



External contribution: Refugees: When human smuggling becomes human trafficking

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Law books make a clear distinction between the definition of human smuggling and human trafficking, the former being a voluntary transaction between the provider of an (illegal) service and a paying client, while the latter involves deception and violence, and pertains to the transport or detention of persons against their will by criminals. If we look at mixed migration flows towards Europe in practice, however, it quickly becomes apparent that there is no binary distinction between the two phenomena but a continuum which always involves elements of both. There is no smuggling without moments of coercion, and conversely, elements of voluntary cooperation can be found between traffickers and victims. The smuggling industry, once established on a certain route, is hungry for profits and will resort to trafficking methods to secure them.

The observations described in the text are based on the following:

- Interviews and discussions within focus groups with hundreds of asylum seekers and refugees, conducted by the author and her team over the past four years, in the countries of origin, transit and destination;
- Systematic assessment of the interviews between asylum seekers and refugees on open social media platforms;²⁷⁶
- Briefings by UNHCR colleagues in the field and journalistic sources.

Key terms and definitions

There are a number of key definitions explaining the terms "Trafficking in Human Beings" and "Smuggling of Migrants":

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (UNTOC) supplementing the United Nations Convention Against Transnational Organised Crime (UNTOC)²⁷⁷ specifies that "'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

According to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UNTOC ('Protocol against the Smuggling of Migrants'), "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Migrant smuggling affects almost every country in the world. It undermines the integrity of countries and communities, and claims the lives of thousands of people every year.

Obviously, there are overlaps between the two forms of organised criminal activities related to migration. According to UNTOC, there are three main differences between human trafficking and the smuggling of migrants²⁷⁸:

²⁷⁵ The author is an employee of the UNHCR. The views expressed here are those of the author and not necessarily those of the United Nations.

²⁷⁶ www.unhcr.org/publications/brochures/5909af4d4/from-a-refugee-perspective.html.

²⁷⁷ www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.

²⁷⁸ www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html.

Consent

The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.

Exploitation

Smuggling ends with the migrants' arrival at their destination, whereas trafficking involves the ongoing exploitation of the victim in some manner to generate illicit profits for the traffickers. From a practical standpoint, victims of trafficking also tend to be affected more severely and to be in greater need of protection from re-victimization and other forms of further abuse than are smuggled migrants.

Transnationality

Human smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another State or only moved from one place to another within the same State.

How does trafficking and smuggling relate to asylum seekers and refugees?

Even though "Everyone has the right to seek and to enjoy in other countries asylum from persecution" (Article 14: Universal Declaration of Human Rights), in practice tight visa regimes, restrictive asylum policies and strict border controls make it nearly impossible for refugees to access the territory of the EU without using the services of smugglers.

Whether a person is in need of international protection is unrelated to the way s/he entered the country of asylum. Smuggled as well as trafficked persons must have access to fair and efficient asylum procedures, in order to establish if the claimant has a well-founded fear of persecution linked to one or more of the 1951 Convention grounds: for reasons of race, religion, nationality, membership of a particular social group or political opinion. Having been trafficked does not constitute a claim to asylum per se, but victims

of trafficking may qualify for international protection if their country of origin is unable or unwilling to provide protection against further re-trafficking or serious harm as a result of traffickers' potential retaliation.²⁷⁹

With 65.6 million people forcibly displaced people worldwide²⁸⁰, the largest number in the history of humankind, it is hardly surprising that a minority of them is trying to come to Europe. (Currently, 84% of all refugees and internally displaced persons remain in the developing world, and only 16% move to industrialized countries.) Consequently, international criminal networks see lucrative business opportunities and move in, adapting their modus operandi. As a result, the common definitions are not up-to-date, as they do not fully reflect today's realities and newly emerged phenomena:

- Very present in today's mixed migration movements is the repeated alteration between smuggling services and trafficking methods during the same journey.
- Unsuspecting clients of a smuggler might find themselves taken hostage by the smugglers themselves or be kidnapped by various militias who prey on people along smuggling routes. They would then be subject to torture and mistreatment for the purpose of extorting a ransom from relatives at home. Sometimes, victims are even traded between different trafficking groups.
- Smugglers who do not get paid as much as they ask for or who increase the price during the journey, might kidnap the client or a family member at home in order to get the requested amount.
- The smugglers are interested in getting their clients to their destination quickly, as they will only get fully paid upon completion of the journey. They will therefore use violence against clients who have a change of heart and want to return home, or who refuse to put themselves in danger by mounting an overcrowded boat or squeezing into suffocating spaces in vehicles.

