Re-framing European Union (EU) - United Kingdom (UK) Cooperation to Address Human Trafficking and Migrant Smuggling

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Abstract: *Since the UK's departure from the* EU*, the two parties have established a Trade and Cooperation Agreement (TCA) to shape their post-Brexit trade relationship. However, no formal agreement has been reached to address people smuggling and human trafficking, despite the UK government's stated intention to collaborate with the EU in tackling these crimes. We argue that when such an agreement is negotiated, it should adopt a human rights-based approach, ensuring the effective identification and protection of actual and potential victims of human trafficking. Enhanced cooperation in integrated border management, such as the 2024 post-Brexit arrangement between the European Border and Coast Guard Agency (Frontex) and the UK, and bilateral agreements with France, has yet to sufficiently prioritise human rights. Like the EU's other cooperation agreements with third states, any potential future bilateral agreement should also incorporate human rights clauses, in line with specific measures contained in the TCA. These legally binding clauses are designed to safeguard and strengthen the protection of fundamental rights. Addressing the complexity of human trafficking and migrant smuggling, along with the multifaceted governance systems they entail, requires balancing the UK's national sovereignty with the EU's legal personality and primacy over its Member States in the development of bilateral agreements rooted in human rights. This challenge requires cooperation and responsibility-sharing, rather than uncoordinated systems that states, and non-state actors can exploit.*

Post-Brexit EU-UK Bi-lateral Agreement, Human Trafficking, People Smuggling, Human Rights

1. Introduction

A bilateral agreement between the UK and the EU on irregular immigration governance is essential to effectively address human smuggling and trafficking while ensuring the protection of the human rights of vulnerable migrants. We propose a framework for the post-Brexit EU-UK relationship to address irregular migration, people smuggling, and human trafficking through a human rights-focused approach. Differing cross-border rules and human rights protection standards in the migration

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field might produce discrepancies between the UK's human rights standards and the higher requirements established by the EU Charter of Fundamental Rights (hereafter, the Charter) (Home Office, 2014). However, as a party to the European Convention on Human Rights (ECHR), the UK shares a foundational human rights framework with the EU. The ECHR is also embedded in the EU legal system as a general principle of EU law under Article 6(3) of the Treaty on European Union (TEU). Therefore, the ECHR could provide a common basis for cooperation between the UK and the EU.

Yet, even before leaving the EU, the UK showed a degree of disengagement from asylum and migration policies within the Area of Freedom, Security, and Justice (AFSJ) [1] by opting out of the 2011 recast of four asylum directives (The Migration Observatory, 2014). The government upheld that these directives limited its discretion over asylum admissions, hindering efforts to reduce asylum numbers, detect false claims, and control borders (El-Enanny, 2017, p. 5; Wolf, Piquet and Carrapico, 2022, p. 615). Its disengagement from certain EU policies did not extend to combatting cross-border crimes, including trafficking in human beings (THB). Since the entry into force of the EU-UK Withdrawal agreement (Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Parliament 2019), the UK repealed the EU's 2011 Trafficking Directive (Directive 2011/36/EU)[2] (now amended by a recast Directive: Directive 2024/1712/EU). Nevertheless, the UK has consistently played a pivotal role in police and judicial cooperation and intends to maintain this role (Wolff, Piquet and Carrapico, 2022, p. 607). This commitment is also reflected in the working arrangement establishing operational cooperation between the UK and the European Border and Coastguard Agency (Frontex), which is an agreement between an EU agency and the UK government and not a formal agreement between the EU and the UK, as well as bilateral agreements with individual EU Member States to combat people smuggling and human trafficking (UK Visas and Immigration, 2020; UK Parliament, 2021)

This article highlights the complexities of effective cooperation in fighting against migrant smuggling and human trafficking—global challenges that require a coordinated, cross-border response, as no single state can address them alone. In Section 2, we provide an overview of the governance of human trafficking, exploring how overlapping legal frameworks on trafficking, people smuggling, and irregular migration intersect with fundamental rights regimes. Section 3 examines Frontex-UK cooperation and specific dispositions of EU-UK Trade and Cooperation Agreement (TCA). In Section

[1] Title V of the Treaty on the Functioning of the EU (TFEU) is titled Area of Freedom, Security and Justice and it includes law and policies on asylum and immigration and police and judicial cooperation in criminal matters.

[2] The UK introduced the Trafficking People for Exploitation Regulations 2013 as part of the implementation in England and Wales of Directive 2011/36/EU. The UK retained the substance of the anti-trafficking provisions, including the Trafficking People for Exploitation Regulations 2013, which continue to apply in the UK under domestic law. As a result, although the UK is no longer bound by Directive 2011/36/EU, the legal framework for combating human trafficking (largely based on the principles of the directive) remains largely intact under UK domestic law, through both retained regulations and subsequent national legislative reforms, such as the Modern Slavery Act 2015 and amendments made under the Nationality and Borders Act 2022

4, we analyse bilateral agreements between the UK and France, assessing whether and how the ECHR is referenced. Section 5 proposes a framework for the post-Brexit EU-UK relationship to address irregular migration, people smuggling, and human trafficking through a human rights-based approach. Despite existing divergences, the ECHR—shaped by the evolving jurisprudence of the European Court of Human Rights (ECtHR)—remains a key reference point for developing future EU-UK cooperation.

