

HUMAN TRAFFICKING AND HUMAN SMUGGLING: SIMILAR NATURE, DIFFERENT CONCEPTS

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The conceptual confusion around human trafficking and human smuggling produces incorrect interpretation of two phenomena in professional circles. This paper analyses the conceptual challenges around human trafficking and human smuggling by comparing the two with each other. The author introduces a comparative table that tests human trafficking and human smuggling against defined criteria: type of crime, characteristics of recruited people, push factors, illegal entry in the country of destination, the relationship between recruiter and recruited individuals, control over the situation, profits, use of violence, services available to trafficked or smuggled individuals. Additionally, the paper discusses some implications (“side effects”) of strict border control measures on human trafficking and smuggling of migrants. The mixed nature and differences between human trafficking and human smuggling are illustrated with examples mainly derived from successfully investigated cases in Ukraine and abroad. Although the conducted analysis is not exhaustive, it contributes to greater comprehension of important aspects of these two phenomena.

Key words: *human trafficking, human smuggling*

The human trafficking phenomenon is difficult to conceptualize and this produces confusion within professional circles. The Global Review and Annotated Bibliography of Recent Publications on smuggling of migrants analyzes numerous sources and suggests that “academic debate over precise definitions for the concepts of trafficking and smuggling appears only after the second half of the 1990s, but those concepts were still used interchangeably in academic literature and expert reports” in the early 2000s [UNODC, Global Review, p.7].

Because it is difficult to distinguish between trafficking and smuggling, victims of human trafficking may be mistaken with illegal migrants, mistreated by authorities and deported without proper assistance. This often leads to further victimization, and allows traffickers to remain unpunished. Ineffectively organized and badly informed victim search-and-rescue operations may lead to a situation where victims are deported as smuggled migrants. If such practices are followed, money, personnel and time will be wasted; human trafficking prosecution and conviction rates will remain low; and the number of unknown victims will grow.

Human smuggling is defined by the UN Protocol against the Smuggling of Migrants by Land, Sea and Air as:

“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” [United Nations Convention, p.42].

Human trafficking is defined by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (UN Palermo Protocol) as: *“the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs”* [United Nations Convention, p.54].

The below table (Table 1) looks at different aspects of human trafficking and human smuggling, and presents structured analysis of the two phenomena by testing them against determined criteria.

Table 1. Human trafficking vs Human smuggling

Criterion	Human trafficking	Human smuggling
Type of crime	Human trafficking is a crime against the person and the state(s). It can be of transnational (involves border crossing) or national (internal trafficking) nature.	Crime against public order. It always has a transnational nature.
Characteristics of recruited people	Victims. Gender, age, appearance, exotic characteristics of the victim are important to the recruiter.	Customers. Identity of the person does not play a role.
Push factors	Poverty, unemployment, poor cost of production, war, political conflicts, discrimination etc.	Same as for human trafficking.
Illegal entry in the country of destination	Entry maybe legal or illegal.	Entry of smuggled individuals is always illegal and break the migration regulations of the country of destination.
Relationship "recruiter - recruited"	Exploitative relationship. Victim is seen as a commodity. Victims are "bought and sold".	Commercial relationship. Persons are secreted across a border in exchange for money.
Control over the situation	Victims have no control over the situation. Traffickers "own" victims.	Smuggled persons can negotiate the price and destination with the recruiter.

Profit	Multiple profits. Victims can be exploited for many years and re-sold many times.	One-time profit.
Use of violence	Violence is used to keep control over victims.	In some cases violence can be used during the smuggling process.
Services, that trafficked and smuggled people are entitled to upon detection	Asylum, refugee status, financial assistance, legal, medical, psychological support and protection.	Asylum, refugee status or deportation.

As it follows from the definition, human smuggling always refers to border crossing between country A and country B. Smugglers and smuggled individuals themselves break the immigration laws of the country of destination (a crime of public order). Human trafficking is always a crime against a person, it undermines human rights and may not necessarily involve border-crossing. For example, the majority of assisted cases of human trafficking in Ukraine are of a transnational nature, and about 5% of all victim caseload concerns trafficking within victim's country of origin [IOM, 2011]. Young girls and boys were sold by their parents in South East Asia and Albania for labor and sexual exploitation in a different province within the same country [Protection Project, n.d.].

In smuggling cases, identity characteristics of intending migrants do not matter to the recruiter. In contrast, special characteristics of human trafficking victims make them more or less attractive to the trafficker. For example, the younger, the more attractive the woman is, the more she costs. According to different sources, young Asian and European virgins cost more than other enslaved women.

The relationship between the smuggler and smuggled individuals is mostly commercial in nature. Intending immigrants pay smugglers to be secreted across a border. In human trafficking cases there are deceiving and/or exploitative relations between the trafficker and the victim right from the point of recruitment. Human trafficking victims have no control over the situation and may die in trafficking enslavement or could be liberated by the one of the following ways:

- victims are rescued by authorities;
- freedom for victims is bought by customers (especially applicable to the cases of sexual exploitation);
- victims' escape;
- death of a victim.

