

CHECKING IN: HOW SOFT LAW AND CORPORATE SOCIAL RESPONSIBILITY ARE FILLING GOVERNANCE GAPS TO COMBAT HUMAN TRAFFICKING IN THE GLOBAL TRAVEL AND TOURISM INDUSTRY

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ABSTRACT

Although data is often underreported, the International Labour Organization (ILO) estimates approximately 25 million adults and children are bought and sold worldwide into human trafficking.^{1,2} Labor and sexual exploitation are among the most common forms of human trafficking, comprising 83% of cases worldwide.³ Women and girls are especially vulnerable to trafficking, accounting for 71% of victims worldwide.⁴

Meanwhile, even though 187 countries ratified the U.N. Convention against Transnational Organized Crime,⁵ human trafficking data indicates that the business is thriving.⁶ Recent estimates suggest that human traffickers earn as much as \$32 billion per year,⁷ which lands trafficking in the ranks of the sale

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1. This Note adopts The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (U.N. TIP Protocol) definition of human trafficking. *See generally* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, *opened for signature* Nov. 15, 2000, 2237 U.N.T.S. 319, (entered into force Dec. 25, 2003) <https://treaties.un.org/doc/Publication/UNTS/Volume%202237/v2237.pdf> [hereinafter U.N. TIP].

2. *Human Trafficking by the Numbers*, HUMAN RIGHTS FIRST (Jan. 7, 2017), <http://www.humanrightsfirst.org/resource/human-trafficking-numbers>.

3. *Id.*

4. *Id.*

5. *Signatories to the United Nations Convention against Transnational Crime and its Protocols*, U.N. OFFICE ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html> (last visited Apr. 21, 2017).

6. Robbie Couch, *Human Trafficking Is Still Globe's Fastest-Growing Crime Despite Increased Awareness*, HUFF. POST (Jan. 7, 2015), http://www.huffingtonpost.com/2015/01/07/human-trafficking-increasing_n_6425864.html.

7. *End Trafficking*, UNICEF USA, <https://www.unicefusa.org/sites/default/files/assets/pdf/End-Child-Trafficking-One-Pager.pdf> (last visited Apr. 21, 2017).

of drugs and arms as one of the world's most profitable illicit crimes.⁸ Moreover, traffickers are becoming increasingly savvy, adapting the latest social media and Internet technologies to cross national borders and evade law enforcement around the world.⁹

The global travel and tourism industry,¹⁰ composed of tour operators, lodging and accommodation businesses, travel agencies, and travel distribution corporations, as well as airlines and other transportation operators, is a prime target and what *Travel Weekly* describes as an “unwitting accomplice” in human trafficking.¹¹ Hotels are used by traffickers as temporary lodging for sexual encounters; airlines carry victims to their next location; and tour operators supply travelers eager to partake in illicit activity.¹² While some headway has been made to make these businesses more aware and accountable for this illicit activity, an array of barriers, including a lack of training on how to handle issues as well as gaps in international policy and national and subnational implementation, hampers efforts.¹³

The global travel and tourism industry is a \$7.6 trillion per year industry,¹⁴ and harnessing the power of the sprawling global tourism business is a key battleground for the fight against human trafficking.¹⁵ First, this Paper identifies gaps in human trafficking hard law at the international, national, and subnational levels to create corporate accountability for human trafficking. Second, this Paper analyzes how soft law, such as international policy guidelines, and corporate social responsibility (CSR) initiatives may help fill these gaps. Finally, this Paper suggests a path forward, outlining a multidisciplinary approach to combating trafficking in the global travel and tourism industry.

8. Couch, *supra* note 6.

9. *Tech-Savvy Sex Traffickers Stay Ahead of Authorities as Lure Teens Online*, REUTERS (Nov. 15, 2015, 7:00 PM), <http://www.reuters.com/article/women-conference-traffickers-idUSL8N1343ZL20151116> [hereinafter *Savvy Traffickers*].

10. This Paper adopts the definition of the global travel and tourism industry used in *The Code*. See generally *Organizational Structure*, THE CODE, <http://www.thecode.org/about/organizational-structure/> (last visited Apr. 21, 2017).

11. Kate Rice, *The War on Human Trafficking*, TRAVEL WEEKLY (May 7, 2014), <http://www.travelweekly.com/Travel-News/Travel-Agent-Issues/The-war-on-human-trafficking>.

12. *Id.*

13. MICHELE SARKISIAN, CORNELL HOSP. REPORT, ADOPTING THE CODE: HUMAN TRAFFICKING AND THE HOSPITALITY INDUSTRY 8 (2015).

14. *Global Travel and Tourism Industry - Statistics & Facts*, STATISTA, <https://www.statista.com/topics/962/global-tourism/> (last visited Apr. 21, 2017).

15. Anna Williams Shavers, *Human Trafficking, the Rule of Law, and Corporate Social Responsibility*, 9 S.C. J. INT'L L. & BUS. 39, 83-84 (2012).

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I. INTRODUCTION

According to the U.N. World Tourism Organization (UNWTO), approximately 1.2 billion tourists traveled outside of their country's borders for one night or more in 2015.¹⁶ The UNWTO indicates that this is the largest global tourism spike in recent years with an increase of 4.4% over 2014, making 2015 the sixth consecutive year of

16. Karla Cripps, *International Tourists Hit Record 1.2 billion in 2015, says UNWTO*, CNN (Jan. 19, 2016), <http://www.cnn.com/2016/01/19/travel/international-tourists-2015>.

above-average growth in the industry.¹⁷ However, along with this influx comes a host of new issues facing the global travel and tourism industry. As the flow of tourists across borders grows, so does human trafficking. And with greater demand comes greater responsibility.¹⁸

Unfortunately, the global travel and tourism industry, composed of lodging and accommodation businesses, travel agencies, and travel distribution corporations, as well airlines and other transportation operators, has long been an “unwitting accomplice”¹⁹ in human trafficking. These businesses are targeted as facilitators in helping human traffickers carry out acts at home and abroad.²⁰ *Travel Weekly* explains this phenomenon: “[p]lanes transport perpetrators and their victims; traffickers with groups of children pass through international checkpoints; hotels house pimps and their victims and provide a venue for exploitation.”²¹

However, providing one out of eleven jobs in the world,²² the global travel and tourism industry is also uniquely positioned to fight international human trafficking. Combating increasingly tactful human traffickers requires a multidisciplinary approach.²³ For example, one study suggests that if businesses in the travel industry were to increase operational costs by 10% to combat trafficking, a trafficker would have to increase his prices by 24% to maintain profits.²⁴ The UNWTO is also aware of the industry’s unique positioning, stating: “[i]t is appalling to see tourism infrastructure being used by traffickers to victimize the vulnerable . . . The tourism sector can and should play a vital role in preventing human trafficking linked to tourism, including sexual exploitation.”²⁵

Yet, at a crucial time for industry-wide action, weak accountability mechanisms threaten corporate impact. While human trafficking law

17. *Id.*

18. Press Release, U.N. World Tourism Org., We Must Act Together to Fight Exploitation and Human Trafficking in Tourism, Say UN and International Partners, U.N. Press Release 12023 (Apr. 24, 2012), <http://media.unwto.org/en/press-release/2012-04-24/we-must-act-together-fight-exploitation-and-human-trafficking-tourism-say-u> [hereinafter UNWTO Press Release]. See also Rice, *supra* note 11.

