

Shadows of Exploitation: Unveiling the Role of Women and Children in the Terrorism-Trafficking Nexus

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I. INTRODUCTION

Human trafficking has increasingly become a tool of war and a lucrative source of funding for terrorist and insurgent groups, posing profound threats to the safety and dignity of vulnerable populations and creating complex challenges for legal systems worldwide. The nexus between human trafficking and terrorist activities, particularly the exploitation of women and children by armed groups as sex slaves and child soldiers, reveals distressing dynamics within the context of armed conflicts. This unsettling trend is compounded by the fact that trafficking is the third most lucrative illegal activity globally, surpassed only by drugs and weapons, with an estimated 27.6 million victims worldwide at any given time.¹ Additionally, terrorism continues to be a serious global threat, with deaths caused by terrorism reaching the highest levels since 2017 and increasing by twenty-two percent from the previous year.² Through a detailed analysis of two case studies—the Islamic State and the Lord’s Resistance Army—this paper aims to unravel the complex dynamics at play in these heinous crimes. Furthermore, it argues that the Rome Statute of the International Criminal Court (ICC) plays a critical role in addressing these issues on a global scale. Given that these crimes are often transnational, perpetrated by powerful networks that exploit weaknesses in domestic legal frameworks, they present substantial prosecutorial challenges at the national level. By incorporating these interlinked crimes within its comprehensive jurisdiction over war crimes and crimes against humanity, the Rome Statute offers a unified, international platform capable of overcoming jurisdictional limitations and disparate domestic approaches that currently impede effective prosecutions, thereby providing a direct and robust mechanism for global accountability and justice.

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1. Press Statement, Anthony J. Blinken, Sec’y of State, National Human Trafficking Prevention Month 2023 (Jan. 19, 2023), <https://perma.cc/UDR7-JS96>.

2. Institute for Economics & Peace, *Global Terrorism Index 2024* (Feb. 2024), <https://perma.cc/M929-8TTF>.

II. NAVIGATING THE QUAGMIRE: LEGAL FRAMEWORKS AND CHALLENGES AT THE INTERSECTION OF HUMAN TRAFFICKING AND TERRORISM

The intersection of human trafficking with global legal standards centers significantly around several pivotal international treaties that collectively aim to combat this grave issue and protect its victims. At the heart of these efforts is the United Nations Convention Against Transnational Organized Crime, adopted in 2000, along with its supplementary protocol, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol).³ The Protocol is particularly significant as it provides the first common international definition of trafficking in persons and sets a structured framework for international cooperation. It defines trafficking broadly, encompassing the recruitment, transportation, harboring, or receipt of persons by means of threat or use of force or other forms of coercion for the purpose of exploitation.⁴ This exploitation includes, at minimum, prostitution, forced labor, slavery, or the removal of organs.⁵ The Protocol also highlights three crucial elements to classify an action as trafficking: the act (what is done), the means (how it is done), and the purpose (why it is done).⁶ In addition to the Palermo Protocol, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), along with their respective protocols, play foundational roles by targeting the specific needs and vulnerabilities of women and children.⁷ Together, these legal instruments—CEDAW and the CRC, along with their respective protocols—create a robust framework for addressing the specific vulnerabilities of women and children in the context of global human trafficking.

In contrast to the well-developed international law regarding human trafficking, the legal landscape for terrorism, despite numerous attempts, lacks a universally accepted definition.⁸ This ambiguity complicates the enforcement and cooperation needed to tackle these interconnected crimes effectively. While various definitions of terrorism reflect its complex and inherently political nature, key themes emerge when analyzing United Nations resolutions and conventions, other legal instruments, and scholarly writings on the subject. These themes include the unlawful use of violence and intimidation, often directed at civilians,

3. OFFICE OF THE SPECIAL REPRESENTATIVE AND COORDINATOR FOR COMBATING TRAFFICKING IN HUMAN BEINGS, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE, TRAFFICKING IN HUMAN BEINGS AND TERRORISM: WHERE AND HOW THEY INTERSECT, at 22 (2021) [hereinafter “OSCE REPORT”].

4. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime art. 3, Nov. 15, 2000 [hereinafter Palermo Protocol].

5. *Id.*

6. U.N. OFFICE ON DRUGS AND CRIME, COUNTERING TRAFFICKING IN PERSONS IN CONFLICT SITUATIONS: THEMATIC PAPER, at vii (2018).

7. JOSHUA NATHAN ASTON, TRAFFICKING OF WOMEN AND CHILDREN: ARTICLE 7 OF THE ROME STATUTE, at 59-60 (Oxford Univ. Press 2016).

8. OSCE REPORT, *supra* note 3, at 22.

to achieve political aims; the coercion or instillation of fear to influence societal or governmental change; and the exploitation of such acts for political leverage or ideological propagation.⁹

Despite the lack of a universal definition, a series of United Nations conventions have sought to specify acts constitutive of terrorism and establish mechanisms for state cooperation. The UN has adopted nineteen universal legal instruments that categorize terrorist activities under four main domains: (i) international civil aviation, which includes offenses against the safety of aviation; (ii) the protection against hostage-taking and safeguarding internationally protected persons; (iii) maritime navigation, covering acts against ships and offshore platforms; and (iv) a “new generation” of counter-terrorism treaties that address modern concerns such as terrorist bombings, terrorism financing, and nuclear terrorism.¹⁰ Further, the United Nations Security Council (UNSC) has issued a series of critical resolutions that shape the global response to terrorism under its Chapter VII authority, all of which are legally binding on UN member states.¹¹ Notably, several directly link terrorism to other forms of criminality, including human trafficking. UNSC Resolution 1373 (2001), enacted after the September 11 attacks, mandates all member states to criminalize and actively suppress terrorism financing and related activities.¹² Resolution 2178 (2014) addresses the issue of foreign terrorist fighters, urging states to prevent their movement and prosecute related activities.¹³ Importantly, Resolution 2331 (2016) explicitly connects human trafficking to terrorism, condemning the trafficking practices of groups like ISIL/Da’esh, and calling for strengthened measures to prevent such abuses.¹⁴ Following this, Resolution 2388 (2017) reinforces the need for comprehensive approaches to combat human trafficking, especially in conflict-affected regions where terrorism is prevalent.¹⁵

Ultimately, while robust international frameworks exist for both human trafficking and terrorism, the absence of a universally accepted definition of terrorism and the intricate links between these crimes significantly hinder enforcement and prosecution efforts. This misalignment is exacerbated by the distinct and sometimes conflicting legal frameworks designed to address each of these grave issues. For instance, while the international community has developed a somewhat cohesive approach to combat trafficking via the Palermo Protocol, prosecutions for trafficking in persons declined globally by twenty-seven percent in 2022.¹⁶ Although the Trafficking in Persons Protocol has widespread ratification and domestic legislation aligns with international definitions, trafficking prosecutions

9. U.N. OFFICE ON DRUGS AND CRIME, TEACHING MODULE SERIES ON COUNTER-TERRORISM, DEFINITIONS AND TERMINOLOGY, <https://perma.cc/NJG3-RUMX>.

10. OSCE REPORT, *supra* note 3, at 26-27.

11. *Id.* at 26-27.

