International Trade, Human Trafficking and *Jus Cogens*: Opportunities for Law Reform in the Gulf Cooperation Council States of the Middle East

by

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Abstract

The European Union (EU) and the Gulf Cooperation Council (GCC) are strong trading partners. The relationship between the two geo-political regions led to negotiations towards a EU-GCC Free Trade Agreement (FTA) in 1988, based on mutual economic, and political interests; however, violations of the rights of migrant workers in the private sector in the GCC have resulted in suspended negotiations. This study considers the potential consequences of the FTA draft on labour rights and migration, focusing on the trafficking of persons, using the Palermo Protocol (2000) definition of human trafficking. Concentrating on the prevention of trafficking, the current sponsorship system (*kafala*) in the GCC is examined and areas for labour, criminal and (im)migration law reform are identified. Similar to slavery, human trafficking should be exclusively catalogued as a *jus cogens* norm in international law. This study involves a synthesis of documentary analysis and parallel study, using a combination of legislation in the GCC and media reports of violations of the rights of migrant workers. The research findings indicate that the *kafala* system is a mechanism by which trafficking of persons is state-enabled. This research also shows that, the FTA can be used to leverage law reform in order to eliminate the *kafala* system, utilising EU initiatives as a best practice. Recommendations are made for evidence-based reform in the GCC, to prevent trafficking for the purposes of exploitation, forced labour and slavery.

Keywords: human trafficking; international trade; EU-GCC Free Trade Agreement; *jus cogens*; migrant workers; law reform

Dedication

To Allah (swt)

To Prophet Muhammad (s) and the Ahlulbayt (a) for their unwavering sense of justice.

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Table of Contents

List of Acronyms

BCCI	Bahrain Chamber of Commerce and Industry
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
ILO	International Labour Organization
IMF	International Monetary Fund
NGO	Non-Governmental Organisation
OSCE	Organization for Security and Co-operation in Europe
TEC	The European Community
TIP	Trafficking in Persons
UEA	Unified Economic Agreement
UN	United Nations
UN.GIFT	United Nations Global Initiative to Fight Trafficking
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention Against Transnational Organized Crime
US TIP	United States Trafficking in Persons (Report)
WTO	World Trade Organization

Glossary

ahadith	Traditions and sayings with a particular chain for the transmission of knowledge or of a particular source (i.e. Prophet Muhammad or God). Viewed to be at minimum, the basis of understanding Islamic law. A hadith consists of *matn* and *isnad*, narrated by the *Ahlulbayt,* whose chain of narration is often referred to as the 'Golden Chain of Narration' for their care in transmitting the knowledge meticulously and with precision and accuracy
Ahlulbayt	Prophet Muhammad's kindred or household. Considered as one of two sources of Islamic knowledge, the other being the Qur'an
de facto	"In practice but not necessarily ordained by law"
fiqh	Islamic jurisprudence
ijtihad	Process of interpreting Islamic law
imam	In Shi'i thought and practice, it is a term used to refer specifically to the divinely appointed leaders and guides after Prophet Muhammad
isnad	Chain of transmitters to a hadith
jus cogens	"A compelling law"
kafala	Generally refers to any sponsorship system. In the context of the Gulf States, it refers to a system of structural dependence whereby migrant workers are sponsored for work by a person of GCC nationality, to enter the GCC for the purposes of work. The sponsor takes in principle, full legal and economic responsibility for the employee during his/her stay in the country
kafeel	Sponsor
matn	Text
sharia	'Way to be followed'. Commonly referred to as 'Islamic law'
sine qua non	"A condition without which it could not be"

1. Introduction

"People are of two kinds, either your brother in faith or your counterpart in humanity"

-Imam Ali (a)

Trafficking in persons affects every nation in the world today, as countries of origin, transit or destination (UN.GIFT, 2008). While sexual exploitation is the most commonly identified form of human trafficking (UN.GIFT, 2008), trafficking for the purposes of labour exploitation is often considered to be a more pervasive form of trafficking as 'hidden in plain sight' (LeBaron & Crane, 2013).

In the past decade, a flurry of media reports and grass roots initiatives led to greater efforts towards addressing the phenomenon of human trafficking. This movement has included heads of state, governments, members of the entertainment industry, NGOs and religious groups, each with an agenda and a motive. Millions of dollars of government spending have been allocated towards anti-trafficking initiatives to eradicate what has come to be known as one of the serious social ills of the globalised world. International agencies have funded and staffed units dedicated to anti-human trafficking efforts with teams of lawyers, experts and consultants, employed to design strategies, draft laws, and assist states in fighting this cause. Yet, human trafficking remains one of the most constantly evolving and lucrative illicit trades in the modern world (Vassiliadou, 2012).

The interest that has accumulated rapidly over the past two decades can be misleading however, because human trafficking is not a contemporary phenomenon. In contrast to historical times, human trafficking today is enabled by globalization and enhanced methods of recruitment, transportation and trade in human beings and human organs. It is an activity that is manifesting itself in new ways, yet one that some would argue is rooted in a phenomenon that dates centuries back, to what is commonly known as slavery.

This constantly evolving nature of the trafficking in persons renders its prevention difficult at best. Some of the challenges entail its cross-jurisdictional nature, difficulties with identification and traceability, the highly lucrative returns that make these criminal enterprises extremely powerful, the lack of evidence and suitable witnesses in criminal proceedings, the vast pool of potential victims to draw from, lack of appropriate training for first responders and the cooperation of corruption of state officials. Perhaps, the greatest challenge in addressing human trafficking however, remains at the stage where activities tantamount or akin to human trafficking are universally agreed upon, acknowledged and consistently treated as the crime of trafficking in persons.

Despite the emergence and growth of a large body of research on human trafficking, there appears to be a gap in research discussing state-enabled forms of human trafficking. More importantly, there is a lack of research highlighting the role of business and government, operating in the formal economy, within a state deemed legitimate framework, as the source of trafficking.

In the past, the role of organised criminal groups have subsumed the role of sourcing and recruitment of potential victims in the trafficking supply chain, and predominantly within the informal economy; however, in this thesis, the role of business and government as the source and recruitment of human trafficking will be discussed in light of problematic policy and legislative frameworks, which not only allow human trafficking but which facilitate the process, within the formal economy and under the protection of state sanctioned norms.

This thesis proposes that, through precise analysis of the legal framework within which both the private and public sector in the Gulf Co-operation Council operate, the very institutions that currently facilitate the human trafficking process, should serve as the source for preventing and protecting victims. From this perspective, the trafficking supply chain looks radically different from previous propositions which focus on the role of organised criminal groups or lone traffickers as the ‘supplier’ of trafficking (see Aronowitz, Theuermann & Tyurykanova, 2010). This research seeks to provide a comprehensive understanding of pressure points and opportunities for interception of the trafficking supply chain, in the context of the Gulf Cooperation Council Member States. This will be done against the backdrop of emerging opportunities resulting from a free

trade agreement between the European Union and the Gulf Co-operation Council whereby minimum standards for criminal law, (im)migration and particularly labour law in the private sector can be determined, agreed upon, and implemented. In doing so, this thesis examines anti-trafficking, labour and (im)migration legislation from the six GCC Member States to shed light on the multifaceted nature of human trafficking and in order to better understand and accurately and effectively prevent the incidences of human trafficking.

The focal point of this study, the Gulf Co-operation Council (GCC), also known as the Co-operation Council for the Arab States of the Gulf, is a coalition of six countries, namely Bahrain, Kuwait, Saudi Arabia, United Arab Emirates, Qatar and Oman which among other stated goals, provides that formulating similar legislation, setting up joint ventures and encouraging cooperation of the private sector, constitute some of their key goals (The Cooperation Council for the Arab States of the Gulf, 2014). As such, the economic bloc has deep-seated interests in aligning not only its cultural and political ambitions but also its legal and economic interests.

This region of the Persian Gulf holds some of the world's largest oil and natural gas reserves, rendering it, one of the wealthiest economic blocs since the inception of trade blocs in the 13th century. It is also one of the regions of the world that has the highest rates of migration, dependence on foreign labour, and human trafficking, which are all by-products of being one of fastest growing economies in a globalised world but also one of the areas of the world with the most questionable labour standards. While there have been significant efforts to address the human trafficking problem in the GCC, there remains considerable room for reform and a vision of responsibility that is aligned with minimum standards, Islamic law, international law and universal norms, and which is built on a foundation of understanding that recognises the role of both business and government as key stakeholders in the process.

In shifting our gaze from the lone trafficker and the organised criminal enterprise, to one of business ethics, corporate social responsibility and state obligations, this study outlines a unique approach to reforming policies and practices that minimise vulnerabilities, and place a greater onus on all stakeholders in the trafficking supply chain. In order to do this, the thesis will illustrate the interlinked nature of the relationship

between the private sector and government in the Gulf Co-operation Council countries, which precludes notions of addressing trafficking purely as a criminal matter involving offenders in the informal economy and instead, creates a sense of shared ownership of the problem to allow for a more unified response.

1.1. Research Objectives

This thesis demonstrates that despite anti-trafficking legislation in the Gulf Cooperation Council states of the Middle East, trafficking in persons continues to thrive. It is the objective of this research to examine the intersections of anti-trafficking legislation, labour laws and immigration policies in order to identify potential areas for reform in policy and practice.

Rather than expecting enforcement and legal issues to be eliminated by domestic legislations in the GCC, a holistic approach is taken to understanding the crime of trafficking in persons against the historical and socio-political backdrop in the region. In doing so, the *kafala* or sponsorship system, which renders migrant workers highly vulnerable to deception and exploitation, is examined as a point of divergence from Islamic law, common law, civil law and international law.

Ultimately, the goal of this research is to identify ways in which meaningful reform can be encouraged in the region, informed by evidence based best practices, while simultaneously taking into account the importance of international trade to the GCC Member States. Recommendations will be made outlining the role of international agreements in the process but more importantly, the significance of ascertaining practical and incremental steps to achieving reform.

1.2. Chapter Overviews

Chapter 2 provides an historical overview of slavery and the reliance of the slave trade in the Greek, Roman, Persian and Byzantine empires. The chapter also discusses the evolution of the terms slavery, unfree labour and human trafficking, as the condition common to all three, gradually gained global distinction as a crime rather than a socially

constructed norm. Chapter 2 also provides a detailed explanation of histories of slavery in the Middle East, discussing the role of gradual reform leading to abolition of the slave trade, brought about by the introduction of Islam in the region. The politicisation of trafficking is discussed using a theory of international relations, which argues that anti-trafficking efforts have become largely focused on the securitisation of states over human security. Finally, a detailed literature review of trafficking in persons and exploitation using the framework of Islamic law and principles is provided due to the legal infrastructure of the GCC.

Chapter 3 describes in detail, the political economy of the GCC Member States, illustrating the unique historical, political, economic and legal landscape of the Gulf States, which renders them as one of the wealthiest geopolitical and economic blocs globally. In addition a brief overview of the GCC's stance on labour and international trade issues is provided, as background to what factors make this region particularly vulnerable to trafficking in persons.

Chapter 4 examines the history and literature on international trade and trade agreements. In this chapter, the theory of competitive advantage is discussed in relation to the commodification of cheap labour as a product on the global market and the human rights concerns inherent in this model of international trade. The chapter also provides a background on the origins of free trade as well as a critique of free trade agreements, to illustrate that while the EU-GCC FTA may be at a standstill because of alleged human rights violations in the Gulf States, by nature FTAs are not concerned with human rights, and particularly not with labour standards. Chapter 4 also discusses trafficking in persons as understood within the framework of international law, and in particular the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000). In relation, the concept of *jus cogens* in international law is discussed to unpack the definition of trafficking in light of the definition of slavery in international law.

Chapter 5 describes the methods used in the research. Details are provided with regards to how data was collected, coded and finally analysed. The data is described at length with attention given to the justification for including media reports, to juxtapose legislation for the EU and the GCC.

Chapter 6 presents the qualitative results. The chapter is organised by answering the five research questions. The results identify the problems inherent in the legal infrastructure in the GCC, which both condemns trafficking in persons, in anti-trafficking specific legislation, but simultaneously, enables it through labour laws for the private sector, which exclude certain categories of work deemed as 'unskilled'. Also, a series of themes are outlined in the media reports used, that relate to how trafficking in persons in the Gulf states is occurring, is perceived and is being responded to. Finally, the themes speak to the larger issue of the sponsorship system unique to the GCC, and the need to eliminate it in favour of a state regulated and monitored (im)migration system for foreign migrant workers in the Gulf States, that is in line with the principles of Islamic law and universal norms.

Chapter 7 translates the descriptive research findings into policy relevant material. By paying special attention to the intersections of criminal law, labour law and (im)migration law, with an eye for potential possibilities in leveraging the EU-GCC FTA, core policy directions are highlighted. Finally, as this research represents one of the first of its kind, in evaluating not only the criminal justice response to trafficking in persons in the Gulf States, but by also labour laws in the private sector and (im)migration processes, some promising directions for multi-jurisdictional reforms in both law and practice are recommended.

2. Normative Understandings of Slavery and Trafficking in Persons: The Case of the Middle East

2.1. Trafficking in Persons: An Ancient Trade or a Contemporary Crime?

Human trafficking is a term that has become synonymous with slavery (Miers, 2003; Ould, 2004; Bales, 2005; Smith, 2007 as cited in Lee, 2011). According to some scholars, human trafficking is not only synonymous with slavery, it *is* the new slavery (Bales, 2004). Others propose that a sociological understanding of slavery and human trafficking may have elements in common but essentially, in law, slavery is a purpose encapsulated within the legal definition of human trafficking and as such is a distinct phenomenon (Allain, 2009).

While human trafficking and slavery may be defined either as interrelated crimes or distinct crimes in contemporary society, historically, the distinction was not always lucid. In trying to understand the trafficking of persons as a crime in contemporary society, it is essential to engage history, and historically, human trafficking is at a minimum rooted in slavery and the slave trade (Scarpa, 2008). Picarelli (2007) suggests that far too many scholars, advocates and politicians approach trafficking ahistorically; however, he argues that, "we need to challenge the received wisdom about trafficking by using a historical approach to the trade in human beings and the forms of servitude it supports" (p. 27). He provides three general observations regarding slavery and other forms of labour servitude. First, he says, "'slavery did not end in the 1800s and continued to evolve in new forms that an international trade in human beings supplied" (Picarelli, 2007, p. 27). Second, he claims that, "state policy *vis-à-vis* the trade of human beings was and remains a derivative of national interests and is not solely altruistic or idealistic" (Picarelli, 2007, p. 27). Most importantly, Picarelli (2007) argues, that

> Traders in human beings historically were small entrepreneurial organisations that had significant ties to legitimate business and political interests and often operated both legally and illegally, with the latter sector of the market becoming more prominent over time (p. 27).

Picarelli (2007) posits that over time, an imprecise terminology has skewed the understanding of slavery and has mistakenly led us to believe that slavery has ended. The confusion however, lies in the fact that 'slavery' has become synonymous with all labour practices, which limit free movement, withhold payment and utilise threats of violence (Picarelli, 2007). He argues that slavery is in reality one form of a phenomenon which some scholars refer to as 'unfree labour' (Picarelli, 2007). Forms of unfree labour he explains, include indentured servitude, and legal ownership of another person (Picarelli, 2007). Therefore, while slavery came to an end in the 1800s, as a result of international pressure by abolitionist groups, he suggests, unfree labour did not, and it is this notion that is termed as the 'new slavery' (Picarelli, 2007).

2.1.1. Early Forms of Slavery

Histories of slavery across the globe differ; however, it is an uncontested fact that "slavery was widespread and legally sanctioned for most of human history" (Welton, 2008, p. 57). While some historians suggest that the no one knows when slavery and the slave trade began, history reveals that slavery in its different manifestations, existed in nearly all societies (Welton, 2008), only to be criminalised fairly recently in history (Philips, 1993). Picarelli (2007) explains that "the earliest form of unfree labour, slavery, is ancient – the Code of Hammurabi contains some of the earliest references" (p. 28). Other historians link the early periods of chattel slavery in Europe to war fighting (Greenidge, 1958 as cited in Picarelli, 2007). Similarly, in the Greco-Roman era, slavery was rooted in conquest and the spoils of war (Picarelli, 2007).

Ironically, despite Greece having produced the great advocates of human rights and justice, it had a greater number of slaves than free men (Rizvi, 1987). In fact the Romans wrote slavery into the "*Jus Gentium* or 'law of nations' that applied to Romans dealings with foreigners and thus spread legal sanction for slavery throughout the Roman Empire" (Picarelli, 2007, p. 28). These practices were rooted in ancient Greek philosophies that considered slavery as morally acceptable (Scarpa, 2008) and to have

been compassionate with slaves was regarded as unnatural (Rizvi, 1987). In fact Aristotle is recorded to have said, “It is thus clear that, just as some are by nature free, so others are by nature slaves, and for these latter the condition of slavery is both beneficial and just” (as cited in Scarpa, 2008, p. 3). Another account of the famous ancient philosopher records him saying with reference to whether one is intended or not, to be a slave by nature,

> There is no difficulty in answering this question, on grounds both of reason and of fact. For that some should rule and others be rules is a thing not only necessary, but expedient from the hour of their birth, some are marked out for subjection, other for rule…Some men are by nature free, and other slave, and that for these latter slavery is both expedient and right (as cited in Rizvi, 1987, n.p.).

Similarly, other ancient societies reveal histories of economies that were dependent on slave labour. Some examples are Egypt and the building of the pyramids by slave labour and the Roman Coliseum that Scarpa (2008) explains “would not have been thinkable without the forced labour of millions of slaves” (p. 4). Ameer Ali (1965) also provides that,

> With establishment of the Western and Northern barbarians on the ruins of the Roman empire, besides personal slavery, territorial servitude, scarcely known to the Romans, became general in all the newly settled countries…The barbaric codes, like the Roman, regarded slavery as an ordinary condition of mankind; and if any protection was afforded the slave, it was chiefly as the property of his master, who alone, besides the State, had the power of life and death over him (as cited in Rizvi, 1987, n.p).

As in the Roman empire, histories of the Persian empire expound accounts of the twelve thousand women slaves living in the palace of the Emperor and similarly, thousands of slaves remaining in attendance with full attention on the Byzantine Emperor when he sat on the throne (Rizvi, 1987). Rizvi (1987) explains that by the 7th century, “slavery was rampant throughout India, Persia, Rome, the Arabian Peninsula, Rumania and Greece” (n.p.). The society at the time, and in particular, the wealthy class, did not regard slaves entitled to even the most basic of human rights (Rizvi, 1987). According to Durant (1950), slaves were commodified and considered no less worthy than cattle selling for rates similar to goat and sheep (as cited in Rizvi, 1987). The

Arabian Peninsula, on the one side "was surrounded by countries which still bore traces of the grandeur of the then declining Roman-Greek civilisation, and on the other side, by countries wrapped in Zoroastrianism and Hinduism" all of which recognised slavery as a legitimate institution (Rizvi, 1987, n.p.).

2.2. History of Slavery in the Middle East

The Middle East has often been critiqued for its history of slavery, particularly by orientalist scholars such as Bernard Lewis[1], credited for coining the term 'clash of civilisations' with reference to Islam's imposition in the modern world. According to Lewis (1990), "In the ancient Middle East, as elsewhere, slavery is attested from the very earliest written records among the Sumerians, the Babylonians, the Egyptians, and other ancient peoples" (p. 3). Although slaves were taken predominantly in warfare, free persons were able to sell themselves, or their offspring, as a commodity on the market (Lewis, 1990). Similarly, in seventeenth century Arabia, the supply of slaves was in great abundance (1990).

However, even according to Lewis (1990), critiqued for his heavily orientalist laden discourses and objections to Islamic law, submits that with the promulgation of the Qur'an and Qur'anic legislation, two major changes were made to ancient slavery and trade in human beings, which had far reaching effects (1990) against the pre-existing backdrop of slavery. One of these changes Lewis (1990) claims, "was the presumption of freedom" and the other, "the ban on the enslavement of free persons" (p. 5). He explains that the Arabs practiced a form of slavery, similar to that found in other parts of the world, however, "the Islamic dispensation enormously improved the position of the Arabian slave, who was now no longer a chattel but was also a human being with a certain religious and hence a social status and with certain quasi-legal rights" (Lewis, 1990, p. 6).

[1] Bernard Lewis is considered a widely read expert on the Middle East. He is credited for coining the term 'clash of civilisations' which later received prominence in Samuel Huntington's work. Among a number of well known publications, he is the author of 'What Went Wrong? The Clash Between Islam and Modernity in the Middle East'. He is also recognised for his introduction of the term 'Islamic fundamentalism' and subsequent contributions to U.S. foreign policy under president George W. Bush.

Eventually, the discouragement and gradual reform of slavery and slave-like practices led to the prohibition of slavery (Lewis, 1990). Most significantly, “it became a fundamental principle of Islamic jurisprudence that the natural condition, and therefore the presumed status, of mankind was freedom” which protected Muslim and non-Muslim subjects of the state alike (Lewis, 1990, p. 6). This however, did not always translate into practice and a number of key factors led to the capture and enslavement of some rebels and heretics of Islam, despite the clear position of Islamic legal text on the subject (Lewis, 1990).

One of the factors that led to the continued enslavement of persons was the influence of practices “of the various conquered peoples and countries which the Muslims encountered after their expansion, especially in the provinces previously under Roman law” (Lewis, 1990, p. 7). Lewis (1990) argues that the laws in these provinces, even in their Christianised form, were still very harsh in their treatment of slaves. Ironically however, despite the resistance of these provinces towards reform, the general adoption of harsher tones and severer rules against enslavement of human beings, led to a fall in the cash value of slaves which at one point in history, fetched anywhere from three hundred to five thousand dirhams, depending on the race and skillset of the slave, which was a significant amount at the time. This direct correlation between the race of a slave and an attributed monetary value, is referred to by Lewis as ‘racial specialisation’ (Lewis, 1990).

2.3. The Politicisation of Trafficking: Raising Trafficking in the World’s Consciousness

As the importance of abandoning slavery and slave-like practices began to consume a prominent space in intellectual and legal discourses, a new body of literature concerning the distinction between slavery and human trafficking emerged. This distinction, particularly in law, is discussed in further detail in subsequent sections of this thesis; however, of equal significant to this debate, and the topic of this section, are the implications of the development of contested definitions and understandings of human trafficking as a crime, which have politicized the issue. O’Connell, Davidson and Anderson (2006) argue that,

> The fact that trafficking has become big business for middle class professionals both reflects and reinforces very serious definitional, conceptual and political problems with the term 'trafficking'. Indeed, it is because 'trafficking' is so poorly defined that so many individuals and interest groups – often with radically different moral and political agendas are able to claim it as their own (p. 11).

There are three areas of concern in this thesis with the politicisation of trafficking: 1) the construction of rhetoric with respect to trafficking in persons ; 2) the alignment of trafficking with that of state security rather than human security; and, 3) and the consequences of subjective non-compliance by way of economic sanctions.