19. Rice, *supra* note 11.

20. Shavers, *supra* note 15, at 64.

21. Rice, *supra* note 11.

22. *Id.*

23. Erika R. George & Scarlet R. Smith, *In Good Company: How Corporate Social Responsibility Can Protect Rights and Aid Efforts to End Child Sex Trafficking and Modern Slavery*, 46 N.Y.U. J. INT’L L. & POL. 55, 111.

24. *Id.* at 104.

25. UNWTO Press Release, *supra* note 18.

exists, very few hard laws specifically address corporate accountability. Instead, soft law, such as the U.N. Guiding Principles on Business and Human Rights (UNGPs), and industry corporate social responsibility (CSR) efforts help fill the gaps to drive corporate accountability.

This Paper analyzes three tools to combat human trafficking and create corporate accountability in the global travel and tourism industry: hard law,²⁶ soft law,²⁷ and CSR initiatives. First, this Paper examines the role of hard law in combating human trafficking and identifies gaps in national and subnational implementation to create accountability. Second, this Paper discusses the roles of soft law and CSR initiatives, addressing how they fill some of these gaps. Finally, this Paper sets forth recommendations for a multidisciplinary approach to combating trafficking in the global travel and tourism industry, emphasizing how hard law, soft law, and CSR initiatives work in concert to create corporate accountability in the fight against trafficking.

II. HARD LAW: ASSESSING GOVERNANCE GAPS IN HUMAN TRAFFICKING LAW TO CREATE CORPORATE ACCOUNTABILITY

The following section reviews select human trafficking laws at international, national, and subnational levels. It examines the role of hard law in anti-trafficking efforts and its emphasis on state actors to implement legal measures. In doing so, it identifies certain gaps in hard law implementation to create corporate accountability in the global travel and tourism industry and discusses how hard law might be just one of several tools, along with soft law and CSR, to create corporate accountability to combat human trafficking.

A. U.N. Trafficking in Persons Protocol

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (U.N. TIP) is one of the three protocols (collectively, Palermo Protocols) supplementing the U.N. Convention against Transnational Organized Crime adopted in 2000.²⁸ The U.N. TIP is widely considered controlling international law in anti-

26. Hard law “refers to legal obligations of a formally binding nature.” Gregory C. Shaffer & Mark A. Pollack, *Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance*, 94 MINN. L. REV. 706, 707 (2010) [hereinafter *Hard Law vs. Soft Law*].

27. Soft law “refers to those that are not formally binding but may nonetheless lead to binding hard law.” *Id.*

28. Naomi Jiyoung Bang, *Casting a Wide Net to Catch the Big Fish: A Comprehensive Initiative to Reduce Human Trafficking in The Global Seafood Chain*, 17 U. PA. J.L. & SOC. CHANGE 221, 249 (2014).

human trafficking efforts.²⁹ This law is remarkable because it is the first global, legally binding treaty with an internationally agreed-upon definition of trafficking in persons.³⁰

This definition states as follows:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.³¹

The definition can be broken down into three parts: acts, means, and purpose.³² “Acts” refers to the actions by which violators traffic humans.³³ Under the U.N. TIP, these actions include recruitment, transportation, transfer, harbouring, and/or receipt of a person.³⁴ Note, the “acts” include a wide array of vehicles by which a violator may traffic—veering away from an earlier, more narrow legal emphasis on smuggling victims.³⁵ The “means” by which trafficking takes place is also a significantly evolved concept compared to earlier definitions.³⁶ For example, by including the phrase “abuse of power,”³⁷ the definition recognizes the imbalance of power often consistent in human trafficking incidents between perpetrator and victim. Finally, with regards to “purpose,” the U.N. TIP includes *dolus specialis*, a *mens rea* of trafficking

29. *The definition of trafficking*, ECPAT-UK, <http://www.ecpat.org.uk/content/definition-trafficking> (last visited Apr. 21, 2017).

30. Bang, *supra* note 28.

31. U.N. TIP, *supra* note 1, art. 3.

32. *Sex Trafficking Acts, Means and Purpose*, VIRTUAL KNOWLEDGE CTR. TO END VIOLENCE AGAINST WOMEN & GIRLS, <http://www.endvawnow.org/en/articles/548-sex-trafficking-acts-means-and-purpose.html> (last visited Sept. 18, 2018).

33. *Id.*

34. *Id.*

35. Phillip Hunter & Quinn Kepes, *Human Trafficking & Global Supply Chains: A Background Paper 4* (U.N. Special Rapporteur on trafficking in persons, especially women and children Nov. 12, 2012), <http://www.ohchr.org/Documents/Issues/Trafficking/Consultation/2012/BackgroundPaper.pdf>.

36. *Id.* at 5.

37. U.N. TIP, *supra* note 1, at art. 3.

intent. Notably, the definition of “exploitation” is especially telling of the evolution of human trafficking law as it includes traditional concepts of “sexual exploitation” alongside more modern thinking in terms of “forced labour” and “practices similar to slavery.”³⁸

To be certain, the audience for the U.N. TIP is state actors.³⁹ Ratifying nations are responsible for implementing the U.N. TIP measures into their domestic legal frameworks to bring state into compliance with the treaty. For example, the majority of accountability and enforcement measures are geared towards large-scale efforts that only states can undertake, such as criminal prosecution and police force coordination with other member states as well as information exchange and training.

Yet, the broad language of the U.N. TIP creates several gaps between international legislation and national implementation. Consider, for instance, *Article 9: Prevention of trafficking in persons* and *Article 10: Information exchange and training* of the U.N. TIP.⁴⁰ Both articles contain provisions urging states to partner with non-governmental organizations and civil society to create more effective multi-stakeholder anti-trafficking efforts, but the U.N. TIP stops there. In effect, the U.N. TIP does little beyond empowering state actors to implement an array of measures and has yet to prescribe and hold states accountable for enacting those measures. Thus, despite almost a century of iterations of human trafficking law, the modern paradigm still has clear limitations.

B. *The ILO's Forced Labor Protocol*

The ILO's Forced Labour Protocol (Labour Protocol) was adopted during the 103rd Session of the International Labour Conference in June 2014 and is a revised protocol to the 1930 Forced Labour Convention.⁴¹ The Convention is considered one of eight fundamental ILO Conventions and, along with the Abolition of Forced Labour Convention in 1957, forms the underpinnings of ILO's stance on forced labor.⁴² While the ILO initially considered creating only a non-

38. *Id.*

39. Amol Mehra & Katie Shay, *Corporate Responsibility and Accountability for Modern Forms of Slavery*, 14 J. INT'L CRIM. JUST. 453, 456 (2012).

40. U.N. TIP, *supra* note 1, at art. 9-10.

41. INTERNATIONAL LABOUR ORGANIZATION [ILO], ILO STANDARDS ON FORCED LABOUR: THE NEW PROTOCOL AND RECOMMENDATION AT A GLANCE 3 (2016), http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_508317.pdf.

42. *Conventions and Recommendations*, ILO, <http://ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm> (last visited Sept. 23, 2018).

binding initiative, the Labour Protocol was created in recognition of “gaps” in older ILO forced labor treaties.⁴³ As a result, the Labour Protocol became a binding legal instrument implementing modern human rights standards for the ILO’s 178 ratifying member states.⁴⁴ Notably, it also includes an accompanying Recommendation which provides Protocol implementation guidelines and technical assistance.