People who are smuggled exercise control over the situation at the point of recruitment and also at the destination point. They obviously are not entitled to a "refund policy" if they do not like the conditions at the point of destination.

Traffickers perform violent acts and use threats to keep victims in fear. There are cases where men and women were blinded, kept naked in icy tubs for several hours, were beaten and raped because they presented some resistance to traffickers. Although human smuggling is sometimes drawn by an "altruistic motivation", lives of smuggled migrants are often put at risk in the course of smuggling. The UNODC brings many testimonies when people were "crammed into windowless storage spaces, forced to sit still in urine, seawater, feces or vomit, deprived of food and water, while others around them die and their bodies are discarded at sea or on the roadside" [UNODC, Smuggling of migrants, p.2].

Human trafficking is a growing crime of choice because it allows traffickers to profit several times. In contrast to drug trafficking, weapon smuggling, etc. enslaved people may be exploited as many times as traffickers decide - which allows traffickers to receive profits multiple times. It is common for traffickers to keep their victims in debt bondage. Smugglers on the other hand, normally receive a one-time payment from intending migrants.

Both human trafficking and human smuggling involve illegal cross border flow of people, however, in cases of human smuggling both smuggled migrants and smugglers are considered offenders, whereas victims of human trafficking are victims of crime.

More to the point, agents identifying smuggled migrants should comprehend that trafficking can start as smuggling (a person gives consent to be secreted across the border) and at a further stage involve abuse, deprivation of power, exploitation and debt bondage.

Examples of effective investigative practices confirm the fact that human trafficking cases may involve smuggling and often start with it. One case investigated in 2008-2009 in the Netherlands concerned a group of unaccompanied minors smuggled with the use of forged documents from Nigeria to the Netherlands, and then trafficked to

Spain and Italy to be exploited in the sex industry. All of the forged documents were arranged by the owner of the travel agency in Nigeria. A successful international investigation revealed a group of criminals running the gang, it included "fixers" who arranged accommodation and connecting travel in the Netherlands, and pimps in Italy who had 'ordered' the victims. Although the case itself contained an explicit determinant of human trafficking – exploitation in the sex industry - the "fixers" and some other suspects were identified by the court as smugglers. Such individuals "were acquitted of trafficking in human beings, since the court found that it could not be concluded that the suspects had knowledge of the things that had happened to the girls in Nigeria or the things that would probably happen to them in Italy and/or Spain, including forced prostitution" [European Commission, Case Law, 2012]. On the contrary, the suspects involved in the case - who used violence and threats of violence to force the young Nigerians to work long shifts in brothels even when sick, and gained personally from that - are, in fact, traffickers.

Both smuggling and trafficking have similar push factors. Poverty, illegal/ unregulated markets, post- or in-conflict economies, discrimination practices - conditions observed nowadays in countries of Southeast Asia, Eastern Europe, Latin America, Central Africa etc. - render people vulnerable to trafficking. In many cases smuggling is seen as a way to get out of poverty. Some authors present cases of pregnant African women paying smugglers to be taken to Spain or France, and traveling there at very late stages of their pregnancy [UNODC, Global Review]. Such women believe that the newborn child can get citizenship of the EU country if born in its territory. Unaccompanied minors and women are especially prone to exploitation by smugglers, they are often physically abused, their documentation is taken away and they are put in debt bondage.

The fact of illegal border crossing or consent of the person to be secreted across the border should be taken into account at the detection point, identification operations should be expanded and include other factors to search for determinants of human trafficking: recruitment, transportation, harboring and receipt of persons, committed through illegal means by and purposes for which these acts are performed. Illegal means include threats, the use of force, coercion, fraud, etc. Illegal purposes include control over another person and exploitation. Brian Iselin suggests that every authority "should err on the side of caution and treat all illegal migrants as potential trafficked victims until investigation proves otherwise" [Brian Iselin, and Melanie Adams, 2003, p.6]. In case of uninformed and not sensitive search - and rescue operations, we may find situations where illegal migrants are granted asylum and

receive other benefits, to which victims of trafficking are usually entitled; and where victims of human trafficking are detained and deported.

Stricter border control management is often viewed as an ill-suited practice, that if not integrated with rescue and assistance missions may lead to deviation of trafficking and smuggling routes, and to even greater dangers for victims. Guerette suggests that “as enhanced border security has correlated with increased migrant deaths, greater border security also leads to greater reliance on human smugglers whose drive for profit may lead to migrant deaths” [Guerette, 2007, p.249]. In 2003 for example, rates of migrant deaths on the US-Mexican border reached over 40 deaths per 100 apprehended irregular migrants - that constitutes almost half of identified attempts of irregular migration.

