

Specificity of Human Trafficking Crimes

Dr. Mamene Bema¹ (Lecturer A)

mamen.bema@univ-khenchela.dz

University Abbes laghrour khenchela

Pr.Benmebarek Maya² (Professor)

benmebarek.maya@univ-khenchela.dz

University Abbes laghrour **khenchela**

Dr.Hebbaz Sana³ (Lecturer A)

habbaz.sana@univ-khenchela.dz

University Abbes laghrour khenchela

Dr.harnane nadjet⁴ (Researcher)

nadjet.har@gmail.com

University Abbes laghrour khenchela

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Abstract

One of the challenges facing humanity in our current era is human trafficking crimes, which have turned human life into a commodity circulated among people of different races and affiliations. This represents the contemporary face of the phenomenon of slavery. Human trafficking is a crime based on the exploitation practiced by international gangs and criminal networks that have professionalized this field, making it the focus of their activity and interest, and perhaps the main source of their income and the rapid growth of their wealth. The threads of this crime extend to more than one country, which has led to the expansion of this trade and an increase in the number of its victims, who are often from poor countries or countries suffering from the catastrophes of war and regional or internal conflicts.

This type of trade differs from commerce in its economic sense in terms of its subject matter, as it takes the human being as its object, making them a commodity subject to supply and demand in the modern slave market, so that they can be traded and exploited by all illegal means to obtain profits, without regard to the pain and psychological and physical suffering of hundreds of thousands of victims, and the forms of degradation, sexual exploitation, forced servitude, coerced sale of human organs, and other immoral practices they are subjected to, which violate divine laws, international laws, and norms.

Keywords: Specificity, trafficking, humans, characteristics, distinction

Introduction

Human trafficking is a crime punishable under national and international law. It is a transnational crime, as its effects do not affect a specific country, but can affect a number of

countries, if not all countries in the world. This crime passes through three countries: either a country of origin, a transit country, or a destination country where trafficked persons end up. For this reason, it is characterized as an international crime.

A qualitative shift has occurred in international legal thought from the issue of traditional slavery to the issue of human trafficking, leading to the inclusion of the traditional concept of slavery within a broader and more comprehensive contemporary definition. Within this framework, slavery and slavery-like practices constitute only one form of the issue of human trafficking.

The concept has shifted from the practice of ownership to the concept of exploitation. This international process reached its goal with the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. This Protocol was annexed to the United Nations Convention against Transnational Organized Crime, issued in 2000, which addressed the issue of human trafficking comprehensively for the first time. The Protocol treated slavery as one of the purposes of trafficking.

According to this Protocol, trafficking in persons means: "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs."

Given the danger that human trafficking crimes pose to the stability of human societies, these societies, in all their categories, have risen to combat this danger by enacting legal arsenals to confront and limit this phenomenon. In light of this danger and this specificity, we are prompted to pose a fundamental question:

What constitutes the specificity and particularity of human trafficking crime compared to other serious crimes?

Chapter One: Distinguishing Human Trafficking Crime from Other Crimes

Human trafficking is an intertwined crime with a compound concept, which appears in two main aspects:

First aspect: Its overlap with traditional crimes stipulated in the Penal Code, such as rape, indecent assault, kidnapping, and unlawful detention, prostitution laws, and other traditional crimes.

Second aspect: The confusion between human trafficking crimes and the crime of smuggling migrants. Therefore, we will divide this study into three sections. In the first, we examine the distinction between human trafficking crime and traditional crimes. In the second, we examine the distinction between human trafficking crimes and the crime of smuggling migrants.

Section One: Distinguishing Between Human Trafficking Crimes and Traditional Crimes

Confusion may occur between human trafficking crimes and traditional crimes such as prostitution, sexual exploitation, rape, indecent assault, and unlawful detention. This has led some to say that addressing this crisis is done through existing traditional laws: prostitution is addressed by laws combating prostitution, kidnapping and rape are addressed by the Penal Code, and forced service is addressed by labor laws. Even slavery has international laws and conventions that prohibit and criminalize it.

Undoubtedly, this is an incorrect treatment, as existing laws address the manifestations of exploitation of the victim without confronting the crime of human trafficking itself. This is the same error made by previous conventions that dealt with white slavery and servitude without addressing the crime of human trafficking. The correction came at the international level with the conclusion of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2000¹, which addressed human trafficking crimes for the first time and established a specific legal concept for them.