The first concern is the process of the politicisation of trafficking is the development of problematic rhetoric. Jackson (2006) explains that, "As the Copenhagen School suggests, changes in the use of language can help to understand how an issue is securitized" (p. 310). In other words, it is argued that security should be seen "as a speech act, where the central issue is not if threats are real or not, but the ways in which a certain issue (troop movements, migration, or environmental degradation) can be social constructed as a threat" (van Munster, 2012). Therefore, securitisation is a concept in security theory in international relations, originating from the Copenhagen School, which describes it

> as a process through which nonpoliticized (issues are not talked about) or politicized (issues are publicly debated) issues are elevated to security issues that need to be dealt with urgency, and that legitimate the bypassing of public debate and debate and democratic procedures (van Munster, 2012).

Jackson (2006) argues that international organisations use "different terms to lump illicit activities together into a single rhetorical 'threat package'", needing to be 'combatted' or 'fought' against and in so doing, encourage "the adoption of similar traditional security strategies to counter these largely distinct activities" (Jackson, 2006, p. 310). Quoting Antonio Maria Costa, Director of the United Nations Office on Drugs and Crime (UNODC) and Jozias von Aartsen of the Organization for Security and Cooperation in Europe (OSCE), Jackson (2006) illustrates how these organisations have argued that efforts against drug traffickers, organised crime groups and terrorists, identified as the 'uncivil forces of our time', and 'the new risks and challenges to

security', occupy a special place in international efforts (p. 310). The construction of militaristic rhetoric, which draws a parallel between terrorism post 9/11, crimes, and migration allows states to securitize trafficking by linking it with 'terrorism', at times, exaggerating the link (Jackson, 2006). Similarly, she found that irregular migration was also associated with trafficking of narcotics, arms and persons, also framed as a major security threat (Jackson, 2006).

Jackson (2006) argues that the packing of language led to international organisations acting on "the assumption that links or 'networks' existed among terrorists and traffickers to justify new policies" (p. 310). These policies, she claims are directed at state security rather than security of trafficked persons and thus have far-reaching implications.

The rhetoric used in constructing trafficking in persons as a crime that is closely related to terrorism, the arms trade and the narcotics trade, is part of a problematic political strategy, to align notions of human security with that of state security. These means are used to achieve what is termed as 'securitised states'. Wæver (1995) writes, "Securitization is the act of lifting an issue out of the sphere of normal/open political debate into a sphere of security (i.e. one that is closed for public debate)" (as cited in Jackson, 2006, p. 311). As a result, this "shifts issues from a 'normal' political process into an 'emergency mode' (Buzan, Wæver & de Wile, 1998 as cited in Jackson, 2006, p. 311). The shift into 'emergency mode' essentially impacts the process of policy decision-making and implementation on a number of levels, due to heightened perceptions of threat, changes in language and administration that justify little or no room left for contested politics (Jackson, 2006). This is often manifested in deportation policies in immigration laws in most countries, which still treat the victims of trafficking as prohibited immigrants. In contrast, if the crime was viewed as a threat to the person and not to the state, priority would be given to victims by way of a more humanitarian approach including granting some type of residency status (temporary or permanent) (Mattar, 2006).

The consequences of securitising the rhetoric and fight against trafficking in persons, are detrimental not only to the plight of victims, whose security often takes a back seat to that of the state, through policies derived in this process, but they also

hinders the priority that should be given to 'real' security issues that need to be put on the political agenda (Jackson, 2006). Mattar (2006) explains that trafficking in persons is a violation of human rights and a crime against the security of an individual that poses a threat to human security. He suggests that using a human security framework, means, "that it is necessary to address not only the right of the trafficked person to personal safety, but the other aspects of human security as well, including economic security, political security, legal security, and community or cultural security" (p. 254). In doing so, he urges that the actual causes of insecurity be explored (2006).

Mattar (2006) also raises the distinction between state security and human security, the effects of each on criminal justice policies and the principle of non-criminalisation of victims. He argues that, "the use of the traditional immigration law approach results in punishing the victims through deportation" (Mattar, 2006, p. 263), whereas the human security approach implies that victims "should not be penalised for unlawful acts committed as a direct result of being trafficked" (Mattar, 2006, p. 263), which he says unfortunately is not the case in domestic laws in most countries. As the Copenhagen School highlights, there is a need for deconstructing securitised rhetoric and more importantly, for an evidence-based and empirically supported analysis of 'real threats' compared to *perceptions* of threat (Jackson, 2006), in order to precisely calculate the urgency of trafficking in persons. The way to do this, Mattar (2006) recommends is by,

> Shifting the focus from recognizing trafficking in persons as a threat against state security to trafficking as a threat to human security, which means recognizing internal trafficking as a form of trafficking, replacing the current deportation policy with the policy of granting victims the residency status irrespective of a burden this may impose on a state's immigration policy, applying the principle of non-criminalization to the acts of victims of trafficking (p. 279).

The third point of concern in the politicisation of trafficking in persons is the imposition of consequences for subjective non-compliance. International organisations, although critiqued for their part in securitisation of trafficking in persons, typically adopt a soft touch approach to pressuring Member States to comply with international norms and standards. In contrast however, there are political entities that are fairly aggressive in their approach to seeking state compliance. A particular example is the U.S. Department

of State's approach, which is carried out by way of the U.S. Trafficking In Persons Report US TIP Report) published annually. Then TIP Report is described by the Department website as "the U.S. Government's principal diplomatic tool to engage foreign governments on human trafficking". The TIP Report places each country onto one of three tiers "based on the extent of their governments' efforts to comply with the minimum standards for the elimination of trafficking found in Section 108 of the TVPA [Trafficking Victims Protection Act]" (US TIP Report, 2013). If a country is found to be non-compliant, according to a subjective review by the U.S. Department of State, actions can be taken against those governments. According to section 110 of the *Trafficking Victims Protection Act* (2000), 'Actions Against Governments Failing to Meet Minimum Standards' section (d) 'Presidential Determinations' (1) (B):

> the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director's best efforts to deny, any loan or other utilization of the funds of the respective institution to that country for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.

The effectiveness of such sanctions has been called into question, in particular, when sanctions which are not clearly defined and applied evenly. This has been the case with sanctions imposed on a selected number of Tier 3 countries by the U.S. government (Siskin & Wyler, 2010). The ethical questions around such tactics have been raised by key figures in the anti-trafficking movement, such as Mark Lagon, former head of the State Department's Office to Monitor and Combat Trafficking in Persons, who acknowledged that at times, the department pulls punches with some countries, citing three concerning events in the ranking of countries. The first reference Lagon makes, is about India which he describes as "the demographic epicentre of human trafficking in the world" but which was upgraded in ranking in 2011, arguing that it "had more to do with strategic relations with India than the merits" (as cited in Ponnudurai, 2013). Lagon's second experience came just days before he was confirmed to his post in 2007, in which he found out about a "Tier 3 ranking being overturned by the very highest level of State Department leadership" (as cited in Ponnudurai, 2013). Lastly,

Lagon is quoted as saying with regards to Uzbekistan, which he describes as "the most appalling case in the neighbourhood of the former Soviet Union",

> Let me be plain: There are loud voices within the U.S. Government who say the U.S. must downplay any distraction which might upset Uzbekistan's cooperation in the Northern Distribution Network getting supplies to troops in Afghanistan…China, Russia and India may predictably avoid downgrades as great powers. But if as unreconstructed and unrepentant an autocracy as Uzbekistan is let off the hook because of a supply mechanism for troops being windowed from Afghanistan anyway, it would be a travesty (as cited in Ponnudurai, 2013).

Sharma (2005) argues that such anti-trafficking efforts and campaigns create a moral panic, which "serves to legitimize [such] increasingly regressive state practices of immigration control" which she believes is an increasingly obfuscated aspect of the national and international security agenda (p. 89). She further posits that "the ideology of anti-trafficking does not recognize that migrants have been displaced by practices that have resulted in the loss of their land and/or livelihoods through international trade liberalization policies, mega-development projects, the loss of employment in capitalist labour markets, or war" (Sharma, 2005, p. 89).

Despite the rhetoric of protecting migrants, Sharma (2005) explains that the emphasis is on controlling migration that is evident through "tighter control over the borders, stricter immigration laws and more punitive criminal laws [which are] called upon as indispensable measures to rescue migrants" (p. 89). Similar to Mattar (2006), Sharma (2005) advocates for a human security approach, rather than a state centered security approach. She explains that instead of objectifying migrants, there is heightened need to "be aware of how intersections of criminal law and immigration law creates the conditions for exploitation of people who need to earn a living and form new homes across borders" (Sharma, 2005, p. 106).

2.4. The Clash of Civilizations?: The Position of Islamic Law on Human Trafficking and Exploitation

The discourse about Islamic law, human rights and criminal justice responses has occupied a prominent space in literature focusing on the Muslim world (Baderin,

2007; An-Na'im & Henkin, 2000; Sajoo, 1995, An-Na'im, 2005, An-Na'im, 1990). In order to understand the complexity of histories of slavery and human trafficking in the Middle East, it is important to contextualise the legal framework by which the GCC states operate against this discourse. The legal framework in the GCC states is a unique hybrid of a certain interpretation of Islamic law, common law and civil law, with Islamic law constituting the major source of law. Other sources of law in the GCC are the Egyptian and French codes, drawing many principles in particular from the Napoleonic Civil Code (Abdullah Kh. Al-Ayoub & Associates, 2014). Of significance are the laws that are exempt from conforming to Islamic law, governing matters concerning commercial laws permitting the payment of interest in commercial transaction (Abdullah Kh. Al-Ayoub & Associates, 2014), and some criminal code laws as well as "all cases involving disputes related to the personal status of non-Muslims" (Embassy of the Kingdom of Bahrain in Japan, 2014).

Given the legal traditions and application of what the GCC states believe to be Islamic law, this section discusses the position of the Islamic legal system on two matters: substantive law and the in particular, prohibitions of elements of trafficking in persons as a form of slavery under Islamic law, and second, the principle of prohibition of exploitation in Islamic law, with particular reference to labour exploitation and the principle of freedom (Mattar, 2010). In gaining an understanding of Islam's position on trafficking in persons and related acts a unified approach that is grounded in the Islamic tradition, as well as in compliance with international law is made possible (Mattar, 2010, p. 1). Mattar (2010) argues that trafficking in persons commodifies human beings and although "more subtle than outright slavery (though many victims endure conditions similar to those under slavery) in that it does not necessarily entail "ownership" of a person, [it does] allows the perpetrators to exert control by insidious means" (p. 5). While international law guides the implementation of a comprehensive strategy for countering trafficking in persons, understanding how Islamic law can be translated into concrete policy steps, as part of countering the commodification of persons, is an important and vibrant dialogue that is taking place in a number of Muslim countries (Mattar, 2010) and one which can provide crucial guidance for such strategies in Muslim countries.

According to Mattar (2010), the definition of law in Islam is different from that of positive laws in other legal systems and while positive laws are incorporated in the legal

systems in Muslim countries, Islamic jurisprudence still governs areas of law that are relevant in the context of human trafficking. Drawing a distinction between Islamic law and the civil and common law systems reveals that "Islamic law is not the product of court decisions, as in the Anglo-American legal system, or of statutes, as in the civil law system…rather, Islamic law is of a divine nature" (Mattar, 2010, p. 11). Often termed as *sharia*, which in Arabic means 'way to be followed' is one of the titles given to Islamic law (Mattar, 2010).

In relation, "Islamic jurisprudence, or *fiqh*, is the process of intellectual activity of discovering the rules of God's law, as humanly understood (An-Na'im & Henkin, 2000), and *ijtihad* is the process of interpretation of Islamic law which relies on the text of the law to provide legal opinions" (Mattar, 2010, p. 13). The two main sources,on which jurists of Islamic law depend on, are the Qur'an and the traditions, or *ahadith*, of Prophet Muhammad and his household, the *Ahlulbayt* (his kindred)[2] who are acknowledged as the most credible and reliable source of transmitting, deciphering and interpreting Islamic knowledge accurately.

The underlying differences between positive law and Islamic law are that Islamic law is considered perfect law with permanent validity and is based on assured certainty whereas positive law has only presumptive effect (Mattar, 2010). Mattar provides that "In God's words, "This is the Book (the Qur'an) where there is no doubt"" (Qur'an, 2:2 as cited in Mattar, 2010, p. 13). Consequently, the Qur'an, as a unique form of intellectual property means that it "may not be amended, deleted or repealed, though one can distinguish between the immutable principles of Islamic law versus changeable rules requiring reinterpretation through the process of *ijtihad*" (Mattar, 2010, p. 14).

[2] The sources of this hadith have been confirmed by both the Sunni and the Shia schools of thought in the following compilations: *Sahih al-Tirmidhi, v5*, pp 662-663, 328; *al-Mustadrak* by al-Hakim, Chapter of "Understanding (the virtues) of Companions, v3, pp 109, 110, 148, 533; *Musnad* by Ahmad Ibn Hanbal, v3, pp 14, 17, 26, 59, v4, pp 366, 370-372, v5, pp 182, 189, 350, 366, 419; *Fadha'il al-Sahaba*, by Ahmad Ibn Hanbal, v2, p 585, Tradition #990; *al-Khasa'is*, by al-Nisa'I, pp 21, 30; *al-Sawa'iq al-Muhriqah*, by Ibn Hajar Haythami, Ch. 11, section 1, p 230; *al-Kabir,* by al-Tabarani, v3, pp 62-63, 137; *Tafsir Ibn Kathir*, v4, p113, under commentary of verse 42:23 of the Qur'an; *al-Tabaqat al-Kubra*, by Ibn Sa'd, v2, p194; *al-Jami' al-Saghir*, by al-Suyuti, v1, p353, v2; and *History of Ibn Asakir*, v5, p 436.

2.5. Substantive Law: Prohibitions of Elements of Trafficking in Persons as a Form of Slavery under Islamic Law

In a discussion of the position of Islamic law on trafficking in persons, Mattar (2010) suggests beginning with a shift in international legal thinking from a traditional notion of slavery to human trafficking. He explains that this is because trafficking "has subsumed the traditional notion of slavery under a wider, more comprehensive and contemporary definition, and in which slavery and practices similar to slavery merely constitute a form of exploitation under trafficking in persons" (Mattar, 2010, p. 15). Mattar (2010) explicitly states that Islamic law is very clear on the prohibition of the institution of slavery. Islam, in the Qur'an, as in the Hebrew Bible and the New Testament, the previously revealed texts of the Abrahamic faiths, he explains, did not abolish slavery at the outset, as it was a common part of society in pre-Islamic history (Mattar, 2010). Rather, the approach was taken to humanize it and regulate in order to accustom society to eventually abolish it. One of the most significant indications of gradual reform towards abolition in the Qur'an is the evident shift textual shift from not allowing Muslims to make new slaves, to text regarding the esteemed status of a person who frees slaves:

> Those who put away their wives (by saying they are as their mothers) and afterward go back on that which they have said, (the penalty) in that case (is) the freeing of a slave before they touch one another. Unto this ye are exhorted; and Allah is aware of what ye do (Qur'an, 58:3 as cited in Mattar, 2010, p. 19).
>
> God will not take you to task for a slip in your oaths, but He will take you to take for such bonds as you have made by oaths, when the expiation is to feed ten poor persons with the average of the food you serve to your families, or to clothe them, or to set free a slave…If anyone emancipates a soul, Allah will set free from Hell a part of his body for every limb of the slave (Qur'an, 5:89 as cited in Mattar, 2010, p. 19).
>
> …righteousness is this that one should believe in Allah and the last day and the angels and the Book and the prophets, and give away wealth out of love for Him to the near of kin and the orphans and the needy and the wayfarer and the beggars and for (the emancipation of) the captives, and keep up prayer and pays the alms giving…(Qur'an, 2:177 as cited in Mattar, 2010, p. 20).

Similarly, Mattar (2010) cites chapter 24, verse 33 of the Qur'an: "[If your slaves] seek a writing (of emancipation), give them such writing, if you find that there is good and honesty in them" as another example of Qur'anic text on the subject of emancipating slaves. And give them something (yourselves) out of the wealth of Allah which He has bestowed upon you" (p. 19). This incremental reform, rather than an abrupt abolition of slavery is consistent with the principle of gradual reform in Islamic philosophy of gradual social change (Mattar, 2010). These repeated and consistent commandments, instructing equitable and humane treatment of slaves at first and later the emancipation, suggests Mattar (2010), can be applied to condemn trafficking in persons in so far as trafficking may occur for the purposes of slavery and slave-like practices and also because trafficking is often referred to as the contemporary slavery.

2.6. The Principle of Prohibition of Exploitation in Islamic Law: Labour Exploitation and the Principle of Freedom

Exploitation is the key element of the Trafficking in Persons Protocol definition of trafficking in persons and the case for forced labour, in addition to exploitation for the purposes of prostitution and trafficking in organs (Mattar, 2010). According to Islam, exploitation is prohibited in a number of ways, of which exploitation of another's property and the ban on illegal commercial practices are most significant for the purposes of this research (Mattar, 2010). However, trafficking for the purposes of forced labour is one of the most prevalent forms of trafficking throughout the world and in particular, in some wealthy Muslim countries where a large percentage of workers in construction, domestic services and hospitality are vulnerable to exploitation. Mattar (2010) finds that:

> This form of trafficking often involves broken or unfulfilled, deceptive contracts, with promised compensation replaced by debt that is to be repaid through work, wages which are a mere fraction of those promised, exploitative working hours which do not reflect those promised, restriction of movement, and hard physical labour often in unbearable conditions

These occurrences take place despite the clear position of Islamic labour law against the exploitation of labour and the status of freedom in Islam (Zulfiqar, 2007 as cited in Mattar, 2010). Some Qur'anic verses Mattar (2010) draws on to illustrate the principles by which Islamic labour law is modelled are chapter 7 verse 85, "So fulfil the

measure and weight and do not deprive people of their due and cause not corruption upon the earth after its reformation. That is better for you, if you should be believers" (p. 22). Similarly, he cites the Qur'an chapter 4, verse 32, "…to men is allotted what they earn, and to women what they earn" (p. 22).

Imam Ali ibn Abi Talib is the first leader of the Muslim world after Prophet Muhammad who is recognised as an exemplar of just governance and efforts in the areas of human rights and advancement of scholarship from 556 to 619 A.D. (UNDP, 2000). He is known to have released 1000 slaves during his lifetime (Shahrudi, n.d.), and is recorded to have said, "All people are born free, except those who (wrongfully) declare themselves to be slaves"(al-Islam.org, 2014) and "Do not be slaves for others since God has established you to be free" (ar-Radhi, n.d.). Further, Imam Ali ibn Abi Talib is recognised for his famous teaching to Malik al-Ashtar, the then governor of Egypt: "habituate your heart to mercy for the subjects and to affection and kindness to them…for a person is either your brother in faith or your equal in humanity" (ar-Radhi, n.d.).

Further, Mattar (2010) explains the consideration of work as an esteemed act of worship, which recognises the rights of an employer and the employee, describing the importance of transparent agreements and fulfilled obligations upon entering into a contract. This is based on a number of *ahadith* such as one narrated by Imam Ali ibn Musa ar-Ridha, a member of the *Ahlulbayt*, who is recorded to have raised the importance of informing a worker of their due wages prior to exacting labour. Imam Ali ibn Musa ar-Ridha is also said to have emphasised, "pay a worker before his sweat dries on his body"[3] denoting the importance of not withholding or delaying payment even for a moment (as cited in *Pearls of Wisdom: Unfixed Labour*, n.d.). Similarly, the Qur'an states in chapter 11, verse 85, "And O my people! Give just measure and weight, nor withhold from the people the things that are their due", denoting the importance of precise business transactions and corporate social responsibility, according to Islamic edict.

Moreover, Mattar (2010) suggests that Islam condemns the infliction of harm and hardship irrespective of whether an act is intentional or not, thereby prohibiting the

[3] *translation*

subjection of hard or forced labour on anyone. As narrated by Imam Muhammad al-Baqir, a member of the *Ahlulbayt*, “Indeed he who treats fairly, even if to his own detriment is only increased in worth and honour by Allah” (Al-Kulayni, n.d. as cited in Al-Aamili, 2002). Consequently, these provisions illustrate that Islamic tradition, in harmony with international law, prohibits the corrupt, deceptive and coercive practices characteristic of the crime of trafficking in persons and promotes the equitable treatment of workers.

The history of slavery, particularly in the Middle East is a common point of reference when addressing contemporary manifestations of human trafficking and slavery. The Middle East is often criticised for its heavy reliance on slave labour throughout the ages and this extends to critiques of early Muslim societies. Islam in particular has been called into question for not immediately abolishing slavery; however, research regarding the use of slaves and slave labour in the Middle East, reveals that it was a common and legitimised activity long before the advent of Islam. As such, the role of Islam was to shed light on the importance of abandoning this practice, through a gradual shift in the mentality and attitude of society, in order to ensure adherence to this newly introduced norm. Through the extensive research of Mattar (2010), it is plainly evident that Islamic doctrine was not accepting of inhumane treatment of people, and therefore, sought to reform society’s exploitative practices. This was done in Qur’anic text as well as through the tradition of Prophet Muhammad and his household, the *Ahlulbayt.*

The following section discusses the political economy of the GCC. The discussion regarding the history of slavery in this region is particularly relevant to the next section, because of the interplay between unfree labour and the abundance of wealth in this region. Throughout the next sections, it becomes evident that while slavery, is no longer manifested as it was historically, it does exist in other forms. In order to provide contextual understanding of current trafficking situation in the region, the following sections discuss the role of an abundance of wealth and other push and pull factors relevant to the GCC, such as priorities to trade and stance on labour issues, in light of barriers to reform that transcend time.

3. Political Economy of the GCC

3.1. The Gulf Co-operation Council

In order to understand the context within which trafficking in persons in the Gulf States occurs, it is necessary to consider historical, political legal and economic factors. The reason for constructing a clear understanding of this backdrop is partly due to the multifaceted nature of human trafficking which is embedded in these contributing factors, all of which play a significant role in creating the supply chain of trafficking in persons. This section provides a brief outline of the context in each of the GCC Member States.

The Gulf Co-operation Council (GCC) is comprised of six states, namely Bahrain, Kuwait, Saudi Arabia, United Arab Emirates, Oman and Qatar, which are situated below the Persian Gulf and south of Iran. The GCC shares borders with Iraq, Jordan and Yemen and is positioned between the Indian Ocean and Red Sea. The GCC reached a cooperative framework on the 25th of May 1981, "joining the six states to effect coordination, integration and inter-connection among the Member States in all fields in order to achieve unity" (The Cooperation Council for the Arab States of the Gulf). The website for the Cooperation Council for the Arab States of the Gulf further states that:

> The underpinnings which are clearly provided for in the preamble of the GCC Charter, confirm the special relations, common qualities and similar systems founded on the creed of Islam, faith in a common destiny and sharing one goal, and that the cooperation among these states would serve the sublime objectives of the Arab nation.

Amongst its objectives, the GCC Charter provides, formulating similar regulations in various fields including economic and financial affairs, and legislative and administrative affairs, as its key priorities.

3.1.1. Historical, Political and Legal Infrastructure

The GCC states together have a population of approximately 47 million persons (The Cooperation Council for the Arab States of the Gulf, 2014). While each of the states share similarities, slight differences in the political and legal makeup of each of these states, renders each state as unique in its outlook and contribution to the interests of the GCC as a whole.