2. The complexity of Trafficking in Human Beings (THB) and its governance

Two key pillars underpin our argument that collaboration between the EU and the UK should be grounded on the recognition of human trafficking as a grave violation of fundamental human rights with a focus on victims' protection. The first keystone consists in considering the complexity of the THB phenomenon and migrant smuggling and their interplay. The second keystone highlights the complexity of enhanced cooperation in integrated border management to combat cross-border crime. This is further analysed in the following sections, through the EU-UK Trade and Cooperation Agreement (TCA) (Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part 2021), the 2024 post-Brexit working arrangement between Frontex and the UK (Frontex, 2024) , bilateral agreements between the UK and France (Home Office, 2022), and the UK-Swiss settlement (Home Office, 2024).

While people smuggling and human trafficking are distinct crimes, they can often intersect.[3] As border controls become more stringent, smuggling networks grow increasingly complex, and individuals seeking to leave their countries of origin are progressively compelled to turn to them (Triandafyllidou, 2018, p. 214; Spijkerboer, 2018, p. 461). Research consistently indicates that migrants may be, or become, victims of human trafficking prior to the commencement of their journey, as they are coerced into accepting perilous work at border areas from smugglers to finance their trip (The Global Initiative against Transnational Organised Crime, 2014; European Commission, 2015, pp. 43, 45 and 46; Augustova, Carrapico and Obradović-Wochnik, 2021). This vulnerability persists throughout their journey and upon arrival in the destination country, as they frequently lack access to legal labour markets, further exposing them to exploitation (Rijken, 2022, p. 476). Therefore, the fight against smuggling of migrants has to take into consideration that many smuggled people can be actual and potential victims of human trafficking. Relying exclusively on repressive measures may leave numerous

[3] For a definition and comparison of people smuggling and human trafficking, see the United Nations Convention against Transnational Organized Crime and the Protocols Thereto General Assembly resolution 55/25 of 15 November 2000. Article 3 of the Trafficking Protocol states that trafficking requires the existence of two means which are1) "…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…" and 2) exploitation. These means are absent in the crime of smuggling of migrants (Article 3 of the Smuggling Protocol), which is defined as "…the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

victims of trafficking vulnerable to further exploitation (Ventrella and Morano-Foadi, 2022, pp. 202-226). By disentangling the automatic link between irregular status and expulsion, the identification of potential and actual victims can be facilitated, while simultaneously upholding their human rights. Notably, State Parties have the legal obligation to identify and protect actual and potential victims of human trafficking (Chowdhury and others v Greece, 2017; V.C.L and A.N v United Kingdom, 2021).

Developing the EU-UK post-Brexit relationship in the context of addressing irregular migration, fighting against people smuggling, and human trafficking, requires a nuanced approach that balances border security with human rights obligations. This framework emphasises the shared responsibility of both parties to address these challenges effectively while upholding the rights and dignity of individuals affected by such criminal activities. When national authorities investigate people smuggling, they should recognise that some migrants involved may also be victims—or at risk of becoming victims—of human trafficking. Therefore, the interplay between these two crimes cannot be underestimated. By prioritising the identification and prosecution of offenders, the authorities often overlook the role they may play in creating conditions that enable exploitation. Yet, the crime of human trafficking is complex, multifaceted, and highly adaptive, presenting significant legal challenges in terms of detection and prosecution. Its dynamic nature, shaped by varying methods and contexts, makes it especially difficult to identify victims within the legal framework. Human trafficking is commonly framed as a criminal offence—organised crime or even a crime against humanity (Obokata, 2005, pp. 445-457; United Nations Convention against Transnational Organised Crime and the Protocols thereto 2003). However, investigations should not only address the unlawful crossing of borders and criminalise the offenders but also assess whether the victims require protection. It is essential to reaffirm survivors' human rights, ensuring that they receive appropriate recognition and "special" treatment by authorities, acknowledging their status as individuals who have endured significant violations.

Considering the complex and often hidden nature of human trafficking, framing it as a serious human rights' violation and not simply a criminal offence would truly provide comprehensive support for survivors and hold offenders accountable. Arguably, without this framing, a lower standard of protection might not sufficiently ensure the rights and well-being of trafficking survivors while effectively criminalising perpetrators. Hence, this highlights the imperative of considering human trafficking not merely as a criminal act but as a profound human rights violation and raises the question of the human rights standards to be included in a possible EU-UK agreement.

In addition to the complexity of the phenomenon itself, the governance of THB is also highly intricate. The proliferation of international agreements and human rights measures within the global system generates a complex multi-layered governance structure (Drezner, 2013, p. 282). Overlapping measures can erode the governance and encourage 'all actors to exploit the complex environment to advance their own interests' (Drezner, 2013, p. 288). When it comes to reaching agreements, the focus is on how two or more institutions—whether national or supranational, such as the Home Office (in the