National legislations have come to view human trafficking crimes as independent crimes, separate from traditional crimes stipulated in existing laws. What is meant by combating here is human trafficking, in which the human being is turned into a commodity that is bought and sold by a person who trades in human dignity - the human trafficker.²

This prompts us to clarify the similarities and differences between human trafficking crimes and some similar traditional crimes:

Subsection One: Distinction Between Human Trafficking Crimes and Fraud

Fraud is one of the means of committing human trafficking crimes, as perpetrators may resort to fraudulent methods and means to trap victims, making it difficult to characterize the crime as either human trafficking or fraud, due to some similarities between them. Below we present the similarities between human trafficking crimes and fraud on one hand, and on the other hand, we examine the differences between these crimes.

First: Similarities Between Human Trafficking Crimes and Fraud

- Human trafficking crimes are compound crimes; the material element consists of more than one act. They agree in this with the crime of fraud, which requires the commission of two acts: the use of fraudulent means and the seizure of another's property.
- Human trafficking crimes and fraud are intentional crimes that cannot be conceived as being committed by error.

¹ - Wijdan Suleiman Artima, General Provisions on Human Trafficking Crimes, First Edition, Dar Al-Thaqafa Publishing and Distribution, Jordan, 2014 ,P 111

² - Al-Banna, Yahya Ahmed, Overview of the Provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, League of Arab States, 2010 , P112

Second: Differences Between Human Trafficking Crimes and Fraud

In terms of the subject of the crime or the violated right: the subject of human trafficking crimes is the human being, while fraud is a crime against property, whether movable or immovable.

Subsection Two: Distinction Between Human Trafficking Crimes and Kidnapping

Kidnapping in human trafficking crimes is one of the means by which human trafficking crimes are committed and is part of the elements constituting the material element of human trafficking crimes. It is not considered an independent crime in principle. Human trafficking crimes are similar to kidnapping in requiring the transfer of the victim from their location, taking them to another place and detaining them in that place or any other place. Detention is the common element among the components of the material element of both human trafficking crimes and kidnapping.

To characterize whether the crime is human trafficking or kidnapping, we note that if the purpose of committing the kidnapping is to exploit the victim as stated in the Palermo Protocol or national legislation on human trafficking, we are facing a human trafficking crime. Otherwise, we are facing a kidnapping crime.

First: Similarities Between Human Trafficking Crimes and Kidnapping

- The subject of the crime in both human trafficking crimes and kidnapping is the human being.
- Human trafficking crimes and kidnapping are compound crimes. Abduction is considered one of the means used to commit acts of recruitment, transportation, harboring, or reception. If any of these acts is coupled with any means of threat, abduction, or fraud to impose exploitation on the victim, we are facing a single crime, which is the compound crime of human trafficking.¹ In kidnapping, this crime is only realized by transferring the victim and removing them from the crime scene or another place with complete control over them. Transportation is an independent act, and the act of removal from the crime scene is also an independent act in itself.²

Second: Differences Between Human Trafficking Crimes and Kidnapping

Despite the distinction between kidnapping as an independent crime and kidnapping as a means of committing human trafficking crimes, there are differences between them:

1. **In terms of criminal intent:** In human trafficking crimes, general criminal intent is not sufficient; special intent represented by exploitation must be present. In kidnapping, general intent is sufficient, represented by the perpetrator's intention to transfer the victim from one place to another with knowledge of this.
2. **In terms of protected interest:** Human trafficking crimes are crimes against persons, and the interest requiring protection is the human's interest in protecting their freedom,

¹ - Omar Daham Akram, The Crime of Human Trafficking, A Comparative Study, First Edition, Cairo, Dar Al-Kab Legal Publishing House, 2011, P81

² - Al-Banna, Yahya Ahmed, Overview of the Provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, League of Arab States, 2010k P 49

dignity, and honor, as well as society's interest in maintaining security. In kidnapping, which is also a crime against persons,¹ the interest worthy of protection from criminalizing kidnapping is the protection of human freedom.

Subsection Three: Distinction Between Human Trafficking Crimes and Prostitution Crimes

Prostitution means: engaging in natural and unnatural sexual acts with people to satisfy others' sexual desires or the perpetrator's desire.

First: Similarities Between Human Trafficking Crimes and Prostitution Crimes

Human trafficking crimes are similar to prostitution crimes in the subject of the crime, which is the human being, and they are both intentional crimes.

