

## **Perpetrators or Preventers? The Double Role of Corporations in Child Trafficking in a Global Context**

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### **Abstract**

In recent years, the engagement of corporations in child trafficking has become a matter of growing importance. Many corporations have adopted global subcontracting systems and complex structures that boost their productivity and profits, but might also create more opportunities for trafficking and exploitation of both adults and children. Taking this context into account, the ways in which corporations can commit child trafficking are explored and exemplified to highlight their diversity. This paper also offers a brief overview of the response given by international and European anti-trafficking instruments concerning corporate criminal liability for child trafficking. Moreover, the mechanisms adopted by some companies to prevent trafficking and promote transparency within their supply chains are also addressed. Overall, this paper serves to illustrate the pivotal role of corporations from two perspectives: as potential perpetrators of this serious crime, and as necessary actors to prevent it.

### **Key words**

Child trafficking; corporate liability; exploitation; corporate social responsibility

### **Resumen**

El compromiso empresarial sobre el tráfico infantil es un asunto de creciente importancia. Muchas corporaciones han adoptado sistemas globales de subcontrataciones y complejas estructuras que incrementan su productividad y sus beneficios, pero que también podrían crear más oportunidades para la trata y la explotación de adultos y niños. Partiendo de este contexto, se exploran y ejemplifican las diversas formas en que las corporaciones pueden cometer tráfico infantil. El artículo repasa brevemente la respuesta de los instrumentos internacionales y europeos en lo tocante a la responsabilidad penal de las corporaciones por la trata infantil, y aborda los mecanismos adoptados por algunas empresas para prevenir la trata y promover la transparencia en sus cadenas de suministro. En suma, se pretende ilustrar el rol crucial de las corporaciones desde dos puntos de vista: como potenciales perpetradores de este grave crimen y como actores necesarios para prevenirlo.

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**Palabras clave**

Trata infantil; responsabilidad empresarial; explotación; responsabilidad social empresarial

**Table of contents**

1. Introduction .....	148
2. Corporations as Perpetrators of Child Trafficking .....	149
2.1. Patterns of Corporations' Involvement in Human Trafficking .....	150
2.2. Corporate Liability for Child Trafficking .....	152
3. Corporations as Preventers of Child Trafficking .....	154
3.1. Self-regulation Initiatives for Preventing Child Trafficking .....	154
3.2. State-Led Initiatives to Promote Transparency and Engage Corporations in the Prevention of Child Trafficking .....	156
4. Conclusion .....	158
References.....	158

## 1. Introduction

Although quantifying child trafficking is a task that still presents many challenges, some estimated data can be useful for giving a first impression of the scope of the problem. According to the United Nations Office on Drug and Crime (hereinafter, UNODC), approximately one-third of detected human trafficking victims are children, a percentage that has been increasing in recent years (UNODC 2014). In the same line, the International Labour Organization (hereinafter, ILO) pointed out that children under the age of 17 represent 26 percent of all forced labour cases (including sexual exploitation), which amounts to 5.5 million children (ILO 2012). These estimates show that trafficking of children is contributing to what is one of the most profitable criminal industries, which generates around \$150.2 billion (U.S.) per year (ILO 2014).

Most of these cases, approximately 90 percent of them, occur in the private economy, where people are exploited by individuals or enterprises (ILO 2008, 2012). For this reason, it is not surprising that the involvement of corporations in human trafficking cases, particularly when the victims are minors, has become a matter of growing importance. Cases of powerful multinational corporations being accused of engaging in exploitative practices abroad are often reported in the media, exposing the gravity of the problem and drawing the public's attention to this issue (Hoff and McGauran 2015). Indeed, companies' involvement in child trafficking for diverse types of exploitation can be very significant, not only in laundering the profits of the illegal activity, but also in recruiting potential victims and exploiting them (Daunis 2010). Aware of this situation, the most recent international legal instruments against human trafficking - such as Directive 2011/36/EU (also referred to as EU Trafficking Directive; see European Parliament and Council of the European Union 2011) - on preventing and combating trafficking in human beings and protecting its victims require States to impose sanctions against legal entities involved in this crime. Nevertheless, "reaching a corporation under a trafficking statute can be very difficult or impossible" (Pierce 2011, p. 578).

Beyond the traditional focus on prosecution, a new perspective that pays attention to the role of corporations as preventers of human trafficking is gaining importance (Jägers and Rijken 2014). In the last decades, not only governments but also stakeholders are showing increasing interest in knowing how companies address social and environmental issues, including the use of child labour and human trafficking (Shavers 2012). Moreover, anti-trafficking strategies have included a new component that has been added to the traditional *three P's*: prevention, protection and prosecution. The fourth *P* is *partnership*, which is characterized as all businesses, from multinational corporations to small companies, collaborating with law enforcement authorities, governments, and non-governmental organizations (NGOs) to recognise and react to incidents of trafficking (Shavers 2012).

