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## NAVIGATING THE COMPLEXITIES OF INTERNATIONAL LAW: CHALLENGES IN MIGRANT SMUGGLING, HUMAN TRAFFICKING, AND THE RISE OF ARTIFICIAL INTELLIGENCE

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### SUMMARY

This article delves into the evolving challenges in international law concerning migrant smuggling, human trafficking, and the integration of artificial intelligence (AI) into these domains. The global landscape is characterized by legal fragmentation, cross-border jurisdictional conflicts, and insufficient enforcement mechanisms, which collectively hinder effective responses to these transnational crimes. As AI technologies rapidly advance, they introduce both opportunities and risks, further complicating the legal landscape. AI-driven tools, while beneficial in surveillance and border control, raise significant ethical concerns regarding bias, privacy, and the potential for misuse. This article critically examines the intersection of AI with migration and trafficking, emphasizing the urgent need for cohesive international legal frameworks that address these complex issues. By analyzing current legal gaps and proposing pathways for reform—including adapting existing protocols, enhancing human rights protections, and developing practical guides for practitioners—this paper aims to contribute to the ongoing discourse on strengthening international law to protect vulnerable populations and ensure the ethical use of AI in global governance.

**Keywords:** International Law, Migrant Smuggling, Human Trafficking, Artificial Intelligence, Legal Frameworks

### Introduction

The phenomena of migrant smuggling and human trafficking represent some of the most pressing challenges in contemporary international law. The processes of globalization, coupled with rapid technological advancements, have intensified these challenges, making them more complex and difficult to address effectively. According to the United Nations Office on Drugs and Crime (UNODC), approximately 2.5 million

people are trafficked globally at any given time, generating an estimated \$150 billion annually for traffickers [1]. Similarly, the International Labor Organization (ILO) reported that in 2021, forced labor and human trafficking affected over 27.6 million people worldwide, marking a significant increase from previous years [2].

Despite concerted international efforts to combat these crimes, the legal response remains fragmented. This fragmentation leads to inconsistencies in enforcement and protection mechanisms across different jurisdictions. For instance, only 146 countries (85%) explicitly criminalize all aspects of trafficking in persons as listed in the UN Trafficking in Persons Protocol [3, p.51]. Such inconsistencies result in varying definitions, legal thresholds, and penalties, thereby allowing perpetrators to exploit legal loopholes and evade justice [4].

The advent of artificial intelligence introduces both innovative solutions and profound ethical dilemmas into this already complex landscape. AI technologies are increasingly utilized for border control, surveillance, and data analysis. For example, the European Border and Coast Guard Agency (Frontex) has employed AI-driven risk analysis to monitor migration flows and identify potential trafficking cases [7]. While these technologies hold the promise of enhancing the efficiency and effectiveness of migration management, they simultaneously raise significant concerns regarding data privacy, algorithmic bias, and the potential for misuse by authoritarian regimes [8, p.109].

A report by Amnesty International highlighted that facial recognition technologies used in border security have significant misidentification rates, especially for certain ethnic groups, thereby exacerbating vulnerabilities and perpetuating systemic discrimination [9, pp.15-17]. These technologies, while intended to enhance border control, often reinforce biases and discriminatory practices, particularly against marginalized communities [9, p.7; 10]. The use of AI in these contexts raises critical questions about the balance between national security interests and the protection of individual human rights.

As AI becomes more integrated into migration management, there is an urgent need to address the ethical and legal implications of its use. Without proper regulations and safeguards, AI tools could exacerbate existing inequalities, infringe upon fundamental human rights, and undermine the rule of law [11]. This article critically examines the intersection of AI with migration and trafficking, highlighting the urgent need for cohesive international legal frameworks that address these

multifaceted issues. By analyzing current legal gaps and proposing pathways for reform—including adapting existing protocols, enhancing human rights protections, and providing practical guidance for practitioners—we aim to contribute to the ongoing discourse on strengthening international law to protect vulnerable populations and ensure the ethical deployment of AI in global governance.

This study employs a qualitative research methodology grounded in legal analysis and interpretative approaches. It involves a comprehensive examination of international legal instruments, including treaties, conventions, and protocols relevant to migrant smuggling, human trafficking, and AI governance. Scholarly articles, judicial decisions, and reports from reputable organizations such as the United Nations, International Labor Organization, Amnesty International, and the Council of Europe are critically analyzed to identify existing legal frameworks, gaps, and challenges.