Second: Differences Between Human Trafficking Crimes and Prostitution Crimes

1- In prostitution crimes, a woman sells pleasure from her body and is considered to have committed a prostitution crime and is described as a prostitute. This alone is sufficient to hold her criminally accountable. However, if another person or persons voluntarily or forcibly lead her to this, then this constitutes trafficking in that woman.

2- Human trafficking crimes are crimes against persons with dual nature: they are a private right, as the interest requiring protection is the right to honor protection and the right to freedom and dignity. It is also a public right in its social aspect, as it conflicts with public morals. Prostitution crimes are crimes against morals and public decency.

Section Two: Distinction Between Human Trafficking and Smuggling of Migrants

Many national legislations enacted in States Parties in implementation of the Palermo Protocol have confused human trafficking crimes with the crime of smuggling migrants. This is due to agreement between some constituent elements of each. Human trafficking crimes and the crime of smuggling migrants are committed by professional international organizations, the subject of criminal activity is the human being itself, and the criminal conduct is the same: gathering victims and transporting them from their country to another country with the aim of making profits. Nevertheless, there are still fundamental differences between them.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, defines the crime of "smuggling of migrants" as: (the procurement of the illegal entry of a person into a State Party of which that person is not a national or permanent resident, in order to obtain, directly or

¹ - Al-Sharfi, Ali Hassan, Organized Crime Gangs and Their Role in Human Trafficking, Naif Arab University for Security Sciences, Riyadh, 2004. P 170

indirectly, a financial or other material benefit) (Sub-paragraph (a) of Article 3). It contains the following elements:

1. Procuring the illegal entry of a person into a State Party of which that person is not a national or permanent resident, in order to obtain a direct financial benefit or any other material benefit.

The distinction between trafficking in persons and smuggling of migrants is complex, due to the difficulty of obtaining accurate information, especially from countries through which migrants or smuggled persons pass. Human trafficking often, but not always, includes smuggling victims. The victim may initially agree to be transported within or across borders to other countries. Distinguishing between the two activities requires detailed information about the victim's final circumstances.

Smuggling is generally viewed as bringing and transporting persons to another country illegally for profit. However, facilitating persons' entry into or passage through a country illegally is not considered human trafficking, although it is often carried out under dangerous or degrading conditions.

Smuggling of persons sometimes requires the migrants' consent to engage in that activity, while human trafficking does not involve victims' consent, or if their consent is initially obtained, the traders' harmful, coercive, and deceptive actions nullify that consent. Victims of human trafficking often do not know that they will be forced to work in prostitution or exploited in various jobs. Therefore, it is possible for human smuggling to transform into trafficking. Smuggled migrants may subsequently become involved through deception or coercion in exploitative situations and thus become victims of human trafficking. The main element that distinguishes human trafficking from smuggling is the presence of deception, force, or coercion.¹

Smuggling always involves a cross-border character, while human trafficking need not be cross-border but may occur within a country's borders. According to the United Nations, the most important distinctions between smuggling of migrants and trafficking in persons are as follows:

Consent: Although the crime of smuggling migrants often occurs under dangerous or degrading conditions, it takes place with the migrants' consent to smuggling. Victims of human trafficking never consented to it, and even if they initially agreed, that consent becomes meaningless due to the coercive, fraudulent, or abusive means used by trafficking perpetrators against their victims.

Exploitation: Smuggling of migrants ends when they reach their intended destination, while human trafficking involves continued exploitation of victims. Practically, it is noted that trafficking victims often suffer more severe harm and are in greater need of protection from re-victimization and exposure to other forms of more severe mistreatment than smuggled migrants.

Source of profit: Both smuggling of migrants and human trafficking are crimes involving the transportation of individuals for profit. However, the main source of profit for human

¹ - - Wijdan Suleiman Artima , op. cit., p149

trafficking perpetrators is the proceeds from exploiting victims in prostitution, forced labor, or other means, where the seller receives payment for the goods. In smuggling migrants, the smuggling fee paid by the illegal migrant is the main source of profit, where the migrant pays travel costs, and usually there is no continuing relationship between the perpetrator and the migrant after that migrant has reached their intended destination.

