Migration is an old phenomenon in human history. It is affected by changes in economic, social, and legal systems due to its direct connection to various political, social, and economic aspects.

The development of Human societies and its political and legal systems which draw the line for freedom of movement and set conditions for new-comers had its clear impact on the development of this phenomenon which is closely connected with notion of sovereignty, It went from a means of earning a living and achieving development to one of the most critical social phenomena that occupies a significant position within the challenges facing the international community.

It is no longer a phenomenon limited to certain states or societies it has become a global phenomenon that all countries suffer from, whether developed countries or developing countries.

Although the phenomenon of irregular migration is an international phenomenon, it has been confronted by different methods that varies from one country to another. the countries I refer to here are states of reception, which represent the destination of the migrant and the transit countries through which the migrants arrive.

it is extremely important to address national and international approaches used in confronting irregular migration as it became one of the most important issues that faces countries which consider irregular migrants as risk and crisis factors and one of the main reasons of causing instability and insecurity and spreading organized crime, drug trafficking and religious and ethnic extremism, the fact that helped justifying the use of harsh countermeasures to confront this phenomenon without giving enough attention or care to Migrants’ rights which eventually weakened their legal status.

The international community has made sincere efforts to combat irregular migration through adopting series international conventions including the United Nations Convention against Transnational Organized Crime and its Protocol against the “Crime of the Smuggling of Migrants by Land, Sea and Air” which paved the way for regional and bilateral agreements made between transit and receiving countries and also between origin and receiving countries that aim to promote international cooperation to eliminate the phenomenon, this cooperation can be easily noticed in the creation of the United Nations Commission on Human Rights to the mandate of the Special Rapporteur on the Human Rights of Migrants, the commission which urged to find ways to protect the rights of migrants, but it worth to be said that achieving both protecting human rights on one hand and the host States’ security seems a difficult task.

The excessive increase in migrants number as a result of successive political crises experienced by some countries led many to call for putting the irregular migrants situation into a clear legal frame through adopting international conventions that
created two types of mechanisms: on one hand mechanisms to confront the phenomenon of migration that focuses on states’ security and on the other mechanisms that creates a balance between state’s security and Human rights.

Nevertheless, these agreements remain of limited importance. A clear example of that is the International Convention on the Protection of the Rights of All Migrant Workers, which was concluded in 1999 and entered into force in 2003, while many countries of origin ratified it, receiving countries did not sign, although receiving countries in Europe, North America and other countries such as Japan, Australia and the Gulf States normally attracts the majority of migrant workers which made the problem of settling their situation and putting into a legal frame continuous, complicated and intricate.

**Definition of irregular migration according to international perspective:**

Before addressing proper means that should be used to confront irregular migration, we should determine its definition according to international statutes, the European Commission defined irregular migration as “any entry by land, sea or air into the territory of a Member State illegally by forged documents or with the assistance of organized crime networks, or by entering the European Space Area in a legal manner through the consent of the authorities to obtain Visa and then stay after the expiration of the specified period or to change the purpose of the visit and residence without the consent of the authorities.”

The Global Commission on International Migration (GCIM) defined it as “passing through a country without the consent of its authorities and without having legal conditions needed to cross the border as a result for not having the necessary legal documentation.”

Article 5 of the International Convention on the Protection of the Rights of All Migrant Workers defined irregular migrants as those who are non-documented or in an irregular situation which leads us to adopt the term irregular migration.

International conventions generally determine four categories of migrants

1. persons who migrate illegally without their status being settled
2. persons who migrate legally and whose term of residence is due
3. persons who are not permitted by their visas to get paid work and end up working illegally
4. persons rejected asylum-seekers who do not comply with the Geneva Convention relating to the status of refugees

The impact of migration From an international perspective led to divide it into two types of migration irregular and legitimate or legal migration in other words regular law-abiding migration, which is the type of migration that happens according to internationally substantive and procedural rules and each country’s legislation requirements, the most important of which are that the migrant should hold a valid legal travel document, not to be legally barred from leaving the country for any reason, to obtain a legitimate authorization of entry to the country he wishes to migrate to, and to reside or terminate his/her stay at this country in accordance with its laws and regulations.

Based on the aforementioned, we conclude that it is the state’s of origin knowledge of the citizen’s movement and his destination and the approval of the receiving country what provides legitimacy to his/her migration.

