

The relationship of the crime of illegal migration to human trafficking in international and national law

علاقة جريمة الهجرة غير الشرعية بالإتجار بالبشر في القانون الدولي والوطني

Dr. Bourtal Amina *

Faculty of Law – University of Ain Temouchent (Algeria)

amina.bourtal@univ-temouchent.edu.dz

The date of Submission: 2025-04-26

The date of revision: 2025-06-28

The date of publication: 10-07-2025

Abstract:

Illegal migration and human trafficking are organized crimes against humanity committed by criminal networks, and as a result of the security threats that affect the entity of states, the international community is constantly working hard to combat them, by concluding international conventions and protocols, imposing preventive measures to limit their spread, and imposing severe deterrent penalties on organized groups that seek to achieve profit at the expense of the dignity of the illegal or trafficked human being exploited by various illegal methods. Which combines these two criminal phenomenon, by identifying the most important legal aspects and comparing the two crimes in terms of similarities and differences, to identify the extent of the overlap of the relationship between them.

Keywords: Illegal immigration; human trafficking; relationship; anti-terrorism.

الملخص:

إنّ الهجرة غير الشرعية والإتجار بالبشر من الجرائم المنظمة ضدّ الإنسانية ترتكها شبكات إجرامية، ومن جراء التهديدات الأمنية التي تمس كيان الدول، يعمل المجتمع الدوليّ جاهدًا بهدف مكافحتها باستمرار، بإبرام اتفاقيات وبروتوكولات دولية وفرض تدابير وقائية للحدّ من انتشارها، وفرض عقوبات ردعية شديدة على الجماعات المنظمة لها التي تسعى لتحقيق الربح على حساب كرامة الإنسان المهاجر غير الشرعيّ أو المتاجر به المُستغل بشقّي الأساليب الغير مشروعة، وسلّطنا الضوء من خلال هذه الورقة البحثية عن العلاقة التي تجمع بين هاتين الظاهرتين الإجراميتين، بالوقوف على أهمّ الجوانب القانونية والمقارنة بين الجريمتين من حيث أوجه التشابه والاختلاف، للتعرف عن مدى تداخل العلاقة بينهما.

الكلمات المفتاحية: هجرة غير الشرعية؛ اتجار بالبشر؛ علاقة؛ مكافحة.

* Corresponding Author.

Introduction:

The phenomenon of illegal immigration is one forms of human trafficking that poses a danger to the safety of the state and the nation and limits its sovereignty;⁽¹⁾ Its first daughter dates back to ancient times and has developed as a result of the global financial crises, and due to the illegal situation of illegal migrants who are subjected to coercion, by infiltrating into transit countries through land, sea or air ports, as confirmed by the Palermo Protocol of 2000,⁽²⁾ criminal groups are professionally targeting the basic rights of victims of crime.

In addition, human trafficking is an inevitable consequence of illegal migration, which ranks third in the world in illegal trade for personal financial gain, which requires determining the legal status towards illegal migrants in order to avoid trafficking, who have taken the smuggling of migrants as a source of the most heinous acts of exploitation and throwing them into death boats.

In the face of the overlap of the phenomenon of irregular migration and trafficking in persons, which increase the risk to the security and safety of the person and the violation of human rights, which have become global criminal phenomenon that impose themselves on international forums, which requires confronting them by developing legal texts, as Algeria has ratified several international conventions, and the Algerian legislator has imposed deterrent penalties in the Algerian Penal Code and introduced Law No. 23-04 of May 7, 2023 to prevent and combat human trafficking,⁽³⁾ By determining the necessary measures and measures to reduce them.

The question arises about the overlaps between human trafficking and illegal migration? Isn't human trafficking distinct from illegal migration? Has our Algerian legislator been successful in combating them? Let us address these questions posed by the subject under study within two main axes, relying on the descriptive and analytical approach of the subject of study.

- The conceptual framework of illegal migration and human trafficking
- Measures to reduce the phenomenon of illegal migration and human trafficking

1. The conceptual framework of illegal migration and human trafficking

Through this section, we try to define the concept of illegal migration and human trafficking and the relationship between them, and this is within the following two requirements:

1.1- The concept of illegal migration and human trafficking

We clarify the concept of human trafficking and illegal migration based on what is stated in international conventions and Algerian legislation:

¹ Raimo Väyrynen, "Illegal immigration, human trafficking, and organized Crime", The United Nations University World Institute for Development Economics Research (UNU-WIDER), Helsinki, N° 72, 2003, p 2.

² It should be noted that Algeria ratified with reservations the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children by Presidential Decree No. 03-417 of November 9, 2003, which includes the ratification with reservation of the Protocol to Prevent, Suppress and Suppress Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly of the United Nations on November 15, 2002, Official Journal No. 69, issued on 12-11-2003.

³ Law No. 23-04 of May 7, 2023 on the Prevention and Combating of Human Trafficking, Official Journal. No. 32, of May 09, 2023.

A- Definition of Illegal Migration

The Algerian legislator omitted the definition of illegal immigration, leaving its definition to jurisprudence, calling it "clandestine immigration" without the knowledge of the source and receiving country, or "illegal immigration". Because it occurs in a manner contrary to international and domestic laws, and "harga" means that the migrant violates all laws and borders in order to reach the destination country, where the illegal migrant searches himself and initiates contact with smugglers to achieve his goal of crossing the border to a third country illegally.⁽¹⁾

The crime of illegal migration is a transboundary crime, i.e. the spatial or geographical movement of populations from one area to another,⁽²⁾ In other words, the movement of people from one country to another extends illegally, smuggling them to cross the country's borders without complying with the requirements of legal entry towards the receiving country, which exposes them to danger.