UK) and the European Commission or Frontex (in the EU)—intersect in terms of their scope and objectives (Betts, 2013, p. 71; Alter and Raustiala, 2018, p. 332). When there are more rules and actors that can claim to be governing one particular issue (Bett, 2013, p. 71; Alter and Raustiala, 2018, p. 332), the absence of hierarchy creates further complexity. In the context of a potential future EU-UK agreement on irregular migration, people smuggling, and human trafficking, the parties would collaborate through agreements without relinquishing sovereignty over their respective systems. Post-Brexit, the UK is no longer bound by the Charter, which, under Article 52(3), aligns its rights with those of the ECHR while often providing a higher level of protection (Moreno-Lax, 2011, pp. 166-170; Tsourdi, 2016, p. 10; Morano-Foadi and Andreadakis, 2020, p. 63). In contrast, the EU and all its Member States remain bound by the Charter, which must be upheld in the context of migrant smuggling investigations and the identification of trafficking victims. As human trafficking constitutes a human rights violation, multiple legal regimes intersect (Betts, 2013, p. 72). However, the ECHR could serve as a common denominator, providing a shared legal foundation for cooperation. By adopting the ECHR and the evolving jurisprudence of the ECtHR, the EU and the UK would be able to manage their cooperation in this field while respecting each other's sovereignty and primacy, navigating complex areas such as irregular migration, security, human trafficking and people smuggling. irregular migration, security, human trafficking and people smuggling. Cooperation grounded in international conventions like the ECHR, would be both feasible and likely to improve the THB governance (European Commission Communication 2021; European Convention on Human Rights, Art. 4; Siliadin v France, 2005; Rantsev v Cyprus and Russian, 2010; Zoletic and others v Azerbaijan, 2021).[4] Human trafficking and people smuggling can be addressed through policy solutions crafted, coordinated, and implemented within flexible, adaptable responses across different policy areas (Alter and Raustiala, 2018, p. 337). Yet, as previously noted, the challenge here is to frame human trafficking as a violation of human rights and not simply as a crime related to irregular migration and the crime of migrant smuggling that needs to be suppressed. Therefore, both parties should agree that THB can be tackled by protecting the actual and potential victims before adopting repressive measures against traffickers. Protection and shelter should be granted through provisions in the agreement which equip survivals and potential victims with skills preventing their victimisation and/or revictimization. Moreover, mutually agreed mechanisms for redistributing migrants and sharing responsibility for actual and potential victims of THB, using the

[4] This point is clarified by the European Commission in the above cited Communication and ECtHR case-law. The Commission stated: "Cooperation among key actors, including at political level, between law enforcement and judicial authorities, in both national and transnational contexts, led to prosecutions and convictions as well as improved identification, assistance and support to victims". COM (2021) 171 final, p. 2. The ECtHR ruled in Siliadin v. France that human trafficking falls within the scope of Article 4 ECHR and that State Parties have the positive obligation to investigate, prosecute perpetrators and protect victims. The ECtHR stated that when human trafficking has a cross-border dimension, State Parties have the legal obligation to cooperate effectively with the relevant authorities of other States concerned outside their territories where part of the crime occurred. (*Rantsev v. Cyprus and Russia,* para. 289 and *Zoletic and Others v. Azerbaijan,* 2021*,* para. 191).

ECHR as a legal foundation for such an arrangement, should be included. Both sides must find compromises and balance their domestic and international interests.

The 2024 post-Brexit working arrangement between Frontex and the UK and the Political Declaration which accompanies the Withdrawal Agreement from the EU (which was then incorporated into the TCA), both mention the respect for fundamental rights as their legal foundation. By contrast, bi-lateral agreements between the UK and France on people smuggling are drafted with the lens of fighting the crime with no attention to human rights. Indeed, the ECHR should play a pivotal role in shaping future agreements between the parties.

3. Human Rights in the Post-Brexit Era: the EU-UK Trade and Cooperation Agreement and the Frontex-UK Agreement

The 2018 Political Declaration, which was endorsed by both the UK and the EU pending ratification of the Withdrawal Agreement (HM Government, 2019; European Union (Withdrawal Agreement) Act 2020, para. 1), reflected the parties' mutual commitment to cooperation within the framework of the international order, the rule of law, and democracy (HM Government, 2019, para. 22). The Declaration asserted that future cooperation between the EU and the UK would be rooted in the principles and values established by the ECHR, whilst the EU and its Member States would remain bound by the Charter, which reinforces the rights enshrined in the ECHR (HM Government, 2019, para. 7). This recognition was reinforced through amendments to the Declaration in 2019 and subsequently reaffirmed in 2020 with the signing of the Withdrawal Agreement. Regarding security, the parties stated in the Declaration that they would aim to collaborate in ensuring the safety of their respective citizens by establishing a "broad, comprehensive, and balanced security partnership" (HM Government, 2019, para. 78). This partnership would respect the national sovereignty of the UK (HM Government, 2019, para. 78), and the parties would "cooperate to tackle illegal [sic irregular] migration, including its drivers and consequences, while recognising the need to protect the most vulnerable" (HM Government, 2019, para. 114).

In 2021, the TCA (Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part 2021) was ratified, building on the commitments made in the Political Declaration. The TCA emphasises the EU and the UK's commitment to human rights, democracy, and the rule of law and reaffirm the Parties' respect for the Universal Declaration of Human Rights (UDHR) and the international human rights treaties to which they are parties, as the foundation for their ongoing cooperation (Article 763 TCA). This commitment is explicitly stated in both Part Six, -which deals with dispute settlement and overarching principles and designates democracy, rule of law and human rights as essential elements of this cooperation-, and Part Three, which focuses on security cooperation. Although the Agreement does not include specific provisions on cooperation between the UK and the

EU for identifying and protecting actual or potential victims of human trafficking, Part Three, entitled *Law Enforcement and Judicial Cooperation in Criminal Matters*, addresses issues of human trafficking, such as for example in relation to 'arrest warrant' (Article 599 (5) (Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part 2021, pp. 682 and 760). Article 524 of the TCA specifies that cooperation between the parties should be grounded on respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the UDHR and in the ECHR and on the importance of giving effect to the rights and freedoms in that Convention domestically (Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part 2021, part 3). The same provision at para 2 indicates that the obligation to respect the requirements of the Charter applies exclusively to "the Union and its Member States" (Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part 2021, part 3). Although the primary focus of the agreement is trade, the foundation of cooperation is built on a shared commitment to the respect of human rights and Part Three specifically refers to the ECHR. Both the Political Declaration and the TCA emphasise the need to protect the most vulnerable migrants. These individuals, often smuggled migrants, are particularly at risk of becoming victims of human trafficking and therefore require dedicated safeguarding measures.

