International Laws of Organ Trafficking: An Annotated Bibliography
Prepared for Kara Vise, Juris.D. Candidate, George Washington University

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Kara,

Thank you for the opportunity to help you with your research. When we first discussed the project, you explained you were looking for international laws on organ trafficking. (Please remember, as I noted at our meeting, I am not an attorney; I am not providing you with the laws themselves, nor am I giving legal advice. I am simply helping you with your legal research.) You explained you were doing a paper and were having difficulty using the databases provided at your school. Our meeting was brief, but I was able to get a general picture of what you were looking for. However, when I began the research myself, I saw the complexities of the subject. Some of my searches turned up comparative laws between two or more states. Other searches retrieved regional law systems, such as laws in Europe and the European Union.

When we talked again, your feedback was instructive and helpful. I asked about narrowing your search and whether you had any specific restrictions in regards to types of international laws. You explained that the real purpose in asking for help was twofold. One, you wanted me to help you cast as wide a net as possible so you could find a suitable focus if need be. Two, you wanted me to help you better understand the databases you work with. I certainly understand your frustration with WestLaw. Databases are not the easiest to use, especially when you are starting out in a new field, such as law. WestLaw works best when you read the lengthy research guides that come with it. However, since you were not provided with them, I was pleased to send them along and to help you navigate a few searches over Skype. I am gratified that that skill will help you through law school and perhaps beyond.
Besides WestLaw, I also used some non-legal databases you may want to use in the future. Both Sociological Abstracts and SociINDEX with Full Text provide abstracts for sociological studies from relevant journals from 1974 to the present. I found these databases helpful for exploring multiple cultural backgrounds that impact how international laws are written and how they are followed—or what barriers may exist to following them—in various countries. They also discussed ethical issues and historical background. I recommend this database because it covers demographics, religions and traditions, and social psychology that may affect law development.

I want to re-emphasize the importance of using controlled vocabulary. As I explained, some databases have thesauri; some do not. Some make it easy to locate their thesauri; some do not. Trying different terms, as well as simply scrolling through many results, gave me terms I could use in turn in new searches. For instance, I had not heard of the phrases “organ procurement,” “organ market,” or “transplant tourism” before. I usually used a 2-faceted search, combining “organ trafficking” or a similar term (“organ donation,” “organ transplantation,” etc.) with “international” or a similar term (“transnational,” “global”). If there were many results to choose from, I would make it a 3-faceted search, combining “organ trafficking,” “law,” and “international,” allowing for more synonyms. As you pointed out at the beginning, there are not that many articles on the subject. Trying to combine too many terms sometimes resulted in zero hits.
Per your request, the top 20 results I chose were all articles published within the last decade. One of them is a paper that was not found in a journal. However, it was peer-reviewed and cited by other academics, so it is still within the parameters you set.

Please feel free to contact me if you are having trouble accessing any of the articles. I tried to locate them a second time to make sure the references are correct and current.

It was a pleasure working with you. Good luck with your assignment and let me know if there is anything else you need.

Anne

Recommended Material


**Abstract:** BACKGROUND TO THE DEBATE: In many countries, the number of patients waiting for a kidney transplant is increasing. But there is a widespread and serious shortage of kidneys for transplantation, a shortage that can lead to suffering and death. One approach to tackling the shortage is for a patient with renal disease to buy a kidney from a living donor, who is often in a developing country, a sale that could—in theory at least—help to lift the donor out of poverty. Such kidney sales are almost universally illegal. Proponents of kidney sales argue that since the practice is widespread, it would be safer to formally regulate it, and that society should respect people's autonomous control over their bodies. Critics express concern about the potential for exploitation and coercion of the poor, and about the psychological and physical after-effects on the donors of this illegal kidney trade.


The draft legislation warns that trafficking in organs is "demand-driven", and adds "[It] is therefore essential to take a comprehensive approach, addressing the underlying cause of the problem: the severe shortage of organs available for transplant". British member of the European Parliament Robert Evans, who drew up the proposal, said: "We need an EU-wide database of patients waiting for organ transplants, so newly available organs can be rapidly
matched with potential recipients and patients can be prioritised according to objective criteria."