This paper addresses the role of corporations in child trafficking from two different perspectives: as potential perpetrators of the crime and as important actors for preventing it. It is necessary to clarify from the beginning that the term *corporation* is used in this piece for convenience, but it is meant to encompass all companies, including small and medium-sized enterprises. Section 2 of this article focusses on the multiple patterns of corporations' involvement in human trafficking, as defined by international law. This paper also offers a brief overview of the response given by the most recent anti-trafficking instruments concerning corporate criminal liability for child trafficking. Section 3 addresses the mechanisms adopted by some companies to prevent trafficking and promote transparency within their supply chains. Overall, this article aims to critically assess both perspectives, identifying their strengths and weaknesses, and highlighting that neither of them should be overlooked in anti-trafficking policies.

## 2. Corporations as Perpetrators of Child Trafficking

Before analysing the various ways in which corporations can engage in child trafficking, it is necessary to clarify what is understood by *trafficking* for the purposes of this paper. The concept of *human trafficking* provided by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations –hereinafter UN- General Assembly 2000b) will be used as a general framework to define *child trafficking*. However, it cannot be forgotten that, despite being the first internationally-recognised definition of *human trafficking* at the time of adoption, this concept has been expanded by European and some national laws, as will be explained after.

Thus, the definition offered by Article 3 of the Trafficking Protocol (UN General Assembly 2000b), child trafficking requires two elements: action and purpose. On the one hand, the *action* element includes the recruitment, transportation, transfer, harbouring or receipt of persons. Directive 2011/36/EU (European Parliament and Council of the European Union 2011) on preventing and combating trafficking in human beings and protecting its victims adds the exchange or transfer of control over persons among the actions of human trafficking, which explicitly covers the selling and buying of people (Article 2.1). On the other hand, the *purpose* element is the exploitation of a minor, including, at least, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs. Directive 2011/36/EU includes, on top of the types of exploitation foreseen in the Trafficking Protocol (UN General Assembly 2000b), the exploitation of criminal activities and begging (Article 2.3 of Directive 2011/36/EU).

Unlike trafficking of adults, both legal instruments make it clear that it is not necessary for a person below 18 to have been subjected to abusive means of control, such as threats, violence or deception, while recruitment for the case to constitute trafficking (Article 3 of the Trafficking Protocol and Article 2.5 of the EU Directive, respectively). This is because it has been considered that neither the person below 18 nor those with parental authority over them may give valid consent to their exploitation. In addition, as is the case with adults, there is no requirement for exploitation to have occurred, but only the intention to exploit. Therefore, child trafficking is “the recruitment, transport, transfer, harbouring or receipt of a girl or boy of less than 18 years old for the purpose of exploitation” (International Programme on the Elimination of Child Labour of the International Labour Organization –hereinafter, IPEC– 2002, p. 35).

Nevertheless, and even though this paper focusses on child trafficking, it is necessary to address exploitation too, as the purpose and, therefore, an integral element of trafficking. It cannot be forgotten that, as sustained by Gallagher (2010), the concept of *trafficking* in international law extends to include the maintenance of an individual in a situation of exploitation, and consequently, the trafficker “is not just the recruiter, broker or transporter, but also the individual or entity involved in initiating or sustaining the exploitation” (Gallagher 2010, p. 47). Despite the importance of the concept, the Trafficking Protocol does not define *exploitation*, instead it provides an open-ended list of exploitative practices. It is assumed that the definitions of some of these practices contained in other international instruments are applicable (Gallagher 2015). Thus, for instance, the Convention on the Rights of the Child, Article 34 (UN General Assembly 1989), identifies the following practices as *sexual exploitation of children*:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices; and
- (c) the exploitative use of children in pornographic performances and materials. (UN General Assembly 1989)

Similarly, the International Labour Organization (ILO) Convention concerning Forced or Compulsory Labour, Article 2, adopted in Geneva at the 14th ILC session on 28th June 1930, is generally considered to define *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". This definition applies to *forced child labour* "with modifications of the concepts of 'voluntariness' and 'menace of penalty' that take due account of the particular legal and social situation of children including their increased vulnerability to threat and intimidation" (Gallagher 2015, p. 30). The ILO also specified that forced child labour can be distinguished from other forms of child labour by the presence of one or more of the following elements: "a restriction of the freedom to move; a degree of control over the child going beyond the normal exertion of lawful authority; physical or mental violence; and absence of informed consent" (IPEC 2002, p. 35).