Similar to the U.N. TIP, the Labour Protocol has a three-part framework: protection, prevention, and compensation.⁴⁵ Among the many significant changes in the Labour Protocol is a more modern, broader take on forced or compulsory labor.⁴⁶ For example, the Labour Protocol recognizes that forced labor is a type of human trafficking, bringing the Labour Protocol’s definition in line with the U.N. TIP’s definition of trafficking.⁴⁷ The Labour Protocol also includes new obligations to prevent forced labor, protect victims, and provide access to a remedy, including compensation for harm.⁴⁸ Perhaps because the Labour Protocol’s strongest attribute is its ability to work in concert with existing international treaties on human trafficking, one of the Labor Protocol’s many goals is to develop a framework that would strengthen existing international law,⁴⁹ such as the existing ILO Conventions and the Palermo Protocols.⁵⁰ As such, the Labour Protocol is considered by its drafters as one of several international “instruments”⁵¹ for addressing the increasingly widespread problem of human trafficking.

Still, even with these changes, the Labour Protocol is not yet rid of the gaps prior to its revision. Similar to the U.N. TIP, this Protocol emphasizes the role of state actors in implementing treaty provisions. For this reason, many of the provisions, including monitoring and

43. Press Release, ILO, Labour Standards: ILO adopts new Protocol to tackle modern forms of forced labour (June 11, 2014), http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_246549/lang-en/index.htm.

44. ILO, *supra* note 41, at 4.

45. *A Treaty to Change 21 Million Lives*, 50 FOR FREEDOM, <http://50forfreedom.org/the-protocol/> (last visited Apr. 21, 2017).

46. ILO, *supra* note 41, at 3.

47. *Compare id.* (discussing the revised protocol and synthesizing that “[t]he new Protocol . . . emphasizes the link between forced labour and trafficking in persons”) with U.N. TIP, *supra* note 1, at art. 3 (defining “trafficking in persons” to include “the exploitation of the prostitution of others or other forms of sexual exploitation, *forced labour or services*, slavery or practices similar to slavery” (emphasis added)).

48. ILO Press Release, *supra* note 43.

49. *Id.*

50. *Id.*

51. *Id.*

reporting, are high-level initiatives, which leave states grappling with the practicalities of integrating the law into their domestic frameworks.⁵² Notably, while the Recommendation accompanying the Labour Protocol provides guidelines for actionable implementation beyond the state level, the Recommendation itself is not binding and therefore has little bearing on what is implemented within a state's borders.⁵³ As a result, the Labour Protocol may be a progressive document at the international level, but, like the U.N. TIP, it creates several gaps in implementation at the national and subnational levels.

C. National and Subnational Human Trafficking Law

The following section analyzes the role of national and subnational laws in filling the gaps between international legislation and state implementation. That is, national laws extend the reach of international human trafficking laws to the state's borders, while subnational efforts extend these provisions with particularity to industries, such as travel and tourism. Yet, as evidenced by the following section, even with these localized, and sometimes highly specialized efforts, there are still several gaps between legal measures and implementation.

1. National Law

Both the United Kingdom's Modern Slavery Act and India's proposed Trafficking of Persons Bill provide insight into national approaches to implementation of international measures.

a. United Kingdom's Modern Slavery Act

The United Kingdom's Modern Slavery Act, largely credited to British politician Theresa May during her tenure as Home Secretary, requires companies with revenue of at least £36 million to publish an annual slavery and human trafficking statement on their website.⁵⁴ The Modern Slavery Act contains several compliance measures. First, corporations covered under the Act must publish a new statement every financial year detailing what steps they have taken to combat human

52. Neill Wilkins, *Tipping Point? Could the New ILO Protocol on Forced Labour and Human Trafficking Make a Lasting Diff.* INST. FOR HUMAN RIGHTS & BUS. (June 25, 2014), <https://www.ihrb.org/focus-areas/migrant-workers/tipping-point-could-the-new-ilo-protocol-on-forced-labour-and-human-traffic>.

53. *Conventions and Recommendations*, *supra* note 42.

54. Georgina Rowley & Allison Crabtree, *The Modern Slavery Act statements: 10 months in*, PEOPLE MGMT. (Feb. 17, 2017), <https://www.peoplemanagement.co.uk/experts/legal/modern-slavery-act-statements-10-month-update>.

trafficking.⁵⁵ The Act also requires companies to take steps to ensure that slavery and human trafficking are not part of their supply chains.⁵⁶ Finally, the statement must be signed and displayed prominently on the business's website.⁵⁷

Remedies under the Modern Slavery Act are two-pronged: (1) an injunction through the High Court may be sought by the Secretary of State and (2) the Act requires website disclosures of efforts taken to combat trafficking.⁵⁸ As one consulting firm on the Act emphasizes: “[t]he assumption is that pressure groups will target businesses and subject them to reputational campaigns to force annual disclosure. The government has also said that it may ‘name and shame’ businesses which drag their heels.”⁵⁹

While the Act is certainly progressive, critics suggest that it is “lackluster”⁶⁰ for its soft law measures, specifically, its reliance on name and shame tactics to create corporate accountability. For this reason, critics suggest the Act is too relaxed to drive corporate accountability. They may have a point. Consider, at the Act's inception, it was estimated that approximately 12,000 companies around the world would be affected by the Act's corporate provisions.⁶¹ However, in 2016, only seventy-five companies reported on their websites in compliance with the Act.⁶² Also consider, under the Act, a company can be in compliance by publishing that they have taken no steps.⁶³ In this way, although the Act is a step in the right direction, it still seems to leave gaps in corporate accountability.

b. India's Trafficking of Persons Bill

The Walk Free Foundation's 2016 Global Slavery Index estimates that approximately 18.35 million people are victims of human

55. *Modern Slavery Act and Section 54*, LAW SOC'Y (Dec. 6, 2016), <http://www.lawsociety.org.uk/support-services/advice/practice-notes/modern-slavery-act-and-section-54>.

56. *Id.*

57. *Id.*

58. *Id.*

59. MODERN SLAVERY ACT 2015 – CALL FOR TRANSPARENCY, ERNST & YOUNG, [http://www.ey.com/Publication/vwLUAssets/EY-Modern-Slavery-Act-2015-Call-for-transparency/\\$FILE/EY-Modern-Slavery-Act-2015-Call-for-transparency.pdf](http://www.ey.com/Publication/vwLUAssets/EY-Modern-Slavery-Act-2015-Call-for-transparency/$FILE/EY-Modern-Slavery-Act-2015-Call-for-transparency.pdf) (last visited Apr. 21, 2017).

60. Lindsay Fortado, *Lacklustre Compliance on Anti-Slavery Law*, FIN. TIMES (Mar. 6, 2016), <https://www.ft.com/content/d8147d76-e22d-11e5-9217-6ae3733a2cd1>.

61. *Modern Slavery Act 2015*, *supra* note 59.

62. Fortado, *supra* note 60.

63. *Id.*

trafficking in India.⁶⁴ This gives India what *The Hindu* calls “a dubious distinction”—India has the highest total number of human trafficking victims recorded in a country within the index.⁶⁵ For this reason, India’s first-ever law on human trafficking would be particularly important.

