

External contribution: smuggling in human beings, an organised crime

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Human smuggling is an illegal form of immigration. Every country in the world is faced with this problem, whether they are countries of origin, transit countries or destination countries.

And the European Union Member States are no different. In 2015, an unprecedented number of refugees headed for Europe. Some European Union Countries were even forced to close their borders to try and maintain a minimum control over this migration flow of unprecedented proportions.

The way legal and/or illegal migration is tackled differs significantly from one country to another. This is why the European Union has attempted to set up a comprehensive transnational migration and asylum policy within its boundaries.

Frontex has been coordinating a European mechanism along Europe's external borders. It is true that this harmonised approach to the problem 'only' applies to Europe's external borders. National borders, within the Union, are still subject to differences from one country to another. In light of the events of 2015, the disparities of this two-speed policy became all the more obvious. Therefore, it is of utmost importance to shed new light on the problem and adopt the appropriate approach.

Until the relevant European policy is in place, every Member State must, of course, take the necessary measures on a national level in an effort to avoid, seek and pursue internal irregularities.

The phenomenon of human smuggling

In order to effectively combat human smuggling, it is necessary to have in-depth

and precise knowledge of the phenomenon above all.

The smuggling of human beings isn't limited to simple illegal migration and illegal migrants. It is an extremely well-organised criminal phenomenon, with its own structures and networks. Furthermore, these organisations show absolutely no respect for any form of human dignity whatsoever and are only driven by financial gain.

Human smuggling networks are flexible, dynamic and very opportunistic.

The notion of human smuggling and related terms

Human smuggling, facilitation of illegal immigration, illegal migrants, irregular migrants, illegal aliens, human smugglers, facilitators, etc. All these terms have a nuance and different connotations. It is important to make a distinction between the process of human smuggling, which is a criminal act, and the people who are the subject of this smuggling. Migrants who become involved in the smuggling process initially do so of their own free will, and it is they who seek it, but this doesn't prevent them from becoming victims along the way, owing to the risks they face, the inhuman conditions of their journey, the violence and exploitation they are sometimes faced with, the theft of their identity papers and their personal property. The smugglers don't consider them as human beings, but as goods allowing them to make a maximum amount of profit.

Migration and human smuggling

Human smuggling is an illegal form of migration.

Migration

Migration has always existed and is driven by push and pull factors. Push factors refer to conflict and war zones, extreme poverty, famine, natural disasters or other environmental problems. As for pull factors, they refer to a better economic situation, the positive image a migrant has of another continent/country, political and social stability, the presence of family and compatriots in the destination country. At the same time, other aspects also affect migration, such as political and historical factors and migration networks.

When legal migration seems impossible, irregular migration appears to be the best solution, with or without recourse to human smugglers.

Considering the complexity and the extent of the migration phenomenon overall, I shall limit myself to the framework of my contribution, i.e. illegal migration within the framework of human smuggling.

Illegal migration and human smuggling

Human smuggling can appear in various forms. Neske's typology³⁸⁸ provides a clear overview of the different forms on which its organisation is based. This leads to the following distinction:

- *individual smuggling with a high degree of self-responsibility*: the migrant mainly relies on their own resources to travel, generally using public transport, and once at the border, calling on a local smuggler to cross this border and thus continue their journey: they don't have any valid travel or residence documents.

- *covered smuggling (through the abuse of documents)*: the migrant calls upon a smuggling network to obtain fake documents such as a passport, a birth certificate and other authentic documents, and then travels by their own means to the destination country.
- *pre-organized stage-to-stage smuggling*: the migrant entrusts the entire organisation of their journey to an organised smuggling network.

This underground aspect prevents us from having an exact idea, based on precise figures, of illegal migration and human smuggling, or the number of perpetrators and victims.

To have an idea of the extent of the phenomenon, please refer to the figures supplied by Frontex³⁸⁹ regarding the illegal crossing of the European Union's external borders.

2010	104,06
2011	141,051
2012	72,437
2013	107,365
2014	282,962
2015	1,822,337

The figures are perhaps far higher since we are dealing exclusively with detected border crossings here. According to Europol³⁹⁰, 90% of migrants resorted to human smuggling services to reach Europe in 2015.

Legal definition of the phenomenon of human smuggling

Owing to the cross-border nature of human smuggling, the phenomenon must have a definition that is recognised internationally in order to favour an international approach.

³⁸⁸ M. NESKE (2006), "Human smuggling to and through Germany", *International Migration*, vol. 44, No. 4.

³⁸⁹ Frontex, Annual Risk Analysis 2016, 28 April 2016, www.frontex.europa.eu.

³⁹⁰ *Migrant Smuggling in the EU*, Europol, February 2016, 28 April 2016, www.europol.eu.