For the immigrant country, it means the exit of the citizen from the territory of his country by illegal means, or exit through a legal port, but using illegal methods such as forging personal identification papers, while for the immigrant state, it means the arrival of the immigrant and his infiltration across land or sea borders illegally to a foreign country with the intention of residing in it surreptitiously.⁽³⁾ Or transit to another country, or enter that country with legal documents and remain in it after the expiration of these documents.

The phenomenon of illegal immigration was criminalized under Article 175 bis 1 of Law No. 09-01 of February 25, 2009 on the Algerian Penal Code,⁽⁴⁾ Extrapolating from the above-mentioned article, it is clear that, in the view of the Algerian legislator, illegal immigration is any process of crossing a land, sea or air border post by impersonating an identity or using forged documents or any other fraudulent means to avoid sharing the necessary official documents or carrying out procedures required by the laws and regulations in force.

B- Definition of Human Trafficking

Human trafficking is a humanitarian crime that poses a threat to societies⁽⁵⁾ known to humanity since the dawn of history, associated with slavery,⁽⁶⁾ In our time, the United Nations has identified an idea called contemporary slavery or forced labour as practices that violate human rights.⁽⁷⁾

Define from a jurisprudential perspective violations of human rights, in particular the right to physical and psychological integrity, life, liberty, security, personal dignity, freedom

¹ Iman El-Sayed Arafa, "Human Trafficking Exchange and its Relationship to Illegal Immigration", Journal of Legal and Economic Studies, Egypt, Volume 13, Issue 1, June 2017, p. 27.

² Ibrahim Abdullah Salqini, Immigration and its rulings, Al-Multaqa Publishing, Turkey, 2nd edition, 2022, p. 28.

³ Ibid., p. 26.

⁴ Law No. 09-01 of 29 Safar 1430, corresponding to February 25, 2009, amending and supplementing Ordinance No. 66-156 of June 8, 1966 on the Penal Code, JR n° 15 of March 8, 2009.

⁵ Khalil Ibrahim Hassab / Hassan Alwan, "The position of Islamic law on human trafficking", Maysan Journal for Comparative Legal Studies, Iraq, Volume 1, Issue 4, 2021, p. 250.

⁶ Jonathan Mendel and Kiril Sharapov, "Re-politicising Anti-Trafficking: Migration", labour, and the war in Ukraine, Anti-Trafficking Review, 22 (2024), p. 57.

⁷ Ola Ahmed Gaber Abdullah, "Criminal Protection from Transnational Crimes in the Light of the Technological Space", Journal of Legal and Economic Studies, Sadat City University, Egypt, Volume 9, Issue 4, December 2023, p. 505.

from slavery, freedom of movement and privacy,⁽¹⁾ This is after transforming the human being who is weak in influence and financially and who is oppressed socially and politically, by fraud, force and coercion, into a human commodity or a victim of an investment that is harnessed for acts contrary to its human value,⁽²⁾ illegally transportable in exchange for paying a profitable value to the smuggler,⁽³⁾ Through the recruitment or receipt of persons through the threat of force or various forms of coercion, abduction, fraud, deception or abuse of power for the purposes of exploitation, forced labour or practices similar to slavery, servitude or removal of organs.⁽⁴⁾

Article 3/1 of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 defines trafficking in human beings as "the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or exploitation of a situation of vulnerability, or by giving or receiving payments or benefits to obtain the consent of a person having control over another person for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs".

We note from the foregoing that it is the same definition as in the European Convention against Trafficking in Human Beings of 2002, which is based on criminal conduct using the threat of force and abuse of power, and coercion to provide false information to the competent authorities with the aim of making profits.

As for the Algerian legislator in the Penal Code, he regulated the provisions of trafficking in human beings from article 303 bis 4 to bis 303 bis 15,⁽⁵⁾ Under the name of the crime of trafficking in persons, as defined in the text of Article 309 bis 04 as the recruitment, transportation, transfer, harbouring or receiving of one or more persons by means of the threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power, exploitation of a situation of vulnerability, or by giving or receiving sums of money or benefits to obtain the consent of a person who has authority over another person with the intention of exploitation..."

The content of this article shows that the Algerian legislator derived the definition contained in article 303 bis 04 of the Algerian Penal Code from the content of article 3 of the Additional Protocol supplementing the United Nations Convention against Transnational Organized Crime of 2000.⁽⁶⁾ Where the term trafficking in persons was used instead of human trafficking, but this last term is more accurate so that it means a natural person (human) or legal person, but the basis of the crime of human trafficking is the human being, in addition to

¹ Abdullah Aziz Fayyad / Ahmed Adel Abdul Karim, "Challenges and Difficulties in Identifying and Combating the Crime of Human Trafficking", Journal of Laws for Legal Studies, Iraq, Volume 3, Issue 4, 2023, pp. 21, 22.

² Khairat Mahdi Farhan, "The Social Causes of the Phenomenon of Human Trafficking (A Socio-Analytical Study of Iraqi Society)", Nasaq Magazine, Iraq, Volume 38, Issue 7, Harizan 2023, pp. 606, 607.

³ Väyrynen, Raimo, op .cit, p 3.

⁴ Michael Chibba, "Human Trafficking and Migration: Concepts", Linkages and New Frontiers, Global Policy Essay, December 2013, p 2.

⁵ Law No. 09-01 of 25 February 2009 on the amended Algerian Penal Code.

⁶ It should be noted that Algeria ratified the provisions of this Protocol by Presidential Decree No. 02-55 of February 5, 2002, which includes the ratification by reservation of the United Nations Convention against Transnational Organized Crime, Official Journal. No. 09, of February 10, 2002.

narrowing the scope of the crime of trafficking in persons by mentioning forms of exploitation exclusively.

Unlike the Algerian Penal Code, the Algerian legislator recently replaced the term trafficking in persons with human trafficking in Law No. 23-04 of May 7, 2023 on the prevention and combating of human trafficking, and defined it in Article 1/1 as recruiting, transporting, transferring, harbouring or receiving one or more persons by means of the threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of authority or position, exploitation of a situation of vulnerability, or by giving or Receiving payments or benefits to obtain the consent of a person who has authority over another person with the intention of exploitation.

