing' (n 959) 4016-4017.
[964] Anugo Obiefuna, *Externalization of Migration Management: Assessment of European Union Responsibility in Abuses of Migrants in Transit Countries* (Masters thesis, University of Uppsala, 2023), 54.
[965] ibid 55-56.
[966] 'IOM: 415 Migrants Intercepted, Returned to Libya' *Libya Review* (13 August 2025) https://libyareview.com/57366/iom-415-migrants-intercepted-returned-to-libya/ accessed 18 April 2026.
[967] Obiefuna, *Externalization of Migration Management: Assessment of European Union Responsibility in Abuses of Migrants in Transit Countries* (n 964) 55-56.
[968] Delphine Nakache and Jessica Losier, 'The European Union Immigration Agreement with Libya: Out of Sight, Out of Mind?' (2017) 25 *E-International Relations.* Available at: The-European-Union-Immigration-Agreement-with-Libya-Out-of-Sight-Out-of-Mind.pdf.

provided financial and technical assistance to improve those centres and manage them as per the Memorandum. This liability is based on Article 16 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts.[969]

Nonetheless, Italy's role in shaping Europe's migration strategy in Libya, especially after 2004, was thus seen as being crucial for solid cooperation. The year marked Libya's formal return to the international stage after Al-Qaddafi's renounced weapons of mass destruction, paving the way for EU–Libya dialogue on migration. Notably, it also coincided with the 2004 EU enlargement, which introduced new migration waves and pushed the EU to engage more actively with North African states, especially Libya, on border control.[970] A key and enduring aspect of the management of migration between Europe and Libya is the overlap of numerous geopolitical and commercial interests, in addition to the involvement of numerous diverse private, governmental and non-governmental players. Most importantly, Libya's fragmented power structure has led to border security functions being carried out by militias, smugglers/traffickers, and armed groups, creating a complex network of private and public actors with varying goals and priorities.[971] For instance, EUTF funds are reportedly directed to smugglers in exchange for stopping boats departing from Libyan shores, and the Tripoli government has enlisted militias involved in smuggling, allowing money to flow between them.[972] Nonetheless, the intervention of international organisations is an addition to the dynamics of migration control in Libya that is overlooked by studies on the topic.

International organisations in Libya used to face restrictions and limited rights for their work assisting refugees and migrants. As previously mentioned, during the Al-Qaddafi regime, UNHCR's office in Tripoli operated without formal recognition by the Libyan

[969] De Guttry, Capone and Sommario, 'Dealing with Migrants in the Central Mediterranean Route' (n 962) 54
[970] European Commission, *Communication from the Commission to the Council and the European Parliament: Developing a Strategic Partnership with Libya* COM (2006) 563 final, 12; The White House, *Libya's Announcement* (19 December 2003) https://georgewbush-whitehouse.archives.gov/news/releases/2003/12/20031219-9.html accessed 10 April 2026.
[971] Pacciardi and Berndtsson, 'EU Border Externalisation and Security Outsourcing' (n 959) 4016-4017; Kela, 'Human Rights Violations in Libya: A Critical Assessment on the EU's Complicity and Migration Policies' (n 845), 16.
[972] Pacciardi and Berndtsson, 'EU Border Externalisation and Security Outsourcing' (n 959) 4021.

authorities, as no Host Country Agreement had been signed. Nonetheless, it was permitted to carry out limited refugee protection activities, including the processing of asylum claims on an informal basis. Furthermore, the Gathering and Departure Facility (GDF) was a UNHCR facility that housed migrants and refugees from 2018 to January 2020. The facility was designed to house those selected for evacuation and who were waiting until they could be transported out. The GDF became overcrowded after the bombing of the Tajoura detention centre in July 2019, prompting UNHCR to reassess its strategies to focus more on urban support. In 2020, UNHCR closed the facility due to security concerns over potential military targets. Instead, alternative support was provided on the streets, such as the Community Day Centre in Tripoli. However, by the end of 2021, the facility was closed and people camping in front were violently removed. Migrants and refugees now camp at UNHCR registration centres since alternative shelters are unavailable.[973]

The International Organization for Migration (IOM) which is a non-normative organisation that provides migration services to UN Member States, cooperates with other migration entities, and recognises the primacy of national law. When Chuang describes the IOM as a "non-normative" organisation, the term refers to its lack of a binding legal mandate, unlike agencies such as UNHCR which operate under the 1951 Refugee Convention. Rather than upholding a defined set of rights-based legal norms, the IOM functions primarily as a service provider to states, carrying out programmes such as repatriation, labour recruitment, and immigration detention.[974] Since joining the UN system in 2016, the IOM is formally subject to the principles of the UN Charter and broader human rights instruments.[975] This integration has increased the IOM's institutional visibility, particularly in global governance initiatives like the Global Compact for Migration but has not changed its state-centric approach.[976] As such, concerns remain about its accountability and the adequacy of protections it affords to