In line with these commitments, in 2024, Frontex and the UK concluded a working arrangement that established a framework for comprehensive border cooperation (Frontex, 2024). The goal was to facilitate legitimate border crossings while safeguarding the borders of both the EU and the UK against irregular entry. The language of the Frontex-UK agreement frames irregular migration and cross-border crime as security threats, while simultaneously grounding cooperation in the respect for shared values and adherence to international human rights obligations. These obligations are outlined in the following key instruments: the ECHR, the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the 1951 UN Refugee Convention and its 1967 Protocol relating to the Status of Refugees, the Convention on International Civil Aviation, and, in the case of Frontex, the Charter (Frontex, 2024, p. 2). Additionally, in the context of their operational cooperation, Frontex and the UK prioritise the respect for human rights obligations and legal principles, particularly concerning access to international protection and the principle of *non-refoulement*. Their work arrangement ensures that the rights of all individuals, especially those requiring international protection, such as unaccompanied minors, victims of trafficking, and other vulnerable persons, are fully upheld throughout all joint activities. This commitment reflects a broader focus on safeguarding the dignity and well-being of those at risk during collaborative operations. Therefore, the arrangement emphasises the critical importance of human rights compliance in all joint activities of border management.

However, while for Frontex human rights are specifically understood as fundamental rights as defined in 'Regulation 2019/1896' (which includes adherence to the Charter) in the working arrangement, and any dedicated instruments jointly agreed upon (Regulation 2019/1896,) the Frontex-UK agreement makes only a vague reference to the UK's legal framework. The agreement is mainly designed to manage borders emphasising a range of activities crucial for security and operational efficiency, with the aim of addressing potential threats, returns and reintegration process. Recognising the complexities of migration, the arrangement supports both pre-return efforts—such as counselling, identifying individuals, and facilitating the issuance of travel documents—and post-return activities like readmission and reintegration. Yet, the agreement's lens is security and, amongst the listed international obligations, the United Nations Convention against Transnational Organized Crime (UNTOC) and its Smuggling and Trafficking Protocols are not included (United Nations, 2001). Although the UNTOC Convention and its Protocol primarily target states and address trafficking through a criminal justice framework, they, along with the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT/CETS197), serve as key instruments in the fight against human trafficking. Both the EU and the UK have acceded the ECAT/CETS197 respectively in 2008 and 2009. The ECAT/CETS197, in its Preamble, considers human trafficking 'a violation of human rights and an offence to the dignity and the integrity of the human being', and Article 1 states that its purpose is to combat THB by protecting the victims' human rights, by ensuring 'effective investigation and prosecution' and by promoting international cooperation. It is indeed concerning that neither the UNTOC and its Protocol, nor the ECAT/CETS197, are referenced in the Frontex-UK agreement, indicating a lack of commitment to coordinated actions in addressing human trafficking. Instead, THB could be fought against by addressing human rights of people whilst preserving sovereignty and the responsibility over border control. Incorporating the UNTOC and its Protocol, and more specifically the ECAT/CETS 197, into the agreement could ensure that victims of human trafficking are properly identified and referred for adequate assistance and protection. A good example of the significance of incorporating these human trafficking provisions into a future EU-UK bilateral agreement is demonstrated by Italy, a country considerably affected by migration inflows from the Mediterranean Sea and the Balkans. By complying

with Article 10 ECAT/CETS197[5] and Article 11(4) 2011 EU Trafficking Directive,[6] the country has been able to identify survivors and potential victims of human trafficking (Nicodemi and Cirillo, 2024). The Italian Supreme Court has recognised Italy's legal obligation to identify and protect victims of human trafficking, as mandated by two key international instruments: the ECAT/CETS 197 and the EU Trafficking Directive (Court of Cassation, section I, n. 23,883, 4 August 2023). In the context of a possible EU-UK bilateral agreement, although the parties would not be able to rely on the EU Trafficking Directive, they would still be able to comply with the requirements of the ECAT/CETS 197, as the UK is a party to this Convention.

Early identification of possible cases of human trafficking is essential to identify survivors and ensure protection. Italy has introduced guidance (UNHCR and the National Commission for the Right of Asylum, 2021), which have been considered best practice at international level (Nicodemi and Cirillo, 2024; U.S. Department of State (2018) Report on Trafficking on Italy; GRETA (2019) and which have improved the rate of identification in the country (UNHCR Data).

Building on this, we argue that any future EU-UK agreement on human trafficking and migrant smuggling should not merely reference human rights but also integrate "conditionality clauses" to ensure adherence to human rights standards. By changing the narrative and re-focusing on rights, it would be possible for the UK and the EU to fight against people smuggling and, simultaneously, protect the human rights of people who are at risk or who have become victims of human trafficking. This approach could be applied by addressing the multiple overlapping frameworks concerning border control, human rights, security, people smuggling and criminal law. All these overlapping frameworks can be honoured through cooperation, whilst maintaining and respecting each other's sovereignty and addressing each of these issues. As mentioned, the respect of each other's sovereignty and primacy can be achieved by referring to the common rules on human rights as incorporated in the ECHR. In the

[5] Article 10 ECAT/CETS197 states: "Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention. 2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2. 3 When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age. 4 As soon as an unaccompanied child is identified as a victim, each Party shall: a provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child; b take the necessary steps to establish his/her identity and nationality; c make every effort to locate his/her family when this is in the best interests of the child".

