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International Migrations and Human Smuggling: A Legal Analysis of its Social And Humanitarian Consequences

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Summary: The aim of this article is to present a socio-legal analysis and the most important consequences of human smuggling across the globe. The issue of human smuggling becomes and area of international cooperation and humanitarian assistance for more than forty years. The firtst part of this article analyses the current scale of human smuggling worldwide. The practice of people smuggling has seen a rise over the past few decades and today now accounts for a significant portion of irregular immigration in countries around the world. People smuggling generally takes place with the consent of the person or persons being smuggled, and common reasons for individuals seeking to be smuggled include employment and economic opportunity, personal and/or familial betterment, and escape from persecution, violence or conflict. The Convention of Palermo, adopted in 2000 is considered the most important international law instrument against human smuggling.

Resume: Le but de cet article est de présenter une analyse socio-juridique et les conséquences les plus importantes de la contrebande humaine à travers le monde. La question de la contrebande humaine devient et le domaine de la coopération internationale et l'aide humanitaire depuis plus de quarante ans. La partie firtst de cet article analyse l'échelle actuelle de la contrebande humaine dans le monde entier. La pratique de la contrebande de personnes a connu une hausse au cours des dernières décennies, et aujourd'hui représente aujourd'hui une part importante de l'immigration irrégulière dans les pays à travers le monde. Les gens de contrebande en général a lieu avec le consentement de la personne ou des personnes en contrebande, et les raisons communes pour les personnes qui cherchent à entrer clandestinement inclure l'emploi et les possibilités économiques, amélioration personnelle et / ou familiale, et d'échapper à la persécution, de violence ou de conflit. La Convention de Palerme, adoptée en 2000 est considéré comme le plus important instrument de droit international contre la contrebande humaine.

Introduction:

First international debates concerning human smuggling and trafficing can be dated back to the eighties and nineties of the las century. The issue of smuggling should be clearly distinguished from the equally important problem of human trafficking. Given the current political priority around people smuggling, it is perhaps surprising that a concerted international focus on defining and responding to migrant smuggling only occurred in the 1990s. This focus followed sharp rises in irregular migration to the United States, and to Europe in the 1980s and 90s. A focus on those who facilitate irregular migration - rather than migrants themselves - was seen as a critical element of any response. The resulting legal framework was the Protocol against the Smuggling of Migrants by Land, Sea and Air (Migrant Smuggling Protocol), that supplements the parent instrument, the United Nations Convention against Transnational Organized Crime. The Migrant Smuggling Protocol does not provide a complete or self-contained legal regime. It exists as part of a "dense web of rights, obligations and responsibilities drawn not just from the Protocol and Convention but

also from the law of the sa, human rights law, and refugee law." An important distinction to make is that between human smuggling and human trafficking. Given the complex nature of human smuggling and trafficking operations, the difference between these two criminal operations is not always readily apparent. Delineating between the two involves taking closer look at the subtle differences between each. Generally speaking, human trafficking involves transporting individuals from one place to another either against their will or under some sort of false pretense. With smuggling, on the other hand, there is understood to be an agreement between smuggler and customer, a meeting of the minds and a contract between the two. These differences can similarly be detected in the Trafficking and Smuggling Protocols (more commonly known as the Palermo Protocols) passed by the UN Convention on Transnational Organized Crime. The Palermo Protocols frame the difference between smuggling and trafficking around the dichotomy of coercion and consent: whereas people who are trafficked are considered "victims" or "survivors", individuals who are smuggled are seen as having engaged willingly in an enterprise that one or both of the bordering countries consider illegal.

Legal Aspects of Human Smuggling:

Thus far, global efforts to curb and stymie the growing tide of smuggled individuals have been largely focused on the apprehension and deportation of individual migrants. Little has been done in the way of dismantling the organizations behind the business of people smuggling. According to the UNODC "[t]ackling migrant smuggling necessitates a comprehensive, multi-dimensional response, which begins with addressing the socio-economic root causes of irregular migration to prevent it, and goes through to prosecution of criminals who commit smuggling-related crimes". Other proposals include focusing not on banning or trying to stifle the smuggling industry, but on undercutting it. Michael Jandl from the International Center for Migration Policy Development, which is an intergovernmental think-tank based in Vienna, has suggested that governments issue temporary visas in the smugglers' best markets at fees priced to compete with the smugglers' rates. Under this proposed plan, one-third of the visa fee could be returned to immigrants upon their departure, and opportunities to purchase additional visas in the future would be available for those who did not break any rules. Given the clandestine but booming nature of people smuggling operations – especially in places like Mexico – drug cartels have also begun tapping into the smuggling network. Cartels have made money not only by taxing Coyotes but also directly engaging in the business of smuggling. In the late 1990s, Mexican drug cartels began initially moving into people smuggling by taxing Coyotes for leading bands of smuggled people across cartel-controlled territory. As these drug cartels have gotten more directly involved, however, they are beginning to play a more central role in the business of people smuggling and often exploit individuals - seen as human cargo - and using them by loading them up with backpacks full of marijuana. Sometimes, the costs of the expensive journey may be defrayed as migrants serve as "mules", carrying drugs out of Mexico. The questions of whether smuggling groups or syndicates would smuggle two different types of contraband at the same time (Multiple Consignment Contraband) (MCC) has been debated within and between law enforcement and intelligence analysts. Furthermore, if this type of smuggling is occurring, which types of MCC are most likely to be bundled together and which type of smuggling group (defined by level of sophistication) would engage in MCC and which regions in the world are most likely to be confronted with MCC also has been discussed by these analysts. The Lichtenwald, Perri and MacKenzie article identified sixteen cases of different smuggling groups smuggling more than one type of contraband at the same time. Four of the sixteen cases involved MCC human and drug smuggling. Three of the four MCC human and drug smuggling organizations were targeting the United States of America.

