



Organ Trafficking and the State of Israel

The Battle for Human Organs

Gréta Mar Jósepsdóttir

Lokaverkefni til BA-gráðu í Stjórn málafræði

Félagsvísindasvið



HÁSKÓLI ÍSLANDS

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Ritgerð þessi er lokaverkefni til BA-gráðu í Stjórnmálafræði og er óheimilt að afrita ritgerðina á nokkurn hátt nema með leyfi rétthafa.

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Útdráttur

Ritgerð þessi fjallar um ólöglega líffæraflutninga (e. organ trafficking) sem hafa aukist til muna síðustu áratugi. Megin ástæðan er talin skortur á líffærum og örvænting fólks til að halda lífi. Siðfræðingar hafa sett spurningamerki við ýmislegt er tengist þessum tiltölulega nýja svarta markaði líffæra, bæði vegna þess að hann mismunar fólki gróflega eftir efnahagsaðstæðum þess og að ekki er alltaf um sjálfviljuga líffæragjöf að ræða. Helsta ástæða þess að Ísrael verður tekið fyrir í þessari ritgerð er hversu áberandi slík ólögleg starfsemi hefur verið á því svæði. Ísraelar hafa verið mjög áberandi á þessum vettvangi og er ástæðan rakin til trúabragða landsins sem leyfa ekki líffæragjafir. Þrátt fyrir bannið hefur ríkisstjórnin veitt fjárhagsstyrki til þeirra er þurfa á slíkum aðgerðum að halda. Einstaklingar sem þurfa á nýjum líffærum að halda þurfa því að leita út fyrir Ísrael og í flestum tilvikum er farið ólöglegar leiðir. Niðurstöður sýna að ofangreindir þættir ásamt öðrum eru megin ástæður þess að Ísraelar leiti á hinn svokallaða svarta markaði. Hins vegar hafa mikla breytingar til hins betra, orðið á lögum landsins og eru lög sem sett voru árið 2008 tekin fyrir sem aðal breyting.

Abstract

This thesis examines illegal organ trafficking, which has spread in the past decades. The main reason is thought to be a shortage of organs and people's desperation for survival. Ethicists question many things related to this relatively new black market, mainly because it brutally discriminates people by their economical status, and because its not always the individual's free choice to give his or her organs. The state of Israel is the main subject because of the extent of this business in this area. Israelis have been very active in this business and the reasons can be traced to the state's religion, which does not permit organ donations. Nonetheless, the Israel government has given financial aid to those who need organ transplants. Individuals who need organs will then have to search outside Israel for organs and in most cases they go through illegal networks. Results show that these things are among those to have pushed Israel in to what is called the 'Black Market' business. Even so, some big changes have occurred within state of Israel and a bill passed in 2008 can be considered the greatest improvement.

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Formáli

Ritgerð þessi er lokaverkefni mitt til BA prófs í stjórnmálafræði við Háskóla Íslands. Hún er metin til 12 eininga (ECTS) af 180 eininga námi. Leiðbeinandi minn var Silja Bára Ómarsdóttir og vil ég þakka henni fyrir góða leiðsögn og aðhald við vinnslu ritgerðarinnar. Einnig vil ég þakka Axel G. Sigurbjörnssyni fyrir yfirlestur ritgerðar og fyrir góðar ábendingar. Að lokum vil ég þakka foreldrum mínum þeim Guðbrandi J. Stefánssyni og Lindu B. Jósefsdóttur fyrir stuðning í gegnum skólagönguna. Efni þessarar ritgerðar vakti athygli mína er ég stundaði nám sem skiptinemi við Copenhagen Business School (CBS) í Kaupmannahöfn en þar sá ég heimildarþátt um organ trafficking. Heimildaöflun fór mikið fram á netinu, því ekki eru til margar bækur um efnið á Íslandi. Þetta var krefjandi og lærdómsríkt ferli.

Introduction

A relatively new global movement has emerged in the world of organ transplantation and is bringing together desperation, poverty and human greed. This movement I am describing is organ trafficking, which has little to do with transplant practice of medicine or other medical interventions we have become habituated to in the West. In fact, the trend I am referring to is illegal in almost every country, and its practice has been widely condemned by major associations such as the United Nations (UN) and The Committee Against Torture (CAT), an international human rights instrument working under UN that monitors how the rights are being implemented. There are two main reasons why this business is thriving: first, the difficult situation of those living in less developed countries, mostly characterized by poverty and unemployment and secondly, the demand that exists in the developed and wealthier countries. One of these countries is Israel, whose case will be further discussed in this paper. Israel is an interesting country for this case because it has emerged as a significant player on the organ-trafficking scene.

The organ-trafficking industry has been growing during last 30 years, due to advanced medical technology, which calls for greater demand for transplantable organs. Therefore, a large gap between those who require organs for their survival and the number of organs currently available has broadened. This kind of gap for organ transplantation has not been felt more acutely than in Israel. Every year, the waiting list for organs increases by 20% (almost 60% of those on the list are expected to die), while the number of Israelis who have signed up as organ donors, remains among the lowest in the world compared to other developed nations.¹ As a solution to this serious shortage of available organs in Israel, many Israelis have looked for other options that could solve their health problems. One of those options has to do with the global underground economy or black market in commercial organ transplants.

Often, the transplanted organs are coming from live, unrelated, donors. Regulators working on commercial organ sales are on the case, especially concerning organs that are trafficked in developing countries. The Israeli government has even been accused of aiding directly to the trafficking of organs by allowing its citizens, access to organ brokers.²

¹ Larry Rohter, "Tracking the Sale of a Kidney on a Path of Poverty and Hope," *The New York Times*, May 23rd 2004:1.

² Council of Europe: Parliamentary Assembly, "Trafficking in organs in Europe," Council of Europe, <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta03/erec1611.htm> (accessed February 11th 2012).

Many transplant surgeons and other medical professionals around the world are risking their careers by participating in the illegal ways of transplantation. It's hard to tell whether the reason is because they think it's morally right or because they gain a better financial position. Most international organizations have forbidden this business with resolutions and other tools at their disposal. Therefore, the trafficking of human organs might be the most debated and most hidden issue that has surfaced on the present field of bioethics.³

The focus of this thesis will be on the concealed violence occurring within circumstances of transplant surgery of human organs and other body parts, mainly within the so called black market. In this thesis, I set out to answer the questions "How has globalization supported organ trafficking?" and "Why have so many Israelis chosen organ trafficking as a solution to their health problems?" Therefore, I will focus mainly on the process of organ trafficking. Citizens are risking their lives in medical procedures that are facilitated by profit-seeking intermediaries. By looking deeper into that process is where I will also begin to make the case of a regulated market for organs in Israel, given the country's Jewish nature. It is a business that is justified by many, including a growing number of surgeons and bioethicists. I argue that the most practical solution to Israeli shortages in organs is to create a regulated market that would guarantee proper medical treatment for donor and recipient.

In the first chapter, I talk about a few theories that could help us frame the problem and to see different perspectives. The theories chosen for that are Global Ethics and Human Rights, Rational Choice and Neoclassical Economics. These theories are relevant because they provide different perspectives to the underlying questions related to organ trafficking. The Global Ethics and Human Rights approaches maintain that organ trafficking constitutes a violation of human integrity but rational choice and neoclassical economics see fewer problems because their central predictions are that peoples can exercise their free will to ensure their rights. Chapter two outlines some of the main concepts, for instance, organ trafficking, organ transplantation and victimization. In chapter three, the main subject will be globalization because our relatively recently globalized world provides increased support for free transport and transfer which benefits organ trafficking. Two separate cases discovered in 2002 and 2004 will be used to shed a light on how organ trafficking has become a very fast growing type of organized crime within the globalized world. Chapter four introduces two organizations that

³ Nancy Scheper-Hughes, "Commodifying Bodies" in *Commodity Fetishism in Organs Trafficking*. 2nd edition, ed. by Nancy Scheper-Hughes and Loic Wacquant (London: SAGE Publications, 2002): 32.

have taken action against organ trafficking. Those organizations are The World Health Organization (WHO) and The Coalition for Organ and Failure Solutions (COFS). Finally, chapter five will be about Israel, the Israeli Jewish laws and religion on Biomedical Ethics, the Israeli government and the black market problem.

