

The Control of People
Smuggling and Trafficking
in the EU

Experiences from the UK and Italy

Matilde Ventrella

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THE CONTROL OF PEOPLE SMUGGLING AND TRAFFICKING IN THE EU

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List of Abbreviations

AVID	Association of Visitors to Immigration Detainees
BID	Bail for Immigration Detainees
EC	European Community
ECHR	European Convention of Human Rights
ENP	European Neighbourhood Policy
EAW	European Arrest Warrant
EEW	European Evidence Warrant
EJN	European Judicial Network
ENP	European Neighbourhood Policy
EPP	European Public Prosecutor
EU	European Union
ILPA	Immigration Law Practitioners' Association
IOM	International Organization for Migration
JCWI	Joint Council for the Welfare of Immigrants
JHA	Justice and Home Affairs
LD SG	London Detainee Support Group
OLAF	Anti-fraud Office
PACE	Police and Criminal Evidence Act 1984
QMV	Qualified Majority Vote
RABITs	Rapid Border Intervention Teams
SAR	International Convention on Maritime Search and Rescue
SOLAS	International Convention for the Safety of Life at Sea
SOCA	Serious Organised Crime and Police Act 2005
TFEU	Treaty on the Functioning of the European Union
UKHTC	UK Human Trafficking Centre
UNTOC	United Nations Convention against Transnational Organized Crime
WTO	World Trade Organization

Preface

When I started my research on policing and judicial co-operation in the EU in 2001, I did not expect to concentrate on people smuggling by sea and on trafficking in human beings. I also did not expect that I would demonstrate that the smuggling of migrants by sea could be addressed by granting permanent visas to victims of this crime. I was aware that it would have been more straightforward to demonstrate this fact for victims of people trafficking because there is a lot of law at the international level that provides for their protection. There is no law that similarly protects victims of people smuggling by sea. There is also a widespread belief that people smuggling by sea is an uncontrollable phenomenon that can only be prevented by restrictive laws forbidding these people from entering the territory of EU Member States. These facts were problematic for my research, as I did not want to accept the position that favoured the victims of human trafficking over the victims of people smuggling by sea just because it is argued that they are not victims, having chosen to travel irregularly from their countries of origin. People smuggled by sea are not victims in the traditional sense because no one forces them to leave their country of origin, and so their decision can be considered freely taken.

The law does not support my views on this, and for this reason I decided to travel to Sicily to talk to experts who have been dealing with the smuggling of migrants by sea for years. I am deeply indebted to the individuals who spared their time to answer my questions in Lampedusa. I greatly benefited from the information they provided. They helped me to understand that smuggling of migrants by sea is controllable, and can be defeated by protecting the victims of these crimes. Having written this book, I am very pleased that the Lisbon Treaty has now entered into force. The Lisbon Treaty provides the possibility of enacting many of my findings by adopting effective laws against the criminal organisations who exploit poverty.

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I am deeply indebted to the individuals who work for the Association Pope John XXIII who spared their time to answer my questions. I am also very grateful to the individuals of the Polizia di Stato (Italian police) in Rimini who helped me to understand how to deal with victims of people trafficking. In fact, I am most grateful to the Polizia di Stato in Italy for the very valuable information they provided to me on trafficking in human beings and smuggling of migrants by sea. I will never forget the professionalism of the individuals in Lampedusa and the fantastic members of Polizia di Stato I met in Siracusa. During my stay in Sicily, I greatly benefited from the help of the staff of Frontex and the Guardia di Finanza (Italian Frontier Police). It was the Guardia di Finanza who suggested that I contact the public prosecutors in Siracusa, and I will always be grateful for their advice. As a result of meeting the public prosecutors and learning about the important work they carry out, I came to understand more fully how smuggling of migrants by sea can be defeated.

I am also very grateful to the Italian Ministry of Internal Affairs, Department of Immigration which supplied me with the data on the number of people smuggled by sea from Africa to Lampedusa. They have been very patient, and have always sent me the updated figures.