[6] Article 11(4) EU Trafficking Directive 2011 states: "Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations".

meantime, the EU and its Member States would continue to be bound by the Charter and its higher standards, and cooperation with the UK would not be an obstacle to respecting the Charter. Another instrument that we suggest it should be added to this complex regulatory framework is the (ECAT/CETS197), which requires State Parties to fight against human trafficking. Any new agreement must explicitly include provisions on the human rights of the victims as the flip side to the criminal offences being addressed, ensuring that victims are recognised, protected, and supported as individuals who have suffered severe rights violations, rather than being treated merely as instruments of criminal investigations or enforcement actions.

4. The Missing Human Rights Approach in Post-Brexit UK-France Bilateral Agreements on Irregular Migration

Post-Brexit, several joint statements have been agreed upon by the UK and EU Member States outlining strategies to address irregular migration. Under the Sunak Conservative government (2022-2024), the UK and France issued a joint statement to enhance cooperation in combating irregular migration mainly through repressive measures. This included a series of measures aimed at addressing all forms of irregular migration, such as “small boat” crossings, while operating within the framework established by international law (Council of European Convention on Action against Trafficking in Human Beings CETS No. 197, note 13). The joint statement aimed to address the growing challenge of “small boats” crossing the Channel, adopting a comprehensive approach focused on three key objectives. First, the strategy sought to stem the expansion of irregular crossings by deploying advanced surveillance and detection technologies. The objective was to make the “small boat” route unviable, effectively preventing migrants from attempting to cross the Channel in increasingly dangerous conditions. Thus, the approach adopted was through technological tools reflecting a broader trend towards "smart borders," where high-tech solutions were used not only to detect crossings but also to disrupt smuggling operations before they could occur (HM Government, 2022). Second, the strategy emphasised dismantling the criminal networks that facilitate people smuggling. This involved enhanced joint intelligence work between the UK and France, including the collection of information from migrants who have been intercepted. By pooling intelligence resources, both nations hoped to identify and target the criminal gangs responsible for trafficking individuals, making it more difficult for these organizations to operate across borders. This collaborative intelligence-sharing is viewed as critical in undermining the criminal infrastructure that profits from irregular migration. Finally, the strategy sought to prevent and deter irregular crossings by addressing the problem upstream, in the countries of origin and transit. By working with these nations, which are unnamed in the agreement, the UK and France aimed to disrupt traffickers' operations before migrants even reach the coast of France. This proactive approach could involve a range of measures, from targeted diplomatic efforts to on-the-ground operations aimed at intercepting migrants further along their journey, potentially reducing the number of individuals attempting to reach the UK. Taken together, these objectives represented a multi-faceted

approach to tackling irregular migration, blending technology, intelligence-sharing, and international cooperation to disrupt the networks behind human trafficking and prevent further irregular crossings. The strategy focused on both reactive measures, such as interception and dismantling smuggling operations, and proactive measures, such as upstream intervention, to address the root causes of irregular migration, failing to address or even mention the need to protect the rights of human trafficking survivors. Unfortunately, the agreement does not adopt a human rights-based approach.

The UK and France's recent investment in measures aimed at curbing irregular migration (HM Government, 2022), including the creation of reception and removal centres, raises concerns about the broader implications for the people directly affected by these policies—namely, the migrants themselves. The investment in reception centres, particularly in the south of France, is framed to deter migrants from attempting dangerous crossings to the UK. By offering what are described as "safe options," these centres aim to provide migrants with alternatives to making perilous journeys across the Channel. However, while the intention is to reduce the number of illegal crossings, the underlying assumption is that migrants can simply be rerouted away from their desired destination, with little regard for the individual circumstances or the broader reasons driving their migration. Many migrants who make the journey to the Channel coast are fleeing conflict, persecution, or severe economic hardship, and the focus on deterring their movements rather than addressing the root causes of their migration can be seen as neglecting the fundamental humanitarian aspects. The provision of reception centres might offer immediate shelter, but without a comprehensive approach that includes long-term support, integration programmes, or pathways to asylum, these centres may become more of a holding facility than genuine alternatives to the dangerous crossings. The emphasis on deterring migration rather than on providing safe, legal, and viable routes for asylum seekers raises questions about the true impact of these centres on migrant welfare. Similarly, the investment in removal centres aimed at facilitating voluntary returns to countries of origin is another measure that primarily targets the cessation of irregular migration, but it does not account for the complex realities that many migrants face when returning to their home countries. While the idea of voluntary return may seem practical on the surface, the assumption that migrants will willingly go back to potentially unsafe or unstable environments is unrealistic. It overlooks the fact that for many, the decision to leave their home countries in the first place was driven by situations that offer little prospect for return without putting themselves at risk of further harm. This approach might focus on reducing migration flows but does little to address the vulnerability and trauma that many migrants face, nor does it consider whether their return is truly safe and voluntary in the fullest sense. The financial commitment of up to €72.2 million demonstrates the seriousness with which both governments are approaching the issue of irregular migration. This strategy seems largely focused on crime prevention and border control, with significant attention given to the dismantling of criminal networks and the deterrence of crossings. While these are crucial elements in the broader fight against human trafficking and organised crime, the focus on combating the crime itself

appears to be occurring at the expense of addressing the needs and rights of the victims of this crime—migrants who are often left in precarious and vulnerable situations.

