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**Human Trafficking as a Crime against Humanity: An Analysis from
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Declaration

I hereby certify that the dissertation for my Bachelor of Laws (LLB, Honours) degree on 'Human Trafficking as a Crime against Humanity: An Analysis from Bangladesh Perspective' has been carried out by me, does not include any material which has been previously submitted for a degree or diploma in any University, and no part of this dissertation was previously published or written by another person except where due reference is made in the text.

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Abstract

This paper aims at recognizing the prevention framework and policies related to human trafficking as a crime against humanity in Bangladesh under International, Regional and National laws. The purpose of this study is to analyze human trafficking as crime against humanity and explore the legal frameworks based on the recent local and global human trafficking scenario. This paper also makes endeavors to analyze the application and inefficacy regarding disability of laws. Also, it attempts to identify the loopholes of such international and regional conventions and domestic laws in Bangladesh. This paper is based on qualitative research. It does content analysis with the objective of determining the scenario of human trafficking in Bangladesh while compering the scenarios regarding human trafficking around the world. This study has suggested some necessary and suitable modifications which can be implemented in the conventions and laws to fight the imprecation of human trafficking as crime against humanity in Bangladesh.

1. Introduction

In modern day, human trafficking has become somewhat pervasive. Reportedly, women and children make up the vast majority of the estimated 800,000 victims of human trafficking each year.¹ Also, the annual profits for the traffickers are estimated to be between \$7 and \$10 billion, and the problem affects nearly every state.² The United Nations Convention against Transnational Organized Crime (UNTOC) adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) in December 2000 (Organized Crime Convention). It is undeniable that trafficking is a problem for the criminal justice system. Violations of criminal and immigration laws threaten the sovereignty of states because the trafficking organizations use violence and corruption to further their business and it threatens the rule of law and the political foundation of States.³

Traditionally, countries have responded to trafficking by tightening controls on crime and immigration in an effort to bring traffickers to justice and stem the flow of trafficked people.⁴ Since the Trafficking Protocol is primarily an instrument meant to promote efficient suppression and prevention, it aims to bolster this response from the criminal justice system. In contrast to other transnational crimes, trafficking is uniquely pervasive and destructive. It is now widely acknowledged that trafficking is a *Delicta Juris Gentium*, or a crime of concern to the international community at large.⁵

Some studies have claimed that human trafficking can be considered a crime against humanity by the international community and is thus classified as such.⁶ The Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) ruled that human

¹ Mark Heinrich, 'Many countries ignore human trafficking', *Reuters*, 13 February 2009, available at: <https://www.reuters.com/article/idINIndia-37993120090213> (accessed on 5 November 2022).

² Tom Obokata, 'Trafficking of Human Beings as a Crime against Humanity: Some Implications for the International Legal System,' (2005) 54 *The International and Comparative Law Quarterly* 445, 447.

³ Laura Thompson, 'Protection of Migrants' Rights and State Sovereignty', (2013) 3 *Migration*, available at: <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty> (accessed on 13 December 2022).

⁴ United Nations Office on Drugs and Crime, 'Human Trafficking and Migrant Smuggling,' available at: <https://www.unodc.org/unodc/human-trafficking/> (25 November 2022).

⁵ Obokata (n 2).

⁶ Autumn D. Tolar, 'Human Trafficking Analyzed as a Crime Against Humanity', *Sciendo*, 2020, available at: https://www.researchgate.net/publication/350690108_Human_Trafficking_Analyzed_as_a_Crime_Against_Humanity (accessed on 5 November 2022)

trafficking qualified as a crime against humanity in the case of *Kunarac*.⁷ In addition, it is arguable that according to the International Criminal Court's Rome Statute (Rome Statute), trafficking in persons, especially women and children, constitutes enslavement because it involves the exercise of any or all of the powers attaching to the right of ownership over a person.⁸

This article aims to elaborate on the aforesaid notion and provide evidence that human trafficking should be categorized as crimes against humanity. Thus, the main question of this thesis paper is –

1. Whether human trafficking is a crime against humanity?
2. Whether categorizing human trafficking as crime against humanity can be useful to prevent human trafficking in Bangladesh?

To address this question, the first step involves looking at how the Trafficking Protocol characterizes trafficking. To determine whether or not trafficking can be considered a crime against humanity, this paper then examines the Rome Statute's definition of a crime against humanity and the jurisprudence established by some international tribunals. When this paper concludes, it discusses some of the effects such an interpretation would have on the international legal system. It can be said that the Rome Statute recognizes trafficking as a crime against humanity. Furthermore, it is argued that such a classification may be useful as it can add pressure on States and the international community to suppress and prevent this rapidly expanding phenomenon, complementing global action against the practice.

The research methodology of this paper is qualitative in nature. I have collected qualitative data to analyse human trafficking situation in Bangladesh and to establish how it constitutes a crime against humanity. As a method of analysis, I have used 'content analyses' in my paper.

2. Definition of Human Trafficking

Human trafficking is a widespread practice in today's modern society. It refers to the illegal transport or confinement of people for the purpose of exploiting them for their labor or

⁷ *The Prosecutor v. Kunarac, Kovac and Vukovic*, [2003] (ICTY-96-23 & 23/1).

⁸ Rome Statute 1998, art 7(2)(c)

service. Increasing demand for trafficked people is a major contributor to the escalation of the human trafficking crisis. Human trafficking does not discriminate on the basis of race, color, national origin, disability, religion, age, gender, sexual orientation, gender identity, wealth, education or citizenship status.⁹ In spite of this, it is estimated that more than 8,00,000 people are trafficked annually across the globe and the vast majority of these victims are women and children.