On May 31, 2016, Women and Child Development (WCD) Minister Maneka Gandhi released a draft of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill for consideration.⁶⁶ Highlights of the Bill include provisions to treat survivors and rehabilitation efforts for rescued victims.⁶⁷ Other key provisions include measures to prevent trafficking victims found in sex slavery from being arrested or jailed.⁶⁸ The Bill also takes critical steps to fill the gaps between national and subnational laws: implementing district, state, and central committees to oversee victims’ needs.⁶⁹ Finally, one of the Bill’s goals is to “unify existing anti-trafficking laws,” which are currently a patchwork of state laws operating in discord.⁷⁰

Although the Bill aims to be comprehensive, it misses the mark in driving corporate accountability. For example, Article 27 creates a civil remedy for recovery of back wages for forced labor, one of the biggest forms of human trafficking in India.⁷¹ This provision seems ripe for a specific corporate liability clause or regulation, but it fails to include one. Notably, the Bill focuses on building anti-trafficking infrastructure, such as strengthening local courts, prescribing investigative provisions, and discerning the differences between trafficking victims and

64. *India*, GLOB. SLAVERY INDEX, <http://www.globallslaveryindex.org/country/india/> (last visited Apr. 21, 2017).

65. *An unsavoury fact: India tops global slavery index*, THE HINDU (May 31, 2016), <http://www.thehindu.com/news/national/an-unsavoury-fact-india-tops-global-slavery-index/article8671904.ece>.

66. Jayant Sriram, *The Trafficking of Persons bill is good, but not good enough*, THE HINDU (Oct. 18, 2016), <http://www.thehindu.com/news/cities/mumbai/news/The-Trafficking-of-Persons-bill-is-good-but-not-good-enough/article14403055.ece>.

67. Nita Bhalla, *India unveils first-ever comprehensive draft law on human trafficking*, REUTERS (May 31, 2016), <http://in.reuters.com/article/india-humantrafficking-lawmaking-idINKCN0YM0HY>.

68. *Id.*

69. *Id.*

70. Diya Nag, *India’s New Anti-Human Trafficking Law, What You Need to Know*, ASIA FOUND. (June 8, 2016), <http://asiafoundation.org/2016/06/08/indias-new-anti-human-trafficking-law-need-know>; Bhalla, *supra* note 67.

71. *Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill*, MINISTRY OF WOMEN & CHILD DEV. (2016), <http://wcd.nic.in/acts/trafficking-persons-bill-2016-draft> (revised bill approved July 26, 2018).

traffickers.⁷² Minister Gandhi calls this a “compassion” approach to anti-trafficking, adding a more nuanced understanding of modern trafficking.⁷³ In light of this, critics seem right to suggest that the Bill is “good, but not good enough.”⁷⁴ While Minister Gandhi’s bill is certainly more progressive than the current legislation, it may need additional tools, such as local business policy guidelines, to fill the hole between national measures and corporate accountability.⁷⁵

2. Subnational Law

In contrast to national laws, subnational laws take a more targeted approach by implementing national and international provisions to address state-specific issues. California’s Transparency in Supply Chains Act, Pennsylvania’s Act 105, and Connecticut’s Public Act No. 16-7 are three examples of subnational laws that drive corporate accountability for human trafficking.

a. California Transparency in Supply Chains Act

Effective since January 2012, the California Transparency in Supply Chains Act (CATSCA) is essentially a “reporting requirement.”⁷⁶ At its inception, the law was expected to impact nearly 3,200 global companies.⁷⁷ Under the CATSCA, retailers and sellers that are above a certain threshold of revenue (\$100 million annually) in California must comply with the Act by “disclos[ing] their efforts to eradicate slavery and human trafficking from their direct supply chains.”⁷⁸ Finally, the CATSCA has a training component: directing businesses to provide training to employees on human trafficking prevention.⁷⁹

The CATSCA’s remedies are two-pronged: (1) the exclusive legal remedy for violating the disclosure requirements is injunctive relief brought by the California Attorney General, and (2) perhaps the thrust

72. Bhalla, *supra* note 67.

73. *Id.*

74. Sriram, *supra* note 66.

75. *India*, *supra* note 64.

76. Robert J. Bowman, *The Growing Pressure on Supply Chains to Eradicate Slavery and Human Trafficking*, SUPPLY CHAIN BRAIN (Jan. 3, 2017), <http://www.supplychainbrain.com/content/blogs/think-tank/blog/article/the-growing-pressure-on-supply-chains-to-eradicate-slavery-and-human-trafficking>.

77. Bang, *supra* note 28, at 243.

78. Daniel H. Aiken et al., *What Retailers Need to Know About California Transparency in Supply Chains Act*, NAT. LAW REV. (Feb. 27, 2017), <http://www.natlawreview.com/article/what-retailers-need-to-know-about-california-transparency-supply-chains-act>.

79. *Id.*

of the Act is its public-shaming-as-deterrence feature where businesses are required to disclose their anti-trafficking efforts on their websites.⁸⁰

While CATSCA certainly goes further than international human trafficking law in ensuring that corporations share responsibility for these issues, CATSCA relies too heavily on the fear of public shaming as a deterrent, which limits its ability to drive accountability.⁸¹ For example, a corporation that reports that it is doing the bare minimum on its website is still in compliance with the law.⁸² For this reason, CATSCA creates gaps in driving accountability. As will be discussed in subsequent sections, industry-specific soft law—such as subnational travel and tourism guidelines for implementing CATSCA-like standards—can extend the Act's relevancy and accountability across industries to better combat trafficking.

b. Pennsylvania Act 105 and Connecticut Public Act No. 16-71

Following the CATSCA, two subnational laws, Pennsylvania's Act 105 enacted in September 2014 and Connecticut's Public Act No. 16-71 enacted in May 2016, aim to create travel and tourism industry corporate accountability for human trafficking within the global travel and tourism industry.

Pennsylvania's Act 105 is notable for several reasons. First, it is lauded for expanding the state's definition of trafficking, thereby creating a cause of action for more victims. Second, Act 105 is notable for creating a robust civil remedy that allows victims to sue those who "participated in or profited from their victimization."⁸³ Importantly, the Act already seems to be serving its intended purpose. Most recently, the Act gave a cause of action to a victim seeking to sue a hotel where she was sex trafficked. In a lawsuit filed on March 10, 2017, the victim accused Philadelphia's Roosevelt Inn of providing hotel rooms to human traffickers for the sexual exploitation of girls.⁸⁴

Unlike Act 105, Connecticut Public Act No. 16-71 takes a more targeted approach in holding travel and tourism businesses accountable for trafficking. For example, it targets trafficking at hotels, motels, and

80. *Id.*

81. *Id.*

82. *Id.*

83. Shea M. Rhodes, *Act 105: Pennsylvania's First Comprehensive Anti-Trafficking Legislation*, VILL. UNIV. CHARLES WIDGER SCHOOL OF LAW, at 1, <http://cseinstitute.org/wp-content/uploads/2016/12/Act-105-Law-on-the-Books.pdf> (last visited Oct. 2, 2018).

84. Julie Shaw, *Philly Motel Sued in First Reported Human-Trafficking Lawsuit Under Pa. Statute*, PHILLY.COM (Mar. 10, 2017, 2:50 PM), <http://www.philly.com/philly/blogs/real-time/Philly-motel-Roosevelt-Inn-sued-in-1st-human-trafficking-lawsuit-under-PA-statute.html>.

inns by requiring businesses to display signage of trafficking hotline phone numbers and maintain a system to keep guest records and receipts for six months or more.⁸⁵ In enacting this law, Connecticut became the first state in the country to specifically target hotels, motels, and inns with such provisions.⁸⁶ Public Act No.16-71 also contains a training mandate, requiring hotels, motels, and inns to train staff on the signs of trafficking and how to prevent trafficking and report incidents.