12. S.C. Res. 1373, ¶ 1 (Sep. 28, 2001).

13. S.C. Res. 2178, ¶ 2 (Sep. 24, 2014).

14. S.C. Res. 2331, ¶ 2 (Dec. 20, 2016).

15. S.C. Res. 2388, ¶ 7, 9, 12 (Nov. 21, 2017).

16. UNITED NATIONS OFFICE ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS, at vii (2022).

remain disproportionately low.¹⁷ This is particularly acute in conflict and post-conflict settings where legal and institutional frameworks are weakest, and where terrorism often complicates the security landscape.¹⁸ Terrorism, meanwhile, remains encumbered by a lack of a universally accepted definition and a coherent legal framework, further complicating international cooperation.¹⁹ The result is a legal and operational silo effect, where trafficking and terrorism are addressed in isolation, with little regard to their interconnections and the compounding effects on victims.²⁰

These challenges are compounded by the stark differences in focus between these frameworks. Counter-terrorism efforts are predominantly prosecution-oriented, often underpinned by stringent security laws that prioritize the criminalization of terrorists over the protection of rights.²¹ In contrast, anti-trafficking frameworks typically emphasize victim protection and rehabilitation, underscored by the principle of non-punishment for victims compelled into illegal activities.²² Thus, when trafficking intersects with terrorism, the application of this principle is not straightforward. Victims may be wrongly perceived as accomplices in terrorism, leading to their criminalization and further victimization.²³ Moreover, the focus on security often leads to the stigmatization of certain groups. Labeling communities or ethnic groups as linked to terrorism can exacerbate their vulnerability to trafficking and other forms of exploitation.²⁴

Further complicating the landscape is the enforcement of domestic anti-terrorism laws, which can be overly broad and often wielded against political dissenters, thereby diluting their intended purpose.²⁵ This overreach can obstruct genuine efforts to combat terrorism and trafficking alike, as the politicization of terrorism can lead to miscarriages of justice, where the focus shifts from the actual perpetrators of trafficking to those merely associated with designated terrorist groups. The challenges are not limited to legal definitions and frameworks. On the ground, the implementation of laws suffers from significant gaps, especially in conflict-affected areas where institutional capacities are debilitated. The reliance on victim testimony and cooperation, which is crucial for successful prosecutions in trafficking cases, is hindered by the victims' understandable reluctance to engage with legal systems that they perceive as corrupt or ineffective.²⁶ This is worsened in settings where law enforcement may be complicit in trafficking networks or where the rule of law is weak.

17. THEMATIC PAPER, *supra* note 6, at xv.

18. *Id.*

19. *Id.* at 29-30.

20. *Id.* at 21.

21. OSCE REPORT, *supra* note 3, at 29-30.

22. *Id.* at 24.

23. Siobhan Mullally (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Rep. on Trafficking in Persons*, U.N. Doc. A/76/263 (Aug. 3, 2021).

24. *Id.*

25. OSCE REPORT, *supra* note 3, at 29-31.

26. THEMATIC PAPER, *supra* note 6, at xvi.

Another key challenge is the transnational nature of these crimes, which often extends beyond the capacity of national jurisdictions.²⁷ This global dimension necessitates international cooperation which is often hindered by variations in national legislation, limited resources, and disparities in enforcement capabilities.²⁸ For instance, the domestic legal definitions of terrorism and human trafficking vary widely, as do prosecutorial priorities.²⁹ This complicates cross-border legal actions and mutual assistance. Countries often face difficulties in domesticating international treaties into local law with effective enforcement mechanisms.³⁰ Moreover, the multifaceted nature of trafficking and terrorism requires a multidisciplinary approach that many legal systems struggle to coordinate effectively.³¹ Further complicating matters, domestic legal frameworks often suffer from a lack of resources and legislative support.³² Disparities in legal resources, law enforcement capabilities, and judicial systems across countries can lead to inconsistent application and enforcement of anti-trafficking measures.³³ Another significant challenge is the varying degrees of compliance and the capacity of different states to adhere to the obligations under these treaties.³⁴ While the flexibility built into these agreements respects state sovereignty and allows for tailored approaches to trafficking and terrorism, it can also undermine cohesive international enforcement. Domestic courts are plagued by security concerns and a lack of enthusiastic backing from international donors, which is crucial for building the capacity to handle complex cases that require sophisticated investigative and prosecutorial approaches.³⁵ Moreover, domestic courts frequently lack sufficient doctrinal and procedural guidance on applying international legal standards, which is vital in handling cases that involve elements of international law.³⁶ Finally, the covert and highly organized nature of trafficking networks and terrorist organizations often outstrips the capacity of existing legal frameworks and law enforcement agencies to respond effectively.³⁷

In conclusion, the effectiveness of global measures on trafficking and terrorism relies heavily on their implementation within national jurisdictions, which frequently proves inconsistent due to disparate national legislation and limited resources. The challenges inherent in these variations are magnified when states must tackle these issues together. Navigating this quagmire demands a shift from viewing these issues through isolated lenses to adopting a holistic approach that does not merely juxtapose anti-trafficking with anti-terrorism but rather weaves

27. ASTON, *supra* note 7, at 8, 66-72; 97-98; 103-106.

28. Nadia Alhadi, *Increasing Case Traffic: Expanding the International Criminal Court's Focus on Human Trafficking Cases* 41 MICH. J. INT'L L. 541, 552 (2020).

29. *Id.*

30. ASTON, *supra* note 7, at 97-101.

31. *Id.*

32. *Id.* at 66-72; 97-98; 103-106.

33. *Id.* at 97-101.

34. *Id.*

35. *Id.* at 66-72; 97-98; 103-106.

36. *Id.*

37. *Id.*

these issues into a coherent strategy that prioritizes human rights and victim protection. This is where international responses such as the Rome Statute come into play. The Rome Statute provides a framework for international cooperation and legal proceedings that can help overcome the limitations of national systems, offering a path towards more effective and just handling of cases that involve both trafficking and terrorism. By leveraging international legal instruments and responses, we can better protect the rights of victims and ensure justice in these intricate and challenging cases.

III. UNDERSTANDING HUMAN TRAFFICKING DYNAMICS IN CONFLICT ZONES

Human trafficking in conflict zones is intricately linked to the broader issues of terrorism, insurgency, and state fragility. Remarkably, about a quarter of the world's population now resides in conflict zones, regions that are disproportionately vulnerable to various forms of exploitation, including trafficking.³⁸ This vulnerability is starkly highlighted by the fact that human trafficking has been reported in ninety percent of the 171 wars and conflicts recorded between 1989 and 2016.³⁹ Terrorism, too, thrives in conflict zones. More than ninety-nine percent of all terrorist-related deaths occurred in countries involved in a violent conflict or with high levels of political terror.⁴⁰ These staggering figures are not merely coincidental but are deeply rooted in the unique conditions that conflict zones engender. One of the primary catalysts for human trafficking in support of terrorist activities within conflict zones is the breakdown of state authority and the subsequent deterioration of the rule of law.⁴¹ Failed and weak states, characterized by their inability to project power and plagued by incompetent and corrupt institutions, provide fertile ground for terrorist groups to organize, train, generate revenue, and establish logistics and communications networks.⁴² These states often fail to extend protection, governance, or social services to peripheral and rural communities, leaving them with no alternative but to accept the support of terrorist organizations that operate as quasi-governments.⁴³

Forced displacement, a common consequence of conflict, significantly heightens vulnerabilities to trafficking.⁴⁴ Nearly sixty-three million people are affected by internal displacement due to conflict and persecution.⁴⁵ Displacement erodes crucial family support and community bonds—traditional safeguards against human trafficking.⁴⁶

38. UN Women Executive Director Sima Bahous, *Statement: Crises drive an increase in human trafficking – Here's how we stop it* (July 29, 2022), <https://perma.cc/S3NP-XSYQ>.

39. *Id.*

40. United Nations, *A New Era of Conflict and Violence*, <https://perma.cc/RGE2-LX4Q>.

41. THEMATIC PAPER, *supra* note 6, at 5.

42. James A. Piazza, *Incubators of Terror: Do Failed and Failing States Promote Transnational Terrorism?*, 52 *INTERNATIONAL STUDIES QUARTERLY* 469, 469-88 (Sept. 2008).

43. *Id.*

44. THEMATIC PAPER, *supra* note 6, at 5.

45. INTERNAL DISPLACEMENT MONITORING CENTRE, 2023 *GLOBAL REPORT ON INTERNAL DISPLACEMENT* (2023), <https://perma.cc/P95Y-QTEP>.

