

ILLEGAL IMMIGRATION, HUMAN SMUGGLING, AND TRAFFICKING

LEMYA BENDAAS¹, SOUHEYLA MEZIANI²

¹Lecturer Class A, Hadj Lakhdar University of Batna1, Faculty of Law, Criminal Sciences, Government and Economic Law Laboratory (Algeria).

²Lecturer Class A, Hadj Lakhdar University of Batna1, Faculty of Law, Administrative Law, A multidisciplinary research and studies laboratory in law, heritage and history (Algeria).

The Author's E-mail: lemya.bendaas@univ-batna.dz¹, souheyla.meziani@univ-batna.dz²

Received: 16/09/2024

Published: 20/04/2025

Abstract: *The aim of this study is to demonstrate the relationship between illegal immigration, human smuggling and trafficking in human beings, and to highlight the seriousness of these crimes, particularly as they are perpetrated by organised crime syndicates that have characteristics that distinguish them from other crimes.*

We have tried to address the concept of these crimes and then to discuss the relationship between them, clarifying the points of similarity and difference. We found that one of the main similarities is their common motivations and causes, including poverty, unemployment and social, economic and political conditions. Therefore, states must recognise the seriousness of these problems and work to mitigate these crimes.

Keywords: *Original (related) to Humans, Human Trafficking, Illegal Immigration.*

INTRODUCTION

By the end of the twentieth century, organised crime had become one of the world's most pressing security issues. At the beginning of the twenty-first century, organised crime has emerged as a leading global threat as a result of significant changes driven by political, economic and social circumstances. Among the most notable of these changes, which have accompanied the development and growth of organised criminal activities, are the extensive and rapid expansion of economic, commercial and financial activities, as well as the advances in modern communication technologies, computers and the dimensions of globalisation, which facilitate these criminal organisations in transcending national borders to carry out their illicit activities.

The term "organised crime" is ambiguous and its definition poses significant challenges, as there is no clear internationally agreed concept. However, it is clear that organised crime involves two essential conditions: the existence of a criminal organisation established for the purpose of committing crimes, and the commission of the crime in question.

Some definitions emphasise elements of the criminal organisation without referring to the criminal activity itself, thus confusing organised crime with criminal organisations, which are fundamental to organised crime and cannot exist without them. The term "organised crime" encompasses both the criminal organisation and the criminal activity (the crime committed), distinguishing organised crime from other crimes by the fact that it is committed by a criminal organisation subject to specific legal elements.

The operational methods of organised crime syndicates are based primarily on planning, integration, complexity and maximisation of profits as the objectives of illegal activities. Trafficking in human beings is one of the dangerous illegal activities used by organised crime groups to achieve their goals and is considered a form of modern slavery.

Given the close links between illegal immigration, smuggling of migrants and trafficking in human beings - due to the seriousness of these crimes for individuals and society - the international legislator, in the context of the establishment of an international convention against transnational organised crime, has created three complementary protocols: one on the prevention of trafficking in human beings, another on the prevention of smuggling of migrants and a third on firearms.

Algeria has taken a positive international stance in this regard by ratifying most of these conventions. This study aims to answer the following questions:

What is the relationship between illegal immigration, human smuggling and human trafficking?

To answer this question, we have divided the topic into two main sections: the concept of illegal immigration, human smuggling and human trafficking, and the relationship between these crimes.

FIRST: CONCEPTS AND TERMS OF THE STUDY

There is a close relationship linking illegal immigration, human smuggling, and human trafficking. To fully understand this topic, we must first address the concepts of these crimes; hence, we have dedicated the first part of this study to this subject.

1. Illegal Immigration: The term “immigration” is derived from the word “hijr,” which means to distance oneself. In language, immigration refers to “leaving something or an action,” and it denotes moving from one land to another.

In legal terms, immigration is defined as “the movement of an immigrant from one country to another without a visa or prior or subsequent permission”¹.

- It can also be described as the movement of individuals or groups from one location to another in search of better social, economic, or security conditions².

- Alternatively, it refers to relocating from one country to another without a visa or prior residence permit, thus living there illegally³.

International law scholars define immigration as the permanent departure of an individual from their home country to the territory of another state. From this definition, it is evident that international law focuses on the status of the immigrant. Therefore, if an individual leaves their territory with the intention of returning after any duration, whether long or short, this is not considered immigration from the perspective of this legal framework⁴.