Human Trafficking is said to be a crime against humanity, which describes the recruitment, transportation and transfer, harboring or receiving of a person through a use of force, coercion or other means for the purpose of exploiting them.¹⁰ In other words, this is a form of human trafficking. Many different factors, including but not limited, to economic hardship, political unrest, racism and legacy of colonialism, conflict, sexism, substance abuse, mental illness and more; all can play a role in the emergence of human trafficking. Each year, human traffickers capture thousands of men, women, and children and these occurrences could take place anywhere, including the individuals home countries.

There have been several international measures taken in response to human trafficking; but it was the Trafficking Protocol that first adopted a legal definition of the phenomenon. The term 'Trafficking in Persons' refers to the "process of obtaining the consent of a person in control of another person in order to exploit them through means such as recruitment, transportation, transfer, harboring, or receipt by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, or giving or receiving payments or benefits."¹¹ Article 3 of the Trafficking Protocol describes this definition of "Trafficking in Persons". This definition has nothing to do with the act of "smuggling" people, which is defined in Article 3 as "the procurement, in order to obtain directly or indirectly, a financial or other material benefit, of illegal entry of a person into a State Party." Prostitution and other sexual exploitation forced labor or services, slavery and other forms of servitude , and the removal of body parts are all forms of human trafficking. The definition of the phenomenon of trafficking in persons that is accommodated

⁹ U.S Department of Justice, 'What is Human Trafficking?', available at: <https://www.justice.gov/humantrafficking/what-is-human-trafficking> (accessed on 25 November 2022).

¹⁰ United Nations Office on Drugs and Crimes (n 4).

¹¹ Ibid.

in Article 3 of the “Trafficking in Persons” Protocol is meant to provide uniformity and consensus all over the world regarding the occurrence of trafficking in persons.

As a global pandemic, the trafficking of human beings is devastating communities at every stage of development. Sexual exploitation forced labor and organ harvesting are the three types of human trafficking that have been officially recognized by the United Nations (UN). These categories can be further broken down into those that exploit people for sexual or economic gain. Most victims do not have passports or visas, so smugglers or traffickers give those victims fake documents and tell them how to avoid getting caught at the border. Some victims choose to voluntarily leave their country in search of stable employment and better opportunities for themselves and their families. The traffickers bribe some victims to cross state lines illegally. Some victims decide to voluntarily leave their country in search of better employment opportunities or humanitarian aid.

Transporters use land, air, and water transportation to keep the migration process running smoothly. However, the vast majority of victims are unaware that they are being recruited for human trafficking. Physical and emotional abuse and threats, social and economic abuse, and isolation from friends and family are some of the most common forms of control used by traffickers. They promise to meet all of the target's needs in an effort to gain power over them and they use those assurances to manipulate the target. The victims of human trafficking are typically women and children who are sold into servitude, sexual exploitation or prostitution. Human traffickers may approach their victims in a number of ways, including by pretending to be a potential boyfriend or close friend, making contact with them through social media such as posting advertisements for jobs and opportunities in the newspaper or online or even by threatening or kidnapping them.

Those who involved in trafficking can more easily take advantage of children who have been abandoned by their parents. Organ and body part trafficking are another type of human trafficking that are on the rise. Organ or body part trafficking occurs when an unwilling victim is used to satisfy the demand of a wealthy or powerful third party. This occurs whether or not the victim of human trafficking dies as a result of organ harvesting for the purpose of selling them to a wealthy or influential third party.

The victim of human trafficking can be anyone. One of the most hilarious crimes that can be committed anywhere; human trafficking affects people all over the world. Millions of

people's lives are negatively impacted by it and their dignity is taken away. Every day, traffickers use deception to lure men, women, and children from all over the world into situations where they can be exploited.¹² Because it involves crossing international borders and gaining entry to a country without proper documentation, it is considered a violation of international law, as well as domestic criminal law and immigration law.

3. Definition of Crime against Humanity

Now that the term of human trafficking as it pertains to international law has been clarified, it is imperative to look at the notion of a crime against humanity. No matter a person's nationality, crimes against humanity entail specific offenses carried out in the course of a massive assault that primarily targets civilians. These offenses include murder, torture, sexual assault, population transfers carried out forcibly, enslavement, persecution, forced disappearances, etc.¹³ A crime against humanity is just an extremely heinous act of inhumanity. Article 7 of the Rome Statute of the International Criminal Court (ICC) specifies crimes against humanity and the intents of the attackers. This crime is an offense under International Criminal Law. The crimes stated above, according to the ICC, are “Committed as part of a widespread or systematic attack directed against any civilian population”. The idea of crimes against humanity, whether viewed as a moral category or as a legal infraction, consolidates the idea that those who either create or implement state policy could be made liable by the international community.¹⁴

According to Article 7(1) of the Rome Statute, which defines “crime and lists elements of crime, there must be a physical element, which can be murder, extortion, enslavement, deportation or forced population transfer, imprisonment, torture, sexual violence, persecution, forced disappearance of individuals, and other inhuman acts that cause great suffering or serious harm to the body or to mental or physical health; there must also be a conscientious element”. In addition, crimes against humanity must be perpetrated in

¹² Ghada Fathi Waly, ‘Human Trafficking and Migrant Smuggling’, United Nations, available at: <https://www.unodc.org/unodc/human-trafficking/> (accessed on 25 November 2022).

¹³ United Nations Office on Genocide Prevention and The Responsibility to Protect, ‘Crime against Humanity’, available at: <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml> (accessed on 25 November 2022).