I am very grateful to the International Organization for Migration (IOM) in Lampedusa and London, whose staff agreed to be interviewed by me. A particular thanks goes to the Italian Red Cross in Lampedusa, and in Sicily in general, who have given much of their time and who have provided me with very important documents on smuggling of migrants by sea.

I thank the Italian citizens I met in Milan who made themselves available to answer my questions. I also thank the individuals from the Poppy Project in London, one of the public prosecutors of the UK Human Trafficking Centre (UKHTC) in Sheffield who responded to my questions on trafficking in human beings, and the Smuggling Unit of Heathrow Airport in London.

I would like to thank my friend Darius who helped me to edit my manuscript.

I am very grateful to my father Antonio who helped me to write the Italian part of my book. My father was an estimated administrative lawyer whose suggestions were invaluable. It was his idea to go to Rimini to interview the police and the members of the humanitarian association I indicate in Chapter 5 of my book. My father also passed on to me all the law and case-law on Italian immigration. Thank you, dad, for having been my father!

To my beloved dad Antonio who passed away on 20th April 2010.

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Chapter 1

Introduction

The Impact of the Lisbon Treaty

The ratification of the Lisbon Treaty provides the EU with an opportunity to show how it can be a force for good. In return, the Treaty allows EU citizens to form a decision as to the extent of EU power. One area where the Lisbon Treaty shows significant potential is in combating the crimes of trafficking in human beings and the smuggling of migrants by sea. As it currently operates, these areas of EU policing and judicial co-operation are governed by the use of framework decisions. Article 34 (2)(b) of the EU Treaty states that framework decisions do not entail direct effect, which means that individuals cannot rely on them before national courts. Another issue is the fact that the European Parliament has only a consultative role in these areas. That legal measures in this area were adopted unanimously by the Council of the EU (hereafter ‘the Council’) is also problematic. The Council is composed of the ministers of the Member States’ governments who are there to represent the interests of national governments, not necessarily the interests of all the people of the EU. Conversely, the European Parliament is the only democratic body directly elected by the people of the EU whose representatives are supposed to aim specifically to improve the EU. Yet the European Parliament is limited to co-legislating with the Council in most of the areas covered by the EC Treaty, but not in the area of police and judicial co-operation (third pillar). This is significant because changes in the third pillar potentially threaten the fundamental human rights of EU citizens. Why should the European people passively accept what is decided behind closed doors? Why should the European people accept the decisions taken concerning their freedoms, their personal data and their rights as defendants and suspects in EU Member States? The whole purpose behind democracy is to give governments the legitimacy they need to act through gaining the support of their citizens. If the EU has the authority to make fundamental decisions affecting its citizens’ rights, EU citizens should have a powerful say in what those decisions should be. If this is not the case, the EU will be seen as functioning as a dictatorship, and should therefore be abolished. There is a conviction that all bodies or new entities which threaten democracy do not have any legitimate reason to exist, and that it is the people’s job to make sure that their fundamental rights are protected. Therefore, in this context, the ratification of the Lisbon Treaty is important as it will permit the European Parliament to co-legislate with the Council in the area of police and judicial co-operation. The Lisbon Treaty will also replace the unanimous voting procedure with majority votes in most of the areas covered by the EU. The Lisbon Treaty will

