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Trafficking in Persons in an Era of Growing Irregular Migration

Keynote Address, European Union Anti-Trafficking Day, Vienna, 14 October 2015



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The exploitation of migrants, many of them refugees, who are seeking asylum in Austria and other parts of Europe has made front-page news for several years and raises questions about the differentiation between trafficking in persons and smuggling of migrants. This article explores the levels and characteristics of recent irregular migration flows, global trends and developments in Europe and Austria concerning trafficking in persons, and examines the circumstances of trafficking, displacement and persecution. The aim of this article is to reflect on the root causes of irregular migration and trafficking in persons and on the best ways to prevent these phenomena.

1. INTRODUCTION

The “World at War”. This is the title used by UNHCR, the United Nations High Commissioner for Refugees, for its recent annual report in the state of refugees in the world. Never before have so many people been forcibly displaced. At the end of 2014, some 60 million people were fleeing persecution, war, generalised violence and human rights abuses. Last year alone, some 13.9 million more people became refugees, the highest figure since recording of such numbers started (UNHCR 2015, 2). Because of the catastrophic situation in countries like Syria, Iraq, Afghanistan, Somalia, Sudan and South Sudan, it is widely expected that the number of refugees will continue to rise to new record heights. Moreover, the precarious situation in transit countries causes many people who believed to be safe to flee again or to lose hope that they will ever return to their home countries.

There is no doubt that Europe is facing a “time of growing irregular migration” – so the title of this year’s EU Anti-Trafficking Day – and it would be merely naïve to think that these times are likely to change in the short and medium term. Indeed, it is surprising that the number of people who feel compelled to leave their countries of origin is not much higher and that the number of those migrating to Europe hoping to find a safer and better future has not risen much sooner.

On the one hand, the events in Hungary, Austria, Germany and along the so-called Western Balkans Route in 2015 are seen by some as a failure of Europe’s asylum and migration policies. On the other hand, the tremendous support and courage that many Austrians put on display when they aided refugees in large numbers is also testimony that civil society feels sympathetic to the plight of refugees and other migrants.

This article reflects on the patterns and levels of irregular migration, examines global trends and developments of trafficking in persons and how they affect Europe and Austria, and explores the causes of trafficking in persons and displacement. This article aims to show that the status quo is not sustainable, that Europe has to face uncomfortable and inconvenient realities, and that it needs to view trafficking in persons and irregular migration in a new light in order to respond to these phenomena more reasonably and more proactively in the future.

2. IRREGULAR MIGRATION, SMUGGLING OF MIGRANTS, TRAFFICKING IN PERSONS

Trafficking in persons must not be confused with the smuggling of migrants. Both phenomena are different types of irregular migration, each with different causes and circumstances. In this context, it is also worth noting that Austrian law criminalises both offences separately: trafficking in persons is an offence under § 104a of the Austrian Criminal Code and smuggling of migrants under § 114 of the Policing of Foreigners Act (*Fremdenpolizeigesetz*).

A similar distinction is drawn in international law, especially in the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children. Relevant materials and legislative guides further stress that the two offences are distinctly different concerning their purpose, the relationship between perpetrator and victim, and in relation to the consent of the victim (UNODC 2008, 2–5). Accordingly, the offence of smuggling of migrants primarily serves to protect territorial borders, administration, and a range of other public interests. The offence of trafficking in persons, on the other hand, serves

to protect personal and sexual freedom and integrity, limb and life. Based on this distinction, penalties, protection and status of victims, as well as law enforcement and administrative responsibilities are designed quite differently for each offence.

Although the distinction is widely contested and, in some cases, unsustainable, it is not the purpose of this article to question the basic understanding of both terms; indeed, negotiations on these definitions were complex and cumbersome and it is a considerable achievement that any consensus on these terms was reached. In the context of this article, two important points are nevertheless of major importance:

Firstly, the already high number of persons who are forced or choose to leave their homes because of persecution, forced displacement, poverty, unemployment, hunger, war, economic under-development, discrimination, natural disasters and climate change has grown considerably in recent years and will continue to grow in the near future. For now, any improvement or eradication of these cause appears unlikely. In contrast, further irregular migration and refugee exoduses are likely to occur from countries such as Yemen, Ukraine and Burundi, as well as Jordan, Lebanon and Turkey.

