

Research Article

Illegal Migration and Human Trafficking: Distinctive Features and Interrelations

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Abstract

This article examines the legal issues of genuine migration. Its scale is noted, representing one of the most serious problems characterizing mixed migration flows. It has been documented in almost all countries accepting migrant workers. Examining the definition of "illegal connection" from a legal perspective, the author concludes that the concepts of "illegal" and "illegal" migration are synonymous, having the same meaning. It is noted that the entry, stay, or unofficial work activity of migrant workers in all cases has the same legal consequences—that is, a violation of established state regulations, which simultaneously constitutes illegal migration. The author also examines the distinctive features and connections between human trafficking and genuine migration. Analyzing international and national law, as well as scholarly opinions, the author defines the concept of "illegal connection," identifies the connections between the activities of traffickers and those of unofficial connections, and their points of contact. The author formulates the distinctive features of these offenses, substantiates their positions with generally accepted evidence, and formulates law enforcement practice. It is concluded that the acts of human trafficking and illegal migration are classified as inventions of acts. First, human trafficking can be committed by crossing state borders, using a second act (a temporary border crossing), or without crossing a state border. Illegal migration can begin with or without the participation of traffickers, with the consent and will of the immigrant, via an illegal border crossing, or even independently, without such accomplices. In any case, its primary characteristic is crossing the border of a specific state.

Keywords

Irregular Migration, Illegal Migration, Human Trafficking, Slavery, Forced Labor, Labor Migrant, Convention

1. Introduction

Migration law constitutes a unified legal mechanism regulating relations concerning the control and management of migrants—from their crossing of customs checkpoints at the state border to their stay within the territory of the Republic of Tajikistan. Migration law cannot function effectively without establishing liability measures for violations committed by migrants.

The realization of the legitimate interests of the state, the protection of the rights and freedoms of labor migrants, and the regulation of migration processes are only possible through adherence to legal public order, which is ensured under state control and national legislation. Violations in this sphere can be effectively addressed only through preventive and educational mechanisms, including the establishment of

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obligations and the prevention of negative consequences of unlawful behavior.

As Bobyrev emphasizes, “irregular migrants not only cannot exercise the rights granted to them but also cannot be compelled to perform duties established by the state. The relationship between migration and security is twofold: it concerns not only the security of society and the state affected by migration processes but also the security of the migrants themselves, which largely depends on the type and grounds of migration [1]”.

Irregular (illegal) migration remains one of the most serious global challenges and continues to be characterized by mixed migration flows. It is recorded in almost all labor-receiving countries.

According to the *World Migration Report 2024* “in the calendar year 2022, the highest number of irregular arrivals since 2016 was recorded — more than 189,000 arrivals in Europe by land and sea. Although there was a decline in illegal border crossings during the COVID-19 pandemic in 2020, a surge was observed in 2021, followed by further growth in 2022. The largest numbers of irregular arrivals in 2022 were from Egypt (about 21,800), the Syrian Arab Republic (around 21,000), Tunisia (more than 18,000), and Afghanistan (over 18,000). Smuggling networks play a key role in facilitating migrant movements to Northern, Western, and Southern Europe, often charging high fees while exposing migrants to numerous risks and abuses [5]”.

Currently, the concept of *illegal migration* lacks a universally accepted definition, and there is no single approach to understanding the essence of this phenomenon. Yastrebova rightly observes that “a gap in the international legal regulation of the prevention of illegal migration remains the absence of its definition at the universal level. Combating this phenomenon is addressed primarily through regional international treaties and national migration legislation [7]”.

Modern academic and normative sources employ a variety of terms to describe persons who enter other countries in violation of established entry and stay rules, reside without authorization, engage in labor activities without proper permits, or otherwise contravene the legal procedures for foreign nationals. These include *illegal*, *irregular*, *undocumented*, *unauthorized*, *unregulated*, *clandestine*, and *semi-legal* migration.

At the International Conference on Population and Development (United Nations, 1994), it was proposed to use the term *undocumented persons* for individuals who do not meet the entry, residence, or employment requirements set by the receiving country.

At the International Symposium on Migration (Bangkok, 1999), the term «persons with irregular status» was proposed [2].

The Handbook on Migration Terminology defines *undocumented migrant workers* as “migrant workers or their family members who are not authorized to enter, stay, or work in a given country,” and *irregular migration* as “movement occurring outside the regulatory norms of the sending, transit, or

receiving countries.” An *irregular migrant* is described as “a person who, due to illegal entry or expiration of a visa, has no legal status in the transit or receiving country” [4].

Most scholars consider these terms synonymous, though some maintain that they carry distinct meanings. Yastrebova argues that “the definitions of ‘illegal migration’ and ‘irregular migration’ are analogous [7]”. Likewise, the United Nations High Commissioner for Human Rights includes “all categories of international migrants in an irregular situation, including undocumented migrants (bearing in mind that not all irregular migrants lack proper documentation) and asylum seekers whose applications have been rejected [6]”.

In recent years, however, the international community has preferred the term *irregular migration* (from French *migration irrégulière*), using *illegal migration* primarily in the context of migrant smuggling.

The issue of irregular labor migration was first formally addressed in the International Labour Organization (ILO) Convention No. 143 of 1975, “*Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*.” The Convention identifies multiple aspects of illegal migration, including entry, transit, residence, and employment. Article 3 provides that: “Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in cooperation with other Members, to (a) suppress clandestine movements of migrants for employment and illegal employment of migrants; and (b) take action against organizers of such movements and against those who employ workers who have immigrated in illegal conditions [3]”.