The research utilizes comparative legal analysis to highlight differences in national legislations, particularly focusing on the implications of the principle of subsidiarity in the European context. By examining case studies and real-world examples, the study illustrates how legal fragmentation and the lack of consensus on definitions impede effective international cooperation. Furthermore, the research explores the ethical considerations surrounding AI deployment in migration management, drawing upon interdisciplinary perspectives from law, ethics, and technology studies.

### **Lack of Consensus on Definitions**

A fundamental challenge in combating migrant smuggling and human trafficking lies in the lack of consensus on definitions across different jurisdictions. The United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air defines smuggling as the procurement of illegal entry of a person into a State Party of which the person is not a national or permanent resident, for financial or other material benefit [4]. However, national laws often diverge from this definition, either by expanding or narrowing the scope of what constitutes smuggling.

For instance, some countries may criminalize the act of assisting illegal entry regardless of financial gain, thereby conflating humanitarian assistance with smuggling. Others may exclude certain acts from criminalization, creating safe havens for smugglers. This inconsistency allows criminal networks to exploit legal loopholes,

complicating international efforts to combat these crimes.

Similarly, the distinction between migrant smuggling and human trafficking is not always clear-cut. While smuggling involves the consent of the individual being smuggled, trafficking entails exploitation and coercion. However, migrants who consent to being smuggled may become victims of trafficking during the journey, blurring the lines between the two crimes. This overlap poses significant challenges for law enforcement and judicial authorities in identifying victims and prosecuting perpetrators.

The lack of a unified definition hampers cross-border cooperation, as law enforcement agencies may have different thresholds for what constitutes trafficking or smuggling. Mutual legal assistance and extradition become problematic when the underlying offenses are not similarly defined or recognized. Traffickers and smugglers exploit these discrepancies by operating in jurisdictions with weaker legal frameworks or enforcement capacities.

Moreover, criminal organizations are increasingly leveraging advanced technologies to enhance their operations. Encrypted communication platforms, darknet marketplaces, and AI-driven tools facilitate recruitment, coordination, and financial transactions while evading detection. Traffickers may use AI algorithms to identify and target vulnerable individuals on social media platforms, employing sophisticated psychological profiling techniques [5, p.327]. These technological advancements outpace current legal frameworks, which are not sufficiently equipped to address the misuse of AI in these contexts.

The rapid development of AI raises fundamental questions regarding international legal consensus on rights and obligations, both at the level of principle and rule [12, p.14]. The European Convention on Human Rights (ECHR) and the UN Convention on Transnational Organized Crime provide general frameworks for protecting human rights and combating organized crime, but they lack specific provisions addressing AI's role in these areas.

In the digital era, societies face multiple challenges in implementing commitments made through instruments like the ECHR, especially concerning new technologies that are not yet fully regulated by existing international standards. For example, the Convention on Artificial Intelligence has not yet been fully integrated with the standards provided by other international prevention conventions, significantly impacting the definition and protection of fundamental rights such as the right to privacy.

The right to privacy, as enshrined in Article 8 of the ECHR, safeguards personal spaces, encompassing body, home, property, thoughts, feelings, secrets, and identity. It enables individuals to decide which aspects of this space are shared with others and how, when, and to what extent they can access it [13, p.92]. However, AI technologies used in surveillance and data collection can infringe upon this right, particularly when deployed without adequate legal safeguards.

The issue of privacy becomes increasingly complex in this context. What should "private life" mean in an era where personal data can be easily collected, analyzed, and disseminated? Vulnerable groups such as migrants or trafficked persons may have their personal information exposed or misused, leading to further harm and stigmatization. It is essential that limitations on these groups' fundamental rights are carried out in a manner compatible with the legal purposes pursued by national legislation, in accordance with the ECHR.

National authorities have considerable discretion, known as the "margin of appreciation," as the legal purposes provided by the Convention can vary depending on the national context and the specific circumstances of each state [14, p.46]. However, this discretion must be exercised within the boundaries of proportionality and necessity, ensuring that any interference with rights is justified and minimal.

Legislation regarding artificial intelligence in relation to norms on human trafficking or migrant smuggling is still underdeveloped at the international level. The absence of clear jurisprudence on this issue increases uncertainty. There is no judicial consensus on the definition of potential fundamental flaws, such as harmful limitations that could infringe on fundamental rights, including using AI. These gaps can be explained by the dynamic nature of social processes, and the ECHR, being a "living instrument," must be applied considering current challenges [15, para.71].

