



## THE INVESTIGATION INTO HUMAN TRAFFICKING CRIMES IN LIGHT OF NATIONAL AND INTERNATIONAL LEGISLATION

Sulaf Abdullah HAMA RASHID

College of Law and International Relations, Bayan University, Erbil, Kurdistan, Iraq.

**Email:** Sulaf.abdullah @ bnu.edu.iq

### ABSTRACT

*Given the suffering of children born out of sexual violence in times of armed conflicts and holding them and their mothers accountable for the crimes they were not responsible for, we tried to state the importance of protection that should be provided to these kids and treat them like the rest of their peers in terms of registering the baby, providing the health care and education. We discussed this by explaining the definition of sexual violence, basic rules for protecting kids in general, and finally the international efforts to protect children born out of sexual violence. We talked about what the danger of human trafficking may have on the whole international community, as it is regarded as a crime against humanity. The study explained the human trafficking crime concepts in the national and international agreements and legislation and clarified the substantive and procedural aspects of human trafficking crime in investigation and trial stages; because of the connections they have through international cooperation in this domain under international agreements, treaties and national legislations. In addition, this study highlighted the efforts made in Iraq to fight this crime under Law No. 28 of 2012 and following the committees emanating from it in the Kurdistan regional government. The study concluded that international organizations should strive to provide the necessary protection for these children and we need more international cooperation to proceed the investigation and trial stages and secure the mechanisms and tools needed to guarantee the investigation according to the principles and skills required by the principles of a criminal investigation in this crime as crime elements are in different countries and so without cooperation, the investigation stage will not be complete. Thus, the perpetrator will remain unpunished.*

**Keywords:** Human trafficking; Slave trafficking; Sexual exploitation of women and children; War crimes.

### INTRODUCTION

Law and criminal social sciences scholars are concerned about the developments of crime trends at the national and international levels. It is noted that the crime of trafficking in human beings and human organs is increasing due to several factors in the current era. Since these crimes are no longer limited to the national or internal system, rather, they have spread rapidly across the countries and became major trade that has entered the organized crime world, so it is necessary to fight them and take the required procedures to stop them.

Iraq has witnessed a series of armed conflicts since 2003 and terrorist groups have taken over large areas of its cities. As a result, Iraq has become the incubator in an environment for human trafficking because of insecurity and disruption of public order. This prompted the Iraqi legislator to expedite the organization of law to fight these crimes and reduce them in the name of the Anti-Human Trafficking Law No. 28 of 2012 to address the criminal offenses and punish the perpetrators.

On the other hand, as long as the terrorist organization is known as "ISIS" was in control, people had witnessed notorious practices and devoid of all human values, including trafficking in women and children and selling them in foreign markets. These practices were not the product of this era but were related to events that occurred in the past, such as the slave trade, where children and women were sold in the slave market after being captured by wars or after being kidnapped by their relatives. Nowadays, it has transformed-after slavery was abolished and criminalized-and has many dimensions and forms in which human being (in particular women and children) are abused, exploited and humiliated, with all kinds of behaviors and practices, where a human is treated as a dehumanized commodity by organized criminal groups that operate clandestinely around the world. They do not stop at one the country borders, but rather go beyond them to emit their toxins and grave negative effects. The phenomenon of trafficking in human beings is an international affair and is not excluded in any certain country. It extends beyond geographical borders and includes many countries with the difference in their patterns and forms based on each country's view of the concept of this phenomenon and respect for human rights. In a study issued by the Oxford University Center for Refugee Studies, human trafficking was considered the third-largest criminal activity and the most important sources of illegal income and the hidden economy after weapons and drug trade and the most important resource of illegal income and hidden economy after the weapons and drugs trading. this generates a fictional profit for its owners that even governments cannot get as they generate billions of dollars. If you know that, the revenues generated by compulsory labor amount to 32 billion dollars annually, and the revenues of sexual exploitation of women and children reach to 28 billion dollars annually according to the report of international labor organization. It also fuels other criminal activities such as the crime of money laundering, drug trafficking, and terrorism. It threatens the stability of countries socially, economically and politically. In the case of Iraq, by 2019, 15 human trafficking networks have been monitored, with most victims of underage girls with disabilities being committed through fake accounts on social media. According to the foregoing and the seriousness of the crime of trafficking in humans, we will discuss the definition of human trafficking crime in each of the international and national legislation of some countries, and then investigating the crime at the domestic and international level.