[973] Smits, '"Dead-dead": Trapped in the Human Trafficking Cycle in Libya' (n 806) 643.
[974] Chuang, 'Preventing Trafficking' (n 958) 1041.
[975] *Agreement concerning the Relationship between the United Nations and the International Organization for Migration* (adopted 25 July 2016, entered into force 19 September 2016) UNGA Res A/70/976–Annex.
[976] International Organization for Migration, *IOM's Role in the Global Compact for Migration* (2018) https://www.iom.int/global-compact-migration accessed 16 April 2026.

migrants, especially when state policies diverge from international human rights standards.[977]

The organisation's activities encompass refugee resettlement, repatriation of trafficked individuals, labour recruitment, third-party certification, and immigrant detention programmes.[978] It has partnered with Libya on migration management since 2004, aiming to enhance transit and irregular migration management in the country.[979] Moreover, the IOM's humanitarian intervention after 2011 led to widespread support abroad. However, changes in their policies on the ground were minimal, and their actions were redefined in humanitarian terms. This trend towards international migration management is part of a broader trend of governments increasingly managing crises worldwide, particularly in controlling undesirable populations. The IOM, for example, in collaboration with Italian and Libyan Ministries of Interior, was instrumental in enhancing border control in the Sahara Desert through technical equipment provision and migration management training complying with EU migration policies. The EU restrictions on migration, along with the lack of legitimate, safe, and respectable pathways for mobility, have resulted in the emergence of frequently unfair, aggressive, and abusive exchanges between migrants and those who are behind them on their travels.[980] Furthermore, the indirect internationalisation of state activities through international organisations, such as the UNHCR and IOM, dilutes state responsibility for policy and implementation, allowing governments to avoid criticism and intervene outside their borders.[981]

According to Brachet, the IOM was successful in restoring migratory networks after a brief interruption during the war in 2011. However, the IOM intervention and EU pressure on regional governments have increased costs and exacerbated the migration process for individuals. Trans-Saharan transport remains expensive and risky, with states taxing migrants. Migration has become a business, and refugees are now

[977] Elspeth Guild, Stefanie Grant and Kees Groenendijk, 'IOM and the UN: Unfinished Business' (2017) Queen Mary School of Law Legal Studies Research Paper No 255/2017, 2.
[978] Chuang, 'Preventing Trafficking' (n 958) 1041.
[979] Hamood, *African Transit Migration through Libya to Europe: The Human Cost* (n 826) 20-24.
[980] Gabriella Sanchez, *Migrant smuggling in the Libyan context: Re-examining the evidence* (International Organization for Migration 2020), 231.
[981] Julien Brachet, 'Policing the desert: The IOM in Libya beyond war and peace' (2016) 48 *Antipode* 272, 273.

mistaken for unwanted migrants. The IOM renews contracts, perpetuating the illusion of bureaucratic efficiency and control while adopting EU policy of border restrictions.[982] Moreover, the IOM has been criticised for employing coercive practices like detention and repatriation, which may hinder the rights and well-being of migrants.[983] Nonetheless, the IOM's ability to exert compulsory power over some forced migrants and organising voluntary returns proves the capability that IOs could have in humanitarian borders and in transit-countries like Libya. Furthermore, the impact of IOs such as that of the IOM extends to other international and local NGOs which are dependent on the organisation's project-based funding.[984]

The institutional position of the IOM is different than that of the ILO. While the ILO is a specialised UN agency with a formal standard-setting mandate, the IOM is merely an UN-related organisation and does not constitute part of the UN's normative framework. As a result, the IOM tends to be more dependent on the policy objectives of its state donors. The ILO, on the other hand, operates within a more structured and authoritative institutional framework, granting it comparatively greater normative influence. This could mean that the ILO as an organisation can have more impact when it activates its standard-setting role and advocacy together in projects on the ground. Nonetheless, according to the global agreement between the ILO and the IOM, both organisations work as Executive Committee members of the UN Network, promote system-wide cooperation and support for the implementation of the UN Global Compact for Safe, Orderly, and Regular Migration (GCM). In this agreement, both organisations established their aim to enhance cooperation in areas of mutual concern, based on their constitutional mandates, rules, and regulations, to improve the effectiveness and impact of their development efforts and cooperation on migration issues.[985] However, the impact and efficiency of this agreement on the issue of trafficking for forced labour is yet to be studied.

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[982] ibid 285.
[983] Chuang, 'Preventing Trafficking' (n 958) 1043.
[984] Megan Bradley, 'The International Organization for Migration (IOM): Gaining power in the forced migration regime' (2017) 33 *Refuge* 97, 103.
[985] *Agreement Between the International Labour Organization (ILO) and the International Organization for Migration (IOM)*, (adopted and entered into force 23 October 2020) 1. Available at: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@jur/documents/genericdocument/wcms_759064.pdf.