In the absence of international consensus, states have a duty to seek national solutions, even by adopting urgent measures to ensure the protection of fundamental rights. The principle of "positive obligations" under human rights law requires states not only to refrain from interfering with rights but also to take active steps to protect individuals from violations, including those perpetrated by non-state actors.

Although the international community may later impose the ratification of new commitments, national authorities must act preventively, particularly in situations where international standards remain unclear or insufficiently adapted to current

realities. This proactive approach is essential to close legal gaps that traffickers and smugglers exploit, ensuring that national laws are responsive to emerging challenges posed by technological advancements.

Furthermore, the lack of consensus on definitions extends to the ethical considerations surrounding AI deployment. Ethical frameworks for AI often vary between jurisdictions, with some countries prioritizing innovation and economic growth over human rights protections. This divergence can lead to "ethics dumping," where technologies deemed unacceptable in one country are deployed in others with less stringent regulations, often affecting vulnerable populations.

### **The Role of Subsidiarity in AI Regulation**

The principle of subsidiarity, enshrined in European Union law and recognized by the European Court of Human Rights (ECHR) and the International Court of Justice (ICJ), grants national authorities the initial prerogative to address regional challenges [17; 18]. Subsidiarity posits that matters ought to be handled by the smallest, lowest, or least centralized competent authority, allowing for decisions to be made as closely as possible to the citizens affected.

In the context of AI regulation, subsidiarity allows states to enact laws and policies that govern the use of AI in migration management and trafficking prevention, tailored to their specific legal traditions, societal values, and national interests. This approach is particularly important given the rapid development of technologies like AI, which presents new and complex legal and ethical challenges that often outpace the creation of comprehensive international legal frameworks.

States, through their margin of appreciation under the ECHR, can balance public interests with individual rights, implementing precautionary measures to prevent the misuse of AI technologies in facilitating or combating migrant smuggling and human trafficking. For instance, they may develop AI-driven national strategies aimed at preventing and prosecuting these crimes, such as:

a) Utilizing AI to analyze vast amounts of data from various sources, including social media, travel records, and financial transactions, to identify patterns indicative of trafficking or smuggling networks.

b) Employing machine learning algorithms to predict potential hotspots for trafficking activities, enabling law enforcement to allocate resources more effectively.

c) Implementing facial recognition, iris scanning, and fingerprinting technologies

at border crossings to verify identities and detect individuals with false or stolen documents.

While these technologies offer significant potential benefits, they also raise substantial ethical and legal concerns. The use of AI in surveillance and data collection can infringe upon the right to privacy and may lead to disproportionate targeting of certain groups, violating the principle of non-discrimination.

The flexibility afforded by subsidiarity can, however, lead to legal fragmentation. Different countries may adopt varying standards for AI use, data protection, and human rights safeguards, resulting in inconsistencies that criminal networks can exploit. For example, if Country A implements strict regulations on AI surveillance with robust oversight mechanisms, while neighboring Country B adopts lenient policies with minimal safeguards, traffickers may shift their operations to Country B to avoid detection.

This displacement effect undermines regional efforts to combat trafficking and smuggling, highlighting the limitations of relying solely on national initiatives. Moreover, victims' rights may be unevenly protected across borders. A lack of harmonized laws means that victims in some countries may not receive the same level of assistance, protection, or legal recourse as in others, exacerbating their vulnerabilities and perpetuating injustice.

In the absence of cohesive international AI regulations, traffickers may exploit technological advancements for illicit activities, while states grapple with the ethical use of AI in law enforcement and border control. The lack of standardized guidelines and oversight mechanisms can lead to abuses of power, violations of human rights, and erosion of public trust in governmental institutions.

States can, however, utilize the subsidiarity principle to pioneer best practices and establish legal norms for AI governance in these areas. By enacting national legislation or judicial practices that address the utilization of AI, they contribute to the evolution of international law. This bottom-up approach allows states to influence future international treaties or conventions regarding AI regulation and migration control.

For instance, countries like Germany have initiated national AI strategies that include ethical guidelines, transparency requirements, and data protection measures, setting examples for other nations [19, p.147]. The German government's "Artificial Intelligence Strategy" emphasizes the need for AI development that is trustworthy,

human-centric, and aligned with European values. Such initiatives can pave the way for international consensus and harmonization of laws.

However, scholarly opinions highlight both opportunities and challenges in this approach. Nicolas P. Suzor argues that while states can and should regulate AI technologies, there is a pressing need for transparency and accountability to prevent abuse of power and infringement on individual rights [19, p.147]. He emphasizes the role of public participation and oversight in ensuring that AI governance aligns with democratic principles and human rights standards.