Rather than applying repressive measures against smuggling and trafficking, a bilateral agreement between the EU and the UK should be grounded in human rights. Although both parties may align on the issue of irregular migration, framing human trafficking as a serious violation of human rights is necessary, as EU institutions are required to comply with the Charter, which establishes a higher standard of protection than the ECHR.

5. Re-Framing the EU-UK Post-Brexit Relationship in Addressing Irregular Migration, Human Smuggling, and Trafficking in Human Beings

Following the UK general election in July 2024, debates on the issue of human trafficking have been central in parliamentary discussions. Chris Murray, Member of Parliament (MP) for Edinburgh East and Musselburgh since 2024, highlighted the severe abuse faced by individuals crossing the Channel irregularly (UK Parliament, 2024a). This underscores the critical need to incorporate robust provisions that prioritise the human rights of these victims within any new bilateral EU-UK relationship, ensuring that such agreements comprehensively address the human rights implications of trafficking and smuggling, rather than focusing solely on the criminal aspects of these crimes. Lord Hanson of Flint, who was appointed Minister of State at the Home Office as of July 2024, further emphasised the UK's international obligations, reaffirming the country's commitment to upholding its responsibilities regarding asylum (UK Parliament, 2024b).

The government intends to support international cooperation with the EU and the House of Commons has emphasised that 'international cooperation should not be focused on people smuggling to the detriment of efforts to combat modern slavery and human trafficking and prevent exploitation of the victims' (House of Commons Home Affairs Committee, 2024, p. 37). In 2024, the Modern Slavery Act 2015 Committee stressed the UK's binding international obligations under the UNTOC Trafficking Protocol, ECAT/CET197, and the ECHR (House of Lords, 2024). The Committee has recommended that: 'The new Government should review its policy and procedures to ensure that primary legislation and statutory guidance are fully aligned with its international obligations under the Palermo Protocol and the European Convention on Action against Trafficking in Human Beings' (House of Lords, 2024).

Although the UK has expressed its willingness to cooperate with the EU on combating human trafficking, such statements remain hollow if irregular migrants are treated as criminals and human rights are not placed at the forefront of the debate and integrated explicitly into any new EU-UK agreement on these issues. Despite its good will, the UK primarily focuses on the externalisation of asylum and migration, neglecting irregular migrants who are normally undocumented migrants and even depriving them of basic needs, such as food (Jolly, 2018, pp. 190-200; Perez, 2023, pp.304-321).

Scholars have emphasised that UK migration rules are restrictive and punitive, as they have the tendency to criminalise undocumented migrants (Griffiths and Yeo, 2021, p. 524). This category of migrants is particularly vulnerable to human trafficking, as confirmed by the ECtHR' decision, which imposes a legal obligation on State Parties to protect undocumented migrants, who are often targeted by exploiters (Chowdhury and others v Greece, 2017; V.C.L and A.N v United Kingdom, 2021). Instead, in the UK, 'the treatment of undocumented migrants differs from other areas because the government is actively committed to a policy of social exclusion through the 'hostile environment' (Jolly, 2018, p. 191). Also, the EU has played a significant role in exacerbating migrants' vulnerability by systematically externalising migration over the past twenty years, prioritising the prevention of 'unwanted' arrivals—those fleeing war, poverty, and a lack of opportunities—rather than ensuring their protection (Jones, Lanneau and Maccanico, 2022, p. 13).

Therefore, reframing the narrative to prioritise a human rights-based approach, rather than focusing solely on the criminalisation of survivors and traffickers, presents considerable challenges. Over the long term, such a shift holds the potential to fundamentally reshape the discourse and foster more effective and sustainable solutions. These outcomes would be achieved through enhanced cooperation, which would facilitate the identification of as many survivors and potential victims as possible by distinguishing them from other migrants and exempting them from detention or security measures aimed at immigration control (Ventrella and Morano-Foadi, 2022, p. 214). Moreover, a human rights-based approach to cooperation would ensure their proper referral within the UK and EU Member States, while also enabling policies that support the reintegration of survivors and potential victims in their countries of origin. By allowing for voluntary return with adequate resources and protections, such policies would help prevent revictimization, reinforcing both effectiveness and long-term sustainability.

Building on these arguments, we contend that any future bilateral agreements between the EU and the UK should adopt a human rights-based framework in addressing people smuggling and human trafficking. Such an approach is both feasible and necessary, particularly given the emphasis placed in the TCA on instruments such as the UDHR and the ECHR. Most importantly, this framework is essential due to the vulnerability of the individuals involved. Such an agreement should go beyond merely referencing human rights instruments, instead being firmly structured around them. It should adopt a fundamentally different approach from earlier bilateral agreements, incorporating mechanisms for the redistribution of vulnerable migrants at risk of trafficking and promoting shared responsibility between the parties involved. The model that we propose would include clauses containing an obligation to not only comply with human rights norms but to make human rights as a 'conditional essential element', when dealing with THB or migrant smuggling.

To construct such a model, we propose two approaches. First, we draw upon key provisions of the TCA that pertain to criminal matters, as human smuggling and trafficking fall within this domain.