1 Background and theoretical framework

Organ trafficking is growing enormously in the developing world, but there is no reliable data about it because of how secret it is. The World Health Organization (WHO) assumes that brokers are charging between US \$100,000 and US \$200,000 to organize a transplant for wealthy patients, and that donors are only receiving about US \$1,000 to US \$5,000 for a kidney.⁴ This is a good example of how the unequal position of people and countries within the globalized world, has made this business of selling and buying so big. We could also say that, extreme poverty in many regions of the world is causing desperation for survival. Organ donors are increasingly becoming more willing to risk their lives by undergoing complex surgery that might reduce their own organ functionality.⁵

Each year since 1990 the Human Development Report (HDR) has published the Human Development Index (HDI) of 187 countries which was set out as an alternative to measures of national development. The Report also outlines great potency for improved equality and sustainability.⁶ The United Nations Development Program (UNDP) has defined the human development index (HDI) based on life expectancy, schooling, income and adult literacy. The HDI index shows numbers where the maximum value is 1.0. The result shows 19 countries with an HDI exceeding 0.9 (example; Canada, Switzerland and Japan) and 25 have an HDI below 0.3 (example; Niger, Afghanistan and Chad). This measurement might not be perfect but can still give a rough idea of the differences in the quality of life in the richest and poorest countries of the world. Israel's HDI is 0.888, which gives the country a rank of 17 out of the 187 countries listed (International Human Development Indicators 2011) which indicates how developed the country is compared to other nations.⁷

By looking at the HDI index and the results for all 187 countries (International Human Development Indicators 2011), there is a clear uneven distribution of wealth and human rights that indicates the gap that exists between the richest and poorest countries in terms of quality of

⁴ World Health Organization, "Organ trafficking and transplantation pose new challenges," *News Report*, September 1 2004. <http://www.who.int/bulletin/volumes/82/9/feature0904/en/index.html> (accessed February 4th 2012).

⁵ Frederike Ambagtsheer, "The Black Market in Human Organs," in *Deviant Globalization: Black Market economy in the 21st Century*, edited by Nils Gilman, Jesse Goldhammer and Steven Weber, (New York: The Continuum International Publishing Group, 2011): 76-77.

⁶ Human Development Reports 2011, "Sustainability and Equity: A Better Future for All," Human Development Reports, <http://hdr.undp.org/en/reports/global/hdr2011/> (accessed March 4th 2012).

⁷ Danilo J. Anton, *Diversity, Globalization, and the Ways of Nature*, (Ottawa, Canada: International Development Research Center, 1995).

life. Therefore, there is a reason to suggest that the unevenness has helped established international organ trading on the basis of supply and demand. Based on the HDI numbers, we could also assume that people living in developed countries (countries scoring 0.9 and above in the HDI index) have better prospects of staying healthy due to access to a much more efficient health-care system with good equipment for treatments and because they can afford it.⁸

It could be argued that, wealthier patients have been and still are, using their position for their own benefits. That is when *global ethics* and *human rights* come into play and will be discussed further on. The *neoclassical economic* and the *rational choice* theories will give different perspective to the uneven distribution of wealth. Economic theories that explain international movements of goods are important for cases of circulation business of bodies and body parts. They can help us understand some of the decisions existing because of demand and supply of organs.

1.1 Global Ethics and Human Rights

Global ethics is something that is not only a big topic, but has also been an important issue for those who are against organ trafficking. Most of them want to know how to resolve the dilemmas of global ethics and how it will determine the framework for us, and future generations. Most likely, this will shape and limit the possible relationships and opportunities of all global actors.⁹

We cannot talk about a “*global ethic*” because there is no particular way of life with a single set of rules, principles or set of values. Hans Kung (1993) presented a list of four principles called “*Declaration Toward a Global Ethic*”. Those principles are: 1) *Commitment to a culture of non-violence and respect for life*; 2) *Commitment to a culture of solidarity and a just economic order*; 3) *Commitment to a culture of tolerance and life of truthfulness*, and; 4) *Commitment to a culture of equal rights and partnership between men and women*.¹⁰

Global ethics can be based on a response to globalization, political, technological and social changes. The key claim is that, because of the increasing interdependence of the global society, economically, culturally and politically, enormous global dilemmas that require

⁸ Robertico Croes, “Tourism, Poverty Relief, and the Quality-of-Life in Developing

Countries,” in *Handbook of Tourism and Quality-of-Life Research: Enhancing the Lives of Tourists and Residents of Host*, ed. M. Joseph Sirgy, (New York: Springer, 2012): 98-100.

⁹ United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs* (France: Directorate General of Human Rights and Legal Affairs, 2009): 31-32

¹⁰ Karl Josef Kuschel and Hans Kung, *A Global Ethic: The Declaration of the parliament of the World's Religions* (New York: The Continuum International Publishing Group, 2006), 24-32.

solutions have been created. Decisions made now will affect future global governance and generations. For instance, if we decide that it is acceptable to buy or use body parts in an unethical matter, then we are making decisions, which will limit and shape what is permissible in the future. This is relevant for all of us and not just for those who are tortured or who buy and sell body parts. If such things are permitted, then human beings could be seen as beings that have body parts to sell. Global ethics is therefore the response to these new dilemmas and cannot be solved within individual states or single jurisdictions.¹¹

Global human rights are closely linked to the basics of global ethics and can be described as: “*Universal rights that individuals are born with, regardless of status, intelligence, or nationality*”.¹² In the reality of human rights and justice, we can identify some ideal universal principles: freedom, respect, truth and equality of opportunity. It is not certain whether ethical behavior is best ensured by trusting individuals to act on their own or whether it should be written in laws. While we may judge certain acts as moral or immoral, the legal system may allow some and prohibit others. Therefore, it can be argued that a legal code is needed to prevent ethical dilemmas in daily life.¹³ Also, it might be hard to make our own judgment on some act (for instance human trafficking, violation, assault), whether that act is against or according to our own belief of what is right or wrong because human beings have different values and norms.

We need to realize that forcing people into organ donation is a practice that exists and is increasing every year, mainly as mentioned before, because of relatively new world of globalization, loss of barriers, the interdependence of countries and cultural exchange. Therefore, as I have said before, enforcement of laws in this matter might be the best solution to solve ethical dilemmas and to protect individual human rights.

1.2 Neoclassical Economics

Proponents of *neoclassical economics* in the global economy, argue that within free markets, individual choice should be without restrictions. That is, they accept people making individual choice of buying and selling, and neither rules nor governments should get in the way. In the market of organ trafficking, individuals should be allowed to make their own decisions and

¹¹ Workineh Kelbessa, “In Search of an Ethical Respond to Environmental Impact of Globalization,” <http://ojs.mona.uwi.edu/index.php/cjp/article/viewFile/287/187> (accessed Mai 23rd 2012).

¹² Judith White and Susan Taft, “Frameworks for Teaching and Learning Business Ethics within the Global Context: Background of Ethical Theories,” *Journal of Management Education* 28, 4 (August 2004): 467.

¹³ *Ibid*, 469.

have free will. Therefore, body parts are and should remain as private owned properties.¹⁴

The increasing organ demand and organ supply has led to a circulation of people in need of organs and people that are willing to sell their body parts to satisfy these patients needs. The theory further explains, that in the world of capitalism, the benefits of organ trafficking are unevenly distributed and in that case, there are clear signs of what can be called “Westernization”, meaning that, the recipients of kidneys that can afford the market price of kidneys are usually more advantaged and the “donors” are usually disadvantaged individuals.¹⁵ The theory’s central prediction is that price controls can increase the demand, in the organ market as in other markets. For instance, the market price could be set too low (by regulations), which would affect the balance of demand and supply and lead to even more shortages of organs.