Illegal immigration relies on secret networks and criminal organizations that work to organize, facilitate, lure, and direct one or more illegal migrants from one country to another, often in exchange for financial compensation or sometimes for other forms of value. These networks engage in human smuggling by arranging the illegal entry of individuals into a country of residence, aiming for them to become permanent residents there⁵.

2. Human Smuggling:

The Protocol against the Smuggling of Migrants by Land, Sea, and Air, which complements the United Nations Convention against Transnational Organized Crime, defines the crime of human smuggling in Article 3, paragraph “a.”

The term “smuggling of migrants” refers to the illegal facilitation of entry for a person into the territory of a State Party, where that person is not a national or a permanent resident, with the aim of obtaining, directly or indirectly, a financial or material benefit⁶.

3. Human Trafficking:

The Protocol attached to the United Nations Convention against Transnational Organized Crime is one of three protocols related to this convention and serves as the international foundation and primary pillar for combating human trafficking crimes, addressing all aspects of human trafficking operations.

In Article 3, paragraph (a), the protocol defines human trafficking as follows:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a vulnerable position or by means of the giving or receiving of payments or benefits to obtain the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at

a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”⁷.

This Protocol defines trafficking in human beings in order to determine the scope of its application and the application of the Convention against Organised Crime to trafficking activities, and provides a common basis for the formulation of domestic legislation on criminal offences and the development of criminal procedures and measures necessary to assist and support victims⁸.

The formulation of national legislation that is consistent with international conventions on organized crime and its dangerous criminal activities, including trafficking in persons and smuggling of migrants, is a critical issue. States must recognise the seriousness of these crimes and draft their domestic legislation in a manner that complements international treaties and enables them to combat these serious crimes and their proliferation in society.

Finally, it should be noted that trafficking is fuelled by global poverty, lack of education, racial discrimination, social injustice and inequality⁹.

These are motivations shared among the three crimes.

SECOND: ILLEGAL IMMIGRATION, HUMAN SMUGGLING, AND TRAFFICKING

This part of the study aims to shed light on the relationship between these crimes, specifically to determine whether there is a connection among them by examining points of similarity and differences.

1. The Relationship between Illegal Immigration, Human Smuggling, and Trafficking:

Discussions about illegal immigration, human smuggling and trafficking can be confusing because it is difficult to obtain accurate information, especially from the countries through which migrants or smugglers pass. Trafficking often, but not always, involves the smuggling of victims.

A victim may initially agree to be transported within a country or across borders to other countries, making it necessary to distinguish between the two activities on the basis of detailed information about the victim’s circumstances¹⁰.

The crime of migrant smuggling emerged after the Second World War and has become prominent in poor countries with growing populations and high poverty rates, such as many African countries, some Asian countries and South American countries¹¹.

Migrant smuggling can be either individual or organised. In individual smuggling, an individual or a small group uses boats to transport people in exchange for a certain amount of money, or hides on board commercial vessels without the knowledge of the crew, either by evading the ship’s guards or by swimming on board during loading and unloading operations. They may hide in lifeboats or storage areas, or slip through land points with minimal border surveillance. Organised migrant smuggling, on the other hand, is carried out for a fee by criminal syndicates through global smuggling networks, employing individuals with expertise in immigration, nationality and residency laws¹².

It is important to note that all these serious crimes are among the most important criminal activities undertaken by organised crime to generate profits. Organised crime operates with a level of professionalism characterised by meticulous planning and precise execution, supported by financial resources that allow it to achieve its objectives through both legal and illegal means. This criminal network relies on a base of criminals and professionals who represent the visible face of crime, while the masterminds behind organised crime remain distant from the scenes of crime¹³.

The essential elements of organised crime include criminal behaviour (the crime committed) and criminal organisations, which aim to undermine moral values and spread new values in society that embody the authority of power and its legitimacy in the acquisition of rights¹⁴.

Human smuggling gangs utilize land and sea routes that are not subject to inspection and control by border guards, charging fees without providing security or health guarantees during the smuggling journey. During this journey, illegal migrants often face the risk of drowning due to overcrowding beyond the vessels’

capacities. Smugglers exploit the opportunity to extort illegal migrants and take advantage of their economic hardships.