Generally, the IOs inability to efficiently tackle the issue of illegal migration and displacement is but an indicator of the problematic form of policies and agenda adopted by these international organisations and their donors behind them. Additionally, anti-trafficking efforts are shifting focus from state responsibility to corporate social responsibility, with initiatives shifting from promoting laws and regulations to promoting voluntary standards and codes of conduct.[986] In fact, the involvement of international organisations in conflict settings shows how such organisations are only succeeding, to a certain limit, in providing humanitarian aid and work as development agencies rather than tackling the root causes of humanitarian crises and, in some cases, they may even contribute to the exacerbation of these issues. Part of this is attributed to the organisations' institutional power being impacted by other organisations working on the same issue from different perspectives. Bradley, for instance, discusses how the IOM is influenced by the UNHCR as they have two different mandates in tacking forced displacement. While the UNHCR has a robust protection mandate, the IOM is considered a more operationally focused agency whose mandate is migration governance. According to Bradley, this dual mandate has benefited member states, limiting UNHCR's "mission creep" and avoiding increased protection-oriented attention to issues such as that of climate change displacement.[987]

Another issue worthy of note is that having multiple organisations with each focusing on one aspect of the humanitarian crises without adopting comprehensive approaches to the conflict can sustain and normalise the conflict instead of bringing an end to it. It is argued that global migration governance is fragmented due to States' approach to migrants' human rights, negatively impacting their situation.[988] These tensions reflect broader structural contradictions in the international migration governance system, where humanitarian, security, and political mandates frequently overlap in ways that complicate principled action.[989]

[986] Chuang, 'Preventing Trafficking' (n 958) 1048.
[987] Bradley, 'The IOM: Gaining Power in the Forced Migration Regime' (n 984) 103.
[988] François Crépeau and Idil Atak, 'Global migration governance: Avoiding commitments on human rights yet tracing a course for cooperation' (2016) 34 *Netherlands Quarterly of Human Rights* 113, 116.
[989] Silvana Lakeman and Robert Oakes, 'A Climate of Cooperation or Competition? UNHCR, IOM and Disaster Displacement' (2022) *Journal of International Studies* 10 109, 110–113.

Furthermore, according to Kuschminder and Triandafyllidou, the international action to tackle irregular migration contributes to the rise of Agamben's "state of exception" in which he explains how the absence of the traditional rule of law develops a new system of law which could be chaotic and in violation of human rights.[990] This state of exception in Libya, for example, can be seen in the handling of migration detention centres and missions of 'rescue' by para-legal armed groups and militias and the normalisation of such a situation by international organisations and certain European countries of interest, such as Italy. In the bigger picture is the neocolonial[991] attitude of such countries and organisations towards Libya and their tendency to view migration as a controllable surplus labour force, through the militarisation of EU borders, while at the same time exploiting the county and the continent's oil and resources by supporting militias involved in human rights violations and forced labour.[992] Thus, instead of enhancing the rule of law in Libya, international organisations' mode of work may help strengthen the state of exception and the decentralisation of the rule of law through normalising the existence of plural and conflicting sources of law. Furthermore, rather than targeting countries of origin or those closer to home in Europe, European policies to date, through the work of international organisations, have focused on controlling the flow of migrants from transit countries.[993]

In the Libyan context, many NGOs operate in an ambiguous space between humanitarian assistance and migration management, often shaped by donor priorities. Organisations working to protect the rights of migrants and refugees frequently find themselves filling critical gaps in service provision, particularly in remote border regions where formal humanitarian infrastructure is absent. These NGOs commonly function through agreements with government actors and within increasingly bureaucratised coordination frameworks involving international partners. This dynamic complicates the perception of NGOs as neutral humanitarian actors, as their involvement in migration governance, often in collaboration with UN agencies, raises

[990] Kuschminder and Triandafyllidou, 'Smuggling, Trafficking, and Extortion' (n 836) 223.
[991] Neocolonial resource extraction practices increase the reserve army of metropolitan capital while decreasing employment possibilities in the impacted countries. See: Pradella and Cillo, 'Bordering the Surplus Population across the Mediterranean', (n 842) 486.
[992] ibid 484-486.
[993] Mehmet Enes Beşer and Fatimah Elfeitori, *Libya Detention Centres: A state of Impunity* (2018) Ankara: Migration Policy Center, 4.

concerns about the coherence of their mandates. Notably, the United Nations' strategic plan for Libya explicitly supports the funding of NGOs under the broader nexus of humanitarian response, migration management, development, and peacebuilding, a framework that has been criticised for advancing overlapping and, at times, conflicting objectives.[994]

While some NGOs document and report human rights violations, their ability to shape public understanding or behavioural change in relation to human trafficking for forced labour appears constrained. The number of local NGOs actively engaging Libyan communities on migrant rights is relatively small and geographically limited, and evidence of widespread public engagement remains minimal.[995] Critics have pointed to the alignment of some NGO activities with state or donor agendas, suggesting that the emphasis on migration control often takes precedence over rights-based advocacy. This dynamic has raised concerns about the extent to which NGOs are able or willing to prioritise migrant protection when such priorities may conflict with operational funding or access.[996] Nonetheless, the political alignment of international organisations with donor states has undermined their ability to foster genuine legal change. Rather than promoting the internalisation of anti-trafficking norms, these organisations have enabled the externalisation of European border controls, reinforced detention and return practices that sustain migrant vulnerability. As Harold Koh argues, internalisation requires not just interaction, but normative interpretation that reshapes domestic behaviour.[997] When international actors prioritise migration management over rights protection, the transnational legal process stalls, and trafficking persists as a result.