The argument here is that these developments do not have positive outcomes for organ trade, because, as mentioned above, the benefits of global capitalism are not evenly distributed. Regarding this and according to neoclassical theory “Westernization”, or global capitalist forces, has fostered new desires and expectations. For instance, high demand exists for bodies from developing countries to be used for industrialized nations and their health problems.¹⁶

Those who follow neoclassical ideology do not necessarily think that the right response is to forbid this business. They would rather argue that the right response should be to license the practice and have international investigations in an effort to get rid of the bad dealings while allowing these businesses to continue in operation.¹⁷

1.3 Rational Choice

Within *the rational choice theory* of medical bioethics, the conflict between “do no harm” and the moral duty to perform good acts, is resolved in favor of rational actors weighing the costs and benefits of action. That is, those who are able to buy should not be prevented from doing so. The donation is therefore seen as a possible “win-win” situation that could benefit both the

¹⁴ Bernhard Felderer and Stefan Homburg, *Macroeconomics and New Macroeconomics*, 2nd ed. (Berlin: Springer-Verlag, 1992): 15-16.

¹⁵ Nancy Scheper-Hughes, “The Ends of the Body: Commodity Fetishism and the Global Traffic in Organs,” *SAIS Review*, Vol. XXII. No. 1 (2002): 77-79.

¹⁶ Frederike Ambagtsheer, “The battle for human organs: Kidney markets and transplant tourism from the Netherlands in the global economy,” (Master Thesis, Erasmus University Rotterdam, 2007), 44.

¹⁷ *Ibid*, 44.

donor and the buyer.¹⁸ People's rights to increase their quality of life (either financially by donating or physically receiving an organ), has become the central aspect of medical bioethical value. Social justice hardly exists in the discussion and is not necessarily a big topic according to rational choice theorists. Bioethical standards should be brought into alignment with the needs and desire of consumer-oriented globalization. Therefore, a rational perspective on the matter is not based on the notion that the poor are obligated to sell bodily tissues. Rather it claims they are selling their organs in order to secure a better economic future for themselves and their families.¹⁹

The fact is that there is a shortage of kidneys and other transplantable organs throughout the world that is leading to suffering of many and even in worst cases, leading to death. Living donors are available to meet this need, though they might be poorer than the recipients. According to the rational view, it still doesn't constitute this action as being morally wrong. Therefore, those who argue against rational choice ideology are in fact harming the poor because they believe that the poor are anxious to sell. The poor are individuals and should be allowed to sell if possible.²⁰

1.4 Interrelations between the theories

Most theories addressing the transplant and biomedical fields try to answer the question "How far can a government go to limit people's freedom to try and save their own lives?" Human rights and ethics arguments might be that, if organs are sold towards monetary gain but not towards the need of saving someone's life, then some sorts of violations against vulnerability are being implemented. In addition, when people's organs are removed and used for commercial purposes then one could say that the personal integrity as well as human dignity is being violated.²¹

Both neoclassical economics and rational choice theory are framing social and economic behavior and are used as an assumption of individual behavior in microeconomic models. That

¹⁸ Nancy Scheper-Hughes, "The Last Commodity: Post-Human Ethics and the Global Traffic in 'Fresh' Organs," *Global Assemblages: Technology, politics and Ethics as Anthropological Problems*. 4th edition, ed. Aihwa Ong and Stephen J. Collier, (Oxford: Blackwell Publishing, 2005): 157-160.

¹⁹ Nancy Scheper-Hughes, "The Ends of the Body: Commodity Fetishism and the Global Traffic in Organs," *SAIS Review*, vol. XXII. No. 1 (2002): 141-155.

²⁰ Organ Transplantation: Organ Transplantation and Donation in the World, "Bioethics: poverty and organ donation," http://pub.mtholyoke.edu/journal/Organ/entry/bioethics_poverty_and_organ_donation (accessed Mai 26th 2012).

²¹ Kristina Touzenis, "Trafficking in Human Beings: Human rights and trans-national criminal law, developments in law and practices," <http://unesdoc.unesco.org/images/0018/001883/188397e.pdf> (accessed April 7th 2012): 8, 121.

is, humans tend to be rational and behave with their own interest in mind either for survival or monetary gain. The main differences are that the rational choice theory describes the rational human behavior as maximizing a person benefits while minimizing the cost, while the neoclassical economic theory focuses on the argument of supporting the free will of human decision-making.

A new study, done by the United Nations and the Council of Europe, correctly observes that, “in order to obtain organs and tissues from the living, there is an agreement that, from an ethical standpoint, it is necessary to have a legally competent individual who is fully informed and can make a voluntary choice about donation.”²² The question could be whether or not people who sell their organs are forced to do so or whether they take informed decisions about donating? Many would say in most cases people are forced to donate and would therefore conclude that organ sales are immoral and should be prohibited. Others might argue that prohibiting the development of legal markets in human organs would thereby force more poor people to sell their organs into black markets, implying that they lack the ability to make rational decisions about what to do with their bodies.

The problem is that there is a severe and growing shortage of transplantable organs and because of that, it is not surprising that dilemmas arise between various theories of organ trafficking, more or less in terms of what is right and wrong within the bioethical field.

²² United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs* (France: Directorate General of Human Rights and Legal Affairs, 2009), 30.

2 Organ Trafficking and Transplant Tourism

The discourse on the market of organs has used various ways to describe the commercialism of organ trafficking. The need for an internationally agreed definition of Organ Trafficking and Transplant Tourism is important and should be agreed on an international level with the involvement of all the relevant players. The following explanations related to Human Organ Trafficking and Transplant Tourism are therefore a useful tool to outline the context of the core problem.

Organ trafficking consists of finding donors, transferring organs or harboring people for the purpose of organ removal. *Organ transplantation* is the moving of an organ from one body to another for the purpose of replacing the damaged or lost organ. Organs that can be transplanted are the heart, kidneys, cornea, liver, lungs and pancreas intestine.²³

“Trafficking in organs, tissues, and cells” (OTC) and “Trafficking in human beings for the purpose of removal of organs” are two different things frequently mixed together by the community and the legal system. The priced object has a different meaning in the law. In one case the “organs, tissues and cells” and in the other case the “person” who is trafficked for the purpose of removing organs. Therefore and according to a joint study launched by the United Nations (UN) and the Council of Europe, a new treaty was needed to prevent trafficking in organs, tissues, and cells (OTC) mainly to imply that this crime should be distinguished from trafficking in persons.²⁴

The market of organ trafficking has most significantly been in the form of illegal commercial activities or what has often been named “The Black Market”, where several players are gaining some financial profits. For instance, the profit-seeking middleman who is the seller of a kidney has financial motivation. This also applies to the broker, who charges a fee to act an intermediary between buyer and seller and the medical professionals.²⁵ The buying and selling is a central aspect of organ trafficking; the organ becomes a product and the financial role becomes the priority for those involved instead of the health and well being of the donors and recipients.

Often there is some sort of a threat or other form of physical force involved in organ trafficking. In that case, there is a person who has power over another person who is then victimized by the process. *Victimization* is often described as the threat or use of force or other

²³ Ibid, 83.

²⁴ Ibid, 98.

²⁵ Arthur Caplan, “The Trouble with Organ Trafficking,” Council for Secular Humanism, http://www.secularhumanism.org/index.php?section=library&page=caplan_29_6 (accessed Mai 20th 2012).

forms of fraud, abuse of power or position of vulnerability. As some can say, there is a big reason to go against organ trafficking and to go against this global movement, mainly because of the injustice of using a vulnerable segment of a country or population as a source of organs (vulnerability defined by social status, ethnicity, gender or age).²⁶

These definitions of organ trafficking can cast a light on the framework of the various processes of organ trading for commercial transplants. Such measures for instance, should focus on providing more information to possible kidney sellers so they are better informed regarding the risks of the procedure and sellers should know how to minimize negative impacts.