#### ***The study problem:***

The crime of human trafficking is the focus of the attention of jurists, researchers, and specialists in legal and social sciences. Because this issue is at the forefront it relates to vulnerable groups in society. The problem stems from the questions: How effective is national legislation in investigating according to international standards outlined in international agreements? Has the investigation been conducted according to the criminal rules in force to investigate other crimes? And how much is it possible to extent of the possibility of fighting and reducing these crimes through international cooperation in the field of investigation and trial?

#### ***Importance of the study:***

The importance of research lies in the field of study that the crime of human trafficking is primarily based on the content of human element exploitation by the commission of the crime.



It has reached its perpetrators to consider human beings as commodities that can be bought and sold, which represents a blatant violation of human rights, including the abuse of human dignity and blood, and the negative effects of this phenomenon on human beings in general carries and societies in particular.

***Objectives of the study:***

- The concept of human trafficking crimes in international legislations.
- The concept of human trafficking crimes in national legislations.
- Formalities for investigating and prosecuting human trafficking crimes.
- Basic aspects of investigating and prosecuting trafficking crimes.

***Study hypothesis:***

The necessity of international cooperation in the investigation and trial stages is following international agreements and treaties to eliminate or reduce the crime of human trafficking.

***Study approach***

This study has adopted an analytical method: Through the analysis of some international treaties texts that regulate the subject of human trafficking. The deductive approach and comparative approach is organized by studying the texts of international treaties to fight trafficking in human and some national legislation of some countries: wherein the study, we are exposed to the position of some domestic Arab and foreign legislation from the crime of human trafficking.



***Scope of Study:***

It will focus on the next stage of committing the crime of trafficking in human beings according to international legislation on the one hand, and national legislation on the other.

***Study Structure:***

**The first topic:** the concept of human trafficking crimes.

**The first requirement:** the concept of human trafficking crimes in international legislation.

**The second requirement:** the concept of human trafficking crimes in national legislation.

**The second topic:** Investigating human trafficking crimes under international and national legislations.

**The first requirement:** formalities for investigation and trial.

**The second requirement:** the substantive aspects of the investigation and the trial.

**CONCLUSION**

**The first topic**

*The concept of human trafficking crimes*

**The first requirement:** the concept of human trafficking crimes in international legislation.

The international community on the prohibition of slavery, the use of people to work against their will and without their will, the prohibition of violence against women and children and their trafficking, through declarations, treaties, decisions and reports issued by the United Nations. In 1948, the most prominent human rights document was issued, the Universal

Declaration of Human Rights, which sets out the general criteria for prohibiting discrimination in all its forms. And the third article of the universal declaration of human rights affirmed the human right to freedom, and the fourth article, explicitly mentioned slavery, prohibiting it and trafficking in slaves in all their forms.<sup>1</sup>

The International Covenant on Civil and Political Rights of 1966 came with a similar text in Article 8 thereof, except that this article distinguished between slavery and the term Servitude. This orientation sees that the term slavery eliminates the legal personality of the individual and thus considered a term with a relatively specific concept, while servitude is the term that carries the broader concept and includes all possible forms of human control over a person. In this view, slavery is the familiar form of these types of control.<sup>2</sup>

On a regional scale, slavery was prohibited by the European Convention on Human Rights in 1950, the American Convention on Human Rights in 1969, and the African Charter of Human Rights in 1981. (Sawsan, 2006)

It is worth noting that the crime of human trafficking and its definition have come under various names and in several international agreements, including:

**Firstly: Definition of the crime of trafficking in human in special international conventions related to the prohibition of slavery:**

There are many international conventions on the prohibition of slavery, including the 1926 Slavery Convention, or as some have called it (the Slavery Convention), which was the product of the work of the Special Slavery Committee appointed by the League of Nations that came to criminalize slave trafficking and then possession of slaves or slavery, where the first article defined slavery and the slave trade.<sup>3</sup>

In the definition of slavery, it states: "it is the condition or situation of any person over whom part or all of the powers resulting from the right of ownership are exercised." In the case of the slave trade, the following definition is defined: "all the actions involved in capturing a person, detaining him, or giving him up to others to turn it into a slave, and all the actions involved in holding a slave to selling or exchanging them and all actions abandonment, sale or exchange of slaves detained for sale or exchange, as well as in any trafficking in slaves or transporting them."<sup>4</sup>

In 1956, the United Nations approved a new agreement confirming adherence to the Slavery Convention of 1926 in the prohibition of slavery and the slave trade, which is the (Supplementary Agreement for the deactivating the Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956), it confirmed in the first article the importance of the commitment of all countries in prohibiting the slavery and revoking its customs and practices, including those covered by the old agreement and those not covered by them, which are by paragraphs (a) and (b).<sup>4</sup>