¹⁴ Richard Vernon, ‘What is Crime against Humanity’, 10 *Willy Online Library*, 12 February 2003, available at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-9760.00151> (accessed on 25 November 2022).

pursuance of a State or organizational policy to launch an assault, according to Article 7(2)(a) of the Rome Statute. Targeting a particular group is not necessary for crimes against humanity. Furthermore, any civilians, regardless of allegiance or identification, may be the target of an assault.¹⁵

Criminal offenses known as crimes against humanity target numerous individuals based on their ethnicity, religion, or other beliefs.¹⁶ It has been observed everywhere. Racism, bigotry, prejudice, and intolerance are the precursors of crimes against humanity.¹⁷ Through their causes, illustrations, and survivors, these crimes may be described.

State and non-state actors, including armed insurgent groups, have allegedly committed crimes against humanity against civilian populations in recent years in many parts of the world.¹⁸ To name just a few countries where these atrocities have traumatized civilians: Myanmar, Syria, China, Israel and the Occupied Palestinian Territory, and the Central African Republic, contrary to genocide, war crimes, torture, and enforced disappearances, crimes against humanity can be committed in peacetime, and international humanitarian law and the laws of war do not sufficiently prohibit such crimes.¹⁹

There are many areas where a state falls short when it comes to handling circumstances or issues brought on by crimes against humanity. With the intention of preventing such crimes, state authorities have initiated several treaties, but they are still insufficient.²⁰ Because there isn't a treaty specifically addressing crimes against humanity, the requirements of the treaty might not be monitored and enforced by a specialized group of specialists. Key components of each crime against humanity might be developed and

¹⁵ United Nations Office on Genocide Prevention and the Responsibility to Protect (n 13).

¹⁶ Ibid.

¹⁷ Marija Pejčinović Burić, 'Manual for Human Rights Education with Young People', *Compass*, 2002, available at: <https://www.coe.int/en/web/compass/discrimination-and-intolerance> (accessed on 25 November 2022)

¹⁸ UN General Assembly Legal Committee, 'Research & Advocacy on Human Rights', *Human Rights Watch*, 6 October 2022, available at: <https://www.hrw.org/news/2022/10/06/qa-towards-crimes-against-humanity-treaty> (accessed on 25 November 2022).

¹⁹ Ibid.

²⁰ The Reparations Agreement between Israel and the Federal Republic of Germany, 27 March 1953, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=en (accessed on 25 November 2022).

explained by a treaty body in terms of how the law interprets them. The prosecution of some of these offences may be made more challenging by the absence of an explanation from a reputable organization.²¹

Furthermore, these instruments provide a means of bringing cases and enforcing violations of state accountability at the International Court of Justice when nations violate their commitments under international treaties, such as those forbidding genocide, torture, and other heinous actions.²² For the Rome Statute to genuinely be global, all UN Member States need to ratify it. While the Rome Statute gives a brief description of crimes against humanity, it does not address more extensive duties on the part of states to prevent and prosecute these offenses. States are required by the Rome Statute to bring legal action against certain crimes in their domestic courts in order to avoid having the ICC look into and prosecute them.

Irrespective of whether or not they ratified the Rome Statute, states parties to a Crime against Humanity treaty have a binding legal obligation to include these crimes in their domestic laws for national prosecution as well as to work with other treaty states parties in looking into and prosecuting suspects. Additionally, a convention on crimes against humanity would provide national authorities additional options to utilize their national courts to prosecute suspects fairly. However, in accordance with the terms of the treaty, there would be a duty to extradite suspects to a state that would perform an independent and impartial inquiry and trial if such national processes in the territorial state are not feasible or do not occur.²³

While the Rome Statute calls for collaboration between state parties to the Rome Statute and the ICC, it does not call for interstate cooperation in the trial of crimes against humanity. As a result, a treaty on crimes against humanity would introduce a new

²¹ Ibid

²² United Nations Human Rights Office, 'The Core International Human Rights Instruments and their Monitoring Bodies', *OHCHR*, available at: <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies> (accessed on 30 December 2022).

²³ Ibid.

responsibility of "horizontal" collaboration between states parties, extending the "vertical" cooperation mandated under the Rome Statute between the court and a state party.²⁴

4. Human Trafficking as a Crime against Humanity

After demonstrating in the previous chapter that the elements of human trafficking are present in the activities listed in Article 7, it is important to further evaluate what constitutes a crime against humanity. An examination of the pre-existing jurisprudence developed by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are prompted by the paucity of jurisprudence established by the ICC (ICTR). It is feasible to assert that human trafficking might be considered a crime against humanity by applying their (ICC) interpretations to Article 7 of the Rome Statute.

Before an act is deemed to constitute a crime against humanity, a number of essential criteria must be met. An "attack against civilian populations", first and foremost, has to be "widespread or systematic" in nature. "Any abuse of the civilian population" is considered an assault.²⁵ The Rome Statute stipulates that it must entail "the various commissions of actions alluded to in paragraph 1 [of what??]".²⁶ The large-scale character of the crime with a "multiplicity" of victims is what is meant by the term "widespread," according to one interpretation.²⁷ Therefore singular acts performed by offenders cannot typically be regarded as such.²⁸ Additionally, whether a crime is committed by "the cumulative effect of a succession of cruel actions or the sole effect of an inhumane act of extreme scale," it may be considered widespread.²⁹ 'Systematic' conduct requires "the organized nature of the acts of violence."³⁰

²⁴ Ibid.