The largest of the six states is the Kingdom of Saudi Arabia (Saudi Arabia), which came into being in 1932 (Royal Embassy of Saudi Arabia Washington DC, 2014). Saudi Arabia which is, "named after the ruling Al Saud family, [who] came into power in the 18th century", is home to "27 million [people], including 8.4 million foreign residents" according to a 2010 census (Royal Embassy of Saudi Arabia Washington DC, 2014). According to its government, "the Kingdom's political system is rooted in Islam's traditions which call for peace, justice, equality, consultation and respect for the rights of the individual" (Royal Embassy of Saudi Arabia Washington DC, 2014). The Sultanate of Oman (Oman) which, similar to Saudi Arabia, was established in 1932. Under the rule of Sultan Qaboos Bin Said, it occupies the "south-east corner of the Arabian Peninsula [and] has a strategically important position at the mouth of the Gulf" (British Broadcasting Corporation, 2013). Oman is the oldest independent state in the Arab world and has a population of 2.9 million (as cited in British Broadcasting Corporation, 2013). As in Saudi Arabia, Oman's judicial system traditionally has been based on a particular reading of Shari'ah, often translated as Qur'anic or Islamic law, and the teachings of Islam.

The United Arab Emirates (UAE), "is a federation of seven states [emirates] formed in 1971 by the then Trucial States after independence from Britain" (British Broadcasting Corporation, 2013). The UAE in total has a population of 8.1 million according to the United Nations (2012 as cited in the British Broadcasting Corporation, 2013). Despite its authoritarian system of government, the UAE is described as "one of the most liberal countries in the Gulf" (British Broadcasting Corporation, 2013). The UAE's legal system is purportedly, "founded upon civil law principles (most heavily influenced by Egyptian law) and Islamic Shari'a law, the latter constituting the guiding principle and source of law" (Tarbuck & Lester, 2009, p. 7). The Dubai Courts, which are under the mandate of Sheikh Mohammed bin Rashid Al Maktoum, the Emir of Dubai and

Prime Minister of the UAE, provides that "its vision is to be a pioneer in court procedure, while valuing justice, equality, ingenuity, excellence, teamwork and independence" (Government of Dubai, 2014).

The State of Kuwait (Kuwait), the fourth largest GCC state, flanked by Saudi Arabia and Iraq, came into independence in 1961, nearly 30 years after its oil fields were first discovered (British Broadcasting Corporation, 2013). Ruled by Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, Kuwait has a population of 3.1 million according to a 2011 census conducted by the State of Kuwait Central Statistics Bureau) of which a significant portion are also migrant workers. While Islamic law is said to form a major source of law in Kuwait, the State primarily follows the civil law system that is rooted in Egyptian and French codes. Accordingly, the State's position is that, "it is not essential for a law to be totally in conformity with Islamic Sharia in order for it to be constitutional" (Abdullah Al-Ayoub & Associates, 2014).

Typically, the laws that are exempt from conforming to Islamic law are ones involving commercial laws permitting the payment of interest in commercial transactions (Abdullah Kh. Al-Ayoub & Associates, 2014). The State of Qatar (Qatar), after gaining independence from British protectorate in 1971 and the discovery of oil and gas fields, became one of the wealthiest countries of the Gulf region, and is now a global energy giant. Qatar is home to approximately 1.9 million people (United Nations, 2012 as cited in British Broadcasting Corporation, 2013). Under the rule of the Thani family, who has been in power for almost 150 years, Qatar's legal system has its roots in both ancient and classical sources (Sultan Al-Abdulla & Partners, 2014). It is stated that, "on the one hand it is founded on Islamic Law and jurisprudence, and on the other, it has adopted many principles of the Napoleonic Civil Code" and borrowed heavily from Egyptian jurisprudence (Sultan Al-Abdulla & Partners, 2014).

Lastly, the Kingdom of Bahrain (Bahrain), which is the smallest of the six GCC states, has been ruled by the Khalifa family since 1783 and has a population of 1.4 million people according the United Nations (2012 as cited in British Broadcasting Corporation, 2013). As in other GCC states, Bahraini citizens live under a dual legal system, comprising of both civil law and Islamic law. The mandate of the Civil Law Courts covers commercial, civil and criminal cases, as well as "all cases involving

disputes related to the personal status of non-Muslims" (Embassy of the Kingdom of Bahrain in Japan, 2014).

After the GCC's creation on 25 May 1985, "besides reinforcing security cooperation, states in the region have initiated a move towards regional integration similar to that of the EU, with the objective of creating a customs union and adopting a single currency" according to Ayadi and Gadi (2013, p. 1). Following the establishment of a Secretariat General in 1981, a number of organisations similar to the EU were created, namely the GCC Patent Office in 1992, the GCC Standardisation Organisation in 2001 and the Monetary Council in 2009 (Ayadi & Gadi, 2013).

3.1.2. Economic Infrastructure

With a gross domestic product (GDP) of $1.60 trillion and a GDP per capita of $33.3 thousand, the GCC is arguably one of the wealthiest regions and economic blocs in the global market (The Cooperation Council for the Arab States of the Gulf, 2014), making it a powerful player in international trade by the rules of competitive advantage which will be discussed in the following sections. The region is well known for its oil and natural gas reserves to which they claim 30% and 20% respectively while their share of production of oil and gas is 23% and 11% (Devaux, 2013, p. 19).

Saudi Arabia is described as one of the largest economies in the world, "accounting for 55% of total GCC GDP" (Deloitte, 2013, p. 4). Capable of producing more than 10 million barrels a day (British Broadcasting Corporation, 2013), oil in Saudi Arabia is said to account for approximately "90% of exports and 75% of government revenue, which is being used to facilitate an infrastructure boom" (Deloitte, 2013, p. 4), although figures appear to be on a gradual decline (Devaux, 2013). As a result, Saudi Arabia's economic "diversification efforts are focusing on power generation, telecommunications, natural gas exploration, and petrochemical sectors" (Central Intelligence Agency, 2014). Currently Saudi Arabia holds $656.9 billion in reserves of foreign exchange and gold, making it the fourth largest holder of reserves in the world (Central Intelligence Agency, 2014) and exports are said to be approximately $388.4 billion while imports are around $141.8 billion.

Similar to Saudi Arabia, Oman's wealth fetches a reported GDP of approximately $89.06 billion (Central Intelligence Agency, 2014), 70% of which is contributed by the private sector (Devaux, 2013). Also similar to Saudi Arabia, Oman is spending significant efforts towards economic diversification, in order to create more jobs in response to soaring unemployment rates for the national population which stems from an "economic development model based on the development of hydrocarbon sector and industrial sectors that do not create many jobs" (Devaux, 2013). Oman currently holds $14.4 billion in foreign exchange and gold (Central Intelligence Agency, 2014). Exports in 2012, the last official year statistics are available for Oman, approximated $52.14 billion while imports were at $25.63 billion.

Similar to Saudi Arabia and Oman, the UAE, which is often marketed as one of the seemingly wealthiest countries in the world, has the Arab world's second biggest economy (Gulf Times, 2014). After gaining foreign direct investment (FDI) to exploit oil and gas (Deloitte, 2013, p. 4), it continues to be one of the world's greatest producers and exporters of oil, with current reserves being held at about 6% of global reserves. In response to concerns about over dependence on oil production and export, the UAE is reportedly "pouring tens of billions of dollars into expanding ports, building airports and developing real estate…amid an economic diversification plan" (Gulf Times, 2014); however, with an average in oil prices of about $100 a barrel last year, the UAE still remains at an economic advantage, due to its link to the regional oil cycle (Devaux, 2013).

The UAE's two main focal points for diversification are tourism and construction, which have both created a labour infrastructure that is significantly dependent on foreign labour. According to Deloitte (2013), which assessed the construction industry in the GCC, found that in 2012, the UAE replaced Saudi Arabia, "as the GCC's largest construction market…with USD 16.2bn" (p. 5). Currently, the UAE's GDP is estimated at around $255.8 billion, ranking as the world's 51st country. The UAE has exports of $350.1 billion and imports of $221.9 billion (Central Intelligence Agency, 2014). Despite its size, Kuwait currently holds 7% of the world's crude oil reserves, which is approximately 102 billion barrels (Central Intelligence Agency, 2014). According to the Central Intelligence Agency (2014), "petroleum accounts for nearly half of GDP, 95% of export revenues, and 95% of government income".

What has been described as ‘paternal capitalism’, the Kuwaiti economy has three main sectors (Embassy of Kuwait, 2014). The sectors identified by the Government of Kuwait, are “the dominant public sector of government institutions and state-owned oil companies, the private sector controlled mainly by local merchant families, [and] the joint sector in which business enterprises are owned by a mix of public and private sector”, such as the local co-op supermarkets (Embassy of Kuwait, 2014). Similar to the other GCC states, the heavy dependence on oil revenue has led Kuwait towards diversification of its economy yet inefficient government bureaucracy, restrictive labour regulations and policy instability are cited as the top three problematic factors for doing business in and with Kuwait (2012-2013 World Economic Forum report, as cited in Deloitte, 2013). These factors, in addition to corruption, render Kuwait’s business environment as the weakest of all the GCC states. Exports by Kuwait amounted to approximately $121 billion in 2012 (Central Intelligence Agency, 2014).

With a GDP of $183.5 billion and growing since 2012, the Qatari economy has proven to be one of the strongest of the GCC states and the world’s highest per-capita income country as well as the country with the lowest unemployment rates (Central Intelligence Agency, 2014). In fact, Qatar has proved oil reserves in excess of 25 billion barrels with a forecasted output of oil at current levels for another 57 years (Central Intelligence Agency, 2014). Similarly, Qatar’s “proved natural gas reserves, exceed 25 trillion cubic meters, more than 13% of the world’s total and third largest in the world” (Central Intelligence Agency, 2014).

As with Kuwait, Qatar’s heavy reliance on oil and gas, placing it as one of the top two GCC states to rely most heavily on oil and gas, which currently account for more than 50% of GDP, roughly 85% of export earnings and 70% of government revenues, has led to increased efforts towards developing policy focused on “developing Qatar’s non associated natural gas reserves and increasing private and foreign investment in non-energy sectors” (Central Intelligence Agency, 2014). In 2012, exports amounted to US$133 billion (Central Intelligence Agency, 2014). A number of initiatives under this policy directive are a greater focus on the export of fertilizer and steel (Central Intelligence Agency, 2014). As a successful bidder for the 2022 World Cup, Qatar has allocated US$150 billion to prepare its infrastructure yet its labour regulation continue to

be a leading source of concern for prospective businesses in the global market (2012-2013 World Economic Forum report, as cited in Deloitte, 2013).

Unique in its own right, Bahrain is recognised as the leading GCC state for diversifying its economy, by being the first GCC state to implement a Free Trade Agreement with the United States in 2006. Bahrain is also known for its "highly developed communication and transport facilities, [which] make Bahrain home to numerous multinational firms with business in the Gulf" (Central Intelligence Agency, 2014). Yet, despite these great strides towards diversification, Bahrain depends heavily on oil production, accounting for more than 60% of export receipts, 70% of government revenues and 11% of a GDP of $33.3 billion (Central Intelligence Agency, 2014).

As in the UAE, a lack of hydrocarbon resources has led the Government of Bahrain to encourage investments in the private sector (Devaux, 2013, p. 18), significant production of aluminum and textiles, and efforts in the finance, particularly in Islamic banking, and construction industries (Central Intelligence Agency, 2014). Although currently suspended, the Bahraini Government is unique in its taxing of expatriate labour (Central Intelligence Agency, 2014), and this has contributed negatively to Bahrain's ranking in global competitiveness as a site for prospective business investments (2012-2013 World Economic Forum report, as cited in Deloitte, 2013).

The abundance of wealth from oil and natural gas reserves in the GCC coupled with the desire to expand its economy through diversification, make it an attractive location for international trade and offshore corporations. Particularly, the economic strength of the GCC, combined with its geographic location, positions it as a powerful economic bloc and prospective global trading partner for many of the world's superpowers. The flow of capital in this region, also makes the GCC an attractive location for migrant workers from developing countries nearby, who view the Gulf States as a land of work opportunities. The following sections describe the role of the migrant labour force and related labour issues in further detail.

3.1.3. Implications of the Legal, Political and Economic Infrastructure in the GCC

While the economic policies of the GCC have gone through major transformation since 1990, growing from the need to diversify in anticipation of the impact of the long-standing problem of relying heavily on producing non-renewable resources coupled with the difficulty in predicting oil production prospects due to the uncertainty of the level of reserves, plans to diversify are rooted in a much larger problem (Devaux, 2013). As part of the economic diversification policies, the GCC is expending significant effort to ensure its financial and economic prowess is maintained and in doing so, has tapped into other means of securing leverage by creating other industries. One particular means of securing leverage is by tapping into the tourism industry, and with that, the construction industry, in order to ensure rapid architectural development. Devaux (2013) provides that, "to meet the enormous labour needs arising from rapid economic development, historically governments have called massively on foreign labour, which is employed primarily in the private sector" (p. 19). The heavy dependence on foreign labour can be viewed as a positive indicator of growth and development in the region, illustrating the high demand for labour as a means of keeping up with the rapid expansion, however, it is not a contemporary feature of the Gulf States. As discussed in earlier sections, traces of the heavy reliance on a foreign labour force, can be traced back historically, to the dependence on slaves. Slavery and the trade in human beings, as a legitimate form of trade and source of labour in the region, prior to being criminalised, were viewed as suitable business options. It was only with the shift towards recognition of labour and labour rights within a legal framework, when the slave trade was formally abolished, and new forms of unfree labour began to take its place.

In the GCC, "national populations mainly hold public sector jobs in a kind of income redistribution system: there are either no incentives or they lack the skills necessary to hold private sector jobs" (Devaux, 2013, p. 19). Generally, this results in as high as 90% of nationals working in the public sector and conversely, 90% of expatriates working in the private sector (Devaux, 2013, p. 19). As a result, the labour situation in the GCC states has gained considerable attention and has come under public scrutiny. In response, the leaders of the GCC have shifted their focus from one of pure economic performance to an outlook with a keen eye for international trade and foreign

investments, under what has come to be termed as the EU-GCC Free Trade Agreement, wherein public perception of alliances with some of the world's superpowers forecasts not only economic but more importantly, political stability for the GCC.

In order to undertake this endeavour however, the GCC first began developing an economic plan of its own to ensure the minimization of the threat of political take-over, and maximization of benefits and protection of wealth in dealing with countries in the EU with whom they historically had a strained political relationship, such as the United Kingdom, which held the GCC states under its rule as a British protectorate until as late as the 1970s (British Broadcasting Corporation, 2013). The next two sections describe parts of the Economic Agreement, which are most relevant to the discussion, namely the GCC's stance on labour interests and on international economic relations.

3.1.4. The GCC's Stance on Labour Interests

The labour market structure in the GCC relies heavily on cheap foreign labour (Ministry of Planning, 2000, Faris, 1996, Taryam 1997, al-Hamad, 1994 as cited in Saban, n.d.). The most current figures for the GCC reveal that expatriates constitute approximately 81 percent of the UAE's total population, 75 percent in Qatar, 67 percent in Kuwait, (Pradhan, 2010), 30 percent in Saudi Arabia, 62 percent in Oman and 26 percent in Bahrain ("Expat population 'could threaten' GCC Security, 2012). While dependency on foreign labour in this region is rooted in several factors, the most predominant causes include "low labour force participation, especially of women, a small native population, initially low literacy and educational levels, and high non-labour income for nationals" (Pradhan, 2010, p. 65). Further, in the GCC, "the nature of citizenship…is shaped by [its]…political economy…as citizenship is closely connected to economic benefits" (Chatham House, 2012, p. 3).

As with other challenges on the horizon, the GCC's economic integration efforts recognised the importance of finding common solutions as an economic bloc, rather than addressing the problem by way of stopgap grants, which historically resulted in a shifting of the problem of heavy dependence on cheap foreign labour and oil to a neighbouring state within the GCC (Chatham House, 2012). As a result, the GCC, partly in fear of political encroachment by expatriates and neighbouring countries (Anti-Slavery

International, 2006), and partly in response to the growing need to explore alternate effective economic solutions, sought to draft an economic plan. Discussions of an economic plan envisioned the creation of a bulwark against what is a significant weakness in the GCC and this served to create a sense of shared responsibility and opportunity for a partnered response in working towards long-term solutions.

To this end, the GCC Supreme Council adopted the Economic Agreement between the GCC states in its 22nd session, on 31 December 2001. Of particular interest are Sections 1 and 2 of Article Sixteen. Section 1 of Article Sixteen states with respect to 'Manpower Nationalization', that, "Member States shall undertake the policies necessary to develop and unify their labor rules and legislation" (The Cooperation Council for the Arab States of the Gulf Secretariat General, 2001, p. 10). As well, in Section 2 of Article Sixteen of the Agreement states that, "Member States shall adopt unified criteria for job description and classification for all professions and trades in all sectors, and undertake to develop and exchange all information related to their labor markets, including unemployment rates, job opportunities and training programs" (The Cooperation Council for the Arab States of the Gulf Secretariat General, 2001, p. 10).

The Economic Agreement did not subsequently fulfill its promise. According to the International Monetary Fund (2013), "excluding the UAE for which data are unavailable, about 7 million jobs were created in the GCC in 2000-2010 [of which] about 5.4 million…were in the private sector" (as cited in Dokoupil, 2013). However, it is stated that of those private sector jobs, "nearly 88 percent were filled by foreign workers [and in contrast] in the public sector, where average wages can be several times higher, nearly 70 percent of new jobs were taken by local citizens" (Dokoupil, 2013). As such, there remains considerable room for further development and progression, some of which depend on the GCC's position in international economic relations.

3.1.5. The GCC's Stance on International Economic Relations

The GCC, similar to other regional trade blocs, has an interest in leveraging its position as one of the wealthiest and strongest global economic blocs. Positioned as the leading hub serving the Middle East, Africa and Southeast Asia, the GCC is one of the major sources of foreign investment capital with projected holdings of over US$3.5

trillion in foreign direct investment (Foreign Affairs, Trade and Development Canada, 2013).

In the 1980s in an effort to harmonize their economic systems, the GCC began the process of economic integration (Legrenzi, 2011) fairly rapidly. The first developments towards harmonisation occurred with the introduction of the Unified Economic Agreement (UEA), described by Legrenzi (2011) as "by far the most significant agreement and indeed the cornerstone of all subsequent cooperation in the economic sphere" (p. 63). The UEA which was "approved in principle on 8 June 1981, less than three weeks after the adoption of the GCC Charter, and which was then formally ratified by the GCC heads of state at the their summit in November 1981" (Legrenzi, 2011, p. 63) consists of seven chapters divided into twenty-eight articles. The seven chapters consist of (1) Trade exchange (2) Movement of capital and citizens and the exercise of economic activities (3) Coordination of development (4) Technical cooperation (5) Transport and communication (6) Financial and monetary cooperation (7) Closing provisions (World Trade Law, 2014).

The second development towards harmonisation occurred on 1 March 1983 with the introduction of a unified 'economic citizenship', which meant that visa requirements for GCC citizens were eliminated, in accordance with Article 4 of the GCC Charter (Legrenzi, 2011). Legrenzi (2011) further provides that, "around the same time the ownership rules for companies were relaxed for GCC citizens well in advance of World Trade Organization (WTO) requirements[4], even in Saudi Arabia, the most shielded of the six economies" (p. 59). Using the classical work of the Hungarian economist Béla Balassa on economic cooperation and integration, the GCC have to a degree, successfully implemented the five sequential stages of economic integration, namely (1) establishing a free trade area (2) a customs union (3) a common market with the

[4] The World Trade Organization's General Agreement on Trade in Services is described as, "the first and only set of multilateral rules governing international trade in services….developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communciations revolution" (World Trade Organization, 2014). Mode 3 or the "commercial presence" clause of the World Trade Organization's General Agreement on Trade Services (GATS) provides that signatories agree to "a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country) (World Trade Organization, 2014).

exception of an important proviso for the six states, which excludes the foreign labour force from enjoying free movement (4) economic union and (5) complete economic integration (as cited in Legrenzi, 2011, p. 60-61).

The concluding Agreement illustrates the gradual and final step in establishing the GCC's position internationally, drawing on the Charter and the UEA. Chapter I, Article Two of The Economic Agreement outlines the GCC's interest maintaining its fiscal strength through enhanced international economic relations in, stating:

> To secure better terms and more favorable conditions in their international economic relationships, Member States shall draw their policies and conduct economic relations in a collective fashion in dealing with other countries, blocs and regional groupings… (p. 5).

Further, the Agreement provides that "Member States shall take the necessary means to achieve this objective, including the following:

i. Negotiate collectively in a manner that serves the negotiating position of the Member States.
ii. Collectively conclude economic agreements with trading partners.
iii. Unify important and export rules and procedures.
iv. Unify commercial exchange policies with the outside world (p. 5).

Whether as part of a larger plan or simply bearing the fruits of efforts well spent by strengthening themselves through systematic and strategic economic integration, the GCC early on established and solidified their position in the international economic arena. Despite this rather rapid emergence and a host of concerns plaguing the GCC's fiscal strength (such as product over-specialisation in oil and a heavy reliance on foreign labour), the signing and ratification of both the GCC Charter and the Unified Economic Agreement meant that the GCC was then ready to compete for a more prominent position in international trade and economic relations, beginning with discussions about a free trade agreement with the European Union (EU).

What economic analysts at the time were not aware of however, was that obtaining a prominent position on the international stage simultaneously meant that the GCC would face a host of insoluble problems. These occurred both in the process,

which has taken over two decades and resulted in several suspended negotiations, and in the potential outcome of the signing of a EU-GCC FTA. Of particular concern to this research is the impact of the potential FTA on economic integration, which will add complicated rules of origin procedures for the GCC. However, more importantly, this thesis is concerned with the GCC's anticipated reservations with respect to labour codes and regulatory frameworks, which currently place undue restrictions on the migrant labour force and restrain their rights to mobility in the Gulf states. This is in marked contrast with the EU structure wherein borders are nearly as porous for migrant workers as they are for EU citizens and where minimum standards on their treatment exist, at least in policy.

It has been illustrated thus far that in order to understand the context within which trafficking in persons in the Gulf States occurs, it is necessary to consider historical, political legal and economic factors in the six Member States of the GCC. While each of the states have been shown to have a slightly difference political and legal makeup, the similarities shared, make the economic bloc a unique and powerful region. Part of the advantageous position of the GCC is attributed to the abundance of wealth due to oil and natural gas reserves. However, the GCC economies have simultaneously expended efforts to diversity the economy and in doing so, have relied heavily on foreign labour employed in the private sector. This heavy dependence on foreign labour, under particular conditions, can be traced back to historical practices, which demonstrate a trend in reliance on slave labour. With this dependence, the GCC has seen challenges in its economic integration, as a result of growing lack of work opportunities for GCC nationals. This has led to the adoption of the Economic Agreement, in an effort to unify labour rules and retain international business prospects. However, challenges remain to consume GCC relations with international partners, which will be discussed in the following section, with particular reference to the EU-GCC free trade negotiations that have been suspended due to labour concerns in the GCC. In addition the following section outlines the labour concerns in the context of international trade, anti-trafficking legislation and stipulations in international law, that prohibit slavery like practices in any form, as a norm from which states are prohibited from derogating in legislation and practice.