At the same time, it is essential to recognise the difficult context in which these organisations operate. Libya's ongoing instability, the absence of a unified legal framework, and the securitised environment around migration governance create significant obstacles for NGOs, both international and local. Many operate under restrictive conditions with limited access to detention centres or vulnerable

[994] Melissa Phillips, 'Advocates, Implementers or Allies? NGOs Between Humanitarian Borderwork and Migration Management in Libya' (2023) 44 *Journal of Intercultural Studies* 110, 112-113.
[995] ibid 119-120.
[996] ibid.
[997] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 203–205

populations, and their ability to advocate meaningfully is often constrained by legal ambiguity and political pressure.

6.4 Concluding Remarks: Reimagining Effectiveness through the Lens of Transnational Legal Process

This chapter has examined the limitations of international law in fragile and conflict-affected contexts, with Libya serving as a compelling case study. It has focused on the extent to which Libya's ratification of the ILO Forced Labour Conventions Nos. 29, 105, and 182 has resulted in meaningful legal and institutional protection for migrants who are particularly vulnerable to forced labour and trafficking. The findings show that while Libya has formally ratified these Conventions, it has failed to implement them in any effective or coherent manner. Legal protections remain fragmented, enforcement mechanisms are weak or absent, and public institutions are unable or unwilling to meet international obligations. This proves a well-established point in the literature; that formal compliance with international norms, while necessary, is not in itself sufficient to guarantee effectiveness.

Most importantly, the Libyan case shows that effectiveness is not merely limited by domestic institutional weakness but is actively obstructed by the donor-driven and state-influenced agendas embedded within international organisations. In Libya, these organisations have often operated less as facilitators of internalisation and more as instruments of external border governance, especially through migration control frameworks aligned with European priorities. As a result, they have contributed to reinforcing rather than dismantling the systemic conditions that enable trafficking for forced labour. This insight builds upon existing theories of norm internalisation, by showing that transnational engagement can sometimes operate counter to human rights-based outcomes when driven by politicised or securitised mandates.

However, to move beyond the limitations of formal compliance, this thesis has drawn on Koh’s theory of transnational legal process. According to Koh, international law becomes truly effective only when it is internalised within domestic legal systems

through a process of interaction, interpretation, and internalisation.[998] In this framework, internalisation is not merely about legal reform. It is about behavioural transformation within state institutions and social actors alike. When internalisation occurs at the legal, political, and social levels, habitual obedience to international norms can emerge. This, for Koh, is the true measure of effectiveness.[999]

This thesis has also studied the role of non-state actors in the process of internalisation. According to Koh, international organisations, civil society, and non-governmental organisations play key roles in the transnational legal process. However, in the Libyan context, these actors face enormous limits. The political alignment of international organisations with donor states has compromised their ability to foster genuine legal change and instead has contributed to the externalisation of European border controls. Despite its normative authority, the ILO does not currently operate on the ground in Libya. This absence, along with the ILO's low visibility in local political and institutional settings, has significantly diminished the prospects of meaningful internalisation. Without a direct presence, the ILO is unable to engage local actors, respond to the dynamics of legal pluralism, or influence behavioural change through sustained interaction. Moreover, the ILO's supervisory mechanisms are not sufficiently conflict-sensitive and fail to account for the overlapping nature of migration control policies and the persistence of trafficking for forced labour. This lack of contextual nuance in monitoring and enforcement mechanisms further hinders the ILO's ability to influence change in fragmented, conflict-affected states like Libya, where human trafficking is both systemic and politically entrenched.

As will be discussed in the final chapter of this thesis (Conclusion), the ILO's presence on the ground, working in partnership with international and local NGOs, can help foster norm creation in favour of the effective implementation of forced labour standards. Furthermore, legal pluralism in Libya, often viewed as a barrier, may in fact provide a unique opportunity. The ILO and its partners can use this pluralism as an entry point to engage meaningfully with all parts of local communities, including effective actors involved in the conflict and the trafficking market. Rather than being

[998] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 203–205
[999] ibid 206–207.

excluded, these actors must be part of a broader process of socialisation that encourages normative change from within. Such an approach, grounded in Koh's framework, offers a more inclusive and realistic pathway towards internalisation and, ultimately, effectiveness.