Belgium³⁹¹ satisfies the European and international definition, with the key elements of border crossing and financial benefit.

However, it isn't sufficient to have a criminal provision, an effective and efficient policy is essential to fight this phenomenon.

Human smuggling and trafficking

Human trafficking³⁹² and smuggling are two different offences³⁹³. In some cases, human trafficking may be preceded by human smuggling.

Human smuggling is, by definition, a cross-border infringement. Whereas human trafficking can also be national in nature. As soon as it is a matter of taking control of another person with the aim of exploiting them, this is referred to as 'human trafficking'. For example, there is the problem of loverboys and pimping teenagers. Even if this method is also used internationally regarding human trafficking, it is largely a local phenomenon. The victims are recruited and exploited at a local level.

Unfortunately, it is clear that there is still confusion between the two offences.

Several elements³⁹⁴ allow us to distinguish between the crime of human trafficking and that of human smuggling:

Element	Human trafficking	Human smuggling
Type of offence	Offence against a person, both on a national and cross-border level	Offence against public order, always cross-border
Push factors	Poverty, conflicts and wars, ecological disasters, etc.	Poverty, conflicts and wars, ecological disasters
Illegal entry to the destination country	Entry can be illegal or irregular	Always irregular and an infringement of the Aliens Act
Relation	Exploitation	Commercial with usurious profit
Financial benefit	Continuous, resulting from exploitation	Only regarding transportation and the facilitation of illegal entry
Consent	None, possible consent in the beginning but rapid recourse to coercion, deceit and abuse	Departure entirely voluntary
Characteristics of the victim concerned	Goods Upon arrival in the destination country, a sort of bond may be created through the debt, it may concern labour exploitation, emotional coercion, etc.	Goods The person is free upon arrival in the destination country

³⁹¹ Article 77bis and following of the Law of 15 December 1980 on access to the territory, stay, establishment and return of foreigners, *Belgian Official Gazette*, 31 December 1980 (Aliens Act).

³⁹² Article 433quinquies and following of the Criminal Code.

³⁹³ A.H. BAJREKTAREVIC, *Trafficking in and smuggling of human beings – linkages to organized crime – international legal measures*, <http://hreak.srce.hr/file/138747>, consulted on 23/09/2013.

³⁹⁴ S. BATSUKOWA, "Human Trafficking and Human Smuggling: similar nature, different concepts", *Studies of Changing Societies: Comparative and Interdisciplinary Focus*, Vol. 1 (1) 2012, 39-49, <http://www.scsjournal.org>, consulted on 03/09/2013.

Human smuggling in the form of a black market

The number of migrants wanting to reach a destination country illegally has increased so dramatically that a black market has appeared in the area of services such as the creation and allocation of fake papers, transportation, facilitating border crossings, accommodation, etc. This means that cross-border criminal organisations provide illegal goods and services at extortionate prices and thus indirectly become partners in the global economy. This market is driven by offer and demand, and there is never a shortage of potential clients ready to take risks in order to lead a better life.

Salt and Stein³⁹⁵ refer to human smuggling as an element of international migratory business responsible for facilitating movement between the country of origin and the destination country. In their opinion, there are different types of smuggling organisations, but their model applies to both small and large organisations. There is clearly an input and output in the systems. The most important input concerns the migrants themselves and the main objective of smuggling is moving them. The system's output consists of integrating the migrant in the country of destination's society. Input and output are bound to each other by a whole series of tasks linked to smuggling, right along the geographic routes that link the different transit countries to each other. The smuggling process is composed of three successive phases: mobilisation, the journey and delivery to the destination country. According to Salt and Stein, human smuggling doesn't only affect the fundamental rights of the migrants involved, it must also be placed in a larger whole, where human smuggling represents an

international business with its own rules and copious profits.

It is still difficult to know today what sums and what financial flows are involved in human smuggling. When a human smuggling network is dismantled or destabilised, it is difficult to record all the financial flows or to seize the income resulting from it. Here too the networks are inventive and work with service providers from the global economy, who often remain in the shadows.

According to Europol's calculations, the turnover from human smuggling was between EUR 3 and 6 billion in 2015.

The digital black market

Human smuggling networks also use the digital black market, which can be found on the dark web using the Tor browser. This digital black market lives off its reputation, and it is clearly very buoyant. The dark web is an anonymous market, which complicates the identification of criminals.

Besides the dark web, human smuggling networks also use social networks to offer their services, to such a point that they have even developed specific applications (apps) in order to provide 'their' migrants with up-to-date travel information concerning weather conditions at certain border crossings, the presence of checks, etc.