also permit national parliaments to be consulted on draft legislation reinforcing the democratic process in the EU. Over the years, many conferences have taken place where academics have debated the role the national parliaments should play. Some academics have argued that consultation with national parliaments could potentially weaken the European Parliament. This view is contested here because it is felt that all legal measures concerning the rights of European citizens must be enacted with as much democratic involvement as possible. If this means involving national parliaments and encouraging a democratic dialogue with the European Parliament, such measures should be welcomed. Encouraging this dialogue would reassure the people of Europe that decisions will not be taken that disregard their interests. The power of the Council should be reduced in the decision-making procedure because the ministers sitting in this body are bearers of their particular national interests, which are not necessarily the interests of the people of Europe. For example, it seems that international terrorism is a threat within the EU, and for this reason the Council (and not the European Parliament, and thus not the people of Europe) is adopting tough legal measures that will limit the liberties of EU citizens. This endangers EU citizens' personal data, as there is a risk that their e-mails or telephone calls could be monitored without their knowledge. Some have noticed that their letters coming from foreign countries into Italy are often delivered opened. When the post office is asked why, it responds that they are being opened because they come from abroad, and must be checked for security reasons. This invasion of privacy is troubling, but what is more upsetting is that the staff of the post office can do this because an EU framework decision allows them to do so regardless of the wishes of Italian or other EU citizens. This would be of concern if members of the European Parliament, as the only direct representatives of EU citizens, had been involved in these decisions, but the fact that the Council made the decision on its own is absolutely unacceptable for anyone who believes in the democratic process. The Lisbon Treaty will make a difference by involving the European Parliament and national parliaments, giving EU citizens a direct say on most of the areas covered by the Treaty. The more EU citizens are involved in the decisions taken by the EU that directly affect their lives, the more they will invest in the effective functioning of the EU. At that point, they will be in a better position to make a judgement as to what direction they would like the EU to take. The Lisbon Treaty presents a chance for people to be brought closer to the EU, and thus to understand it better. In this way, the sovereign people of Europe will be fully entitled to say: 'We want or we do not want the EU as it stands.' The Treaty thus presents the citizens of Europe with an important opportunity.

Content of the Book

This book focuses attention on the two crimes of smuggling of migrants by sea and trafficking in human beings in the European Union. The subject is approached by analysing the United Nations Convention against Transnational Organized Crime

(UNTOC) Protocols against Smuggling of Migrants and Trafficking in Human Beings, and EU laws adopted relating to these crimes. The book explores EU police and judicial co-operation to counter smuggling and trafficking, and the amendments that the Lisbon Treaty will introduce.

A sizeable portion of the book is dedicated to examining the plight of victims of human trafficking and people smuggling, because their story can be a motivation for combating these two cross-border crimes. This research was undertaken as part of the search for a solution to these particular crimes. Initially, the difference between trafficking and smuggling was not clear, as it was believed that there was little to no difference between the victims of these two crimes. Indeed, there are similarities, as both groups are forced to go against their will. Victims of human trafficking are forced by criminal organisations to travel for the purpose of sexual or other forms of exploitation, such as forced labour. Victims of people smuggling are forced to travel, not by organised crime, but by the impoverished circumstances they are compelled to escape from in their countries of origin. However, the research early on revealed that according to international conventions and EU law, the difference between people who are smuggled and people who are trafficked is that the latter are considered victims, while the former are not. International conventions and EU law consider that when people who are smuggled leave their countries of origin, they are making a free choice which is absent in the case of victims of human trafficking. Nights and days were spent trying to understand this difference, and the conclusion was reached that this differentiation, although fully supported by the law, was not accurate. The research was carried out in Italy, where the crime of smuggling of migrants by sea is a major problem. Interviews were held with law enforcement authorities and members of humanitarian organisations who deal every day with smuggled migrants, in order to get their views, based on their experience, about the best way to tackle human trafficking and people smuggling. Discussions were initiated with many people in the north and south of Italy about victims of trafficking and people smuggling. The research made it clear that smuggled migrants are in fact victims, because their decision to leave their country of origin is not made freely, but as a result of extreme poverty. This book presents the results of these findings. It is clear that those smuggled are forced by circumstances to leave their countries of origin, and are aware that their trip will not be easy. They are aware that most people who attempt to leave countries in Sub-Saharan Africa do not even make it out of the desert. They are aware that even if they are lucky enough to reach the coast of Libya, many of them will be tortured in Libyan prisons before being able to take boats bound for Italy (see Chapter 5). Finally, they are aware that of those who actually get the chance to make the journey across the sea to Italy, many will drown as a result of travelling on sub-standard boats. Despite knowing that the odds are stacked against them, they still decide the risk is worth taking. Why would they make that choice? This is clearly not a decision to be taken lightly. They take this decision because they are forced, not by other people, but by the fact that they have no alternative if they want to survive and seek a better life for themselves. It is thus very difficult