<sup>1</sup> Universal declaration of human rights of 1948, United Nations General Assembly Resolution 217a(d-3)

<sup>2</sup> The International Covenant on Civil and Political Rights of 1966, United Nations, Treaty Series, VOL 999No. 14688, pp. 171

<sup>3</sup> First article of Slavery Convention of 1926, United Nation, Treaty Series, VOL212, NO2861

<sup>4</sup> First article of Supplementary Agreement for the deactivating the Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, United Nation, Treaty Series, VOL266 ,NO3822



**Second:** Defining trafficking in human beings in the international banning human trafficking conventions.

The United Nations endeavored to conclude an international convention in the field of human trafficking in 1949 and affirmed the prohibition and punishment of those involved in the trafficking of persons and the exploitation of the prostitution of others in any way and that is called (the International Convention for the Prohibition of Trafficking in White Slaves of 1949) which was adopted by the United Nations General Assembly and entered into force in 1951, according to which the states parties approved the entry into force of the legal instruments that were concluded under the auspices of the League of Nations. (Sawsan, 2006)

Due to the international community belief in the seriousness crime of selling, trafficking, and exploitation of women and children, the United Nations continued its efforts to eradicate this inhuman crime and issued a protocol to prevent, suppress and punish trafficking in persons, especially for women and children, supplementing the United Nations Convention against Transnational Organized Crime, by General Assembly resolution 15-15 November 2000 In accordance with Resolution No. 55/25.<sup>5</sup>

The previous protocol is one of the annexes to the United Nations Convention against Transnational Organized Crime. Where human trafficking crimes are considered to be transnational organized crimes in a manner that makes them eligible for the application of the provisions of the Convention to them (Al-Arian, 2011). The protocol includes the first international definition of trafficking in human beings and laid down the provisions relating to the prohibition and establishment of rules and protection and assistance to its victims with full respect for their human rights within the framework of international cooperation to combat.

On the one hand, the protocol defined in its third Article what is meant by the term trafficking in human beings and related criminal concepts, as stated in the first paragraph of Article Three: "Human trafficking means:

Recruiting, transporting, transferring, harboring or receiving people by threat of force or using it or other forms of coercion, kidnapping, fraud, deception, abuse of power, or exploitation of a state of vulnerability, or receiving money or benefits to obtain the consent of a person who has control over another person for exploitation. Exploitation includes as a minimum, exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or servitude, slavery or practices similar to slavery, servitude or removal of organs. The protocol shall apply to the preventive measures, investigations, and prosecutions related to the crimes mentioned in Article Five when these crimes are transnational and committed by an organized criminal group.<sup>6</sup>

It should be noted that the definition contained in "Preventing, Suppressing and Punishing Trafficking in Persons" protocol in 2000 is the same as that contained in the European Convention against Trafficking in Human Beings 2005<sup>7</sup>, so the definition of human trafficking



<sup>5</sup> Whereas, on 11-15-2000, the United Nations General Assembly adopted the anti-organized crime convention through national boundaries, as well as the two Optional Protocols on trafficking in persons and smuggling of migrants.

<sup>6</sup> The fourth article of "Preventing, Suppressing And Punishing Traffic in Persons, Especially Women And Children" protocol, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>7</sup> European Convention against Trafficking in Human Beings Signed by the European Union member states in 16/5/2005 in Warsaw- Poland



came in full conformity with the previous protocol definition<sup>8</sup>, and stipulated that there was no effect of victim's consent to the targeted exploitation, it defined the meaning of the child as a person under eighteen years of age, and identified the victim as a normal person subjected to human trafficking.<sup>9</sup>

Thirdly: Definition of human trafficking in international criminal law conventions:

Giving the link between the international criminal law and human rights norms, both of these laws contained many basic rules that protect: life, liberty, personal's safety and physical safety, including those relating to crimes committed against physical freedom. It is done that slavery and forced service are part of it. The best example refers to the role of the criminal law it is the last resort to the implementation of international human rights protection. (Khalaf Mahmoud, 2013)

International law conventions depend on either the direct application system or the indirect application system. Although the majority of international law conventions depend on the indirect application system, which means the system is based on the assumption that each of the member states to the international law is implementing the provisions and punishing of the violators. (Sharif Bassiouni, 2007)

Slavery and anti-trafficking agreements that explicitly or implicitly recognize that a specific behavior constitutes an international crime - as we have previously shown - usually impose on signatory states the obligation to prevent prohibited behavior, prosecute accused offenders, or extradite them to other countries willing to try them, and cooperate with other states to prevent and end prohibited behavior.