46. *Id.*

Furthermore, displaced persons often lack official documents, access to education, and opportunities for self-reliance, making them susceptible to traffickers who deceitfully offer them employment and a semblance of safety.⁴⁷ Traffickers exploit these large-scale movements of people, both internally and across borders, using the chaos as cover for their trafficking operations.⁴⁸ Moreover, the humanitarian crises that arise from conflicts create socio-economic stresses that traffickers exploit to recruit individuals under coercive or deceptive pretenses. The breakdown of conventional economic and social structures forces individuals to adopt survival strategies that may inadvertently increase their risk of exploitation.⁴⁹ In conclusion, conflict zones are often characterized by weakened public institutions, human rights violations, and eroded essential services that create permissive conditions for trafficking. These areas also provide fertile grounds for terrorist groups, which thrive in environments of political instability and underdevelopment.

Armed groups engage in human trafficking for several strategic purposes, each serving to bolster their operations and sustain their presence in conflict zones. These purposes include financing their operations, recruiting and retaining members, spreading terror, and conducting military operations. First, trafficking provides a critical source of funding for armed groups.⁵⁰ By trafficking in humans, these groups generate revenue through the sale of individuals, ransom payments, or even systematic exploitation in slavery-like conditions.⁵¹ This financial aspect is crucial for the sustenance and expansion of their operations, making human trafficking a profitable endeavor that funds further militant activities. Second, groups like the Islamic State (hereinafter “ISIS”) have infamously used the lure of sexual slavery as a propaganda tool to recruit fighters.⁵² The promise of access to “wives” and sex slaves acts as a powerful incentive, particularly for economically marginalized men from socially conservative religious societies.⁵³ These recruits are often drawn by the allure of power, status, and sexual access that are unavailable in their communities.⁵⁴ The strategic use of women’s bodies not only helps in recruiting fighters but also in retaining them.⁵⁵ IS has been reported to pay fighters for each additional sex slave and child born within their controlled territories, intertwining perverse financial incentives with systemic sexual violence.⁵⁶

Third, the use of human trafficking and sexual violence serves as a tactic to terrorize individuals and entire communities.⁵⁷ The fear of being trafficked or knowing

47. *Id.*

48. INTERNAL DISPLACEMENT, *supra* note 45.

49. THEMATIC PAPER, *supra* note 6, at 5.

50. *Id.*

51. *Id.* at 20.

52. *Id.* at 19-20.

53. *Id.*

54. *Id.*

55. Maria Grazia Giammarinaro, Rep. on Trafficking in Persons, Statement on Trafficking in Persons, Especially Women and Children at the 71st Session of the General Assembly (Oct. 28, 2016).

56. Coman Kenny & Nikita Malik, *Trafficking Terror and Sexual Violence: Accountability for Human Trafficking and Sexual and Gender-Based Violence by Terrorist Groups under the Rome Statute*, 52 VAND. L. REV. 43, 48 (2021).

57. THEMATIC PAPER, *supra* note 6, at 19-20.

someone who has been trafficked exerts immense psychological pressure on entire populations.⁵⁸ This state of fear is compounded by the humiliation and social stigmatization of those trafficked, using sexual and gender-based violence (SGBV) as a core tactic of terrorism.⁵⁹ Finally, human trafficking is strategically used to conduct military operations.⁶⁰ The threat and actual execution of abductions and sexual violence can drive the forced displacement of civilians, especially minorities, both internally and across borders.⁶¹ This displacement allows terror groups to clear territory, extend their military control, and create buffer zones free of local resistance.⁶² Additionally, some terror groups have gone as far as using trafficked victims to commit acts of terrorism. For example, abducted Yazidi boys have been indoctrinated, trained, and forced to fight in ISIS offensives, turning victims of trafficking and sexual violence into perpetrators of terrorist acts.⁶³ Human trafficking is thus deeply integrated into the strategy and operations of terrorist organizations, serving to fund militant activities, recruit and retain fighters, instill fear and control populations, and support military objectives, making it a multifaceted and devastating tool of conflict.

IV. SEXUAL SLAVERY BENEATH THE BLACK FLAG: THE ISLAMIC STATE'S THEOLOGY OF RAPE

The intersection of human trafficking and terrorism is nowhere more harrowingly illustrated than under the black flag of ISIS, where the abhorrent practice of sexual slavery has persisted for over a decade. The systematic abduction, rape, and sale of Yazidi women and girls by ISIS, for trivial sums and under coerced conditions of sexual slavery, directly align with the Palermo Protocol's definition of trafficking, involving the use of force, coercion, and deception for the purpose of exploitation. The atrocities committed against young Yazidi girls are emblematic of a terror tactic rooted in a perverse interpretation of theology rather than financial gain.⁶⁴ With daily revenue from oil sales reaching a million dollars, the transactional value of human life at mere pittance underscores the strategic use of human trafficking as a weapon to demoralize those conquered.⁶⁵ This section examines the dire situation of the Yazidi people, particularly women and girls, who were sold, raped, and commoditized by ISIS fighters. It examines the ideological underpinnings, methods of exploitation, and institutional mechanisms that have perpetuated a culture of sanctioned abuse, bringing to light the chilling reality faced by countless victims and the instrumental role sexual slavery plays within the trafficking-terrorism nexus.

58. Kenny and Malik, *supra* note 56, at 51-52.

59. *Id.*

60. *Id.* at 53.

61. *Id.*

62. *Id.*

63. *Id.*

64. Rukmini Callimachi, *ISIS Enshrines a Theology of Rape*, N. Y. TIMES (Aug. 13, 2015).

65. Luay Al-Khatteeb & Eline Gordts, *How ISIS Uses Oil to Fund Terror*, BROOKINGS (Sept. 27, 2014), <https://perma.cc/WGZ8-UEP8>.

ISIS, born from the remnants of al-Qaeda in Iraq, surged to global prominence in 2014 by declaring a caliphate.⁶⁶ At its height, it controlled large swaths of Syria and Iraq, governing nearly eight million people.⁶⁷ It distinguished itself through barbaric tactics and a strict interpretation of Sharia law, under which it justified numerous atrocities.⁶⁸ Beyond its notorious brutality, ISIS's modus operandi involved a systematic and genocidal campaign against the Yazidis, whose ancient polytheistic faith set them apart in Iraq's religious tapestry.⁶⁹ In the aftermath of the Sinjar massacre, ISIS trafficked over 6,400 Yazidi women and children, viewing them as spoils of war and commodities for transactions amongst fighters.⁷⁰ These women and children were enslaved and dispatched across ISIL-controlled prisons, military camps, and fighters' homes, many subjected to repeated rape and forced marriages to ISIS fighters.⁷¹ These actions were not isolated incidents but part of a deliberate strategy to dehumanize and terrorize, with a perverted claim that such acts of rape were forms of worship.⁷² The extent of this atrocity was meticulously documented by journalists and researchers, revealing a disturbing trade of human beings in both physical markets and digital spaces.⁷³ This practice was alarmingly trivialized by ISIS members, as evidenced in the grotesque video footage where fighters jovially discuss the 'distribution day' of enslaved women and girls, reducing them to mere commodities.⁷⁴ Some women were sold for as little as 2 USD.⁷⁵

This strategic terror, designed to destroy communities and religious minorities from within, was theologically framed by ISIS's own publications to provide warped religious validations for these abhorrent acts.⁷⁶ The internal memos and pamphlets like "Questions and Answers on Female Slaves and their Freedom"⁷⁷ and "The Revival of Slavery Before the Hour"⁷⁸ serve as chilling testaments to the calculated intersection of faith and fear in ISIS doctrine. These documents provided religious sanction for the sale, rape, and marriage of captive women and children, suggesting that the sexual subjugation of "infidel" women could bring them closer to Islam.⁷⁹

66. Zachary Laub, *The Islamic State*, COUNCIL ON FOREIGN RELATIONS (Aug. 10, 2016), <https://perma.cc/2XM6-78U9>.

67. BBC, *The rise and fall of the Islamic State group: The long and short story* (Mar. 23, 2019), <https://perma.cc/WWC6-8EWR>.