- **Types of migration:**

  In addition to regular migration, which we determined its terms,
It should be mentioned that irregular migration also has its terms and types, it is divided into two types, the first type happens when a migrant does carry legal travel documents and does not have the legal permission to enter the country of destination or the permission to departure from the State of origin and yet still enters to a state by an unauthorized way, the second type is to travel illegally according to the means previously mentioned but settle the legal status later with the authorities in accordance with the laws of the receiving State.

• Categories of migrants:

By reviewing international conventions that mentioned the legal status of migrants, we clearly don’t find a unified legal system or a comprehensive preventive mechanism that aims to protect migrants, we can only find set of procedures that aim to confront the phenomena and deter who is responsible for it without establishing legal norms that is compatible with different categories of migrants, or unified standards that would help in understanding the phenomenon, and enable national legislation and judicial systems to follow them in order to figure out mechanisms to counter irregular migration.

International conventions generally determine four categories of migrants, persons who migrate illegally without their status being settled, persons who migrate legally and whose term of residence is due, persons who are not permitted by their visas to get paid work and end up working illegally, and finally rejected asylum-seekers who do not comply with the Geneva Convention relating to the status of refugees.

1- International approaches to irregular migration:

The international community sought to put the phenomenon of irregular migration into Legal Framework through recognizing migrants’ human rights and through concluding international conventions, the most significant conventions of which are conventions concluded by the International Labor Organization that sought to protect migrants’ rights, most notably the International Convention No. 97 of 1949, the Convention No. 143 of 1975, the Convention No. 189 concerning Decent Work for Domestic Workers.

The ILO has generally sought to protect migrants’ rights as they are considered to be one of the most vulnerable categories that can be exploited, particularly through adopting the Protocol against the Smuggling of Migrants by Land, Sea and Air, which was endorsed by the United Nations General Assembly resolution 55/25 of 2000, this protecting approach was reinforced through issuing the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime to protect migrants and prevent smuggling them. The protocol considered smuggling migrants an international crime in an attempt to develop a set of guidelines similar to the ones imposed in preventing smuggling operation for organized crime groups, and also to guarantee that migrants will be treated humanely and that states would take the necessary measures and legislation to criminalize the smuggling of migrants.

While these international conventions have granted rights to migrants, they remain unable to fully guarantee their rights, as real and effective mechanisms to remedy and receiving States refuse to guarantee their basic rights.

Today, the Convention on the Protection of All Migrant Workers and Their Families is the most capable of keeping up with irregular migration’s developments, on one hand it promotes the protection of their rights, and on the other hand, it determines the international standards that gives the guarantees needed for irregular migrants, it also differentiate between two main categories, migrants who hold legal documentation that allows them for a limited time residence and those who don’t carry any legal documents at all.

In addition, this Convention promotes cooperation and commitment between origin, transit, and receiving states, pays the respect needed for the migrants’ cultural identity and ensures migrants’ human rights to eliminate any exploitation of migrants that might occur, regardless of whether their residence legal or not in the receiving countries.
In theory, it seems that international conventions have called for framing the phenomenon of irregular migration and controlling through a set of guidelines.

However, paying respect by states parties to these conventions to the guidelines doesn’t always occur due to various reasons that concern the receiving states and their attempts to protect their sovereignty, stability and security, a clear example of that is the migration law issued by Italy in 1998 which is the first of its kind to set a legal system for migrants, it recognizes the procedure of refoulement and organizes detention and accommodation centers for irregular migrants.

This law also determined the duration of detention for migrants which decides their fate. However, this law was not sufficient to deter migrants. One incident occurred in October 2013 concerning the sinking of a ship carrying 300 migrants who could have been assisted by fishing vessels but they didn’t as they were afraid to be punished by Italian law which criminalizes assisting irregular migrants by any means.

Despite the importance of International agreements in confronting irregular migration, they remain merely efforts that do not achieve the objective of effectively confronting this phenomenon and all its aspects or make a balance between human rights needed guarantees and confronting migration, this happens due to the absence of comprehensive strategies and long-term policies by receiving countries and origin countries as international efforts to cope with the phenomenon of migration are only reactions made to certain situations that lacks inclusiveness and to put a legal framework for irregular migration, clear guidelines for proper means to confront this phenomenon should be established and the rights of migrants should be clearly determined and punitive rules should be appropriate and in accord with the characteristics of the case or the situation we are facing.