Conversely, Julia Muraszkiwicz cautions that without international coordination, national initiatives may lead to a fragmented approach, potentially undermining the global fight against human trafficking and compromising victims' rights [20]. She underscores the importance of cross-border cooperation, information sharing, and harmonized legal frameworks to effectively address the transnational nature of these crimes.

Furthermore, the European Union Agency for Fundamental Rights notes the necessity for a coordinated international approach to regulate AI effectively in the context of human trafficking, to ensure that fundamental rights are protected across all member states [21]. The agency advocates for comprehensive strategies that integrate legal, technical, and ethical considerations, emphasizing the indivisibility and universality of human rights.

Therefore, while the principle of subsidiarity empowers states to address these challenges proactively, it also leads to a fragmented legal landscape, potentially undermining the uniform protection of fundamental rights. A collaborative approach is essential one that leverages the strengths of national initiatives while striving for international cooperation and standardization.

International bodies such as the United Nations, the Council of Europe, and the European Union have pivotal roles to play in facilitating dialogue, developing guidelines, and fostering consensus among states. The establishment of international AI governance frameworks can provide overarching principles and minimum standards, ensuring that national laws align with global human rights obligations.

Moreover, public-private partnerships involving technology companies, civil society organizations, and academic institutions can contribute to developing ethical AI practices, promoting transparency, and enhancing accountability. Such collaborations

can drive innovation while safeguarding human rights, addressing the complexities of AI deployment in migration management and trafficking prevention.

### **Recommendations**

Considering the complexities and challenges identified in this article, three key academic recommendations emerge to enhance international legal responses to migrant smuggling, human trafficking, and the ethical use of artificial intelligence.

Firstly, there is a critical need to adapt existing international protocols, particularly the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, to address technological advancements exploited by traffickers and smugglers. This adaptation should involve incorporating explicit provisions on the use and misuse of AI and emerging technologies in facilitating these crimes. By updating definitions and establishing new offenses related to technological misuse within international transnational conventions, legal frameworks can remain relevant and effective in the digital age. This will close legal loopholes that criminal networks currently exploit and ensure that international law keeps pace with rapid technological developments.

Secondly, measures must be established to enhance the protection of human rights within the context of AI deployment in migration management. Developing international guidelines that ensure AI technologies comply with human rights law is imperative. This includes safeguarding rights to privacy, non-discrimination, and due process. Implementing oversight mechanisms and accountability structures will prevent abuses of power and infringements on individual rights. States should also ensure that individuals adversely affected by AI technologies have access to effective judicial remedies. By prioritizing the protection of fundamental rights, the international community can balance the benefits of AI technologies with the necessity of upholding human dignity and justice.

Thirdly, it is imperative to elaborate practical guides for practitioners on implementing AI law standards. Such guides would provide law enforcement officers, policymakers, and legal professionals with the necessary tools and knowledge to ethically and effectively utilize AI technologies. They should encompass best practices, ethical considerations, and legal obligations, bridging the gap between theoretical legal frameworks and real-world application. Training programs and capacity-building initiatives should accompany these guides to enhance practitioners' understanding of AI technologies, legal obligations, and ethical considerations. By equipping practitioners

with practical guidance and skills, the deployment of AI technologies can be conducted responsibly, contributing positively to combating migrant smuggling and human trafficking.

### **Conclusion**

The integration of artificial intelligence into migration management and the fight against human trafficking presents both unprecedented opportunities and significant challenges. While AI can enhance surveillance, identification, and predictive capabilities, it also raises profound ethical and legal questions, particularly concerning privacy rights, algorithmic bias, and the potential for misuse.

The lack of cohesive international legal frameworks exacerbates these challenges, leading to fragmented responses that criminal networks can exploit. By adapting existing protocols to address technological advancements, creating measures to protect human rights, and providing practical guidance for practitioners, the international community can strengthen its legal responses.

National efforts, while essential, shall be complemented by collaborative international approaches. Establishing comprehensive regulations, promoting ethical AI practices, and enhancing international cooperation are critical steps towards protecting vulnerable populations and ensuring the ethical use of AI. Ensuring that AI serves as a tool for good rather than perpetuating existing inequities will require cohesive international legal frameworks, built on collaboration between nations, and informed by robust ethical standards. Through collective action and a commitment to upholding human rights, it is possible to harness the potential of AI to enhance migration management and combat trafficking, while safeguarding the dignity and rights of all individuals.

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