4. International Law, Trade, and the GCC

4.1. International Trade and Trade Agreements

There are two basic reasons why countries trade internationally. One reason is because countries do not have the ability to produce a certain good or provide a certain service domestically and are required to import it. The second reason is more complex because countries sometimes import goods or services even when they have the capability to produce it themselves. In fact, this type of trade accounts for majority of international trade today (Reuvid & Sherlock, 2011). The question arises as to why countries import goods and services when they can be self-sufficient? Reuvid and Sherlock (2011) suggest that the reasons for this fall under one of three classifications: "The imported goods may be cheaper than those produced domestically [;] A greater variety of goods may be made available through imports [or] The imported goods may offer advantages other than lower prices over domestic production" (p. 3). All three of the classifications are rooted in the law of comparative advantage, which was first articulated by David Ricardo, an economist in the 19th century (Reuvid & Sherlock, 2011).

Fundamentally, the law of comparative advantage proposes that there is an "economic benefit for a nation to specialize in producing those goods for which it has a relative advantage, and exchange them for the products of the nations who [have] advantages in other kinds of product" (Reuvid & Sherlock, 2011, p. 4).

Over a span of 140 years, world trade grew and fell into slumps rapidly, particularly during the interwar years of the 1920s and 1930s (Reuvid & Sherlock, 2011). In response, many governments reacted by trying to protect "jobs at home by raising the protection against imports" (Reuvid & Sherlock, 2011, p. 6). This resulted in an increase of tariffs, which are taxes or duty levied on imported goods, as well as non-tariff barriers such as quotas, which are numerical limits in terms of value or volume imposed on the

amount of a product that can be imported, both of which have come to be known as the most common methods of protectionism (Reuvid & Sherlock, 2011, p. 7).

Other less common forms of protectionism that were introduced were voluntary export restraints, domestic subsidies, import deposits, safety and health standards, technical specifications, and exchange rate manipulation (Reuvid & Sherlock, 2011), all of which are claimed to be aimed at protecting businesses and workers within a country. In response, agreements and organisations such as the General Agreement on Tariffs and Trade (GATT), the World Trade Organisation (WTO) and the International Monetary Fund (IMF) were set up to overcome protectionism (Reuvid & Sherlock, 2011), with advocates arguing that protectionism harms the people it is meant to help, and instead promoted the notion of 'free trade'. The following sections explain in greater detail the origins of free trade and free trade agreements, concluding with a critique of these agreements.

4.1.1. Origins of the Free Trade Doctrine

'Free trade' is a term that does not have a unique definition (Irwin, 1996, p. 5). According to Irwin (1995),

> In theoretical terms, free trade generally means that there are no artificial impediments to the exchange of goods across national markets and that therefore the prices faced by domestic producers and consumers are the same as those determined by the world market" (p. 5).

In practical terms, he suggests, free trade describes,

> "A policy of the nation-state toward international commerce in which trade barriers are absent, implying no restrictions on the import of goods from other countries or restraints on the export of domestic goods to other markets" (Irwin, 1996, p. 5).

The notion of free trade and a universal economy can be dated as far back as A.D. 100, to the works of Plutarch. Irwin (1996) provides that Plutarch contemplated in writing, the suitability of the sea and its benefits in bringing not only friendship, cooperation, mutual assistance and exchange between inhabitants of lands between the sea, but the bringing of vine from India to the Greeks, the use of grain across the sea

from Greece and the concept of writing letters from Phoenicia against forgetfulness, without which Plutarch wrote, “man would be savage and destitute” (as cited in Irwin, 1996, p. 11).

In contrast, other early thinkers were less eager about such notions. For example Quintus Horatius Flaccus, or Horace the Roman lyric poet, as he is known in the English-speaking world, who lived from 65 B.C. until 8 B.C., wrote: “In vain has God in his wisdom planned to divide the land by the sea’s separations, if, for all that, ungodly ships are crossing the waters that he placed out of bounds” (as cited in Irwin, 1996, p. 12). Similarly, early philosophers, theologians and writers such as Cicero, Plato, Pliny, Aristotle and St. Thomas Aquinas too make reference to the positive or negative implications of the doctrine of free markets in some of their cornerstone works *Politics*, *Republic*, *De Officiis* and *Summa Theologica*. This reveals that the doctrine of free trade is not necessarily a modern feature of the globalised world but one that has been contemplated and debated for centuries, and which will likely continue to consume much of scholastic thought and perhaps even some political and economic debates regarding the subject.

A free trade agreement (FTA), is described as a “treaty between two or more countries to establish a free trade area where commerce in goods and services can be conducted across their common borders, without tariffs, quotas, or hindrances” (Business Dictionary, 2014). This is not however include, the free movement of capital or labour. The distinguishing feature of FTAs is that “member countries usually impose a uniform tariff (called common external tariff) on trade with non-member countries” (Business Dictionary, 2014). The rise of FTAs is most evident in the latter part and particularly in the last decade of the twentieth century.

FTAs can be signed bilaterally, multilaterally or regionally. Multilateral FTAs, the most common agreements often associated with the WTO, are agreements between multiple states to “exchange tariff preferences in line with the non-discriminatory most-favoured-nation principle” (The Conversation, 2013). Bilateral FTAs, agreements between two states, became a popular choice as a result of the difficulties inherent with forging consensus among multiple states. Bilateral FTAs “typically involve states swapping trade concessions with each other, but also address so called trade-related

measures such as investment, intellectual property, and bio-security", while excluding other sensitive trade issues from the agenda, such as agriculture, and services" (The Conversation, 2013). Regional FTAs provide a foundation upon which multilateral deals can later be built. They are described as the option midway between multilateralism and bilateralism, wherein a group of countries within a geographic region negotiate a free trade area (The Conversation, 2013).

These agreements are "sometimes considered trade sweet spot – easier than multilateralism, but more substantial than bilateral deals" (The Conversation, 2013). Some of the immediate challenges associated with regional FTAs are power asymmetries, which result in "deals that favour the largest member [of the regional bloc], at the expense of smaller partners" (The Conversation, 2013). As well they are thought to "pose the risk of balkanising the global trading system by dividing the world economy into competing trade blocs" (The Conversation, 2013). Regional FTAs are the focus of this thesis.

4.1.2. Critique of FTAs: Legal Straightjackets or a Democratisation of Trade?

Scholars of early modern history have found that a majority of economists believed that international trade should be free (Kearl et al., 1979). This view can be traced to the publication of Adam Smith's 1776 book, *The Wealth of Nations,* which set the tone for the subsequent two centuries of economic literature. There is a general consensus among economists that free trade among nations improves overall economic welfare (Irwin, 1996). This is reflected in a as the findings of a study conducted by Frey et al., (1984) which revealed that 95 percent of economists in the United States and 88 percent of economists in a survey administered in the United States, Austria, France, Germany and Switzerland, supported with qualifications the proposition that "tariffs and import quotas reduce general economic welfare" (as cited in Irwin, 1996, p. 3). The reason provided for this belief is that free trade is argued to "allow each country to specialize in the goods it can produce cheaply and efficiently relative to other countries [and] such specialization enables all countries to achieve higher real incomes" (Irwin, n.d.).

Critics have suggested, however, that free trade agreements have little to do with free trade (Fletcher, 2010). Banerjee and Goldfield (2007) have argued that, "globalization under neoliberalism is really what has been happening to the world economy" (p. 2). The authors contend that, " neoliberalism has several tenets, which it trumpets, promotes and pushes with near religious fervour" the first of which is the mantra of free trade (p. 2). The objectives of neoliberal globalisation have not only been to control private markets such as banks and investments, but also to privatize all state-controlled enterprises and even public utilities such as industry, oil and transportation, to ensure their 'optimal functioning' (Banerjee & Goldfield, 2007). The means used to this end call for a withdrawal by states from

> "the business of regulation industries including utilities, airlines and trucking" in addition to the diminishing of social support given by the state to its citizens in the form of minimum wages, workplace safety regulations and rights, health care, disability benefits, unemployment insurance, pensions and other forms of social welfare" (Banerjee & Goldfield, 2007, p. 3)

Despite successful attempts at marketing free trade agreements as a necessary tool of trade liberalisation[5] and as a beneficial by-product of globalisation (simultaneously falsely promoting trade liberalisation itself as a healthy choice), Fletcher (2010), argues that the legal substance of free trade agreements are 10 percent about free trade and 90 percent about matters that do not concern free trade agreements. Rather, he argues, "these agreements go beyond securing honest foreign investors…and embrace the dangerously elastic principle that any action which reduces the future profitability of foreign investments constitutes expropriation" (Fletcher, 2010, p. 165). Suggesting that FTAs are less about putting governments in legal straightjackets and more about reinforcing profoundly undemocratic values, he describes the problem of overt support of private interests over public interests:

> Taken to its logical conclusion, this ultimately amounts to the idea that the profitability of investments must be the supreme priority of state policy –

[5] Trade liberalisation, which stems from conventional economic theory concludes that by liberalising trade, it will "lead to increased trade, accelerated economic growth, more rapid technological change, and a vastly improved allocation of national resources away from inefficient import substitutes toward more efficient exportable goods" (Shaikh, 2007, p. 51).

> overriding health, safety, human rights, labor law, fiscal policy, macroeconomic stability, industrial policy, national security, cultural autonomy, the environment, and everything else (Fletcher, 2010, p. 166).

Similarly, McNally (2006) suggests that the idea that free trade and globalisation are intricately connected in a relationship whereby globalisation enables world trade is a myth. He argues, "among the main claims made by globalization advocates are that recent decades have seen an unprecedented rise in the significance of world trade, and that, as a result we are moving toward a more open [and freer] world [however] neither of these claims is supported by the evidence" (McNally, 2010, p. 166). McNally (2010) found that while there has been a decline in the most conventional of trade restrictions – tariffs, which are taxes applied to imports or exports that cross borders, quotas and other non-tariff barriers are in fact rising (p. 31).

One example of this can be found in the signing of recent FTAs between the U.S. and Chile, Singapore, Peru, Columbia and Thailand wherein the intellectual property provisions have the highest standards of protection yet seen in patent law, which "add periods of marketing exclusivity, extend the scope and terms of patent protection, facilitate ever-greening, block parallel imports and limit the ability to utilise compulsory licensing" (Harrison, 2007, p. 167). All of these conditions have resulted in either a skyrocketing of prices of medicine in developing countries or the limiting of their ability to obtain generic medicines[6] (Harrison, 2007, p. 167).

McNally (2010) further argues that if the hypotheses about the positive influences of globalisation of free trade were true, the share of imports which were subject to barriers such as rising quotas and other non-tariff barriers, into the U.S. alone between 1975 and 1992 would not have risen from 8 to 18 percent (McNally, 2010, p. 31), a nearly 50 percent growth rate in a span of two decades. The figures are particularly significant if analysed statistically, which should expectedly reveal a positive correlation between the sudden rise in FTAs, which Legrenzi (2011) describes as occurring at

[6] There are at least two documented cases that have been discussed before the UN Committee on the Rights of the Child, with regard to El Salvador alone. Harrison (2007) also cites that "this trend and its potential adverse impact on the right to health has already been noted by several UN human rights treaty monitoring bodies" (p. 167).

breakneck speed, over the span of a few decades, and the rise in non-tariff barriers against the backdrop of indicators of globalisation. This is because hypotheses put forward by proponents of globalisation and free markets, should reveal a negative correlation, based on claims that free trade and free trade agreements *lower* trade barriers, rather than the other way around.

An example can be found in the United States, which is currently the state with the most number of free trade agreements globally. The United States has been termed as the 'leader of the free trade movement', yet simultaneously it also has a track record of fairly rapid rate of increase in trade that was subject to trade barriers. This illustrates the myth that McNally refers to. It also serves as a basis for a critical understanding of the true nature and potential negative impact of the EU-GCC FTA, on trade but also on labour laws. In particular, the discussion concentrates on the negative impact of FTAs on the right to mobility for foreign migrant workers.

The following section sets forth the international legal framework for trafficking in persons. In illustrating that international trade and FTAs may have negative outcomes on human rights and security, the discussion on trafficking will expand this notion further. The discussion will demonstrate that trafficking in persons is a likely outcome of one form of vulnerability created as a result of prioritising international trade over that of human security.

4.2. The International Legal Framework for Trafficking in Persons: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

Trafficking in persons is a phenomenon that occurs in every continent in the world today. The United Nations Office on Drugs and Crime (UNODC), with the assistance of Member States, confirm cases of victims in the millions (UNODC, 2009). This is despite the dark figures of under reporting and which plague every method of data collection conducted in identifying the number of victims (UNODC, 2009). Similarly, according to the International Labour Organization (ILO), there are an estimate 2.5 million people in the category of forced labour alone, at any given time with

approximately 230,000 of that figure occurring in the Middle East alone (as cited in UN.GIFT, 2008). As well, an estimated 1.2 million children are trafficked each year and the profits from forced labour, independent of all other forms of trafficking, equal an estimate US$31.6 billion (ILO, 2007 as cited in UN.GIFT, 2008).

However, despite these figures, there are questions as to what constitutes trafficking in persons, how it relates to cases of labour migration, particularly forced labour and exploitation, and what potential solutions there may be for a phenomenon that occurs globally and on such a wide scale. These issues are particularly relevant in the GCC states. For the purposes of this thesis, the understanding of trafficking is based on a legal definition of trafficking provided in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

4.2.1. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

The most widely used and internationally agreed upon definition of trafficking in persons, which explicitly defines trafficking as a modern form of slavery, is provided in the Palermo Protocol, adopted by the United Nations to supplement the 2000 United Nations Convention Against Transnational Organized Crime (UNTOC), known as the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.* The Protocol was adopted by resolution of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations in Palermo, Italy, hence its name, the Palermo Protocol. Article 3(a) of the Protocol defines trafficking in persons as:

> 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 payment 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 (UNODC, 2009).

Regarding prosecution, article 5, paragraph 1, requires State parties to recognise "trafficking in persons" as a specific crime in their national legislation, "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally" (UNODC, 2009). Further, article 9 focuses on the prevention of trafficking in persons and mandates States to undertake research and public awareness campaigns and to pursue economic and social initiatives to prevent trafficking and revictimisation and to alleviate those factors which make persons, especially women and children vulnerable to trafficking, especially poverty, underdevelopment and lack of equal opportunity (UNODC, 2009).

This Protocol, which has been signed by 117 Member States and ratified, accepted, approved, acceded and succeeded by 159 Member States, puts forward in essence, three constituent elements of trafficking (United Nations Treaty Collection, 2014). These elements are the *act* (meaning the recruitment, transportation, transfer, harbouring or receipt of persons), the *means* (threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim), and the *purpose* (exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs) (UNODC, 2009).

Simultaneously, despite reference to what is often conceived of as an antiquated phenomenon, the definition provided takes into consideration the many different manifestations of human trafficking in the modern and globalised world. The UNODC is often credited with authoring the most comprehensive and commonly employed definition of trafficking and is one of the few definitions that considers exploitation as a form of trafficking. It has promoted the prevention of trafficking, the protection of victims, the prosecution of traffickers and more recently, partnership initiatives between host and sending countries (otherwise known as the four 'P's') (UNODC, 2009).

The inclusion of slavery or practices similar to slavery, as an objective of the trafficking transaction, has sparked considerable debate amongst scholars. One component of the debate is centered on the premise that the two violations or crimes against persons warrant different criteria and are hence mutually exclusive from one

another. One nuance of this argument puts forward the claim that slavery and trafficking in persons are distinct from one another. This is attributed to the fact that slavery is defined as "an example of exploitation to be suppressed [and thus] trafficking in persons cannot be a new form of slavery, as slavery is but one example of eight component parts of one of three elements of the definition of trafficking" (Allain, 2009, p. 455). Allain (2009) further argues "if trafficking in persons is indeed a new form of slavery in law, then the other examples of exploitation must also be deemed to be swallowed up by the definition of slavery" (p. 455). Describing the problematic relationship of equating slavery to trafficking, Allain (2009) suggests that to think of think of the two phenomena as one and the same, is an example of the snake swallowing its own tail.

Other scholars (see Bales, 2005; Bales, 2007; Bales, 2009; Bales 2009; Bales, 2012 for a non-legal definition of slavery; Scarpa, 2008) see no difference in practices that constitute slavery and those that fall under the ambit of trafficking in persons. In fact, they would argue that trafficking in persons is nothing but a manifestation of a modern form of slavery and should thus occupy the space which slavery has in past discourse regarding human rights and standards in international law (Kandathil, 2005-6). For the purposes of this thesis, it is important to consider a definition of slavery and trafficking from both a legal and social perspective. The following section provides a brief overview of the legal foundation for slavery as a crime against humanity and its impact on the definition of trafficking in persons.

4.3. Slavery and *Jus Cogens* in International Law

Adopting a legal definition (rather than a social definition) of slavery has significant implications for both our understanding of trafficking in persons and for its prevention. This section briefly describes the evolution of the definition of slavery and its relationship to what are termed as *jus cogens* norms in international law. This brings into focus universal standards as antithetical to policies and practices that are associated with human trafficking.

4.3.1. Evolution of the Definition of Slavery

Slavery was defined in international law on 25 September 1926, in Geneva, by the League of Nations. Article 1(1) of the 1926 Slavery Convention reads, “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.

Allain (2009notes that the this definition was subsequently “reproduced in substance and augmented under Article 7(a) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery” (p. 240). The Supplementary Convention was adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956 and was entered into forced on 30 April 1957, in accordance with article 13. Article 7(a) of the 1956 Convention reads:

“’Slavery’ means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and ‘slave’ means a person in such condition or status” (U.N. Economic & Social Council, 1956).

Slavery is further addressed in the Rome Statute of the International Criminal Court (often referred to as the Rome Statute), which is the treaty that established the International Criminal Court (ICC). The Rome Statute was adopted at a diplomatic conference in Rome on 17 July 1998 and entered into force on 1 July 2002. It established four core international crimes: 1) genocide; 2) crimes against humanity; 3) war crimes; and 4) crimes of aggression.

As of 2014, the Rome Statute had 130 Signatories and 122 Ratifications. Under the Rome Statue ‘enslavement’ is deemed a crime against humanity under Article 7(1)(c), and defined at Article 7(2)(c) as, “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children” (U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, 1998).

Allain (2009) argues that "what remains common to each of these definitions is the phrase: the powers attaching to the right of ownership" suggesting that "the notion of ownership thus appears to be the *sine qua non* [referring to an essential or indispensable ingredient] of slavery in international law" (p. 241). What becomes evident in examining the evolution of the definition of slavery is that slavery as a phenomenon has been a concern of the international community and lawmakers for a long time and is likely to remain so. The following section discusses the response of international law to the crime of slavery.

4.3.2. Jus Cogens

International law is often critiqued for its consent-based system of governance. However, it remains an essential component of the global community. It has twin roots and functions, which have been described as 'co-existence and common aims' (Weil, 1983 as cited in Jørgensen, 2000). The term "*jus cogens"*, which literally means "the compelling law" in Latin, is a fundamental principle of international law, that is accepted by the international community, as a norm from which no derogation is permitted (Jørgensen, 2000).

The concept of *jus cogens* is derived from the two main purposes of international law, which are believed to be, "to enable heterogeneous and equal states to live side by side in a peaceful and orderly fashion, and… to cater for the common interests which continue to surface over and above the diversity of states" (Weil, 1983 as cited in Jørgensen, 2000, p. 85).

The notion of non-derogable norms is not a product of the modern world. Its history can be traced back to the works of Grotius in 1753 (Jørgensen, 2000) whose foundational work in international law. This was further developed in 1834 by Vattel (Jørgensen, 2000). Vattel, in his book, 'The Law of Nations or Principles of the Law of Nature' states in relation to certain types of law:

"Whence as this law is immutable, and the obligations that arise from it are indispensable, nations can neither make any changes in it by their conventions,

dispense with it in their own conduct, nor reciprocally release each other from the observance of it" (as cited in Jørgensen, 2000, p. 86).

In the years that followed, both Oppenheim (1905), a renowned German jurist and Hall (1924), an influential English lawyer in international law, "made reference to 'fundamental' or 'universal' principles of international law, whose peremptory effect was recognized by custom" (Jørgensen, 2000, p. 86). Finally, in 1937, Verdross, often called a founding father of international law, addressed the question of whether some laws in the international domain contain rules, which have a non-derogable character, arguing that,

> there exists higher interests in the world community corresponding to fundamental norms of international public policy that restrict freedom and sovereignty of states for it is the quintessence of norms of this character that they prescribe a certain, positive or negative behaviour unconditionally; norms of this character, therefore, cannot be derogated from by the will of the contracting parties (as cited in Jørgensen, 2000, p.86).

The results of the efforts of early thinkers of the concept of *jus cogens* can be found in contemporary international law, particularly in the Vienna Convention on the Law of Treaties. Article 53 of the Vienna Convention on the Law of Treaties "encompasses the concept of peremptory norms of international law…and provides that a treaty which infringes these norms is invalid" (Proukaki, 2010, p. 11). Article 53 of the 1969 Vienna Convention on the Law of Treaties provides the following:

> A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

In other words, the implications of *jus cogens* are "those of a duty and not of optional rights" (Bassiouni, 1996, p. 65). While *jus cogens* crimes are not catalogued specifically and considerable debate persists about which crimes should be included (McGregor, 2007), Bassiouni (1996) provides that "the legal literature discloses that the

following international crimes are *jus cogens*: aggression, genocide, crimes against humanity, war crimes, piracy, slavery, and slave-like practices, and torture" (p. 68). The implications of such a high standard of consideration accorded to slavery in international law should ideally translate to a greater focus placed on ensuring its prevention, which is an argument that will be explored in greater detail in the following sections.

4.4. The EU-GCC Relationship

The European Union (EU) and the GCC are both economic and political unions with far more similarities and common interests than their geographical positions and cultural differences positions might suggest. The EU is now comprised of 28 Member States, operates through a system of supranational independent institutions and decisions negotiated at the intergovernmental level by the Member States (Central Intelligence Agency, 2014). EU citizens elect the European Parliament every 5 years and Brussels is the *de facto* capital of the union (Euractiv, 2010).

The EU was established by the Maastricht Treaty in 1993 (Craig & De Búrca, 1998). The EU has seven institutions which serve as its body of governance, namely the European Parliament, the Council of the European Union, the European Commission, the European Council, the European Central Bank, the Court of Justice of the Europe Union and the European Court of Auditors (Central Intelligence Agency, 2014). While executive tasks are carried out by the European Commission and the European Council, the task of amending legislation is dealt with by the European Parliament and the Council of the European Union. Similar to the GCC, the EU has a strong GDP of US$15.83 trillion with imports of nearly US$2.312 trillion, with fuels and crude oil making up for the primary commodity of interest, and exports of US$2.173 trillion (Central Intelligence Agency, 2014).

As in the GCC, the EU has abolished internal trade barriers but has also adopted a common currency, which the GCC has yet to do. The EU also has a legal system in which all Member States follow a supranational law system (Central Intelligence Agency, 2014). In this system law is divided into 'primary' and 'secondary' legislation (Central Intelligence Agency, 2014). The EU's primary legislation includes the treaties, as set out

in the *Treaty of Lisbon*, which serve as the basis for all EU action (Central Intelligence Agency, 2014) while its secondary legislation includes regulations, directives and decisions, which "are derived from the principles and objectives set out in the treaties" and laid down in the Court of Justice (Central Intelligence Agency, 2014). Accordingly, the "key principles of EU law include fundamental rights as guaranteed by the Charter of Fundamental Rights and as resulting from constitutional traditions common to the EU's states" (Central Intelligence Agency, 2014).