The basic principles needed for a comprehensive international framework have been addressed in numerous separate international conventions such as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which has not been ratified by many receiving countries, and the United Nations Convention against Transnational Organized Crime 2000 and its two protocols on the prevention of human trafficking and the fight against the smuggling of migrants by land, sea and air which also has been ratified by a few countries.1

Addressing the issue of irregular migration has taken different forms and approaches that varied according to issues and problems raised, but the main forms in which it has been addressed is as a phenomenon that is troubling the international community, as a source of dangers that may threaten the receiving countries and as a situation that deserves further attention and protection when it comes from a fundamentally human rights perspective, that last form is the main reason that not long time ago addressing the issue of migration was mainly linked to the rights of migrant workers and their families and any discrimination that might be experienced by migrant workers in reception countries, the very countries that after the world attracted migrants as Labor force, or in other words, it forced them to leave their origin countries to participate in reconstruction. This approach or point of view which was adopted by many countries in a certain historical era in order to protect migrants’ rights was not pursued later as official policies have changed as the receiving countries now cope with migrants and develop complicated laws and regulations to curb migration, as migration, to them, became illegitimate and applied only on selective basis where the receiving countries seek to attract skillful talented individuals and set limits and obstacles to other large groups that they once before considered them to be a useful mean for business and development, but became later a risk and crime factor that pose a threat to their stability and security.

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1 - The United Nations Convention against Transnational Organized Crime (UNTOC) is a 2000 United Nations-sponsored multilateral treaty against transnational organized crime, and its two protocols the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime is considered to be one of the most important conventions that was concerned with crime and migration, it was adopted by a resolution of the United Nations General Assembly on 2000 and have been opened for signature by December 2002.
In this sense, irregular migration has become a concern for receiving countries, which seek to establish security policies of a discriminatory nature but the international community has adopted a different perspective through concluding several international and regional conventions that aims to curb this phenomenon instead of imposing the needed guarantees to protect migrants, and despite their effort in applying that perspective they has been unable to control this phenomenon, which has been stated as a crime in the penal law of many receiving, transit and origin states.

Due to pressures imposed by receiving countries, especially European countries as they are the main destination for irregular African migrants and migrants’ tragic situation, African countries were forced to take necessary measures to counter irregular migration and conclude several bilateral conventions that included several deterrent and punitive measures that excludes human rights protection, it can be said that these are purely security measures that relates to border detention and the removal of irregular migrants from the territory of the receiving states.

The United Nations has defined irregular migration as “the unformalized entry of an individual from one State to another by land, air or sea ... This entry does not carry any form of permanent or temporary residence permits, nor does it respect the necessary requirements to cross the borders of the State”

From this perspective, there is a clear difference between human trafficking and smuggling as the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Crime, defines the smuggling of migrants according to the following elements: arranging illegitimate entry of a person into a State Party of which that person is not a national or permanent resident.

Smuggling of migrants and human trafficking are both international criminal offenses, therefore, it is necessary to distinguish between both of them to determine and clarify all aspects related to them, while the act of smuggling involves the transfer of individuals from one State to another for profit, human trafficking is criminalized including two additional elements that go beyond the scope of smuggling, it must involve crooked means such as coercion or abduction for the purpose of exploitation regardless of whether or not exploitation has taken place or occurred, it is crucial to differentiate between means used to commit both crimes, in human trafficking cases the means used are usually threats of force, use of force, any form of coercion, abduction, fraud, abuse of power, social abuse or abuse of a vulnerable situation, or through paying an amount of money. As for irregular migration it happens according to the person’s consent where he/she contacts smugglers to help him achieve his objective, In addition to that , the two offenses differ in purpose, human trafficking usually includes sexual exploitation, slavery or sale of organs and similar practices, on the contrary, irregular migration is the crime in which smugglers seek personal benefit that may be financial, of a materialistic nature or otherwise, and any exploitation ends as soon as the migrants reach their destination where they become free.

The two offenses differ in terms of requiring the consent of the victim. In human trafficking, the victim consent is not required, even if they gave their consent at first under any circumstances, such consent is meaningless when we analyze traffickers’ acts that are usually coercive or deceptive, on the other hand, migrants are fully aware of all the circumstances that surrounds smuggling them, which are generally considered offensive and dangerous, yet they agree to being smuggled with their free will.