### 2.1. Patterns of Corporations' Involvement in Human Trafficking

As the above definition demonstrates, child trafficking is a complex crime that can occur in several different forms. Likewise, as this section will illustrate, corporations' involvement in trafficking can be very diverse, since they can potentially commit any of these actions and for any kind of exploitation.

Regarding the *action* element, corporations can commit the recruitment, transportation, transfer, harbouring or receipt of minors directly and willingly, or facilitate them indirectly, sometimes even being unaware of it. This can occur in any stage of the production process, from the initial cultivation, production, harvesting or extraction of raw materials to the transportation or selling of the final product (Feasley 2016). Taking this premise into account, corporations' involvement in human trafficking can be classified into three different categories. The first one involves the most obvious cases, which occur when the victim is directly recruited and exploited by the company. Some companies transport victims, provide them with the documentation required to be moved to the place where they will be exploited, and obtain benefits from that exploitation (Díaz 2014). The UNODC Case-Law Database includes several cases of minors being recruited and sexually exploited in brothels or clubs. One example would be *US v. J. Kim et al.* (Human Trafficking Database of the University of Michigan Law School n.d.), a case in which the defendants recruited and forced into prostitution more than 15 Korean girls within their large massage parlour/brothel business. The UNODC also reported the prosecution and conviction of two directors of an Indonesian company that were involved in the production of fake documents to send more than 160 workers, including children, abroad to be exploited (Kepes and Hunter 2015).

The second category covers companies' involvement in child trafficking when their products, services or facilities are used in the trafficking process. "This can occur in the hospitality, tourism and transport sectors" (Hunter and Kepes 2012, p. 13). For example, it may affect airlines or shipping companies used to move the victims, and hotels or resorts used to host them (Hoff and McGauran 2015). It is estimated that 93.3 percent of child sexual tourism occurs in hotels, where staff can organise and facilitate child trafficking for sexual exploitation (Härkönen 2016). In one reported incident, a trafficked child for the purposes of sexual exploitation was "imprisoned in a hotel room for almost two weeks" (George and Smith 2013, p. 103). Corporations can also be involved when trafficking victims are exploited at their properties such as bars, nightclubs, brothels, factories and construction sites, among others (Europol 2011). With the increasing importance of new technologies, internet advertisers and/or dating sites, for instance, might facilitate sex trafficking even if they do not have a direct relationship with the traffickers (Shavers 2012). *US v. Epps* (2013) illustrates this final pattern. In this case, a man recruited a 16-year-old girl through a website to exploit her as a prostitute. He used another website to advertise the victim for sexual exploitation in a hotel, and he took the victim to a tattoo parlour to have his street name tattooed on her arm. Neither the hotel, the websites nor the tattoo parlour reported the case, despite the victim's youthful appearance.

The third category is the most complex and difficult to identify. It includes cases of companies that accept working with third parties that resort to child trafficking. The constant rapid improvement in high technologies has given rise to cheaper transport and communications that enable quick delivery and tracking of goods, making it possible to divide the production process into distinct stages and locate it in different countries (ILO 2008, Konov 2011). In this context, many corporations have tried to increase their profits by producing more and cheaper products. To do so, they have resorted to outsourcing, offshoring or subcontracting practices, both nationally and internationally (Konov 2011, Bang 2013, Hoff and McGauran 2015). For example, most textile and garment production, as well as other manufacturing industries, have either been relocated to lower income countries or subcontracted to small and flexible suppliers (ILO 2008, Hoff and McGauran 2015). The adoption of global supply chains has been proven to be highly profitable for companies. In fact, a study of several U.S. multinational corporations showed a strong correlation between global subcontracting and increased profits because of decreased costs (Bang 2013). Moreover, it has been argued that global production systems might present many alleged social advantages for other stakeholders (ILO 2008, Coon *et al.* 2014). However, it cannot be forgotten that new global production systems can also generate greater risks of trafficking. Supply chains have grown immensely in size, geographical reach and complexity. Since large buyers can easily find cheap suppliers in different countries, there is a lot of pressure on them to produce in a cheap and flexible manner (Hoff and McGauran 2015). To do so, suppliers must inevitably allow for deteriorating working conditions and diminishing wages, with their subsequent descent into forced labour and human trafficking (ILO 2008, Hoff and McGauran 2015). Moreover, cross-border subcontracting systems can render the worker abroad effectively invisible, making the use of trafficked manpower easy to hide (Bang 2013).