In conclusion, the Libyan case confirms that effectiveness depends not on the existence of law alone, but on the extent to which that law is internalised and reflected in behaviour. To achieve this, international organisations must shift their focus from narrow technical assistance towards sustained engagement with domestic actors, including legal institutions, civil society, and affected communities. Only by fostering this inclusive and iterative process can international norms move from the abstract realm of treaties into the lived realities of those they are meant to protect. This is the essence of Harold Koh's transnational legal process, and it is through this lens that the future of international labour law should be evaluated.

Chapter 7: Conclusion

This thesis has examined the effectiveness of international labour standards in conflict settings through the lens of Harold Koh's transnational legal process, with a specific focus on the application and implementation of the ILO's Forced Labour Conventions in Libya.[1000] It has attempted to challenge and move beyond a formalistic understanding of compliance, highlighting that true effectiveness in international law arises only when norms are internalised across legal, political, and social domains.[1001] Thus, this thesis has built upon Koh's framework by integrating legal pluralism as a necessary lens for evaluating norm internalisation in decentralised or non-Westphalian legal environments.[1002]

Koh's framework clarifies that the mere act of establishing or ratifying international legal rules does not confer any effect. Instead, such rules become meaningful through dynamic interaction between international and domestic actors, through interpretative processes that contextualise norms to fit particular socio-political landscapes, and ultimately through internalisation.[1003] Internalisation, as established in this thesis, is the culmination of this interaction, whereby legal rules are assimilated into domestic practice, resulting in observable and sustained behavioural change. Critically, for Koh, habitual obedience to international law is the clearest indication that internalisation has occurred and, thus, that international law is effective.[1004]

This reasoning becomes specifically relevant when applied to conflict settings, particularly civil war contexts, where formal legal institutions are weak or absent. In such settings, the traditional model of compliance crumbles under the weight of political fragmentation, foreign intervention, and the absence of central authority. Libya, as this study demonstrates, represents a prime example of such fragmentation. Despite ratifying key ILO Conventions,[1005] the official Libyan government has not

[1000] International Labour Organization, *Forced Labour Convention*, C29 (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55; *Abolition of Forced Labour Convention*, C105 (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291.
[1001] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 183-184.
[1002] Krasner, *Sovereignty: Organized Hypocrisy* (n 24) 16.
[1003] Koh, 'Why Do Nations Obey International Law' (n 11) 2655.
[1004] ibid.
[1005] International Labour Organization, 'Ratifications of C029 – Forced Labour Convention, 1930 (No. 29)' https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103130

implemented these legal obligations into meaningful safeguards on the ground. Institutional weakness is not the only explanation for this failure. It is ingrained in the disconnect between international legal standards and the pluralistic realities of Libya's domestic governance and legal landscape.[1006]

It has been illustrated throughout the chapters of this thesis that the ILO's current model of supervision and technical engagement is inadequate and ill-equipped to meet the complex needs of conflict settings.[1007] The ILO's supervisory mechanisms, while procedurally robust, lack both contextual sensitivity and practical competence to prompt norm internalisation in states experiencing internal conflict.[1008] Their structure assumes a functioning state apparatus, a committed government, and clear lines of authority. These assumptions do not hold in conflict settings such as Libya, where governance is divided among rival administrations and where non-state actors wield significant power in both political and economic spheres.[1009]

While the ILO does not operate in Libya, the presence and activities of other international organisations have further complicated the internalisation of labour standards. In fact, several international actors involved in Libya's migration governance have prioritised donor-driven and state-aligned agendas, with a particular emphasis on border control and security objectives.[1010] These frameworks, which are frequently influenced by European migration policy, have occasionally clashed with the broader human rights agenda, unintentionally reinforcing the conditions that allow

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accessed 20 April 2026. See also, on another topic; International Labour Organization, *Individual Case (CAS) – Discussion: 2019, Publication: 108th ILC session (2019) – Libya – Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4000325 accessed 22 April 2026.

[1006] See Chapter 6 of this thesis, Section 6.3.3 Internalisation: The Examination of Social Behavioural Changes. See also: Floor El Kamouni-Janssen, Nancy Ezzeddine and Jalel Harchaoui, *From Abuse to Cohabitation: A Way Forward for Positive Migration Governance in Libya* (Clingendael Institute 2019) pp. 10, 34, 23, 41 https://www.clingendael.org/sites/default/files/2021-11/From_abuse_to_cohabitation_Report_Oct2019.pdf accessed 22 April 2026.

[1007] See in particular Chapter 5 of this thesis, Section 5.2.2 ILO Special Policies in Conflict Settings. See also: International Labour Organization, *High-Level Panel: Advancing Decent Work in Fragile and Conflict-Affected States* (High-Level Panel, Geneva, 12 June 2023) https://www.ilo.org/meetings-and-events/high-level-panel-decent-work-fragile-states accessed 22 April 2026.

[1008] International Labour Organization, *Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)* (2023).