There is undoubtedly a strong relationship between illegal immigration, driven by social and political circumstances, wars, and the spread of epidemics and diseases, as a solution to difficult living conditions and lack of security¹⁵. Illegal immigration has become one of the most common problems in modern times¹⁶.

"Illegal immigration has become one of the most prevalent problems in the modern era. Amidst human smuggling and trafficking, the majority of illegal immigrants resort to human smuggling kingpins to arrange their escape to countries where they wish to relocate and live, in exchange for financial sums. Human smuggling gangs often operate by sea, using old dhows and boats with large generators to sail from specific coastal areas towards their intended destinations, as is the case with Somalis, Sudanese, Ethiopians, and Eritreans heading to Saudi and Yemeni territories, where they are disembarked at remote anchorages away from ports and security checkpoints.

Smugglers often negotiate high prices with migrants, and may negotiate to disembark at the nearest location on condition that additional sums are paid, putting their lives at risk due to the possibility of drowning. Some may also try to lighten the boat's load by throwing some migrants overboard to get rid of excess weight. In addition, some problems arise from the fact that some illegal immigrants are drugged by putting narcotics in their food and drinks and then exploited in the organ trade, being handed over to specialised gangs who take them to specialised hospitals to carry out these illegal operations, remove their organs and transplant them to others in exchange for huge sums of money.

Profits from human smuggling to EU countries alone amount to around five billion dollars a year, half of which goes to the Vietnamese mafia, which is the most active human smuggling mafia.

Human trafficking and illegal immigration are also carried out by Albanian, Moroccan and Chinese gangs, who use the usual drug trafficking routes to enter European countries. Immigrants are illegally subjected to sexual exploitation or death, making the crime of human smuggling a major threat to the lives of immigrants and to the European economy. The perpetrators of these crimes use sophisticated techniques to evade coastguard and border control.

Among human smuggling and trafficking, most illegal migrants turn to human smuggling kingpins to organize their escape to the countries they wish to move to and live in for a fee. Human smuggling gangs typically operate by sea, using old boats and large motorized vessels to sail from specific coastal areas to their intended destinations, as seen with Somali, Sudanese, Ethiopian, and Eritrean migrants heading to Saudi Arabia and Yemen, where they are dropped off at remote ports away from security checkpoints.¹⁷

2. Similarities and Differences Between Human Smuggling and Human Trafficking

After defining the concepts of illegal immigration, human smuggling, and human trafficking, three significant differences between these crimes become clear:

Consent: Human smuggling involves individuals who are often in dangerous and degrading situations, and they accept the smuggling. In contrast, victims of trafficking either do not express consent or, if they initially do, that consent becomes meaningless due to the traffickers resorting to coercion, deception, or abuse¹⁸.

Exploitation: The smuggling process ends when migrants reach their destination, whereas trafficking involves ongoing exploitation of the victim, yielding illegal profits for the traffickers. Practically, victims of trafficking are often more vulnerable than smuggled migrants and are in greater need of protection from further harm and other forms of abuse¹⁹.

Transnational Aspect: Human trafficking can occur within a country's borders or across them²⁰, while smuggling always involves crossing from one country to another²¹.

We will clarify the similarities and differences between human trafficking and smuggling as follows:

A. Similarities:

Given the alarming spread of human smuggling and trafficking on an international scale, the international community strives to draft agreements aimed at preventing and combating these crimes²². Both crimes are punishable under international and national laws. In this context, we note that Algerian legislation enacted Law 08/11 on July 25, 2008, concerning the conditions for foreigners entering, residing, and moving within Algeria, and Law 09/01 includes penalties related to illegal immigration.

Both crimes fall within the framework of organized crime, as previously mentioned.

Both crimes involve criminal collaboration among multiple parties²³.

The perpetrators aim to achieve enormous financial profits through these crimes.

These three crimes are interconnected; illegal immigration leads to human smuggling, which then leads to human trafficking.

These crimes share motivations and causes, including poverty, unemployment, difficult economic and social conditions, the desire for better living conditions, political and social corruption, wars, and armed conflicts.

B. Differences:

Human trafficking is considered a more severe and dangerous crime than illegal immigration.

International law punishes human trafficking as a felony, while illegal immigration is considered a misdemeanor²⁴.