**Abstract:** PURPOSE OF REVIEW: Organ trafficking, transplant tourism and transplant commercialism are now defined by the Declaration of Istanbul; the Declaration provides principles of practice based on those definitions. Organ trafficking and transplant tourism should be prohibited because they violate the principles of equity, justice and respect for human dignity. RECENT FINDINGS: This report provides a country-by-country description of current events that may effect the practice of transplantation internationally for the foreseeable future. SUMMARY: The implications of the Istanbul Declaration are profound. It calls for a legal and professional framework in each country to govern organ donation and transplantation activities. It calls for a transparent regulatory oversight system that ensures donor and recipient safety and enforces the prohibitions of unethical practices. Governments should ensure the provision of care and follow-up of living donors be no less than the care and attention provided for transplants recipients.


**Abstract:** PURPOSE OF REVIEW: 'Global transplant commercialism' (practices and policies involving international trade in organs from living vendors, e.g., 'transplant tourism') is currently subjected to unprecedented criticism. In parallel, the debate around 'local transplant commercialism' (practices and policies that confine trade in organs from living vendors to national markets or economic unions) is heating up. In an attempt to assess the potential outcomes of these trends, this article reviews and discusses some sociological and ethical issues, ending with a proposal for a reinvigorated anticommercialist strategy. RECENT FINDINGS: The current international campaign against global transplant commercialism is conducted by an ad hoc alliance between strange bedfellows, proponents of local transplant commercialism on the one hand and opponents of any transplant commercialism on the other. Disparities in the rigor of the respective ethical discourses, the expanding list of precedents of legitimized commerce in the human body, and the political economy of transplantation, all suggest that the former have the upper hand. SUMMARY: Recent achievements in the struggle against international organ trafficking may not herald the abolition of transplant commercialism but rather presage its reconfiguration in deglobalized forms. In light of such a prospect, those who wish to prevent the pervasive commodification of the human body from entering the gates of transplant medicine should consider devising a new, perhaps more radical, strategy.


**Abstract:** The most effective treatment for end-stage renal disease is a kidney transplant. While the supply of cadaveric kidneys is limited, the debate has been focused on the effects of the
existence of a free market for human organs. Economists as well as medical and legal researchers are divided over the issue. Iran has a unique kidney market which has been in place for over 20 years, frequently reporting surprising success in reducing the waiting list for kidneys. This paper demonstrates how the Iranian system works and estimates the welfare effect of this system.


**Abstract:** Organ trafficking and trafficking in persons for the purpose of organ transplantation are recognized as significant international problems. Yet these forms of trafficking are largely left out of international criminal law regimes and to some extent of domestic criminal law regimes as well. Trafficking of organs or persons for their organs does not come within the jurisdiction of the ICC, except in very special cases such as when conducted in a manner that conforms to the definitions of genocide or crimes against humanity. Although the United States Code characterizes trafficking as "a transnational crime with national implications," (22 U.S.C. Section 7101(b)(24) (2010)), trafficking is rarely prosecuted in domestic courts. It has thus functioned in practice largely as what might be judged a "stateless" offense, out of the purview of both international and national courts. Yet these forms of organ trafficking remain widespread—and devastating to those who are its victims. In this article, we begin by describing what is known about the extent of organ trafficking and trafficking in persons for the purpose of removal of organs. We then critically evaluate how and why such trafficking has remained largely unaddressed by both international and domestic criminal law regimes. This state of affairs, we argue, presents a missed chance for developing the legitimacy of international criminal law and an illustration of how far current international legal institutions remain from ideal justice.


**Abstract:** During the past decades, the number of altruistic living unrelated kidney donations has substantially increased in developed countries. However, the altruistic supply of transplantable kidneys has remained much less than the demand. As a result, severe kidney shortage has been associated with increasing number of patient deaths and increasing number of commercial transplants and transplant tourism. Studies have shown that there is still a need for living kidney donation because even all potential brain-dead donors cannot supply the escalating need for kidneys. The use of living unrelated kidney donors should be morally and ethically justified and should be compatible with ethical principles. Many experts believe that increasing number of patient deaths and commercial transplants will continue to happen if kidney donation system remains merely altruistic. While some transplant professionals support a paid and regulated system to eliminate kidney shortage, others argue that it will be destructive. Iran has a 20-year experience with a compensated and regulated living unrelated kidney donation program. This transplantation model was adopted in 1988, and successfully eliminated kidney transplant waiting list by the end of 1999. Currently, more than 50% of patients with end-stage kidney disease in Iran are living with a functioning graft. This Iranian
transplantation model has many ethical successes. However, because it has not been well regulated by transplant ethicists, some ethical shortcomings have remained. Unfortunately, due to lack of interest and expertise in health authorities, the number of serious ethical failures is also increasing in this transplantation model.