[1009] See Chapter 6, Section 6.1 The Political Context of Libya.

[1010] UNSMIL and OHCHR, *Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya* (n 22).

trafficking and forced labour.[1011] The ILO, on the other hand, has been mostly absent, and its low visibility and lack of direct engagement on the ground have limited its ability to develop and foster the kind of interaction and socialisation that Koh identifies as key to internalisation.[1012]

Importantly, this thesis has argued that legal pluralism in Libya should not be viewed merely as a barrier to norm implementation, but rather as a potential site of legal participation.[1013] Non-state actors, including tribal leaders, armed groups, and informal community networks, play a critical and central role in interpreting and applying norms in practice. If the ILO intends to prompt internalisation in such environments, it must reconsider its methods and strategies of engagement.[1014] As Koh would argue, only through sustained interaction, including with non-traditional actors, can the ILO hope to embed international norms within local behavioural patterns.[1015] For example, Michael Posner argues that internalisation is particularly relevant in conflict or contested governance settings. According to Posner, entrenched normative habits can empower communities to resist authoritarian encroachments, highlighting the potential for non-state and pluralistic actors to contribute to norm internalisation in fragile environments.[1016]

Indeed, a central conclusion of this thesis is that the ILO must transition from a supervisory body fixated on reporting and ratification, to one that facilitates internalisation through iterative and inclusive engagement with both state and non-state actors. In this regard, internalisation should not be perceived as a passive or linear process. It is recursive, adaptive, and inextricably embedded within the socio-political dynamics of each local context,[1017] as demonstrated by Shen in the case of Chinese companies, where meaningful change is dependent on sustained external interaction

[1011] Agnes Callamard, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions' UN Doc A/72/335 (2017).
[1012] See Chapter 6, Section 6.4 Concluding Remarks: Reimagining Effectiveness through the Lens of Transnational Legal Process.
[1013] ibid.
[1014] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 204-206.
[1015] ibid.
[1016] Michael Posner, 'Applying Harold Koh's Transnational Legal Model to Current Human Rights Challenges' (2021) 88 *University of Chicago Law Review* 1767, 1767–1782.
[1017] Maria-Therese Gustafsson, Roger Merino and Martin Scurrah, 'Domestication of International Norms for Sustainable Resource Governance: Elite Capture in Peru' (2020) *Environmental Policy and Governance*, 235.

and pressure rather than on formal compliance.[1018] Shen's analysis of U.S. antitrust cases against Chinese export cartels, as well as related WTO disputes, illustrates how transnational actors engage reciprocally to promote the internalisation of norms spanning trade and competition law. Such mutually reinforcing institutional engagements highlight the potential for transnational legal processes to overcome sovereignty concerns and fragmented authority, thereby embedding international legal standards within domestic practices. Such examples demonstrate the potential for transnational legal processes to overcome sovereignty challenges and fragmented authority, reinforcing the relevance of Koh's framework for conflict settings like Libya.

Furthermore, this thesis has demonstrated that international law's impact is contingent on the agency of domestic actors.[1019] International organisations such as the ILO must acknowledge the strategic role of domestic civil society, informal legal structures, and even non-legitimate authorities in norm diffusion and adaptation.[1020] Drawing on Koh's framework, the pathway to effectiveness lies in establishing long-term and sustainable processes of interpretation and socialisation that extend beyond state-centric formalism and embrace the complexities of local governance.[1021]

In summary, the findings of this thesis endorse the need to reconceptualise the ILO's effectiveness through the lens of internalisation, rather than compliance. They also demonstrate the necessity of adapting Koh's theory of transnational legal process to account for the political and legal pluralism that characterises conflict settings. Only then can the ILO realise its foundational mandate of promoting social justice and decent work in a world where the boundaries between state and non-state, legal and extra-legal, are progressively more blurred.

Recommendations to the International Labour Organization

[1018] Weimin Shen, 'The Role of Transnational Legal Process in Enforcing WTO Law and Competition Policy' (2020-2021) 30 *Journal of Transnational Law & Policy* 59, 73–78, 91–104.
[1019] Anne-Marie Slaughter, Stepan Wood and Andrew S. Tulumello, 'International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship' (1998) 92 *American Journal of International Law* 367, 380-381.
[1020] Gustafsson, Merino and Scurrah, 'Domestication of International Norms for Sustainable Resource Governance: Elite Capture in Peru' (n 1017) 229.
[1021] Koh, 'The 1994 Roscoe Pound Lecture: Transnational Legal Process' (n 10) 198.

