



International Legal Framework Regarding Human Trafficking

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Abstract: International failures in this field have several causes. Thus, many states have preferred to include the crime of human trafficking in their own criminal codes, without considering it necessary to regulate it through a special law. That could favor the legislation of all aspects of the crime itself, of those related to it, of the particular aspects of a procedural nature, including those regarding international cooperation in the matter. Another cause could be that of criminalizing only human trafficking for the purpose of prostitution, without taking into account the other forms. In addition, most of the laws of the world's states did not apply a special treatment to the victims of human trafficking, offering them the necessary protection and assistance, but on the contrary, the victims were accused of prostitution, of illegal border crossing, of falsifying travel documents, being expelled and repatriated in their country of origin.

Keywords: human trafficking; organized crime; cooperation; International Convention; international organization

Introduction

The United Nations organization has the mission to coordinate the activity of preventing and combating human trafficking in the world. The coordination is focused on two distinct aspects: the creation of international legal norms and the intensification of cooperation between the world's states.

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As for the legal creation that responds to the need for joint action by states, it exists, but its efficiency is sometimes questionable. Nevertheless, the UN has the merit of providing a starting point, a model for the construction of national legislation of states in the field of human trafficking and organized crime. Facilitating cooperation at the international level in the issue of human trafficking is also an essential step in the fight against this crime, due to its transnational character that forces the coordination of the individual efforts of states.

The prevention and combating of human trafficking has become one of the main goals of the international world, being a problem that has been on the United Nations agenda for more than two decades. Acclaimed and disputed, the organization's initiatives finally led to a reaction from the member states, in the sense of establishing, even if only theoretically, the measures necessary to prevent and combat human trafficking.

The history of international regulations regarding the trafficking of human beings actually begins with legislative efforts prior to the existence of the United Nations Organization, efforts embodied in norms to criminalize slavery and the slave trade. Some of the developed states of the world, convinced of the negative impact of slavery on economic and especially social stability in a modern era already affected by military conflicts generated by the struggle for affirmation and independence of some peoples, have initiated these regulations.

After the first world conflagration, the League of Nations had the initiative to create and adopt two international conventions in the field: the International Convention for the Suppression of Traffic in Women and Children (September 30, 1921) and the International Convention for the Suppression of Traffic in Adult Women (October 11, 1933). The first of them brings the criminalization of the trafficking of male minors as a new element¹. The second convention also marks a progress in terms of establishing the elements of the objective side of the crime of trafficking in persons. The first attempt to criminalize trafficking and the exploitation of victims at the same time was marked by the UN Convention on the

¹ Cf. International Convention for the Suppression of Trafficking in Women and Children, September 30, 1921, 9 LNTS 415, http://www.coe.int/t/e/human_rights/trafficking/3_documents/international_legal_instruments/UNTS_Sup_trafficking.asp, accessed on 20.01.20.

Suppression of Trafficking in Persons and the Exploitation of Persons in Prostitution¹ (2 December 1949).

This convention has partially replaced and supplemented previous regulations in the field. The first step towards the development of an international cooperation strategy focused exclusively on the prevention and combating of human trafficking was the adoption by the states of the world of uniform legislative norms. Thus, the United Nations Organization designed and adopted, in 2000, the International Convention on the Fight against Transboundary Organized Crime together with the Additional Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children, the Additional Protocol against Migrant Trafficking on by land, water or air and the Additional Protocol against the manufacture and illicit trafficking of weapons, parts or components thereof and ammunition.

The UN Convention against Transboundary Organized Crime and the first two additional protocols thus provide the international legal framework specifically for preventing and combating human trafficking.

As a novelty, the Convention replaces the principle of availability with that of international cooperation. Thus, the signatory states of the Convention must consider not only the establishment of preventive and combative measures aimed at the trafficking of human beings, but also collaborate by any means in this sense.

The convention is, in fact, a mandatory legislative and conceptual model for the signatory states to follow, aimed at making the global prevention and combating of organized crime, including human trafficking, more effective, on three major coordinates: punishment, protection and prevention.

Thus, in the preamble of the first additional protocol of the Convention, the Additional Protocol for the Prevention, Suppression and Punishment of Trafficking in Persons, especially of Women and Children, the purpose of establishing these international norms is clearly specified. Namely: the prevention of trafficking, the implementation of a global action aimed at punishing traffickers, ensuring the protection of victims of trafficking. In this sense, the Protocol defines the crime of trafficking in persons, obliging the signatory states to criminalize at the national level an activity that deviates from moral and legal norms.