68. Laub, *supra* note 66.

69. *Id.*

70. *Id.*

71. *Id.*

72. Callimachi, *supra* note 64.

73. Independent International Commission of Inquiry on the Syrian Arab Republic, "They Came to Destroy": ISIS Crimes Against the Yazidis, U.N. Doc. A/HRC/32/CRP.2, at 3 (June 15, 2016).

74. Cathy Otten, *Slaves of Isis: the long walk of the Yazidi women*, GUARDIAN (Jul. 25, 2017), <https://perma.cc/5DDT-3FX5>.

75. Nina Shea, *The Islamic State's Christian and Yazidi Sex Slaves*, HUDSON INSTITUTE (June 31, 2015), <https://perma.cc/8U7F-L3BZ>.

76. Callimachi, *supra* note 64.

77. Greg Botelho, *ISIS: Enslaving, having sex with 'unbelieving' women, girls is OK*, CNN (Dec. 13, 2014), <https://perma.cc/7MDB-Z5VN>.

78. U.N. Human Rights Council, *supra* note 73, at 29.

79. Callimachi, *supra* note 64.

The use of rape as 'ibadah' or worship highlights the distorted interpretation of religious texts, with ISIS fighters justifying their actions as divinely sanctioned, declaring such heinous acts as 'halal' or permissible.⁸⁰ These acts are presented as a twisted form of compensation to fighters, solving the so-called "marriage crisis" by providing them with access to women and girls under the guise of religious sanction.⁸¹

While some countries have prosecuted former ISIS members for their involvement in atrocities against the Yazidi community, these efforts have often been limited and focused more on membership in a terrorist organization than on specific crimes committed.⁸² Courts in Iraq, for instance, have predominantly prosecuted individuals based on their association with ISIS rather than the explicit actions against the Yazidis, with proceedings criticized for their lack of transparency and inclusivity of survivors.⁸³ In Syria, the ongoing conflict and dominance of the Assad regime further complicate any prospects for justice, leaving little likelihood of effective legal redress through local mechanisms.⁸⁴ Internationally, the ICC has yet to initiate prosecutions related to ISIS's crimes against the Yazidis due to jurisdictional constraints and the absence of a UN Security Council referral.⁸⁵ Germany stands out in Europe for actively prosecuting ISIS members under universal jurisdiction principles, focusing on specific atrocities such as the enslavement and abuse of Yazidi women and girls.⁸⁶ These cases emphasize charges of religious and gender-based persecution, acknowledging the targeted violence against the Yazidis.⁸⁷ However, the overall international response lacks a comprehensive framework to address the full scope of ISIS atrocities, underscoring the need for a unified international strategy to ensure justice for the Yazidis, enhance acknowledgment of victim experiences in legal proceedings, and foster a more committed approach to addressing such severe crimes globally.⁸⁸

Ultimately, the deplorable use of sexual slavery by ISIS, masquerading under a facade of religious obligation, represents one of the most sinister facets of the trafficking-terrorism nexus. The systematic targeting and exploitation of the Yazidi women and girls not only serve ISIL's ideological goals but also address logistical needs within the group, offering a grim example of how terrorism can sustain itself through such inhumane practices. As the international community continues to confront ISIS's legacy, the legal discourse must evolve to address the complexity of these crimes, which not only infringe on individual rights but

80. *Id.*

81. Katrina Montgomery, *ISIS Recruits Brides to Solve Middle East 'Marriage Crisis'*, SYRIA DEEPLY (May 8, 2015).

82. Hannah McCarthy, *Is Europe doing enough to prosecute ISIS fighters for Yazidi genocide?* EURO NEWS (Oct. 10, 2021), <https://perma.cc/53MQ-CT5G>.

83. *Id.*

84. *Id.*

85. Joshua Keating, *Why It's So Hard to Prosecute ISIS for War Crimes*, SLATE (Apr. 08, 2015), <https://perma.cc/N6QN-H5WG>.

86. McCarthy, *supra* note 82.

87. *Id.*

88. *Id.*

also aim to decimate entire communities through orchestrated campaigns of sexual violence and slavery.

V. INNOCENCE ENSNARED: THE LORD'S RESISTANCE ARMY'S LEGION OF CHILD SOLDIERS

The tragic saga of the Lord's Resistance Army (LRA) in Central Africa presents another stark example of the complex trafficking-terrorism nexus, with its notorious use of child soldiers as a case study in the confluence of extreme violence and the exploitation of innocence. Since its inception, the LRA has morphed into a relentless machine of terror, devoid of a cogent political agenda, operating under a facade of spiritual warfare while perpetuating some of the most severe human rights violations against the backdrop of Uganda's conflict-ridden northern districts.⁸⁹ Despite the dispersion of its forces following intense military pressure and the ongoing efforts of international justice, the LRA remains a fragmented yet persistent entity. Now operating across remote areas in the Democratic Republic of the Congo, the Central African Republic, and South Sudan, the group has adapted to its diminished stature by becoming more elusive, yet it continues to inflict terror and recruit children into its ranks.⁹⁰

The LRA's systematic abduction and recruitment of children to serve as combatants, laborers, and sex slaves through methods such as coercion, force, and exploitation squarely falls within the definition of trafficking. Founded in 1987 by Joseph Kony, the LRA originally aimed to topple the Ugandan government and institute a regime based on Kony's unique interpretation of the Ten Commandments.⁹¹ Kony's messianic delusions, compounded by brutal militarism, have culminated in a campaign of unspeakable violence that has persisted for decades, primarily targeting the most vulnerable: children.⁹² Although claiming a spiritualist agenda, the group is renowned for its abductions, employing severe violence to instill fear and obedience in its ranks. The LRA's longevity as a terror group has been heavily reliant on the abduction of children—over 30,000 to date—turning them into soldiers, porters, and sex slaves.⁹³ Without material resources or formal salaries, the LRA wielded indoctrination, threats of spiritual punishment, and violence to instill a perverse loyalty in its captives.⁹⁴ This psychological manipulation ensured a tight bond to the group, making desertion not only dangerous but, in the eyes of the indoctrinated, spiritually catastrophic.

89. Phuong Pham, Patrick Vinck, & Eric Stover, *ABDUCTED: THE LORD'S RESISTANCE ARMY AND FORCED CONSCRIPTION IN NORTHERN UGANDA 1* (Berkeley-Tulane Initiative on Vulnerable Populations ed., 2007).

90. Madeline Beard, *The Children of Northern Uganda: The Effects of Civil War*, *GLOBAL MAJORITY E-JOURNAL* 4, 15 (June 2011).

91. The Lord's Resistance Army, *BRITANNICA*, <https://perma.cc/9RY6-8XE2>.

92. Beard, *supra* note 90, at 4.

93. The Lord's Resistance Army, *THE ENOUGH PROJECT*, <https://perma.cc/MZS5-FVHM>.

94. Anthony Vinci, *The Strategic Use of Fear by the Lord's Resistance Army*, 16 *SMALL WARS & INSURGENCIES* 360 (2005).

The journey of these child soldiers is one of forced conscription and unfathomable trauma. Children, some as young as eight, are coerced into committing unspeakable acts.⁹⁵ Boys are typically trained to handle weapons and perform combat roles, participating in raids and ambushes.⁹⁶ Their training is merciless, emphasizing desensitization to violence and obedience to commands under threat of death. Girls, on the other hand, are often subjected to sexual slavery, forced to serve as 'wives' to commanders.⁹⁷ Children describe grueling marches through the bush, carrying heavy loads of looted goods, and enduring harsh weather conditions without adequate food or water.⁹⁸ Failure to keep up or obey orders is met with brutal punishment, often administered by their peers to reinforce solidarity and complicity in violence.⁹⁹

A particularly harrowing aspect of the LRA's method to ensure the allegiance of its child soldiers involves compelling them to commit violent acts against their own communities or even family members.¹⁰⁰ This serves a dual purpose: severing ties with their past and fostering a traumatic bond with the group through shared guilt.¹⁰¹ A stark example involved a young girl forced to kill a fellow captive—a boy she knew from her village.¹⁰² Under the threat of being shot, she, along with other new captives, was coerced into beating him to death with sticks, only to then smear his blood on themselves, symbolizing their full immersion into the group's violent ethos.¹⁰³ Such acts, whether through direct participation or as forced witnesses, ensure that these children, ensnared in the LRA's web of terror, cannot easily contemplate life beyond the group.¹⁰⁴ Their hands, once used for play and learning, now wield weapons or bear the indelible bloodstains of their coerced brutality.