Transnational character: Smuggling of migrants always has a transnational character, as it involves crossing a country other than the migrant's country, constituting illegal entry since they have no legal residence or entry visa. Human trafficking may not be so, as trafficking in persons can occur regardless of whether victims were taken to another country or simply moved from one place to another within the same country.

Nature of violation: The crime of smuggling migrants - in essence - is a violation of state authorities, as it involves procuring illegal entry contrary to what state authorities require, making the illegally smuggled migrant an accused. Human trafficking crimes are essentially violations against persons, and the trafficked person is considered a victim in human trafficking crimes.

From the foregoing, the difference between human trafficking crimes and the crime of smuggling migrants becomes clear. This is what the United Nations Convention against Transnational Organized Crime understood, as it devoted a special protocol to the crime of illegal smuggling: the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime, adopted by the United Nations on November 15, 2000.¹

Chapter Two: Characteristics of Human Trafficking Crimes

Section One: Human Trafficking Crimes are Organized Crimes

The United Nations Convention against Transnational Organized Crime did not define organized crime, contrary to what some scholars say. We will clarify this below:

Subsection One: Definition of Organized Crime

Two approaches have emerged to define organized crime. The first approach focuses on defining it through a general description of the organized structure that commits it. The second approach relies on identifying the acts committed by the criminal organization and, through this, establishes a general conception of that organization's characteristics.

Some define organized crime as a criminal enterprise with a hierarchical organizational structure characterized by stability and permanence, engaging in illegal activities aimed at obtaining money, using violence, threats, intimidation, and bribery to achieve this goal in complete secrecy to ensure and protect its members. It is noted that this definition provides a definition of crime through describing the organization that commits it, its objectives, and the methods it uses.

Others define organized crime as the social phenomenon caused by certain groups that fundamentally engage in violent criminal activity aimed at profit. Here it is noted that this

¹- Al-Banna, Yahya Ahmed, , op. cit., p111

definition focuses on the criminal phenomenon as the basis for definition, not on the organization and its structure.

The European Union provides another definition of organized crime based on stating the characteristics and attributes enjoyed by the organization.

This definition is distinguished by enumerating eleven characteristics of organized crime:

- Cooperation between more than two persons
- Each member undertaking a specific task
- Using a strict form of organizational control within the organization
- Extending for a long or indefinite period
- Suspicion of committing serious crimes
- Working at an international level
- Using violence or other means of terrorism
- Using commercial means
- Exercising influence on politics, media, public administration, judicial authorities, and the economy
- Resorting to money laundering
- Seeking profit and power

For the description of organized crime to apply to a committed crime, at least six of the eleven aforementioned characteristics must be present, including the first, fifth, and eleventh characteristics, in order for the group that committed it to be considered an organized crime group.

Subsection Two: Definition of Organized Crime in Conventions

Conventions have defined a number of basic terms related to organized crime in Article 2 of the Convention. According to this article, "organized criminal group" means a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offenses criminalized under this Convention, in order to obtain, directly or indirectly, a financial or other material benefit. "Serious crime" means conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

"Structured group" means a group that is not randomly formed for the immediate commission of an offense and that does not need to have formally defined roles for its members, continuity of its membership, or a developed structure.¹

Article 37 of the United Nations Convention against Transnational Organized Crime and Article 1 of the Palermo Protocol to Prevent Trafficking in Persons establish the basic principles governing the close relationship between the Convention and the Protocol. According to Article 37/2 of the Convention, no State can become a party to any of the protocols unless it is also a party to the Convention. These provisions should be interpreted with the protocols annexed to the Convention in conjunction with it, taking into account the purpose of the protocol (Article 4/3). Article 1 of the Protocol stated that this Protocol

¹ - Wijdan Suleiman Artima , op. cit., p152

supplements the United Nations Convention against Transnational Organized Crime and shall be interpreted in conjunction with the Convention. The provisions of the Convention apply to the Protocol, and acts criminalized under Article 5 of the Protocol are considered acts criminalized under the Convention (Article 1/3 of the Protocol).

Section Two: Human Trafficking Crimes are Compound and Continuing Crimes

Subsection One: Human Trafficking Crimes are Compound Crimes

Human trafficking crimes consist of a series of criminal acts, where each act constitutes an independent crime. Therefore, they are called human trafficking crimes, not human trafficking crime. The first link in these crimes begins with kidnapping or seducing a person for recruitment or enlistment (indoctrination), and its links continue with transporting them and taking them out of the source country, and illegally entering them into the destination country. Many other criminal acts may be connected or associated with these crimes, such as fraud, or forgery of travel documents. The series of criminal acts does not end there, but may be followed by many other acts which are the ultimate purpose of trafficking: acts of exploitation.