In cases of smuggling, migrants retain their freedom of choice after crossing borders, whereas in trafficking, they become subjected to forced labor through physical or psychological coercion²⁵.

The role of the trafficker in human trafficking extends within the destination country through exploitation, while the trafficker's role in illegal immigration ends once the migrant is enabled to enter the destination country.

Human trafficking does not necessarily occur across borders; it can happen within a country as long as its elements are present, whereas human smuggling always involves crossing from one country to another.

The primary source of profit for those committing human trafficking crimes comes from exploiting victims in prostitution, forced labor, or other means. In contrast, the fee paid by illegal migrants for smuggling is the main profit source, as the smuggler receives a monetary payment to facilitate their entry into a country where they are neither a citizen nor a resident²⁶.

CONCLUSION

Illegal immigration, human smuggling, and human trafficking are among the most dangerous criminal phenomena exploited by organized crime groups as a means to generate profits. Additionally, the widespread nature of these crimes impacts security and stability within states, violating human dignity and reducing individuals to cheap commodities.

From the above, we have noted the close relationship between these crimes and the significant similarities between illegal immigration and human smuggling. Most illegal migrants turn to human smugglers to organize their escape to the countries they wish to migrate to for a certain fee. We have also found that these crimes share common motivations and causes, such as poverty, unemployment, and other economic and social conditions that drive individuals to illegal migration, leading them to seek the assistance of human smugglers, often falling into the hands of human traffickers and becoming mere commodities to be traded and exploited.

Furthermore, it is inconceivable for human smuggling to occur within a country's borders, unlike human trafficking, which can happen both within and outside a country's boundaries.

Finally, it is essential to emphasize that the seriousness of these crimes must be met with serious and effective action from states to mitigate them at both international and national levels. As previously mentioned, while

Algerian legislation has taken positive positions in this area internationally, this is not enough to achieve effective combat; internal laws must be formulated to align with international regulations.

REFERENCES:

- [1] *Abd el Fattah Moustafa Al-Sayfi, Introduction to Organized Crime, Naif Arab University for Security Sciences, Riyadh, 1999, 1st edition.*
- [2] *Abdul Qadir Al-Sheikhly, Crimes of Human Trafficking and Organ Trafficking and Their Penalties in Sharia, Arab Laws, and International Law, Halabi Legal Publications, Beirut, Lebanon, 2009, 1st edition.*
- [3] *Abdullah Saud Al-Sarani, The Relationship Between Illegal Immigration, Human Smuggling, and Human Trafficking, Naif Arab University for Security Sciences, Riyadh, 1st edition, 2010.*
- [4] *Ahmed Rashad Salam, Visible and Hidden Threats to National Security from Illegal Immigration, Naif Arab University for Security Sciences, Riyadh, 1st edition, 2010.*
- [5] *Dala Bahri, lecture on the Dimensions of Illegal Immigration, Batna University, Faculty of Law, Department of Legal Sciences, no year or edition.*
- [6] *Ghazli Mohammed, The Security Challenges of Illegal Immigration in the Mediterranean Organization: Algeria as a Model, Academy Journal of Social and Human Studies, Hassiba Ben Bouali University, Chlef, Issue 08, 2012.*
- [7] *Hani Al-Sabki, Human Trafficking Operations: A Study in Light of Islamic Law, International Law, and Some Arab and Foreign Legislations, Dar Al-Fikr Al-Jami'i, Alexandria, 1st edition, 2010.*
- [8] *Khaled Moustafa Fahmy, The Legal System for Combating Human Trafficking Crimes: A Comparative Study. Dar Al-Fikr Al-Jami'i, Alexandria, 2011, 1st edition.*
- [9] *Mohamed Mahmoud Al-Siryani, Death Boats Migration Across the Mediterranean Between the South and North, Naif Arab University for Security Sciences, Riyadh, 1st edition, 2010.*
- [10] *Mohamed Saib Musette, Maghrebis in International Migration: Trends and Perspectives in North Africa, Applied Research Center for Development, Algiers, Volume 2, 2006.*
- [11] *Othman Hassan Mohamed Nour, Yasser Awad Al-Karim Al-Mubarak, illegal Immigration and Crime, Naif Arab University for Security Sciences, Riyadh, 2008, no edition.*
- [12] *Susie Johnson, Human Trafficking: Preventing, Protecting, Prosecuting, United Methodist Women.*
- [13] *Zahra Thamer Salman, Human Trafficking: A Comparative Study, Dar Wael Publishing, Jordan, 2012, 1st edition.*