The LRA's brutal legacy has prompted international condemnation and action, including the issuance of the first set of arrest warrants by the International Criminal Court (ICC) for Joseph Kony and his commanders.¹⁰⁵ The case of Dominic Ongwen, a former child soldier turned LRA general who was arrested and tried for war crimes, underscores the complexities of holding such groups accountable. Ongwen's trial at the ICC, which involved the testimony of over 4,000 victims, highlights the dual role many child soldiers occupy as both victims and perpetrators.¹⁰⁶ This legal action reflects the growing recognition of the

95. Rosa Brooks, *The Stories We Must Tell: Ugandan Children and the Atrocities of the Lord's Resistance Army*, 45 AFRICA TODAY 79, 81 (1998).

96. Beard, *supra* note 90, at 11.

97. *Id.* at 11-12.

98. Brooks, *supra* note 95, at 81.

99. *Id.* (Punishments include being beaten, hacked to death, or killed, often carried out by other abducted children under rebel orders.)

100. Vinci, *supra* note 94.

101. *Id.*

102. Brooks, *supra* note 95.

103. *Id.*

104. *Id.*

105. Press Release, ICC, Warrant of Arrest unsealed against five LRA Commanders (Oct. 14, 2005).

106. Human Rights Watch, Q&A: The LRA Commander Dominic Ongwen and the ICC (Jan. 27, 2021), <https://perma.cc/28NR-MDV9>.

need to balance accountability with the rehabilitative needs of child soldiers coerced into atrocities.¹⁰⁷ The Ongwen case also highlights both the challenges and potential of the ICC in dealing with complex issues like the nexus between terrorism and human trafficking. While the proceedings have had their constraints, they have also succeeded in drawing international attention to the serious crimes committed by the LRA, including acts of trafficking. This exposure underscores the ICC's capability to spotlight global concerns, shedding light on the intertwined issues of terrorism and human trafficking, and emphasizing the need for an international response to such violations.

In conclusion, the enduring crisis of the Lord's Resistance Army (LRA) starkly highlights the deeply intertwined issues of child trafficking and terrorism, where brutal exploitation and psychological manipulation converge in one of the most tragic abuses of innocence. The group's persistent use of child soldiers not only perpetuates a cycle of violence but also poses significant challenges for legal systems striving to address the complexities of war crimes involving coerced young perpetrators. Addressing these issues demands a nuanced approach that encompasses both justice for the perpetrators and effective rehabilitation for the victims, ensuring that the international legal responses are as comprehensive as they are compassionate.

VII. GALVANIZING THE ROME STATUTE: THE IMPORTANCE OF INTERNATIONAL ACCOUNTABILITY AT THE TRAFFICKING-TERRORISM NEXUS

A. *Why the ICC?*

As outlined above, current accountability mechanisms for addressing the trafficking-terrorism nexus are markedly ineffective at deterring or punishing perpetrators. Despite the egregious nature and escalating prevalence of these crimes, national efforts often fail to deter or adequately punish the perpetrators of trafficking and terrorism, particularly in cases as severe and complex as those involving ISIS and the LRA. By recognizing the interconnected nature of these crimes within its jurisdiction over war crimes, crimes against humanity, and, in more severe cases, genocide, the Rome Statute offers a robust, unified international platform that can overcome the jurisdictional limitations and disparate approaches that currently undermine effective prosecutions at the national level.

First, the ICC is the sole permanent international court with the capacity to prosecute serious international crimes that transcend national borders.¹⁰⁸ This is particularly pertinent for crimes like human trafficking and terrorism, which often involve complex transnational operations that evade full accountability within national jurisdictions.¹⁰⁹ Second, the ICC's ability to apply uniform legal standards across cases is critical in the fight against trafficking and terrorism, making it uniquely positioned to address the atrocities committed by organizations like

107. Press Release, ICC, Dominic Ongwen sentenced to 25 years of imprisonment (May 6, 2021).

108. *How the ICC Works*, AMERICAN BAR ASSOCIATION, <https://perma.cc/A5EC-LRX3>.

109. ASTON, *supra* note 7, at 176-77.

ISIS and the LRA.¹¹⁰ These crimes of global significance often suffer from disparate legal treatments across different jurisdictions, leading to inconsistencies that can hinder effective prosecution and dilute justice. The ICC's standards provide a consistent framework for prosecution, ensuring that perpetrators are held accountable under a universally recognized set of laws, thus filling the enforcement gaps left by national systems.¹¹¹

Third, the ICC's victim-centered approach sets it apart from many national systems. Victims can actively participate in the proceedings at any stage, voice their concerns, and even claim reparations and individual compensation.¹¹² This approach not only supports the healing and rehabilitation process for victims but also enhances the judicial process by integrating the direct perspectives of those affected.¹¹³ Fourth, the Trafficking Protocol itself allows state parties to address disputes via arbitration or the International Court of Justice but lacks a prosecutorial body to initiate actions against individual perpetrators.¹¹⁴ Enforcement is therefore largely left to state parties to implement in their domestic courts.¹¹⁵ In contrast, the Rome Statute empowers the ICC to initiate investigations and prosecutions, providing a direct response to trafficking crimes that complements domestic efforts.¹¹⁶ This is particularly crucial where states are unable or unwilling to prosecute.¹¹⁷

Fifth, the ICC's track record in handling cases of war crimes and crimes against humanity illustrates its potential to extend these successes to the realms of human trafficking and terrorism. The ICC's conviction of Thomas Lubanga Dyilo marked a significant milestone as the Court's first conviction for the war crimes of enlisting and conscripting children under the age of fifteen to participate in hostilities, highlighting the international community's resolve to combat the exploitation of children in armed conflicts.¹¹⁸ Similarly, the case against Bosco Ntaganda, who was found guilty of eighteen counts of war crimes and crimes against humanity, including the conscription of children and the landmark prosecution of sexual violence committed by his own forces, pushed the legal boundaries on addressing sexual violence in conflict settings.¹¹⁹ Additionally, the Ongwen case underscored the ICC's adeptness in handling intricate victim-perpetrator dynamics, particularly in a situation that intersected issues of human trafficking and terrorism.¹²⁰ This case was notable not only

110. Lisa J. Laplante, *The Domestication of International Criminal Law: A Proposal for Expanding the International Criminal Court's Sphere of Influence*, 43 J. MARSHALL L. REV. 635, 649, 665-66 (2010) (The Rome Statute establishes a framework for consistent international accountability, reflecting the global commitment to addressing atrocities under uniform legal standards).

111. *Id.*

112. THE OFFICE OF PUBLIC COUNSEL FOR VICTIMS, ICC, REPRESENTING VICTIMS BEFORE THE INTERNATIONAL CRIMINAL COURT: A MANUAL FOR LEGAL REPRESENTATIVES 28-29 (5th ed. 2011).

113. *Id.*

114. Alhadi, *supra* note 28, at 553.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Prosecutor v. Dyilo*, ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute (Mar. 14, 2012).

119. *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2666-Red, Judgment (Mar. 30, 2021).