According to UNHCR, “immigration control measures, although aimed principally at combating irregular migration, can seriously jeopardize the ability of persons at risk of persecution to gain access to safety and asylum” [Interception of Asylum-Seekers and Refugees, 2000, p.3]. The enhancement of border control causes traffickers and smugglers to invent new ways and means to secret people across the border. Such cases include for example, the construction of underground subways to cross the border to USA. In 2009, for example, a group of three smugglers were identified by the US Border Patrol, the smugglers used a jet ski to transfer undocumented immigrants through water channel [Valley Morning Star, 2009]. In 2010, five Ukrainian men were charged with the smuggling of desperate young men who recently completed their military service in Ukraine and were looking for better employment opportunities abroad. In this case, about 30 Ukrainian victims were smuggled from Ukraine to Philadelphia, USA through Mexico. They were promised free room and board, and jobs paying US\$ 500/ month, but did not get anything once in the country of destination, and were physically abused if they resisted working for free. Instead of fulfilling their dreams for great opportunities in USA, these smuggled Ukrainians found themselves in trafficking enslavement.

Policies aimed at immigration control, despite their good intentions, may raise demand as well as the cost for smuggling. The ICMPD Migration Yearly Book suggests that the fee for smuggling services depends on the distance, the types of guarantees the smuggler is able to offer, the level of convenience of the transfer and on the solvency of the migrant [ICMPD, Yearbook on Illegal Migration, 2010]. There are different estimations and data on smuggling fees: over US\$ 9,000 from Asia to Europe and about US\$ 3,000 from Eastern Europe and

Western Europe [On-line Data Base, n.d.]; UNODC Global Review cited that smuggling from China's Fujian province to the United States has doubled – from US\$ 28,000 to US\$ 60,000 in 2001, and US\$ 2,000-3,000 US Dollars from Moldova to Greece [p.101].

According to Migration in Ukraine Report, 2008, Ukraine is a “part of the Central European route” of irregular migration. This route extends from Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan through “Russia, Ukraine, Poland and Slovakia to Western European countries” [p.48]. According to Bilger, 2006, Kiev, Ukraine is one of the important hubs for smuggling from the Middle East countries.

Ukraine is mainly recognized as a country of origin of victims of human trafficking trafficked to Russian Federation, Turkey, Poland, Czech Republic and other countries. In the latest decade an increased number of sources identify Ukraine as a country of destination for victims trafficked from Central Asia and Moldova.

The process of identifying and assisting victims of trafficking is very complicated from the beginning (defining a trafficking victim) to the end (providing access to resources and appropriate quality services). Victim assistance is a complicated undertaking due to many factors including lack of financing -which makes the continuity of assistance uncertain, fluctuation of victim needs, social stigmatization of human trafficking, inefficient cooperation among stakeholders responsible for identification and assistance of trafficking victims etc.

Among the services which victims of human trafficking may receive as a part of rehabilitation process are:

- Interpretation
- Housing
- Food
- Clothing
- Medical care Mental health care
- Restoration of ID documents
- Language classes
- Employment and skills training
- Financial self-sufficiency skills training
- Criminal advocacy
- Repatriation aid
- Immigration relief and benefits

The UN Palermo Protocol requires countries of origin and of destination to consider implementing measures to provide for the physical, psychological and social recovery of trafficked victims. Every state ratifying the Protocol against the Smuggling of Migrants

by Land, Sea and Air “shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object” to human smuggling [United Nations convention, p.62]. Both victims of trafficking and smuggled migrants may be entitled to asylum and granted refugee status according to the UN criteria for consideration. However if there are no grounds for asylum, illegal migrants are detained and deported. Such examples are found when the state authorities apprehend undocumented arrivals who apply with asylum seeking or refugee status seeking papers with no justifying grounds for protection [UNHCR, *Interception of Asylum-Seekers and Refugees*, 2000].

As it is evidenced in this article, human trafficking and human smuggling are not interchangeable terms. The conceptual confusion existing around these two phenomena, often leads to incorrect interpretation of trafficking cases by law enforcement, prosecutors and judges.

In many cases both victims of trafficking and smuggled individuals are migrants in search for better opportunities and life conditions abroad. The relations between smuggled and smugglers are commercial in nature, where the former is involved in the process to be moved to their “country of dreams”, while the latter gains profit from this illegal activity. Human smuggling is an international phenomenon, while trafficking can be performed both within national borders and internationally. The relationship between the smuggler and smuggled individuals normally stop once they are in the country of destination, in contrast, the relationship between traffickers and victims often start/continue in the country of destination and involve threats, violence and abuse of power. This article provides examples illustrating cases of human trafficking which started with smuggling of migrants, and then included exploitation and deprivation of power at a later stage. Both human trafficking and human smuggling are criminal offences, however in cases of smuggling both recruiter and recruited individuals are offenders. While human trafficking is called a crime against humanity, people smuggling is not classified as a violent crime.

The two phenomena are inter-related, and the proper identification may take time. The use of a sensitive, humane and informed approach at the point of identification of irregular migrants is of upmost importance. Both international and national legislation and laws, as cited in the text of this paper, call for proper treatment of migrants at the point of detection. Not only can ill-suited search and identification practices lead to mistreatment of individuals, but also they may break the trust of potential witnesses, and thus impede the

effectiveness of the potential crime investigation process. Practitioners involved in search and identification operations should undertake special training in order to distinguish trafficking from smuggling, and offenders from victims. While both human trafficking and smuggling crimes evolve and become more illicit, academics and practitioners should use different fora to exchange information and materials and to keep the profile of victims and offenders as current as possible.

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