In the case of an application system, it is achieved when these agreements recognize the establishment of a direct application plan, which is achieved by the establishment of an international criminal court to try those responsible for the crimes covered by its provisions. (Sharif Bassiouni, 2007)

Among the international covenants that referred to human trafficking, crimes are the Nuremberg and Tokyo Pact, as slavery is an independent crime against humanity, as stipulated in the Sixth Article of the Nuremberg Pact in 1945, and it falls within a non-exclusive group of crimes that some have been called crimes, from the model of murder to distinguish from the crimes of the persecution model.<sup>10</sup>

Similar to the Nuremberg Charter, Article (5 / c) of the Tokyo Charter stipulated the definition of crimes against humanity and includes the crime of slavery without stipulating the existence of discriminatory motivation.<sup>11</sup>

The system of the two international criminal tribunals for the former Yugoslavia and Rwanda also contains a reference to the crime of slavery, such as the 1993 International Criminal Tribunal system for the Former Yugoslavia; the text of Article Five defines crimes against humanity:

<sup>8</sup> Article 4 (a / h) of the 2005 Warsaw Convention

<sup>9</sup> Article 4 of the aforementioned convention

<sup>10</sup> Whereas Article 6 / c of the Nuremberg Charter (Crimes Against Humanity) was defined by saying: "Intentional homicide, extermination Slavery, expulsion, and other inhumane acts committed against any group of the civilian population, before or during the war, or persecution for political, ethnic, or religious reasons in implementation of any crimes that fall within the jurisdiction of the court or constitute a connection with these crimes, regardless of whether It was committed or not.

<sup>11</sup> Article 5 of the Tokyo Charter relating to crimes against humanity

A person is responsible according to the article when those crimes are committed in armed conflicts, Whether it is of an international or domestic nature, and it is directed against any group of the civilian population, and the aforementioned Article Five did not require access discriminatory motivation as an additional element in relation to the crime of slavery or other crimes against humanity but rather stipulated only in the crime of Persecution. (Sawsan, 2006) While the international tribunal system in Rwanda in 1994 included a definition of anti-human crimes, which showed that criminal responsibility does not lie with slavery-like any other -inhuman practices except with the presence of discriminatory motive. This means criminal acts are committed for national, political, ethnic, racial or religious reasons.<sup>12</sup>

***The second requirements: Definition human trafficking in the national legalization***

In international efforts, countries did not remain arms folded but tried to drop and search for definitions of proportionality to their legal system, so many countries have sought to make definitions that are most affected by definitions in international agreements and treaties and especially the Palermo protocol in 2000 and one of this legislation. (Asma, 2000)

**First: Definition of human trafficking in some Arabian legislation.**

**1. In Egyptian legislation:**

The Arab Republic of Egypt joined the united nation in 2003 to combat organized crime through national borders and issued anti-trafficking in humans with No. 64 for 2010 and in implementation article NO 29 of this law, the executive regulations of the law No. 64 of 2010 as defined in the second article of the anti-trafficking trade: anyone deals in any way with a normal person including selling offers, selling of buying or saying words committing to do them or using or transferring or giving or keeping or receiving whether inside or outside the country through its national border.<sup>13</sup>

**2. In the Bahraini legalization:**

In 2004, The kingdom of Bahrain joined the united nations convention against organized crime through its two protocols, and in implementation law No. 01 of 2008 on Combating trafficking in persons, the national committee was established by the Ministry of Foreign Affairs and accordingly This human trafficking committee is defined as follows:

"Recruiting, transferring, constant transferring, harboring or receiving personally for abuse, using coercion, threats, or trickery, or by exploiting the function, influence, or abuse of authority over that person, or by any other unlawful means directly or indirectly and that includes abuse, exploitation of that person for prostitution, or any form of exploitation, sexual assault, forced labor or service, slavery, practices similar to slavery, servitude, or removal of organs (Sibucour, 2017).