Both the EU and the GCC are experiments in integration and regionalisation, which Lawson (2008) suggests are more than anything else, politically motivated. Citing the work of Galal and Hoekman (2003), he argues, "both sought to use economic cooperation as a mechanism for political integration (p. 15).

What should be highlighted however, is that Galal and Hoekman's research on EU-GCC relations found that the historical experience of the EU can offer a useful guide to Middle Eastern policy-makers. More specifically, there can be benefit from the EU's envisaged and clearly-articulated 'ultimate objective', which is regionalism (as cited in Lawson, 2008).

Aside from the political dimension, the reason why a parallel can be drawn between the EU and the GCC is because of their trade relations. Currently, the GCC is the EU's fifth largest export market with nearly €75 billions worth of exports, and the EU is the grouping's biggest trading partner with trade flows totaling €145 billion, or 13.5 percent of the GCC's global trade (Arnold, 2013). Recognising their strong trading relationship, the EU and GCC signed a Cooperation Agreement in 1998, that established bilateral relations between the two blocs. According to the European Union, The Cooperation Agreement intended to:

> strengthen stability in a region of strategic importance [;] facilitate political and economic relations [;] broaden economic and technical cooperation [and] broaden cooperation on energy, industry, trade and services, agriculture, fisheries, investment, science, technology and environment (European Union External Action, 2014).

More importantly, the 1988 Cooperation Agreement contained a commitment to entering into negotiations on a free trade agreement. Negotiations started and have

been suspended several times since 1990, but the EU states that it is committed to concluding the agreement (European Union External Action, 2014). The following section explores the EU-GCC Free Trade Agreement and the barriers to its conclusion.

4.4.1. EU-GCC Free Trade Agreement

The 1988 Cooperation Agreement signed by the EU and the GCC provided the framework for the elaboration of a bilateral trade agreement between the two regional blocs. While formal negotiations towards what will be the first region-to-region FTA if it is signed (Antkiewicz & Momani, 2007), began in 1990, the talks have suffered several suspensions.

Historically, Ayadi and Gadi (2013) whose work which was commissioned by the European Union, found that the GCC first attracted the attention of EU policymakers in the 1970s as a result of a mix of geopolitical and commercial interests. The authors note that "the first initiative structuring relations between EU countries and the GCC countries dates back to 1974, when France pushed for the launch of the Euro-Arab Dialogue, following the Arab-Israeli War of 1973 and the first oil crisis" (Ayadi & Gadi, 2013, p. 5).

Despite the collapse of the initiative in 1989 it is credited for its laying the groundwork for the Cooperation Agreement and later the EU-GCC FTA. While objectives of the Cooperation Agreement were fairly straightforward, the rationale for having close relations with the GCC became less clear for the EU as time progressed. In fact Ayadi and Gadi (2013) state that "the Gulf countries were not included in the EU's external cooperation programmes until 2007, when the Council adopted Regulation (EC) No 1934/2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories for the years 2007-2013" (p. 6). This resulted in meaningful trade relations but not political dialogue and technical cooperation between the two blocs. This raised concerns about the objectives of each party in concluding the FTA.

Considering the discussions that have occurred over the past two decades, Ayadi and Gadi (2013) believe that geopolitical considerations are likely to take precedence over economic interests. Antkiewicz and Momani (2007) suggest that, given

the support shown by the European Parliament, the EU Council and the EU Commission, in addition to various national parliaments, the delays in signing the Agreement are not due to an unwillingness to partner with the GCC for economic or bureaucratic reasons. In fact the EU has powerful economic interests in liberalising investment rules in the Gulf States, through the EU-GCC FTA, so that EU "corporations may participate in the region's oil, banking, telecoms, port services and other industries" (bilaterals.org, 2012).

The delays have been attributed to the EU's political reservations, which "include demands from the EU with regards to fulfilling standards of democracy and human rights", citing its obligation under the *Lisbon Treaty* for highest consideration that is to be accorded to respect for democratic principles and fundamental human rights, in any international trade policy agreement that it strikes (bilaterals.org, 2012; European Parliament, 2014). In concluding reservations regarding the EU-GCC FTA, the European Parliament (2014)

> Notes that there are 15 million migrant workers in the six GCC Member States and that those workers make up 40% of the total population; draw[ing] attention to the precarious situation of migrant workers in the Gulf States, which has been highlighted by the ILO, and supports its call for a minimum wage in the region in order to prevent any further deterioration in the position of domestic migrant workers (line 40).

In addition it,

> "Emphasises the need to respect the democratic principles and fundamental rights established by the Universal Declaration of Human Rights [and] urges the GCC Member States to combat the discrimination against women and the exploitation of children, in particular on the labour market, and to implement the UN Conventions on the Elimination of All Forms of Discrimination against Women and on the Rights of the Child (line 41).

Finally, the European Parliament (2014) establishes in its position that it

> Considers that the ratification and full implementation by the GCC Member States of the framework established by the UN Convention against Transnational Organised Crime, the UN Convention Against Corruption and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families should be a key issue in the FTA negotiations (line 42).

The pressure on the EU to place human rights at the centre of the EU-GCC trade negotiations has come primarily from human rights groups in Europe. One influential group is the International Federation for Human Rights, which is based in Paris and is comprised of 178 member organisations (FIDH, 2014). The International Federation for Human Rights states that it welcomes the commitment of the EU to the FTA with the GCC however it remains deeply preoccupied by the lack of labour rights for migrant workers in the Gulf States in return for any trade concessions granted through the FTA (bilaterals.org, 2012; FIDH, 2014). As a result, at the end of 2008, the GCC formally announced it was suspending trade talks. Additional demands of the EU was that the GCC sign off on clauses on cooperation against terrorism and weapons of mass destruction, which is highly problematic when lumped with other human rights issues such as labour rights for migrant workers (bilaterals.org, 2012). The two economic blocs have resumed talks informally since then with mixed reports on progress (Trade Arabia News Service, 2013).

This chapter noted that in order to understand the multi-faceted nature of human trafficking, particularly in the context of the GCC, it is important to explore the backdrop against which it occurs in the region. It has been shown that a substantial amount of effort and consideration is given to trade in the GCC. As such this chapter began with a discussion of the role of trade and illustrated that the GCC is a key proponent of international trade, due to its competitive advantage in producing and exporting oil and natural gas.

As part of engaging in international trade, and in order to overcome different forms of protectionism, the GCC and the EU, which established themselves as strong international trading partners overtime, began discussing the idea of a regional free trade agreement. The EU-GCC FTA which was premised on the desire to establish a free trade area where commerce in goods and services can be conducted across their common borders, without tariffs, quotas, or hindrances however, following the dictates of FTAs, this is not however include, the free movement of capital or labour. The EU-GCC FTA attracted considerable criticism from opponents, who argue that FTAs undermine notions of human rights and particularly labour rights in favour of private interests, which consequently create vulnerabilities particularly for foreign migrant workers.

Drawing on the notion of vulnerabilities in migration for the purposes of labour, a nexus is illustrated between the values of international trade and resulting opportunities for trafficking in persons. Using the Palermo Protocol definition of trafficking in persons, which explicitly defines trafficking as a modern form of slavery, the argument is put forward that macro economic structures coupled with gaps in international law, that do not recognise trafficking in persons as a *jus cogens* norm, despite the proximity between slavery and human trafficking, create a problematic infrastructure in the GCC, which not only allows trafficking in persons to occur, but it indirectly promotes the prioritisation of trade and economic gain, over human rights. This is not without hope of reform however. The chapter demonstrates that the very mechanisms, which propel states to indirectly allow trafficking and exploitation for the purposes of labour, namely international trade and macro economic structures, can conversely be used to leverage potential reforms. Drawing on the case of suspended negotiations between the EU and the GCC regarding the EU-GCC FTA as a result of labour exploitation in the GCC, the chapter explores the possibility of reform, by way of using economic partnerships as incentive for improving labour laws and practices. The following chapter explores this hypothesis in greater detail, through a comprehensive examination of legislation in the EU and the GCC.

5. Methods

5.1. Introduction

In the past, research on trafficking in persons has focused extensively on Europe and North America (see Perrin, 2010; Goodey, 2012; Lee, 2007; Shelley, 2010). To date, little attention has been given to human trafficking and foreign migrant workers in the GCC states and there is a paucity of studies examining the legal infrastructure and interplay between criminal law, labour law and immigration in the GCC. Similarly, there are no published studies that examine the potential for leveraging law reform in these areas in the GCC as part of the EU-GCC FTA negotiations.

The absence of research, or at least published materials, is due partly to the silence surrounding particular subjects and also the implications the research may have pertaining to the stability of the GCC states whose heavy reliance on foreign labour is a source of concern amongst GCC nations[7]. Other reasons for why such research is not common may be because of the negative publicity associated with an already strained relationship between the EU and the GCC in the FTA negotiations due to the pressure placed on the GCC relating to alleged human rights violations. The EU in comparison is more advanced in addressing the issues surrounding human trafficking, at least in policy. As well, both blocs have borderless trade practices, labour migration and trafficking patterns. Most notably, the attempt by the GCC to emulate the EU system of economic and political integration (Antkiewicz & Momani, 2007), serves as the basis for comparing the two regions, in order to identify best practices that can be applied from one region to another.

[7] In fact the last census in the UAE was published in 2009 before it was 'cancelled' altogether based on the claim that the endeavour was too expensive and impractical.

Examining the similarities and differences between the two regions, this thesis will compare the laws and policies in the GCC and the EU. This will be done in order to determine whether developments in EU legislation concerning matters of labour, migration and trafficking can be used as a framework for outlining law reform in the GCC. In this capacity, EU legislation can be used to identify best policy practices that can serve as a benchmark and minimum standard. In doing so, my primary methodology will involve documentary analysis of legislation in the GCC and the EU. The legislation gathered for analysis will be legislation passed by legislative bodies in each of the GCC states in addition to directives in the EU. To juxtapose the legal documentation media pieces, reporting on practices related to current labour and migration standards and protocols in the GCC states will also be assembled. This will be done in order to identify possible gaps in policy and practice, which can be remedied by effective and evidence-based law reform measures directed at enhancing prevention strategies for trafficking in persons.

5.2. Research Questions

The thesis is centered on five research questions:

Research question #1: How can labour and (im)migration policies and practices in the Gulf Co-operation Council states of the Middle East be understood within the framework of and in relation to domestic anti-trafficking legislation and the Trafficking in Persons definition provided in Article 3, paragraph (a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000)?

Research question #2: What are the implications of using comprehensive international definitions of crime and presenting and applying them as 'established' and 'universally agreed-upon' standards globally as *jus cogens* norms?

Research question #3: What are the points of convergence and divergence in criminal laws, immigration policies and labour laws related to trafficking in persons in the GCC states and the EU Directive 2011/36?

Research question #4: How can lessons and best practices from more successful models in other geopolitical regions such as the EU be applied in the GCC?

Research question #5: What are the challenges in applying standards, legislative frameworks and best practices related to anti-human trafficking from experiences in one region to another, taking into account the various legal codes employed in each region, particularly as these relate to the common law, civil law, and Islamic law?

5.3. Methodological Approaches: Content Analysis & Parallel Study

The objective of this thesis is to identify laws and practices related to trafficking in persons in the GCC, which can be reformed, using the example of EU Directive 2011/36 as a best practice. To accomplish this, two methods of data collection and analysis are used: content analysis and case studies.

The use of these two approaches has a number of benefits. One is that it allows for a parallel comparison of two geographic regions, taking into consideration differences and similarities, both of which are of importance to this research, while focusing on the key subject matter, which is, trafficking in persons. The second benefit is that the two approaches are complimentary.

5.3.1. Definition and Techniques of Content Analysis

Content analysis can be defined as "a method of analysing written, verbal or visual communication messages" (Cole, 1988 as cited in Elo & Kyngäs, 2007). Generally, researchers consider content analysis as a flexible method of analysing text data (Cavanagh, 1997 as cited in Hsieh & Shannon, 2005). Weber (1990) suggests that, "qualitative content analysis goes beyond merely counting words to examining language intensely for the purpose of classifying large amounts of text into an efficient number of categories that represent similar meanings" and that these meanings can be represented either through explicit communication or inferred communication (as cited in Hsieh & Shannon, 2005, p. 1278). Downe-Wamboldt (1992) suggest that the goal of content analysis is to provide and understanding of meanings, intentions, consequences

and contexts of a certain phenomenon (as cited in Hsieh & Shannon, 2005; Elo & Kyngäs, 2007).

There are several types of content analysis: conventional content analysis, directed content analysis and summative content analysis (Hsieh & Shannon, 2005). According to Hsieh and Shannon (2005), "all three approaches are used to interpret meaning from the content of text data and, hence, adhere to the naturalistic paradigm" (p. 1277).

For the purposes of this thesis, a conventional content analysis has been used. This type of design is as the most appropriate when theory or existing literature on a subject is limited (Hsieh & Shannon, 2005). Given the limited theory on trafficking in persons, coupled with availability of limited literature discussing problematic legal infrastructures as the source of trafficking in the GCC, this method appears most suitable for the purposes of this research. The advantage of using this approach is that the data source is considered the direct source of information and does not rely on preconceived theories or categories (Hsieh & Shannon, 2005).

5.3.2. Definition and Technique of Parallel Studies

Parallel studies are a common methodological approach used predominantly in comparative criminology. Premised on the notion that all nation states utilise basic social and cultural categories of political and social indicators (though different in organisation and structure), parallel studies provide a comparison of two or more of these categories and can serve as a guide to understanding different nations and their legal systems (Howard, Newman & Pridemore, 2000).

Comparative criminology is described as an "approach that employs basic unifying concepts of human groups and seeks to compare cultures and nation-states to highlight the similarities and differences between each class with respect to these universal concepts" (Howard, Newman & Pridemore, 2000, p. 144). In relation, parallel studies usually "focus on a close analysis of the criminal justice systems or the nature of crime within two nations" (Howard, Newman & Pridemore, 2000, p. 167). Particularly, parallel studies are considered most appropriate when coordinating efforts against

transnational crime by understanding something of the characteristics of the systems, which enable the crime as a result of operational strengths and weaknesses (Howard, Newman & Pridemore, 2000).

Parallel studies are generally focused on the nature of a crime within two nations; however this thesis, uses this methodological approach to focus on two regional blocs, each of which are comprised of nation states that have their individual domestic laws but which also adhere to regional laws. Parallel studies can be divided in to three general subtypes: crime rate/criminal justice system analysis, topical comparison and replication of an experimental design (Howard, Newman & Pridemore, 2000). This research employs the first of the three types of parallel studies, namely criminal justice system analysis. Although this methodological approach is commonly used to compare statistical differences between two nations, Howard, Newman and Pridemore (2000) cite the example of a study conducted by Downes (1988) in which penal policies of The Netherlands, England and Wales were compared, focusing on the fine detail of complex legal and bureaucratic processes that produced incarceration in the 1980s. Similarly, the criminal laws, labour laws and immigration laws in the GCC will be compared to the EU, while focusing on the complex legal and bureaucratic processes that allow for trafficking in persons to occur in the GCC.

5.4. Data Collection

5.4.1. Data Gathering

The data-gathering phase of my research involved reviewing legal texts for the GCC and the EU, as well as media sources to juxtapose policy with practice. The collection of two types of data did not result in triangulation, which is recommended to enhance a study's quality by encouraging the researcher to approach their line of inquiry from different angles (Richards & Morse, 2007; Mason, 2005). However, it does nevertheless enhance validity and provide a more complete picture of the disconnect between policy and practice with regards to trafficking in persons.

Legal texts

GCC Legal Texts

For the purposes of this research, labour laws and human trafficking laws were collected to be studied in depth, and where available, legislation pertaining to (im)migration was also included. In addition to supplementary national annual reports for trafficking in persons were integrated.

The materials reviewed for the data collection were categorised as follows: “Human Trafficking Law”, “Immigration Law” and “Labour Law”. Within the “Human Trafficking Law” classification, six categories were created: “UAE Human Trafficking Law”, “Oman Human Trafficking Law”, “Kuwait Human Trafficking Law”, “Qatar Human Trafficking Law”, “Bahrain Human Trafficking Law” and “Saudi Arabia Human Trafficking Law”. Similarly, within the “Immigration Law” classification, six categories were created: “UAE Immigration Law”, “Oman Immigration Law”, “Kuwait Immigration Law”, “Qatar Immigration Law”, “Bahrain Immigration Law” and “Saudi Arabia Immigration Law”. Finally, in the “Labour Law” classification, I created six categories: “UAE Labour Law”, “Oman Labour Law”, “Kuwait Labour Law”, “Qatar Labour Law”, “Bahrain Labour Law” and “Saudi Arabia Labour Law”.

Obtaining the data proved to be a far more difficult task than anticipated. I began with Internet word searches for the mentioned categories using the Google search engine. However, the results did not produce legal texts and instead produced reports and media coverage of the topics. As a result, two main sources were identified where I knew I would find leads for where to begin searching, having had prior familiarity from work at the UNODC Human Trafficking and Migrant Smuggling Section. One source was the United States Department of State Trafficking in Persons Report 2013 (herein referred as TIP Report), which provides country narratives for every country in the world, based on comprehensive research conducted by field researchers in each of the countries. The TIP Report provided me with tips about which GCC state had legislation and which did not, and whether their human trafficking related legislation was a standalone document or whether it needed to be read with other legislation such as the Penal Code or the Criminal Code.

The second source was an article published by Mohamed Y. Mattar (2011), titled *Human Rights Legislation in the Arab World: The Case of Human Trafficking*. I knew that Mohamed Mattar, a Senior Research Professor of International Law and Executive Director of The Protection Project at Johns Hopkins University School of Advanced International Studies is a key figure in human trafficking research in the Middle East. Mattar is regarded as one of the few trusted scholars by the GCC states, who has extensive knowledge of the GCC and who has been at the centre of human trafficking legislation development in the Middle East therefore this article would provide some tips about where to obtain the legislation. Using this article, the names of the legislations for each of the GCC states were identified. The Protection Project's website was then visited, which has a database of the legislation for each of the Middle Eastern states. Some but not all the documents were found in English therefore the search had to be extended in NATLEX, which is described as

> The database of national labour, social security and related human rights legislation maintained by the ILO's International Labour Standards Department. Records in NATLEX provide abstracts of legislation and relevant citation information, and they are indexed by keywords and by subject classifications. Each record in NATLEX appears in only one of the three ILO official languages (English/French/Spanish). Where possible, the full text of the law or the relevant electronic source is linked to the record. NATLEX contains over 80,000 records covering 196 countries and over 160 territories and subdivisions (NATLEX, 2014).

Using the NATLEX database, most of the relevant pieces of legislation were found, but some documents were only available in Arabic while some had the same naming convention as other pieces of legislation[8] so a further search was conducted using the Library of Congress website for alternative sources. The Library of Congress, which is an agency of the legislative branch of the U.S. government, is described as the largest library in the world (Library of Congress, 2014). As well, extensive searches using the Google search engine were conducted, with the specific names of the documents or the names of the GCC governments in order to obtain all the pieces of

[8] See State of Qatar Law No. 15 – Civil Aviation Authority (http://www.caa.gov.qa/caa/sites/default/files/Civil_aviation_Law_No_15.pdf) and State of Qatar Law No. 15 on Combatting Trafficking in Human Beings (http://www.protectionproject.org/wp-content/uploads/2010/09/Trafficking-Law-English1.pdf)

legislation needed in English. With the exception of Kuwait's *Forced Labour Law of 2011*, and Kuwait's *Law No. 91 of 2013 Trafficking in Persons,* which had to be professionally translated, the English translations of all the documents were located.

A final list of legislation included in the research can be found in Appendix A.

EU Legal Texts

The data collection regarding the EU, entailed gathering regional legislation rather than legislation for each member state. The reason behind this decision to do this was twofold. First, gathering and analysing data for 28 Member States, for each of the classifications and categories, would prove beyond the limitations of this thesis would require more resources to analyse it comprehensively. The second reason for deciding to use EU regional legislation and not domestic legislation for each member state is because the GCC has stated, as part of the EU-GCC FTA negotiations, that the key incentive for the GCC is to emulate the EU system of integration (Antkiewicz & Momani, 2007). Therefore, by analysing how effective the system to which the GCC is reaching for, made more sense than to analyse each member state's legislation individually, when in fact the GCC is shifting towards the EU model.

With this in mind, one source was analysed, the European Commission's *EU Directive on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA* (herein referred as the EU Directive), which was adopted on 21 March 2011. A directive is a legislative act of the EU (Folsom, Lake & Nanda, 1996). A directive is unique because it requires Member States of the EU to achieve a particular result, in this case addressing trafficking in persons, without dictating the means of achieving it. This gives member states the leeway to implement measures that are most suited to the conditions of their country (Folsom, Lake & Nanda, 1996). The legal basis for the enactment of directives is from Article 288 of the *Treaty on the Functioning of the European Union* (ex Article 249 TEC), which states:

> To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.
>
> A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

> A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
>
> A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Therefore, drawing from Article 288, directives are binding on the Member States to whom they are addressed, which in general is all Member States.

Media Sources

In order to gauge for possible breaks between policy and practice, and to compensate for not being able to conduct direct observation or interviews with migrant workers in the GCC, I collected a limited number of newspaper articles highlighting problematic labour practices and the treatment of migrant labourers, from various news sources, to juxtapose against the legal text. Krippendorff (2004) explains, "the inability to use direct observations is an invitation to apply content analysis" (p. 26).

An ideal research methodology that is perhaps worth exploring in future projects is to have included direct observation and interviews with foreign migrant workers in the GCC or ones that have left the GCC. For the purposes of this thesis, given the limited time frame and ethics restraints, data could not be collected directly from migrant labourers. Instead content analysis of news articles from the Internet was utilised using relevance sampling. Relevance sampling (also referred to as purposive sampling), is "defined by the analytical problem at hand" (Krippendorff, 2004, p. 119). Krippendorff (2004) explains that relevance sampling is not probabilistic, and that "in using this form of sampling, an analyst proceeds by following a conceptual hierarchy, systematically lowering the number of units that need to be considered for an analysis" (p. 119). He suggests that,

> The resulting units of text are not meant to be representative of a population of texts; rather, they are the population of relevant texts, excluding the textual units that do not possess relevant information. Only when the exclusion criteria have exhausted their ability to shrink the population of relevant texts to a manageable size may the analyst apply other sampling techniques (Krippendorff, 2004, p. 119).

Data gathering for newspaper articles was conducted in two stages. The first stage involved setting up a Google Alert for three phrases in 2012 to 2014, in anticipation of writing this thesis. Google Alerts is a content change detection and notification service, offered by the search engine company Google, that automatically notifies users when new content from news, web, blogs, video and/or discussion groups matches a set of search terms selected by the user and stored by the Google search engine.

The three Google Alert phrases were "GCC" which was set up on 13 November 2012, "Human Trafficking" which was set up on 20 July 2013 and "Migrant smuggling" which was set up on 20 July 2013. The results produced were 384 messages for "GCC" with each alert containing 45 news pieces each[9], totalling in 17,280 news reports. Similarly, the "Human Trafficking" alert, produced 157 messages, with each containing 45 news pieces, totalling in 7,065 news reports. Lastly, the "Migrant Smuggling" alert, produced 66 messages, with each containing 45 news pieces, totalling in 2,970 news reports. In hindsight, the Google Alerts should have been set up for different phrases but the angle taken in this research was not anticipated far in advance. Regardless, the pool of data provided plenty of information to work through.