In this context, it is not difficult for companies to have subcontractors within their supply chains that resort to child trafficking for the purposes of exploitation within their businesses (Hunter and Kepes 2012). The most notable example of this modality occurred in the cocoa industry. Nestlé and other companies in the chocolate production business were accused of aiding and abetting child slavery by providing assistance to Ivorian farmers who used child slave labour to produce and harvest cocoa beans (*John Doe v. Nestle, S.A.* 2013). The court considered that, even if these companies were not the owners of the farms, they had facilitated and assisted the use of child slave labour by their suppliers. In this regard, the court stated that the companies were "well aware" of the situation (*Idem*, p. 8), because "their agents visit the farms several times a year" (*Idem*, p. 8), and that they "had enough control over the Ivorian cocoa market that they could have stopped or limited the use of child slave labour" (*Idem*, pp. 23-24). However, "they did not use their control to stop the use of child slavery, but they instead supported and facilitated it" (*Idem*, pp. 23-24). Thus, it was established that "the defendants sought a legitimate goal, profit", but they did it "through illegitimate means, purposefully supporting child slavery" in their supply chain (*Idem*, pp. 23-24). This case was vacated and remanded for further proceedings.

Finally, regarding the *purpose* element of trafficking, corporations' involvement in child trafficking can include any exploitation. The type of exploitation varies depending on the gender, age, nature of the tasks that are going to be performed, the level of their skills and vulnerability (IPEC 2008). Sexual exploitation is the most frequently reported crime. However, it is difficult to judge if this is because it occurs more or because it has achieved more visibility and, therefore, it is more frequently reported (UNICEF 2008, Organization for Security and Co-operation in Europe –OSCE– 2014). Despite being difficult to detect, there are other forms of exploitation that have also been featured in reports on human trafficking. In December 2014, the Bureau of International Law Affairs of the United States Department of Labour (hereinafter, ILAB) published a list of goods produced by

child labour or forced labour. This list comprises goods from the agriculture, manufacturing, and mining sectors (ILAB 2014). The report highlighted the risks of resorting to forced child labour in cocoa, coffee, and tobacco production. As stated before, cocoa beans have been linked to child trafficking in cultivation and harvesting in West Africa, where it is estimated that approximately two million children and adults work under exploitative and forced-labour conditions (International Cocoa Initiative 2011). Examples of these practices have also been reported in the U.S. Department of State *Trafficking in Persons Report (TIP Report)* of 2016, which indicated that five alleged traffickers from an agricultural company were arrested in Mexico for the forced labour of 228 adults and 78 children; as well as "several managers of a coffee plantation involved in the forced labour of indigenous Guatemalan children" (U.S. Department of State 2016, p. 268). Similarly, companies are at risk of resorting to trafficked child workers in the garment industry. Children can be exploited in all stages of the supply chain, "from the production of cotton seeds, cotton harvesting and yarn spinning mills to all the phases in the cut-make-trim stage" (Overeem and Theuws 2014, p. 1). India, Uzbekistan, China, Bangladesh, Egypt, Thailand, and Pakistan have all been reported as particularly notorious places for child labour in the textile and garment industry (*Ibid.*). For example, in October 2007, a newspaper in the UK alleged that the subcontractors of "a well-known global retailer" were "using 'slave' children in India", who worked long hours, did not get paid, and lived on the roof of the factory (Hunter and Kepes 2012, p. 26).

## 2.2. Corporate Liability for Child Trafficking

The previous section has illustrated the complexity and variety of corporate involvement in child trafficking. Aware of these risks and trying to stop companies from engaging in these practices, the most recent anti-trafficking legal instruments explicitly foresee the possibility of finding corporations criminally liable for human trafficking offences.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN General Assembly 2000b) does not mention corporate liability at all. However, this Protocol supplements and should be interpreted together with the United Nations Convention against Transnational Organized Crime (hereinafter, UNTOC; see UN General Assembly 2000c), which does address corporations' involvement in organised crime. Article 10 of the UNTOC obliges each State Party to adopt the necessary measures to establish the liability of legal persons for several offences, including human trafficking, as defined in Article 5 of the Trafficking Protocol (UN General Assembly 2000b). It is important to clarify that States' obligation to provide for the liability of legal entities is mandatory only to the extent that this is consistent with its legal principles. Thus, there is no obligation to establish criminal liability, such liability can also be civil or administrative (UNODC 2004). In any case, the discretion given to States is not absolute. On the one hand, they must guarantee that such liability shall be without prejudice to the criminal liability of the natural person who has committed the offence. On the other hand, whatever type of liability is chosen, it must ensure that legal persons are subject to "effective, proportionate and dissuasive sanctions", whether they are criminal or not (UNODC 2004, para. 240; Pierce 2011, pp. 597-598).