**3. In the legalization of the United Arab Emirates:**

Article No 1 of Federal Law No. 51 of 2006 regarding the Anti-Human Trafficking Law, Human Trafficking, defines: "The Recruiting, transporting, deporting, or acceptance of persons by threat or use of force, or other forms of coercion, or Kidnapping, fraud, deception, abuse of power, abuse of a vulnerable situation, or giving or receiving money or benefits to obtain personal consent who has control over another person for exploitation, and exploitation

<sup>12</sup> Third article of the International Criminal Court system for Rwanda

<sup>13</sup> Wahidan Suleiman Artemah, previous reference, pp. 114, 119, 121



includes all forms of sexual exploitation or exploitation of the prostitution of others, forced labor, forced service, slavery, or similar practices of Slavery, servitude or destruction these organs. (Sibucour, 2017)

## **Second: Defining the crime of human trafficking in some western legalization:**

### **1. American law:**

The Trafficking Victims Protection Law of 2000 is the first comprehensive federal law that deals with trafficking in persons, and providing a three-pronged approach that includes prevention, protection, and judicial prosecution. This law has been re-delegated through the Re-delegation Law to Protect Trafficking Victims in 2003 and 2005 and 2008 and 2013. According to US federal law, “severe forms of trafficking in persons” include sex trafficking and labor trafficking. Sex trafficking is the recruitment, harboring, transportation, provision of, access to, sponsorship or solicitation of persons for commercial sex, where the commercial sexual act is induced by force, fraud, or coercion, or the person doing this act hasn’t reached eighteen.

Definition of People Trafficking: (recruiting, harboring, transporting, providing or obtaining a person in exchange for work or services, through the use of force, fraud, or coercion for slavery or servitude).<sup>14</sup>

### **2. The French law:**

In the case of the French legislator, when defining human trafficking, it sets out the legal model that human trafficking is expected to focus on a person (Article 225-4-1). The French Penal Code states that “trafficking in human is the activity that takes place in exchange for a fee or any other benefit, or a promised reward, or benefit for the recruitment, transportation, transfer, harboring, or hosting of a person to place him at the disposal of others, even without specifying the identity of this third person, either to commit sexual crimes and assaults against this person, or use them to beg or impose conditions of work or housing that offend his dignity, or to compel him to commit felonies or human trafficking misdemeanor, a penalty of seven years imprisonment and fined 150,000 one hundred and fifty thousand euros (Sibucour, 2017).

## **Third: Defining human trafficking in Iraqi legalization:**

And Article (1 / First) of Law No. 28 of 2012 defines the crime of human trafficking as follows:-

Human trafficking in this law is to recruit, transport, harboring or receiving people through the threat or use of force, or other forms of coercion, kidnapping, deception, abuse of power, or giving or receiving money or benefits to obtain approval of a person with authority or Guardianship over another person to sell or exploit them in prostitution, sexual exploitation, forced labor, slavery, begging, or trading in their human organs or for medical experiments).<sup>15</sup>

The principal form of a criminal act is the recruitment, transfer, harbor, or taking of people by using force, threats, or other means of coercion, kidnapping, fraud, deception, abuse of power, or by giving or receiving money or benefits to obtain the approval of a person has authority or

<sup>14</sup> The text of Article (7102 § USC 22) of the US Penal Code, then seen today 12-14-2018. <https://humantraffickinghotline.org/what-human-trafficking/federal-lawhttps://www.state.gov/j/tip/laws>.

<sup>15</sup> First article of the Iraqi Law to Combat Human Trafficking Crimes, No. 28 of 2012





guardianship over another person, and the purpose of the previous criminal acts is to sell the person or exploit him in prostitution, sexual exploitation, forced labor, slavery, begging, or trading in human organs or for medical experiments purposes, and that this crime has a place or subject represented in a significant interest of the enemy (the victim's interest is a free and dignified life) as it affects old men and small child, both male and female, but the majority of the victims were women, children and people with special needs. (Al-Husseini, 2018)

## Second topic

Investigating crimes of human trafficking

In this regard, we will deal with the investigation of human trafficking crimes in light of international treaties and agreements through international judicial cooperation in the investigation and trial stages. We have covered the definition of human trafficking crime in the previous topic, and we will address the formal rules on international cooperation in investigation and trial stages each in a separate requirement.

**The first requirement:** formalities procedures to Investigation and Prosecution of human trafficking crimes

There is a set of formal terms and conditions that regulate the procedures for international cooperation in the investigation and trial phases, starting with the determination of the entity that performs this procedure, then submitting the cooperation requests and terms of this agreement.

In Egypt, the National Coordination Committee on Combating and Preventing Trafficking in Human Beings, chaired by the Foreign Minister, is the main source designated for this task, and in Jordan, the National Anti-Trafficking Committee is headed by the Minister of Justice. It will take on this task.

In Iraq, the Federal Central Committee on Combating Human Trafficking chaired by Federal Ministry of Interior

First: The party that undertakes these procedures: Within the framework of information exchange and international cooperation to combat human trafficking, a mechanism must be established between countries to carry out this process, and each country has to determine who is responsible for these procedures, there is an obligation for each state party of this agreement to designate a central authority for the process, and to grant this authority the following main powers<sup>16</sup>.

