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## Book Review

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## BOOK REVIEWS

**JERNEJ LETNAR ČERNIČ, HUMAN RIGHTS LAW AND BUSINESS: CORPORATE RESPONSIBILITY FOR FUNDAMENTAL HUMAN RIGHTS (EUROPA LAW PUBLISHING, 2010)**

In the 21st century, the notion that corporations lack responsibilities and obligations under human rights law is becoming less tenable.<sup>1</sup> In *Human Rights Law and Business*, Jernej Letnar Černič<sup>2</sup> argues that corporations have nationally and internationally enforceable obligations to observe fundamental human rights.<sup>3</sup> Černič analyzes the responsibilities of corporations to individuals, communities, and states. He lays out fundamental values that can be identified as universal human rights, such as security, prohibition of forced labor,<sup>4</sup> and non-discrimination, and then discusses how national and international legal systems, or “orders,” recognize and promote corporate responsibility for these fundamental rights. While he acknowledges that the current enforcement of corporate responsibilities is limited, he urges his reader not to confuse a lack of enforcement with a lack of human rights obligations. Although Černič’s approach is academic, it does provide practical lessons about how corporations can be held accountable for fundamental human rights violations.

Černič proposes a five-level pyramid framework to examine the origin, scope, and enforceability of corporate obligations to human rights.<sup>5</sup> Černič uses this framework to contextualize corporate legal obligations in current jurisprudence. The five levels of Černič’s framework follow the conceptual steps that 1) the national and international value system is the origin and foundation of responsibilities, 2) from which fundamental human rights obligations of corporations arise, 3) which are the responsibility of states, corporations, and individuals, 4) who hold corporations accountable, 5) which then brings us to a “harmonic society.” Ultimately, this framework fails to adequately address what is meant by “harmonic society,” and its highly theoretical nature detracts from the clarity of Černič’s core argument. Still, Černič makes a robust argument for the existence of corporate obligations to human rights

and the idea that they are already enshrined in many legal systems.

Černič argues that corporate human rights obligations originate in national and international legal systems, international treaties, multi-lateral charters, and voluntary commitments by corporations. The scope of corporate human rights obligations, he says, includes the obligation that corporate activities should avoid interfering with or violating the rights of individuals. Černič goes further, and says that corporations should also take reasonable steps to protect workers from violations committed by the state, or seek legal redress for their employees if violations have been committed.<sup>6</sup> Černič’s approach stands in contrast to the argument that states bear the responsibility to protect citizens from human rights violations committed by corporations. This dichotomy is important when considering the open question of whether corporations and their directors, or sovereign nations and their heads of state, are ultimately responsible for violations of an individual’s security, prohibition of forced labor, and non-discrimination.

Voluntary corporate commitments to recognize human rights are important tools for arguing that obligations to human rights are recognized by, and therefore enforceable on, corporations themselves. Černič notes that voluntary commitments of corporations in human rights and business can most often be found in internal human rights policies or codes of conduct.<sup>7</sup> Although these codes of conduct do not create legal obligations, they do create moral obligations that Černič suggests bring significant improvements in employee rights. The effect of these policies is limited because they are often vague and do not support mechanisms for their implementation or independent monitoring.<sup>8</sup>

The bedrock of Černič’s argument is that corporate obligations under human rights law do not derive from the inherent nature of corporations, but from agreed values enshrined in national and international legal systems that have acquired the status of customary international law.<sup>9</sup> According to Černič, corporate human rights obligations can be readily identified in most

instances as rights that protect the security of persons, prohibition of forced labor, and non-discrimination.<sup>10</sup> These kinds of rights are protected in European states, and the constitutions of many states across the globe include provisions for similar human rights, including India, South Africa, Namibia, Cambodia, Burundi, Cameroon, Brazil, Argentina, Mexico, Algeria, Iran, Egypt, and Tunisia.<sup>11</sup> Furthermore, there are a number of international conventions that indirectly regulate corporate behavior, such as the OECD Convention on Combating Bribery of Foreign Public Officials, which establishes the liability of legal persons for bribery of a foreign public official. Other conventions on nuclear energy, oil pollution damage, and hazardous waste all impose strict liability on corporations and individuals.<sup>12</sup> This broad support would seem to validate Černič’s claim that these values have achieved the status of customary international law, but there are also significant examples of states that have not adopted these values, including China. Černič makes a compelling argument that the global position on these rights is nearing a consensus, even though one does not yet exist.