To ensure that my data was accurately related to my research topic and line of inquiry, the results obtained from Google Alert were supplemented with Google word searches for more distinct phrases, using three classifications: 'worker abuse' 'labour problem' and 'sponsorship system problem'[10]. A particular time frame was not selected however the most dated news piece is from 2009 and the most recent from 2014. Using these three classifications, the word searches entered into the Google search engine were: "UAE worker abuse", "UAE labour problem", "UAE sponsorship system problem", "Qatar worker abuse", "Qatar labour problem", "Qatar sponsorship system problem", "Saudi Arabia worker abuse", "Saudi Arabia labour problem", "Saudi Arabia sponsorship

[9] Google Alert will automatically allow only up to 45 news pieces per day, as a delivered configuration of the search engine.

[10] The sponsorship system in the context of the GCC states is actually referred to as the '*kafala'* system, which in literal Arabic only means 'sponsorship', however, because of anticipated problems with translations from Arabic to English, I decided to use the English term 'sponsorship' which is more commonly and accurately used in media sources.

system problem, “Bahrain worker abuse”, “Bahrain labour problem”, “Bahrain sponsorship system problem”, “Kuwait worker abuse”, “Kuwait labour problem” and “Kuwait sponsorship system problem”, and finally, “Oman worker abuse”, “Oman labour problem” and “Oman sponsorship system problem”. Occasionally, I entered the word “news” following the search term, in order to obtain news reports and filter our academic articles, NGO reports and other types of publications.

Once the searches were conducted for each phrase reviewed the search results and extracted only the articles with the information most relevant to the research topic, while remaining reflexive of news article choices. Charmaz (2006) explains that reflexivity involves:

> The researcher’s scrutiny of his or her research experience, decisions, and interpretations in ways that bring the researcher into the process and allow the reader to assess how and to what extent the researcher’s interests, positions, and assumptions influenced inquiry. A reflexive stance informs how the researcher conducts his or her research, relates to the research participants, and represents them in written reports (p. 188-189).

One method of trying to maintain reflexivity throughout the data-gathering phase involved deliberate effort to include sources from a three different types of news corporations. The first type was established state owned news corporations in the GCC states, which are highly controlled and as a result, publish very polished and positive versions of actual accounts. The second was from news corporations belonging to source countries, meaning countries from where trafficking victims and migrant labourers in the GCC are often from, and thirdly from established news corporations internationally, such as Reuters, The Guardian and BBC. Intentionally articles from Fox News were not included, taking into account potential bias for this corporation due to their often inflammatory and highly inaccurate reports of the Middle East.

In total, 8 news articles were selected for the term “UAE worker abuse”, 9 articles for “UAE labour problem”, 6 articles for “UAE sponsorship system problem”, 9 articles for “Qatar worker abuse”, 7 articles for “Qatar labour problem” 8 articles for “Qatar sponsorship system problem”, 8 articles for “Saudi Arabia worker abuse”, 7 articles for “Saudi Arabia labour problem”, 8 articles for “Saudi Arabia sponsorship system problem,

7 articles for “Bahrain worker abuse”, 7 articles for Bahrain labour problem”, 8 articles for “Bahrain sponsorship system problem”, 9 articles for “Kuwait worker abuse”, 6 articles for “Kuwait labour problem”, 7 articles for “Kuwait sponsorship system problem”, 4 articles for “Oman worker abuse” 3 articles for “Oman labour problem” and finally 2 articles for “Oman sponsorship system problem”, all of which total 23 articles. The search results were more fruitful for some GCC states such as the UAE and Qatar. This is partly because the UAE is arguably the most highly marketed country of the GCC internationally. Another reason is because Qatar is the successful bidder for the 2022 FIFA World Cup and hence considered more newsworthy. Other GCC states such as Oman produced the least results, for which contributing factors are unknown and hence cannot be controlled or accounted for.

5.5. Qualitative Data Coding and Analysis

To provide order to the large amount of data, the coding and analysis were conducted in two stages given, particularly because of the two types of data used: legislation and news sources. The first stage involved reading through the legislation for each of the GCC states and the EU Directive, highlighting areas of concern to this thesis. In reading through the documents, emphasis was placed on disconnections in law rather than similarities in policy between the EU and the GCC. Upon identifying the relevant sections of each legislation, the second part of coding began, involving the coding of news articles.

Given the vast amount of relevant information that the collection of articles presented, the decision was made to colour code each topic. This was done in order to make sense of recurring themes, emerging themes and the difference in themes discussed by each type of news sources. This coding method was particularly useful in highlighting the stark difference in perspective between the news articles collected from state owned news sources, international news sources and news sources. Richards and Morse (2007) explain that “there are many ways of coding and many purposes for coding activities [however] they all share the goal of getting from unstructured and messy data to ideas about what is going on in the data” (p. 133). The coding strategy most suitable to this type of research entailed topic coding, which is described as “the

most common and the most challenging sort of coding done in qualitative research" (Richards & Morse, 2007, p. 139). Topic coding is typically "used to identify all material on a topic for later retrieval and description, categorization, or reflection" (Richards & Morse, 2007, p. 139). It involves thinking of coding up from the data in order to be able to identify dimensions and patterns that are then configured into even finer categories (Richards & Morse, 2007).

After colour coding each article based on seven topics, namely "labour law/reform", "kafala/sponsorship problems", "trafficking/harm/slavery", "international pressure", "loss of work", "concern for reputation", "economy/business/trade references", and "calling for joint GCC action", a list of the most important and relevant themes that were recurring and emerging was made. Richards and Morse (2007) suggest that themes are common threats that run through the data, which then allow the researcher to manipulate them as ideas and develop categories as a result. Further, the authors provide that "discovery and coding for themes usually involves copious and detailed memos that are abstract and reflective" (p. 143). Similarly, Mason (2005) explains that "qualitative research aims to produce rounded and contextual understandings on the basis of rich, nuanced and detailed data" (p. 3).

Once the initial coding and identification of themes was completed, the list was further consolidated in order to arrive at a concise and more accurate set of themes that minimised redundancy. Finally, due to the richness of the data, and limited scope of this particular research project, a list of thoughts were extracted throughout the process of reading through the accounts experienced by foreign migrant workers in the GCC, many of whom end up as victims of trafficking due to deceptive recruitment methods enabled through the sponsorship system. This was done, to prepare for giving thought to the implications of my findings and for future publications. This process of continuing analysis beyond coding, according to Richards and Morse (2007), is a common feature of qualitative data and one which is a highlight of this process as a researcher. The results provide excerpts from the news reports. References for each news report is presented as a footnote, rather than in-text citation, in order to allow for uninterrupted flow of information when reading the results section of this thesis.

5.6. Ethical Considerations

The methodology used for the thesis did not involve human participants and so the usual ethical concerns associated with methods such as participant observation or interviews did not apply to this research. This also meant that ethics approval, informed consent, privacy and anonymity, and confidentiality were not necessary; however, as is the case in any line of research, irrespective of whether or not it involves human participants, ethical matters were an important consideration in this project. A useful distinction is provided by Homan (1992), who suggests that there is a difference between *ethical codes and ethical values* (as cited in Hesse-Biber & Leavy, 2011). Homan (1992) explains that ethical codes may take the shape of an informed consent or a confidentiality agreement, but the absence of an ethical code does not absolve the researcher from ethical values (as cited in Hesse-Biber & Leavy, 2011). Therefore, despite the absence of ethical codes required in research involving human participants, practical measures were taken to ensure ethical values were considered throughout the research.

One of the most significant ethical concerns when conducting content analysis can be to maintain the integrity of the data in data interpretation. Lichtman (2013) explains that "a researcher is expected to analyze data in a manner that avoids misstatements, misinterpretations, or fraudulent analysis" (p. 57). This is described as being distinct from ones lens which is expected to influence the researcher (Lichtman, 2013). Similarly, accuracy and authenticity in data interpretation takes into account that every researcher has a subjective stance on their research underscores the ethical responsibility in avoiding "potential pitfalls of overinterpreting or misinterpreting that data collected to present a picture that is not supported by data and evidence" (Lichtman, 2013, p. 57).

In an effort to minimise the possibility of overinterpreting or misinterpreting the data, reflexivity at the data collection, coding and analysis was carefully observed. One example of this is in the collection of news articles from a range of sources, including ones that are state owned by the GCC, in order to ensure that the data was collected in a fair and rigorous manner and not from a particular source with stakes in sensationalising the abuse, exploitation or trafficking of migrant workers in the GCC.

Similarly, reflexivity was exercised during the coding and analysis phases to allow for emerging and unexpected themes to be documented.

The following chapter provides the results from the research and outlines the significance of the results in the context of the five proposed research questions. The results are discussed along six major themes: the GCC and international conventions, GCC trafficking in persons legislation, GCC labour legislation, reports of migrant workers in the GCC, human trafficking in light of the sponsorship system in the GCC and the principle of *jus cogens*, and the relation of these findings to the EU Directive on human trafficking. The discussion from the following chapter further inform three significant recommendations, which will be discussed in detail in chapter 7.

6. Results and Discussion

6.1. The GCC and International Conventions

The GCC has a unique relationship with international organisations. While it remains supportive through significant monetary contributions[11], its involvement can best be described as passive or perhaps, strategic. To date, all GCC states have ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* and are thus parties to it. In doing so, the six Member States have declared their intention to make the terms of the treaty legally binding on themselves, however not all have done so without reservation to certain articles of the Protocol. The Kingdom of Bahrain, which acceded the Protocol on 7 June 2004, provides that it "does not consider itself bound by paragraph 2 of article 15 of the Protocol" (UN Treaty Collection, 2014). Article 15(2) states that

> Any dispute between two or more State Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of the those State Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those State Parties are unable to agree on the organization of the arbitration, any of those State Parties may refer the dispute to the International Court of Justice by request in accordance with the Statue of the Court (UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000).

[11] The UAE has to date contributed approximately US$ 8 million to UNICEF to aid repatriated child camel jockeys and approximately US$15 million to the UN global conference on human trafficking. The Qatar Foundation for Combatting Human Trafficking also pledged US$ 5.3 million for the Arab Trafficking in Persons Initiative to the United Nations Office on Drugs and Crime. Similarly, Saudi Arabia, the United Arab Emirates and Qatar are mentioned as amongst the UNODC's major donors (United Nations Office on Drugs and Crime: Funds and Partners, 2014).

Similarly, the State of Qatar, which acceded the Protocol on 29 May 2009, firstly puts forward reservations to Paragraph 3(d) of Article 6 (UN Treaty Collection, 2014), which reads:

> Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other members of civil society, and in particular, the provision of:
>
> (d) Employment, educational and training opportunities (UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000).

Qatar also places reservation on Paragraph 1 of Article 7, with reference to the legal status of victims of trafficking in persons, which states that,

> In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases (UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000).

Secondly, as does Bahrain, Qatar declares that it does not consider itself bound by the provisions of Paragraph 2 of Article 15 (UN Treaty Collection, 2014).

The Kingdom of Saudi Arabia, which ratified the Protocol on 20 July 2007, also places reservation to Article 15(2), Article 6(3)(d) and Article 7 (UN Treaty Collection, 2014). Similar to the other GCC states, the United Arab Emirates acceded the Protocol on 21 January 2009 also with reservation to Article 15(2) (UN Treaty Collection, 2014). The remaining two GCC states, Oman and Kuwait have both acceded the Protocol with no reservations (UN Treaty Collection, 2014).

Despite being party to the Palermo Protocol however, none of the GCC states are signatories to, or have ratified the International Labour Organization's 1975 Convention No. 143, *Migrant Workers (Supplementary Provisions)*, also known as *Convention concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers* (International Labour Organization, 2014). As well, they are not parties to or have ratified the 1990 *International Convention*

on the Protection of the Rights of All Migrant Workers and Members of their Families, all of which are important conventions aimed at protecting the rights of migrant workers, and which should be taken into consideration by Member States, particularly ones with a heavy dependence on a foreign labour force, as does the GCC states. One such convention is the Committee on the Elimination of All Forms of Discrimination against Women, to which all GCC states are party, with the exception of Qatar, and the Convention on the Rights of the Child, which all GCC states are party to, meaning that they are bound by the provisions on trafficking in persons.

The question then remains that if the GCC states have at a minimum, acknowledged and agreed to the Palermo Protocol, how is the protection of persons and prevention of trafficking for purposes of labour manifested in domestic legislation in each of the GCC states? The following section provides a brief overview of the legislative developments in the GCC states since their ratification of the Palermo Protocol and the impact of clauses, which leave migrant workers particularly vulnerable to becoming victims of trafficking in persons.

6.2. GCC Trafficking in Persons Legislation

As articulated in article 5, paragraph 1 of the Protocol of Prevent, Suppress and Punish Trafficking in Persons, state parties are obligated to recognise "trafficking in persons" as a specific crime in their national legislation: "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally" (UNODC, 2009). Consequently, the six GCC Member States have drafted, since the signing and/or ratification of the Palermo Protocol, national legislation criminalising the trafficking of persons, and in the case of Kuwait, additional legislation on forced labour.

6.2.1. Trafficking in Persons

Using the language of the Protocol, Bahrain defines in article 1 of *Law No. 1 of 2008 with Respect to Trafficking in Persons*, trafficking in persons and exploitation as

> …the recruitment, transportation, transfer, harbouring, or receiving persons by means of threat or the use of force or other forms of coercion, abduction, fraud, deceit, abuse of power or of position or any other direct or indirect unlawful means.
>
> Exploitation shall include the exploitation of such persons or the prostitution of others or any other forms of exploitation, sexual assault, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Sultanate of Oman, in article 2(a) of *Royal Decree No 126/2008 Anti-Trafficking Law* defines trafficking and exploitation as:

> Any person shall be deemed committing a human trafficking crime if they intentionally or for the purposes of exploitation:
>
> Use, transfer, shelter, or receive a person by coercion, under threat, trick, exploitation of position of power, exploitation of weakness, by use of authority over that person, or by any other illegal means directly or indirectly

The United Arab Emirates, in article 1 of *Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes* defines human trafficking and exploitation as:

> Recruiting, transporting, transferring, harbouring, or receiving persons by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, 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 includes all forms of sexual exploitation, engaging others in prostitution, servitude, forced labour, enslavement, quasi-slavery practices, or detachment of organs.

Qatar, in *Law No. (15) of Year 2011 on Combatting Trafficking in Human Beings,* defines in article 2, trafficking in human beings and exploitation as:

> Whoever recruits, transports, submits, harbors, receives a natural person in any form, whether inside a state territory or across its national borders, through the use of force, violence or threat to use any of them or through abduction, fraud, misrepresentations or through the abuse of power or by exploiting a position of vulnerability or need or by promising to provide or receive of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation in whatever form, is coming the crime of trafficking in human beings. Exploitation shall

> include the exploitation of the prostitution of others or any forms of sexual exploitation and sex trafficking of children, pornography or begging, forced labor or services, slavery or practices similar to slavery servitude or removal of human organs, tissues or parts of it, commits a crime of trafficking in human beings.

The Kingdom of Saudi Arabia, in article 1(1) of *Anti-Trafficking in Persons Law Royal Decree No. (M/40)* defines trafficking in persons as the "Use, recruitment, transportation, harbouring or receipt of a person for the purposes of exploitation". It further prohibits trafficking in persons in article 2:

> It is prohibited to commit any act of trafficking in persons, including coercion, threat, fraud, deceit or abduction of a person, abuse of position or power or any authority thereon, taking advantage of the person's vulnerability, giving or receiving payments or benefits to achieve the consent of a person having control over another persons for the purpose of sexual assault, forced labour or services, mendicancy, slavery or slavery-like practices, servitude or the removal of organs or for conducting medical experiments thereon.

Kuwait, in article 6 of the *Law No. 91 of 2013 Trafficking in Persons and Smuggling of Migrants*, defines trafficking in persons and exploitation as:

> '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 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.

As well, Kuwait in article 1 of *Ministerial Legislation Number (201) for the year of 2011 on the Ban of Forced Labour* states:

> With consideration to the provisions of *Law of Labor in the Private Sector No. 6 of 2010*, on labour in the domestic sector:

a. It is prohibited for employers who work in the domestic sector to use any means that result in forcing labourers to work for them against their will and to undertake labour that is outside their responsibilities as employees.

b. Without breaching the provision of the previous article, it is prohibited for employers to make use of employees/labourers without providing them wages.

c. and with that, and within the limits of Ministerial Legislation Number (188/2010), it is permissible for employers to commission their employees/labourers to work additional hours.

6.2.2. Aggravating Circumstances

As in the example of the Palermo Protocol, some GCC Member States have outlined aggravating circumstances under which the crime of trafficking takes place in each of the national legislations regarding trafficking in persons. The aggravating circumstance of particular importance to this research, are ones illustrating the harmful relationship between employers and employees in the trafficking transaction as well as crimes of a transnational nature.

The Kingdom of Bahrain in article 4(3) and (4) of *Law No. 1 of 2008 with Respect to Trafficking in Persons*, states:

Subject to the provisions of Chapter 5 of Part 3 of the Penal Code, the following shall be deemed as aggravating circumstances in a crime of trafficking in persons:

3. If the crime is of a non-national nature.

4. If the perpetrator is a blood relative of the victim or if he is his guardian or responsible for his supervision or has authority over him, or if the victim is his servant.

Similarly, The Sultanate of Oman, in article 9(d) and (g) of *Royal Decree No 126/2008 Anti-Trafficking Law* increases a penalty based on this aggravating factor:

A human trafficking crime shall be punishable by imprisonment for not less than seven years and not more than 15 years, and a fine of not less than ten thousand Rials and not more than one hundred thousand Rials:

d. Where the culprit is spouse of the victim, one of their ascendants, descendants, their guardian or has power over them.

g. Where the crime is transnational.

The United Arab Emirates, in article 2(8) of *Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes* provides that:

> The penalty shall be life imprisonment if any of the following conditions is met:
>
> 8. The crime is transnational.

However, the UAE anti-human trafficking legislation does not address the aggravating circumstances created as a result of a work relationship.

Qatar, in *Law No. (15) of Year 2011 on Combatting Trafficking in Human Beings,* defines in article 2(3) and (7), states:

> A person who has committed an offence of human trafficking shall be punished by imprisonment for a period not exceeding fifteen (15) years and a fine not exceeding three hundred thousand (300,000) Riyals, in the following cases:
>
> 3. If the perpetrator was a spouse, one of the ascendants or descendants, custodian or guardian of the victim, or has authority over the victim.
>
> 7. If the crime was of a transnational nature.

Similar to the other GCC states, the Kingdom of Saudi Arabia, in article 4(5) and (8) of *Anti-Trafficking in Persons Law Royal Decree No. (M/40)* provides that:

> Penalties provided for in this Law shall be made harsher in the following cases:
>
> 5. If the perpetrator is the spouse, ascendant, descendant, or guardian of, or has authority over the victim.
>
> 8. If the crime is transnational.

Lastly, article 2 (2) and (3) of Kuwait's *Law No. 91 of 2013 Trafficking in Persons and Smuggling of Migrants*, provides:

> The penalty shall be life imprisonment if:

2. the crime is of a non-national character;

3. the defendant is married or related to the victim, or has any authority over him/her.

By including trafficking a person over whom someone has authority as an aggravating circumstance, one would imagine that the position of vulnerability is acknowledged, and measures would be taken to ensure the protection of victims. However, as will be discussed in the following sections, the impact of such clauses of the anti-trafficking legislation in the GCC is diminished due to the inconsistency between labour laws in the private sector and criminal laws.

6.2.3. Penalties

Following the example of the Palermo Protocol and infusing a unique standard of determining minimum and maximum penalties, each of the GCC states, have outlined fairly severe penalties for the crime of trafficking in persons, notwithstanding stiffer penalties put forth in other legislative decrees and codes. The strict penalties indicate, at least in policy, that trafficking in persons is considered a grave crime.

The Kingdom of Bahrain in article 2 of *Law No. 1 of 2008 with Respect to Trafficking in Persons*, states:

> Without prejudice to any harsher penalty prescribed by the Penal Code or any other law, any person committing a crime of trafficking in persons shall be punished by imprisonment and a fine of no less than Bahrain Dinars two thousand and not more than Bahrain Dinars ten thousand.
>
> In the case of conviction, the perpetrator shall be obliged to pay the costs, including the costs of repatriating the victim to his country where he is a foreigner.

Similarly, The Sultanate of Oman, in articles 7 and 8 of *Royal Decree No 126/2008 Anti-Trafficking Law* stipulates a fairly aggressive punishment:

> 7. Without prejudice to secondary, additional or any more severe punishment stated in Oman Penal Code or any other law, the crimes mentioned herein shall be subject to the punishments stipulated herein.

> 8. Whoever commits a human trafficking crime shall be punished by imprisonment for not less than three years and not more than 7 years, and a find of not less than five thousand Rials and not more than one hundred thousand Rials.

The United Arab Emirates, in article 2 and article 8(1) and (2) *Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes* provides that:

> 2. Whoever commits any of the human trafficking crimes provided for in Article (1) of this law shall be punished by temporary imprisonment for a term of not less than five years.
>
> 8. (1) Any person who attempts to commit one of the crimes enumerated herein shall be punished by the penalty for a complete crime.
>
> (2) Any person who collaborates in committing one of the crimes provided for in Articles 2, 4, 5 and 6 of this law, as a direct participant, accomplice, or who knowingly takes part in transporting or harbouring victims of any human trafficking crimes, enumerated herein, or holding their documents for coercion, shall be deemed a perpetrator of the crime for purposes of the criminal sanction specified in this law.

Qatar, in *Law No. (15) of Year 2011 on Combatting Trafficking in Human Beings,* stipulates penalties for trafficking in Chapter 5, articles 13 and 14:

> 13. Without prejudice to any more severe penalty provided by another law, penalties provided by this law shall be applied.
>
> 14. A person who has committed one of human trafficking offences provided by Article (2) of this Law shall be punished by imprisonment for a period not exceeding seven (7) years and a find not exceeding two hundred fifty thousand (250,000) Riyals.

Similar to the other GCC states, the Kingdom of Saudi Arabia, in article 3 of *Anti-Trafficking in Persons Law Royal Decree No. (M/40)* stipulates that:

> Any person who commits an act of trafficking in persons shall be punished by imprisonment for a period not exceeding fifteen years or a fine not exceeding one million riyals, or by both.

Finally, article 2 of Kuwait's *Law No. 91 of 2013 Trafficking in Persons and Smuggling of Migrants* states that:

> Without prejudice to any more serious penalty stipulate by other laws, a person who has committed the crime of trafficking in persons as set forth in Article (1) of this Law, shall be sentenced to a term of fifteen years imprisonment.

6.2.4. Trafficking in Persons by Corporations

A unique aspect of GCC anti-trafficking legislation is that the legislation incorporates the trafficking of persons by corporations and persons acting on behalf of corporations as a distinct set of provisions in each of the national legislations. The sole exception is the Sultanate of Oman and Qatar who do not address the issue.