**Abstract:** The regulation of medical work in the has [sic] been shaped by the post-war settlement, which lead to the creation of the National Health Service in 1948. The removal of clinical care from the market was supported over the following decades by prohibitions of the sale of human organs and gametes. That settlement is now being dismantled, with the increasing privatisation of NHS facilities. The recommodification of medicine in Britain is achieved as part of broader patterns of neoliberal globalisation. Cross-border markets in health services are realized in law through international (e.g. the General Agreement on Trade in Services) and regional trade law (e.g. European Community law).


**Abstract:** Organ commercialism, which targets vulnerable populations (such as illiterate and impoverished persons, undocumented immigrants, prisoners, and political or economic refugees) in resource-poor countries, has been condemned by international bodies such as the World Health Organization for decades. Yet in recent years, as a consequence of the increasing ease of Internet communication and the willingness of patients in rich countries to travel and purchase organs, organ trafficking and transplant tourism have grown into global problems. For example, as of 2006, foreigners received two-thirds of the 2000 kidney transplants performed annually in Pakistan. The Istanbul Declaration proclaims that the poor who sell their organs are being exploited, whether by richer people within their own countries or by transplant tourists from abroad. Moreover, transplant tourists risk physical harm by unregulated and illegal transplantation. Participants in the Istanbul Summit concluded that transplant commercialism, which targets the vulnerable, transplant tourism, and organ trafficking should be prohibited. And they also urged their fellow transplant professionals, individually and through their organizations, to put an end to these unethical activities and foster safe, accountable practices that meet the needs of transplant recipients while protecting donors. Countries from which transplant tourists originate, as well as those to which they travel to obtain transplants, are just beginning to address their respective responsibilities to protect their people from exploitation and to develop national self-sufficiency in organ donation. The Declaration should reinforce the resolve of governments and international organizations to develop laws and guidelines to bring an end to wrongful practices. "The legacy of transplantation is threatened by organ trafficking and transplant tourism. The Declaration of Istanbul aims to combat these activities and to preserve the nobility of organ donation. The success of transplantation as a life-saving treatment does not require-nor justify-victimizing the world's poor as the source of organs for the rich" (Steering Committee of the Istanbul Summit).

**Abstract:** The organ trafficking market is on the rise worldwide. Numerous unfortunate stories of networks of brokers, physicians, and hospitals engaged in illegal trade have been featured in high-profile media. The profitable enterprises facilitating these unregulated services exploit the poor in underresourced countries and offer substandard medical care with unacceptable outcomes to the rich recipients. Despite efforts to boost altruistic organ donation and resolutions to curb transplant tourism, their implementation has been compromised. At the same time, the worldwide escalation in the number of patients with kidney failure coupled with a shortage in the supply of organs continues to fuel this trade. Thus, measures to enhance the donor pool in well-resourced countries to meet their own needs will act as a strong deterrent to the proliferation of transplant tourism in impoverished nations. Regulated schemes that include reimbursement for removing potential disincentives to organ donation and ensure the long-term safety of donors and their families are likely to increase living donations. Such socially responsible programs should be tested in both developed and developing countries for their own populations. It also is vital that developing countries establish a regulated, standardized, and ethical system of organ procurement; create awareness in physicians and the public; upgrade facilities and standardize medical care; and enforce legislation for transplantation. The World Health Organization, National Kidney Foundation, and international transplant and nephrology societies can have an instrumental role in facilitating initiatives in these critical areas. There should be clearly defined codes of conduct for health care facilities and professionals' roles in unregulated paid organ donations and transplants. Ultimately, physicians and transplant surgeons have the responsibility to ensure to the best of their ability that the organs they transplant were obtained upholding the highest standards of ethics.


**Abstract:** The ease and affordability of international travel has contributed to the rapid growth of the healthcare industry where people from all around the world are traveling to other countries to obtain medical, dental, and surgical care while at the same time touring, vacationing and fully experiencing the attractions of the countries that they are visiting. A combination of many factors has led to the recent increase in popularity of medical tourism such as exorbitant costs of healthcare in industrialized nations, favorable currency exchange rates in the global economy, rapidly improving technology in many countries of the world and most importantly proven safety of healthcare in selected foreign nations. Nevertheless, the development of medical tourism has certainly awakened many ethical and legal issues, which must be addressed. Issues pertaining to malpractice, consumer protection, organ trafficking, alternative medicine and telemedicine need comprehensive legal regulatory framework to govern them. Ethical issues are also been raised by the promotion of medical tourism in particular those pertaining to doctor and patient relationship. A future, where medical law is subsumed into various legal and ethical dimensions, poses serious challenges for the practice and ethics of medicine.