²⁵ *Prosecutor v. Milorad Krnojelac*, [2007] (ICTY-97-25).

²⁶ Rome Statute 1998, art 7(2)(a).

²⁷ *The Prosecutor v. Duško Tadić*, [1992] (ICTY-IT-94-1-A).

²⁸ The United Nation Office of Legal Affairs, 'Report of the International Law Commission on the work of its forty-eighth session', *Legal.un.org*, 6 May-26 July 1996, available at:https://legal.un.org/ilc/documentation/english/reports/a_51_10.pdf (accessed on 25 November 2022).

²⁹ *The Prosecutor v. Blaskić*, (ICTY-IT-95-14).

³⁰ Obokata (n 2).

The term "with the knowledge of the assault" is another crucial one. This implies that a crime against humanity must be proven to have *mens rea*, or criminal intent. On this issue, the ICTY ruled that the accused must have known:

That there is an attack on the civilian population and that his acts comprise part of that attack, or at least that he took the risk that his acts were part of the attack and must have had the intent to commit the underlying offence or offences with which he is charged.³¹

However, this does not imply that the accused must be familiar with the specifics of the attack.³² It should be highlighted that, unlike genocide, which necessitates the deliberate desire to exterminate a group on the basis of its nationality, ethnicity, race, or religion, crime against humanity does not necessitate the intentional intent to discriminate. Furthermore, while every offender must have the intention to commit a crime, there are several reasons why they could carry out the deed. In the past, it has been argued that a crime against humanity might be committed for simply personal purposes and that the accused's motivations for taking part in the attack are unimportant.³³

In addition, crimes against humanity must be committed under support of a State or organizational policy, as stated in Article 7(2)(a) of the Rome Statute. The scope of this article's wording allows it to cover actions taken by non-State actors, and this interpretation has received widespread support. Individuals "with de facto power or organized criminal gangs are just as capable as State leaders of adopting a large-scale policy of terror and perpetrating mass acts of violence," according to the International Law Commission, for example.³⁴ Similar to this, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) declared that "the international community, in adopting the Rome Statute, affirmed that the crime against humanity might be committed by non-state actors."³⁵ Such an interpretation is also supported by some national tribunals.³⁶ Although a State or

³¹ *The Prosecutor v. Kunarac, Kovac and Vukovic*, [1992-1993](ICTY- IT-96-23-T & IT-96-23/1-T).

³² *Ibid.*

³³ *Ibid.*

³⁴ Draft code of Crimes Against the Peace and Security of Mankind 1996, part II.

³⁵ *The Prosecutor v. Blaskic*, (ICTY-IT-95-14).

³⁶ *Kadic v. Karadzic*, [1995], [ILM, 34(6)].

group must actively support or incite an assault on a civilian population in order to violate the prohibition against crimes against humanity,³⁷ it is not necessary for it to be explicitly or plainly expressed.³⁸ It could be sufficient to demonstrate the existence of a given act's broad and systematic character in and of itself to establish the existence of a policy.³⁹

It is reasonable to claim that after considering the afore-mentioned factors, human trafficking can be considered to a crime against humanity. It is pervasive, as was already said that at least 800,000 individuals are trafficked annually, and almost every State is touched. Particularly when organized criminal gangs are involved, the conduct is also systematic.⁴⁰ Additionally, the Trafficking Protocol's definition of trafficking implies that the perpetrators should be aware of the attack on civilian populations. As was already said, a crime against humanity might be committed for simply selfish reasons. As a result, trafficking, which is done to get money or other valuables, might also be viewed as such. Additionally, the phrase "organizational policy" may be deduced from the behavior promoted by groups like organized criminal organizations. It should be emphasized, however, that not all forms of trafficking constitute crimes against humanity; for starters, evidence suggests that trafficking may not constitute slavery, forced labor, or other cruel acts as defined by Article 7 of the Rome Statute,⁴¹ and they might not be as coordinated in their actions as, say, organized criminal organizations.

³⁷ Steven R. Ratner, Jason S. Abrams, James Bischoff, 'Accountability for Human Rights Atrocities in International Law Beyond the Nuremberg Legacy', *The Inter-American Court of Human Rights*, 1997, available at: <https://www.corteidh.or.cr/tablas/26121.pdf> (accessed on 12 December 2022).

³⁸ *The Prosecutor v. Blaskic*, (ICTY-IT-95-14).

³⁹ *The Prosecutor v. Kunarac, Kovac and Vukovic*, [1992-1993](ICTY- IT-96-23-T & IT-96-23/1-T).

⁴⁰ Andreas Schloenhardt, 'Organised Crime and The Business of Migrant Trafficking', *Office of Justice Programs*, November 1999, available at: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/organised-crime-and-business-migrant-trafficking-economic-analysis> (accessed on 12 December 2022).

⁴¹ Trafficking in Persons Report, 'Bureau of Public Affairs', U.S. Department of State, 10 June 2003, available at: <https://2001-2009.state.gov/r/pa/ei/rls/21475.htm> (accessed on 12 December 2022).

5. Contextualizing Human Trafficking in Bangladesh

The act of trafficking happens via several routes, particularly a marine route. People from Bangladesh are trafficked through a variety of channels, including land, air, and water.⁴² In the past eight years, about 2.5 lakh fortune-seekers from Bangladesh have fallen victim to trafficking by the maritime route. An article titled "Slave Trade Booms in Dark Triangle" was co-written by Martin Swapan Pandey, Emran Hossain, and Mohammad Ali Zinnat where seven phases of trafficking by sea were depicted in a drawn image.