1.2- The relationship of illegal migration to human trafficking

Through this request, we talk about the similarities and differences between the phenomenon of illegal immigration and human trafficking as separate and common phenomenon to reveal the interrelationship between them, as a result of the existence of common elements between these two crimes, but they are separated the more stringent immigration laws are applied against illegal arrivals, the more various criminal methods of human trafficking are used to overcome the barriers necessary to make a profit, and this is within the following two sections:

A- Similarities between Illegal Migration and Human Trafficking

We try to identify the most important similarities between illegal migration and human trafficking on the basis that illegal migration, smuggling and trafficking are overlapping concepts, which we will explain below:

- The seriousness of the two criminal phenomenon

Illegal immigration and human trafficking are two of the most serious criminal phenomenon, sharing the illegal nature of entry into a country,⁽¹⁾ Where the element of transporting victims poses a difficulty in determining the type of crime committed, whether it is human trafficking or illegal immigration, which raises the question when transferring victims from one country to another illegally, but the crime of trafficking in persons itself represents a type of migration when the person is transferred from one country to another, by exposing the illegal migrant to one of the means of exploitation, and the individual may migrate of his own free will to work, but he becomes vulnerable to human trafficking after his agreement with the smuggler The illegitimate where he submits to all his orders. In addition, both the illegal migrant and the victim of human trafficking are at risk, through the migrant being drowned, sacrificed by the smuggler for security reasons, or performing removal of an organ of the victim of human trafficking.⁽²⁾

- Participation of the two crimes in the same material place of the crime

Both crimes are considered crimes against humanity;⁽³⁾ where the crime of illegal immigration and human trafficking targets the human element, and focuses on the same material object that lies in the human being, so that human trafficking in itself constitutes a

¹ Raimo Väyrynen, op. cit, p 4, 6.

² Aseel Khaled Jamal Abu Sarah / Majd Walid Haider Abu Bakr, "The relationship between illegal immigration and human trafficking in the light of international conventions and Jordanian legislation", Al-Zaytoonah University Journal for Legal Studies, Jordan, Volume 3, Issue 3, 2022, pp. 155, 156, 159.

³ Hussam Bardan Ayes, "The Legal Basis for Criminalizing Human Trafficking", Iraqi University Journal, Iraq, Part 1, Issue 56, 2022, p. 397.

type of migration, especially if a person is transferred from another country,⁽¹⁾ The latter has the right to be protected from criminalization of the acts constituting the two crimes.

- Achieving financial profits

The crime of trafficking in persons and the crime of smuggling migrants aim to achieve illegal material gain, which is stated in the protocols on these crimes and affected by national legislation, as the Algerian legislator expanded the benefits obtained by the smuggler of clandestine migrants, to include financial benefit and any other benefit.⁽²⁾

Trafficking in persons is also the third most lucrative illegal trade in the world, as a result of the exploitation of clandestine migrants and victims, as smugglers of clandestine migrants aim to obtain large sums of money from illegal immigrants.⁽³⁾ Human traffickers seek money through human trafficking or exploitation of migrant victims, in order to advance the capitalist system.⁽⁴⁾

Whenever a large number of persons are trafficked across national borders, victims are deprived of their human rights and freedoms, increasing the rate of organized crime.⁽⁵⁾

- The participation of the two crimes in the same motives and reasons

Mr. Bronson McKinley, Director-General of the International Organization for Migration, noted the close relationship between human traffickers and illegal migration, and described human trafficking as the ugly face of global migration movement, and one of the consequences of irregular migration, where a large number of people migrate in search of better living opportunities abroad due to poverty, social rupture, political tensions and economic conditions within their home countries.⁽⁶⁾

Thus, they share the same incentives that encourage their perpetration, such as poverty, unemployment, economic conditions and political and social corruption.⁽⁷⁾

Desperate individuals trapped in conflict and extreme poverty often accept alternatives to sex work as a survival strategy,⁽⁸⁾ Migrants move across borders because of income differences, hoping for more lucrative work,⁽⁹⁾ At the request of employment by employers in a desire to live in dignity.⁽¹⁰⁾

In addition to the suffering of some peoples from wars and armed conflicts, this hostile climate is a breeding ground for the exacerbation of human trafficking, generating a desire to

¹ Iman al-Sayyid 'Arafeh, op. cit., p. 28.

² Mahira Nasira / Khalifa Mohamed, "Illegal Migration: The Separation Point between the Crime of Trafficking in Persons and the Crime of Smuggling Migrants", Journal of the Researcher in Legal and Political Sciences, Souk Ahras University, Issue 6, December 2021, p. 117.

³ Atiqa Beljal, "Illegal Migration and Human Exploitation", Journal of Jurisprudence, University of Mohamed Khider Biskra, No. 8, pp. 44, 45.

⁴ Jonathan Mendel and Kiril Sharapov, op. cit, p 57, 58.

⁵ Atiqa Beljabel, op. cit., p. 45.

⁶ Ibtihaal Jamal Al-Din Al-Sadiq Karrar, "The Impact of Illegal Migration and Human Trafficking on Arab National Security", Arab Journal of Science and Research Publishing, Journal of Economic, Administrative and Legal Sciences, Palestine, Volume 6, Issue 11, April 2022, pp. 69, 71.

⁷ Khurais Kamal, "Distinguishing Migrant Smuggling from Human Trafficking and its Importance (A Comparative Study with International Conventions)", Research Journal, University of Algiers, No. 11, Part 3, 2017, p. 29.

⁸ Daniel Ogunniyi, "Armed Conflict-induced Displacement and Human Trafficking in the Sahel: Organised crime", vulnerabilities, and the accountability of non-state armed groups Anti -Trafficking Review, Issue 22, 2024: 74-9, p 78.