Many would classify the act when organs are displaced across national borders for medical procedures as organ trafficking but there are instances when it is legal and appropriate.²⁷ Therefore, those in favor have argued that transplant tourism provides a valuable public service. First, it brings together the ones who need organs and those who are willing to donate organs but would otherwise never meet. Second, transplant tourism may have positive financial effects for individuals and for their families. Selling your own organ could be a “rational” decision. For instance, if you need money to feed your family or pay off debt then it could be the only solution. Therefore and as described before, they are selling their organs in order to secure a better economic future for themselves and their families. This is according to rational choice ideology the patient's right to gain better life by maximizing their choices. Neoclassical economics also follow the idea of people making their own decisions and having free will. According to the theory, body parts are and should remain privately owned.²⁸

One criticism is that, those who “choose” to sell their organs for life’s basic necessities are often blinded by the short-term gain. They require information, options, as well as the ability to understand the risks involved.²⁹ Another criticism is that, if the legal system were able to serve those in need of organ transplantation OTC, trafficking in human beings would not exist in the same manner as it does today.

²⁶ UNIDOC, “Human Trafficking FAQs,” UNIDOC, <http://www.unodc.org/unodc/en/human-trafficking/faqs.html> (accessed February 11th 2012).

²⁷ Debra A. Budiani-Saberi and F.L. Delmonico, “Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities,” *American Journal of Transplantation*, 8, 5 (2008): 926.

²⁸ United Nations, “*Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*,” (France: Directorate General of Human Rights and Legal Affairs, 2009): 31.

²⁹ *Ibid*, 31.

3 Globalization and Human Organ Trafficking

With globalization, people and information are able to travel freely without much government regulation. Due to this openness, transplant tourism has been able to reach new heights and people are becoming more connected in many ways, for instance by receiving organs from less developed countries. Globalization is used to describe the process by which regional economies, societies, and cultures have become integrated. Adding to that, the erosion of borders and the interdependence of countries are big indicators of increasing globalization.³⁰

The case of an international illegal organ trafficking ring discovered in 2002 will help to clear up how global this practice has become. This particular trafficking ring was apparently involved in selling and purchasing kidneys in three countries. The donors were poor Brazilians, who were willing to sell one kidney for about \$10,000 and the kidney recipients were Israelis, who paid up to \$100,000 in return for the same organs. Both the donors and patients willingly traveled to South Africa for surgeries, which took place in the same hospital. Before the surgeries took place, both parties (donors and recipient) had to sign documents stating that they were related. All this was organized and facilitated by middlemen, and operations carried out by surgeons and other medical staff. Because of the price differences, there is a strong reason for brokers to become involved in a trade like this, as it brings the opportunity for financial profit.³¹

Another case was reported in Brazil in 2004, where two Israeli citizens were accused of working as brokers in an organ trafficking operation. The recipients were Israelis who received health insurance of around 80,000 dollars from Israeli government for procedures abroad. The two brokers were arrested, because they were going against laws in Brazil. As in many other countries, recipients and donors have to go through formal organizations so the process will be legal. The two Israelis did not think they were committing a crime because at the time these actions were considered legal by the Israeli government. They also thought they were making a good effort towards a win-win situation, believing that a sick person was saved while a poor person got food on his table.³²

³⁰ Hyuksoo Cho, Man Zhang and Patriya Tansuhaj, "An empirical study on international human organ trafficking: effects of globalization," *Innovative Marketing* 5, 3 (2009): 66.

³¹ Ambagtsheer, Frederike, "The Black Market in Human Organs," in *Deviant Globalization: Black Market economy in the 21st Century*, edited by Nils Gilman, Jesse Goldhammer and Steven Weber, (New York: The Continuum International Publishing Group, 2011): 76-77.

³² Mario Osava, "Poor Sell Organs to Trans-Atlantic Trafficking Ring," *IPSnews*, February 23rd 2004. <http://ipsnews.net/news.asp?idnews=22524> (accessed March 21st 2012).

Goble (2000) has argued that human organ trafficking has become the fastest growing type of organized crime under economic globalization. Traffickers see this business for their own profit and treat human organs as nothing more than profit goods in a globalized economy.³³ Scheper-Hughes (1997) points out that economic globalization movement flows from South to North, from black to white, from poor to rich, and from female to male bodies.³⁴ Based on those arguments we could assume that there is a positive relationship between class-division and human organ trafficking in a given country. However, there is little empirical work on how globalization affects human organ trafficking because of the secrecy that surrounds the industry.³⁵

³³ Goble, “World: Analysis from Washington – Globalization of Slavery,” Goble, <http://www.rferl.org/nca/features/2000/12/05122000205456.asp> b(accessed February 3rd 2012).

³⁴ Nancy Scheper-Hughes, “The New Cannibalism,” Berkeley, <http://sunsite.berkeley.edu/biotech/organswatch/pages/cannibalism.html> (accessed January 8th 2012)

³⁵ Hyuksoo Cho, Man Zhang and Patriya Tansuhaj, “An empirical study on international human organ trafficking: effects of globalization,” *Innovative Marketing* 5, 3 (2009): 73.

4 Institutional framework against illegal transplants

Organ transplantation is one of the medical miracles of the twentieth century and has improved the lives of thousands in need worldwide. It has been associated with limited regulations and oversight.³⁶ Therefore, many health and human rights organizations have emerged in various countries across the world, which oppose illegal organ transplantation and most of them are non-governmental organizations (NGOs).

One of those organizations is the United Nations Office on Drugs and Crime (UNODC), which was established in 1997 and operates in all regions of the world. It assists Member States in their struggle against drugs, crime, terrorism as well as human and organ trafficking. According to UNODC, an important part is to create similar goals and a cooperative relationship between those institutions that are working against organ trafficking. The reason is that when there is conformity between organizations, the process of limiting organ trafficking will be much more effective.³⁷ Other actions have included publishing articles about the issue within medical and social science literature, raising the awareness of the issue in the media and participating in international declarations against organ trafficking including the WHO Guiding Principles made in 2004. In that declaration WHO urged member states to protect the poorest from transplant tourism and the sale of organs.³⁸

What has been suggested is for all countries to implement and to coordinate a legal framework against trafficking. Conformity with rules and principles for organ donation and transplantation activities, as well as a regulatory oversight system that can ensure donor and recipient safety, is also desirable. A step towards creating that conformity was taken at a Summit Meeting in Istanbul 2008, where more than 150 representatives of scientific and medical experts from around the world gathered. A declaration was made between The Transplantation Society (TTS) and the International Society of Nephrology (ISN), representing the consensus of all the 150 participants. According to them, few principles needed to be integrated within national governments. First of all, governments need to be working in

³⁶ Oxford Journal, "Nephrology Dialysis Transplantation 2008," *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, 23, 11 (2011): 3375-3380.

³⁷ Karin Rammerstorfer, *UNODC and the Global Programmes*, (Norderstedt: Grin Verlag, 2006): 3-13.

³⁸ World Health Organization, "Draft guiding principles on human organ transplantation," World Health Organization, http://www.who.int/ethics/topics/transplantation_guiding_principles/en/index.html (accessed February 4th 2012).

collaboration with the international and non-governmental organizations and develop programs for prevention and treatment of organ failure.

This declaration includes the progress of scientific research, effective international guidelines to treat patients with transplant diseases and finally, treatment for organ failure.³⁹

As mentioned above, there are many organizations that have taken big steps against this problem but there are few major international organizations that have been more visible than others and have increasingly taken actions against this relatively new problem. I have chosen two organizations as representative organizations working against organ trafficking. They are the World Health Organization (WHO) and the Coalition for Organ-Failure Solutions (COFS). Both work towards similar goals and purposes but are different in function.