The primary maritime route for smuggling Bangladeshis and Rohingyas into Southeast Asian nations is through Cox's Bazar, particularly Teknaf town.⁴³ Each victim of human trafficking must pay a significant amount of money at each stage, which is often between Tk 2,50,000 and Tk 4,50,000.⁴⁴ A fortune-seeker must spend between 25 and 30 days, and occasionally even two months, cruising over the Bay of Bengal aboard a tiny fishing boat. Numerous people perish on board from malnutrition or dehydration, and their remains are dumped into the sea.⁴⁵

According to UNHCR estimates, 750 individuals perished at sea along this route in 2014 alone.⁴⁶ The ships touch down in Thailand and the boat's survivors are being held in a camp in the bush. Between Tk. 2 lakh and Tk. 3.5 lakh were demanded as ransom from the victims.⁴⁷ If the arrested individuals would not pay the demanded ransom, they were not

⁴² United Nations Office on Drugs and Crime, 'TRAFFICKING IN PERSONS IN BANGLADESH', *RESPECT International*, available at: <https://respect.international/wp-content/uploads/2022/11/First-National-Study-on-Trafficking-in-Persons-in-Bangladesh.pdf> (accessed on 12 December 2022).

⁴³ Mohammad Jamil Khan, 'Rohingya man narrates 16 days' ordeal on route of trafficking', *The Daily Star*, 13 October 2022, available at: <https://www.thedailystar.net/rohingya-influx/news/17-days-ordeal-route-trafficking-3141201?amp> (accessed on 13 December 2022).

⁴⁴ Mark Samrat, 'Human Trafficking and Exploitation of Women and Children in Bangladesh', *Academia.edu*, 2020, available at: https://www.academia.edu/44770648/Human_Trafficking_and_Exploitation_of_Women_and_Children_in_Bangladesh (accessed on 12 December 2022).

⁴⁵ KIM MURPHY, 'Smuggling of Chinese Ends in a Box of Death', *Los Angeles Times*, 12 January 2002, available at: <https://www.latimes.com/archives/la-xpm-2000-jan-12-mn-53272-story.html> (accessed on 13 December 2022).

⁴⁶ The UN Refugee Agency, 'Refugee Malaysia: Home', *Refugee Malaysia*, July 2020, available at: <https://refugeemalaysia.org/> (accessed on 12 December 2022).

⁴⁷ Ibid.

transported to their intended country, particularly Malaysia.⁴⁸ Sometimes, anyone who refuses to pay the ransom is either murdered by the traffickers or sold into slavery. The deceased bodies are either buried in Thai Jungle or thrown into the ocean.⁴⁹ On May 2, 2015, 26 remains were discovered in Thailand's Songkhla province's Sadao district.⁵⁰ Authorities in Thailand believed they were illegal immigrants from Bangladesh and Myanmar.

After arriving in their intended country, many job seekers are abused by traffickers who steal their passports and visas and force them into forced labor. The victims are helpless to stop the traffickers because they fear being detained as an undocumented immigrant. Some women without fences are transported across the border to Nepal, Pakistan, or India for sexual exploitation.⁵¹ Some women are brought into the Middle East illegally to work as housekeepers, but they are actually victims of prostitution related trafficking.⁵²

Nearly 10 million Bangladeshi migrants are employed globally.⁵³ In the Middle East, 90% of them reside in nations like Saudi Arabia, the United Arab Emirates, Qatar, Syria, Iraq, Iran, Yemen, Lebanon, Oman, Kuwait, Bahrain, and Egypt.⁵⁴ Many victims of human trafficking from Bangladesh, both men and women, are subjected to forced labor or sexual exploitation in those nations. Because several successful Bangladeshi migrants reside there, Bangladeshis are encouraged to migrate there. Girls under the age of 18 and minors from

⁴⁸ United Nations Office on Drugs and Crime, 'Ransomware attacks, a growing threat that needs to be countered', 18 October 2021, available at: <https://www.unodc.org/roseap/en/2021/10/cybercrime-ransomware-attacks/story.html> (accessed on 12 December 2022).

⁴⁹ Amy Sawitta Lefevre, Andrew R.C.Marshall, 'Traffickers use abductions, prison ships to feed Asian slave trade', *Reuters*, 22 October 2014, <https://www.reuters.com/article/uk-thailand-trafficking-specialreport-idUKKCN0IB0A520141022> (accessed on 12 December 2022).

⁵⁰ Ibid.

⁵¹ Human Rights Convention, 'Causes and Consequences of Women Trafficking Bangladesh, *The Lawyers & Jurists*, available at: <https://www.lawyersjurists.com/convention/causes-and-consequences-of-women-trafficking-bangladesh-2/> (accessed on 13 December 2022).

⁵² Jason Burke, 'Poverty-stricken Indian women forced into prostitution in Middle East', *The Guardian*, 7 February 2013, available at : <https://amp.theguardian.com/world/2013/feb/07/indian-women-forced-prostitution-middle-east> (accessed on 25 November 2022).

⁵³ Shoaib Alam, 'What is the future of our migrant workers?', *The Daily Star*, 19 February 2021, available at: <https://www.thedailystar.net/supplements/30th-anniversary-supplements/aspirations-the-next-50-years/news/what-the-future-our-migrant-workers-2047573?amp> (accessed on 25 November 2022).

⁵⁴ The Council of the European Union, 'Migration flows in the Eastern Mediterranean Route', available at: <https://www.consilium.europa.eu/en/policies/eu-migration-policy/eastern-mediterranean-route/> (accessed on 25 December 2022).