⁹ Raimo Väyrynen, op. cit, p 4.

¹⁰ Elizabeth M. Wheaton, Edward J. Schauer and Thomas V. Galli, "Economics of Human Trafficking", Journal Compilation, International Migration, Oxford, Volume 48, Issue 4, 2009, p 117.

think about illegal migration as a result of the lack of international protection for its nationals, and impunity often becomes normal, creating an environment conducive to human trafficking.⁽¹⁾

- Both criminal phenomenon are transnational

The crime of human trafficking and illegal migration is considered a transnational crime, which is confirmed by the United Nations Convention against Transnational Organized Crime of 2000 and its Protocol, where human trafficking is carried out in the same ways as the crime of illegal migration, through the forged travel document, fraud and crossing by sea using boats, and in most cases traffickers with illegal smugglers are considered victims.⁽²⁾

- Imposing deterrent penalties for both crimes

Both illegal migration and human trafficking are crimes, punishable under national and international legal texts, which are adapted to transnational organized crime,⁽³⁾ with a criminal contribution by offenders, so that the crime of illegal immigration is committed and then followed by the crime of trafficking in persons, as it constitutes a form of forced migration,⁽⁴⁾ When a person ends up being exploited in the country of destination, such as a worker who enters a State illegally, and is exploited in unwanted forced labour.⁽⁵⁾

B- Differences between Illegal Migration and Human Trafficking

It is impossible to characterize the offence as to whether it is illegal immigration or human trafficking, which requires a distinction between them in terms of the characteristics and elements of the two crimes as follows:

- The elements of the two crimes

The crime of illegal immigration differs relatively from the crime of human trafficking in terms of their elements, especially with regard to the moral element, in the crime of human trafficking requires a special criminal intent based on the exploitation of the victim, while illegal immigration requires a general criminal intent, although illegal migration can be transformed into human trafficking when it results in one of the elements of human trafficking, such as deception or exploitation, which represents its moral element.

- The place of assault

Human trafficking is a crime through which a person (accused or victim) is assaulted, unlike illegal immigration, where the authorities and laws of the exporting and receiving countries in which the illegal entry or exit of the migrant is carried out, and accordingly, the person who is exploited for the purpose of trafficking is a victim, while the illegal immigrant is accused before the competent authorities.

¹ UN Human Rights Council, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children', A/HRC/32/41, 3 May 2016, para. 25.

² Aseel Khalid Jamal Abu Sarah / Majd Walid Haider Abu Bakr, op. cit, p. 159.

³ Organized crime is an ongoing criminal enterprise that rationally takes advantage of illegal activities that are often highly demanded of the public. Its continued existence is maintained through the use of force, threats, monopoly control and/or corruption of public officials.

- Jay S. Albanese, "Organized crime in our time, Routledge, 6 th edition, 2015 p 4.

⁴ Al-Afer Bahia, The crime of trafficking in persons and mechanisms to combat it in Algerian legislation, (PhD thesis), University of Oran 2, Faculty of Law and Political Science, 2021-2022, p. 23.

⁵ Muhammad Sattar Jabbar, "International and National Mechanisms to Combat the Crime of Human Trafficking (A Comparative Analytical Study)", Journal of the Al-Alamein Institute for Graduate Studies, Iraq, No. 7, 2021, p. 422.

- The transnational nature

Human trafficking within the borders of a particular State, without the requirement to cross national borders, unlike illegal migration, which always involves a transnational character, which requires the transfer of illegal migrants from one State to another called the State of destination,⁽¹⁾ targeted by clandestine immigrants with the aim of reaching its territory.⁽²⁾

- The continuity of the profit relationship

The relationship between the migrant and the smuggler is of a profitable nature that ends once the migrant arrives at the desired destination and the smuggler receives the agreed amount, while the relationship between the trafficker who committed the crime and the victim is a continuous relationship with the traffickers exploiting the victim and collecting the return by making profits by exploiting it by various means, on the basis that the crime of human trafficking is one of the continuous crimes against persons as it is inherently extendable over time.⁽³⁾

Thus, the illegal immigrant is different from the trafficked person, so that the latter represents a commodity that enters the market by any means and then descends into the human exchange, making it subject to the law of supply and demand.⁽⁴⁾

- The expression of will

The illegal migrant of the smuggler resorts to an agreement on the method of transfer, i.e. expresses his will, unlike human trafficking, he does not obtain consent from the victim and their consent is not considered, because the trafficking process takes place through means of physical or moral coercion at various stages of crime from deception and cheating, but illegal immigration may turn into human trafficking after the smuggler resorts to the use of deception and cheating, and these clandestine migrants are exposed when they cross the borders and after entering the country concerned to deception and fraud or Coercion by a trafficker, resulting in a transformation from an illegal immigrant to a victim of human trafficking.⁽⁵⁾

- The gravity of the crime

The crime of human trafficking is more and more serious than the crime of illegal immigration, and this is because migrants have economic and humanitarian motives, so that they seek to find work and improve their living conditions by heading to a foreign destination by adopting illegal methods, while human trafficking does not focus on the smuggler who benefits financially, but rather exploits the disadvantaged victims in society.⁽⁶⁾ trafficked in acts that degrade human dignity, exposing them to the risk of exploitation, begging or medical experiments, enslavement and the sale and purchase of human organs, which can be said that

¹ Doub Nasira, "Distinguishing between the crime of smuggling migrants and the crime of human trafficking", Journal of the Researcher Professor for Economic Legal Studies, University of Messila, Volume 1, Issue 9, March 2018, p. 539.

² Mohamed Sabah Saeed, "The Crime of Smuggling Migrants (A Comparative Study)", Arab Center, Egypt, 1st Edition, 2018, p. 37.