In this context, the United Nations Office on Drugs and Crime (UNODC), which plays an important role in addressing irregular migration and its consequences, has produced its model Law against the Smuggling of Migrants in response to the request by the General Assembly to promote and assist the efforts of Member States to become party to and implement the United Nations Convention against Transnational Organized Crime and the Protocols thereto, for achieving that article one identified the purposes of this Law which are to prevent and combat the smuggling of migrants; to promote and facilitate national and international cooperation in order to meet these objectives; and

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2 - Legislative guides for the implementation of the United Nations convention against transitional crime and the protocol there to, 2004
to protect the rights of smuggled migrants.

In order to confront irregular migration and its tragic effects, International Organization for Migration (IOM) adopted several mechanisms that aims to improve migrants’ conditions and supporting strategies and policies against the smuggling of migrants as it has negative effects on many countries around the world, through regional and international coordination and cooperation between all relevant authorities and agencies. Border security, in order to control border management systems. ³

**2 - Tunisian legislation Approach for irregular migration:**

National legislation on irregular migration differ from one country to another depending on objectives, policies adopted, political, social and economic situation of these countries.

In this sense, the main purpose of irregular migration law-making for North Africa Maghreb countries was to confront it, criminalize it and penalize who ever commits it or associates in committing it, a clear example of that is Tunisian legislation, specifically Act No. 2004-6 of 3 February 2004 that amends and supplements Law No. 75-40 of 14 May 1975 concerning passports and travel documents, this act stated many penalties that relates to migration and range from a 3-year prison sentence to a 20-year prison sentence without paying adequate attention to the rights or protection of migrants and excluding approaches that adopts theories of “the victim migrant” and adopting instead approaches that are mainly based on deterrence and punishment which are the legal mechanisms that are in line with procedures taken by some European countries, specially, Italy which is one of the countries of reception for Tunisian migrants as the and the most affected European country by this phenomenon, where its southern coasts have become a destination for huge numbers of illegal migrants, all that led Italy to issue a migration law in 1998, which introduced for the first time a legal system for irregular migration that controls entry procedures for the Italian territory and manages renewal of residence permits

3 - See also: Collenthouez, Migration and Human-Security, Paper Submitted to the international Migration Berlin Programme for the Consolations International Migration, Berlin, 12-22 October, 2002.

Despite the negative nature of these measures, they were insufficient to deter this dangerous phenomenon that threatens Italy, especially after the great increase of migrants numbers over time, that paved the way for issuing another migration law in 2002 known as “Law No. 189 or the law of Bossi Fini,” this law included procedures that penalize with imprisonment and expulsion, for example article 13 stated that “a foreigner who was ordered to be expelled but remains on the territory of the state shall be arrested, tried and imprisoned from one to four years”.

Not only did this law included penal sanctions but also regulated procedures for expelling irregular migrants and escorting them to borders as a way of helping migrants, they should also assist him when needed through helping him obtain travel documents and carrying out investigations, and in case of absence of any appropriate means of transport to escort him/her to his country of origin’s borders, authorities shall detain him at temporary accommodation centers from 30 days to 60 days, and at the end of this extended period stated in chapter 14 of the law and if the deportation decision can not be carried out another final decision that states penal consequences for violating it shall be issued to deport the migrant within five days, In addition, Italian law stated a new penalty for migrant who reside without a residence permit regardless of whether their entry was legal or not, as the law considers them to be in an illegal situation to be subject to deportation.