Bangladesh are frequently trafficked to India, Pakistan, and other South Asian nations including Malaysia, Indonesia, and Thailand for sex slavery, forced labor, or organ harvesting.⁵⁵

Beginning in January 2011, practically all Middle Eastern nations ceased hiring Bangladeshi laborers.⁵⁶ As a result, individuals fall prey to trafficking after being tricked into traveling to South Eastern nations. According to a UNICEF estimate, 400 women and children in Bangladesh fall prey to human trafficking every month.⁵⁷ According to another research, in the past 10 years alone, 300,000 Bangladeshi women and children between the ages of 12 and 30 have been trafficked to India.⁵⁸

Transnational human trafficking organizations are increasingly preying on women in urban slums and selling them to Indian brothels in exchange for enticing employment opportunities. Over 50 women had been trafficked in the previous six years.⁵⁹ Locals and law enforcement officials said that about 20 of them were taken from a slum in the Mirpur neighborhood of the capital's Kalshi.⁶⁰ Consider the lady who fled the Kalshi slum on April 6 for India.⁶¹ An employment offers from a trafficking network lured the mother of a four-year-old daughter. She received a job offer from traffickers at a beauty salon at a pay of about Tk 35,000 per month. The victimized girl told her mother over the phone that they had betrayed her. They sold her to a horrible region in India rather than providing her with employment, speaking to *The Daily Star*, the mother claimed that as soon as her daughter called her, she

⁵⁵ The United States Department of State, 'Trafficking in Persons Report', 2021, available at: <https://www.state.gov/reports/2021-trafficking-in-persons-report/bangladesh/> (accessed on 12 December 2022).

⁵⁶ Omor Zahid, 'The Ongoing Plight of Migrant Domestic Workers in the Middle East', *Gpilondon*, 10 August 2022, available at: <https://gpilondon.com/publications/the-ongoing-plight-of-migrant-domestic-workers-in-the-middle-east> (accessed on 23 December 2022).

⁵⁷ Tessa Wong, Bui Thu & Lok Lee, 'Cambodia scams: Lured and trapped into slavery in South East Asia', *BBC News*, 21 September 2022, available at: <https://www.bbc.com/news/world-asia-62792875.amp> (accessed on 12 November 2022).

⁵⁸ Md. Ruhul Amin & Md. Rashidul Islam Sheikh, 'Trafficking Women and Children in Bangladesh: A Silent Tsunami of Bangladesh', 2 *Core*, 2011, available at: <https://core.ac.uk/download/pdf/234645455.pdf> (accessed on 12 December 2022).

⁵⁹ (Jamil Khan) (n 43).

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

hurried to Sohag and Kalu, who had sent her abroad, for assistance.⁶² Kalu and Sohag reportedly told the woman that all of the information was false and that her daughter was fine, but the mother claimed that her daughter is now in a brothel in Kishaganj, India, where she is being tortured, made to take drugs, and exposed to bad people on a daily basis.⁶³

When another resident of the slum arrived from India with her daughter, who had been trafficked to the same brothel in the neighboring country, the lady, holding the hand of her four-year-old granddaughter, claimed she had only learned of her daughter's location.⁶⁴ The three fell prey to the same trafficking organization. Once the traffickers were aware of everything, they moved the victim to a New Delhi brothel. The victim was eventually saved by her mother. But in terms of human trafficking, this is a rare and shocking occurrence. There are several instances where victims are pushed into performing illicit labor or are being trafficked without their knowledge.⁶⁵

A 12-year-old girl from Bangladesh was abducted from her family and duped into traveling to India.⁶⁶ She was then sold to a proprietor of a brothel there. She was repeatedly gang-raped and subjected to torture till she ultimately consented to have sex with up to 10 men every day of the year, every day of the week. Many girls like her eventually get a condition that damages their bodies, and some of them pass away from terrible illnesses. Her position serves as a representative illustration of the many women and children who are victims of trafficking.⁶⁷ Human trafficking has emerged as one of Bangladesh's most severe issues due to the use of children and women as slaves and as forced laborers. It is imperative to stop this heinous issue as soon as possible.

⁶² (Jamil Khan) (n 43).

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Jamila Ahmed Chowdhury, 'Human Trafficking - A New Form of Slave Trade in Bangladesh', *Research Gate*, October 2004, available at: <https://www.hurights.or.jp/archives/focus/section2/2004/09/human-trafficking---a-new-form-of-slave-trade-in-bangladesh.html> (accessed on 23 November 2022).

6. Discussion and Policy Implications

6.1 Discussion

In Bangladesh, human trafficking is currently one of the main issues. It is challenging to obtain accurate data and statistics on human trafficking due to the crime's complexity, organization, and clandestine character, as well as the victim's family's willful reluctance and avoidance of reporting incidents of trafficking for a variety of socio-psychological reasons. There is a law against human trafficking in Bangladesh ‘The Prevention and Suppression of Human Trafficking Act, 2012’.

A number of criminal laws that directly relate to human trafficking make up Bangladesh's anti-human trafficking legislative framework, along with a few supplemental legislations that indirectly affect the fight against trafficking. The Penal Code of 1860, the Suppression of Immoral Trafficking Act of 1933, the Children Act of 1974, and the Prevention of Repression against Women and Children Act of 2000 are the statutes that somehow establish penalties for the acts, procedures, and byproducts of human trafficking (as amended in 2003).⁶⁸ On the other hand, complementing legislation like the Child Marriage Restraint Act of 1929, the Dowry Prohibition Act of 1980, the Primary Education Act of 1990, and the Labour Act of 2006 work to build a preventative environment and system against human trafficking.