These “migration pressures” create an opportunity and a growing clientele for migrant smugglers and traffickers. In order to escape persecution and poverty, many migrants will use their money and belongings, and those of their families, to pay smugglers. Others will fall victim to the tricks of traffickers who are promising a better future and greater prosperity. Given the lack of alternatives, more and more people will have little choice but to put their future in the hands of smugglers and traffickers and accept the dangers and risks of exploitation associated with smuggling of migrants and trafficking in persons.

Secondly, these circumstances make it increasingly difficult to draw a meaningful distinction between smuggling and trafficking:

- ▶ Is, for instance, the common scenario in which Afghan refugees in a refugee camp in Pakistan accept the promises made by smugglers, that they will be taken to Europe quickly and safely but then repeatedly have to fork out additional money to pay the smugglers en route and later, against their expectations, end up travelling from Libya to Italy on an unseaworthy dinghy, a case of smuggling to which the migrants consented or is it a case of trafficking in which refugees are victims who have been betrayed, exploited, extorted and placed in a situation of imminent danger?
- ▶ If, for instance, a woman in Moldova is made to believe that for payment of a fee she can travel to Austria without a visa and that she can work in Austria in the sex industry to escape poverty and unemployment, is this a case of exploitation and trafficking, or is it a case of smuggling of migrants because the woman is desperate enough to consent to any offer, regardless of how credible that offer is?
- ▶ If a Syrian family, hoping to find asylum in Germany, enters the crowded compartment of a refrigerated truck in order to be smuggled from Hungary via Austria, and if the compartment is subsequently locked by the smugglers and the 71 smuggled migrants inside suffocate and, along with the truck, are left on the side of a highway in Burgenland, is this not a case of exploitation involving illegitimate means?

3. GLOBAL TRENDS AND DEVELOPMENTS IN EUROPE

The 2014 Global Report on Trafficking in Persons 2014 that was authored by

UNODC, the United Nations Office on Drugs and Crime, emphasises that trafficking in persons is a global phenomenon that affects women in particular. It is estimated that approximately 70 % of all victims of trafficking worldwide are women, including 21 % who are girls under the age of 18. Approximately 30 % of all victims are male, including 18 % boys (UNODC 2014, 29). According to the Report, the percentage of female victims is higher still in Western and Central Europe where it is estimated that as many as 62 % of all adult victims of trafficking are women in addition to 16 % who are girls (UNODC 2014, 61).

It has also been noted that the percentage of minors among victims of trafficking has grown considerably in recent years. In 2014, some 33 % of all victims were minors; about two thirds of them were girls (or 21 % of all victims) and about one third were boys (or 12 % of all victims) (UNODC 2014, 31). Trafficking in children constitutes about 19 % of all trafficking cases in Western and Central Europe and over 86 % of these children are girls (UNODC 2014, 61).

The fact that so many women are among the victims of trafficking is due to the type of exploitation, but also a result of the existing law, the work of criminal justice agencies and the political will of some states. In practice, the great majority of cases of trafficking continues to involve instances of sexual exploitation. In many countries, criminal offences and other laws relating to trafficking and the main emphasis of investigations are almost exclusively concerned with sex trafficking (UNODC 2014, 34). For these reasons, 53 % of all victims of trafficking worldwide are victims of sexual exploitation; in Western and Central Europe, that figure is as high as 65 % (UNODC 2014, 33; *ibid.*, 62). The vast majority of victims of sexual exploi-

tation are women. UNODC estimates that 79 % of all female victims of trafficking worldwide are victims of sex trafficking and that only 8 % of male trafficking victims experience sexual exploitation (UNODC 2014, 36).

Forced labour and other types of labour exploitation, which mostly involve male victims, constitute approximately 40 % of all cases of trafficking in persons worldwide and only 26 % in Western and Central Europe. Trafficking for the purpose of organ removal, illegal adoptions, forced marriage, child soldiers, debt bondage and pornography are not well documented and are not further discussed here.

A further feature of trafficking in persons in Europe is the fact that most of the victims who are identified in Europe – unlike in other parts of the world – are, for the most part, not from other European countries, but originate from a great range of countries and often have travelled for long distances to come to Europe. Between 2010 and 2012, victims from over 130 different countries of origin have been identified in Western and Central Europe (UNODC 2014, 62). This demonstrates the complexity of the European trafficking problem and is symptomatic for the nexus between trafficking in persons and other forms of irregular migration and forced displacement.