One of the most important elements of Public Act No.16-71, however, took place before it entered into force. As part of Connecticut's drafting process, the state drew input from a range of stakeholders. Connecticut's Trafficking in Persons Council (TIP) invited Marriott International and American Lodging and Hotel Association (AHLA), along with members of the public sector such as Grace Farms Foundation, to provide input and guide the drafting process.⁸⁷ Krishna Patel of Grace Farms Foundation, one of the drafters of the law, opined: "[w]ith the passage of Public Act No. 16-71, we have a measure that puts teeth into existing laws and supports the enforcement and prosecution of those who deal in human trafficking."⁸⁸ While it may be too early to discern Public Act No. 16-71's effectiveness, its targeted efforts represent innovative thinking in collaborating with stakeholders to combat trafficking.

Both acts represent a targeted, more nuanced hard law approach to corporate accountability in human trafficking. For example, although Act 105 does not target a specific business, it provides expansive civil remedies against traffickers who profit from exploitation. In this way, businesses such as hotels and motels as well as supply chains with forced labor issues could be implicated. Comparatively, Public Act No. 16-71 takes a much more focused approach. It draws on the legislature's knowledge of local needs to address exploitation at hotels, inns, and motels.

What these laws lack, however, is the flexibility to change with the ever-shifting human trafficking landscape. Would Connecticut Public

85. Gwen North Reiss, *Grace Farms Announces Justice Initiative Results: Ground Breaking New Legislation & Enhancing CT Trafficking Statutes*, HAMLET HUB (May 16, 2016), <http://news.hamlethub.com/ridgfield/places/52099-grace-farms-announces-justice-initiative-results-ground-breaking-new-legislation-enhancing-ct-trafficking-statutes>.

86. *Id.*

87. *Connecticut Moves Toward Eradicating Human Trafficking in Hotels and Motels with New Law*, POLARIS PROJECT (Aug. 5, 2016), <https://polarisproject.org/blog/2016/08/05/connecticut-moves-toward-eradicating-human-trafficking-hotels-and-motels-new-law>.

88. *Id.*

Act No. 16-71 still be effective if forced labor or child trafficking, not sex trafficking, became more prevalent? What if modes of profiting from trafficking in Pennsylvania shifted from less traceable measures like cash and credit to bitcoin? These questions are inherent in all questions about hard law in human trafficking. As CSR expert and legal scholar Jenny Stein argues: “[h]ard law will always have gaps. Soft law may be viewed as a precursor to hard law. It can be a training ground for accountability initiatives; it gets conversations within companies to change.”⁸⁹ The following sections discuss other tools for creating targeted approaches to corporate accountability in human trafficking.

III. SOFT LAW: INTERNATIONAL POLICIES ON BUSINESS AND HUMAN RIGHTS FILLING GOVERNANCE GAPS

While sweeping binding treaties and targeted state legal provisions are creating some corporate accountability in driving anti-trafficking efforts, hard law alone is not enough to combat human trafficking in the global travel and tourism industry.⁹⁰ Soft law can help fill some of the governance gaps created by hard law.⁹¹ For example, where hard law can be tied to significant negotiating costs, soft law is an advantageous tool that may be less costly to negotiate, allows for greater flexibility, and deepens ties between state and non-state actors for effective collaboration.⁹² Legal scholar Kal Raustiala writes on the importance of soft law: “compliance as a concept draws no causal linkage between a legal rule and behavior, but simply identifies a conformity between the rule and behavior.”⁹³ Meaning, hard law is not summarily more effective merely because it contains binding provisions.⁹⁴ The following addresses how soft law, including the U.N. Guiding Principles on Business and Human Rights (UNGPs) and U.N. World Tourism Organization Global Code of Ethics (UNWTO Code), complements human trafficking hard law to increase accountability in the global travel and tourism industry.

89. Telephone Interview with Jennifer Stein, attorney and legal scholar with deep expertise in corporate social responsibility initiatives (Apr. 13, 2017).

90. Hard Law vs. Soft Law, *supra* note 26, at 720.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

A. UNGPs

Proposed by John Ruggie, the UNGPs represent a growing awareness of the impacts of human rights on business.⁹⁵ The U.N. Human Rights Council endorsed the Principles in June 2011 and thereby established the U.N. Working Group (UNWG) on Business and Human Rights.⁹⁶ Totalling thirty-one principles, the UNGPs are voluntary guidelines based on three pillars: (1) state duty to protect human rights, (2) corporate responsibility to respect human rights, and (3) access to remedies if human rights are not respected.⁹⁷

Principles 18 and 21 of the UNGPs encourage companies to “know” about ongoing or potential human rights abuses and prevent them. They also ask companies to “show” or communicate externally how the business addressed human rights impacts, which might take the form of an annual report or memorandum to shareholders.⁹⁸ In this way, the “know and show” approach provides specific, actionable accountability measures that businesses can take to protect human rights.

Beyond creating the Principles, the UNWG plays a key role in disseminating the guidelines and providing guidance on “good practices and lessons learned.”⁹⁹ Specifically, one of its mandates is to “promote the effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights.”¹⁰⁰ Among the UNWG’s methods of implementing this mandate are multi-stakeholder initiatives, which are incorporated at every level of the working groups’ projects.¹⁰¹

Despite the UNWG’s targeted approach and ambitious agenda, critics argue that the UNGPs are still only voluntary guidelines and that

95. *UN Guiding Principles on Business and Human Rights*, SHIFT PROJECT, <http://www.shiftproject.org/un-guiding-principles/> (last visited Apr. 21, 2017).

96. U.N. Office of the High Comm’r for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc. HR/PUB/11/04 (2011), https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

97. *UN Guiding Principles on Business and Human Rights*, *supra* note 95.

98. *Guiding Principles on Business and Human Rights*, *supra* note 96, at ¶¶ 18, 21.

99. U.N. Office of the High Comm’r for Human Rights, *Working Group on the issue of human rights and transnational corporations and other business enterprises*, <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx> (last visited Sept. 23, 2018).

100. *Id.*

101. U.N. Office of the High Comm’r for Human Rights, *Working Group on the issue of human rights and transnational corporations and other business enterprises – Methods*, <https://www.ohchr.org/EN/Issues/Business/Pages/WorkingMethods.aspx> (last visited Oct. 10, 2018).

corporate accountability requires binding measures.¹⁰² While this argument has merit, it also fails to see the broader range of initiatives at play in this space. The UNGPs are not a set of one-off guidelines bereft of international context. They must be viewed as another tool in the anti-trafficking toolbox: building on and supplementing hard law to create stronger accountability mechanisms in the global travel and tourism industry.

And, for now, it seems the UNGPs may be doing just that. For example, a 2015 study by Arizona State University found that over half of all Fortune 100 companies have forced labor policies.¹⁰³ However, whether this milestone can be attributed to the UNGPs specifically is difficult to say, but for now, it is clear that the UNGPs' themes such as knowing and showing are helping to drive accountability.

B. UNWTO CODE

Like the UNGPs, the UNWTO Code is a set of non-binding, voluntary principles. Adopted by the U.N. General Assembly through U.N. Resolution A/RES/56/212 in December 2001, the UNWTO Code is composed of ten principles that provide stakeholders with a best-practice approach to tourism development.¹⁰⁴ The principles span industry-specific issues, such as Sustainable Development (Article 3), Obligations of Stakeholders (Article 6), the Right to Tourism (Article 7), and Rights of Workers within the Industry (Article 9).¹⁰⁵ The UNWTO Code is the result of collaborative efforts among private sector, non-governmental actors, and industry-specific labor organizations as well as seventy U.N. member states. Article 6 and Article 9, in particular, increase corporate accountability, as they include obligations to

102. Michael Kourabas, *Is a Binding Treaty the Way Forward for Business and Human Rights?*, TRIPLE PUNDIT (July 14, 2015), <http://www.triplepundit.com/2015/07/binding-treaty-way-forward-business-human-rights>.