However, I think that the legal framework for combatting trafficking in Bangladesh has to pay greater attention to the victim's money and property losses as well as their physical, emotional, and psychological harm.⁶⁹ In order to join this worldwide, standardized legal framework and take part in the global battle against trafficking in persons, Bangladesh has ratified the United Nations Convention against Transnational Organized Crime (UNTOC) on 13 July 2011 and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

⁶⁸ United Nations Office on Drugs and Crime, ‘Bangladesh: Interview with Prof. Zakir Hossain on Human Trafficking’, 9 June 2009, available at: https://www.unodc.org/southasia/frontpage/2009/September/bangladesh_interview-with-prof.-zakir-hossain-on-human-trafficking-.html (accessed on 25 December 2022).

⁶⁹ Ibid.

The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, the SAARC Convention on Regional Agreements for the Promotion of Child Welfare in South Asia, the Slavery Convention, the Supplementary Convention on the Slave Trade, to name a few, as well as the International Bill of Rights, have all been incorporated into the Government of Bangladesh's efforts to strengthen its response to Trafficking in Persons Report (TIP). The right-based policy must take the place of the dominant repressive strategy in South Asia's fight against human trafficking. The core of the fight against human trafficking is any legislative framework against it that meets with the minimal requirements for human rights. Good laws must be rigorously enforced in order to be effective. The police, prosecutors, and judges urgently need to be made aware of and given the required training on anti-trafficking laws.

The SAARC Convention on Combating Trafficking needs to be improved in accordance with the UNTOC and its Protocol to Prevent, Suppress and Punish Trafficking in Persons in order to eradicate the evil acts of trafficking from such a region and to initiate more effective regional initiatives to counter trafficking in persons. Trust between the states is necessary for any South Asian cooperation that has any real substance. South Asian nations should not place the responsibility for cross-border trafficking victims on one another. Instead, they ought to have a productive conversation to carry out more efficient victim rescue, prosecution, and repatriation efforts.

Constructive communication between South Asian nations will enable them to view the issue of trafficking from a humanitarian standpoint rather than just from the perspective of their own narrow national interests. This will automatically broaden the scope of cooperation in information exchange and sharing, rescue operations, investigations, prosecutions, repatriation, and other related areas of anti-human trafficking.

The Rome Statute empowers trafficking victims by giving them access to international criminal justice since human trafficking can be considered a crime against humanity and a transnational offense. It should be understood, nevertheless, that the restrictions placed on the International Criminal Court's (ICC) ability to exercise its jurisdiction can impair the organization's function. The ICC has three options for claiming jurisdiction:

First, it may do so when the Prosecutor is given a case by the States.⁷⁰ In this situation, the approval of territorial States or the nation states of the accused is necessary.⁷¹ A case would also be deemed inadmissible by the Court if it was the subject of a national investigation and prosecution.⁷²

Second, if a matter is referred by the United Nations Security Council acting in accordance with Chapter VII of the United Nations Charter, the ICC may exercise its authority.⁷³ This might not occur in the case of human trafficking since the act may not be easily viewed as posing a danger to global peace and security and so necessitating the application of Chapter VII.

Third, the ICC has jurisdiction following an impartial inquiry the Prosecutor has started.⁷⁴ The approval of territorial States or States of the accused's nationality is necessary, much like in situations of referral by States.⁷⁵ These undoubtedly support the argument that it is not always possible to bring trafficking cases before the ICC since the ICC may be constrained by the concept of national sovereignty and state political interests.

However, there is still a chance that the ICC may become involved. For instance, if it can be demonstrated that nations are either unwilling or unable to investigate, prosecute, and punish offenders of a crime listed in the Rome Statute, cases needing the cooperation of a State would be declared admissible.⁷⁶ A Council Decision on the prosecution and investigation of genocide, crimes against humanity, and war crimes was recently approved by the EU.⁷⁷ The introduction of the European Arrest Warrant, which attempts to speed up the transfer of offenders and replace drawn-out extradition processes, is another recent

⁷⁰ The Rome Statute 1998, art 13 and 14.

⁷¹ Ibid, art 12(2).

⁷² Ibid, art 17.

⁷³ Ibid, art 13(b).

⁷⁴ Ibid, art 13(c).

⁷⁵ Ibid, art 12(2).

⁷⁶ Ibid, art 17.

⁷⁷ U.S. Helsinki Commission, 'Genocide, Crimes against Humanity, and War Crimes', available at: <https://www.csce.gov/issue/genocide-crimes-against-humanity-and-war-crimes> (accessed on 23 December 2022).

development.⁷⁸ In order to prevent and combat international crimes, including the crime against humanity, these instruments obligate Member States of the EU to enhance mutual legal assistance. However, non-State actors like traffickers are not subject to direct enforcement of international human rights law.⁷⁹

6.2 Policy Implications

The advantage of classifying trafficking as a crime against humanity rather than a regular crime might have the following policy implications: -

Firstly, it would increase the pressure on States and the international community to support indirect enforcement of the relevant human rights norms, such as the ban on torture and slavery, through criminal proceedings at the national and international levels. In other words, contextualizing human trafficking as a crime against humanity has the potential to spur international action even in case of those human trafficking that have been happening from Bangladesh.