The organization of illegal migration in the modern world is among the most widespread transnational crimes. In studying the prevention of illegal migration, the issue of human trafficking also holds significant academic relevance, as there exists a strong interconnection between illegal labor migration and criminal activities associated with human trafficking. According to statistics from the International Labour Organization “in 2021 approximately 50 million people lived in modern slavery. Of these, 28 million were subjected to forced labor, and 22 million were trapped in forced marriages. Unfortunately, the number of people living in modern slavery has risen considerably over the last five years—10 million more than in the 2016 global estimates. The risk of forced labor for migrant workers has tripled [9]”.

1.1. International Legal Framework

The International Covenant on Civil and Political Rights (1966) stipulates in Article 8 that “no one shall be held in slavery” and “no one shall be required to perform forced or compulsory labor [10]”. Similarly, the International Covenant on Economic, Social and Cultural Rights (1966) recognizes the right to work freely chosen or accepted and prohibits the enslavement of any person (Article 6) [11]. The League of Nations Slavery Convention of 1926, as amended in 1953, defines slavery as “the status or condition of a person over whom

any or all of the powers attaching to the right of ownership are exercised” (Article 1, para. 1), and slave trade as “all acts involved in the capture, acquisition, or disposal of a person with intent to reduce him to slavery [13]” (Article 1, para. 2). With the emergence of new forms and methods of slavery, international law began using the term human trafficking. The 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, defines trafficking as recruitment, transportation, transfer, harbouring or receipt of persons by coercion, deception, or abuse of vulnerability for the purpose of exploitation [14].

1.2. National Legislation and Regional Frameworks

Similar definitions appear in numerous national and regional documents, including the 2005 CIS Agreement on Cooperation in Combating Trafficking in Persons, Human Organs and Tissues, and the Law of the Republic of Tajikistan No. 1096 (2014) 'On Combating Trafficking in Persons and Assisting Victims of Human Trafficking.' [12]. According to Article 1 of the Tajik law, human trafficking is defined as purchase and sale or other transactions concerning a person for the purpose of exploitation or unlawful gain, using coercion, deception, or abuse of power or vulnerability.

2. Doctrinal Perspectives on the Relationship Between Human Trafficking and Illegal Migration

Scholars differ in their interpretation of the distinction between migrant smuggling and human trafficking. According to Bekyashev and Ivanov, «illegal transportation of migrants involves individuals who consent to the illegal movement, whereas victims of human trafficking never consent—or if they initially did, such consent becomes meaningless due to coercion or deception [8]».

2.1. Differences in Understanding the Concept

The International Organization for Migration (IOM) Guidelines note that when a migrant smuggled illegally continues to be controlled and exploited after entry, the case ceases to be smuggling and becomes trafficking [15]. However, Yastrebova argues that both acts are closely linked since the ultimate goal of migrant smuggling often becomes exploitation [7].

2.2. National Classification and Interrelation in Tajikistan

The Government of Tajikistan Decree No. 342 of July 2, 2019, 'On the List of Crimes Related to Human Trafficking',

highlights the interconnection between trafficking and related crimes, including illegal migration, and underscores the complexity of their classification in practice [16]. The decree lists the organization of illegal migration as a crime under Article 335(2) of the Criminal Code of Tajikistan [17].

3. Conclusion

Illegal (irregular) migration and human trafficking represent closely interrelated phenomena, sharing overlapping causes, mechanisms, and consequences. Both are driven by socio-economic disparities, labor demand, political instability, and the pursuit of better living conditions, often exploited by organized criminal networks.

While illegal migration primarily concerns violations of entry, residence, or labor regulations, human trafficking involves coercion, exploitation, and the deprivation of personal freedom. Nevertheless, irregular migration frequently serves as a gateway to trafficking, as migrants in vulnerable and undocumented situations are at greater risk of exploitation and abuse.

From a legal perspective, a clear conceptual and normative distinction between these two phenomena is essential for effective policy development and law enforcement. International instruments—particularly the *ILO Convention No. 143* [3], the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons* [3], and International Organization for Migration (IOM) guidelines—emphasize the need for an integrated, human rights-based approach that simultaneously combats illegal migration and protects migrants from trafficking-related abuse [15].

In conclusion, strengthening international cooperation, harmonizing national migration laws, and enhancing preventive measures remain critical to countering both illegal migration and human trafficking, while ensuring the protection of migrants' fundamental rights.

The distinction and interrelation between human trafficking and illegal migration remain insufficiently defined and require clearer legal delimitation. Human trafficking and illegal migration should be viewed as distinct acts. The former may occur with or without border crossing and may involve illegal migration; the latter may occur with or without elements of trafficking. Nonetheless, the defining feature of illegal migration remains the crossing of a national border.

4. Recommendations

Since the term "illegal migration" is widely used in international and regional treaties concluded between various countries, its unambiguous meaning and precise application in countries receiving migrant workers is an important condition for the legal regulation of migration. Therefore, it is recommended that the following definition of this term be used in national legislation: "illegal migration is the entry, stay, and

exit of citizens of foreign states and stateless persons in violation of the laws in force in the receiving countries."

Abbreviations

ILO International Labour Organization
IOM International Organization for Migration

Author Contributions

Nurullo Rahmatullo Mahmadullozoda is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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