4. TRAFFICKING IN PERSONS IN AUSTRIA

The annual Trafficking in Persons Report, published by the United States Department of State, notes in its 2015 edition that: “Austria is a destination and transit country for men, women, and children subjected to sex trafficking and forced labour. The majority of identified victims are girls and women subjected to sex trafficking. Victims primarily originate from Eastern Europe (Bosnia and Herzegovina, Serbia,

Romania and Bulgaria) and, to a lesser extent, China, Nigeria, the Middle East, North Africa, Southeast Asia and South America”. (US Department of State 2015, 77).

Furthermore, the Report points to the problem of forced begging in Austria. It highlights the fact that among the victims are many unaccompanied minors and asylum seekers from Syria, Afghanistan and Northern Africa, who are forced into begging (US Department of State 2015, 77). Although it is difficult to validate all of the observations made in the US Trafficking in Persons Report, these remarks emphasise once more the nexus between forced migration, displacement and trafficking in persons which is manifested in organised begging that can be seen in many cities across Austria.

The high number of unaccompanied minors who enter Austria illegally, who are smuggled into the country, and who reside or apply for asylum in Austria is worrying and raises several questions which cannot be answered instantly and that require further research and analysis. Exact figures about the number of victims of trafficking in persons who are minors are presently not available, but the following data provides some useful indicators.

In 2014, the Austria’s Federal Bureau of Investigation, the Bundeskriminalamt, reported that 27 % of all persons smuggled into Austria were minors. 15 % were aged between 15 and 18 years, 6 % aged between 8 and 14, and a further 6 % younger than 8 years of age (Bundeskriminalamt 2015, 24). In absolute numbers this means that in 2014 alone, more than 4,360 minors were smuggled into Austria. Between 1 January and 31 August 2015 alone, 5,559 asylum applications were lodged by unaccompanied minors, with figures expected to rise (BMI 2015, 9).

These figures must not be confused with the number of trafficked persons, but they nevertheless reflect the growing number of persons who are at particular risk of exploitation and who are especially vulnerable to violence and threats, thus requiring special protection.

5. CAUSES – AND WHAT TO DO ABOUT THEM

Measures capable of preventing that women, children, and men fall victim to trafficking in the first place are a central feature of any strategy to combat trafficking in persons. Understanding the causes and conditions that lead to victimisation and re-victimisation is the best way to stop trafficking effectively. Accordingly, Article 9 (4) of the Trafficking in Persons Protocol obliges States Parties to take or strengthen measures to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

This call for action ties trafficking in persons to the issue of development aid, highlighting the fact that trafficking generally occurs from economically less developed to wealthier countries and acknowledging that trafficking is frequently caused by inequality and discrimination, especially against women.

The particular circumstances that explain why individual persons or groups of persons are at risk or fall victim to trafficking vary between cases. The different types of exploitation, the experiences and hopes of individual people, economic and political conditions, along with many other factors that can lead a person to be lured, tricked, recruited, or exploited by traffickers cannot be generalised in a meaningful way. All too frequently, stereotypes are used that portray victims as stupid and naïve, incapable of making rational choices about their

lives. For these reasons, it is meaningless to develop general prevention measures that ignore the personal circumstances of actual and potential victims. Moreover, in raising awareness about trafficking, it is important to disseminate truthful information rather than using scare-tactics and exaggerations to dissuade potential victims from their desire to change their personal situation (Wheaton et al. 2010, 135).

Special consideration needs to be given to the fact that most victims of trafficking are women. In this context, it needs to be noted that most predictions suggest that the number of women among regular and irregular migrants is likely to increase further, leading some sources to refer to a feminisation of international migration. In many countries – not only so-called “developing nations” – women experience discrimination and have little opportunity to complete secondary or tertiary education, engage in skilled labour, and gain access to the regular labour market. In many parts of the world, women, even if they can find work, earn lower wages than men despite being equally qualified (American Bar Association 2005, 116; Chuang 1998, 68–69). Moreover, several studies show that a direct nexus exists between female youth unemployment and trafficking in persons and that female victims of trafficking mostly come from those areas and countries in which they see no economic opportunities (Danailova-Trainor/Laczko 2010, 54; Malone 2001, 91). In these circumstances, it is nearly impossible to resist the offers made by traffickers.