**Abstract:** The international medical travel industry includes patients seeking to access human biological materials (HBM) including gametes, organs and stem cells. Of the various niche markets, 'transplant tourism' has earned global condemnation and efforts to eradicate cross-border trade in organs, while other markets continue to expand. This article reviews the ethical issues raised by medical travel for HBM, in particular those concerning trade in HBM. It argues that a more consistent approach to the regulation of cross-border trade is imperative to ensure that the perils of 'transplant tourism' are not replicated in other markets. In addition, it discusses the role of the self-sufficiency model in assisting the development of ethical and practical policies regarding the procurement and use of human biological materials at a national level, thereby minimizing demand for medical travel.


**Abstract:** Since the 1990s, trafficking in persons as an international human rights issue has garnered significant attention on both international and national levels. As a result, there has been an increase in the number of scholarly articles that have analyzed the problem, its root causes, and its forms, and discussed the international and national efforts to combat it. Professor Mattar’s bibliography is an effort to identify, organize, and describe this growing body of literature.


**Abstract:** The article explores the phenomenon of trafficking in human organs in Europe or other countries accessible. Citizens from the poorest countries are the most likely to sell kidneys to organized criminals. Moldova, The Ukraine and Turkey are the countries most often associated with trafficking in human organs within the European context. The recruitment of donors for the traffic in organs have been reported in Bulgaria, Georgia, India and Israel. Affluent Middle Easterners and Europeans are the main recipients that arrange the transplant procedure and hospital stay with Indian agents. An overview of measures developed in the field of policy-making and the complications of implementing operational measures are discussed.


**Abstract:** The global demand for organs has surpassed organ donation in most cases, leading organized crime organizations to begin brokering in organ trafficking. Worldwide criminal activity related to the organ trade is examined.


Abstract: This article argues for a regulatory and institutional response towards organ trading, tourism and trafficking that differs from extant approaches. European countries have hitherto adopted blanket prohibitions on organ trading (i.e. the buying or selling of human organs). This article advances the view that policy makers have thereby overreacted to legitimate public health concerns and the evils of organ trafficking (i.e. organ trading and tourism involving coercion or deception). It argues for a trial of a very tightly regulated system of organ trading that could eventually lead to a limited system of organ tourism (i.e. organ trading involving more than one jurisdiction).


Abstract: This issue's "Legal Briefing" column covers legal developments pertaining to organ donation and allocation. This topic has been the subject of recent articles in JCE. Organ donation and allocation have also recently been the subjects of significant public policy attention. In the past several months, legislatures and regulatory agencies across the United States and across the world have changed, or considered changing, the methods for procuring and distributing human organs for transplantation. Currently, in the U.S., more than 100,000 persons are waiting for organ transplantation. In China, more than 1.5 million people are waiting. Given the chronic shortage of available organs (especially kidneys and livers) relative to demand, the primary focus of most legal developments has been on increasing the rate of donation. These and related developments are usefully divided into the following 12 topical categories: 1. Revised Uniform Anatomical Gift Act. 2. Presumed Consent and Opt-Out. 3. Mandated Choice. 4. Donation after Cardiac Death. 5. Payment and Compensation. 6. Donation by Prisoners. 7. Donor Registries. 8. Public Education. 9. Other Procurement Initiatives. 10. Lawsuits and Liability. 11. Trafficking and Tourism. 12. Allocation and Distribution.

Roberts, Erica D. 2009. When the storehouse is empty, unconscionable contracts abound: Why transplant tourism should not be ignored. Howard Law Journal 52, no. 3 (Spring).

[No abstract available]


Abstract: Reports on the support of the European parliament of wide ranging moves to stamp out the growing phenomenon of trafficking in human organs. Proposals to make it a crime for European Union citizens to pay for kidney transplants abroad; Minimum ten year prison sentence for those caught trafficking; Shortage of legal donors; Current British kidney donor program; Pressure on European Union governments to tighten existing legislation.