Second, we draw inspiration from specific provisions of the EU's external agreements with third countries and the EU-Swiss agreement, which could be adapted to shape future EU-UK cooperation in this field. As already noted, the *first approach* highlights that Part Three of the TCA, which governs cooperation between the parties on law enforcement and judicial cooperation in criminal matters, explicitly refers to the ECHR. Article 524 TCA makes security cooperation between the EU and the UK conditional on respect of the ECHR and UDHR (since the EU Charter of Fundamental Rights no longer applies to the UK). The EU and its Member States also reaffirm their obligation to respect the EU Charter. The ECHR conditionality is expressed in Title XII (Other provisions) of Part Three, which includes the conditions of termination and suspension of law enforcement and criminal justice cooperation. Accordingly, violations of the ECHR or some of its Protocols by the UK or a Member State can lead to 'fast-track' termination of Part Three. Although Article 771 of the broader TCA classifies Article 763— which obliges the Parties to uphold shared values and principles, including democracy, the rule of law, and respect for human rights— as an 'essential element' of the agreement, Article 772(1) allows either the UK or the EU to suspend or terminate the agreement if they determine a 'serious or substantial failure' to uphold human rights obligations. By contrast, Part Three at Article 692 states that either party can terminate this part of the agreement, but unlike the broader TCA, it does not require a "serious and substantial failure" to justify termination (or any other threshold above and beyond denunciation of the ECHR or its listed protocols). This and other requirements make termination a simpler and more unilateral process compared to the rest of the TCA (see Article 772(1) TCA) (Peers, 2021). Beyond these complexities, it is important to highlight that Part Three of the TCA prioritises human rights in the EU-UK relationship. It could be a good base to consider for cooperation on human smuggling and trafficking, ensuring that these efforts remain grounded and conditional to the respect of the ECHR.

The *second approach* is based on an examination of certain provisions of the EU's external agreements with third countries, as well as the EU-Swiss agreement and how they could be adapted to shape future EU-UK cooperation in this field. The EU's external affairs agreements with third countries include human rights clauses, which stipulate that respect for human rights is a prerequisite for receiving aid. These clauses were first implemented in 1977, when financial assistance was suspended due to human rights violations (European Parliament, 2005). The (at the time) Council of the European Communities (now Council of the EU) cited its members' commitment to human rights under the Lomé Convention (1975), stating that the aid was withdrawn to prevent European Economic Community (EEC, now EU) funds from worsening the situation (European Parliament, 1977, pp. 77-78). Scholars have argued that the human rights clause creates inconsistency and power imbalance and shows a democratic problem, making a move towards more authoritative, double standards in EU human rights commitments (Mayer, 2008, p. 61). The inconsistent application of the clause creates ambiguity,

making it difficult to discern whether the EU's actions are genuinely motivated by human rights concerns or driven by commercial or security interests (Døhlie Saltnes, 2023).

We are not suggesting that future EU-UK cooperation in this field should mirror the EU's external policy with third countries, but rather that a clear statement on what human rights standards/thresholds should be employed in human rights provisions to be included in any putative EU-UK agreement. These standards should establish common rules for the identification, protection, and referral of both actual and potential victims, as well as ensure their protection throughout investigations. These provisions should be framed as "conditional clauses", with any violations leading to the termination or suspension of the agreement. We envisage that since the EU has already established special relationships with third countries such as Switzerland (Eckert, 2022, p. 1195), the same special relationship could be used as basis for agreements with the UK. Although the EU-Switzerland relationship in migration and asylum is grounded in the Schengen acquis, and the UK has never been part of the Schengen acquis, certain aspects of their cooperation could still exhibit similarities.[7] The EU-Swiss bilateral agreements are founded on intergovernmental cooperation, meaning that no sovereignty is transferred to a higher authority, such as the EU institutions. The responsibility for implementing these agreements rests solely with the contracting parties. EU-Swiss relations are primarily governed by 20 key bilateral agreements, supported by approximately 100 additional agreements and numerous joint committees (Swiss Confederation and Federal Department of Foreign Affairs, 2009).[8] In 2004, nine additional sectoral agreements (Bilateral Agreements II) were signed, including Switzerland's participation in the Schengen and Dublin treaties as well as agreements on Europol (2006), Frontex (2010), Eurojust (2011), among others, and an arrangement on participation in the European Asylum Support Office (EASO, now EU Agency for Asylum (EUAA) (2016) (Agreement between Swiss Confederation and the European Police Office, 2004).[9] In the Schengen agreement, there

[7] For the bilateral agreements between the EU and Switzerland Bilateral Agreements Switzerland-EU. https://www.europarl.europa.eu/meetdocs/2009_2014/documents/deea/dv/2203_07/2203_07en.pdf, accessed on 11/11/2024. Agreement Between the Swiss Confederation, of the One Part, and the European Community and Its Member States, of the Other Part, on the Free Movement of Persons, Concluded on (21 June 1999), https://www.admin.ch/opc/fr/classified-compilation/19994648/index.html, accessed on 10/06/2024. Council Decision of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, 2004/849/EC, L368/26, 15/12/2004.
Council decision of 28 January 2008mn on the conclusion on behalf of the European Community of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (2008/147/EC). OJ L 53/3, 27/02/2008.