4.1 WHO – The World Health Organization

WHO was established in 1948 and is a specialized unit of the United Nations (UN). The organization has 194 Member States, aiming to develop and promote international health standards. Those standards will be used as tools in prevention, therapy or diagnosis of human diseases, which are important for global public health.⁴⁰ Health Assembly resolutions WHA40.13 (adopted in May 1987) and WHA42.5 (adopted in May 1989) were at first a concern over these worldwide health developments. The resolutions essentially forbid the paying and accepting payment for organs, as well as any other commercial dealing in the field of transplantation. They place a particular emphasis on the protection of minors and other vulnerable persons, who should not donate organs.⁴¹

In 1991 the organization published *The Guiding Principles* on Organ Transplantation. They were intended a reaction to the 1987 and 1989 Health Assembly resolutions but were not put in practice until in 2004, when the first global conference on regulatory requirements for transplantation of human cells and tissues was held. The conference highlighted the global need for greater regulation and was the first major act that WHO took against transplantation of human cells and tissues. The results were that they developed principles for safety and

³⁹ Oxford Journal, "Nephrology Dialysis Transplantation 2008," *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, 23, 11 (2011): 3375-3380.

⁴⁰ The Macro Data Guide, "World Health Organization," *The Macro Data Guide*, November 24th 2011. <http://www.nsd.uib.no/macrodataloguide/set.html?id=48&sub=1> (accessed March 19th 2012).

⁴¹ World Health Organization, "Draft guiding principles on human organ transplantation," World Health Organization, http://www.who.int/ethics/topics/transplantation_guiding_principles/en/index.html (accessed February 4th 2012).

efficiency of organ transplantation. These principles would be developed through international consultation with health authority, experts and regulators around the world.⁴²

To address The Guiding Principles (see *Appendix I*) here would be unnecessary unless one would like to go into details. What matters are rather the reasons they were made and the message they contain. The Guiding Principles are intended to provide an ethical framework for regulating transplantation of human organs for therapy. For instance, the principles do not allow giving and receiving money in exchange for organs, and they prohibit any other commercial activity in that area.

What concerns WHO the most is when vulnerable persons are forced or urged to give organs. That's why the organization felt obligated to put in writing principles to protect the minors and other vulnerable persons. According to WHO policies all principles need to be followed in order to obtain legal transplantation. For instance, the organs and tissues may only be removed from bodies that physicians have determined dead or from a living person that is genetically related to the recipient and gives a legal written permission for the donation. Also, advertising for available organs by offering payment is not allowed.⁴³

Over all, WHO should provide safety information and be on the lookout if something is not working according to procedures. Therefore, they need to keep on defining processes and products of safety and quality that were intended to be advisory and are often used as the basis for national legislation.⁴⁴

4.2 COFS – Coalition for Organ and Failure Solutions

COFS was founded by Dr. Debra Budiani to respond to the voices of victims of organ trafficking and to use ethical solutions to end these abuses. COFS is a non-profit health and human rights organization committed to ending organ trafficking where the vulnerable and the poor are used as a source of organ and tissue supplies.⁴⁵ The organization started its work in 2006 by focusing on the Middle East especially Egypt, in an effort of improving transplant

⁴² World Health Organization, *First Global Consultation on Regulatory Requirements for Human Cells and Tissues for Transplantation* (Ottawa: WHO Library Cataloguing-in-Publication Data, 2004): 4-5.

⁴³ World Health Organization, "Draft guiding principles on human organ transplantation," World Health Organization, http://www.who.int/ethics/topics/transplantation_guiding_principles/en/index.html (accessed February 4th 2012).

⁴⁴ World Health Organization, *First Global Consultation on Regulatory Requirements for Human Cells and Tissues for Transplantation* (Ottawa: WHO Library Cataloguing-in-Publication Data, 2004): 5.

⁴⁵ Debra A. Budiani-Saberi and Deborah M. Golden, "Advancing Organ Donation Without Commercialization: Maintaining the Integrity of the National Organ Transplant Act," June 2009. http://www.cofs.org/COFS-Publications/Budiani_Saberi_and_Golden_Issue_Brief_June_2009.pdf (accessed February 14th 2012).

practices there. It has developed a strategy to seek practical solutions to the problem of organs trafficking globally by recognizing that, organ recipients turn to the alternative of organ trade, because of the lack of available alternatives.⁴⁶

COFS works with partners in various countries like Bahrain, Egypt, India, Nepal and the United Arab Emirates (UAE) and tries to develop strategies of prevention measures. What they have done is develop an outreach program and are considered to be the only organizations that provide this kind of services to survivors of the organ trade. The program includes health services and long-term clinical follow up, health education, employment assistance, counseling, support and legal services. Currently, there are no other organizations that provide an outreach service to survivors of the organ trade in the same manner as COFS does. In addition, they visit donors to enquire about their health after the operation. Part of their checkout procedure is employment situation and overall health assessment.⁴⁷ Their work also includes creating public awareness about organ trafficking and is done by reaching out to target groups with information about organ trade, reaching the media to cover stories about organ trafficking and producing documentary films.⁴⁸

The organization's biggest achievements are reflected in various types of services, including prevention programs and assistance, related to their organ donation.⁴⁹ The service does not only provide support, it is also very important data on donor outcomes and their quality of life after the operation.⁵⁰

⁴⁶ Debra A. Budiani-Saberi and Othman Shibly, "Islam, Organ Transplants, and Organs Trafficking in the Muslim World: Paving a Path for Solutions," October 2006.
http://cofs.googlecode.com/svn/trunk/Publications/Budiani_and_Shibley.doc (accessed February 14th 2012).

⁴⁷ Coalition for Organ-Failure Solutions, "Where We Work," Coalition for Organ-Failure Solutions,
<http://www.cofs.org/where.htm> (accessed March 17th 2012).

⁴⁸ Coalition for Organ-Failure Solutions, "What We Do," Coalition for Organ-Failure Solutions,
<http://www.cofs.org/what.htm> (accessed January 22nd 2012).

⁴⁹ UNIDOC, "Coalition for Organ-Failure Solution (COFS)," UNIDOC,
http://www.unodc.org/ngo/showSingleDetailed.do?req_org_uid=17367 (accessed January 24th 2012).

⁵⁰ Debra A. Budiani-Saberi and Othman Shibly, "Islam, Organ Transplants, and Organs Trafficking in the Muslim World: Paving a Path for Solutions," October 2006.
http://cofs.googlecode.com/svn/trunk/Publications/Budiani_and_Shibley.doc (accessed February 14th 2012).

5 The State of Israel

The State of Israel was established as a Jewish state and a democratic republic in May 1948, in the area known as Palestine, which had been ruled by the British from 1920 to 1948. The history of Israel is complex and could take many pages to describe therefore it will only help to get the frame of the core elements.

The fight for Israeli independence started in the beginning of the Holocaust, which would be the period from 1933 to 1945 when the war in Europe ended. This period led to the murder of approximately six million Jews where they were the victims of Germany's attempt to wipe out the entire Jewish population in Europe. Having no country of their own, Jews “decided to return to history”.⁵¹ As a response to that, the UN divided the area of Israel into Arab and Jewish states but was deeply rejected by the Arabs. There was a series of wars, in which the Israelis were victorious, but deep tensions still remain between the two sides.⁵² The most obvious signs for the need of a new state were the Jewish community in the Land of Israel, as well as, the universal Zionist Movement. It became increasingly more important for Israeli people to gain an independent and sovereign Jewish state to provide a safe place of shelter for the Jewish nation. Still today, conflicts concerning their settlement have not been solved completely.⁵³

Jewish history does not only indicate how Jews' independence was reached, but also how their religion and culture influenced their development of interaction with other religions and culture and how it affects how important decisions about social affairs are taken.

5.1 Jewish Laws and Religion on Biomedical Ethics

The Torah is Judaism's most important text and is the basis of Jewish law and religion. While some Jewish groups have based their beliefs on the written text alone or *The Halakhah*, most Jews believe in the “written oral Torah” or *The Talmud*. They justify that by stating, that many words and procedures in the Torah are without explanation or instructions. Therefore, the

⁵¹ Jewish Virtual Library, “The Holocaust: an Introductory History,” Jewish Virtual Library, <http://www.jewishvirtuallibrary.org/jsource/Holocaust/history.html> (accessed March 5th 2012).