It is for these reasons that many experts call for an end to discrimination and for greater opportunities for women to participate in society and to realise their potential. This includes, *inter alia*, access to schools, universities, skills training and labour markets, equal opportunity to work independently and for entrepreneurship,

equal allocation of family duties for men and women and, in particular, equal political rights (UNODC 2008, 426–429).

Apart from personal circumstances and motivations of individuals, far-reaching structural causes are enabling trafficking in persons and create a lucrative source of income for traffickers. This, as mentioned earlier, involves political, economic and social triggers that cause displacement, persecution and emigration and that leave many people with no choice but to leave their home environment. These push and pull factors need to be seen in the context of historical and political ties between States and earlier migration of relatives and friends that explain why persons often use long and cumbersome routes and means to travel from their country of origin to their destinations. Trafficking in persons, just like smuggling of migrants, is, after all, one type of irregular migration and needs to be understood in this context (UNODC 2008, 426–429; Wheaton 2010, 121).

It is important to stress that the distinction between political refugees and economic migrants, which is used by certain political factions to raise apprehension and hostility towards immigrants and asylum seekers, is somewhat artificial and removed from the reality of contemporary migration flows. Several studies show that people who are fleeing from situations of crisis and conflict generally seek to flee from political circumstances just as much as they seek to escape from dire economic situations in the affected areas. In large parts of Syria, eastern Ukraine, Iraq, Afghanistan, and in many other parts of the world, it is equally impossible to practice, express and live one's faith, political opinion and ethnicity as it is impossible to practice and pursue one's job, economic activity, or feed one's family. In these circumstances, it is completely plausible and understandable why many people choose to emigrate.

6. LEGAL AVENUES OF MIGRATION

Many persons fall victim to the promises of traffickers hoping that this will enable them to gain access to safe and wealthy destination countries. The literature, many experts, and a growing number of international organisations recognise that immigration restrictions and the unavailability of legal avenues of migration are one of the reasons why people become victims of trafficking in persons (Steele 2007, 20; Berman 2010, 94). This creates a demand and a lucrative market for smugglers and traffickers who take advantage of the migrants' hopes and desperation and who frequently place their lives and safety in danger.

In a 2010 article, trafficking is described as the worst possible form of migration. Trafficking is said to be the most corrupted form of migration, which turns the hopes of migrants to earn money abroad, to support their families, and to enable their children to have a better future into nightmares (Danailova-Trainor/Laczko 2010, 38). Consequently, it is essential to recognise that trafficked persons usually have valid reasons for their desire to migrate and that neither measures designed to close border and deter migrants nor the many dangers which irregular migration entails can stop migrants from taking the risks associated with trafficking and smuggling.

One way to combat trafficking in persons in the medium and long term and to prevent persons from falling victim to traffickers is to create legal avenues of migration. If this is done sensibly and sustainably, trafficking is no longer a necessity for many migrants and the offers made by traffickers and smugglers become redundant.

This does not mean that border controls are abandoned and that countries open up to unlimited numbers of migrants. In con-

trast, the suggestion here is that States increase their influence on migration flows by developing sensible immigration, labour market, and population policies, as well as integration programmes. Many international organisations and research centres have a plethora of plans and proposals that can be adapted to the specific circumstances of individual States.

In Austria, suggestions of this kind have mostly been limited to initiatives such as the “Rot-Weiß-Rot Karte”, which was introduced in 2011 to enable skilled migrants from non-EU Member States to find work and settle in Austria. The demonstrated success of this initiative is, however, rather modest and, according to recent reports, quotas and expectations relating to the Rot-Weiß-Rot Karte have not been met. In the three years between mid-2011 and mid-2014 only 5,500 of the 8,000 allocated positions for skilled workers could be filled (Stiober 2014).

This situation could be rectified easily, as many of the refugees who have come to Austria in recent years are highly skilled and could fill vacancies in some industries if they are adequately trained and receive language courses. However, to this day qualifications of asylum seekers are not adequately recorded. Naturally, in domestic asylum procedures the protection needs of asylum seekers need to be prioritised, but the potential of those seeking to find a new home in Austria should neither be neglected nor underestimated (Steiner/Höller 2015).