Based on the findings of this thesis, to support the internalisation of international labour norms in conflict settings and legally pluralistic environments, the ILO should consider adopting the following recommendations:

1. **Establish a Strategic Field Presence in Conflict Settings**
   The ILO is advised to keep a direct presence in conflict settings to enable active and sustainable engagement with both state and non-state actors. Such a presence would allow for interaction, a key component of norm internalisation as per Koh's framework. In Libya, for example, this means involving tribal leaders, municipal authorities, and informal networks to interpret and apply labour norms in fragmented jurisdictions.
2. **Adapt Supervisory Mechanisms to Conflict-Sensitive Realities**
   The ILO's supervisory procedures, including those of the CEACR and CAS, should be adjusted to address the structural complexities and legal pluralism present in conflict settings. This requires developing flexible benchmarks for assessing compliance and engaging non-traditional legal and political actors involved in labour regulation and enforcement.
3. **Promote Norm Socialisation through Inclusive Community Engagement**
   Effective internalisation is not top-down; it relies on inclusive engagement and active involvement of different segments of society at all levels. The ILO should support ongoing norm interpretation and social dialogue with local organisations, informal workers, community leaders, and migrant networks to foster habitual compliance through behavioural adaptation.
4. **Collaborate Closely with Local and International NGOs**
   NGOs play a crucial and irreplaceable role in diffusing norms and acting as agents for international standards, particularly where state institutions are weak or absent. In conflict settings like Libya, where the ILO has no formal operational presence, both local and international NGOs help prompt the interaction and interpretation processes essential for internalisation.
5. **Issue Conflict-Specific Operational Guidance on Forced Labour**
   The ILO should publish operational guidance specific to the realities of conflict settings. These must include practical toolkits for local authorities and humanitarian actors, model legislative clauses sensitive to plural legal orders, and technical guidance on engaging with de facto authorities.

6. **Contextualise Forced Labour Within Political Economy and Conflict Dynamics**

   The ILO must recognise forced labour not merely as a human rights or development concern, but as a phenomenon embedded in power structures, conflict economies, and geopolitical interests. In Libya, for instance, donor-driven migration control policies have sustained environments of forced labour. Tackling these dynamics is essential for genuine internalisation.

7. **Integrate Forced Labour Strategies into Broader Migration and Border Governance Analysis**

   The ILO should analyse and report on how externalised migration and border policies contribute to systemic forced labour. In contexts such as Libya, this requires recognising the complicity of international actors in maintaining detention regimes that exploit migrants and refugees under the guise of humanitarian or security objectives.

8. **Use Legal Pluralism as an Entry Point, Not a Barrier**

   Legal pluralism in conflict settings should be conceived as a resource. The ILO should explore partnerships with religious courts, customary authorities, and informal legal systems as pathways for socialising and thus internalising international labour standards and embedding them within local normative orders.

9. **Avoid Technocratic Formalism in Compliance Evaluation**

   Compliance should be measured not by ratification or state reporting alone, but by behavioural change among key actors.[1022] The ILO should prioritise assessments that examine whether forced labour practices have been meaningfully reduced and whether rights-holders, such as migrants, experience tangible improvements in protection. Also, the ILO should ensure that it addresses all active stakeholders in its observations and direct requests, and not only the state's government, especially in conflict settings.

10. **Maintain Normative Independence Amidst Securitised Agendas**

    The ILO must remain cautious against donor-driven migration or security frameworks. Sustaining its social justice mandate necessitates resisting

[1022] Technocratic is defined as the process of engaging experts in science or technology who are holding power in government or business. See: Cambridge Dictionary, 'Technocratic' (Cambridge University Press, 2024) https://dictionary.cambridge.org/dictionary/english/technocratic accessed 24 April 2026.

policies that externalise borders at the expense of migrant and labour rights. In conflict settings, the ILO should emphasise its normative leadership by critically engaging with securitised migration agendas that sustain situations of forced labour.

While these recommendations offer a revolutionary vision for ILO engagement in conflict settings, implementing them presents a number of practical and normative challenges. Some of these challenges are not merely logistical but touch the heart and base of the ILO's institutional identity, normative commitments, and operational limitations, especially when situated within Koh's framework of transnational legal process.

Firstly, the suggestion that the ILO maintain a direct presence in conflict zones raises considerable concerns around the safety of staff and the ILO's institutional capacity to operate in potentially dangerous and often militarised environments. Unlike humanitarian organisations such as the ICRC or Médecins Sans Frontières, the ILO lacks an operational mandate and security protocols for conflict deployment. Its traditional dependence on social dialogue and technocratic engagement with governments, employers, and workers does not easily translate into contexts characterised by armed conflict and legal uncertainty. Moreover, there is a reputational risk to the ILO if its neutrality is compromised or if it becomes reliant on military actors for its protection. This challenge is intensified by the normative tension between promoting internalisation through interaction, as Koh recommends, and avoiding complicity in configurations that perpetuate violence or forced labour. Therefore, while Koh's framework emphasises the importance of engagement for norm diffusion, such engagement must be critically assessed against the political economy of presence in conflict zones.