Under the home state responsibility doctrine, a home state, where the corporation is incorporated/registered, is responsible for prosecuting human rights violations when the host state, where the corporation only operates, has failed to do so.<sup>13</sup> Černič notes that both the European Court of Human Rights and the Inter-American Commission on Human Rights have held that there can be jurisdiction for state prosecution for extraterritorial violations of human rights committed by corporations.<sup>14</sup> Corporate activity can also be attributed to the state, which can incur international responsibility for the attributed conduct.<sup>15</sup> According to Černič, international law is moving towards an obligation on the part of the home state to control – by means of legislation or otherwise – the activities of corporations abroad.<sup>16</sup>

National and international legal systems recognize security, prohibition of forced labor, and non-discrimination as the cornerstones of protection for funda-

mental human rights. Černič argues that in response, national and multi-national corporations have begun to recognize their responsibility to respect, protect, and fulfill fundamental human rights. Although the five-level framework that Černič uses to contextualize his argument is theoretical and difficult to apply in practice, his arguments for the existence of corporate responsibility for fundamental human rights is robust.

*Asheesh Bhalla, a J.D. candidate at the American University Washington College of Law, reviewed Human Rights Law And Business: Corporate Responsibility for Fundamental Human Rights for the Human Rights Brief.*

**MATILDE VENTRELLA, THE CONTROL OF PEOPLE SMUGGLING AND TRAFFICKING IN THE EU: EXPERIENCES FROM THE UK AND ITALY (ASHGATE 2010)**

In 2006, the European Parliament reported that people trafficking is the fastest growing form of organized crime in Europe. Three years earlier, the European Commission estimated that approximately 120,000 women and children are trafficked into Western Europe every year. Europe is also a popular destination for people smuggling, offering an escape for those suffering from economic, political, and social repression in Eastern Europe, North Africa, and the Middle East. Smuggling is generally defined as facilitating the illegal entry of a consenting person across international borders. In contrast, trafficking is the facilitation of the illegal entry of a non-consenting person across international borders. In *The Control of People Smuggling and Trafficking in the EU*, Matilde Ventrella assesses the strengths and weaknesses of the European Union's (EU) efforts to combat smuggling and trafficking, and suggests that the EU coordinate the efforts of the police agencies of EU Member States and the work of judiciaries across the EU.<sup>17</sup> She also discusses the possible impact of the Lisbon Treaty on anti-trafficking and anti-smuggling.

Ventrella divides her analysis into four sections, beginning with a summary of European Union/European Community (EU/EC) policies and international laws related to trafficking and smuggling. Next, she describes the measures and mechanisms employed by the EU to enforce laws. Ventrella subsequently assesses the

strengths and weaknesses of EU migration policies. Lastly, the author contrasts the trafficking policies of the United Kingdom (UK) and Italy, highlighting the successes and failures of both. Overall, Ventrella argues that in order to effectively battle crime, states should empower and treat both groups similarly rather than distinguishing between victims of trafficking and smuggled peoples. The author also argues that in order to successfully enforce anti-trafficking and smuggling laws, EU Member States need to craft collaborative policies and coordinate efforts among each other.

The first section discusses the laws in the EU, the EC, and the international community that pertain to trafficking and smuggling. Ventrella highlights that under the United Nations Convention against Transnational Organized Crime (UNTOC), the difference between smuggled peoples and victims of trafficking rests on consent and exploitation; smuggled peoples agree to illegally cross international borders, while trafficking victims are forced. Subsequently, she explores how human trafficking is addressed within the legal framework of the EU. The European Council initiative on human rights identifies people trafficking as a criminal act, and focuses on protecting women and children. The European Commission goes one step further, asserting that trafficking violates international human rights law and calls on states to ratify UNTOC. In December 2000, all EU Member States and the European community formally signed UNTOC. However, as the author points out, failure to ratify UNTOC renders its protections limited in their effect. Therefore, Ventrella highlights the importance of the Lisbon Treaty, which will require all states party to the treaty to adopt a common policy on asylum, subsidiary protection, and temporary protection.<sup>18</sup> The Lisbon Treaty will also implement directives enabling individuals to rely on EU/EC law in national courts.

The second section discusses what tools the EU has at its disposal to prevent trafficking and people smuggling. Ventrella assesses the effectiveness of regional law enforcement measures, including Europol and the European Public Prosecutor, and regional judicial institutions such as Eurojust and the European Judicial Network. Furthermore, she suggests that in order to be successful, the European

Parliament, Council, and Commission must coordinate their policies more effectively. If the European Council consulted with the European Parliament more closely when drafting criminal legislation, nationals in the EU might trust the Council's crime-fighting initiatives because the Parliament is democratically elected. The Lisbon Treaty, which was passed in 2009, streamlines EU institutions and amends the Treaty on European Union and the Treaty on the Functioning of the European Union. Additionally, the Lisbon Treaty essentially eliminates the differences between the European Council and the European Union by making all decisions adopted by the European Community applicable and enforceable in the EU. This will allow more room for uniform and ideally more humanitarian policies directed against trafficking and smuggling.