⁵² Fred Skolnik, “The State of Israel (1948-2000),” in *A History of Israel and the Holy Land*, ed. Michael Avi-Yonah and Shimon Peres (New York: The Continuum International Publishing Group, 2003): 332.

⁵³ ynetnews.com, “The State of Israel,” *ynetnews.com*, December 12th 2012. <http://www.ynetnews.com/articles/0,7340,L-3284752,00.html> (accessed March 5th 2012).

written Torah cannot be correctly understood without explanations from the oral one, which is at least fifty times larger than the written Torah.⁵⁴

The largest Jewish religious movements are *Orthodox Judaism*, *Conservative Judaism* and *Reform Judaism*. The major differences between these groups are their approach to Jewish law. The Orthodox Judaism is the most traditional Judaism where they believe in the entire Torah (the written and the oral). They hold that the Torah and Jewish law are the origin of all religions and laws and they should be strictly followed. Conservative Judaism, for instance, is more liberal and seeks to avoid the extremes by promoting a more “traditional” interpretation of Judaism. Reform Judaism is also rather liberal. Its mission is that Jewish law should be viewed as a set of general guidelines rather than as a set of restrictions.⁵⁵

Two different illustrations can be found in the oral Torah, one is from Rabbi Abraham Ibn Ezra, or Ibn Ezra as he is often called, and the other is from Rabbi Joseph Karo. By viewing both statements we can see how the oral Torah can give various perspectives on biomedical issues.

Ibn Ezra was born about 1092 and died in 1167. He made a huge contribution to Jewish literature, although his greatest observations were on the Bible. He suggested it was right and permissible for a physician to heal a wound, but only if it was an external one. He felt that all internal wounds should be left to God. In his commentary he also states that “just as God “healed” the undrinkable waters at Marah for Israelites, so will God heal all plagues on the earth and there will be no need for physicians”.⁵⁶ According to his words, an argument could be made that the aim is to rely entirely on prayer for their healing because otherwise, it would show a lack of trust in the faith.

Ibn Ezra’s restrictions were truly rejected by Rabbi Joseph Karo in his famous code of Jewish law. Karo was born in 1488 and in his life he tried to organize all of Jewish law into a system, by showing the origins and to list what a Jew was supposed to do in each circumstance of life. He called his legal document the *Shulchan Aruch* or the prepared table, which was a simple collection of rules. The *Shulchan Aruch* was the first code to be printed and became hugely influential in the Jewish world.⁵⁷ There Karo states that if a person has lost his health in

⁵⁴ John J. Parsons, “Torah Shebal Peh: The Orah Torah and Jewish Tradition,” Torah Shebal Peh - A Second Torah? http://www.hebrew4christians.com/Articles/Oral_Torah/Oral_Torah.pdf (accessed March 21st 2012).

⁵⁵ Religion Facts, “Jewish Denominations,” Religion Facts, <http://www.religionfacts.com/judaism/denominations.htm> (accessed March 21st 2012).

⁵⁶ Fred Rosner, *Biomedical Ethics and Jewish Law*, (Hoboken: Ktav Publishing House, 2001): 6-8.

⁵⁷ Jewish Virtual Library, “Joseph Karo,” Jewish Virtual Library. <http://www.jewishvirtuallibrary.org/jsource/biography/JosephKaro.html> (accessed April 1st 2012).

some way and a physician is able to restore it, he is allowed to do so. This is the reason why studying medicine is permissible in Jewish law. We could therefore say that, in the *Shulchan Aruch*, permission is given to use any means needed to cure the body.⁵⁸

Karo was very certain about his view on the Torah. Here is a small example from his Code of Jewish law: “The Torah gave permission to the physician to heal: moreover, this is a religious percept and it is included in the category of saving life; and if he withholds his service, it is considered as shedding blood.”⁵⁹ From these statements, it is clear that the Torah gives physician, who has knowledge and expertise, obligation to use his medical skills to heal those in need. Judaism is a “right-to- life” religion.

Another story from the Bible about healing and personal duty to heal is about Rabbi Ismael and Rabbi Akiba, who were walking in Jerusalem and met a sick man who asked how he could be cured. The Rabbi’s reactions were to bless him with words of good, a prayer and give him healing instructions. This is a clear sign that they act both as physicians with healing instructions and they use prayers. Therefore, a patient going to a doctor for operative procedure can be interpreted as being permissible because the physician is acting as an agent of God (the healer). This story, and others, can show us evidence supporting the stance that requires the patient to seek medical aid when sick.⁶⁰

The Jewish view of organ donation is based on the following three verses from the Torah: “You shall not stand by the blood of your neighbor” (Leviticus 19:16), “You shall surely heal” (Exodus 21:19), and “You shall restore” (Exodus 23:4). Jewish tradition does not consider a person dead unless their heartbeat and breathing have stopped. The issue is therefore, that organs like the heart and the lungs will not be viable for operation because of their functionality. That means a donor heart must be kept pumping after brain death to remain viable for transplant.⁶¹ The problem from this point, is whether it is legally right according to the Torah to take away body parts of the dead and whether it is right to implant them into a living body? As we can see and according to the Torah, the oral and the written, it can be difficult to find one answer for that because transplantation with the technology we have today is relatively new and there are no direct discussions of this kind of a procedure in older Jewish

⁵⁸ Fred Rosner, *Biomedical Ethics and Jewish Law*, (Hoboken: Ktav Publishing House, 2001): 8.

⁵⁹ *Ibid*, 9.

⁶⁰ *Ibid*, 13.

⁶¹ Rabbi Goldie Milgram, “What Does Judaism Have to Say About Organ Donation?” *Reclaiming Judaism*, <http://reclaimingjudaism.org/teachings/what-does-judaism-have-say-about-organ-donation> (accessed March 27th 2012).

literature. Therefore, Jewish leaders and Rabbis differ on how to determine the time of death because they are not consistent when a person is declared dead.⁶² We could then say that, there will always be a fulfillment of one law while violating another.

What has been said about Jewish tradition on organ donation strongly indicates that Jewish traditions differ from today's ideas because debates and social changes may have led to new ideas. Therefore, I argue that some confusion is due to religious interpretation, and the Israeli government has been forced to prohibit organ donation under Jewish law, but have not been very strict when people seek some other option, even if that option is considered illegal by most other nations. They have even supported patients financially to seek alternatives in other regions although this changed with a bill passed in 2008, which will be discussed further on.

5.2 The Israeli Government and the Black Market problem

The state of Israel is a republic, defined as a parliamentary democracy and remains as a mixed legal system of English common law, British regulations, and Jewish, Christian and Muslim religious laws.⁶³ The governing system is based on a separation between its three branches: Legislative, judicial and executive. The legislative authority is the Knesset combined with a body of 120 members and operates through 12 standing committees. Its members are elected every four years in nationwide elections across the country.⁶⁴ The Knesset's main purpose is to develop the law and apply binding norms. Legislation can be created either by one member, a group of Knesset members or by a Knesset committee. A bill needs to be approved by simple majority of the Knesset.⁶⁵ The head of the state is the president and is chosen by the Knesset once every seven years. His role is primarily symbolic where he has neither a governmental nor a political position.⁶⁶ The judicial authority plays a central role in constitutional norms and is there to ensure that the Israeli society is following the law and respecting human rights. These standards are formulated by Israel's norms and values since a single unified document has not

⁶² Rabbi Goldie Milgram, "What Does Judaism Have to Say About Organ Donation?" Reclaiming Judaism.

⁶³ cia.gov, "Middle East: Israel," The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/is.html> (accessed March 20th 2012).

⁶⁴ The Knesset Celebrates 63, "The Work of the Knesset Responsibilities, Roles and Authority," The Knesset Celebrates 63. http://www.knesset.gov.il/birthday/eng/KnessetWork_eng.htm (accessed March 21st 2012).