Subsequently, both the Council of Europe Convention on Action against Trafficking in Human Beings (European Trafficking Convention; see Council of Europe 2005), adopted in Warsaw in 2005, and Directive 2011/36/UE on preventing and combating trafficking in human beings and protecting its victims (European Parliament and Council of the European Union 2011) explicitly require Member States to establish liability of legal persons for human trafficking. Again, the form of liability imposed on corporations can be criminal, civil or administrative, but it must ensure that sanctions are effective, proportionate and dissuasive (Articles 22 and



23 of the European Trafficking Convention, and Articles 5 and 6 of Directive 2011/36/UE). European law has further developed the general obligation contained in international law, and has established minimum standards concerning liability of legal persons that Member States must comply with. Both European legal instruments clarify that the offence should be committed by a "natural person", acting either individually or as part of an organ of the legal person, for the benefit of the company. A *natural person* can be someone with a leading position within the legal person, or another person, without a managerial position, acting under the authority of the former. In the first case, the person must have power of representation or authorisation to take decisions or exercise control within the legal person (Article 22.1 of the European Trafficking Convention and Article 5.1 of Directive 2011/36/UE). In the second situation, the crime must have been made possible by a lack of supervision or control by the person in a leading position. (Articles 22.2 and 5.2 respectively).

Although they do not specifically address child trafficking, there are other instruments related to the exploitation of children that contain provisions about legal persons. At the international level, the ILO Private Employment Agencies Convention (ILO 1997), adopted in Geneva on 19 June 1997, establishes that States Party shall take measures to ensure that child labour is not used or supplied by private employment agencies (Article 9). Similarly, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (UN General Assembly 2000a) obliges each State Party to take measures to establish criminal, civil or administrative liability of legal persons for the sexual exploitation, transfer of organs for profit or forced labour of children (Article 3 of the Optional Protocol, UN General Assembly 2000a). At the European level, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted in Lanzarote in 2007, requires Member States to establish liability of legal persons for these offences in the same terms as the above-mentioned European anti-trafficking instruments (Council of Europe 2007, see Articles 26 and 27).

These legal provisions, which might seem simple in a preliminary analysis, lead to multiple obstacles when applied to real cases. Several difficulties arise from the complicated structure that present day companies have adopted, in which subcontracting and outsourcing are increasingly common, and in which the stages of supply chains are spread across different countries. Firstly, it is difficult to demonstrate the connection between the parent corporation and the agent who committed the crime, who might have been directly hired by one of the subsidiary companies (Pierce 2011, Bang 2013). These challenges are accentuated when companies operate beyond national borders. In those cases, national laws might not allow for the assertion of jurisdiction over offences committed abroad, and, even if they do, the problems concerning evidence gathering will remain (Konov 2012, Kepes and Hunter 2015). Once all these obstacles are surpassed, there are still some hurdles in finding a sanction that incentivises the company to change its practices and prevent trafficking. The most frequently used sanction is a monetary fine, criminal or non-criminal, proportional to the benefits that the company obtained from the criminal activity (UNODC 2004, para. 257). However, monetary fines have faced opposition, given the difficulties in quantifying the profits of trafficking, and considering the possibilities that corporations do not refrain from engaging in criminal activities fearing the economic loss caused by fines (Coffee 1980). Hence the importance of exploring non-monetary sanctions such as temporary or permanent closure of establishments which have been used for committing the offence, publishing the sentence (Andrix 2007), prohibiting the legal person from advertising activities or products related to the crime, compelling it to engage in community services to repair the damage caused and prevent similar offences (Gruner 1993), or imposing some sort of corporate probation (Levin 1983).

In any case, regardless of the nature of the sanction imposed by States when implementing these provisions, they all must pursue a common rationale: punishing corporations' involvement in child trafficking to reduce it and ultimately eradicate it. However, currently, reaching a corporation under a trafficking statute is still very difficult, and prosecution is still very rare (Pierce 2011, Feasley 2016, Tamaş *et al.* 2016).

### 3. Corporations as Preventers of Child Trafficking

Recently there has been a tendency to go beyond prosecution in order to recognise the essential role that the private sector has in reducing demand for trafficking and developing supply chains that do not involve child labour. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (European Commission 2012), for instance, proposed the establishment of a Private Sector Platform, the so-called European Business Coalition against human trafficking, which would develop models and guidelines in cooperation with businesses and other stakeholders, to reduce demand and prevent human trafficking in high-risk areas, such as the sex industry, agriculture, construction and tourism. Indeed, corporations are in an excellent position to police their supply chains, identify situations of risk and cooperate with law enforcement authorities to prevent child trafficking (see Shavers 2012, George and Smith 2013). Some of them, particularly those that have already suffered the reputational costs of being accused of committing this crime, have adopted self-regulation initiatives like training staff, adopting codes of conduct and carrying social audits to implement them (Parente 2014). Aware of the convenience of having the private sector as an ally in the fight against human trafficking, States have tried to promote transparency in business operations to encourage voluntary commitment by companies to prevent this crime (UN Human Rights Council 2013).