The third section of the book argues that the European Parliament and Council should amend their relevant legislation to ensure that smuggled persons are treated similarly to victims of trafficking. Ventrella asserts that, like victims of trafficking, smuggled persons are also victims of coercion. Conditions in the country of origin such as poverty and natural disaster blur the traditional consent/coercion line that usually distinguishes trafficking victims from smuggled persons. Furthermore, the author argues that by treating smuggled persons the same as trafficking victims, countries will gain new, valuable resources for investigating organized crimes. Just as victims of trafficking have proven to be valuable to police investigations by testifying against criminals, so too can smuggled peoples. Ventrella additionally recommends legislation reform in a variety of key areas, including: making the protection of people smuggled by sea mandatory, guaranteeing legal protection for victims of human trafficking rather than offering only a few procedural protections, and reforming economic laws to encourage people to come to the EU legally.

The last section of the book analyzes the policies and laws in the United Kingdom and Italy to identify best practices. Ventrella compares the approaches of both countries to demonstrate that empowering trafficking victims can help prevent human trafficking and smuggling of migrants by sea. Working with victims of human trafficking after granting them legal status has allowed Italy to successfully investigate criminal

organizations that facilitate trafficking, because the victims have the opportunity to share their knowledge with the police. The “Rimini Method” and the “Siracusan Approach” are two Italian practices that emphasize collaboration between the International Organization for Migration and local police authorities, and offer victims of smuggling short-term resident permits and the option to integrate by providing them with shelter. By doing so, the police can gain the trust of the victims of trafficking, which might encourage them to share information regarding organized crime and testify against their smugglers and traffickers. However, Ventrella criticizes the Italian government for not widely adopting these methods, and further argues

that regions of Italy that have not adopted these methods have often coincidentally violated international and regional laws by utilizing repressive measures against illegal migrants. By contrast, the UK ratified the European Council Convention on Trafficking and has combated human trafficking with greater success because the convention provides protections for victims of human trafficking. Still, the author notes that the UK would be more successful if it collaborated with other EU countries in its policing and adjudicating efforts.

The author concludes by emphasizing the important implications of the Lisbon Treaty. In particular, she highlights how it will establish common policies towards

law enforcement and a legal framework to help counter trafficking and smuggling within the EU. However, Ventrella asserts that states that are signatories to the Lisbon Treaty and Member States of the EU should consider creating more protections for victims of trafficking and smugglings when crafting policy and legislation; a technique that proved to be successful in Italy and the UK.

*Shubra Ohri, a J.D. candidate at the Washington College of Law, reviewed The Control of People Smuggling and Trafficking in the EU: Experiences from the UK and Italy for the Human Rights Brief.* **HRB**

## ENDNOTES: Book Reviews

<sup>1</sup> JERNEJ LETNAR ČERNIČ, HUMAN RIGHTS LAW AND BUSINESS: CORPORATE RESPONSIBILITY FOR FUNDAMENTAL HUMAN RIGHTS 27 (Europa Law Publishing 2010).

<sup>2</sup> As Max Weber Postdoctoral Fellow at the European University Institute, Černič has written extensively on business and human rights, and has significant experience working in national and international legal institutions.

<sup>3</sup> ČERNIČ, *supra* note 1, at 7.

<sup>4</sup> *Id.* at 65. (The prohibition of forced labor

enjoys a universal character and forms part of international customary law).

<sup>5</sup> *Id.* at 25.

<sup>6</sup> *Id.* at 55.

<sup>7</sup> *Id.* at 43.

<sup>8</sup> *Id.* at 46.

<sup>9</sup> *Id.* at 34.

<sup>10</sup> *Id.* at 35.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 41.

<sup>13</sup> *Id.* at 108.

<sup>14</sup> *Id.* at 111.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 122.

<sup>17</sup> MATILDE VENTRELLA, THE CONTROL OF PEOPLE SMUGGLING AND TRAFFICKING IN THE EU: EXPERIENCES FROM THE UK AND ITALY (Ashgate 2010).

<sup>18</sup> Subsidiary protection operates as an alternative to asylum seekers, and provides humanitarian protection to illegal migrants. Temporary protection entails short-term residency visas and temporary legal status to illegal migrants.