to see how trafficked people are classed as victims whilst smuggled migrants are not. It seems obvious that they are victims, and as such, they should be legally protected by their states of destination. Unfortunately, states of destination simply return them to their countries of origin, because it is much easier for them to ignore the larger problem of poverty that forces these people to take this decision. A different policy would not be presented in such a way as to make it a vote-winner, and thus would not be taken up by national governments. This book aims to demonstrate that a different policy concentrating on the integration of victims is both necessary and possible if these crimes are to be defeated. It is necessary because statistics show that in recent years, smuggling of migrants has increased, which means that the criminal organisations behind this crime are growing stronger. It is possible because the smuggling of migrants is not uncontrollable. Italy, for example, knows very well the number of people who are smuggled in every year.¹ In 2009, the number of migrants smuggled by sea arriving in Italy decreased because the government turned away boats carrying these people to its shores. However, by taking this decision, the Italian government has been in breach of different international conventions. Firstly, the Italian government has violated the United Nations Convention on the Law of the Sea, which states that States Parties of this convention have the legal obligation to rescue people found at sea who are lost or in danger.² Secondly, the Italian government has violated the Convention on the status of refugees and EU law on the protection of persons in need of subsidiary protection. This is because many of the people on the rejected boats are asylum seekers who are escaping from war or for other reasons covered by this convention, as well as EU law. Finally, the Italian government has violated the UNTOC Protocol on Trafficking in Human Beings and EU law on trafficking, because many people on the rejected boats are victims or potential victims of this crime. Nations do not have the right to ignore international conventions and EU law just because they go against their particular narrow interests.

If they decide to join the EU or to ratify international conventions, they must respect them to the same extent as they do their own domestic laws, and the EU should ensure that nations are respectful of the international and EU law they are a party to. The Lisbon Treaty will facilitate this, because national parliaments, along with the European Parliament, will be involved in the adoption of legal measures regarding most areas of the EU, including that of immigration. It is hoped that the European Parliament will be keener in pursuing the general interests of European people rather than the particular interests of one or of a few particular Member States. This is because the people of Europe will be vigilant in ensuring that their representatives pursue the general interests of the EU. Rejecting people smuggled by sea is not in the general interest of the European people because it does not resolve the problem of irregular entry.

1 See Chapter 5 of this book for the Italian statistical data on the smuggling of migrants by sea which I received from the Ministry of Home Affairs.

2 See Chapter 4.

Chapter 2 will show that most irregular migrants are over-stayers, and not the victims of people smuggling. Therefore, rejecting them does not address the problem of irregular migration at all, which clearly cannot be resolved by the mere adoption of repressive measures without regulating regular economic migration. The Lisbon Treaty, by promoting a common policy on immigration, will permit the adoption of legal measures on economic migration which will contribute to the reduction of irregular entry. It is unfortunate that the UK, Ireland and Denmark have decided to opt out of the measures regarding EU immigration policies.³ They have missed an opportunity to improve the policy and law on immigration by co-operating with other EU Member States. Was opting out of these policies and laws what the citizens of these three countries really wanted? In the UK, there is much demagoguery about the EU that might have misled the British people into being suspicious of it as an institution. Sectors of the British press in particular appear to take a very hostile approach towards the EU, which may influence public opinion and policy. A Labour politician once said that the UK should allow limitation of its sovereignty by the EU on economic issues only.⁴ The problem is that the EU is already limiting national sovereignty in delicate areas such as data protection by framework decisions which result in people not having any say on the issues. The UK is party to the measures related to EU police and judicial co-operation, and this means that it, along with other Member States, has approved tough measures concerning the fundamental freedoms of EU citizens without allowing the European Parliament (representing the sovereign people of Europe, which includes the British people) to have its say. The Lisbon Treaty should allow these sovereign people the opportunity to understand the demagogic intent of their government through the European Parliament. Their right to decide on whether to stay or to leave the EU will be the result of their understanding of it, and should be given full respect. At the moment, the sovereign people of Denmark, Ireland, the UK and of all the EU Member States are not prepared to reject the EU, as a majority lack knowledge of what the EU is about. They do not have sufficient understanding of how the EU functions to be able to see the positive role the European Parliament can play as their representative in the EU.