²⁷⁹ www.fmreview.org/peopletrafficking/floor.html.

²⁸⁰ www.unhcr.org/fr/apercu-statistique.html.

Case study: A smuggling industry emerges

UNHCR's case study (*From a Refugee Perspective*²⁸¹) clearly demonstrates through social media sources that the smuggling industry is a demand-driven business. If there are potential clients, it emerges at breathtaking speed. And, more importantly, once a major smuggling network with its considerable infrastructure is in place, it expects profits from paying clients. When client numbers dwindle, this is initially compensated by "special offers" and low prices to entice potential customers. In such cases, we can still talk of **smuggling** networks. However, when marketing becomes more aggressive and smugglers start luring clients with false promises, deceit and coercion, it morphs into **trafficking**.

When analysing the social media discourse on asylum and migration related issues in Arabic between March and December 2016, UNHCR could demonstrate how the smuggling industry developed and professionalized within months after legal possibilities for refugees to reach Europe via the Western Balkans route had been closed. The level of sophistication and complexity of smuggling offers found on Facebook in Arabic language dramatically increased between March and July 2016, indicating that experienced cartels moved in and took over the business.

In early 2016, our researchers found posts on Facebook indicating the presence of opportunistic local money making schemes. Offers were put forward by individuals who would sometimes identify themselves as Syrians, Moroccans and Pakistanis, as well as Turkish citizens. Most of them operated from Izmir, more precisely around Basmane Square. Potential clients in search of smugglers informed each other on Facebook that smuggling agents could be found in streets and cafés of certain Turkish cities. Apparently, local criminals and businessmen seized the opportunity to make money by offering life vests and accommodation in coastal cities, as well as boat rides to Greece on cheap dinghies, and sometimes on their private yachts or fishing boats.

Smuggling offers during that time seemed amateurish and experimental. For example: on Sunday, 27 March 2016, there were several Facebook announcements of direct ship connections on commercial cargo vessels from Turkey to Italy, but on Monday they were all cancelled. Short-lived, bizarre offers of transfer appear and disappear: by Jet Ski or in plastic containers which would be towed behind

boats submerged under water. Impracticable routes for Europe were being promoted, e.g. from hard to reach Albania to Italy, others even via Latin America and the Caribbean.

In spring 2016, access to Europe became difficult for refugees and migrants. The humanitarian corridor which, in preceding months, allowed refugees and migrant easy access via Greece, Serbia, Hungary (later Croatia and Slovenia) to Austria and Germany was shut down. On 9 March, the President of the European Council, Donald Tusk, declared the Western Balkans route closed. On 18 March, the EU concluded a deal with Turkey to stop the influx to Europe across the Aegean Sea, boosting the demand for more sophisticated smuggling services.

Already in April 2016, professionals started moving in. The number of smugglers' accounts on Facebook increased every day. Their pages were mostly set up as closed groups, requiring interested clients to identify themselves before seeing the content. By the end of April, regular tourist and student visas from various European consulates were on offer, indicating that criminal networks had established links to corrupt officials.

In the beginning of May 2016, a vast number of smugglers posted offers for various routes to Europe on Facebook, mostly departing from Turkey. Such offers comprised flights, boat rides, road trips and guided treks on foot or combinations thereof. This implied that a growing number of persons worked in the smuggling business and that the networks had at their disposal collaborators at ports, airports, borders crossings, etc.

Smuggling advertisements usually included the names (or aliases) and full telephone numbers of contact persons. Detailed negotiations between smuggler and client were not openly conducted on Facebook but through private communication channels. Enquiries by clients were removed quickly from Facebook pages, so as not to leave too much of an electronic trail.

Over the following months, European politicians and media kept debating whether all borders would remain closed, whether the EU-Turkey deal would collapse or not. Meanwhile, smugglers tried to calm down fears of refugees and migrants that they might get stuck in Turkey and/or Greece. On Facebook, they encouraged potential customers to keep coming as they have ways to get people to Europe. One smuggler even had the audacity to post the slogan "Keep coming. Only legal borders are closed".

By the end of May 2016, Facebook was full of visa offers for numerous Schengen and non-Schengen countries in Europe. Tourist visas, student visas and fake marriages

281 www.unhcr.org/publications/brochures/5909af4d4/from-a-refugee-perspective.html.

could be bought. Tourist visas, student visas and marriages of convenience were offered for sale.

