



The New Era of Smuggling in the Mediterranean Sea

Criminalising Humanitarianism? The criminalisation of migrant smuggling between International and European law

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The different facets of the human smuggling counteraction

- I. Human smuggling and organised crime
- II. Human smuggling and the human rights violations
- III. Human smuggling as a threat to international peace and security
- IV. ...as a way to prevent and deflect Migrant flows
- V. Defending the Border



I. Human smuggling and organised crime

- The definition in the smuggling Protocol
 - Financial or other material benefit
- Does the Protocol criminalise the irregular entry?
 - Neutral position
 - Exclusion of criminalisation



II. Human smuggling and the human rights violations

- Jurisdiction extends extraterritorially only in limited circumstances
 - UN Convention: Article 15. (Active or Passive personality)
 - EU Law: Active personality
 - Protection and Universality criteria (human smuggling as a crime against humanity)

III. Human smuggling as a threat to international peace and security

- The Sanctions by UN Security Council
 - Travel ban and asset freezing to human smugglers
 - Is the link between human smuggling and other crimes always clear-out?
 - Preventive measure, but criminal sanctions under *Engel* criteria (ECHR)

IV. ...as a way to prevent and deflect Migrant flows

- Facilitation as an offence (Council Directive 2002/90/EC)
 - Art. 1 dispenses with the condition of obtaining a financial or other material benefit (difference with UN Palermo Convention)
- EU Law Targets are not only smugglers but also smuggled
- Assisting Vs. Procuring irregular entry
- Art. 8: humanitarian assistance has a discretionary nature

V. Defending the Border

- Irregular entry and stay are not criminalised as such in EU law either. Yet they are treated as criminal offences in the legal systems of a number of EU Member States.
- The criminalisation of irregular migration as ‘precautionary criminalisation’ against specific categories of individuals and their undesirable conduct.
- Criminalisation of smugglers as a way to reduce the migrant flows

V. Defending the Border

- RETURN DIRECTIVE (2008/115)
 - MAIN AIM OF THE DIRECTIVE: expulsion of irregular migrants from the territory of the EU as soon as possible
- Court of Justice of the European Union
 - EL DRIDI: return Directive and the delay of the enforcement of the return decision.
 - ACHUGHBABIAN: the compatibility of French law criminalising irregular entry and residence with the Return Directive

Conclusion: Shaky normative foundations of criminalising human smuggling

- Lack of legal certainty and ambiguity regarding the concrete aims behind the criminalisation of human smuggling.
- Criminalisation of human smuggling within the paradigm of preventive justice. The instrumental use of criminal law