1. They have the responsibility and authority to receive requests for mutual legal assistance.
2. Executing these requests or referring them to the competent authorities for implementation.
3. This authority shall ensure the speed and safety of carrying out the requests received or sent.
4. The authority designated by the parties states shall do its utmost to speed up the process of exchange of information, and therefore it shall pursue the request for information of other competent authorities of the country and encourage those competent authorities. In confirmation of the foregoing, the states parties have - in implementation

<sup>16</sup> Paragraph (13) of Article 18 of the United Nations Convention against Transnational Organized Crime



this agreement - notified the Secretary-General of the United Nations on behalf of the designated central authority for this purpose at the time of the deposit of their instrument of ratification, acceptance, approval or accession to the Convention. While some countries have identified the Ministry of Justice as the competent central authority to do so, for example in Kuwait, while other countries have identified specific central bodies, in Sultan Oman the National Committee to Fight Human Trafficking has been identified headed by the Inspector General of Police and Customs. In the United Arab Emirates, the National Committee to Fight Trafficking has been identified under the chairmanship of the Minister of State for Foreign Affairs. In Egypt, the National Coordinating Committee for Fighting and Preventing Trafficking in Human Beings chaired by the Foreign Minister Affairs is the central authority that has been identified for this task, and in Jordan the National Committee for Fighting Human Trafficking headed by the Minister of Justice that will take over this task. (Hamdan, 2014)

In Iraq, the Supreme Central Committee to Fight Human Trafficking was chaired by the Federal Ministry of Interior Iraq, coordination with representatives of the regions, ministries, and irregular bodies in a region and relevant bodies to implement and achieve the purposes of Human Trafficking Law <sup>17</sup>

The UN Convention has urged state parties to conclude bilateral or multilateral agreements or arrangements that allow the relevant competent authorities to establish joint investigative bodies, concerning matters that are the subject of investigations or Prosecutions or judicial proceedings in one or more countries. In the absence of such agreements or arrangements, joint investigations may be conducted by agreement in each case. The States Parties concerned shall ensure that the sovereignty of the State Party in whose territory such investigation is conducted is fully complied with.<sup>18</sup>

Second: Submission of applications and their formal requirements: There are a set of formal conditions that were established to ensure the seriousness of the request in one hand and to ensure that it is validated on the other hand, and these conditions can be summarized as follows <sup>19</sup>

4-These requests must be submitted in writing, wherever possible, or by any means capable of producing a record written in an acceptable language to the requested State Party, and on conditions that allow that State Party to verify its authenticity. That is, it may be in writing, or sent via e-mail, on CD-ROM, or phonetically recorded, or audio and video, or by any other means, provided that the following conditions are met:

- a. To be able to keep and archive them with the records provided, an oral request for this purpose is not considered acceptable, unless it is an electronic registration, of course.
- b. To be sent in a way that the receiving country can confirm the validity of this request.
- c. To be sent in the language approved by the state upon ratification, acceptance, approval or accession to the Convention.
- d. The request may be made orally, provided that it is confirmed in writing immediately.

<sup>17</sup> See the text of Article (2 and 3) of the Human Trafficking Law in Iraq No. 28 of 2012

<sup>18</sup> Article No. 19 of the United Nations Convention against Transnational Organized Crime

<sup>19</sup> Article 14, 15 of the United Nations Convention against Transnational Organized Crime



5- Request for mutual legal assistance should include at least the following information:

- a. The identity of the requesting authority
- b. The subject and nature of the investigation, prosecution or judicial procedure to which the request relates, and the name and functions of the authority conducting the investigation, prosecution, or judicial procedure.
- c. A summary of the relevant facts, except for those related to requests to report judicial documents.
- d. A description of the sought assistance and details of any specific procedure that the requesting State Party wishes to follow.
- e. The identity, location, and nationality of each person concerned, wherever possible.
- f. the purpose for which evidence, information or measures are sought.

6- If the information sent is not sufficient to assist the requesting State, the requested State Party may request additional information when it is determined that this information are necessary for implementing the request following its domestic law, or when that information would facilitate that implementation.

7- No request that is contrary to the internal law of the requesting State Party shall be accepted. If this is achieved, the requested State will be dissolved.

### **The second requirement: Basic aspects of human trafficking crimes investigation and trial**

**First:** requesting a judicial assistant: Countries resort to submit requests to each other to extend help and assistance in the investigation or trial procedures in one of the cases related to fighting trafficking in human beings. We will address the provisions regulating this issue; starting with the subject of the request, the obligations of the requesting state, and finally cases where the request may be rejected.