The first stolen passports were on sale in June 2016, showing the existence of international cooperation between persons who steal ID documents in various countries and those who sell them, mostly in Turkey.

As of July 2016, forged passports, diplomas, driving and marriage licenses could be bought from providers on Facebook. A full-fledged transnational criminal network was at work.

Apparently, competition was high and profits were dwindling by August 2016: for the first time, smugglers on Facebook named and shamed rivals who had allegedly cheated clients out of their money. At the same time, they downplayed the dangers of irregular movement. They called their trips “safe” and “100% guaranteed” while people kept losing their lives drowning at sea or suffocating hidden in tiny spaces in vehicles.

Different routes - Different dangers

The way to Europe is becoming increasingly difficult as a general rule, but there are major differences as to the level of danger travellers are exposed to. Each route has characteristic moments where smuggling degenerates into trafficking and smugglers endanger the lives of their clients in their greed for profit.

Afghans

Afghan refugees and migrants usually book an “all-inclusive” trip from a major city in Afghanistan or Iran all the way to a destination country in Europe. They travel in groups of mostly young and minor males and are accompanied by handlers called “uncles”. Travellers completely rely on the instructions and guidance provided by these “uncles” as they often have no notion of the geographical, cultural or political circumstances on route or at the destination, and they rarely speak any foreign language.

The local smuggling agent normally changes from country to country. The young Afghans are dependent on their services regarding food, water, accommodation and transportation and, thus, vulnerable to mistreatment and exploitation, including sexual abuse.

The most dangerous stretches of the journey are the Afghan-Iranian border areas, where border guards shoot to kill, as they do not distinguish between drug traffickers and people being smuggled. In order to avoid contact with the authorities, smugglers load their clients on pickup trucks and drive by night, off-road, without lights and at neck-breaking speed. If accidents occur, injured people are left behind.

The next critical leg of the journey is the crossing of the Van mountain range between Iran and Turkey that the migrant groups and their guides normally pass on foot, by night, without the necessary gear and in all weather conditions. Here, too, if someone is injured or too exhausted to move on, they will be left behind.

The most dreaded stretch is the Aegean Sea. Although it is a relatively short trip, Afghans, coming from a landlocked country and mostly unable to swim, are terrified. As such, it is quite common that they refuse to board overcrowded dinghies to cross to a Greek island. Such last-minute debates are dangerous for the smuggling agent.

To maximize their profits, smugglers push far too many persons on the boats and do not care much about weather conditions. They are interested in sending off the vessels as quickly as possible in order to avoid being detected by police, and they only get paid when the customers arrive. As such, they often threaten people with knives or fire arms.

In interviews, UNHCR heard of cases where the travellers or their families could not pay the full amount asked by the smuggler. In such incidents, it is not uncommon that either the traveller or a family member at home in Afghanistan is taken hostage until the smuggler is fully compensated.

Syrians and Iraqis

Both on the Western and Central Mediterranean routes, smugglers use force during embarkation. They need as many people as possible to enter the boats as quickly as possible and do not allow them to change their minds at the last minute (see above). They do not refrain from using violence to make this happen. Delays in departure decrease the profit rate and increase the danger of detection by law enforcement.

Eritreans and Somalis

Eritreans and Somalis are two groups that run the highest risk of becoming Victims of Trafficking (VOTs) during their attempts to reach Europe. Trafficking agents prey on young people in Somalia, Ethiopia and Sudan, looking for potential clients at typical youth congregation points such as schools. They promise gullible teenagers that they will take them to Europe for little or no money and paint a rosy picture of the riches and comforts awaiting them there. Most young people leave in a clandestine manner without informing their parents.

Once they cross into another country, the traffickers show their true colours. They start brutally torturing and abusing their victims and send proof of their suffering to the families back home in order to extort a ransom. Sometimes they threaten to remove the victims' organs if the money is not paid in time. These threats are underpinned by phone calls during which the victim is being tortured and screams for help or their ordeal is recorded on sound files and videos posted on social media. Prices range from a few thousand dollars up to a few tens of thousands of dollars.

When hostages get traded between different criminal networks, prices go up. It might also happen that during a journey a person is taken hostage multiple times in succession, especially in Libya where many armed groups operate. During incarceration, victims are regularly tortured and raped by their captors, receive little food and water and live under incredibly unhygienic conditions.