The Kingdom of Bahrain in article 3 of *Law No. 1 of 2008 with Respect to Trafficking in Persons*, states:

> Each corporate person who commits a crime of trafficking in persons in its name or on its behalf or benefits from any chairman, member of board of directors or another official at such corporate person or affiliate acting in such capacity shall be liable for payment of a fine of no less than Bahrain Dinars ten thousand and not more than Bahrain Dinars one hundred thousand.
>
> This shall not prejudice of the criminal liability of natural persons who work for such corporate person or on its behalf in accordance with the provisions of this Law.
>
> The Court may order the dissolution or the permanent or temporary closure of the corporate person, and such provision shall be applicable to the branches thereof.
>
> The corporate person shall jointly with the natural person be liable for payment of the costs, including the costs of repatriating the victim to his country where he is a foreigner.

Similarly, the United Arab Emirates, in article 7*Federal Law No. (51) of 2006 on Combating Human Trafficking Crimes* provides that:

> A corporate entity shall be punished by a fine of not less than one hundred thousand dirhams, and not more than one million dirhams, if its representatives, directors or agents commit, in its name or for its account, one of the human trafficking crimes enumerated herein; and that is without prejudice to the responsibility and punishment of its dependent natural person. In addition to that penalty, a court may order a temporary

> dissolution, or total closure of the corporate entity of closure of one of its branches.

Similar to the other GCC states, the Kingdom of Saudi Arabia, in article 13 of *Anti-Trafficking in Persons Law Royal Decree No. (M/40)* stipulates that:

> Without prejudice to the liability of natural persons, if a crime of trafficking in persons is knowingly committed through, to the benefit of or on behalf of a corporate person, said person shall be punished by a fine not exceeding ten million riyals, and the competent court may order temporary or permanent dissolution or closure of the same or any branch thereof.

As well, Kuwait in article 2 of *Ministerial Legislation Number (201) for the year of 2011 on the Ban of Forced Labour* states:

> Without breaching the provision of article (141) of law number (6/2010) or any punishment more severe which has been outlined in another law. It is permissible for the Ministry to discontinue the file of an employer permanently or temporarily if he violated the provisions of this law.

Despite the stance taken in legislation again the trafficking of persons, when compared against the domestic labour laws, it is evident that there is inconsistently in addressing the protection of migrant workers and the prevention of trafficking in persons.

6.3. GCC Labour Legislation: One Step Forward, Two Steps Back

Despite the ratification of the Palermo Protocol by each of the GCC states there are two major areas in national legislation that are contributing factors to the vulnerability or persons to being trafficked: the sponsorship system (*kafala*) and the lack of protection for certain categories of migrant workers such as domestic workers and agricultural workers under national labour laws.

The *kafala* system, often translated as the sponsorship system, is most commonly associated with the GCC. It is a system whereby persons of non-GCC origin can obtain a permit to visit, live or work in the GCC through a person of GCC national

origin (Mattar, 2010). While the *kafala* system can be used in legitimate ways, it is also a vehicle by which unscrupulous recruitment firms and traffickers can exploit migrant workers and often go undetected. The *kafala* system has long been the subject of scrutiny in the GCC states as a result of increasing pressure on the region to scrap this method of migration; however, due to the combination of lack of women and nationals in the private sector, and the unwillingness by nationals to undertake the line of work for which migrant workers are employed, the system continues to thrive. Estimates for the number of migrant workers brought into the GCC by way of the *kafala* system differs in each state. Some GCC states such as the UAE have as high a figure as 90 percent of the private sector, (in construction, domestic work, agriculture, sanitation and hospitality) comprised of a non-national workforce (Dechert LLP, 2013) while the estimates are 8 million persons in Saudi Arabia (Brown, 2014), and 3.8 million in Kuwait.

The recruiting of migrant workers is carried out through GCC labour laws whereby the employer-employee relationship is governed under federal jurisdiction and managed by the ministries of labour. Under this system, migrant workers in the private sector are legally tied to their employer. This grants the sponsor excessive power over the worker. A number of stipulations in the labour laws dictate the terms of the employee-employer relationship.

In accordance to Article 21 of the Oman Labour Law, Article 2 of the UAE Labour Law, Article 16 and 77 of the Saudi Arabia Labour Law, Article 29 of the Kuwait Labour Law, and Article 19 of Bahrain Labour Law, migrant workers are required to sign a work contract which must legally be in Arabic. While the employer may provide the employee with a contract that is translated to the worker's native language, only the Arabic version is binding. With most of the migrant workers sourced from countries such as Pakistan, Sri Lanka, Nepal, Bangladesh, Indonesia, Thailand, Philippines, Ethiopia, Ghana, Eritrea and India (United States Trafficking In Persons Report, 2013), this practice is highly problematic because migrant workers are unaware of what they are signing. In fact according to the US Trafficking in Persons Report, "A 2011 study by the Bahrain government's Labour Market Regulatory Authority (LMRA) found that 65 percent of migrant workers had not seen their employment contract and that 89 percent were unaware of their terms of employment upon arrival in Bahrain" (p. 85).

Similarly, Article 38 of the Bahrain Labour Law, Article 115 of the Saudi Arabia Labour Law, Article 63 of the UAE Labour Law and Article 50 of the Oman Labour Law, stipulate that wages shall be determined by the employer based on the general wage level of a given sector or at best up to the a Ministry representative who shall make the determination. The law remains vague at best on the issue of minimum wages for workers in the private sector.

Articles 44 and 45 of the Bahrain Labour Law make reference to maximum percentages a sponsor may charge a worker for repayment of loans but as with other sections of the Labour Law, the clauses remain vague and open to interpretation. This has attracted unscrupulous recruitment firms and sponsors who charge workers exorbitant recruitment fees at rates of interest that take workers years to pay off, if at all possible, creating situations of debt bondage akin to slavery (US Trafficking in Persons Report, 2013). Also under Article 71 (11) of the Bahrain Labour Law, a worker is to notify the sponsor of his/her place of residence, martial status and "all other information that must be included in his personnel file".

One of the most highly problematic laws pertains to the inability of workers to transfer employment upon arrival in the GCC states. Articles 71 of the Bahrain Labour Law, 42 of the Qatar Labour Law, 11 and 15 of the Qatar Law No. 4, and Article 18 of the Oman Labour Law prevent workers from transferring employment or working for a third party while under someone else's sponsorship. This often results in workers being unable to leave their employer and being subject to fines and imprisonment upon escaping.

A similarly problematic feature of the sponsorship system is in the granting of permission to sponsors to withhold passports from their workers. While some GCC states such as the UAE have criminalised this practice, other states such as Qatar in Article 6 of Law No. 4 legislate that employers must withhold the passport of their worker. This removes the worker's rights to mobility. Even in the case of the UAE, the U.S. Trafficking in Persons Report (2013) found that the practice remains rampant. The U.S. Report also notes that similar to Qatar, Kuwait's Labour Law "restricts worker's movements and penalizes them for "running away" from abusive workplaces" (p. 225). In relation, Article 18 of Qatar Law No. 4 prohibits workers from leaving Saudi Arabia

without an exit visa or permit from their sponsor, which is also a highly problematic feature of the *kafala* system found in Saudi Arabia (U.S. Trafficking in Persons Report, 2013). These laws have created a culture of immobility for migrant workers whereby workers brought into the GCC are often confined to the workplace for indefinite periods of time (U.S. Trafficking in Persons Report, 2013).

Finally, although the labour laws include many of the ILO protections, two are notably absent: the lack of permission to the freedom to associate and the right of collective bargaining which is limited to GCC nationals, as per Article 116 of the Qatar Labour Law and Article 99 of the Kuwait Labour Law, which severely hinders the ability of workers to demand their rights as enshrined in GCC legislation without the fear of reprisals or being deported.

Some of the sanctions outlined in the GCC labour laws, include a maximum term of 3 years imprisonment and a maximum penalty of 50,000 Qatar Rials for workers who transfer employment as first time offenders and a maximum term of imprisonment of 3 years and a maximum fine of 100,000 Qatari Rials, the equivalent of approximately USD $27,461, for workers who repeatedly transfer employment and who are considered 'repeat offenders'. These harsh penalties on mobility limitations have resulted in a large number of female migrant workers ending up in prostitution upon running away from abusive employers and falling prey to individuals who exploit their illegal status (U.S. Trafficking in Persons Report, 2013). In relation, Article 52 of Qatar Law No. 4 legislates a 10,000 Qatari Rials penalty on workers who withhold the submission of their passports to their employers.

The second major area in national legislation that is problematic in light of creating situations that are conducive to trafficking in persons, is the lack of protection under any labour laws for domestic workers and agricultural workers. Article 5 of the Kuwait Labour Law, Article 3 of the Qatar Labour Law, Article 2, paragraph (b)(1) of the Bahrain Labour Law, Article 3, paragraph (b)(1)(2) and paragraph (c) of the Saudi Arabia Labour Law, Article 3, paragraph (c) and (d) of the UAE Labour Law and Article (2), section (3) of the Oman Labour Law exempt these two categories of workers from enjoying the privileges of domestic labour laws.

These laws impact the process of recruitment as these two types of workers are not only not entitled to the same privileges under the labour laws, they are also not required to obtain work permits through the Ministries of Labour or be registered as do other workers in the private sector. This results in a direct employer to employee contractual relationship that is highly exploitative and vulnerable to abusive work conditions. The U.S. Trafficking in Persons Report explains that although many migrant domestic workers "sign contracts delineating their rights, some report work conditions that are substantially different from those described in the contract [yet] other migrant workers never see a contract at all leaving them especially vulnerable to forced labour and debt bondage" (p. 318).

6.4. GCC Migrant Worker Reports: Looking Beyond the Glitter

At first sight, the anti-trafficking legislation in the GCC appears to be addressing the problem of trafficking in persons in the Gulf States. However, upon closer examination of the labour laws discussed in the previous section highlights the inherent contradiction between the two pieces of legislation: one which promotes the prevention of trafficking, protection of victims and punishment of offenders, which is consistent with Islamic law and international norms, and another which legalises practices that contradict anti-trafficking efforts. This includes Islamic law and international norms. In the context of the GCC the intersections of criminal law, labour law and (im)migration policies underscore the need for an evaluation of the outcomes of such laws in practice as well as a review of purposes and reasons behind the drafting of such laws. This should be done in order to identify the source behind such hindrances and to propose legal reforms.

A review of the outcomes of anti-trafficking and labour legislation in the Gulf States, reveals that the means, act and purpose of trafficking in persons, as defined in national legislation and the Palermo Protocol are being supported by the sponsorship system. This observation is based on media reports from a range of news sources, all of which allude to a number of significant points: the sponsorship system in the GCC needs to be eliminated altogether for any real changes to occur; labour laws need to be

reformed on a number of fronts; and anti-trafficking measures need to be enforced. These points are derived from reports that indicate migrant workers are commonly being recruited deceptively, harboured as a result of having their passports withheld and mobility restricted, and exploited for labour, coerced to work, or treated like slaves, by employers who enjoy the protection of labour laws that allow them to do so in spite of anti-trafficking legislation.

An examination of the news reports which led to the mentioned conclusions revealed a host of themes based on the three types of news sources employed in this research, all of which inform policy recommendations made in subsequent sections.

6.4.1. GCC News Sources

With the exception of a few who confirmed reports of abuse of domestic workers and construction workers in labour camps[12], non payment of salaries, non-fulfilled promises, physical and emotional harassment and withholding of passports, and barriers to migrant workers who try to take an issue to court[13], local newspapers in the GCC mainly signalled denial of any problems with the sponsorship system[14]. Their primary concern in news reports was evidently with regards to international reputation[15].

A significant finding from the analysis of the data was the embellishment of policy and practice reforms[16] and the widespread concern about the impact of reforms on the business community[17]. In Bahrain the business community joined forced forces with the Federation of Trade Unions, the Bahrain Chamber of Commerce and Industry (BCCI) and the Bahrain Fishermen Society to voice outrage as well as to threaten to stage

12 "Kuwait takes first step to scrap sponsor system", 2013; "Bahrain plans law to protect domestic workers", 2012; "Ministry issues warning over labour camp overcrowding", 2009.

13 "Labor issues top expat legal problems", 2014.

14 "Expatriates in Kuwait anticipate abolition of sponsorship system", 2009; "Sponsorship System Tops Some Laws That Need to Be Modified", 2014; "Report is critical of UAE on labour", 2010.

15 "Sponsorship System Tops Some Laws That Need to Be Modified", 2014.

16 "Expatriates in Kuwait anticipate abolition of sponsorship system", 2009.

17 "New Bahrain labour law stirs hornet's nest", 2009; "Bahrain sponsorship system will not be scrapped", 2009; "Bahrain commended for sponsorship reforms", 2010.

rallies in opposition to proposed measures to scrap the sponsorship system if the decision was not repealed by Minister of Labour, Majid Al-Alawi[18]. Al-Alawi is one of the only members of parliament in the region who have taken a stand against the sponsorship system likening it to modern-day slavery[19]. Others, such as the Dubai Police Chief were strongly in favour of eliminating the sponsorship system. However, the reason cited for his support was reportedly because of the perceived financial and social burden placed on the Government[20]. This same individual is reportedly responsible for fielding complaints by workers, and ensuring that the complaints are forwarded to the Ministry of Labour.

Some reports examined for the study referred to the need to eliminate the sponsorship system in order to prevent political encroachment by foreign migrant workers, and to promote the indigenisation of the labour market[21]. Reports stated that this had led to the arrest and deported of hundreds of foreign workers residing in impoverished areas[22]. When references to trafficking in persons were made, the blame was often put on unscrupulous recruitment firms in source countries for what they term 'visa trafficking'[23]. A positive theme that was evident in the news reports concerned the felt need for joint action by all the GCC Member States[24]. This included practical reforms such as the Wage Protection System that ensures that employers submit records of all payments made to workers through an electronic system that is monitored by the Ministry of Labour[25].

18 "New Bahrain labour law stirs hornet's nest", 2009; "Bahrain sponsorship system will not be scrapped", 2009; "Bahrain commended for sponsorship reforms", 2010.

19 New Bahrain labour law stirs hornet's nest", 2009; "Bahrain sponsorship system will not be scrapped", 2009; "Bahrain commended for sponsorship reforms", 2010.

20 "Scrap job sponsorship system, says police chief", 2009.

21 "Kuwait takes first step to scrap sponsor system", 2013.

22 "Kuwait's foreign labour: Here today, gone tomorrow", 2013; "New clamp on illegal workers in Bahrain", 2013.

23 "Kuwait takes first step to scrap sponsor system", 2013; "Kuwait's foreign labour: Here today, gone tomorrow", 2013; "New clamp on illegal workers in Bahrain", 2013; "Labor issues top expat legal problems", 2014.

24 "Labour Minister Meets GCC Labour Ministries Undersecretaries", 2013.

25 "Report is critical of UAE on labour", 2010.

6.4.2. Source Country News

News reports from source countries focused heavily on the deception and abuses faced by their citizens in the GCC states as a result of the sponsorship system[26]. Reports documented physical torture including burns, cuts and marks made on domestic workers[27]. Other reports indicated that domestic workers faced criminal charges or deportation for attempting to change employers, after being denied adequate food and their promised salary and enduring physical and sexual abuse, pointing to the re-victimisation of trafficking victims[28]. Yet other reports explained the hardships endured by migrant workers whose passports were withheld by their employers[29].

These media sources also reported instances of the coordination of efforts between the GCC Governments and embassies for countries from which majority of migrant workers are sourced in the Gulf States[30]. Meanwhile, some news reports described measures taken by embassies to protect their citizens by creating associations across the GCC states in order to serve as a haven for workers, as well as advising them not to sign blank documents or even contracts that are not otherwise translated, which in the past have often turned out to be travel bans[31].

An underlying theme of the media reports however, appeared to be a fear of the impact of labour reforms in the GCC on the job market in source countries and the lack of opportunities for migrant workers[32]. Some reports cited a case where a Filipina domestic worker was awarded 2 million Philippine Pesos for damages, a scholarship and psychosocial counselling for having suffered what was described as 'grave abuse'

26 "Indian workers left high and dry in Kuwait", 2013.

27 "OFW abused in Kuwait returns home with scars and a painful story", 2013; "Kuwait considering scrapping sponsorship system", 2014.

28 "Kuwait: for abused domestic workers, nowhere to turn", 2010; "Kuwait considering scrapping sponsorship system", 2014.

29 "Indians threatened in Bahrain asked to approach authorities", 2013.

30 "OFW abused in Kuwait returns home with scars and a painful story", 2013; "PH lauds Bahrain for new labor laws", 2013; "Indians threatened in Bahrain asked to approach authorities", 2013; "Migrant workers unsafe in Bahrain, says rights body", 2012.

31 "Indians threatened in Bahrain asked to approach authorities", 2013.

32 "PH lauds Bahrain for new labor laws", 2013..

by her employer[33]. This signals an incremental acknowledgment of the rampant abuses migrant workers face, especially as they are not protected by private labour laws in any of the GCC states.

The GCC governments at times announced that they would abolish the sponsorship system and replace the employer-based system with a government-administered recruitment authority, however reforms would still not include domestic workers, or that reforms lacked transparency and were cosmetic at best[34].

One particular theme indicated the fear of political encroachment or yet another 'Arab Spring' by foreign migrant workers in the labour force, which has prompted the shift towards indigenisation of the private sector[35].

While media accounts are not always based on actual facts, the vested interest of source countries in shedding a positive light on the treatment of foreign workers, is especially questionable. This may be due to the fact that source countries need to ensure that their citizens have work opportunities, irrespective of the treatment they encounter upon obtaining work in the GCC.

6.4.3. International News

Perhaps the most revealing of the three types of media sources were international news sources which of the three, are most likely the least biased given that they are not direct stakeholders in potential law reforms. At times international news sources dramatised the subject by employing a language of exposé journalism that is not uncommon when discussing problems in the Middle East, but which were taken into account and at times disregarded if the language was not supported by concrete facts in the news article.

33 "OFW abused in Kuwait returns home with scars and a painful story", 2013

34 "Kuwait considering scrapping sponsorship system", 2014; "Migrant workers unsafe in Bahrain, says rights body", 2012.

35 "Kuwait considering scrapping sponsorship system", 2014; "Kerala voices concern over deportations from Kuwait", 2013.

As with source country news reports, international news reports provided lengthy accounts of the abuse and suffering migrant workers endure in the Gulf countries as a result of inadequacies in labour law and more importantly by way of the sponsorship system. Often times, reports would refer to the conditions faced by thousands of migrant workers, and particularly construction and domestic workers and cleaners, whose sub-standard and squalid living conditions as well as treatment at work are best described as 'slave-like' sometimes living with five to seven men to a room and sharing a bathroom with 50 people in labour camps guarded by private security[36] as they build New York University's Abu Dhabi campus, the Gulf's Louvre, British Museum and Guggenheim who are contracted by massive construction firms such as Arabtec and Nakheel[37]. Specific abuses included having their wages withheld for anywhere between three to ten months, debt used as collateral, passports withheld by employers, and excessively long working hours[38]. One report indicated an instance of a migrant worker being denied time to visit her family in 21 years[39].

Other reports indicated that hundreds of foreign workers commit suicide[40] citing employer abuse or exploitation as the primary factor[41]. Some reports document migrant workers fleeing to their embassies, void of legal status in the GCC, complaining of physical and sexual abuse, harassment, long periods without pay and the confiscation of mobile phones[42]. News reports often noted that workers were unable to leave their employer due to labour laws which prevent transferring of employment, often subjecting

36 "Qatar's foreign domestic workers subjected to slave-like conditions", 2014; "Migrant workers in Dubai: 'They are sucking our blood'", 2012; "Modern day slave labor: Conditions for Abu Dhabi's migrant workers shame the west", 2013.

37 "Modern day slave labor: Conditions for Abu Dhabi's migrant workers shame the west", 2013; "Striking Dubai workers face mass deportation", 2013.

38 "Quicktake: Migrant workers in Bahrain face widespread abuses", 2012; "Domestic workers face abusive employers", 2006; "Modern slaves: Domestic migrant workers in Kuwait, UAE, Saudi Arabia", 2012.

39 "Bahrain: Abuse of migrant workers despite reforms", 2012.

40 "Dubai's skyscrapers, stained by the blood of migrant workers", 2011.

41 "Kuwait TV channel mocks migrant worker abuse", 2012.

42 "Domestic workers face abusive employers", 2006; "Qatar's foreign domestic workers subjected to slave-like conditions", 2014; "Overcoming the Gulf's sponsorship program: Workers and unions struggle to find solution to growing problem", 2012; "Domestic workers face abusive employers", 2006.

them to being considered as illegal migrants, if they ran away, even if from abusive situations[43].

Many news reports cited systematic abuses encountered by migrant workers reveal 'extreme exploitation' encountered as a result of the poorly structured sponsorship system, from which there is no escape[44]. Reported accounts included contracts and job descriptions changing upon arrival in the GCC, not being allowed days off, deprivation of food and shelter, facing a menace of penalty where loans are structured in a way to ensure workers cannot get out of a debt, wrongful accusations of theft by employers, and rampant sexual assault[45].

A common theme throughout the articles was a lack of enforcement of existing legislation[46]. News reports cited the fact that no one employer had been charged with criminal penalties for not paying wages, indicating that there was an unwillingness to act on labour and anti-trafficking laws that are currently in place[47]. Similarly, some reports indicated that mechanisms for redress were lacking severely[48] leaving migrant workers vulnerable to deportation without pay[49]. Others argued reforms were again, cosmetic at best, a mere gesture[50] citing campaigns such as that initiated by the ruler of the UAE to "thank blue-collar workers for their service to the country"[51]. Such gestures were called

43 "Overcoming the Gulf's sponsorship program: Workers and unions struggle to find solution to growing problem", 2012.

44 "Domestic workers face abusive employers", 2006; "Overcoming the Gulf's sponsorship program: Workers and unions struggle to find solution to growing problem", 2012; "Modern day slave labor: Conditions for Abu Dhabi's migrant workers shame the west", 2013.

45 "Qatar's foreign domestic workers subjected to slave-like conditions", 2014.

46 "Kuwait's abused domestic workers have 'nowhere to turn'", 2010; "Bullied and helpless in Bahrain", 2009.

47 "Quicktake: Migrant workers in Bahrain face widespread abuses", 2012.

48 "Overcoming the Gulf's sponsorship program: Workers and unions struggle to find solution to growing problem", 2012.

49 "Economic, social pressures behind Kuwait crackdown on foreign workers", 2013.

50 "Do promises to end the sponsorship system hold any merit?", 2012; "Bahrain: Abuse of migrant workers despite reforms", 2012.

51 "Striking Dubai workers face mass deportation", 2013.

into question for the image they formed, in order to safeguard the reputation of the GCC on the international platform[52].

Business concerns were commonly cited in news reports, indicating that GCC companies were strongly against the ability of migrant workers to transfer employment due to perceived strains it would place on the company having to re-hire and train a new employee[53]. However, reports also speculated that labour law reforms would signal in a new movement of indigenisation of the labour force to reserve work opportunities for GCC nationals in the private sector[54].

Not surprisingly, silence and denial were also common themes in news reports A key issue is the intolerance for the mere mention of the treatment of foreign workers in GCC society, which is indicative of the sensitivity felt by the Governments[55]. One report quoted the Kuwaiti government claiming, "no widespread abuse is taking place"[56]. The lack of checks and balances in the system to ensure that migrant workers' rights are not violated is also a frequent theme in source country media[57].