³ Samer Saadoun Al-Ameri, "The Correlation between Human Trafficking and the Terrorist Phenomenon", Anbar University Journal of Legal and Political Sciences, Iraq, Issue 16, 2019, p. 239.

⁴ Iman al-Sayyid 'Arafeh, op. cit, p. 30.

⁵ Aseel Khalid Jamal Abu Sarah / Majd Walid Haider Abu Bakr, op. cit., p. 158.

⁶ Väyrynen, Raim, op. cit, p 5, 6.

the crimes of trafficking in human beings are crimes of danger,⁽¹⁾ Its danger lies in the organization and planning that ensures its success and continuity so that it is difficult to surround and eliminate it easily, as those who belong to these criminal organizations have experience and professionalism who plan in a tight manner.⁽²⁾

2. Measures to Curb Illegal Migration and Human Trafficking

International and national laws criminalize the phenomenon of human trafficking and illegal migration, given their seriousness and negative impact at the international and local levels, which prompted the international community to develop a legal strategy through the adoption of several conventions and protocols criminalizing illegal migration and human trafficking, enacting national legislation that is compatible with it, taking precautionary measures to prevent it, confronting the threat to security and stability, and imposing international cooperation to confront this transnational crime.

This topic will be divided into two requirements, the first of which will talk about international and national efforts in combating illegal migration and human trafficking, and in the second requirement, we will talk about methods of preventing human trafficking and illegal migration.

2.1- International and national efforts to combat illegal migration and human trafficking

The phenomenon of illegal migration and human trafficking are a global phenomenon whose effects have worsened at the global and local levels due to the spread of globalization, which has facilitated the movement of people and funds beyond national borders, and the achievement of quick gains, so States have sought to combat the crime of human trafficking and protect human rights.⁽³⁾ This has influenced the Algerian legislature with the participation of the international community in its efforts.

In this requirement, we will talk about international and national efforts to combat these crimes, by clarifying international conventions on combating human trafficking and illegal migration, while indicating the efforts made by the national legislator to reduce these crimes, and this is what we will address in the following two sections:

A- Combating Illegal Migration and Human Trafficking at the International Level

International law guarantees protection of irregular migrants and victims of human trafficking,⁽⁴⁾ by developing strategies to combat them by concluding international conventions aimed at coordinating international efforts to combat these crimes, which are classified among the most serious crimes against humanity, where the perpetrators are subjected to the most severe penalties, in order to protect human interests and preserve human dignity, we will summarize the most important of these international conventions:

- Schengen Agreement

¹ Talal Abd Hussein Al-Badrani / Muhammad Diab Sattam Al-Jubouri, "The policy of criminalization and punishment in the provisions of the Anti-Human Trafficking Law in Iraq No. (28) of 2012", Al-Rafidain Legal Journal, University of Mosul, Iraq, Volume 19, Issue 67, 2021, pp. 242, 244.

² Samer Saadoun al-Amiri, op. cit., p. 240.

³ Reda El-Sayed Abdel Aty, The Crime of Human Trafficking in Arab Legislation and International Conventions, Dar Mahmoud, Egypt, 2018, p. 57.

⁴ International humanitarian law does not explicitly refer to or prohibit human trafficking, but some international legal systems prohibit exploitative practices.

- Daniel Ogunniyi and Oladimeji Idowu, op. cit, p 84.

The United Nations concluded the Schengen Agreement, one of the European Union agreements to combat illegal migration,⁽¹⁾ The most prominent of the agreement is that it provides for the exchange of personal information by States through an information system established to control borders and facilitate the task ‘This facilitates the apprehension of any person who enters the borders illegally in any of the States of the Union and has eliminated the circumvention used to enter those Member States.

- The Protocol on the Smuggling of Migrants

The Protocol on the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, aims to prevent and combat such crime, strengthen international cooperation in combating smugglers and thwart smuggling attempts.⁽²⁾

- The Convention against Transnational Organized Crime and the Protocol on Trafficking in Persons

On 15 November 2000, the United Nations General Assembly adopted the Convention against Transnational Organized Crime, which contains provisions relating to prohibiting and combating trafficking in persons, protecting and assisting victims of trafficking while respecting their full human rights, which requires States parties to take measures in the country of origin, transit and destination to prevent and combat trafficking in human beings;⁽³⁾ Enact legislation to punish traffickers, provide the necessary protection to victims of trafficking in human beings, respect their universally recognized fundamental rights, and strengthen cooperation among States parties in achieving those goals.

It also adopted the Protocol on Trafficking in Persons, the most important international legal document defining trafficking in persons,⁽⁴⁾ Article 9 of the Protocol supplementing the International Convention stipulates that all States parties are obliged to take measures to prevent crime, such as carrying out the necessary research on it, working on social and economic initiatives, and promoting cooperation among States parties to alleviate the impact of such victims and preserve their internationally recognized fundamental rights. Article 6 of the Protocol emphasizes the need to protect victims of trafficking in human beings by safeguarding the personal liberty of victims and maintaining strict confidentiality with regard to the necessary procedures by States parties, enacting domestic legislation aimed at protecting victims of trafficking in human beings by not infringing on the rights of the defence, and taking the necessary measures to compensate victims for damages. It should be noted that it is mandatory to cooperate between States parties, through the exchange of information through their domestic laws, in order to be able to inquire about persons who are victims of human trafficking, and to exchange experiences by presenting the methods used by perpetrators for the purposes of human trafficking.⁽⁵⁾

¹ It should be noted that the Schengen Agreement was signed in June 1985.

² Presidential Decree No. 03-418 dated November 9, 2003 ratifying by reservation the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Organized Crime, Official Journal No. 69, of November 12, 2003.

³ Aseel Khalid Jamal Abu Sarah / Majd Walid Haider Abu Bakr, op. cit., p. 161.