¹ UN Convention on the Suppression of Traffic in Persons and of the Exploitation of Persons in Prostitution, 1949, <http://www.unhcr.ch/html/menu3/b/33.htm>., accessed on 20.01.20.

In addition, the regulations cover issues related to victims of human trafficking. Thus, the signatory states assume, in certain circumstances, the responsibility of adopting the legal norms in order to ensure the necessary protection and assistance to the victims of human trafficking. Some of the aspects related to the punishment of the perpetrators, the protection of the victims and the prevention achieved through material and criminal procedural norms are not expressly regulated in the UN Protocol on human trafficking.

The main text of the UN Convention against organized cross-border crime is the one that comes to fill the apparent gaps in the express anti-trafficking rules.

Moreover, Article 37 of the Convention and Article 1 of the Protocol establish the relationship between the two documents: the rules of the Convention and those of the Protocol must be interpreted in conjunction, while applying the *mutatis mutandis* rule. This means that, if the situation requires it, the general provisions of the Convention will be able to undergo minor changes in interpretation or application, necessary for their adaptation to the specific rules established by the Additional Protocol on human trafficking. Of course, the rule does not apply when the text of the Convention or that of the Protocol expressly excludes it.

The protocol provides a broad definition of human trafficking, which the signatory states will adopt in their internal legislation, adjusting it to adapt it to national and possibly regional realities. However, it is preferable for the definition to keep essentially the same text.

Thus, trafficking in human beings consists in “recruiting, transporting, transferring, harboring or receiving persons, by threat of recourse or by recourse to force or other forms of coercion, by kidnapping, fraud, deception, abuse of authority or a vulnerable situation or by offering or accepting payments or advantages to obtain the consent of a person having authority over another for the purpose of exploitation”¹

¹ Article 3 lit. a, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women or Children, Additional to the United Nations Convention against Transfrontier Organized Crime, A/RES/55/25, New York, 15 November 2000, at http://www.unuinfo.ro/documente_fundamentale/instrumente_internationale/conventia_impotriva_crimei_organizate_protocol_trafic_persoane/, accessed on 20.01.20.

The text also states that “exploitation refers, at least, to exploitation through prostitution of another person or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, use or removal of organs”¹.

As can be seen, the definition includes the distinct activities involved in human trafficking, namely: recruitment (obtaining the person's consent by fraudulent means or violence), transportation and exploitation of victims. According to the UN Protocol, the lack of one of these elements leads to the non-existence of the crime of trafficking in adult persons.

One of the most well-known controversies related to the definition of human trafficking in the UN Protocol refers to the scope of applicability of this definition, as long as Article 4 of the document states that the purpose in which it was drafted is that of “prevention, investigation, punishment the acts referred to in article 5 (...) in the event that these acts have a transnational nature and involve an organized criminal group, as well as the protection of the victims of these acts”. In other words, the Protocol considers only cross-border traffic, excluding internal traffic, and also limits the active subject of the offense to organized criminal groups only.

Following the debates, the Legislative Guide clarifies the interpretation of article 34 par. 2 of the Convention and of Article 4 of the Protocol, indicating that states must not create national norms that consider the cross-border character and the authorship of organized criminal groups as conditions for the existence of the criminal acts: “(...) in national law, the norms regarding the crimes established according to the Convention (...) and the Protocol on Trafficking in Human Beings (...) must be applied to the same extent, regardless of whether a case involves transnational or only national elements”².

It also states that “(...) the UN Protocol on Trafficking in Human Beings considers the protection of victims regardless of their transnationality and the involvement of an organized criminal group” and, unlike illegal migrant trafficking³, “human

¹ Article 3 lit. a, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women or Children, Additional to the United Nations Convention against Transfrontier Organized Crime, A/RES/55/25, New York, 15 November 2000, at http://www.unuinfo.ro/documente_fundamentale/instrumente_internationale/conventia_impotriva_crimei_organizate_protocol_trafic_persoone/, accessed on 20.01.20.

² UNODC, Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, no. 89, New York, 2004, pp. 10-11.