A possible solution could be in revisiting the ILO's engagement model through what may be phrased "conflict-sensitive embedded presence." This alternative model would include building partnerships with humanitarian or protection-focused international agencies, such as the UNHCR, that already uphold logistical frameworks and security infrastructures in conflict zones, rather than working to establish a stand-alone ILO mission. By operating through a multi-agency field platform or as part of a "UN joint

team" model, the ILO could preserve access to local actors without assuming full operational exposure or compromising its neutrality. Such an approach ensures continued interaction, which is critical to norm diffusion, while distributing the risks and avoiding militarisation of its presence. Additionally, the ILO could adopt a "hybrid engagement" approach that focuses on empowering and working through trusted intermediary actors, such as diaspora networks and migrant associations,[1023] who have cultural legitimacy and presence in areas where the ILO cannot operate directly. These actors may perform as agents for interpretative and socialisation processes that promote the internalisation of norms from below. Koh's theory is specifically accommodating of such intermediated engagement, as it acknowledges the norm-building role of non-state actors within transnational legal process.

Secondly, in relation to the recommendation to engage non-traditional actors in supervisory processes, including armed groups or de facto authorities, introduces critical questions about legitimacy and recognition. Koh's theory allows interaction with non-state actors as part of the norm-internalisation process but fails to resolve the political dilemmas associated with recognising groups such as Russian-backed administrations in Ukraine or Israeli settler councils in occupied Palestine. While these groups may exercise de facto regulatory functions, engaging with them risks legitimising internationally unlawful situations or undermining broader human rights frameworks. The ILO would need to develop clear criteria for engagement that upholds both its constitutional principles and the international obligation of non-recognition.[1024] This is particularly relevant given the ILO's historical reluctance to confront the geopolitical dimensions of labour exploitation, as this thesis has highlighted in relation to Libya and donor-driven migration regimes. One way to solve

[1023] For example: Libyan Women's Platform for Peace (LWPP), Tamkeen International, International Domestic Workers Federation (IDWF), and Caritas Libya.

[1024] The duty of non-recognition arises in cases of serious breaches of peremptory norms and requires states to refrain from treaty or economic relations that may legitimise or entrench unlawful territorial situations, as clarified by the ICJ in the *Namibia* Advisory Opinion and reflected in Article 41 of the ILC Draft Articles on Responsibility of International Organisations. It is worth noting that, according to the ILC, this obligation extends beyond formal recognition to include acts that would imply recognition. See: International Law Commission, 'Commentary to Art 41 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) II *Yearbook of the International Law Commission* 115, para 8; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] ICJ Rep 16, 29–32; Eva Kassoti, 'The EU's Duty of Non-Recognition and the Territorial Scope of Trade Agreements Covering Unlawfully Acquired Territories' (2019) 3(5) *Europe and the World: A Law Review* 1, 5.

this dilemma is for the ILO to consider the adoption of a principled engagement framework rooted in international law, specifically the obligation of non-recognition, and in functional necessity rather than political validation. This would permit the ILO to engage with non-traditional actors such as de facto authorities or armed groups only and exclusively for the purpose of protecting labour rights, without granting legitimacy or implying political recognition.

Thirdly, the call for greater and stronger collaboration with local and international NGOs necessitates a strategy for assessing credibility and accountability of these actors. In conflict settings, the NGO landscape can be fractured, politically co-opted, or limited in capabilities. Identifying "reliable" NGOs necessitates not only vetting processes but also attention and sensitivity to local power dynamics and the possibility of elite take over, where influential local actors or elites dominate NGOs.[1025] This weakens the independence, inclusivity, and legitimacy of such organisations, damaging their operations in ways that may serve the interests of dominant groups rather than vulnerable populations.[1026] Koh's emphasis on iterative interaction and socialisation highlights the role NGOs can play in norm diffusion, yet their effectiveness is contingent on legitimacy, inclusivity, and operational independence. Therefore, the ILO should only critically engage with these factors to avoid reproducing existing inequalities or silencing of marginalised voices.

Finally, the recommendation that the ILO oppose the political economy of forced labour, especially in Libya where EU externalisation policies exacerbate and sustain situations of forced labour and exploitation, raises concerns about the ILO's normative autonomy. Should the ILO openly confront European migration policy? This would position the organisation more firmly within the domain of political contestation, potentially threatening its diplomatic standing or donor relationships. However, Koh's framework encourages normative leadership, arguing that internalisation necessitates not only interaction but the shaping of values through interpretation. If the ILO fails to oppose these structures, it risks sustaining superficial compliance devoid of

[1025] David Mosse, *Cultivating Development: An Ethnography of Aid Policy and Practice* (Pluto Press 2005), 91, 117, 145.
[1026] ibid 252.

behavioural change, which is the exact opposite of what Koh considers genuine effectiveness.

In conclusion, while the thesis rightly advocates ambitious reforms based on transnational legal process theory, their execution must deal with the difficulties and challenges of conflict settings, institutional mandates, and the risks of political entanglement. These challenges do not diminish the importance of the recommendations set forth, but rather highlight the necessity for a cautious, context-sensitive, and normatively coherent strategy for their implementation.

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