Tunisian legislation was not free from fears related to irregular migration, but the issue was considered to be one of the most...
significant national challenges that needs to be confronted specially through criminalization and imposing various penal sanctions that varies according to the nature of the crime committed, in fact, it is not different from legislation adopted in several other countries, the most important of which is Egypt, where it adopted the same legislative process and relatively different penal sanctions and stipulated 21 penalties for crimes related to irregular migration. The law included in the second chapter “Crimes and Penalties” It included clear definitions for crimes and determined punishments, as article 5 of this Act, states that “The penalty of imprisonment shall befall each person establishing, organizing, or managing an organized criminal group for the purposes of smuggling migrants, or assuming any leading role in such groups, or being a member of such groups or associated thereto” in addition it the law also stated that “The penalty of imprisonment and a fine of no less than fifty thousand pounds and no more two hundred thousand pounds, or a fine equivalent to the achieved profits, whichever is greater, shall befall each person who commits, attempts or mediates in the crime of smuggling migrants. The penalty of aggravated imprisonment and a fine between two hundred thousand pounds and five hundred thousand pounds or a fine equal to the value of the achieved profit, whichever is greater, shall apply in the following cases, If the criminal established, organized, or managed an organized criminal group for the purposes of smuggling migrants, or assumed command therein, or was a member thereof or joined it, If the offence had a transnational character, If the offence was committed by several criminals or by a person carrying a weapon, If the criminal was a public official or assigned to a public service and committed the offence by abusing his position or the public service, If the offence might threaten the life of the smuggled migrants or compromise their well-being or is considered inhumane or degrading treatment, If the smuggled migrant was a woman, a child, an incompetent person or a person with a disability, If a forged travel or identity document was used to commit the offence, or if a travel or identity document was used by someone other than its legal holder, If a vessel was used to commit the offence in violation of its proper purpose or its defined routes”

Unlike the Egyptian legislator, the Tunisian legislator was more in favor of using harsh punitive penalties for irregular migrants, ranging from 4 to 20 years as the Law on Passports and Travel Documents of 2004 stated in Chapter 38 that “whoever plots, facilitates, assists, mediates or arranges by any means, even if it is free of charge, the entry of a person to Tunisian territory or his departure by stealth whether by land, sea or air, through crossing points shall be imprisoned three years and fined 8,000 dinars and even conspiracy and attempts are due to punishments” penalties also included those who host migrants as the law stated that “whoever hosts migrants that enter or depart from Tunisian territory by stealth or hosts perpetrators who committed crimes that was previously stated in that chapter, prepare a place as a shelter for them, hide them or work to ensure their escape, lack of detection or non-punishment shall be imprisoned four years and fined 10,000 dinars and whoever provides any means of transport of any kind for the purpose of committing the crimes set forth in this section or to assist in committing them, shall be punished with the same punishment”

It should be said also, that the Tunisian legislator treated smugglers of migrants who assist any person to enter Tunisian territory equally to those who assist in their departure outside Tunisia as both are punished by five years imprisonment and a fine of 12,000 dinars for their deliberate transfer of a person or persons inside or outside Tunisian territory by stealth whatever was the means they used to achieve that.

Not only did the Tunisian legislator penalize migrants and those who are responsible for hosting and sheltering them, but also penalized those who “participated in an agreement or established an organization that aims to prepare,
manage, cooperate with or assist in any way whether it is inside or outside the country, and agreements and organizing are obtained between two or more persons through consent and intending to commit the aforementioned actions previous chapters”. The legislator also emphasized penalties for a certain category provided for in the Chapter 43 of the Passports and Travel Documents Act where the punishment shall be by imprisonment for a period of twelve years and a fine of forty thousand dinars if the aforementioned crimes are committed: “By those who have been entrusted with guarding or controlling borders or crossing points or ports, directly or indirectly, or who monitor them, and Internal Security Forces or members of the military forces or agents who have taken advantage of power given to them of his or her job or work against a child or abusing him/her.

Despite the importance of these sanctions in deterring migrants from migrating illegal to escape the social, political or economic conditions in which their countries live, they do not fully deter migrants and are ineffective and unable to confront this phenomenon due to penal sanctions adopted by the countries of origin and security policies adopted by the host countries which only aggravate the situation. The current situation has shown the need to establish long-term international strategies to confront migration and to provide the necessary guarantees for the rights of migrants, who are often considered victims of a particular political or social situation.

Finally, we must note that international organizations, despite their numerous attempts to find ways of framing the phenomenon, have been unable to give a clear unified definition for migration, or to give accurate statistics on the number of migrants or a clear criteria to determine the effectiveness of measures taken by receiving countries in facing irregular migration and the absence of ways to reduce this phenomenon.

Confronting irregular migration and achieving efficiency in dealing with its effects requires continuous cooperation between the receiving countries, which are mostly the countries of the North, and the countries of the South that export irregular migration.

This cooperation should address the causes and motives related to the phenomenon of irregular migration objectively, the most important of which are economic motives and political crises which most Arab countries are experiencing today.