103. *ASU report finds majority of Fortune 100 companies have forced labor policies*, ARIZ. STATE UNIV. (Jun. 3, 2014), <https://asunow.asu.edu/content/asu-report-finds-majority-fortune-100-companies-have-forced-labor-policies>.

104. *Background of the Global Code of Ethics for Tourism*, U.N. WORLD TOURISM ORG., <http://ethics.unwto.org/en/content/background-global-code-ethics-tourism> (last visited Sept. 18, 2018).

105. *Global Code of Ethics for Tourism*, U.N. WORLD TOURISM ORG., <http://ethics.unwto.org/en/content/global-code-ethics-tourism> (last visited Apr. 21, 2017). See also generally U.N. World Tourism Organization, *Global Code of Ethics for Tourism*, arts. 1-10, U.N. Doc. A/Res/56/212 (Dec. 21, 2001).

keep tourists and industry workers safe and discuss rights of employees in the workplace.¹⁰⁶

Another feature of the UNWTO Code is the World Committee on Tourism and Ethics (WCTE), created in 2003.¹⁰⁷ Considered a “voluntary implementation mechanism,” the WCTE allows stakeholders to refer matters “concerning the application and interpretation of the document” to the Committee.¹⁰⁸ In practice, WCTE operates as an independent body under the UNWTO and reports to the UNWTO General Assembly.

The WCTE is perhaps the Code’s most innovative feature and an especially helpful mechanism for driving accountability. The WCTE’s goals are to promote sustainable, responsible, and accessible tourism while also monitoring compliance with the Code.¹⁰⁹ This governing body is particularly important as the Code is non-binding.¹¹⁰ For this reason, the WCTE offers a robust complement to hard law measures that focus almost entirely on state actors to implement anti-trafficking measures. For example, the WCTE’s industry-specific approach offers a more targeted layer of accountability for the travel and tourism industry that also complies with international law.

IV. CORPORATE SOCIAL RESPONSIBILITY: INITIATIVES IN THE GLOBAL TRAVEL AND TOURISM INDUSTRY FILLING GOVERNANCE GAPS

As the foregoing section illustrates, where human trafficking law exists, there is very little binding legislation affecting the travel and tourism industry. Instead, corporate accountability measures are largely voluntary, such as the UNGPs and UNWTO Code, which have built-in accountability mechanisms through working groups overseeing implementation or independent adjudicatory bodies providing remedy. This section will demonstrate how CSR fills some of the gaps between hard law and soft law.

Corporate social responsibility in human trafficking is derived from a general responsibility of businesses to uphold basic human rights outlined in the International Bill of Rights.¹¹¹ Put more simply, as Michele Sarkisian writes for the *Cornell Hospitality Report*, businesses in the global

106. *Global Code of Ethics for Tourism*, *supra* note 104.

107. *Id.*

108. *Id.*

109. *World Committee on Tourism Ethics*, U.N. WORLD TOURISM ORG., <http://ethics.unwto.org/en/content/global-code-ethics-tourism> (last visited Dec. 19, 2018).

110. *Background of the Global Code of Ethics for Tourism*, *supra* note 104.

111. Shavers, *supra* note 15, at 70.

travel and tourism industry should take anti-human trafficking measures because “it’s the right thing to do.”¹¹² The following list, though by no means exhaustive, highlights how CSR initiatives also help fill the governance gaps to create corporate accountability in fight against human trafficking.

A. *Awareness Raising and Training: AHLEI Modules and CHME Combat Human Trafficking Initiative*

The majority of CSR efforts in the travel and tourism industry emphasize the “know and show” approach¹¹³ as well as awareness-raising programs. Two examples of these awareness-raising initiatives are the e-learning module of the American Hotel & Lodging Association Educational Institute (AHLEI) used to train front-line employees on the signs of human trafficking and the Combat Human Trafficking project of the United Kingdom’s Council for Hospitality Management Education (CHME).

AHLEI is the professional learning initiative of the AHLA, an industry trade group representing hospitality organization owners.¹¹⁴ AHLA advocates and supports American hospitality organization owners and brings together key players on issues affecting the industry as whole. Marriott International originally created the training as part of a larger human rights staff-training initiative and donated the program to AHLEI.¹¹⁵ AHLEI then re-launched the e-learning module as a collaboration between hotels, non-governmental organizations, and nonprofits, including End Child Prostitution and Trafficking (ECPAT) USA and the Polaris Project.¹¹⁶ The training, entitled “Your Role in Preventing Human Trafficking: Recognize the Signs,” teaches employees about all forms of human trafficking and includes information

112. Sarkisian, *supra* note 13, at 9.

113. Guiding Principles on Business and Human Rights, *supra* note 96, at ¶ 21 (“The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice.”).

114. *Who We Are*, AM. HOTEL & LODGING ASS’N, <https://www.ahla.com/who-we-are> (last visited Sept. 18, 2018).

115. Kalhan Rosenblatt, *Human Trafficking in Hotels: New York Lawmaker Teams Up With Advocate*, NBC NEWS (Mar. 21, 2017), <http://www.nbcnews.com/news/us-news/new-york-assemblywoman-teams-advocate-eradicate-human-trafficking-hotels-n733496>.

116. Nicole Walker & Michelle Guelbart, *Hospitality Industry Human Trafficking Awareness Training to Be More Comprehensive and Global*, ECPAT USA (Nov. 8, 2016), <https://www.ecpatusa.org/blog/2016/11/8/hospitality-industry-human-trafficking-awareness-training-to-be-more-comprehensive-and-global>.

about local and state ordinances regarding human trafficking and employee trainings.¹¹⁷ Of particular note, the AHLEI's training is offered in fifteen different languages: a nod to the global nature of the tourism industry.¹¹⁸ ECPAT-USA reports that approximately 40% of the U.S. hospitality industry now has access to AHLEI's webinar and trainings.¹¹⁹

Efforts like AHLEI's e-learning module are becoming more common in the travel and tourism industry. For example, in 2012, the Department of Transportation and the Department of Homeland Security teamed up with Amtrak to train 8,000 employees to recognize the signs of human trafficking.¹²⁰ Similarly, a program named Airline Ambassadors trains airline staff to spot human trafficking.¹²¹

Similar to AHLEI's e-learning module, CHME's Combat Human Traffic Project is a multilateral initiative between the European Commission Directorate of Home Affairs, Oxford Brookes University and University of West London in the United Kingdom, Lapland University of Applied Sciences in Finland, and Ratiu Foundation for Democracy in Romania.¹²² According to CHME, the goal of the project was two-fold: "[t]he aim of this project was to increase the awareness of [trafficking in human beings (THB)] and to develop a comprehensive training toolkit to enable hospitality and tourism businesses to combat THB."¹²³ The resulting training contained several implementation tools for practitioners, including case studies, reference guides, and posters for managers to hang in staff lounges.¹²⁴

Several elements of these initiatives signal the intent of corporations to adapt international law and policy to address on-the-ground challenges, while other elements highlight a need for more nuanced soft law or hard law initiatives. First, the range of stakeholders on the respective projects—a mix of nonprofits, non-governmental organizations,

117. *Id.*

118. *Id.*

119. *Id.*

120. Press Release, Dep't of Homeland Sec., DHS, DOT and Amtrak Announce New Partnership to Combat Human Trafficking (Oct. 4, 2012), <https://www.dhs.gov/news/2012/10/04/dhs-dot-and-amtrak-announce-new-partnership-combat-human-trafficking>.