#### 3.1. Self-regulation Initiatives for Preventing Child Trafficking

Currently, many companies integrate social, environmental and economic concerns in their business operations and in their interaction with stakeholders on a voluntary basis (Shavers 2012). "It is now common for companies to issue annual corporate social responsibility (CSR) reports in which they explain business practices in the area of sustainability and responsible sourcing" (Feasley 2016, p. 19). These corporate social responsibility strategies also address human trafficking, particularly when it affects children. Although historically these measures have not received widespread shareholder support (Konov 2011), it has been argued that "today's corporations are feeling the call to respond to the pressing social issues of our time" (Byerly 2012, p. 26). A recent report released by the American Bar Association and Arizona State University indicates that 54 percent of Fortune 100 companies have policies targeting human trafficking and 68 percent have a commitment to supply chain monitoring, with most using a mixture of internal and external monitoring methods (American Bar Association and Arizona State University 2014). It has been asserted that large businesses are beginning to see themselves as "social institutions with purpose and values", a long-term focus and emotional engagement, for either moral, institutional or reputational reasons (Byerly 2012, p. 27).

Although some argue that corporate social responsibility is not consistent with the primary economic objectives of a business, it can offer certain advantages that eventually lead to an increase in profits (Shavers 2012). In other words, companies might be interested in preventing child trafficking because consumers might be reluctant to buy products that had been made with the involvement of children. For example, a poll carried out by *ICM Research for Drapers Magazine* in 2008 indicated that, due to allegations of using child labour in their supply chains, a famous global retailer could lose up to 42% of its customers (Hall 2008). Furthermore, the adoption of corporate social responsibility strategies is supposed to enhance brand

value and reputation, build credibility with local stakeholders, strengthen relationships with other business partners, ensure access to international markets and global business relationships, and build stronger investor relationships (Kepes and Hunter 2015). Another economic reason that might encourage corporations to adopt self-regulation anti-trafficking strategies, particularly compliance programs, is the possibility of excluding or attenuating criminal liability (and the subsequent monetary sanctions) if they can prove that they were acting with due diligence, without any lack of supervision or control over their employees that would have made the offence possible (Gómez 2015).

Regardless of the nature of their motivations, some private businesses are taking steps towards the prevention of child trafficking. Some companies and sectors are carrying out campaigns to indicate to the consumer that their products have not been produced with child trafficking or forced labour (Feasley 2016). These practices, known as *right-sensitive branding* or *social labelling*, such as *slave free chocolate*, have been profitable and well received by corporations (*Idem*, p. 19). Moreover, many corporations have also implemented codes of conduct that provide principles, values or standards that guide the decisions, procedures and systems of an organisation. This would "contribute to the welfare of its key stakeholders" as well as "respect the rights of all constituents affected by its operations" (Hoff and McGauran 2015, p. 108). These codes of conduct normally arise as a collaborative solution developed by several companies operating in the same industry (Coon *et al.* 2014). Multi-stakeholder initiatives to prevent child trafficking in specific industries and sectors are gaining importance, since if a serious violation of labour rights is found in the extraction or production of a commodity, it is the entire sector that suffers perceptual damage (see ILO 2008, Shavers 2012).

One of the most celebrated examples of a voluntary set of business principles for preventing child trafficking is the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (hereinafter, The Code; see Organisation for the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism n.d.), developed in 1996 by End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (ECPAT), United Nations World Tourism Organization (UNWTO), and the Swedish tourism industry. Tourism companies adhering to The Code commit themselves to establishing policies and procedures against the sexual exploitation of children, adopting a clause in contracts with suppliers ensuring a zero tolerance policy, training employees to prevent and report suspected cases and providing information to travellers. Companies must also report annually on their implementation of The Code. Similarly, companies operating in Brazil in economic sectors that are typically targeted in reports on human trafficking such as the iron, sugar and soy industries, have signed agreements to ban any form of involvement with businesses listed in the so called "*lista suja*" (the bad list) (IPEC 2008, p. 39). The International Cocoa Initiative or the Better Cotton Initiative are other examples of competitors, suppliers, local communities, government authorities, labour recruitment agencies and other stakeholders working together to eradicate human trafficking (ILO 2008).