The exchange of information here requires that a crime covered by the agreement and that the state needs information during investigations process to find out the ambiguity of this crime to reveal the circumstances surrounding it and the persons involved in it, upon scrutiny and reflection on Article 8 of the agreement we can summarize the substantive provisions related to the exchange of information and legal aid with the following<sup>20</sup>:

**Second:** Legal cooperation is an international duty imposed by the convention and the protocol: this agreement places an obligation on all member states to provide - to each other - as much mutual legal assistance as possible in investigations, prosecutions, and judicial procedures.

**Third:** The subject of the request is a crime of a transnational nature: The request must be related to one of the transnational crimes covered by the Convention, or that there are reasonable grounds to suspect that the crime committed is of a transnational nature and that the victims of those crimes or witnesses or their proceeds or the tools used in its commission or evidence thereof is found in the requested State Party and that an organized criminal group is involved in the commission of the offense.

**Fourth:** Providing priority to the state's sovereignty and its internal legislation: The agreement affirms the principle of territorial sovereignty of the state over its territory and internal



<sup>20</sup> Article 8 of the United Nations Convention against Transnational Organized Crime

sovereignty, and thus provides full mutual legal assistance in accordance with the recipient state's laws, conventions, agreements, and related arrangements.

**Fifth:** The subject of legal aid: This agreement stipulated that the subject of legal aid of the requesting country would be 4 for each of the following purposes:

- a. Receiving evidence or people statements.
- b. Notification of judicial documents.
- c. Executing inspections, seizures, and freezes.
- d. Check things and locations.
- e. Providing information, evidence, and evaluation by experts.
- f. Submitting original documents and related records, including government, banking, or financial records, or company or business records, or valid copies thereof.
- g. Identify or trace the proceeds of crime, property, tools or other objects for purposes of obtaining evidence.
- h. Facilitate the voluntary appearance of individuals in the requesting State Party.
- i. Any other kind of assistance that does not conflict with the domestic law of the requested State Party.

**Sixth:** Self-initiative to send information without prior request: A certain country may obtain information related to crime, persons or organized gangs in another country, and believes that this information provides a great service to that country, and therefore an agreement stipulated that it is like international cooperation and that whatever happens in any country in the world may affect the entire global system, it is permissible for the competent authorities of the State party - without receiving a prior request - to transmit information related to criminal matters to a competent authority in another state party, wherever it sees that this information can help that authority to carry out criminal investigations and procedures or help in successful completeness or it may lead to other State Party request formulated according to this Convention.

**Seventh:** Priority for application of bilateral legal aid exchange agreements: This agreement urged the conclusion of bilateral agreements between the states parties intending to exchange legal aid and urged the adoption of the provisions contained in the international agreement, or the establishment of provisions for the two countries. In which case, these provisions are presented in the Convention, and therefore Article 18 stipulates in its seventh paragraph that paragraphs 9 to 29 of this article apply to requests submitted according to this article if the States Parties concerned are not bound by a treaty to exchange legal aid. If those states parties are bound by a treaty of this kind, then the corresponding provisions of that treaty must be applied, unless states parties agree to apply paragraphs (9 to 29) of this article instead of them. States parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

**Eighth:** Transfer of accused and convicted persons: A request submitted by the state party may relate to the request of the person arrested or serving a sentence in the territory of a State party and whose presence is required in another state party. Such as conducting identification, testifying, or providing other assistance in obtaining evidence for investigations, prosecutions, or criminal proceedings related to the offenses covered by this Agreement. (Hamdan, 2014)

It is noted that international reports still indicate that the crime has recently spread across Iraq in 2017 and 2018 and the growth of the crime in the Kurdistan Region and especially through



its use on social networking sites and that the increase in the size of that crime comes as a result of the lack of legal deterrence on social communication websites, and given that the committee's monitoring of cases that are monitored is weak due to the government's lack of commitment to support the law, as well as the mechanisms of investigation and those responsible for it, they lack the qualifications and experience to investigate these crimes.

## CONCLUSION

The phenomenon of “trafficking in human beings” is a serious crime and of complexity and many political, economic, social and cultural factors lie behind it, and is an organized crime that faces the societies in the current era.