³ UNODC, Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, no. 89, New York, 2004, pp. 259, http://www.unodc.org/pdf/crime/legislative_guides/03%20Legislative%20guide_Trafficking%20in%20Persons%20Protocol.pdf.

trafficking must be criminalized regardless of whether it occurs by crossing national borders or within a state”¹ (t.n.).

According to the rules of the Protocol, it is worth noting the recognition of the forms of trafficking that we encounter today: prostitution or other forms of sexual exploitation, forced labor, forced rendering of services, slavery or similar practices, the use or unlawful removal of human organs. However, it omits the trafficking of children with a view to enlisting and using them in military conflicts, a situation which is the subject of a separate convention, but which can be assimilated, we believe, to the expression “forced service”.

The definition given by the UN to human trafficking was adopted with some amendments by the signatory states. One of the declared goals of the UN Protocol and one of the reasons for the fight against human trafficking is the protection of victims of trafficking and the prevention of the abduction of other people by traffickers. Guaranteeing and respecting the rights and freedoms of victims of human trafficking is one of the sensitive, but indispensable issues for creating the legal norms necessary to fight against human trafficking.

The UN protocol does not define the term victim of human trafficking, a fact that could constitute a shortcoming of the document. In accordance with the provisions of the UN Protocol, the signatory states must act not only in order to combat human trafficking, but also in terms of its prevention. Prevention policies, specialized programs and other appropriate measures must be on the list of states' priorities.

As an example, the Protocol mentions public information campaigns, media campaigns, social and economic initiatives (art. 9 para. 2) aimed at effectively supporting the fight against human trafficking, that is, concretely, to leads to the “remedial of the factors that make people, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunities” (art. 9 paragraph 4).

The legal framework for preventing and combating human trafficking is not limited to international documents that directly and specifically regulate this issue. UN legislation includes a wide range of regulations that have an indirect impact on

¹ UNODC, Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, no. 89, New York, 2004, pp. 341
http://www.unodc.org/pdf/crime/legislative_guides/03%20Legislative%20guide_Trafficking%20in%20Persons%20Protocol.pdf.

human trafficking, completing the international legal framework in the matter. Thus, the UN regulations regarding the protection of women and children in the world come to specify in particular the fundamental rights and freedoms that these people must enjoy.

Also, the International Labor Organization, together with the UN, has initiated various actions to counter human trafficking in connection with illegal labor migration. Thus, in 2003, the ILO started the Program to Combat Forced Labor based on the ILO Convention¹ on Combating Forced or Compulsory Labor (1930) and the ILO Convention on the Prohibition of Forced Labor² (1957).

Other international legislative regulations that can find their incidence in preventing and combating human trafficking are the UN Convention³ on the Status of Refugees from 1951 and the Protocol on the Status of Refugees from 1967⁴.

2. The Activity of International Cooperation between the Structures Specialized in Preventing and Combating Human Trafficking

The specialized literature reveals divided opinions regarding the chances of harmonizing international criminal legislation to the extent that it would give rise to an international criminal law. There are theoreticians who deny this possibility, post-modern law not being able to reconcile the social, economic, political, cultural differences that exist worldwide. Even if the efforts were to materialize in a legislative text, it would not find its applicability anyway, due to the lack of effective coordination and collaboration.

Despite the pessimism, there are notable advances in international collaboration. The United States of America, Japan, Australia, Brazil, Denmark, Great Britain, Ireland, Italy support, through various collaboration programs, the efforts of the states which, against the background of the economic and political instability they face, become or are countries of origin of the traffic of people. The exchange of

¹ The ILO Convention on the Prohibition of Forced Labor was adopted on 25.06.1957 and entered into force on 17.01.1959, being also known as ILO Convention no. 105 (320 UNTS 291).

² The ILO Convention on the Combating of Forced or Compulsory Labor was adopted on 28.09.1930 and entered into force on 1.05.1932, also known as ILO Convention no. 29 (39 UNTS 55).

³ Convenția ONU privind statutul refugiaților a fost adoptată la 28.07.1951 și a intrat în vigoare la la 22.04.1954, 189 UNTS 150.

⁴ The protocol regarding the status of refugees was adopted on 31.01. 1967 and entered into force on 4.10. 1967, 606 U.S.C. 267.

information between the countries of origin and the countries of destination of the victims of human trafficking is the main coordinate of these collaborations.