One of the main objectives of these codes is to spread awareness and train staff and suppliers so that they can identify and report potential risks of trafficking within the company and the entire supply chain (UN Human Rights Council 2013, Coon *et al.* 2014). The ILO has suggested some measures that companies can use to identify child labour that can also be useful in child trafficking cases. They suggest using age estimation techniques, cross-referencing information gathered through site inspection and reviews of workers' documentation, as well as interviews with a representative cross-section of workers and managers (ILO 2015). It is important to ensure that different corporate divisions, from financial to sourcing departments, work together to effectively ensure that the business does not involve any form of trafficking (Overeem and Theuws 2014). One example of a company-driven

measure to prevent human trafficking is the organization known as the Think Tank, which started in 2008 at the initiative of a famous global retailer that had been accused of using child slavery, as a programme to investigate “the fundamental causes of child trafficking in India, collaborating with government, other brands, suppliers and NGOs” (Hunter and Kepes 2012, p. 26). There have also been examples of airlines (e.g., American Airlines) that have taken “the initiative to educate employees about red flags in product supply chains or actions of customers that may indicate that the airline is being used to facilitate trafficking” (Shavers 2012, pp. 81-2).

To monitor compliance with the codes of conduct in their own facilities and those of their suppliers, many companies are using social audits (Kepes and Hunter 2015). Social audits are usually a practical tool to scrutinise the risks of human trafficking at all levels of the supply chain (UN Human Rights Council 2013). Nevertheless, the UNODC (Kepes and Hunter 2015) has warned that social audits cannot always illuminate human trafficking in supply chains, especially when it occurs before the victim arrives at the workplace. These difficulties are increased when the victims of trafficking are children. Even in the formal sector, child workers are hidden away when auditors visit the plant (Overeem and Theuws 2014). To avoid advance warnings that can give suppliers the opportunity to correct misconduct, providing a false sense of compliance, surprise audits, with a specific focus on exposing trafficking have been recommended (Coon *et al.* 2014). However, even when auditors have access to workers, the difficulties to proof their age remain, since they may lie about it and they usually lack any identity papers (Overeem and Theuws 2014). Hence, the importance of complementing them with the training of workers, human resources and compliance officers, who are in a privileged position to identify and seek appropriate remedies for human trafficking within the company.

Generally, business-driven initiatives to prevent child trafficking have faced two main criticisms. Firstly, it is necessary to avoid mechanisms that lack any meaning or practical effect and are just compelling *marketing techniques* to protect or rehabilitate a brand (Feasley 2016, p. 20). One possible solution to this problem would be the establishment of organisms, either public (as in Italy – although the UNODC has stated that Italy could do more), or private (as in Chile – now ranked in the top tier of 188 countries for its efforts to prevent or prosecute crime involving, or pertaining to, human trafficking), to certify that compliance programs are truly operational (Gómez 2015). Secondly, self-regulation initiatives have been criticised for lacking meaningful accountability mechanisms, other than public scrutiny or expulsion, which may result in a lack of implementation of significant policies when they are less financially lucrative (Feasley 2016, p. 21).

### *3.2. State-Led Initiatives to Promote Transparency and Engage Corporations in the Prevention of Child Trafficking*

The previous section has shown how some businesses are voluntarily adopting mechanisms to prevent child trafficking, for moral or economic reasons. However, this has not always been the case. Some businesses are still reluctant to admit that they have a responsibility to act in the public interest, to serve some larger social purposes, such as preventing human trafficking, and that maximising shareholder value should be their only duty. Contrary to this position, many national and international organizations have highlighted the need to encourage businesses to contribute to prevent or mitigate any risks of trafficking (European Commission 2012, UN Human Rights Council 2013, ILO 2015, U.S. Department of State 2015). Thus, some States have tried to incentivise corporations to initiate protocols to prevent human trafficking and disclose information about their anti-trafficking measures (Jägers and Rijken 2014). This obligation to show the impact of their preventive policies, both international and externally, is justified to enable

stakeholders and consumers to monitor if and how a corporation is complying with its responsibility (*Ibid.*).

One of the most prominent examples of domestic regulations aimed at promoting transparency is the California Transparency in Supply Chains Act of 2010 (hereinafter, CTSCA), which came into force in 2012 as the “first legislative initiative that addresses the role of corporations in the prevention of THB for labor exploitation” (Jägers and Rijken 2014, p. 60). The CTSCA requires all retailers and manufacturers with annual global revenues of more than \$100 million (U.S.) that do business in California to disclose their efforts to eliminate forced labour and human trafficking from their direct supply chains. Several years later, the United Kingdom passed the Modern Slavery Act 2015, which requires all businesses operating in the United Kingdom with annual revenue exceeding £36 million (U.K.) to annually publish a statement that details their efforts, if any, to ensure their operations and supply chain are free of human traffic. In both cases, the information must be posted on companies’ websites with prominent and easy-to-access links. It is ironic that these acts do not require companies to take any specific action to reduce trafficking. Companies only have a duty to disclose if they are doing something and what they are doing, but there is no sanction foreseen for violating this obligation. In other words, businesses can comply simply by saying that they have not done anything, since both the British Government and the California legislature hope that the risk of negative publicity will suffice to ensure that affected businesses feel compelled to take some steps in this direction.