Large quantities of money are generated through trafficking, either in poor countries that supply the trafficking market with these victims or in rich countries that are the main source of demand for these victims. This makes facing it a difficult and complex process, thus requiring close, intensive, sustained and decisive international cooperation. human trafficking has only taken on this international and national dimension because of its close association with organized crime. Through its statement of international cooperation at the investigation and trial stage of international agreements, treaties and national legislation, this study has provided many findings and recommendations

## RESULTS:

1. Security and economic are one of the most important factors that have led to the spread of human trafficking crimes in Iraq and have led the country to instability, widespread corruption, widespread poverty, ignorance, internal displacement, and exodus as a result of fierce terrorist organizations' control of vast areas of the state.
2. The study showed that the protected interest in the crimes of human trafficking is the human dignity that a living person gains from birth to death and that the exploitation of the human beings contradicts the pride and dignity of the human being, and that human trafficking makes a person a commodity that is sold and bought, which degrades human dignity, his moral integrity and an assault to the human right to be free from slavery and servitude.
3. Human Trafficking is recognized as a form of organized crime as well as international in nature, but crime statistics remain poor, especially in Iraq.
4. No country is immune from this crime, which often does not recognize the borders and is such that it is committed in one state and its victims from another country and they are exploited in a third country where the recurring, repetitive, cursive reports indicate that is its legacy.
5. Despite the enactment of a special law on the fight crime in Iraq and the formation of special committees to perform its tasks in monitoring, following up and implementing the Human Trafficking Law, it lacks mechanisms worthy of achieving the goals that are required to legislate the law and make the tasks assigned to the formed committees successful.





**Recommendations:**

1. Conduct legal studies and investigations that include a database of statistics on crime, human trafficking and work to activate organized mechanisms to confront these crimes.
2. The crime of human trafficking, by its nature, poses a great danger to all persons connected to the criminal lawsuit arising from it, whether judges, prosecutors, judicial seizure officers, witnesses, victims, or collaborators with public authorities who have been accused and they belonged to the organized criminal community, which necessitates providing adequate protection for these persons.
3. The necessity of strengthening international cooperation in the field of fighting the crime of human trafficking and urging all countries to adhere to the relevant international agreements concerned, as it is difficult to fight them without increasing the actual cooperation between countries and working to establish international anti-national coalitions for the region.
4. Intensifying qualification and continuous training programs, to build and develop capacities of those responsible for the implementation of the law, including chiefs and subordinates in the judicial and security apparatus, employees and government officials who are responsible for the techniques used for fighting trafficking in human beings and its methods so they become professional in the prosecution and investigation of these crimes and trying the perpetrators.
5. Paying attention to the realities of society, especially the areas of armed conflict by improving societal conditions, such as education, health and social security, and ensuring government support to address poverty and unemployment.

**References**

- Khalaf Mahmoud, A. A.Q. (2013). *Definition of the crime of human trafficking in international treaties and agreements*, Master Thesis, Al-Nahrain University, College of Law, Iraq.
- Al-Husseini, A. (2018). Prohibition of Human Trafficking, Adam Center for Defending Rights and Freedoms, article published on the website <http://ademrights.org/news522>
- Ahmad Al-Rasheed, A., (2000). *Trafficking in Human Beings and Its Historical Development*, Arab Renaissance publishing house, Cairo.
- Hamdan, S., (2014). International Judicial Cooperation in Combating Trafficking in Human Beings according to the provisions of the Law on Combating Trafficking in Human Beings and International Legislations, *The Jordanian Journal of Law and Political Science, Mu'tah University*, 6(1), 198.
- Al-Arian, M. A. (2011). *Publishing Trade and Control Mechanisms (Comparative Study)*, New University House, Alexandria, 2011
- Sharif Bassiouni, M. (2007). *An Introduction to the Study of International Criminal Law*, 1st floor, Al-Sharq publishing house, Cairo.

Sawsan Tamarkhan Backah, (2006). Crimes against humanity in light of the provisions of the statute of the International Criminal Court, 1st edition, Al-Halabi human rights publications, Beirut.

Sibucour, A. (2017). The crime of human trafficking and the mechanisms to combat it, Master Thesis, Faculty of Law, Kassadi Murbah University, Ouargla, Algeria.

### **Bibliography:**

American Law issued in 2000

Bahraini Law No. 51 of 2006

Convention on the Prohibition of Trafficking in Persons and the Exploitation of Others, 1949

Egyptian Law No. 64 of 2010

Emirates Law No. 1 of 2008

European Convention on Human Rights, 1950

French law 1992

Iraqi Law No. 28 of 201

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000

Supplementary Agreement on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956

The Declaration on the Elimination of Violence against Women, 1991

The Forced Labor Agreement 1930

The Slavery Convention of 1926

The Universal Declaration of Human Rights, 1948

The US Penal Code is posted on the website: <https://humantraffickinghotline.org/what-human-trafficking/federal-law>.