⁶⁵ The State of Israel: The Judicial Authority, "Remarks of the President of the Supreme Court," The State of Israel, <http://elyon1.court.gov.il/eng/chief/index.html> (accessed March 21st 2012).

⁶⁶ Gregory S. Mahler, *The Knesset: Parliament in the Israeli Political System*, (London and Toronto: Fairleigh Dickinson Univ Press, 1981): 36.

yet been created and the constitution still remains in progress.⁶⁷ Finally, the executive authority is the government or cabinet of ministers. They are responsible for overseeing internal and foreign affairs. The prime minister is the head of the executive authority and is in most cases under the responsibility of the Knesset (see *Appendix 2*).⁶⁸

Israel has maintained a socialized health care system since its establishment in 1948 but since then there have been some systematic changes. One of those changes was the National Health Insurance Bill passed in 1994. By law, the changes required every citizen to join a healthcare company that would provide a unified package of healthcare services. Israeli citizens are therefore entitled to choose from four health care companies, which are financed by the National Insurance Institute and through state support and are supposed to give all citizens a quality service regardless of their financial status.⁶⁹

The regulations on the Israeli national health insurance system state that; “If medical treatment is not available in Israel, treatment abroad will be covered”.⁷⁰ This indicates that medical treatments such as organ transplantations that were not available in Israel will be paid for by the Israel National Health Insurance Companies when they have to be done elsewhere. Also, before 2008, there were no laws in Israel that forbade trafficking in human organs, which allowed the brokers to look overseas for organs and operate with few restrictions. That was creating many problems in cases where Israelis were arrested in other countries for recruiting people to sell their kidneys.

By now, some changes have been made to Israeli regulations concerning health services and organ trafficking. Perhaps the most important step was the country’s 2008 Organ Transplant Act, a new bill passed through the Israel Ministry of Health. The bill brought an end to a policy that had been in effect since 1998, which allowed the ministry to cover the cost of organ transplantations in a foreign country. Also, the bill defined the time of death and according to the new law the time of death is when the brain has stopped functioning. Before the law passed, time of death was when the heart has stopped but the heart can beat few days

⁶⁷ The State of Israel: The Judicial Authority, “Remarks of the President of the Supreme Court,” The State of Israel, <http://elyon1.court.gov.il/eng/chief/index.html> (accessed March 21st 2012).

⁶⁸ The Knesset Celebrates 63, “The Work of the Knesset Responsibilities, Roles and Authority.”

⁶⁹ Benjamin Gidron, Michal Bar and Hagal Katz, *The Israeli Third Sector: Between Welfare State and Civil Society*, (New York: Kluwer Academy, 2004): 126-127.

⁷⁰ Israel Ministry of Foreign Affairs, “National Health Insurance,” Israel Ministry of Foreign Affairs, http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1998/7/National+Health+Insurance.htm (accessed March 20th 2012).

after the brain death. These new regulations have increased the rate of organ donations in Israel because organs will be much more viable for transplantation.⁷¹

Chaim Amsellem who was involved in the making of the bill described the law as making history.

The law passed Monday regulates Israeli organ donations for the first time. The law determines, among other things, that brokering sales of organs, whether in Israel or overseas, is a criminal offense punishable by up to three years in jail.⁷²

Though these new laws have made a difference in Israel, there is still some pressure on the Israeli state that Israel needs to develop a legislation and policies that reign outside territorial limits, which addresses Israelis' use of transplant procedure abroad. By doing so, the state could have a stronger hold on things and could possibly prevent transplant tourism to other countries.⁷³

What is important for new regulations like these is a system that would be based on records preserving knowledge and facts about donors, recipients and the ethically correct distribution of organs to where they are most needed. Also, the government will need to support the donor after the surgery in order to provide donor's long-term health.⁷⁴ We have to face the fact that organ trade already exists in many parts of the world and perhaps making more consistent regulations would prevent further harm.

⁷¹ Sally Stale, "Kidney Mitzvah: Israel's Remarkable New Steps to Solve Its Organ Shortage," January 27th 2010. <http://www.aei.org/article/health/healthcare-reform/kidney-mitzvah/> (accessed April 5th 2012).

⁷² Shahar Ilan, "With top rabbis' blessing, Knesset approves organ donation law," *haaretz.com*, March 25th 2012. <http://www.hods.org/pdf/press/organ%20donation%20law.pdf> (accessed January 22nd 2012).

⁷³ Nancy Scheper-Hughes and Loic Wacquant, *Commodifying Bodies*, (London: SAGE Publications, 2002): 32-33.

⁷⁴ Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, *Coercion in the Kidney Trade? A background study on traffickin in human organs worldwide* (Eschborn: Deutsche Gesellschaft für Technische Zusammenarbeit, 2004): 15.

6 Conclusion

The development of organ trafficking has gained far to little attention. Journalists have not fully exposed this awful trend, ideologists have not yet come to any sort of agreement about what to do, and medical professionals are conflicted by the lifesaving duties their patients have come to demand of them.

Organ Trafficking has made internationally medical associations unable to function because they have been too slow to adapt to changing realities that are taking place within some of the poorest countries. My argument is therefore that, brokers have been and still are taking advantage of the globalized world and inefficient laws that are in many cases lacking some consistency and progression. Governments have also been turning their backs to human rights violations that are occurring almost every day.

The focus of this thesis has mainly been on organ-trafficking and the effects it has had on Israeli society, for instance, their religion, laws and regulations, and explaining some of the core reasons why the country has been such a big participant in the black market business. In this thesis I set out to analyze “How has globalization supported organ trafficking?” and “Why have so many Israelis chosen organ trafficking as a solution to their health problems?” I believe that globalization, greed, and inequality, has supported organ trafficking to become so widespread. Therefore, the global organized crime of trafficking is on a rise due to the forces of an increasingly integrated world. Supporters for globalization argue that this opens up opportunities for economic and technology developments. However, it has been shown that the global economy spreads not just wealth, but danger. Furthermore, developing countries lack the basic laws and enforcement capabilities to make trafficking illegal. Israel could be considered one of those countries, even though it is a developed country, indicating why they have been major participants.

My argument is that, the health care system in Israel has not been able to provide relevant assistant for those who desperately are waiting for organs, which states that Israelis waiting for organs can hardly rely on their country’s ability to provide them appropriate service given the low donation rate. They have mainly been purchasers of organs rather than donating, showing interest to use their government’s silent acceptance, even encouragement, of purchasing organs in another country but the organ donation rate in Israel has been getting better since the 2008 law, which has stopped Israelis from getting compensation from insurance companies, for illegal activity in other countries.

Within theoretical framework, it has been described that Organ-trafficking has developed into a well-organized profit seeking business, which is functioning on the basis of supply and demand, business that is causing human rights groups and several international organizations, for instance WHO, to take note. Improvements in medical technology have increased the success rate of organ transplants and thereby, opening possibilities in health care service that wasn't an possibility short time ago which has increased the demand for organs. This demand has then been accustomed to violation of fundamental human rights, such as the rights to life, liberty, security in person and freedom from brutal treatment. That is one of the main reasons why human rights organizations and followers are making effort for adoption of global consent laws, which would support organ supply to be done legally.

Neoclassical economics and rational choice theories would argue that people should be allowed to make their own choices and have free will, stating that, both parties gain from the procedure. Rational choice consists of maximization of individual choice, describing individual behavior as selfish with personal benefits in mind. Therefore, making choice of selling your own organ because there are some financial payments involved is according to rational thinking, a normal behavior. Libertarian thesis like neoclassical economics, are stating that selling one's organs does not necessarily violate the right of self-determination, and should fall within the individual privacy of free choice based on supply and demand. Meaning that, supply and demand is set by the consumers.