Secondly, at both the national and international levels, the importance of combating human trafficking has been acknowledged, and a significant step in this direction was taken with the adoption of the Trafficking Protocol. It's laid the groundwork for anti-trafficking measures, criminal penalties, and global coordination. The success of the Trafficking Protocol is uncertain because it was just implemented. However, the recognition of trafficking as a crime against humanity has the potential to bolster this instrument by bringing all parties involved to a shared understanding of the gravity of the issues trafficking engenders. There are ancillary thus benefits to recognizing trafficking as a crime against humanity for Bangladesh too as this country is also a party to the Protocol.

Thirdly, despite continued reluctance from some states and the international community, the crimes within the international scope, they should be able to do so if they believe that some actions require uniform prohibition and punishment. Another important aspect of international criminal law is the rights of individuals. The vast majority of

⁷⁸ Dr Wouter van Ballegooij & Ivana Kiendl Krišto, 'European arrest warrant', *Europarl.europa.eu*, February 2020, available at: https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2020/02-19/EPRS_European_Arrest_Warrant_EN.pdf (accessed on 25 December 2022).

⁷⁹ Obokata (n 2).

defendants in cases involving this area of law have been agents of States and/or members of armed forces, according to an examination of the relevant case law. Recognizing trafficking as a crime against humanity reinforces the fact that non-State actors can commit atrocities against civilians and are not immune to international criminal law and justice. This will bring a collective benefit of punishing traffickers of Bangladeshi people as people are trafficked from Bangladesh and there are traffickers in and outside Bangladesh.

Finally, the fact that trafficking has been designated as a crime against humanity demonstrates that it lies at the crossroads of several subfields of international law. This not only shows how intricate the practice is, but also suggests that the Trafficking Protocol and international criminal law cannot provide the full answer. States and the international community need to take an all-encompassing stance that takes into account the many factors that contribute to and are affected by human trafficking. Together, at the national and international levels, with strong cooperation and coordination, we may be able to put an end to trafficking sooner rather than later if we adopt such an approach.

7. Conclusion

Human trafficking is the greatest moral challenge facing the world today, exemplifying the current deplorable state of affairs. Human trafficking involves the abduction, enslavement, and sale of people for the purpose of sexual exploitation or forced labor.⁸⁰ Human trafficking is a problem in the majority of nations of the world because of economic downfall caused by natural and manmade disasters, which in turn threatens the economic and social welfare of every person on earth. The core of human trafficking is the multifaceted exploitation and violation of human rights that occurs during the act itself. Human trafficking is a worldwide crime that affects people of all sexes, ages, and socio-economic statuses.⁸¹ Human trafficking is a heinous crime that undermines fundamental human rights. It can be fought by raising awareness, educating people, and enforcing strict anti-trafficking laws. Faster healing for the victims is possible with a comprehensive set of services for recovery and support. Protecting, rehabilitating, and empowering survivors of human trafficking through comprehensive social,

⁸⁰ The Council of Europe, 'Human Trafficking for the Purpose of Labour Exploitation', *Greta*, 1 January-31 December 2017, available at: <https://rm.coe.int/labour-exploitation-thematic-chapter-7th-general-report-en/16809ce2e7> (accessed on 5 January 2023).

⁸¹ U.S. Department of Justice, 'Human Trafficking | What is Human Trafficking?', available at: <https://www.justice.gov/humantrafficking/what-is-human-trafficking> (accessed on 5 January 2023).

medical, and legal services is extremely helpful, and such efforts must be maintained without interruption. Human trafficking is an issue that requires the community and government to work together to solve.

The United Nations General Assembly adopted the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children in 2000 as an international legal instrument to prevent and combat trafficking, to protect and assist victims, and to promote cooperation among countries that have ratified the Protocol to achieve these goals.⁸² Daily, the number of victims of human trafficking in Bangladesh grows. Authorities in Bangladesh were urged to enhance victim rights and protections in order to combat human trafficking, particularly for the purposes of sexual exploitation and forced labor.⁸³ In my thesis, I attempted to answer questions like, "What is human trafficking?" and "Who are the victims of human trafficking?" and "How can human trafficking crime be reduced?" and "How does human trafficking create massive awareness?" and "Why is it becoming very useful for every person to know the before and after effects of human trafficking?" Crimes against humanity are defined as "specific crimes committed in the context of a large-scale attack targeting civilians of any nationality" and "human trafficking" is a clear example of these crimes because they involve the recruitment, transportation, transfer, harboring, or receiving of a person through the use of force, coercion, or other means, for the purpose of exploiting them.

Finally, labeling human trafficking as a crime against humanity can help in the fight against it through building international cooperation and taking other measures, I suggested in my paper, among the member states of the Rome Statute. In Bangladesh, there is a law that can be called "The Prevention and Suppression of Human Trafficking Act, 2012" that sets out provisions to prevent and suppress human trafficking, protect victims of the crime of human

⁸² United Nations Human Rights, 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime', *OHCHR*, 15 November 2000, available at: https://www.unodc.org/documents/treaties/Special/2000_Protocol_to_Prevent_2C_Suppress_and_Punish_Trafficking_in_Persons.pdf (accessed on 5 January 2023).

⁸³ The Office of the United Nations High Commissioner for Human Rights, 'Bangladesh: Protect victims of trafficking, especially within the country, says UN expert', available at: <https://www.ohchr.org/en/press-releases/2022/11/bangladesh-protect-victims-trafficking-especially-within-country-says-un> (accessed on 5 January 2023).

trafficking and their rights, and guarantee safe migration.⁸⁴ If such measures are taken on a national, regional, and international level with strong cooperation and coordination, the fight against trafficking may be won sooner rather than later, and not just in Bangladesh.

⁸⁴ The Prevention and Suppression of Human Trafficking Act 2012.

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