FOOTNOTES:

- ¹- Abdullah Saud Al-Sarani, *The Relationship Between Illegal Immigration, Human Smuggling, and Human Trafficking*, Naif Arab University for Security Sciences, Riyadh, 1st edition, 2010, p. 104.
- ²- Mohamed Mahmoud Al-Siryani, *Death Boats Migration Across the Mediterranean Between the South and North*, Naif Arab University for Security Sciences, Riyadh, 1st edition, 2010, p. 171.
- ³- Abdullah Saud Al-Sarani, Previous Reference, p. 104.
- ⁴- Ahmed Rashad Salam, *Visible and Hidden Threats to National Security from Illegal Immigration*, Naif Arab University for Security Sciences, Riyadh, 1st edition, 2010, p. 203.
- ⁵- Ghazli Mohammed, *The Security Challenges of Illegal Immigration in the Mediterranean Organization: Algeria as a Model*, Academy Journal of Social and Human Studies, Hassiba Ben Bouali University, Chlef, Issue 08, 2012, p. 53.
- ⁶- Hani Al-Sabki, *Human Trafficking Operations: A Study in Light of Islamic Law, International Law, and Some Arab and Foreign Legislations*, Dar Al-Fikr Al-Jami'i, Alexandria, 1st edition, 2010, p. 61.
- ⁷- Hani Al-Sabki, Previous Reference, p. 39.
- ⁸- Hani Al-Sabki, Same Reference, p. 40.
- ⁹- Susie Johnson, *Human Trafficking: Preventing, Protecting, Prosecuting*, United Methodist Women, p. 4.
- ¹⁰- Abdul Qadir Al-Sheikhly, *Crimes of Human Trafficking and Organ Trafficking and Their Penalties in Sharia, Arab Laws, and International Law*, Halabi Legal Publications, Beirut, Lebanon, 2009, 1st edition, p. 21.
- ¹¹- Abdullah Saud Al-Sarani, Previous Reference, p. 114.

-
- ¹²- Abdullah Saud Al-Sarani, Previous Reference, p. 114.
- ¹³- Abd el Fattah Moustafa Al-Sayfi, Introduction to Organized Crime, Naif Arab University for Security Sciences, Riyadh, 1999, 1st edition, p. 27.
- ¹⁴- Same Reference, p. 27.
- ¹⁵- Dala Bahri, lecture on the Dimensions of Illegal Immigration, Batna University, Faculty of Law, Department of Legal Sciences, no year or edition, p. 3.
- ¹⁶- Mohamed Saib Musette, Maghrebis in International Migration: Trends and Perspectives in North Africa, Applied Research Center for Development, Algiers, Volume 2, 2006, p. 17.
- ¹⁷- Abdullah Saud Al-Sarani, Previous Reference. p. 115.
- ¹⁸- Khaled Moustafa Fahmy, The Legal System for Combating Human Trafficking Crimes: A Comparative Study. Dar Al-Fikr Al-Jami'i, Alexandria, 2011, 1st edition, p. 147.
- ¹⁹- Abd el kadir Al-Sheikhly, Previous Reference, p. 22.
- ²⁰- The U.S. Victims of Trafficking and Violence Protection Act does not stipulate that victims must be moved from one area to another and exploited; it suffices to recruit, harbor, and provide victims for work or services through force, coercion, or deception to subject them to compulsory service, forced labor, or debt bondage.
- ²¹- See: Othman Hassan Mohamed Nour, Yasser Awad Al-Karim Al-Mubarak, illegal Immigration and Crime, Naif Arab University for Security Sciences, Riyadh, 2008, no edition, p. 75.
- ²²- Khaled Mustafa Fahmy, Previous Reference, p. 148.
- ²³- Same Reference, p. 148.
- ²⁴- Zahra Thamer Salman, Human Trafficking: A Comparative Study, Dar Wael Publishing, Jordan, 2012, 1st edition, p. 49.
- ²⁵- Khaled Mustafa Fahmy, Previous Reference, p. 149.
- ²⁶- Zahra Thamer Salman, Previous Reference, pp. 50-51.