The United Nations encourages international cooperation in this field by initiating global action programs, doubled by the creation and adoption by member states of international conventions and treaties on aspects directly or indirectly related to the prevention and combating of human trafficking: criminalizing the act as a crime, combating the crime organized, eliminating forms of discrimination against women, respecting and guaranteeing the rights of the child, legal migration, eliminating torture and ill-treatment, combating money laundering, corruption, the creation of Interpol, etc.

Also, the regional multilateral conventions constitute another form of collaboration for the purpose of preventing and combating transnational crimes, including human trafficking. Thus, at the level of Europe, on the one hand, the existence of European conventions and agreements, initiated under the auspices of the Council of Europe, and, on the other hand, the specific legislation and programs of the European Union focused on the issue of human trafficking, but with limited applicability to the 28 of its members.

Another instrument that supports international cooperation is the bilateral agreement, the understanding between two states, with or without common borders. From this category, the bilateral extradition treaties and the mutual legal assistance treaties are noteworthy.

Also, in terms of mutual legal assistance, the UN has offered the states a bilateral treaty model to facilitate the implementation of cases in practice, ensuring the prevention and combating of cross-border crime, including human trafficking, in the long term.

Considering the fact that we are dealing here with a social phenomenon and then with a legal one, the justice's efforts to combat and prevent human trafficking are supported by those of the police structures, through specific actions to investigate and catch the perpetrators, and of civil society in general, through NGOs that carry out extensive information and prevention campaigns for the population regarding human trafficking, at the same time initiating social assistance programs for trafficking victims.

The concerted actions at the international, inter-regional and regional level are mainly supported by the law enforcement forces of the states involved, the coordination being realized through bilateral agreements (Benin-Nigeria, Italy-

Nigeria, Greece-Albania, Mali-Côte d'Ivoire, Laos-Thailand, Cambodia-Viet Nam, UK-USA) and multilateral, intergovernmental (Police Cooperation on South-East Europe, Bali Process on Smuggling, Trafficking in Persons and Related Transnational Crime, Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Subregion, Multilateral Cooperation Agreement to Combat Trafficking in Persons Especially Women and Children in West and Central Africa), or directly, through the intervention of Europol or Interpol. Regardless of the form of collaboration, the exchange of information and the result obtained as a result remains essential and relevant.

However, starting with the period of the 70s, but especially in the last two decades, the emergence of a new way of solving international criminal cases, through the cooperation between national and international specialized authorities, can be noted. Concretely, we are currently witnessing the informal gathering of international criminal networks, trans-governmental, which interpret, apply and create international criminal law. The diplomatic channels used to enforce the criminal law are progressively abandoned in favor of direct contacts, at the level of national judicial authorities.

The trans-governmental networks are made up of judges, prosecutors, criminal investigation bodies that, through coordinated actions, cooperate in a much more flexible and informal manner than the one currently carried out in international criminal tribunals. This cooperation can be supported in the future by ad hoc agreements, the creation of "hybrid" courts and the activity of various international and regional associations specialized in the field, including non-governmental organizations.

One of the main advantages of the emergence of international networks in criminal matters could be that of remedying the lack of capacity of some states to concretely and effectively apply legal norms, as a result of the lack of financial and human resources (specialized staff) or due to instability economic, political, high level of corruption, etc.

3. The Legislative Model of the USA in the Regulation of the Activity of Countering the Human Trafficking

The Palermo Protocol was initiated and supported by the United States of America, which proposed the text that was subsequently submitted to negotiations. At the same time, the United States of America adopted its own anti-trafficking rules,

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offering a solid legal example to the states of the world, but controversial at the same time.

The Trafficking Victims Protection Act (2000) includes the anti-trafficking legal regulations developed by the US government. The text was taken over and amended by the American Congress - the Trafficking Victims Protection Reauthorization Act, in 2003 and 2005 respectively - which re-allocated the funds necessary to support the scaffolding of authorities, bodies and organizations involved in the fight against human trafficking. The current American legislation provides preventive measures against human trafficking on the national territory and outside it, combative and protection measures for the victims of human trafficking.

The law allowed the creation of a team to prevent and fight human trafficking through the collaboration of various national agencies whose responsibilities are in the field of human trafficking, immigration, national security, foreign policy.