121. Kalhan Rosenblatt, *Flight Attendants Train to Spot Human Trafficking*, NBC NEWS (Feb. 4, 2017), <http://www.nbcnews.com/news/us-news/flight-attendants-train-spot-human-trafficking-n716181>.

122. Maureen Brookes & Alexandros Paraskevas, *Combating human trafficking in the hospitality industry*, COUNCIL FOR HOSP. MGMT. EDUC. (Jan. 22, 2017), <https://medium.com/chmehospitality/combating-human-trafficking-in-the-hospitality-industry-9d13674da325#nh7hyab10>.

123. *Id.*

124. *Id.*

corporations, and industry analysts—shows an intention to get the right people in the room. This multi-stakeholder approach is also similar to other global approaches like UNWTO's WCTE. The similarities between programs suggests at least some consensus on one approach to combat trafficking in the industry. This idea will be discussed in further detail in the following sections. Second, awareness-raising trainings like the AHLEI and CHME the bedrock of several international, national, and subnational laws and policies.¹²⁵ Thus, it bodes well for future efforts that AHLEI and CHME tailored the trainings to meet specific industry needs. Finally, the fact that both of these trainings were made to be accessible and easily disseminated, whether through implementation tools like posters or translation into a number of languages, sustainably builds upon both international law and policy with regard to information dissemination and knowledge sharing.

There are, however, certain gaps in these CSR programs. For example, while making staff aware of human trafficking is certainly better than the staff being uneducated, the training initiatives lack critical elements under the UNGPs.¹²⁶ For example, they do not include an ongoing commitment to accountability after the trainings, such as an enforcement mechanism to report efforts. In this regard, while the initiatives are a step in the right direction, the emphasis on awareness-raising could be construed to show a lack of sincere commitment to combat human trafficking efforts. Indeed, while raising awareness is a helpful and progressive step, it must work in tandem with other industry initiatives.¹²⁷ That is, there must be an actionable continuum between binding law and awareness-raising initiatives. Lessons from AHLEI's and CHME's trainings are addressed and incorporated into the final section on recommendations for the path forward.

125. See, e.g., U.N. TIP, *supra* note 1, art. 9 (highlighting member country's responsibility to train and educate citizens about human trafficking); Aiken, *supra* note 78 (discussing CATSCA's training requirements).

126. See, e.g., Guiding Principles on Business and Human Rights, *supra* note 96, at ¶ 17 (discussing the importance of ongoing diligence to ensure adherence with anti-trafficking measures: "[i]n order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. Human rights due diligence . . . (c) Should be *ongoing*, recognizing that the *human rights risks may change over time* as the business enterprise's operations and operating context evolve." (emphasis added)).

127. UN OFFICE ON DRUGS & CRIME, UN COMMENTARY ON THE EU – A HUMAN RIGHTS-BASED APPROACH 24 (2011), https://www.unodc.org/documents/human-trafficking/2011/UN_Commentary_EU_Trafficking_Directive_2011.pdf ("An integrated and holistic approach gives equal attention to prevention, prosecution, protection and the need for partnership to effectively address[] human trafficking.").

B. *Partnerships and Commitment: The Code*

The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (The Code) is an international effort to combat the sexual exploitation of children.¹²⁸ Created by ECPAT-Sweden, the UNWTO, and Swedish tour operators following the first World Congress Against Commercial Sexual Exploitation of Children in 1996, The Code has been lauded as a “zero tolerance”¹²⁹ approach in helping the global travel and tourism industry fight human trafficking.¹³⁰ Today, The Code is an independent and global multi-stakeholder nonprofit seated in Bangkok, Thailand, with more than 1,300 signatories in forty-two countries around the world.¹³¹

Central to The Code are its six criteria. For example, criteria 1 and 6—“To Establish a Policy and Procedure” and “Report Annually,” respectively¹³²—speak to Principles 18 and 21 of the UNGPs in regard to “know[ing] and show[ing].”¹³³ Criteria 3, “Include a Clause in Contract,” is also significant, as it requires signatories to exact a zero tolerance policy for human trafficking in their supply chains.¹³⁴ Like those of AHLEI and CHME, The Code’s mission is to provide awareness training, practical tools, and support for the global travel and tourism industry.¹³⁵

The Code contains an enforcement mechanism led by a diverse group of stakeholders who make up the Board of Directors.¹³⁶ The Board is composed of nine stakeholders—five industry members and four non-industry representatives.¹³⁷ The allocation of seats is highly particular and thoughtfully tailored to invite participation across the tourism industry.¹³⁸ Each of the five industry seats is dedicated to a certain area of travel and tourism, such as an airline, hotel chain, or tour operator.¹³⁹ The four non-industry seats are similarly diverse. Non-

128. *About*, THE CODE, <http://www.thecode.org/about/> (last visited Sept. 26, 2018).

129. Press Release, UNICEF, UNICEF applauds tourism industry’s commitment to stop child sex tourism (June 9, 2010), https://www.unicef.org/sports/23619_53882.html.

130. *About*, *supra* note 128.

131. Rice, *supra* note 11.

132. *About*, *supra* note 128.

133. *See generally* Guiding Principles on Business and Human Rights, *supra* note 96, at ¶¶ 18, 21.

134. *About*, *supra* note 128.

135. *Organisational Structure*, THE CODE, <http://www.thecode.org/about/organizational-structure/> (last visited Oct. 14, 2018).

136. *Id.*

137. *Id.*

138. *See id.*

139. *Id.*

industry seats are allocated to local non-governmental organizations and individual organizations committed to the cause.¹⁴⁰ In turn, the diverse board is responsible for all manners of high-level decision making, including guiding The Code's strategy and, ultimately, the implementation of The Code's six criteria across member organizations.¹⁴¹

Despite this mechanism, The Code, too, has certain gaps in creating accountability. First, outside of annual reporting, several elements of The Code's structure create weak accountability mechanisms. For example, The Code is currently funded by member dues and government donations.¹⁴² It therefore seems unlikely that The Code would punish a contributing member for failing to adequately complete annual reporting when that same member helped establish the non-profit's purse. Second, as ECPAT-USA's *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism 2016* report rightfully states: "the value of its work can only be assessed at the national level in tourism destinations where the sexual exploitation of children takes place."¹⁴³ Thus, while The Code is a robust, highly coordinated initiative, its efforts are confined only to child trafficking—which is just one of several types of trafficking.

However, instead of focusing on The Code's weaknesses, there is a lesson in its strengths. According to a recent member survey, to industry representatives, the biggest driver for The Code's participation is a simple truth: "[j]oining The Code is the right thing to do."¹⁴⁴ In this way, the Code stands for a particularly powerful initiative created by a wide array of stakeholders, including industry insiders and non-governmental organizations. While it is still a voluntary, non-binding initiative, The Code offers helpful insights into the types of initiatives that might be successful in the travel and tourism industry moving forward.