The social organisation of human smuggling

Schloenhardt³⁹⁶ distinguishes three categories of human smugglers: amateurs, small groups of organised criminals and international human smuggling networks. Amateurs are active locally and provide specific services, such as crossing the border in their own car or boat. These amateurs can work on demand for large smuggling networks. Small groups of organised criminals specialise in the transportation of migrants via known routes

³⁹⁵ J. SALT and J. STEIN, "Migration as a business: The case of Trafficking", *International Migration*, volume 35, Issue 4, www.onlinelibrary.wiley.com, consulted on 18/09/2013.

³⁹⁶ A. SCHLOENHARDT, "Organized crime and the business of migrant trafficking", *Crime, Law and Social Change*, 1999, vol. 32, issue 3, pp. 203-233.

between country A and country B. International human smuggling networks are capable of organising the entire smuggling process themselves.

Cooperative relationships within human smuggling networks

Ethnicity, shared cultural origins or roots play a major binding role in cooperative relationships. Collaborative relationships exist on known smuggling itineraries³⁹⁷ between nationalities other than that of the transit country, which provide the services necessary for the smuggling of migrants who come from the same country.

Coordination and distribution of tasks

It is possible to distinguish two organisational structures in transnational human smuggling networks. One is characterised by a restricted number of people active in collaborative relationships and no clear differentiation between tasks, with a relatively high amount of non-initiated people who provide a very limited number of services for the collaborative relationship. In this case, we are talking about ethnic homogeneity. The other one is characterised by a large number of people active in the collaborative relationship, where everyone performs a restricted number of tasks separately. In this case, there are less non-initiated people involved. These collaborative relationships are hierarchical. It is mostly a question of ethnic differentiation, with smugglers coming from different countries of origin.

Logistics process and tasks

In the human smuggling process, we can distinguish a variety of tasks: Kleemans³⁹⁸ makes a distinction between the bridge builders and the facilitators. The bridge builders are people who owe their position to their ability to build geographic and social bridges. They operate on an international and inter-ethnic level, and therefore on the border between crime and legality. They adopt a key role in organised crime. The facilitators³⁹⁹ are providers of all sorts of services and accomplish relevant and essential tasks in the human smuggling process, such as:

- *recruiters* of potential migrants wanting to settle in the West and ready to pay the price. They are often from the same community and have the same culture as the migrants in question; for smugglers, recruitment is a separate sales business and they use advertisements on the internet and brochures to offer their services.
- *coordinators* organise the smuggling operations and harmonise the sub-processes between them. For this purpose, they have a whole string of contacts and they endeavour to buy the right services at the best price.
- *transporters and guides* take people to the other side of the border, regardless of the distance that has to be covered.

³⁹⁷ Socta threat assessment 2013, www.europol.europa.eu/sites/default/files/publications/socta2013.pdf, consulted on 21/09/2013.

³⁹⁸ R. STARING, G. ENGBERSEN, H. MOERLAND, N. DE LANGE, D. VERBURG, E. VERMEULEN, A. WELTEVREDE, *De sociale organisatie van mensensmokkel*, Erasmus Universiteit Rotterdam, 1 juli 2004, <http://www.godfriedengbersen.com/wp-content/uploads/De-sociale-organisatie-van-mensen-smokkel.pdf>, consulted on 18/08/2013.

³⁹⁹ A. H. BAJREKTAREVIC, *Trafficking in and smuggling of human beings – linkages to organized crime – international legal measures*, <http://hreak.srce.hr/file/138747>, consulted on 23/09/2013.

- *document forgers* play an important role, on an increasingly frequent basis, in the logistics of human smuggling. They forge all sorts of documents or have contacts who lend passports or other travel documents.
- *escorts* accompany and help migrants during their journey, usually for a restricted part of a journey.
- *safe house managers and supervisors*: during the smuggling process, the migrants must be housed for a certain amount of time.
- *debt collectors*: both in the country of origin and in the transit or destination country.

Some of these facilitators offer services to various networks of smugglers without being part of a smuggling network, such as document forgers, debt collectors or guarantors.

Composition of the collaborative relationship

Cooperative relationships are flexible and decentralised⁴⁰⁰ and can be quickly reorganised. The decentralised operating method of dividing the tasks between different groups, reinforces the system if a component has to opt out owing to a legal intervention or an incident. Only this element becomes visible and the rest of the organisation remains in the shadows. By incorporating small specialised groups, it is also possible to quickly jump on new market opportunities.

Collaborative relationships help to diversify activities and aren't limited to human smuggling.

Conclusion

Human smuggling is an organised criminal phenomenon and must be treated as such, with the knowledge that cooperation inside and outside Belgium is crucial.

⁴⁰⁰ A.A. ARONOWITZ, *Smuggling and trafficking in human beings: the phenomenon, the market that drives it and the organization that promotes it*, <http://mensenhandelact1112.wdfiles.com/local-files/in-woord/artikel>.