In order to be able to enjoy the services offered by the US government, victims of human trafficking must acquire the status of a victim of human trafficking, according to the criteria established by law. This is where one of the interpretable issues of American legislation arises. The criteria for granting a person the status of “victim of a serious form of trafficking in persons”, as required by law, are:

- a) the victim must have been trafficked for commercial forced sexual services or forced labor;
- b) the victim must be under 18 years of age or, if he is over this age, be willing to participate by any means in the capture and punishment of the perpetrators;
- c) not to have been refused a special stay visa as a victim of trafficking (T-visa) on American territory.

Several gaps can be highlighted in the case of these requirements: the legal norms do not distinguish between other forms of trafficking, there are ethical and practical problems regarding the obligation of the participation of victims of trafficking “by any rational means possible” in catching and punishing traffickers, the request for granting the right to temporary residence on the territory of the United States also involves certain difficulties.

The United Nations is trying to push the states of the world to consider the fight against human trafficking a priority at the national, regional and international level,

acting promptly and in concert to eradicate or at least limit the commission of the crime.

The analysis of the generating causes, the determining factors of human trafficking, its impact on individuals and concrete actions to eradicate the phenomenon are the main objectives of the UN activity in the field. The special international legal norms created under the auspices of the UN for the prevention, suppression and punishment of human trafficking, such as the Palermo Protocol, were adopted by the member states and transposed into national legislation.

However, the number of indictments and convictions is modest in most of the world's states. Thus, 91 states annually register at least one prosecution, 73 states at least one conviction. Only 47 states out of 155 report at least ten convictions per year and only 15 states report 50 convictions per year for human trafficking.

The economic, social, political, cultural differences between states and regions are also manifested in human trafficking. At present, not all countries in the world have legislation in the field, not to mention infrastructure. For example, some states on the African continent have not created anti-trafficking legal norms, and in some cases, the legislation is only aimed at child trafficking.

From the UN study, it seems that the lack of financial resources is no longer a completely valid reason for the lack of combative attitude against trafficking. Most convictions for human trafficking come from a few states, some rich and some not, proving that national anti-trafficking determination and initiative can overcome economic obstacles.

The cooperation programs in the field of human trafficking and the international, inter-regional, regional and national structures, which ensure their implementation, are numerous and support the UN's efforts to coordinate the fight against trafficking. Some developed countries of the world, such as the USA, Great Britain, Australia, Sweden, Germany, establish bilateral partnerships, helping financially and logistically the countries that cannot cope with the causes and manifestations of trafficking.

Also, some of the national legislations are taken as a model of legal creation, their application constituting a model of best practices for the offensive against human trafficking.

Despite these efforts, limitations and obstacles to criminalizing trafficking, punishing traffickers, and protecting its victims worldwide continue to exist. From

a strictly legal point of view, the refusal of some states to adopt and ratify treaties, international conventions with direct or indirect impact on the prevention and combating of human trafficking or accept their application at the national level only on the condition of removing some essential provisions disarmingly affects the efficiency legal instruments.

4. Conclusion

The imposition of international norms on national states remains a sensitive issue and insufficiently addressed in practice. The establishment and application of unilateral sanctions to states that violate the obligations assumed by international treaties and conventions, first of all, discourages their signing and, secondly, generates theoretical and practical conflicts regarding the principles that govern international law, protecting the national sovereignty of states, such as that of non-interference.

Also, the provision of statistical data necessary to assess the seriousness of the problem to be faced is currently one of the great attempts of the process of preventing and combating human trafficking. The existence of data, their collection and interpretation on the basis of universally established criteria is sporadic. The existing statistics are criticized in this way, due to the lack of data and inconsistency in the conclusions.

Against the background of human trafficking, the UN intervenes with the support of regional and national security policies, the collaboration of police structures, the activity of specialized non-governmental organizations, the attempts to democratize justice and the eradication of corruption. To these are added the efforts of the world financial institutions, as well as those of the developed states to provide the resources necessary to ensure the improvement of living conditions.

The identification, recognition and regulation of all existing forms of human trafficking, the provision of appropriate assistance and protection to the victims of trafficking, with full respect for human rights, the establishment of criminal liability of the perpetrators and the application of appropriate punishments to them are the main aspects covered by the material international criminal law. To these are also added the procedural rules that should standardize, as much as the differences in the national system allow, the investigation, prosecution and judgment of trafficking cases.

However, in spite of all the criminal legislative efforts of the UN and other international organizations and bodies, human trafficking will never be able to be stopped if only its effects are combated, ignoring its causes and their profound social nature.

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