These laws also constitute an effort to “educate consumers” hoping that they “punish” those companies that do not make efforts to avoid human trafficking (Mehra and Shay 2015, p. 10). In the same manner, the Bolivian Foreign Trade Institute in coordination with the Ministry of Labour operates a certification programme called Triple Seal, which is awarded to those companies that demonstrate that they do not resort to child labour, discrimination and forced labour at any point on their production chain. It is controversial whether consumers will change their habits after seeing this information to the extent that companies’ profits might be affected. As stated before, there are examples of consumer decisions not to buy certain products which offered no guarantee that child trafficking had not been involved. Moreover, a study carried out in the U.S. in 2005 shows that consumers are willing to pay higher prices for products that display a label saying that they had been made with good labour standards (Hiscox and Smyth 2008). However, to ensure the efficacy of this transparency measures, it is better to supplement them with awareness raising campaigns.

With regards to compliance, NGOs have been assessing the information disclosed by U.S. companies and have been able to distinguish five different patterns. At best, some companies detail the extensive measures they have in place, highlighting their commitment to combatting human trafficking in their supply chain. Others indicate that they are committed to acting, but they have not undertaken any significant steps yet. Some corporations simply copy the language of the law and indicate compliance without taking any specific steps. There are then some companies that disclose that they are taking no steps to identify or eradicate human trafficking from their supply chains.

Finally, some companies are simply unaware of their obligation (Coon *et al.* 2014). In the UK, for example, “media and NGOs reported [that] compliance so far has been incomplete”, partly because of “misunderstandings among businesses about what the law requires” and partly because of “the lack of monetary or criminal penalties for companies that do not comply with the reporting requirement” (U.S. Department of State 2016, p. 387).

Overall, this author, among others, believes that the fact that corporations are, voluntarily or compulsorily, engaging more and more in the prevention of child trafficking doubtlessly deserves a positive assessment. This author also believes

that governments should incentivise corporations' involvement in anti-trafficking policies not only as a means by which to avoid accountability for the crimes committed, but also as a moral duty towards their workers, suppliers, and consumers. Even if they do not impose strict obligations on corporations, legal instruments that promote transparency in companies' policies, such as the CTSCA, are a welcome first step towards moving away from the traditional reliance on the State as the only entity with an obligation to combat human trafficking.

#### 4. Conclusion

Modern corporations try to make profits in a global context characterised by the effects of a huge geographical expansion. Global production systems, normally associated with other factors such as subcontracting, the adoption of complicated corporate structures and use of recruitment agencies, have been embraced because they are profitable. However, they also raise the risks of companies becoming perpetrators of human trafficking, particularly when it involves children. In this context in which companies are inexorably related to the so-called *modern day slavery*, they must decide whether they want to be perpetrators or preventers of this crime.

As reflected in this article, it is suggested that there are multiple ways in which corporations can potentially become perpetrators of child trafficking. They can recruit, transport, host or receive victims directly or through their subcontractors or labour recruiters for various types of exploitation. Moreover, their products or facilities can also be used to facilitate the trafficking of minors. Although the most commonly reported purpose of child trafficking continues to be sexual exploitation, some economic sectors, such as agriculture, manufacturing and mining, are being targeted for using forced child labour and slave forced labour. If companies happen to be perpetrators of child trafficking they should face liability for doing so. The most recent anti-trafficking legal instruments foresee sanctions for both natural and legal persons who commit this crime. However, corporations are rarely prosecuted under trafficking statutes and there are still many obstacles that need to be overcome to guarantee accountability.

Nevertheless, it was noted that companies also can (and should) take advantage of their proximity to the trafficking problem to become active preventers of this crime. Indeed, many corporations have already put into place codes of conduct, awareness raising and training campaigns, social audits and sectorial agreements to eradicate trafficking from their supply chains on their own initiative. Some States are beginning to include the private sector as a valuable partner to mitigate child trafficking, and encouraging the adoption of this kind of business-driven initiative. However, as this paper has demonstrated, the effective implementation of these self-regulation measures is still not truly guaranteed and, unfortunately, sometimes they are nothing more than marketing strategies, with almost no effect on the protection of children.

Generally, the legal response to human trafficking has focussed much more on prosecution than on prevention. This has also been the case in relation to legal entities involved in this crime. Governments have discussed the best way of punishing those corporations which chose to be perpetrators, disregarding that encouraging and rewarding those which chose to be preventers was also crucial. It is necessary to recognise the double role of corporations in this crime to put an end to child trafficking, using not only the *sticks* but also the *carrots*. Only through the adoption of collaborative solutions will it be possible to work towards truly operational frameworks of prevention to secure the safety of children.

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