V. THE PATH FORWARD

"When there is this size of an industry of this kind that operates outside of the rule of law, it threatens everyone," stated Marilyn Carlson Nelson, CEO and chairwoman of Carlson Companies, an international

140. *Id.*

141. *Id.*

142. ANGELA HAWK & ALISON RAPHAEL, EPCAT INT'L, GLOBAL STUDY ON SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM 89–90 (2016), <https://static1.squarespace.com/static/594970e91b631b3571be12e2/t/5975f0415016e132ff08e3d1/1500901444238/Global-Report-Offenders-on-the-Move-Final.pdf>.

143. *Id.*

144. Sarkisian, *supra* note 13, at 9.

travel corporation and the first U.S. signatory to The Code.¹⁴⁵ In describing the need for corporations to combat human trafficking, Nelson highlights an increasingly difficult truism—human trafficking is increasing, and no single industry, state actor, or international organization can fight this war alone.¹⁴⁶ For this reason, it seems that a multidisciplinary approach to combating human trafficking is the path forward. The U.N. recognizes the merits of this response, stating: “[a]n integrated and holistic approach gives equal attention to prevention, prosecution, protection and the need for partnership to effectively address[] human trafficking”¹⁴⁷

As such, multidisciplinary national and subnational initiatives, informed by international law and policy, are the focus of the following recommendations. The key to forging this path is three-fold: (1) focus on national and subnational level efforts to create corporate accountability by combining hard law and soft law, (2) increase opportunities for multi-stakeholder engagement, and (3) build more public-private partnerships.

A. *Expand Targeted Hard Law Legislation, Complemented by Soft Law Components*

National and subnational laws are significant opportunities to expand corporate accountability in hard law, because they tend to be more localized and targeted. Moving forward, these laws should include soft law components. The relationship between hard law and soft law is symbiotic: “soft law is considered to provide a low-cost and flexible way to elaborate and fill in the gaps that open up when a standing body of hard law encounters new and unforeseen circumstances.”¹⁴⁸ That is, soft law can work in tandem with hard law to address issues created by the shifting human trafficking landscape.

This framing has implications for national and subnational anti-trafficking legislation. For example, at the national level, adding corporate accountability guidance to India’s Trafficking of Persons Bill would help to build a robust accountability component to India’s proposed legislation, especially as the country currently faces an increase

145. Rice, *supra* note 11.

146. *About*, U.N. GLOB. INITIATIVE TO FIGHT HUMAN TRAFFICKING, <http://www.ungift.org/about/> (last visited Oct. 18, 2018) (“[H]uman trafficking is a crime of such magnitude and atrocity that it cannot be dealt with successfully by any government alone. This global problem requires a global, multi-stakeholder strategy that builds on national efforts throughout the world.”).

147. UN OFFICE ON DRUGS & CRIME, *supra* note 127.

148. Hard Law vs. Soft Law, *supra* note 26, at 722.

in forced labor due to globalization.¹⁴⁹ However, for countries like the United Kingdom with existing human trafficking hard law that contains soft law provisions, the reverse may be true. Adding hard law penalties to re-enforce the soft law mandatory reporting requirements can raise the floor for corporations doing the bare minimum. At the subnational level, Pennsylvania's and Connecticut's anti-trafficking legislation should consider adding state-specific soft law measures aimed at trafficking prevention. In a state like Connecticut where legislation already contains a number of awareness-raising soft law initiatives, additional principles outlining steps beyond these efforts, such as requirements to participate in separate working groups or task forces to share lessons learned from implementation, might be beneficial. Ultimately, exploring the synergies between soft law and hard law can lead to expanded corporate accountability in the changing trafficking landscape.

B. Increase Opportunities for Public-Private Multistakeholderism

Multistakeholderism, already a strong part of soft law and CSR initiatives, could be better integrated into the national and subnational legislation process. In the future, lawmakers may want to consider adopting a multi-stakeholder approach to the national and subnational anti-trafficking legislative process. This approach might include a diverse group of industry and civil society stakeholders as well as individuals, such as victims, to drive accountability.

John Ruggie discussed the importance of having the right types of stakeholders at the table in multi-stakeholder initiatives: "the issue is not the number of parties so much . . . as it is the kind of relations that are instituted among them."¹⁵⁰ Connecticut's Public Act No. 16-71 is an exemplary model for bringing stakeholders together to draft legislation, as it includes a range of actors with careful thought towards "the kind of relations"¹⁵¹ between parties. For example, by including AHLA and Marriott International alongside Grace Farms, the Connecticut legislature ensured that almost all members of society who were affected by Act No. 16-71 could have a say in its creation. In this way, the drafting process shed light on the shared fight to combat trafficking, uniting public and private sectors alike to drive corporate accountability.

149. *India, supra* note 64.

150. John G. Ruggie, *Multilateralism: the Anatomy of an Institution*, 46 INT'L ORG. 561, 566 (1992).

151. *Id.*

However, noticeably missing from the multi-stakeholder initiatives discussed in this paper is the voice of individuals for whom these laws are largely made. Bringing the civil society voice to the table for multi-stakeholder initiatives has a practical element as well. Adding a face to anti-trafficking initiatives may help drive corporate accountability. Consider, “[m]ost CSR initiatives currently implemented in the private sector are a direct response to the demand for greater social responsibility,”¹⁵² and nowhere is this demand more evident than in consumers or even former victims. For certain, multistakeholderism should continue to play a large role on the path forward.

C. *Develop Capacity-Building Initiatives Through Public-Private Partnerships*

Awareness-raising efforts like AHLA’s AHLEI e-learning modules and CHME’s Combat Human Trafficking Project are important CSR efforts that are largely dependent on the network effect. Meaning, the value of these initiatives increases when more travel and tourism corporations implement them. This is why private-public partnerships, like that of Marriott and AHLA in the re-launch of a staff training module for expanded use, is of the utmost importance. Just as soft law can fill gaps left by hard law, private companies, with a wealth of resources and driven by social responsibility, can and should assist public initiatives.

In practice, this approach might include large-scale efforts like multinational hotels or airline operators subsidizing not-for-profit human trafficking research opportunities or new public awareness campaigns about trafficking. Partnerships like these underscore the bottom line that no single corporation or industry can take on the global challenge of human trafficking alone, and innovative partnerships can create new opportunities across sectors. Thus, deepening ties within and across sectors enhances the network effect of anti-trafficking efforts.

VI. CONCLUSION

“Unwitting accomplice” is the term *Travel Weekly* uses to describe the global travel and tourism industry’s unique position in the human trafficking supply and demand chain.¹⁵³ As tourism around the world increases, the global travel and tourism infrastructure becomes manipulated by increasingly savvy human traffickers.¹⁵⁴ Fortunately, the

152. George & Smith, *supra* note 23, at 94.

153. Rice, *supra* note 11.

154. *Savvy Traffickers*, *supra* note 9.

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global travel and tourism industry is also positioned to take on the fight to combat trafficking.

Where hard law's emphasis on the role of state actors to implement anti-trafficking measures leaves governance gaps for corporate accountability, soft law efforts and CSR initiatives fill these gaps to increase accountability. Whether commitment comes from a place of risk mitigation, corporate social responsibility, or moral obligation, industry leaders agree that harnessing the power of the travel and tourism industry to fight human trafficking is "the right thing to do."¹⁵⁵ Therefore, in recognition that no single or industry can fight human trafficking, the path forward includes a multidisciplinary approach to anti-trafficking that builds on current efforts, brings new stakeholders to the table, and deepens partnerships within the industry and across sectors to drive corporate accountability in the global travel and tourism industry.

155. Sarkisian, *supra* note 13, at 9.