Aims of the Book

The aims of this book are twofold. The first is to demonstrate that EU Member States alone cannot address these two crimes, because they have a cross-border

3 For the position of the UK, Ireland and Denmark on EU immigration law and policy, see Chapter 3, which explains their position under the EU Treaty, and their future position under the Lisbon Treaty.

4 Comments made by the Labour MP Gisela Stuart during a public lecture at the University of Buckingham, 2 June 2008.

dimension. This means that these crimes are committed across different EU Member States and in countries outside the EU. This explains the intervention of agencies such as Europol and Frontex. These international crime-fighting agencies must co-operate with the national police forces of EU Member States and facilitate communication with non-EU countries. However, allowing their presence on national territory means that EU Member States will have to limit their sovereignty concerning certain criminal investigations. This should only be done if the sovereign people of the EU are in agreement. EU citizens would have greater understanding of how important EU police and judicial co-operation are if there was improved dialogue between them and their representatives in the EU Parliament. In this way, the sovereign people could create a *cultural and moral movement* against the criminal organisations involved in the smuggling of migrants and trafficking, with the opportunity to vote in favour of legal measures on EU police and judicial co-operation. This cultural and moral movement should also aim to integrate victims of people smuggling and trafficking. In this way, they would escape from the intimidating power of criminal organisations and feel comfortable enough to co-operate with law enforcement authorities. Integration is possible by granting a permanent visa to these victims. The Lisbon Treaty could permit a more unified policy on migration and a more effective approach against these two cross-border crimes. This book will show that at the moment, there is a lack of mutual trust between the law enforcement authorities of EU Member States. New legal measures aimed at fostering mutual trust between the Member States have been adopted. However, they will not create mutual trust until the sovereign people of Europe understand how their personal rights and freedoms will be impacted, and how the reinforcement of mutual trust can be ensured without the sacrifice of fundamental human rights. Italy and the UK have been chosen as the focus of this research in order to demonstrate the difficulties that Member States with different legal systems and traditions may encounter when trying to co-operate with each other.

The other aim of this book is to demonstrate that the criminal organisations that commit these crimes can be defeated through the support of their victims. The research on which the book is based will show that criminal organisations are able to intimidate people by threatening them or their families, especially when these people are not integrated into the society where they live. In the case of smuggling of migrants and trafficking, their victims cannot be integrated if they do not have a long-term visa. A long-term visa would permit these people to work and to trust the law enforcement authorities, which would then assist and encourage them to testify against their smugglers and traffickers. In this way, criminal organisations would lose their power of intimidation, and could be defeated. One might ask how all this can be proven. This method has been successful in two Italian cities, and this would suggest that it could and should be applied elsewhere in Italy and in other Member States. The protection of victims of human trafficking has long been lacking. The two successful approaches are called the 'Rimini Method' (for victims of human trafficking) and the 'Siracusan Approach' (for victims of smuggling of

migrants by sea). This book will share the findings of interviews carried out in the UK and in Italy, at the detention centre of Lampedusa (Italy), which further strengthen the argument that people smuggled by sea are in fact victims.