Moreover, the reality of and projections for population growth need to be considered when discussing migration flows to Austria. Without further immigration, Austria’s population would have been decreasing for several years. In the medium and long term, Austria’s population is expected to grow as a result of immigration, but it is also projected that the population

will age considerably. Figures provided by Statistik Austria show that the number of persons aged 20 and below is decreasing while the number of persons aged 65 and above, i.e. persons at retirement age, is growing rapidly (Statistik Austria 2015). As a result, immigration is needed to balance the low birth rate, support the national pension system, sustain the social security system, and support economic growth.

The so-called “flood of migrants” thus has many positive aspects for Austria, which could be maximised further by engaging in pro-active policy making and population planning. Several studies show that migration not only reduces the skills shortage in certain industries, but also that migration is indispensable for many companies in Austria. A lack of immigration would affect manufacturing, tourism and hospitality particularly negatively (Pfarrhofer 2012). A contentious question in this context is whether asylum seekers should be given access to the labour market. Austria’s Chamber of Commerce and Industry has repeatedly endorsed the suggestion that asylum seekers be allowed to work (Höller 2015). Not only would such a step fill many job vacancies, but it would also foster the integration and independence of new migrants and prevent them from becoming second class citizens who, in the worst case scenario, engage in criminal activities to sustain a living. Suggestions that immigrants and asylum seekers “take away” jobs from Austrian nationals – a statement made frequently by certain political factions – are presently baseless and unsustainable.

A simulation run by the Austrian Institute for Economic Research (Österreichisches Institut für Wirtschaftsforschung) published in April 2015 shows that if the Austrian labour market was opened up for asylum seekers, unemployment rates

would rise by a mere 0.22 % in the short and medium term. This rise would be lower still if access to the labour market was delayed by a couple of months (Bock-Schappelwein/Huber 2015, 94). The same study shows that restricting the conditions imposed on asylum seekers, such as denying access to the labour market, is no deterrent for further migration and does nothing to reduce the number of asylum seekers; a number that is expected to rise due to the situation in the main countries of origin (Bock-Schappelwein/Huber 2015, 90). The study further notes the limited information on this topic and criticises the lack of data (Bock-Schappelwein/Huber 2015, 89). Additional research in this field is urgently needed, not least in order to counter statements and demands coming from certain political factions.

The high level of illegal labour and illegal employment of foreign nationals in Austria provides a further impetus to rethink access of foreign workers to the labour market and to create programmes that enable asylum seekers, refugees and other immigrants to participate properly and legally in the workforce. These are further tools to prevent exploitation and trafficking and to increase tax revenue and the national social security system.

7. CONCLUSION

In closing, it needs to be stressed that “the era of growing irregular migration” is only in its infancy and that migration in all its form will be increasing, not least because of greater mobility and interconnectivity.

Migration is not a problem that can be abolished. Migration cannot be stopped by building border fences, by deterrence measures, or by involving the armed

forces. Migration is a reality that can be managed in meaningful and sustainable ways and that can be planned and directed.

The so-called migration or refugee crisis of 2015 was predictable and countries could have planned and prepared several years in advance. Crises like those in Afghanistan, Syria, eastern Ukraine and in many other parts of the world did not arise suddenly and over night. That these crises would be followed by displacement and mass migration was also predictable, as was the fact that many migrants would resort to smugglers or fall victim to traffickers. To think that Austria would be immune to these developments is, at best, naïve – or otherwise merely ignorant.

While there are few and very limited – and often very questionable – mechanisms to counteract migration, there is a lot that can be done to stop trafficking in persons. Addressing the root causes and creating legal avenues of migration are the two main points raised in this article. In addition, there are numerous other ways to prevent exploitation and reduce the demand for cheap, illegal workers.

This call for action addresses anybody who, in official or personal capacities, comes into contact with trafficking. Trafficking in persons is not, as has often been said, a “hidden crime”. The direct and indirect exploitation of people, migrants in particular, takes places in every part of society. It is time to open our eyes and face the reality of trafficking in persons. This is why it is important to break with taboos and overcome stereotypes in order to understand the signs, circumstances and causes of trafficking in persons and to act against them.

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