120. *Prosecutor v. Ongwen* ICC-02/04-01/15-2023, Judgment (Dec. 15, 2022).

for its complexity but also for its commitment to empowering victims within the judicial process, allowing over 4,000 individuals to participate and voice their experiences at various stages throughout the proceedings.¹²¹ These precedents not only affirm the ICC's commitment to tackling severe war crimes and crimes against humanity but also suggest a robust framework for addressing the interconnected issues of human trafficking and terrorism.

Finally, the ICC's jurisdiction over war crimes, crimes against humanity, and genocide enables it to address the complex interplay between human trafficking and terrorism, which often overlap in the context of armed conflict and organized crime.¹²² By prosecuting these crimes within a unified legal framework, the ICC can break down the silos that currently segregate efforts against trafficking and terrorism. By leveraging its unique capabilities and jurisdiction, the ICC can offer more than just legal remedies; it can significantly contribute to the development of a cohesive international legal architecture capable of confronting these intertwined global challenges.

B. Legal Framework of the Rome Statute: Key Provisions

The Rome Statute has been pivotal in establishing international legal frameworks to prosecute the gravest of international crimes, including genocide, war crimes, crimes against humanity, and the crime of aggression. This section explores specific provisions within the Rome Statute that might be harnessed to address human trafficking and terrorism, highlighting how these mechanisms can be and have been mobilized to combat these pervasive issues.

Article 6. Article 6 of the Rome Statute defines genocide in terms that explicitly focus on acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.¹²³ This definition provides a critical legal framework for addressing some of the most egregious actions carried out by terrorist organizations, particularly when they target specific groups with the intent of annihilating their identity and existence.¹²⁴ For the prosecution of genocide under Article 6, the challenge lies in establishing the specific intent to destroy the targeted group.¹²⁵ This element requires demonstrating that the trafficking actions by terrorist groups are not merely byproducts of conflict or economic gain but are deliberately aimed at the destruction of particular groups.¹²⁶ For instance, the intentional killing of group members, particularly males, to diminish or halt the group's continuation, coupled with the trafficking of women and children, highlights a clear intent to eradicate the group's social fabric and reproductive

121. *Uganda: ICC conviction of LRA commander provides overdue justice for victims of decades-long campaign of abuses*, AMNESTY INTERNATIONAL (Feb. 4, 2021), <https://perma.cc/WR6P-WQ44>.

122. ASTON, *supra* note 7, at 176-78.

123. UN General Assembly, Rome Statute of the International Criminal Court, art. 6, U.N. Doc. A/Conf. 183/9 (July, 17 1998) (last amended 2024) [hereinafter *Rome Statute*].

124. Kenny, *supra* note 56, at 64-68.

125. Rome Statute art. 6.

126. U.N. Human Rights Council, "They came to destroy": ISIS Crimes Against the Yazidis, U.N. Doc. A/HRC/32/CRP, at 4 (June 15, 2016).

capability.¹²⁷ ISIS's trafficking of Yazidi women, and massacre of Yazidi men, is a poignant example where genocide charges are applicable.¹²⁸ This scenario clearly outlines the intent to annihilate the Yazidi identity and existence—both through direct killing and by breaking the social and cultural continuity of the group through trafficking and enslavement.¹²⁹ These actions were specifically aimed at erasing the social and reproductive structures of the community.

Article 7. One of the most pertinent sections of the Rome Statute in the context of human trafficking and terrorism is Article 7, which defines crimes against humanity as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”¹³⁰ Article 7(1)(a)-(k) sets out the specific acts required to constitute a crime against humanity, crucially including provisions against enslavement, sexual violence, and other inhumane acts.¹³¹ The classification of these activities under Article 7 is significant as it provides the legal basis for prosecution in both peacetime and wartime contexts.¹³² While human trafficking and terrorism have not yet been prosecuted as standalone crimes against humanity under the ICC, the structural framework of Article 7 lays a robust foundation for their potential inclusion. These crimes typically manifest on a scale that qualifies as widespread, impacting vast numbers of individuals across national, and often international, boundaries.¹³³ Moreover, their execution tends to follow a systematic approach, characterized by strategic planning and coordination that fulfills the systematic criterion outlined in international jurisprudence.¹³⁴

To establish a crime against humanity under Article 7, there must be a demonstration of both the scale (widespread) and the nature (systematic) of the activities, coupled with the intent (policy) behind them.¹³⁵ International jurisprudence has clarified that an attack must be directed against a multiplicity of victims to be considered “widespread,” and it must be carried out pursuant to a preconceived policy or plan to be deemed “systematic.”¹³⁶ This dual requirement often converges in practice since actions that affect numerous victims generally involve significant planning and organization.¹³⁷ For terrorist organizations involved in human trafficking, these criteria are often inherently satisfied.¹³⁸ Their operations

127. *Id.* at 21-28.

128. *Id.*

129. *Id.* at 28-31.

130. Rome Statute art. 7(1).

131. *Id.*

132. Alhadi, *supra* note 28, at 554; Ridarson Galingging, *Prosecuting Acts of Terrorism as Crimes Against Humanity Under the ICC Treaty*, 7 *INDON. J. INT'L L.* 746, 757 (2010).

133. Alhadi, *supra* note 28, at 565-68; ASTON, *TRAFFICKING OF WOMEN AND CHILDREN*, at 179-184; Galingging, *supra* note 132, at 756-57.

134. Alhadi, *supra* note 28, at 565-68; ASTON, *supra* note 7, at 179-184; Galingging, *supra* note 132, at 758-60.

135. Rome Statute art. 7.

136. Galingging, *supra* note 132, at 759.

137. *Id.* at 759.

138. Alhadi, *supra* note 28, at 566.

are usually transnational, affecting large numbers of people and executed in a manner that underscores both their scale and their organized nature.¹³⁹

The ICC's definition in Article 7(2) further clarifies that crimes against humanity must be executed "pursuant to or in furtherance of a State or organizational policy to commit such attack."¹⁴⁰ This policy does not need to be formally documented or explicitly stated and can often be inferred from the repetition of similar criminal acts or the improbability of their random occurrence.¹⁴¹ For instance, the systematic abduction, transportation, and enslavement of civilians by terrorist organizations can be inferred from the consistent pattern of behavior aimed at achieving specific strategic goals, such as financing their operations or coercing populations.¹⁴² Another pivotal element is the knowledge requirement of the perpetrator, which involves specific intent relating to the broader context of the attack.¹⁴³ This implies that the perpetrators are aware that their actions are part of an organized and widespread or systematic assault on civilian populations.¹⁴⁴ In cases of trafficking by terrorist organizations, this knowledge can often be inferred from the scale of operations and the roles individuals play within these organizations.¹⁴⁵ Finally, Article 7 explicitly requires that the attack be directed against a civilian population.¹⁴⁶ Given that both human trafficking and acts of terrorism primarily target civilians, meeting this requirement would be straightforward.

Having established that trafficking-terrorism crimes can meet the *chapeau* requirements of Article 7, there are several specific acts codified in Article 7(1) that could apply to this context. First, Article 7(1)(c) explicitly prohibits enslavement.¹⁴⁷ Importantly, the Office of the Prosecutor (OTP) has clarified that the definition of enslavement can be guided by the Palermo Protocol, which broadens the scope to include practices similar to slavery such as forced labor or servitude.¹⁴⁸ Moreover, in the landmark case of *Prosecutor v. Kunarac*, the International Criminal Tribunal for the former Yugoslavia (ICTY) significantly broadened the definition of enslavement to include a range of coercive and exploitative behaviors beyond traditional chattel slavery.¹⁴⁹ The ICTY recognized enslavement as a crime against humanity that could extend to servitude, compulsory labor, and human trafficking.¹⁵⁰ Key indicators of enslavement identified included control over the victim's movement, environment, and labor, as well as the use of force or threats, duration of control, and measures preventing escape.¹⁵¹ Importantly, the ICTY noted that formal ownership of

139. *Id.*

140. Rome Statute, art. 7(2)(a).

141. Alhadi, *supra* note 28, at 563.

142. Galingging, *supra* note 132, at 759.

143. Rome Statute art. 7.

144. Alhadi, *supra* note 28, at 564-65.

145. Galingging, *supra* note 132, at 760-61.

146. Alhadi, *supra* note 28, at 562-64; ASTON, *supra* note 7, at 179-82.

147. Rome Statute art. 7(1)(c).

148. Kenny & Malik, *supra* note 56, at 56.

149. Alhadi, *supra* note 28, at 558-59.

150. *Id.*

151. *Id.*

a victim is not necessary, and victim consent is irrelevant, marking a critical evolution in international criminal law to address modern forms of slavery and human trafficking.¹⁵² The expanded definition of enslavement in the *Kunarac* case underscores how Article 7 of the Rome Statute could be applied to cases of human trafficking within the context of terrorism. By recognizing practices like human trafficking as forms of enslavement, the ICC can effectively prosecute terrorist groups that exploit individuals through control, coercion, and forced labor, aligning with international legal standards to combat these complex crimes.