[8] Ibid

[9] [9] Agreement Between the Swiss Confederation, of the One Part, and the European Community and Its Member States, of the Other Part, on the Free Movement of Persons, Concluded on (21 June 1999), https://www.admin.ch/opc/fr/classified-compilation/19994648/index.html, accessed on 10/06/2024. Article 3 of Agreement between the Swiss Confederation and the European police Office. On Microsoft Word - Agreement_between_the_Swiss_Confederation_-Switzerland-_an… (europa.eu), accessed on 10/06/2024.

is only one simple mention in the preamble to the fact that the cooperation is based on the principles of freedom, democracy, the rule of law and respect for human rights, as guaranteed in particular by the ECHR committees (Swiss Confederation and Federal Department of Foreign Affairs, 2009).[10] Subsequently, in response to high migration numbers in 2015 and 2016, and issues in migration management, the EU Pact on Migration and Asylum, was introduced and Switzerland is in the process of partially implementing the five legislative instruments from the Pact, through its Schengen/Dublin association (Federal Department of Foreign Affairs, 2004). However, there is evidence that in cooperation agreements with third countries, including Switzerland, human rights clauses are poorly drafted (Federal Department of Foreign Affairs, 2004), with ambiguity about the normative value of "essential elements" clauses and their applicability. For instance, the EU-Swiss Agreement refers to the ECHR as the benchmark for the protection of human rights but does not define the specific content of these rights or their scope of applicability. The Convention encompasses civil and political rights; however, the ECtHR has expanded its application to include certain economic, social, and cultural rights, extending beyond the scope of customary international law.

By contrast, an agreement on smuggling and trafficking between the EU and the UK would be based on the ECHR, as the UK is bound by the ECHR and, according to Article 6(3) TEU, the fundamental rights as guaranteed by the ECHR 'shall constitute general principles of the Union's law'. In particular, it would be based on Article 4 of the ECHR, which mirrors Article 4 of the UDHR, stating that no person "shall be held in slavery or servitude" (Federal Department of Foreign Affairs, 2004, note 28). In addition, the UNTOC Trafficking Protocol, which emphasises that human trafficking must be addressed with full consideration for the protection and assistance of victims while fully respecting their human rights, would also be incorporated into the putative agreement (United Nations Convention against Transnational Organised Crime and the Protocols thereto, Art. 2(b)). Additionally, Article 1(1)(b) of ECAT/CETS197, which establishes the protection of trafficking victims' human rights as a core purpose of the Convention should also be included.

To summarise, we argue that a bilateral agreement between the EU and the UK addressing the issues of smuggling and trafficking, is not only possible, but also viable, provided it is firmly grounded in a human rights-based framework. Such an agreement would be both practical and consistent with the obligations established by international law, especially in terms of safeguarding the rights and protection of vulnerable individuals. It is imperative that victims of trafficking be distinctly differentiated from

Article 2 of the Agreement between Eurojust and Switzerland states that the agreement includes cooperation to fight against serious forms of international crimes and smuggling and trafficking are included in this category. On Eurojust-Switzerland-2008-11-27-EN.pdf (europa.eu), accessed on 10/06/2024.

[10] See Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's Association with the Implementation, Application and Development of the Schengen Acquis, [2008] OJ L 53/52. Bilateral Agreements Switzerland-EU. https://www.europarl.europa.eu/meetdocs/2009_2014/documents/deea/dv/2203_07/2203_07en.pdf,

other migrants, ensuring they are not subjected to detention or the general provisions of immigration and security control laws. This differentiation is crucial for safeguarding the rights and dignity of survivors, ensuring their protection and access to appropriate support mechanisms.

6. Conclusion

This contribution has argued that any future EU-UK cooperation agreement on trafficking and smuggling should adopt a human rights-based approach to the identification and protection of actual and potential victims of human trafficking. It should also ensure a balance between these potentially conflicting interests within the framework of human rights law, making human rights protection a *sine qua non* condition, with failure to uphold it, warranting the termination of the agreement. Both parties in the agreement should preserve their sovereignty and the EU's legal personality and primacy towards MSs, while simultaneously adopting measures to address people smuggling and human trafficking.

Therefore, our proposed model integrates clauses mandating compliance with human rights norms, as required by both Part Three and the broader provisions of the TCA, thereby ensuring the formal incorporation of human rights obligations. It draws upon the EU's external agreements with third countries, as well as the EU-Swiss agreement, adapting relevant provisions to the specific context of EU-UK cooperation on migrant smuggling and THB. By synthesising these legal frameworks, the model seeks to reinforce protections for vulnerable individuals while aligning with established international commitments. This approach would ensure full respect for the ECHR and the ECAT/CETS 197 and the UNTOC Trafficking Protocol. In line with the TCA, particularly Part Three, which stipulates that agreements between the parties must adhere to the ECHR, the UK would not be required to comply with the Charter. While the Charter mandates comprehensive human rights protections in the fight against trafficking and explicitly recognises human trafficking as a violation of fundamental rights in Article 5, the UK is not bound by it. Nevertheless, the ECHR and the ECAT/CETS 197 would serve as a common framework and foundational basis for a potential EU-UK bilateral agreement. Given that the Charter sets a higher standard than the ECHR, both the EU and Member States would need to exercise even greater caution in their protection efforts. Ultimately, such an agreement should prioritise the protection and support of both actual and potential victims of human trafficking, ensuring that they receive shelter and assistance even before perpetrators are apprehended and prosecuted. The inclusion of an arbitrator could provide a temporary solution within the agreement to resolve potential disputes between the parties regarding the specific thresholds for protecting survivors or potential victims. The UK's commitment to aligning its legislation with international obligations, including the UNTOC Trafficking Protocol and the ECAT/CETS197, underscores its capacity to engage constructively in such an agreement (Home Office, 2024b). Consequently, we conclude that a bilateral agreement grounded in the respect for human rights is not only achievable but also mutually beneficial for addressing shared challenges.

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