⁴ Mariam bin Noah Mariam / Malika Jama / Muhammad Al-Mahdi Bakrawi, “Human Trafficking and Exploitation Crimes and Mechanisms to Combat it in International Criminal Law”, Law Journal for Legal Studies and Research, University of Thi-Qar, Iraq, Issue 22, 2021, p. 339.

⁵ Article 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

- **Convention against the Trade in White Slaves of 1904:**

At the beginning of the twentieth century (20), international efforts to combat the trade in white slaves began, as the International Convention against the White Slave Trade was signed in Paris in 1904, where countries pledged to establish an authority that collects information on the use of women and girls for prostitution abroad, and the parties pledged to search and monitor women and girls at stations, ports and other transit points, with the aim of preventing this criminal trafficking, and monitoring shops engaged in smuggling women or girls abroad.⁽¹⁾

- **International Convention against Trafficking in Human Beings of 1921**

Trafficking in human beings in all parts of society, men and women, is criminalized, and article 2 provides for the follow-up and punishment of trafficking in children, both male and female.

- **International Convention for the Suppression of the White Slave Trade of 1949**

It is considered one of the most important conventions that seek to criminalize trafficking in persons, as it stipulated that every person is punished and contemporary forms of slavery are effectively confronted, and the United Nations has formed a working group on slavery since 1975 that prevents discrimination and protects minorities, and undertakes the task of implementing the conventions on the prohibition of slavery,⁽²⁾ This is in line with what is affirmed by some regional instruments in Africa to prevent trafficking in human beings, for example, the African Charter on Human and Peoples' Rights, adopted in 1981, obliges States to promote human rights without specifically referring to the protection and prevention of human trafficking.⁽³⁾

Human rights NGOs are committed to assisting this group by providing adequate information, as well as the International Labour Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the Office of the United Nations High Commissioner for Refugees, the United Nations Commission on the Status of Women and the United Nations Crime Prevention and Criminal Justice Branch, with which they collaborate to combat slavery and slavery-like practices.⁽⁴⁾

From the foregoing, we can see that we do not lose sight of the extent of the international community's interest in concluding international conventions criminalizing human trafficking and illegal migration, but they remain insufficient to combat this criminal phenomenon, which is still widespread as a result of the emergence of organized criminal gangs and the development of methods of crossing national borders and trafficking in these illegal immigrants.

B- Combating illegal migration and trafficking in human beings at the national level

The Algerian legislator has established a legislative policy to combat illegal immigration under legal provisions when it stipulates under article 44 of Law 11-08⁽⁵⁾ on the entry, residence and movement of foreigners in Algeria. However, a foreign illegal immigrant

¹ Article 1, 2 and 6 of the Convention against the Trade in White Slaves, of May 18, 1904.

² Maryam bin Noah Mariam / Malika Jama / Muhammad al-Mahdi Bakraoui, op. cit., p. 337.

³ Daniel Ogunniyi and Oladimeji Idowu, "Human Trafficking in West Africa: An Implementation Assessment of International and Regional Normative Standards", The Age of Human Rights Journal, Issue 19, 2022, p 83, 84.

⁴ Maryam bin Noah Maryam / Malika Jama / Muhammad al-Mahdi Bakrawi, op. cit., p. 338.

⁵ Law No. 08-11 dated 21 Jumada II 1429, corresponding to June 25, 2008, relating to the conditions for the entry, residence and movement of foreigners in Algeria, Official Journal No. 36, issued on July 2, 2008.

shall be punished by imprisonment from six (6) months to two (2) years, and a fine of 10.000 DA to 30.000 DZD.

Law 09-01 of February 25, 2009, amending and supplementing Ordinance 66-156 on the Penal Code, affirms that "without prejudice to other legislative provisions in force, any Algerian or foreign resident who leaves the national territory illegally, while passing through a land, sea or air border posts, by impersonating an identity card, shall be punished by imprisonment from two (2) to six (6) months, and a fine of 20.000 DZD to 60.000 DZD, or by either penalty. By using forged documents or any other fraudulent means to evade the production of the necessary official documents or the procedures required by the laws and regulations in force, The same penalty shall apply to any person who leaves the national territory through ports or places other than border posts.

In view of the inadequacy of the provisions of Law No. 09-01 in combating the crime of human trafficking, the Algerian legislator imposed a punitive policy by introducing Law No. 23-04 of May 7, 2023, which repealed articles 303 bis 4 to 303 bis 15, 319 bis and 320 bis of Law No. 09-01 amending and supplementing the provisions of the Penal Code, classifying human trafficking crimes into misdemeanors and felonies, as a felony when the victim was subjected to torture or sexual violence or the crime resulted in permanent disability. Or if the act leads to the death of the victim, he shall be punished by life imprisonment in accordance with the provisions of Article 42 of Law No. 23-04, and if the crime is committed in the presence of aggravating circumstances exclusively under Article 41, he shall be subject to a penalty of temporary imprisonment from ten (10) years to twenty (20) years, which is the same penalty provided for in the Penal Code, and a fine of 1,000,000 DZD to 2,000,000 DZD. In the case where the offence is committed by an organized criminal group or of a transnational nature or on the occasion of an armed conflict, the penalty shall be imprisonment from twenty (20) to thirty (30) years and a fine of 10,000,000 DZD to 20,000,000 DZD. Perpetrators of human trafficking crimes are also subject to mandatory and optional complementary penalties stipulated in Article 55 of Law No. 23-04 of May 7, 2023.⁽¹⁾

2.2- Methods of prevention of illegal migration and human trafficking

The conclusion of international conventions and the enactment of national legislation are insufficient to curb the crime of illegal and human trafficking, unless it is embodied on the ground, which requires the competent authorities within the State to activate strict preventive methods in order to avoid the occurrence of such crimes, protect human rights and ensure social security, which we will explain:

A- Ways to prevent the phenomenon of illegal migration

Exporting and receiving countries of clandestine migrants must take preventive measures against the phenomenon of illegal migration and the judiciary Therefore, as human rights organizations seek to adopt a policy of deporting illegal immigrants for fear of being

¹ Article 55 of Law No. 23-04 dated May 7, 2023 stipulates that one or more of the complementary penalties provided for in the Penal Code shall be applied to a natural person convicted of committing one of the crimes provided for in this Code.

trafficked, we summarize ways to prevent the phenomenon of illegal immigration as follows:⁽¹⁾

- Improving the social conditions of the individual within society by raising and educating the child, providing him with safety and stability at home, living in a safe environment and keeping him away from family problems.
- Strengthening and consolidating national identity through educational programs that focus on citizenship.
- Improving the educational qualifications of young people and working to invest them through the opening of cultural clubs, institutions and associations, which leads to the provision of job opportunities for young people.
- Work on coordination between the security services and the media to report groups organizing crime.⁽²⁾

B- Ways to prevent human trafficking

Ways to prevent the phenomenon of trafficking in human beings require a strategy by States with a view to eliminating it, as follows:

- Preventing the occurrence of crime by exemption or mitigation of the applicable penalty, when the victim commits to report the crime at any stage and before the detection of criminal networks.⁽³⁾
- Monitoring establishments and real estate used to carry out human trafficking.
- Provide protection and prevention for those at risk, especially children and women,⁽⁴⁾ reduce obstacles to health care and education.⁽⁵⁾
- Directing continuous awareness courses and programs to target groups about the dangers of trafficking in persons, and benefiting from the religious and moral values prevailing within society,⁽⁶⁾ Improving the legal and legislative frameworks that address the causes of trafficking, and paying attention to the methods used by traffickers to trap them.⁽⁷⁾
- Monitoring employers who impose forced labour and military recruitment with a view to using them in armed conflicts.⁽⁸⁾
- Develop preventive programmes on the Internet to track traffickers who try to reach people through the Internet.⁽⁹⁾

Conclusion:

In conclusion, the issue of illegal immigration and trafficking in persons, especially women and children, has become a global phenomenon, professionalized by gangs and organized groups, making it the focus of their activity and a major source of income and the

¹ Carter Quinley, "Links Between Human Trafficking and U.S.-Mexico Immigration", International Affairs Review, Washington, volume XXIX, Number 2, Spring 2021, p 58.

² Aseel Khalid Jamal Abu Sarah / Majd Walid Haider Abu Bakr, op. cit., pp. 169, 170.

³ Raad Fajr Al-Rawi, "Human Trafficking between Internal and International Legislation", Tikrit University Journal of Law, Iraq, Year 5, Volume 5, Issue 2, Part 2, 2020, p. 83.

⁴ Khairat Mahdi Farhan, op. cit, pp. 606, 607.

⁵ Jonathan Mendel and Kiril Sharapov, op. cit, p 66.

⁶ Ramia Mohammed Shaer, Human Trafficking (Social Legal Reading), Al-Halabi Human Rights Publications, Lebanon, 1st edition, 2012, p. 19.

⁷ Alaa Abdul Razzaq, "Human Trafficking in Iraq: Human Implications and Social Dimensions", Journal of International Studies, University of Baghdad, Iraq, Issue 94, 2023, p. 454.

⁸ Mohamed Mohamed Abdel Latif, "The Efforts of International Organizations in Combating the Crime of Human Trafficking", Egyptian Journal of International Law, Egypt, Volume 75, Issue 1, 2019, p. 239.

⁹ Eng. Abdullah Aziz Fayyad / Eng. Ahmed Adel Abdul Karim, op. cit, p. 35.

rapid growth of their wealth, and therefore it has become one of the most important topics that the international community is looking for solutions to due to its danger to expelling countries and countries that attract labor due to the deplorable conditions. This made developed countries and humanitarian organizations defend human rights by fighting these gangs that invest in human groups of various groups in contradiction with humanitarian, religious and moral principles.

One of our results is that:

Despite the difference between the phenomenon of illegal migration and human trafficking, they are intrinsically related, linked by a relationship so that the illegal migrant is exploited by traffickers using fraudulent methods.

Illegal migration is also carried out at the discretion of the party wishing to migrate, with the consent of the illegal migrant and the smuggler, unlike trafficking in human beings where the trafficked person is a victim, and fraudulent methods are imposed on him to coerce the person into being the subject of human trafficking.

We have noticed through the legal texts enacted by the Algerian legislator that are sufficient to deter the accused criminal and protect victims from these criminal phenomenon, whenever they are done on the ground, especially Law No. 23-04 of May 7, 2023 on the prevention and combating of human trafficking, this law is of a preventive nature, which increased the penalties applied to the perpetrators of these crimes.

Based on these findings, we propose the following recommendations:

- The need to enact a separate law to combat illegal immigration, similar to the Law on the Prevention of Human Trafficking.
- Preparation of training courses to enable the security services to investigate this type of crime.
- Raising awareness among members of society about the dangers of these crime against the human.
- Promotion and protection of human rights enshrined in international conventions.

List of references:

1- Books:

- Ibrahim Abdullah Salqini, Immigration and its rulings, Al-Multaba Publishing, Turkey, 2nd edition, 2022.
- Jay S. Albanese, Organized crime in our time, Routledge, 6th edition, 2015.
- Mohamed Sabah Saeed, The Crime of Smuggling Migrants (A Comparative Study), Arab Center, Egypt, 1st Edition, 2018.
- Reda El-Sayed Abdel Aty, The Crime of Human Trafficking in Arab Legislation and International Conventions, Dar Mahmoud, Egypt, 2018.
- Ramia Mohammed Shaer, Human Trafficking (Social Legal Reading), Al-Halabi Human Rights Publications, Lebanon, 1st edition, 2012.