Sex trafficking victims face threats of violence from many sources, including customers, pimps, brothel owners, madams, traffickers, and corrupt local law enforcement officials. Raids as an anti-sex trafficking measure severely impact sex trafficked victims. Because of their complicated legal status and their language barriers, the arrest or fear of arrest creates stress and other emotional

trauma for trafficking victims. Victims may also experience physical violence from law enforcement during raids. Generally speaking, human trafficking involves transporting individuals from one place to another either against their will or under some sort of false pretense. With smuggling, on the other hand, there is understood to be an agreement between smuggler and customer, a meeting of the minds and a contract between the two. These differences can similarly be detected in the Trafficking and Smuggling Protocols (more commonly known as the Palermo Protocols) passed by the UN Convention on Transnational Organized Crime. The Palermo Protocols frame the difference between smuggling and trafficking around the dichotomy of coercion and consent: whereas people who are trafficked are considered "victims" or "survivors", individuals who are smuggled are seen as having engaged willingly in an enterprise that one or both of the bordering countries consider illegal.

Current Dynamics of Human Smuggling:

The current dynamics of human trafficking is very diversified worldwide. Virtually every country in the world is affected by people smuggling, be it in the capacity of country of origin, transit, or destination. While reliable data is scarce, experts note that "current estimates place the number of irregular migrants worldwide at up to thirty million and that a substantial proportion of these persons can be expected to have used the services of smugglers at one or more points in their journey". People smuggling between the United States and Mexico is a booming business that, as of 2003, garnered over $5 billion a year. Similarly, in the EU, profits from people smuggling perations is estimated to be around €4 billion per year. People smuggling is a dangerous operation and has frequently resulted in the death of those individuals being smuggled. In 2004, 464 recorded deaths took place during the crossing from Mexico to the United States, and each year, an estimated 2000 people drown in the Mediterranean on the journey from Africa into Europe.The transition to a market economy in some countries has led to both opportunity and a loss of security for citizens of these countries. Economic hardship and promises of prosperity have left many people vulnerable to trafficking within their countries and to destinations in other parts of Europe and the world. Unique to the Balkans are some of the situations that support trafficking, such as organized crime, and the recruitment strategies that perpetuate it. While some generalizations can be made, the countries within this region face different challenges and are at varying stages of compliance with the rules that govern trafficking in persons.

The Most Important Challenges of International Cooperation in The Area of Human Smuggling:

People smuggling operations range from small to large-scale actors operating in a transnational market. Small-scale smugglers generally arrange all aspects of the smuggling operations themselves. However, more commonly, smugglers engage and do business within a larger smuggling network where there is a division of work among the actors involved. In the past, smuggling rings tended to be more obscure, amateurish, and limited. As people smuggling has continued to grow, however, smuggling rings are far more extensive and organized. In Mexico, as Jim Chaparro—head of the anti-smuggling office at the US Immigration and Naturalization Service—puts it, the once small and informal smuggling business has evolved into a powerful web of "literally hundreds of syndicates, some at a low level and some at the kingpin level". (In fact, as the flow of illegal immigrants into the United States from Mexico has become more organized, there has opened an opportunity for smuggling groups within Mexico to market their services to non-Mexicans. Indeed, smuggling operations are often complex and smuggled persons often make stops at countries across the globe before arriving at their final destination). A Lebanese-Mexican Symbiotic smuggling network involved in human smuggling into the United States of America that

came to the attention of law enforcement and counterintelligence has been described in the literature. Over the years, smuggling has evolved into a sophisticated service industry, with certain routes and enclaves used by smugglers becoming practically institutionalized; for example: from Mexico and Central America to the United States, from West Asia through Greece and Turkey to Western Europe, and within East and Southeast Asia. Responsible for the flourishing business of people smuggling are a combination of interacting factors, from weak legislation and lax border controls to corrupt officials and the power of organized crime.