Lastly, the need for joint action by the GCC to resolve the problem of trafficking in persons through the sponsorship system was an important theme in the reports[58]. This is essentially at the crux of this research, and one that is addressed in greater detail in the following section.

52 "Do promises to end the sponsorship system hold any merit?", 2012.

53 "Overcoming the Gulf's sponsorship program: Workers and unions struggle to find solution to growing problem", 2012.

54 "Overcoming the Gulf's sponsorship program: Workers and unions struggle to find solution to growing problem", 2012; "Striking Dubai workers face mass deportation", 2013; "Striking Dubai workers face mass deportation", 2013; "Economic, social pressures behind Kuwait crackdown on foreign workers", 2013.

55 "Dubai's skyscrapers, stained by the blood of migrant workers", 2011; "Migrant workers in Dubai: 'They are sucking our blood'", 2012.

56 "Kuwait's abused domestic workers have 'nowhere to turn'", 2010.

57 "Migrant workers in Dubai: 'They are sucking our blood'", 2012; "Modern slaves: Domestic migrant workers in Kuwait, UAE, Saudi Arabia", 2012; "Bahrain to end 'slavery' system", 2009.

58 "Bahrain to end 'slavery' system", 2009.

6.5. Trafficking in Persons, *Kafala* and *Jus Cogens*

The *kafala* system is not void of merits. However, the inability by the GCC states to ensure that it is not employed as a vehicle for trafficking suggests that the elimination of the system in favour of a just migration system for foreign workers may be required. Despite the enormous wealth of the GCC states, their astronomical GDP, and their reserves of foreign exchange and gold, migrant workers are at a high risk of being commodified. Further, they are often treated as disposable, partly due to the principles of international trade, which promotes the exchange of cheap and pliable labour as a product on the global market.

The GCC states do not perceive the *kafala* system as conducive to trafficking in persons. However, this thesis has argued that intersections in criminal, labour and (im)migration law in the GCC, particularly against the backdrop of wealth and political power create vulnerabilities for migrant workers. The results of this research reveal that the *kafala* system creates conditions that are highly exploitative and tantamount to human trafficking. The trafficking legislation in the GCC addresses the concerns of trafficking in persons in policy; however, considerable room is left for law reform. Reform in the areas of labour law and (im)migration in the GCC are particularly relevant. Reforms in policy coupled with practical reforms that ensure the safety of migrant workers is proposed as the necessary approach to overcoming the current state migrant workers find themselves in.

Based on the position that the structure of the *kafala* system creates conditions tantamount to human trafficking, this research suggests that the *kafala* system is a state-enabled form of trafficking in persons. The research suggests that kafala system needs to be formally addressed while engaging international norms and standards, which should serve as guideposts in the process. While the argument can be made that *jus cogens* norms protect against violations of trafficking in persons, this is not entirely true. The reality is that, due to the legal definition of trafficking in persons, which encapsulates slavery and slave-like practices as a purpose, trafficking and slavery are distinct in international law. This distinction in law results in the exclusion of trafficking from being considered a *jus cogens* norm.

Consequently, the proposed remedy is to consider slavery and trafficking as distinct crimes, but similar enough to warrant trafficking to be codified as an international norm from which states are not able to derogate in law or practice. If the argument can be made that trafficking and slavery are similar enough whereby crimes of trafficking in persons enjoyed the same legal protection as crimes of slavery in international law, the definition of trafficking in persons would need to be revisited. The re-thinking of legal definition of trafficking would essentially bring into question the inclusion of slavery as a *purpose* within the Palermo Protocol definition of trafficking in persons.

With the codification of the crime of trafficking in persons as a *jus cogens* norm, discussions regarding further development of law and legal standards would potentially ensue in the context of the GCC states. All six members of the GCC recognise the crime of trafficking in persons, at least in legislation if not yet in practice. Further, with the codification of trafficking in persons as a *jus cogens* norm, state violations of this norm, as is evident with the *kafala* system, would qualify for a conviction before the International Court of Justice. In so doing, the conviction would stand irrespective of reservations made by some GCC states to articles in the Palermo Protocol preventing them from being brought before the Court as a mechanism of redress. Perhaps only then, would the principles of human security and freedom trump those of state security and values of capitalism inherent in international trade.

6.6. EU Directive on Human Trafficking: A Natural Next Step for the GCC

Trafficking in persons is a crime that is constantly evolving. In order to effectively manage measures directed particularly at prevention of trafficking, a unified response through coordinated efforts and strengthened partnerships is necessary. While a global response would ideally entail consistently applied international legal frameworks, a more reasonable starting point may be developing regionally coherent and consistent legislative frameworks. A unique example can be found in the case of the EU's *Directive 2011/36 of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting the victims, and replacing Council Framework Decision 2002/629/JHA*. In achieving this, countries in the GCC

would, minimize the risk of displacing human trafficking to a nearby state. As mentioned previously, Directive 2011/36 is unique because it requires Member States of the EU to address trafficking in persons, without dictating the means of achieving it. Further, Directive 2011/36 is characterised by a comprehensive approach, described as focusing "equally on prevention of trafficking, prosecution of criminals, protection of victims, and partnerships across relevant disciplines and between different levels" (Vassiliadou, 2012).

A number of key points can be taken from the EU Directive that could provide a basis for a regional framework in the GCC. First, the EU Directive, in section (2) outlines that third countries are consulted and involved in the process of identifying root causes of trafficking, and in doing so, preventing trafficking from its source. As well, it highlights the role of the EU in assisting third countries[59] develop appropriate anti-trafficking legislation. In section (3), the Directive recognises the gender specific nature of trafficking in persons and seeks to identify 'push' and 'pull' factors unique to each sector. Importantly, it explains in section (4) that policies should be based on identified best practices and that it indicators should be developed and exchanged between all public and private social services. Section (5) of the EU Directive discusses the importance of cooperation among law enforcement in Member States while section (6) highlights the role of civil society organisation, including non-governmental organisations in addressing trafficking and protecting victims.

One of the most important characteristics of Directive 2011/36 is its human rights based approach to countering trafficking in persons which is enshrined in section (7). Another equally important section of the EU Directive, is section (10) which states, "This Directive is without prejudice to the principle of non-refoulement in accordance with the 1951 Convention relating to the Status of Refugees" (Directive 2011/36). Further, sections (14) and (20) underscore the responsibility of Member States in preventing the re-victimisation of trafficking victims. This is enshrined by recognition that any partaking of victims in criminal activities such as prostitution, immigration or use of false

[59] The term 'third countries' refers to countries from which individuals who are in transit and/or applying for visas in countries that are not their own country of origin, in order to go to a destination country that is similarly not their country of origin.

documents are a direct result of being compelled to commit such acts and not as a result of being voluntary parties to a crime. Section (17) of Directive 2011/36 defines mobility rights for trafficking victims and their families within the EU, under a special residence permit while sections (18) and (21) describe the assistance and support that should be made available to them based on individual assessments made by Member States. Provision (19) outlining the entitlement of victims to legal counselling and representation is another essential aspect of the EU Directive, outlined. On a practical level, Directive 2011/36 describes the importance of research and education as a means of preventing trafficking in persons, and requires that Member States develop awareness-raising campaigns. Perhaps one of the most relevant provisions to this research, is section (26) which states,

> Directive 2009/52/EC provides for sanctions for employers of illegally staying third-country nationals who, while not having been charged with or convicted of trafficking in human beings, use work or services exacted from a person with the knowledge that that person is a victim of such trafficking.

Finally, the sections (27) and (29) mandate the appointment of a national rapporteur and establishment of a national monitoring system as well as a consolidated Union strategy to avoid duplicating efforts, but more importantly, to improve coordination and coherence in anti-trafficking efforts.

Essentially, the EU Directive provides a framework that could be employed as a standard of best practice in the GCC. In fact, the GCC has clearly stated that as part of the EU-GCC FTA negotiations a key incentive for the GCC is to emulate the EU system of integration (Antkiewicz & Momani, 2007). Normally, the application of laws from one region to another can be a questionable practice if done with disregard for the context in each region. However, EU Directive 2011/36 provides a framework that is adaptable to each region while creating a unified sense of responsibility among Member States. This would also ensure that efforts to address human trafficking are coordinated and coherent. Given the evident inadequacies inherent in the intersection between labour laws, criminal laws and (im)migration policies in the GCC, the adoption of such an approach would raise the standard of response to trafficking in persons. It would also relieve the GCC from pressures accruing from uncoordinated reforms by some but not

all Member States, which could result in a sudden displacement of trafficking trends to another GCC Member State. In addition, by adopting the EU Directive approach, the GCC Member States would benefit from reconciling their national standards with regional and international standards. As well, the Member States would be safeguarding their reputation as a region with respect for human rights standards, while retaining international business prospects.

7. Translating Research into Practice: Opportunities for Law Reform

One of the primary objectives of research that involves an analysis of law or policy is to inform recommendations to address identified issues. Law reform is a process that may take a substantial amount of time before results come to fruition. However, this does not negate the importance of initiating law reform as an effective means of action. Law reform is the first of many steps towards reforms in practice.

Using the analysis of legal texts on a national, regional and international level, coupled with an analysis of media reports describing the treatment of the migrant workers in the GCC, this research identifies a number of recommendations. These recommendations can be captured under three broad terms aimed particularly at prevention measures in the GCC states: (1) Returning to an authentic and accurate reading of Islamic law that is consistent with international norms and standards (2) aligning all national legislation with a regional directive using the EU Directive 2011/36 as a best practice, and lastly, (3) codifying trafficking in persons as a *jus cogens* norm in international law.

The materials presented in this thesis reveal that historically, Islamic law introduced reforms to slavery and sought to abolish slavery-like practices. By extension, it has been argued that if Islamic law is immutable then it is in in harmony with international law. More specifically, Islamic law prohibits the corrupt, deceptive and coercive practices characteristic of the crime of trafficking in persons and promotes the equitable treatment of workers. Further it emphasises that human beings should be treated with respect. As well, the notion of freedom as a principle matter in Islam has been described through a selection of the two sources of Islamic law, all of which underscore the unacceptability of exploitation of workers. In relation, just business ethics have been highlighted as a cornerstone of transactions in Islamic law. Yet in spite of these standards, the GCC countries, whose legal systems are claimed to be drafted

predominantly in accordance with Islamic law, allow for striking contradictions in their adherence to Islamic laws and provisions in labour laws, which explicitly allow for exertion of power and control of foreign migrant workers.

The findings of this research can be used to set out a number of recommendations. First, there should be a return to accurate principles of Islamic law in the GCC. This would ensure that that law and policy in these states would be dictated by the only two reliable sources, namely the Qur'an and the *Ahlulbayt.* Both of these sources demonstrate that Islamic law is not only compatible with international norms and standards, but is also consistent in its intolerance for the exploitation of persons. If the GCC states did not claim to be operating according to Islamic law, a recommendation would be made to align national laws and practices with the predominant legal system. However, the GCC states proclaim their legal system to be based on the principles of Islamic law, and hence the recommendation is to honour that claim.

In doing so, the recommendation is to jettison the hybrid model of legal system. The hybrid system enforces common law and civil law in matters concerning business and financial interest, while applying Islamic law to all other matters. The legal system should be replaced with a single comprehensive framework of law based on an accurate understanding of Islamic law. Further, by following the principles of Islamic law, the sponsorship system as it currently stands, would have to be eliminated. In its place the GCC states can implement a system of governance, based on the model of Imam Ali ibn Abi Talib's government, recognised by the Arab states as a leading example of just governance (UNDP, 2000). Such a model of governance would be identified as compatible with business ethics and equally with corporate social responsibility. Most significantly, by returning to a legislative framework that is based on an accurate interpretation of Islamic law, the response to trafficking in persons will shift from that of state security to one of human security, which is the ultimate goal of this research.

The second recommendation is that the GCC agree to a directive, similar to EU Directive 2011/36. The development of a GCC directive will ensure that (a) anti-trafficking legislation in the six Member States is similar enough between each state, so the trafficking of persons does not shift to a nearby member state (b) law enforcement efforts are coordinated and by extension investigations and prosecutions are expedited

(c) victims are provided appropriate support and resources, including health and education (d) coordination with third countries is given due priority (e) indicators of trafficking are consistent and context specific (f) efforts on all levels are integrated and holistic (g) victims are not re-victimised by law enforcement officials and the investigative or legal process (h) training and awareness raising campaigns are coordinated and effectively targeted and lastly, (i) victims can exercise mobility rights within the GCC by way of temporary visas if need be.

In developing a comprehensive GCC directive, there may be a higher likelihood that Member States will enforce trafficking laws with a greater degree of consistency. Further there is a higher likelihood that they will develop measures to improve labour laws through regional efforts without the fear of losing business to other GCC states. In addition, they would have to consider creating monitoring systems and bodies that are independent of the government, which may have vested interests in the deportation of migrant workers to indigenise the labour force.

The third recommendation is that the crime of trafficking in persons be codified as a *jus cogens* norm in international law. The crime of slavery is currently one of few universal norms from which states are not able to derogate in any type of legislation. However, despite the similarities between slavery and human trafficking, human trafficking does not enjoy the same legal status. This is due to the fact that legally, slavery and human trafficking are defined as distinct crimes. Trafficking in persons encompasses slavery as a purpose of trafficking but is defined differently from trafficking in persons. Therefore, human trafficking, as a crime distinct from slavery, according to international law, should be codified as a *jus cogens* norm. The anticipated benefit in advancing trafficking in persons as a *jus cogens* norm is that at a minimum, it signals the grave nature of this crime which affects millions of people everyday. At best, it allows for states in direct contravention of this norm to be brought before the International Court of Justice, irrespective of reservations made to the Palermo Protocol.

8. Conclusion

Trafficking in persons in the GCC States is a direct result of problematic legal infrastructures that not only allow human trafficking, but which, indirectly, legalise the trafficking of persons for the purposes of exploitation or forced labour. To explore this position further this research sought to answer five research questions.

The first research question explored how labour and (im)migration policies and practices in the Gulf Co-operation Council states of the Middle East can be understood within the framework of, and in relation to domestic anti-trafficking legislation and the Trafficking in Persons definition provided in Article 3, paragraph (a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000). The research determined that all GCC Member States have drafted laws enacting anti-trafficking legislation, as per the Palermo Protocol. The labour laws of the private sector in each GCC Member State however, were found to be inconsistent with the spirit of the Protocol, as they indirectly legitimise trafficking, through the sponsorship system and lack of protection for some categories of workers. Further, through the sponsorship system, the means, act and purpose of the trafficking in persons definition is met. In other words migrant workers are recruited, transported, transferred and harboured, by means of threat, use of force and other forms of coercion, fraud, deception, abuse of power of a position of vulnerability. This is done for the purposes of exploitation, namely forced labour and practices similar to slavery. The research demonstrates that such acts and activities are rampant in the reports provided in international, local and source country news.

The second research question sought to understand what the implications may be, of using comprehensive international definitions of crime and presenting and applying these as ‘established’ and ‘universally agreed-upon’ standards globally. The results of the research indicate that the implications of using a comprehensive definition of crime and presenting it as ‘established’ and ‘universally agreed-upon’ are significant in

the context of the GCC. The problem is attributed to a lack of shift in attitude in the GCC States to act on these principles, despite the criminalisation of trafficking in persons in the GCC, as a direct result of international pressure. For this reason, the implications of using a comprehensive definition of crime and presenting them as 'established' and 'universally agreed-upon' is problematic. This is partly due to the presumptuousness in assuming that legislation is sufficient indication of agreement that a certain is unacceptable and that there is a willingness to act on such legislation. The situation in the GCC highlights the weakness in this approach as it illustrates that enacting laws, simply to satisfy international pressure, does not necessarily signify agreement to an act being 'established' as a crime, or a willingness to act upon the legislation. This ultimately results in disparities between law and practice.

The third question this research sought to answer was what the points of convergence and divergence are in laws related to trafficking in persons in the GCC states and the EU Directive 2011/36. The main points of convergence, according to the research findings are that both regions have domestic legislation criminalising trafficking in persons. The point of divergence is that the EU, through EU Directive 2011/36 provides a comprehensive framework for each Member State to address trafficking in persons, while the GCC does not. The comprehensive framework is implemented in the EU to ensure that the response is unified. This essentially plays an important role in preventing the displacement of trafficking to a nearby state within the same geopolitical region. In contrast, the GCC Member States have each drafted their own laws, some of which are more comprehensive than others. This creating an imbalance in the response to preventing trafficking, and which creates opportunities for a shift in trafficking from one Member State to another.

The fourth research question explored how lessons and best practices from the EU, as another geopolitical bloc can be applied in the GCC. The results indicate that factors taken into account in the EU that are not included in anti-trafficking efforts in the GCC. One effort includes involving third countries in prevention efforts by consulting them in identifying root causes of trafficking, and in doing so, preventing trafficking from its source. Another factor is that policies in the EU are required to be based on identified best practices and on indicators that must be developed and exchanged between all public and private social services. Further, the EU Directive discusses the importance of

cooperation among law enforcement in Member States while highlighting the role of civil society organisation in anti-trafficking efforts. Another important factor takes into account the non-refoulement of victims. In relation another factor taken into account in the EU, that is currently lacking in the GCC is the precaution taken, in policy, against re-victimisation of trafficking victims. Finally, the EU mandates the appointment of a national rapporteur and establishment of a national monitoring system as well as a consolidated Union strategy to avoid duplicating efforts, all of which the GCC could use as best practices.

The fifth and last research question sought to understand the challenges in applying standards, legislative frameworks and best practices related to anti-human trafficking efforts from experiences in one region to another, taking into account the various legal codes employed in each region.

The research findings reveal that the GCC needs to reconcile its labour laws and anti-trafficking legislation, in the absence of a regional framework. In contrast, this appears to be a non-issue in the EU because it provides a general framework for Member States to draft their own laws. Similarly, the research findings discover that the GCC needs to re-affirm its commitment to an authentic and accurate understanding of Islamic law, in both policy and practice, while the application of Islamic law in the context of the EU is not a concern.

Finally, the findings indicate that despite the occurrence of trafficking in persons in the EU, the EU has a social fabric, which impacts the way in which labour is conceived of, that prove to be less challenging that in the GCC. The mentality regarding labour in the GCC can be characterized as an unwillingness to acknowledge slavery like practices as problematic. The findings indicate that the percentage of foreign nationals in the labour force in the GCC creates fears of political encroachment and lack of employment opportunities for GCC nationals. These fears have been dealt with through indigenisation efforts of the labour force, and have proven to create even greater vulnerabilities for migrant workers. In contrast, in the EU, this concern, while it exists, is not manifested as overtly as it is in the divide between the public and private sector and respective laws in the GCC. The lack of women in the workforce also has implications in the GCC whereas in the EU this is less of a concern.

Consequently, while all six Member States of the GCC have enacted anti-trafficking legislation that stipulate severe penalties for individuals and/or corporations charged with trafficking in persons, GCC labour laws in the private sector expose migrant workers to severe work conditions that can be defined as slavery.

The inhumane treatment of migrant workers is often attributed to the history of slavery in the Middle East and the failure of Islamic law to abolish slavery. Orientalist scholars, including Samuel Huntington (1993) in the *Clash of Civilizations?* have argued that as civilisations encounter one another, each will try to exert control over the another. Huntington (1993) cites the most important of these efforts as that of the West's which in the process of promoting its "values of democracy and liberalism as universal values", which, in turn, has engendered countering responses from other civilisations (p. 29). This research has illustrated that such arguments promote binaries and the positional superiority of one civilisation over another. Further these problematic arguments, which inform theories of slavery in the Middle East as being rooted in the indifference of Islamic law towards the treatment of slaves, are inherently baseless and ill informed. It has been demonstrated that Islamic law and its principles are consistent with international norms and standards, if interpreted accurately, using the Qur'an and the traditions of the *Ahlulbayt*.

Using the arguments made by Mattar (2010), it has been established that Islamic law prohibits the exploitation of persons and acts which fall under the definition of trafficking, as defined by the United Nations Protocol to Prevent, Suppress and Punish the Trafficking of Persons (2000). Further it has been demonstrated that Islamic law promotes ethical business and corporate social responsibility. It has been argued in this thesis that the human trafficking problem in the GCC is rooted not in Islamic law, but in the sponsorship system known as *kafala*. This system creates highly exploitative situations for migrant workers and runs counter to international law as well as to national anti-trafficking legislation. This manifestation of trafficking is described as state-enabled and unique to this region of the world. Therefore the recommendation has been made to return to an authentic reading of Islamic law and by extension, the elimination of the sponsorship system.

Against the backdrop of the significance attributed to international trade in the region, this thesis has also put forward the recommendation to leverage labour reforms through the EU-GCC Free Trade Agreement. While the principles of international trade and the theory of competitive advantage promote the commodification of cheap labour, this thesis has suggested that the same apparatus, by which migrant labourers are exploited and trafficked, can be turned into a mechanism to improve human rights standards. By suspending the EU-GCC FTA negotiations, the EU, partly as a result of grave violations against the migrant labour workforce in the GCC, has created pressure on the Gulf States to acknowledge, even if not explicitly, that the *kafala* system needs to be discontinued. At this point in time, as the negotiations reach a critical point, the GCC may begin to feel the impact of their poor international reputation for inhumane labour standards on international trade prospects and business relations. In effect, this pressure may ultimately result in labour law reforms that are long overdue.

Finally, this thesis has proposed that due to the difference in legal definitions of human trafficking and slavery, but equally similar outcome of both crimes, trafficking in persons should, similar to slavery, be catalogued as a *jus cogens* norm. This recommendation stems from the grave nature of this activity which affects all countries in the world (UN.GIFT, 2008), and which is essentially a crime against humanity. In doing so, states that violate this norm could be brought before the International Court of Justice, irrespective of reservations to provisions in the Palermo Protocol, which would otherwise prevent them from being prosecuted. In order to achieve this however, a greater shift on a global scale is needed towards depoliticising the trafficking of persons and approaching it, not as an issue of state security, but as a matter of human security and just governance.

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Appendices

Appendix A.

GCC Legislation

UAE

Federal Law No. 51 of 2006 pertaining to trafficking in persons
Federal Law No. 8 of 1980 pertaining to labour law
National Committee to Combat Human Trafficking Annual Report 2012-2013

Sultanate of Oman

Royal Decree No 126/2008 Anti-Trafficking Law
Ministry of Manpower Labour Law 2012

Kingdom of Bahrain

Shura Council Law No. 1 of 2008 with Respect to Trafficking in Persons
Bahrain Penal Code 1976
Kingdom of Bahrain Law No. 36 of 2012 The Promulgation of the Labour Law in the Private Sector

Kingdom of Saudi Arabia

Labour and Workmen Law 1969 Royal Decree No. M/21
Anti-Trafficking in Persons Law Royal Decree No. (M/40)

Kuwait

Ministerial Legislation Number (201) for the year of 2011 on the Ban of Forced Labour
Law No. 91 of 2013 Trafficking in Persons and Smuggling of Migrants
Law of Labor in the Private Sector No. 6 of 2010

Qatar

Law No. (15) of Year 2011 o Combating Trafficking in Human Beings,
Law No. (14) of the Year 2004 The Labour Law
Law No. 4 of 2009 Regulating the Entry and Exit of Expatriates in Qatar and their Residence and Sponsorship,