2 – Theses:

- Al-Afer Bahia, The crime of trafficking in persons and mechanisms to combat it in Algerian legislation, (PhD thesis), University of Oran 2, Faculty of Law and Political Science, 2021-2022.

3 - Journals:

- Aseel Khaled Jamal Abu Sarah / Majd Walid Haider Abu Bakr, The relationship between illegal migration and human trafficking in the light of international conventions and Jordanian legislation, Al-Zaytoonah University Journal for Legal Studies, Jordan, Vol 3, Issue 3, 2022.
- Atika Beljal, Illegal Migration and Human Exploitation, Journal of Jurisprudence, Mohamed Khider Biskra University, Vol. 6, No. 8, 2013.
- Abdullah Aziz Fayyad / Eng. M. Ahmed Adel Abdul Karim, Challenges and Difficulties in Identifying and Combating the Crime of Human Trafficking, Journal of Laws for Legal Studies, Iraq, Vol 3, Issue 4, 2023.
- Alaa Abdul Razzaq, Human Trafficking in Iraq: Human Implications and Social Dimensions, Journal of International Studies, University of Baghdad, Iraq, Issue 94, 2023.
- Carter Quinley, Links Between Human Trafficking and U.S.-Mexico Immigration, International Affairs Review, Washington, volume XXIX, Number 2, Spring 2021.
- Doub Nasira, Distinguishing between the crime of smuggling migrants and the crime of human trafficking, Journal of the Researcher Professor for Economic Legal Studies, University of Messila, Vol 1, Issue 9, March 2018.
- Daniel Ogunniyi, Armed Conflict-induced Displacement and Human Trafficking in the Sahel: Organised crime, vulnerabilities, and the accountability of non-state armed groups Anti - Trafficking Review, Issue 22, 2024.
- Daniel Ogunniyi and Oladimeji Idowu, 'Human Trafficking in West Africa: An Implementation Assessment of International and Regional Normative Standards', The Age of Human Rights Journal, Issue 19, 2022.
- Elizabeth M. Wheaton, Edward J. Schauer and Thomas V. Galli, Economics of Human Trafficking, Journal Compilation, International Migration, Oxford, Volume 48, Issue 4, 2009.
- Hussam Bardan Ayesh, The Legal Basis for Criminalizing Human Trafficking, Journal of the Iraqi University, Iraq, Part 1, Issue 5, 2022.
- Iman El-Sayed Arafa, Human Trafficking Exchange and its Relationship to Illegal Immigration, Journal of Legal and Economic Studies, Egypt, Volume 13, Issue 1, June 2017.
- Ibtihal Jamal Al-Din Al-Sadiq Karrar, The Impact of Illegal Migration and Human Trafficking on Arab National Security, Arab Journal of Science and Research Publishing, Palestine, Vol 6, Issue 11, April 2022.
- Jonathan Mendel and Kiril Sharapov, Re-politicising Anti-Trafficking: Migration, labour, and the war in Ukraine, Anti - Trafficking Review, 22, 2024.
- Khalil Ibrahim Hassab / Hassan Alwan, The position of Islamic law on human trafficking, Maysan Journal for Comparative Legal Studies, Iraq, Volume 1, Issue 4, 2021.
- Khairat Mahdi Farhan, The Social Causes of the Phenomenon of Human Trafficking, Nasaq Magazine, Iraq, Vol 38, Issue 7, Harizan 2023.
- Khurais Kamal, Distinguishing Migrant Smuggling from Human Trafficking and its Importance (A Comparative Study with International Conventions), Research Journal, University of Algiers, Issue 11, Part 3, 2017.
- Michael Chibba, Human Trafficking and Migration: Concepts, Linkages and New Frontiers, Global Policy Essay, December 2013.

- Muhammad Sattar Jabbar, International and National Mechanisms to Combat the Crime of Human Trafficking, Journal of the Al-Alamein Institute for Graduate Studies, Iraq, Issue 7, 2021.
- Mohamed Mohamed Abdel Latif, The Efforts of International Organizations in Combating the Crime of Human Trafficking, Egyptian Journal of International Law, Egypt, Vol 75, Issue 1, 2019.
- Mahira Nasira / Khalifa Mohamed, Illegal Migration: The Separation Point between the Crime of Trafficking in Persons and the Crime of Smuggling of Migrants, Journal of the Researcher in Legal and Political Sciences, Souk Ahras University, Issue 6, December 2021.
- Mariam bin Noah Mariam / Malika Jama / Muhammad Al-Mahdi Bakraoui, Crimes of human trafficking and exploitation and mechanisms to combat it in international criminal law, Law Journal for Legal Studies and Research, University of Dhi Qar, Iraq, Issue 22, 2021.
- Ola Ahmed Gaber Abdullah, Criminal Protection from Transient Crimes in the Light of the Technological Space, Journal of Legal and Economic Studies, Sadat City University, Egypt, Volume 9, Issue 4, December 2023.
- Raimo Väyrynen, Illegal immigration, human trafficking, and organized Crime, The United Nations University World Institute for Development Economics Research (UNU-WIDER), Helsinki, N° 72, 2003.
- Raad Fajr Al-Rawi, Human Trafficking between Internal and International Legislation, Tikrit University Journal of Law, Iraq, Year 5, Volume 5, Issue 2, Part 2, 2020.
- Samer Saadoun Al-Ameri, The Correlation between Human Trafficking and the Terrorist Phenomenon, Anbar University Journal of Legal and Political Sciences, Iraq, Issue 16, 2019.
- Talal Abd Hussein Al-Badrani / Muhammad Diab Sattam Al-Jubouri, The policy of criminalization and punishment in the provisions of the Anti-Human Trafficking Law in Iraq No. (28), Al-Rafidain Legal Journal, University of Mosul, Iraq, Vol 19, Issue 67, 2021.