The complexity of the smuggling network is dependent upon the route to be taken and the nature of the journey. For routes that are well-known and tested, smugglers may function more as family enterprises and utilize fairly contained operations. The more complex the route, however, the more members of the smuggling network must be recruited. In general, the infrastructure of the people smuggling business is nontraditional, with no clearly identifiable organization and no rigid structure. The network of smugglers is diffused and decentralized. Smugglers form temporary business alliances, and the organization of smugglers can best be understood and described as ad hoc task forces, in which activities are specialized and controlled by individuals that deal with each other on a one-to-one basis. In the business of people smuggling, there is no single "godfather" figure who commands the activities of subordinates; rather, individuals conduct business on equal grounds and tend to consider themselves free agents. In fact, according to a Los Angeles-based smuggler, "The division of labor is really clear and refined. Everyone involved is useful in his own way and does his own thing only. There is no leadership in any smuggling rings. Leadership will not emerge because the work involved is so specialized.

Concluding Remarks

Human smuggling will become one of the most important challenges international community will face in the next years. The UN conventions and protocols established in recent years are characterized by a very marginal impact. Unlike human trafficking, people smuggling is characterized by the consent between customer and smuggler - a contractual agreement that typically terminates upon arrival in the destination location. However, smuggling situations can nonetheless in reality descend into situations that can best be described as extreme human rights abuses, with smuggled migrants subject to threats, abuse, exploitation and torture, and even death at the hands of smugglers. Smuggling operations are complex, working within networks of many individual players. As smuggling operations and its underlying infrastructure becomes increasingly intricate, so do the issues surrounding the matter of people smuggling. With major and minor players spanning the globe, people smuggling poses a significant economic and legal impact on society, and solutions to the problem of people smuggling remain contested and under continued debate and development. Smuggling has been described as the classic "wicked problem: one that is hard to define, keeps changing, and does not present a clear solution because of pre-existing factors that are themselves highly resistant to change - in this case the very existence of States, gross inequalities among them, and strong motivations on the part of some to keep them out." Because every state has different economics and governments, this problem cannot be universally classified as 1 and therefore, makes it more difficult for law enforcement to stop smuggling of people, as they have to adapt to the conditions in different states. We are also observing the growing dynamics of human smuggling and human trafficking in the countries of the Global South, failed states, Africa and Asia. The increasing dynamic of human smuggling in diffrent parts of the globe caught attention of specialists form various fields of social sciences, anthroplogy, international relations and political sciences. In 2015, the ongoing civil war in Syria has led to massive displacement and reliance on people smugglers to assist people to seek sanctuary in Europe. This has also led to unprecedented movements - and deaths - across the Mediterranean. According to UNHCR statistics, there have been almost one million arrivals by sea in Europe in 2015, and more than 2900 dead or missing migrants. According to the IOM Missing Migrants Project, there have been more than 3800

deaths during migration around the world in 2015. Although anti-trafficking campaigns over the past few years have become more effective in countering some forms of trafficking, data collection and management has continued to be a problem for countries in the Balkans (southeastern Europe).] Data collection is an important tool for monitoring country and regional trends and its analysis is often used to shape anti-trafficking policies. It is important to collect data on both the victims and their traffickers and information on investigation and prosecution rates are often utilized when assessing a country's performance. Despite the growing number of international refugees in Europe (immigration crisis in the UE and Miditerranean), human trafficking still remain one of the most important problem in Europe and challenge for the international com munity.

Illegal trafficking and smuggling of children for the forced labour is another issue underestimated in recently published literature. The objective of child trafficking is often forced child labour. Child labour refers specifically to children under a stipulated minimum age, usually 14 at the lowest, being required to work. UNICEF estimates that, in 2011, 150 million children aged 5–14 in developing countries were involved in child labour. Within this number, the ILO reports that 60% of child workers work in agriculture. The ILO also estimates that 115 million children are engaged in hazardous work, such as the sex or drug trade. Overall, child labor can take many forms, including domestic servitude, work in agriculture, service, and manufacturing industries. Also, according to several researchers, most children are forced into cheap and controllable labor, and work in homes, farms, factories, restaurants, and much more (Beyrer 16; Gozdziak and MacDonnell 171; Vinkovic 88). Trafficked children may be sexually exploited, used in the armed forces and drug trades, and in child begging. In terms of global trends, the ILO estimates that in 2004–2008, there was a 3% reduction in the incidence of child labor; this stands in contrast to a previous ILO report which found that in 2000–2004, there was a 10% reduction in child labor. The ILO contends that, globally, child labour is slowly declining, except in sub-Saharan Africa, where the number of child workers has remained relatively constant: 1 in 4 children aged 5–17 work in this region. Another major global trend concerns the number of child laborers in the 15-17 age group: in the past five years, a 20% increase in the number of these child workers has been reported. A surprised example has occurred in the United States as McCabe (2008) indicates that in the 1990s, huge companies such as Gap and Nike were using industries “sweatshops” that use trafficked children to make their desired products (p. 81)

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