Article 7(1)(g) of the Rome Statute, moreover, prohibits sexual violence, which is a common and horrific component of human trafficking.¹⁵³ This provision covers rape, sexual slavery, enforced prostitution, forced pregnancy, and other forms of sexual violence, which are often used as tools for controlling trafficked persons.¹⁵⁴ Both human trafficking, particularly for sexual exploitation, and certain acts of terrorism involving sexual violence against civilian populations can be prosecuted under this clause. Finally, Article 7(1)(a) & (k) cover the intentional infliction of death or great suffering, bodily or mental injury to civilians, which are often components of terrorist attacks and, in extreme cases, associated with human trafficking operations.¹⁵⁵

As outlined above, ISIS's systematic abduction, rape, and enslavement of Yazidi women align with Article 7(1)(g), which prohibits sexual violence, and 7(1)(c), which addresses enslavement. These acts were part of a calculated attack intended to terrorize and degrade the Yazidi community, demonstrating both the widespread and systematic nature required for such crimes. Similarly, the LRA's widespread abduction and forced recruitment of children, employed as combatants, laborers, and sex slaves, meet the criteria for enslavement and forced labor as crimes against humanity. The systematic nature of these crimes, driven by a clear policy to destabilize and exert control over populations in Northern Uganda and its neighboring regions, underscores the LRA's qualifying activities under this article. The inherently widespread and systematic nature of these crimes, their execution pursuant to implicit organizational policies, and the severe impact on civilian populations squarely position them within the ambit of crimes against humanity.

Article 8. While the Rome Statute does not explicitly include terrorism as a distinct crime, acts typically associated with terrorism can be prosecuted as war crimes under Article 8 if they target civilians or non-combatants in the context of an armed conflict. Article 8 details war crimes that include severe violations of the laws and customs applicable in both international (IAC) and non-international armed conflicts (NIACs), "in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes."¹⁵⁶ According to the "Tadic test," derived from jurisprudence of the International Criminal Tribunal

152. *Id.*

153. Rome Statute art. 7(1)(g).

154. *Id.*

155. Rome Statute art. 7(1)(a), (k).

156. Rome Statute art. 8.

for the former Yugoslavia (ICTY), a NIAC exists whenever there is protracted armed violence between governmental authorities and organized armed groups, or between such groups within a state.¹⁵⁷ Under this definition, many terrorist operations can be categorized as part of a NIAC, particularly when these groups engage in sustained military engagements against state forces or other armed groups.

Several specific violations listed under Article 8 are particularly relevant to the issue of trafficking by terrorist organizations. For example, Articles 8(2)(b)(xxii) and 8(2)(e)(vi) prohibit sexual violence, which is frequently utilized as a weapon of war by terror groups and during human trafficking operations within conflict zones.¹⁵⁸ Additionally, Article 8(b)(xxvi) prohibits conscripting or enlisting children under fifteen years into armed forces or groups, or using them to participate actively in hostilities, which intersects with trafficking when children are recruited and exploited by these groups.¹⁵⁹ ISIS operated in the context of a non-international armed conflict in Syria and Iraq, marked by protracted violence between state forces and organized armed groups, including ISIS itself. ISIS's systematic deployment of sexual violence, including rape, sexual slavery, and forced marriages, contravenes Article 8(2)(b)(xxii) of the Rome Statute. These actions represent only a fraction of the extensive war crimes committed by ISIS. They were not only part of their warfare tactics but also a deliberate strategy to inflict terror among civilians, contravening established norms of international humanitarian law.

Similarly, the LRA participated in a complex NIAC across Northern Uganda and neighboring regions, engaging in armed clashes with Ugandan national forces and other militia groups. They engaged in many acts that constitute war crimes—namely widespread killings and mutilations of civilians, forced recruitment of women and children who were subjected to sexual slavery, rape, and forced marriages by LRA commanders, and the use of child soldiers in active combat roles. The application of Article 8 of the Rome Statute to human trafficking by terrorist organizations during armed conflicts illuminates how these heinous acts can be prosecuted as war crimes. This not only expands the legal tools available to international jurists but also enhances the mechanisms through which international law can address the complexities and atrocities of modern armed conflicts involving non-state actors.

In conclusion, while the Rome Statute does not explicitly enumerate terrorism or human trafficking as distinct crimes, its provisions cover acts commonly associated with terrorism through the statutes related to genocide, crimes against humanity, and war crimes.

C. Confronting Challenges and Limitations: Procedural Hurdles to Effective Prosecution

Despite the ICC's strong mandate and global recognition, numerous structural and practical challenges limit its effectiveness in prosecuting complex crimes

157. DAVID LUBAN ET AL., INTERNATIONAL AND TRANSNATIONAL CRIMINAL LAW 987 (4th ed. 2023).

158. Rome Statute art. 8(2)(b)(xxii); Rome Statute art. 8(2)(e)(vi).

159. Rome Statute art. 8(b)(xxvi).

such as human trafficking and terrorism. The ICC's ability to prosecute crimes is constrained by its referral mechanisms and strict jurisdictional and admissibility requirements. The ICC can initiate cases through several referral mechanisms: UN Security Council referrals, state party referrals, and *proprio motu* actions by the Prosecutor, each offering different pathways for jurisdiction and imposing specific conditions that significantly influence how cases are brought to the court.¹⁶⁰ As the most expansive referral mechanism, the UN Security Council can refer situations involving non-state parties to the ICC under Chapter VII of the UN Charter.¹⁶¹ This authority allows the ICC to bypass typical jurisdictional constraints related to the territoriality and nationality of the crimes committed.¹⁶² Such referrals have been pivotal in addressing crimes in regions where the ICC would otherwise lack jurisdictional reach, ensuring that even states not party to the Rome Statute are subject to international justice in the face of serious crimes. Additionally, states parties to the Rome Statute can refer situations within their own territories or concerning their nationals to the ICC.¹⁶³ Finally, the ICC Prosecutor can independently initiate investigations into situations in the territories of state parties or involving nationals of state parties, provided that such actions are authorized by the Pre-Trial Chamber (PTC).¹⁶⁴ This ability to act *proprio motu* empowers the Prosecutor to address crimes proactively. Another notable aspect of the ICC's jurisdiction involves non-state parties, which can consent to the ICC's jurisdiction on an ad hoc basis.¹⁶⁵ An example of this is Uganda's referral of the situation concerning the Lord's Resistance Army (LRA), demonstrating how states that have not ratified the Rome Statute can still engage with the ICC to address grave crimes within their territories.¹⁶⁶ Ultimately, this referral framework restricts the ICC's reach, particularly given that nearly forty percent of the world's countries, including some of the most populous and influential like the U.S., Russia, China, and India, are not signatories to the Rome Statute.¹⁶⁷

The ICC also operates within stringent jurisdictional limits that constrain its ability to address many instances of terrorism and human trafficking. It has no jurisdiction over crimes committed before the Rome Statute's enactment in 2002, limiting its reach into historical cases.¹⁶⁸ The crimes in question must also fall within the specific categories defined by the Statute,¹⁶⁹ and they must have occurred on the territory of a state party or have been committed by a national of

160. LUBAN ET AL., *supra* note 157, at 678.

161. *Id.*

162. *Id.* at 685.