A distinction must be made between human trafficking crimes and serial act crimes. Serial act crime presupposes multiple acts characterized by two things: First: they are similar. Second: each constitutes a crime in itself, and if the perpetrator were satisfied with it, they would be punished for it. However, the law usually treats them as one crime due to the similarity of criminal acts, so only one penalty is imposed.

Human trafficking crimes are similar to serial act crimes in that they consist of multiple acts united by the unity of the violated right and the unity of criminal purpose aimed at: exploitation of the victim. However, they differ in an important fundamental element: the lack of similarity of criminal acts constituting human trafficking crimes. The act of recruitment or enlistment differs from the act of transportation, transfer, reception, or other acts committed against the victim (trafficking victim).

Subsection Two: Human Trafficking Crimes are Continuing Crimes

A continuing crime is one whose execution is by its nature capable of extending over time as long as its perpetrator wishes. The criterion for division between instantaneous crimes and continuing crimes relates to the time required to realize the crime's elements. If it does not take a long time but only a short time, the crime is instantaneous. However, if realizing the crime's elements requires a relatively long time, the crime is continuing.

Applying this to human trafficking crimes, any human trafficking crime is a continuing crime if the crime's elements take some time to be realized. The perpetrator's commission of any trafficking act such as recruitment, enlistment, transportation, harboring, or reception for the

purpose of exploiting the victim for any exploitation purpose requires time, making time a fundamental element for committing human trafficking crimes.¹

Subsection three : Human Trafficking Crimes are Crimes Against Persons

Human trafficking crimes are crimes against persons, not crimes against property. The consideration in determining the type of crime is determining the violated right. In human trafficking crimes, this is represented by the violation of the human right to freedom and dignity. The perpetrator's obtaining of money is the motive or incentive and does not affect changing the crime in terms of the violated right.²

Subsection four: Human Trafficking Crimes are Intentional Crimes

Crimes are divided in terms of the mental element into intentional crimes (willful) and unintentional crimes (error). For a crime to be considered intentional, criminal intent must be present in the perpetrator. As for unintentional crimes, it is sufficient that negligence or error be present in the perpetrator's conduct.

It is inconceivable that the mental element in human trafficking crimes takes any form other than intent - criminal intent. It is difficult to imagine committing human trafficking crimes through error or negligence. Therefore, the mental element in human trafficking crimes is present with the presence of criminal intent in the perpetrator. Human trafficking crimes are intentional crimes, as acts of recruitment, enlistment, transportation, transfer, or reception using means of force, threat of use, fraud, or kidnapping - which are originally independent crimes - are acts and means that cannot be conceived except in the form of intent.³

Conclusion

From the foregoing, we conclude that the specificity of human trafficking crimes is based primarily on the evolution of the international legal approach to combating them, starting from prohibiting traditional slavery based on ownership and ending with a more recent concept of human trafficking as a crime of exploitation.

¹ - Majid Adel, Combating Human Trafficking Crimes in International Agreements and National Law of the United Arab Emirates, First Edition, Part One, Riyadh, 2010, P 126

² - Omar Daham Akram, op. cit., P71

³ - Wijdan Suleiman Artima , op. cit., p155

It can also be said that what most distinguishes the crime of human trafficking is its special model that distinguishes it from other crimes in its substantive rules specific to it. From the foregoing, the following can be proposed:

- Although all human trafficking crimes share the subject of the crime, which is the human being, as well as the material element, they differ among themselves in forms of exploitation and criminal intent. This necessitates determining the legal structure of each form of human trafficking crime separately.
- The material element of human trafficking crimes consists of criminal conduct, criminal result, and causal relationship. The criminal conduct constituting the material element of human trafficking crimes includes acts of human trafficking, which consist of acts of an enticing nature and others of a coercive nature, and the means by which human trafficking acts are committed. In light of this specificity, legislations have varied in determining the acts constituting this element. Some have limited them to acts of recruitment, transportation, harboring, reception, while others did not stipulate reception and were satisfied with criminalizing the provision or obtaining of any person by any means whatsoever. This necessitates studying this element and arriving at unified elements consistent with the principle of narrow interpretation of criminal texts.

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