Those whose families cannot pay are sold into slavery and forced prostitution.

There are luckier travellers who deal with smugglers rather than outright traffickers. The dangers they are exposed to are of a different nature: travellers are transported across the desert on the backs of trucks. During the trip, they might fall off the truck, get sunstroke, be dehydrated, or fall ill. In these cases, the smuggler leaves them behind in the desert. The testimonials UNHCR collects²⁸² show that women regularly get raped.

Once they arrive at the coast, they often have to wait many days, even weeks for their departure. During this time, they are kept locked in remote industrial buildings, with little food and water and under deplorable hygienic circumstances. Again, sometimes the guards turn violent and abuse their hostages physically and sexually. Embarkation onto vessels follows the same patterns of violent smuggler behaviour as described above.

West Africans

Migrants and refugees from West Africa can move freely within the ECOWAS area, using public transport to get to the city of Agadez in Niger, where the Sahara Desert begins. In order to cross this stretch and get to the Libyan coast they need to commission the services of smugglers who are easily contacted in the streets.

Bringing people and goods across the Sahara has been the main source of income for some of the local families for hundreds of years. Currently, they offer such services to migrants and refugees heading for Europe. Danger is mostly looming on the Libyan side, where armed groups can take the travellers hostage to extort ransom and the same pattern emerges as described for Somalis and Eritreans in the previous paragraph.

Nigerian women

There is one particular group that stands out however, these are Nigerian women, mostly from Edo State and its capital city Benin, who are trafficked to become sex workers in Europe. In their case, it is not smuggling that turns bad, but it is trafficking from the start.

The women know from the beginning that they will be forced to do sex work in European brothels for several years in order to "pay back" the transportation costs incurred by the trafficker. These young women are not forced to come along but conclude an agreement with their traffickers that is often reinforced by religious ceremonies. After that the agreement becomes binding and the women have to follow the orders of their traffickers. Sex work sometimes already starts on route. ID papers are taken from the women and they cannot leave or breach the contract without serious repercussions for themselves and their families at home. This is how ordeals start that may last for many years in a spiral of violence, exploitation and dangerous work.

Few women find the strength to break out. They lack experience, means of sustenance and they believe breaching the contract will endanger themselves and the lives of their families at home. Also, their legal status and right to residency in Europe is uncertain.

282 www.tellingtherealstory.org.

Interaction between smugglers and clients on social media

Target audience	Somalis and Eritreans	Syrians and Iraqis	Afghans	West Africans
Social media use pre-departure	some	yes	no	some
Social media use en route	yes	yes	some	too expensive, rather text messages
Social media use upon arrival	yes	yes	yes	yes

Syrians and Iraqis are most active: Smugglers offer their services on social media (Instagram and Facebook), but business deals are negotiated on closed channels.

Afghan smugglers offer their services directly and on social media. Often travel agencies have a legitimate business and some illegal offers on the side. No negotiations are done on social media.

Smugglers get in touch directly with Somalis and Eritreans to recruit clients. However, when they are taken hostage, the trafficker's sometimes use social media, sometimes mobile phones to get in touch with the families. Families sometimes use social media to raise funds for paying the ransom.

Smugglers for the West African route rarely use social media at this point in time, but this might change soon as the use of mobile phones and smart phones is growing fast in the region.

Solutions must be global and comprehensive

In the past years, Europe has tried to stem the influx of asylum seekers by closing its borders, tightening border controls and making regular access to EU territory nearly impossible. Such measures proved to be short-sighted. Tackling refugee flows at their tail end rather increases the dependency of refugees on ever-growing international smuggling cartels.

Europe needs to understand and address the root causes of forced displacement and the drivers of onward movement. In December 2016, UNHCR presented a paper to the European Union calling for a far-reaching reform of Europe's global engagement with refugees.²⁸³

Asylum policy should not start at European borders but should engage with countries of origin in order to prevent and resolve conflict. In countries of first asylum and transit the EU should support measures to stabilize refugee populations and offer them protection closer to home. In addition, UNHCR is calling for a more efficient asylum system within Europe, and for legal pathways for refugees to enter EU territory.

When presenting this paper in Brussels, UN High Commissioner for Refugees Filippo Grandi stressed that Europe can develop comprehensive solutions, drawing "on its history of tolerance, openness and protection principles".

²⁸³ Better Protecting Refugees in the EU and Globally: www.refworld.org/pdfid/58385d4e4.pdf.