163. *Id.*

164. *Id.*, at 682-83.

165. Rome Statute, art 12(3).

166. Press Release, Int'l Crim. Ct., ICC – President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC (Jan. 29, 2004).

167. LUBAN ET AL., *supra* note 157, at 676.

168. *Id.* at 680.

169. *Id.* at 681.

a state party unless an exception applies.¹⁷⁰ Moreover, the admissibility of cases before the International Criminal Court (ICC) hinges on two key principles: complementarity and gravity.¹⁷¹ Complementarity serves as a cornerstone of the ICC's jurisdiction, reflecting the court's supplementary role in the international justice system.¹⁷² It dictates that the ICC will only exercise its jurisdiction when national courts are incapable of carrying out proceedings or when they fail to act.¹⁷³ This could occur due to a lack of will or resources or because national proceedings are not being conducted genuinely — for example, if they are marred by undue delay or are intended to shield individuals from criminal responsibility.¹⁷⁴ In the context of failed states, where terrorism and trafficking thrive, this principle is particularly pertinent. As discussed previously, failed states lack the ability to exert control and maintain the rule of law. In these states, the justice system is either too weak or too compromised to pursue investigations and prosecutions.¹⁷⁵ By applying the principle of complementarity to these scenarios, the ICC acts as a necessary backstop that can intervene and prosecute these crimes when national systems fail. Additionally, the potential for ICC intervention serves not only as a mechanism of last resort but as a preventive measure.¹⁷⁶ The threat of ICC prosecution might motivate states to address crimes internally to avoid external intervention and maintain sovereignty over their judicial processes.¹⁷⁷

In addition to complementarity, the gravity threshold is a qualitative measure of the ICC's caseload management, ensuring the court's resources are allocated to the most serious crimes of concern to the international community as a whole.¹⁷⁸ Cases that meet the gravity threshold typically involve a large scale of commission or particularly atrocious manifestations of crime, which may include the nature of the crime, the manner of its commission, and the impact on victims and affected communities.¹⁷⁹ This could include the systematic commission of crimes, the employment of particularly heinous means, or the targeting of vulnerable populations.¹⁸⁰ The reliance on state cooperation is another significant barrier.¹⁸¹ The ICC requires the support of national governments to execute arrest warrants and gather evidence, which can be particularly challenging when state interests conflict with the demands of international justice.¹⁸² Additionally, the ICC faces resource constraints that affect its ability to pursue all cases that come

170. *Id.* at 681-82.

171. *Id.* at 683.

172. *Id.* at 683-84.

173. *Id.*

174. *Id.*

175. Daniel Thürer, *The 'Failed State' and International Law*, 81 INT'L REV. OF THE RED CROSS 731, 731-61 (1999), <https://perma.cc/VC7Q-V4L9>.

176. Katharine A. Marshall, *Prevention and Complementarity in the International Criminal Court: A Positive Approach*, 17 HUM. RTS. BRIEF 21, 21-26 (2010).

177. LUBAN ET AL., *supra* note 157, at 683-84.

178. *Id.* at 684-85.

179. *Id.*

180. *Id.*

181. ASTON, *supra* note 7, at 187-88.

182. *Id.*

under its purview, often forcing the Court to prioritize cases based on their severity and the broader impact of the alleged crimes.¹⁸³ Ultimately, these structural and practical limitations often restrict the ICC's effectiveness in achieving its mission of providing justice for the gravest crimes, particularly in regions where jurisdictional reach and international cooperation are most needed.

D. From Priorities to Prosecutions: Creating a Targeted Policy for the Trafficking-Terrorism Nexus

Although the Office of the Prosecutor (OTP) has recognized the critical need to address human trafficking and declared it a priority, the ICC has yet to successfully prosecute any cases specifically related to human trafficking or terrorism.¹⁸⁴ This reality underscores the critical need for the OTP to translate its intentions into a clear and actionable policy that specifically addresses trafficking crimes in the context of terrorism. Given the established success of targeted policies on gender persecution, gender-based crimes, and children, and most recently, slavery crimes, there is a clear precedent for the effectiveness of specialized policies in driving the direction and focus of the court.¹⁸⁵ Consequently, the OTP should develop a dedicated policy on trafficking crimes, particularly in the context of terrorism, to bridge the gap between stated priorities and judicial action.

The success of the OTP's 2014 Policy Paper on Sexual and Gender-Based Violence (SGBV) crimes provides a compelling model for what a trafficking-specific policy could achieve.¹⁸⁶ Under Prosecutor Fatou Bensouda's leadership, substantial progress was made: the OTP initiated thirteen new preliminary examinations, nine involving SGBV crimes, and four brought on the prosecutor's initiative.¹⁸⁷ This proactive approach led to significant advancements, including the conclusion of preliminary examinations in Nigeria and Ukraine, both incorporating SGBV crimes.¹⁸⁸ Furthermore, the OTP opened seven new investigations, six of which involved allegations of SGBV crimes, underscoring a committed focus on these offenses.¹⁸⁹ This period saw SGBV crimes constituting nearly fifty percent of the crimes charged, highlighting a strategic shift in prosecutorial priorities.¹⁹⁰ High-profile convictions, such as those of Bosco Ntaganda and Dominic Ongwen, underscore the policy's effectiveness, with the Ntaganda case marking the first final conviction for SGBV crimes in the Court's history.¹⁹¹

183. *Id.*

184. Julia Crawford, *Could the ICC Address Human Trafficking as an International Crime?* JUST INFO (June 17, 2019), <https://perma.cc/XHD9-6JGF>.

185. Press Statement, ICC, ICC Office of the Prosecutor launches public consultation on Policy on Slavery Crimes (Mar. 19, 2024).

186. Yvonne Dutton & Milena Sterio, *The ICC's 2022 Gender Persecution Policy in Context: An Important Next Step Forward*, JUST SECURITY (June 1, 2023), <https://perma.cc/NKQ4-RZBT>.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

Drawing from this successful template, the development of a trafficking policy should outline clear and measurable objectives similar to those achieved under the SGBV policy. The policy should detail the criteria for identifying trafficking linked to terrorism, delineate investigative strategies, and establish collaborative frameworks with national and international bodies. By doing so, the OTP would not only strengthen its prosecutorial approach but also facilitate a more robust legal response to these intertwined global threats. Metrics of success for the proposed trafficking policy could mirror those of the SGBV policy, with specific targets for preliminary examinations, investigations, and prosecutions related to trafficking crimes, especially those with a nexus to terrorism. The policy would aim to increase the percentage of trafficking cases brought to trial, enhance convictions, and potentially set precedents in international law concerning the complex relationship between human trafficking and terrorist financing or recruitment. As with the Gender Persecution Policy, this framework would solidify the OTP's intentions, help bridge the gap between words and action, and bring justice to victims of human trafficking and terrorism.

VIII. CONCLUSION

In the shadows of the terrorism-trafficking nexus, the grave exploitation of women and children emerges as not only a fundamental human rights issue but also a critical legal challenge with profound implications for international security. This paper has elucidated the complex dynamics at play, where the intersections of human trafficking and terrorism create daunting challenges for both national legal systems and international legal frameworks. While the Rome Statute is not a panacea and the ICC faces significant challenges in prosecuting these cases, its frameworks and mechanisms still offer a cohesive and potent legal mechanism to combat these crimes on a global scale. Success stories, such as the prosecution of past LRA soldiers, demonstrate that overcoming these limitations is possible. As the trafficking of women and children continues to serve as both a strategy and consequence of terrorism, reinforcing and expanding the jurisdiction of international law, particularly through the ICC, becomes imperative. This approach not only promises more consistent prosecution of these crimes but also ensures a humanitarian focus is maintained in the fight against these global scourges.