Those two theories predictions can be used as a tool to view this global world we now live in because their ideologies have been prevailing for decades. Therefore, I argue that governments have been turning their backs on this serious problem of organ trafficking for too long by allowing such business to grow and not been making any relevant actions against it. For instance in the case described before about the organ trafficking ring in 2004 where illegal business done in Brazil was silently "accepted" by the Israeli government and the brokers were assure that they were not doing anything illegal.

Israel's case is unique because of the country's Jewish majority and precisely because its organ-trafficking dilemma is related to Jewish law. Even though many Jewish biblical commentators have resist from commenting on the subject, I would argue that an agreement has been reached allowing for the sale of organs if the mission is saving a human life and not financial gaining. Israelis have been willing to travel long distances in order to buy organs. But they are not alone in this business because many people from other industrialized countries like in America and Europe have also been willing to spend incredible amounts of money to obtain healthy organs.

I believe that, consistent international regulations and state laws on organ donation would reduce the number of organs obtained on the illegal black market. That contains, countries should strengthen their laws against this crime and adopt consent laws to increase legal organ supply. What I would also suggest is to implement some legal requirements on doctors to report if they suspect that a patient has obtained an organ from a trafficked person. These recommendations could help support the rights of the less fortunate.

Overall, what makes it so difficult to work against organ trafficking is that there is no way to pinpoint it because there are no valid records on it, nor any source of evidence. Also, there are different restrictions for each country: the laws are not consistent. Organizations, for instance COFS and WHO, lack direct enforcement mechanisms and are still not as effective as they need to be in order to combat this global health issue. Therefore, bioethical standards should meet requirements of every region, due to religious and cultural differences and as said before, healthcare professionals should be mindful of the origin of human organs and the health of both parties involved.

I believe that most governments have been having hard time in the battle against organ trafficking and have not yet found any relevant solutions within their regulation frame. Indeed, it is understandable that consistency concerning regulations in organ donations is hard to achieve because how global this issue has become and because of cultural differences between countries. The Israeli government has especially been struggling because of their religion. What has been written in *The Talmud* and in *The Halakhah* has had enormous effects on Government decisions and on regulations outcomes. Therefore, it could be argued that Ethical standards and Human Rights have been put aside for decades, while Jewish traditions has most significantly been influential. However, changes occurring with 2008 law made some great improvements concerning Israelis trafficking dilemmas where the Government showed some independent ability against the issue. The law increased Israelis donation and therefore decrease the organ trafficking for Israel citizens. I do not think that a regulated market in organs is the only solution to the world shortage but I do believe it is the best solution for the State of Israel.

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Appendix 1

Guiding principle 1: Organs may be removed from the bodies of deceased persons for the purpose of transplantation if: (a) any consents required by law are obtained; and (b) there is no reason to believe that the deceased person objected to such removal, in the absence of any formal consent given during the person's lifetime.

Guiding principle 2: Physicians determining that the death of a potential donor has occurred should not be directly involved in organ removal from the donor and subsequent transplantation procedures, or be responsible for the care of potential recipients of such organs.

Guiding principle 3: Organs for transplantation should be removed preferably from the bodies of deceased persons. However, adult living persons may donate organs, but in general such donors should be genetically related to the recipients. Exceptions may be made in the case of transplantation of bone marrow and other acceptable regenerative tissues. An organ may be removed from the body of an adult living donor for the purpose of transplantation if the donor gives free consent. The donor should be free of any undue influence and pressure and sufficiently informed to be able to understand and weigh the risks, benefits and consequences of consent.

Guiding principle 4: No organ should be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissues.

Guiding principle 5: The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any other compensation or reward) for organs should be prohibited.

Guiding principle 6: Advertising the need for or availability of organs, with a view to offering or seeking payment, should be prohibited.

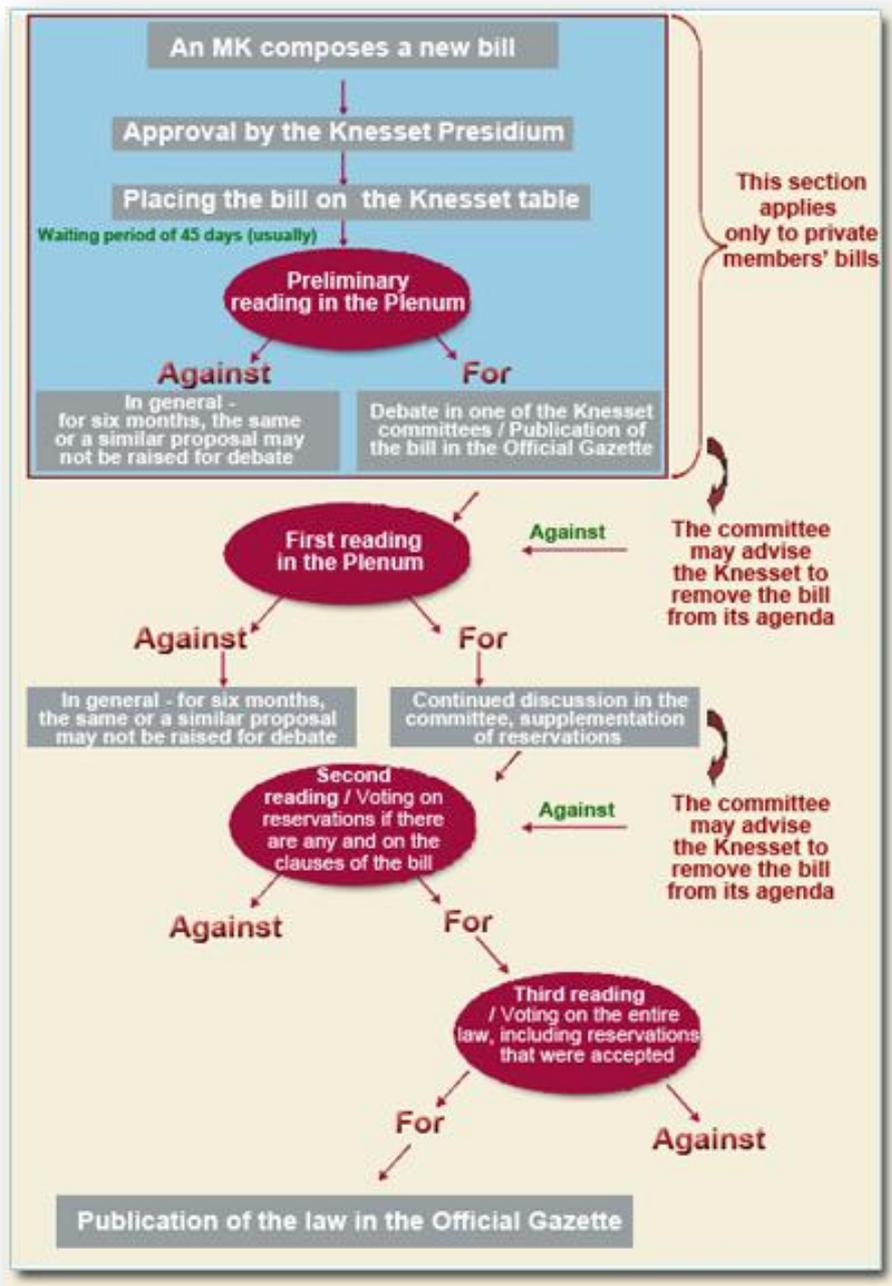
Guiding principle 7: It should be prohibited for physicians and other health professionals to engage in organ transplantation procedures if they have reason to believe that the organs concerned have been the subject of commercial transactions.

Guiding principle 8: It should be prohibited for any person or facility involved in organ transplantation procedures to receive any payment that exceeds a justifiable fee for the services rendered.

Guiding principle 9: In the light of the principles of distributive justice and equity, donated organs should be made available to patients on the basis of medical need and not on the basis of financial or other considerations.

(Available at: http://www.who.int/ethics/topics/transplantation_guiding_principles/en/index1.html)

Appendix 2



(Available at: <http://www.knesset.gov.il/birthday/photo.aspx?lng=3&md=212>)