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IMISCOE Policy Brief

**Inside Perspectives on the Process
of Human smuggling.**

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Executive Summary

This policy brief may be of interest to policymakers who deal with irregular migration and asylum, particularly as the fields pertain to human smuggling. Presented here are the conclusions of a doctoral research project on human smuggling called *Navigating Borders: Inside Perspectives on the Process of Human Smuggling into the Netherlands* (Van Liempt 2007). This study analyses human smuggling processes into the Netherlands from Iraq, the Horn of Africa and the former Soviet Union. The central question it raises is: what impact does smuggling have on how migration process evolve and, consequently, what choices do migrants make within this process?

Smuggling is often treated as an illegal, criminal business in which huge profits are made. This dominant perspective's development is manifest in current academic studies, but it has also found its way into policies dealing with irregular migration. Combating human smuggling is seen as a solution to prevent unwanted forms of migration. Yet, paradoxically, efforts to combat smuggling may increase the demand for smugglers, drive smuggling prices up, heighten the dangers for migrants involved in migrating and lessen likelihood of return migration altogether. *Navigating Borders* presents an alternative perspective from which to take into account social perceptions of human smuggling, to pay more attention to diversity within smuggling processes and to accommodate the complex stories that may lie hidden in the smuggling process.

One-sided perspective on human smuggling

In contemporary discourse, human smuggling usually refers to criminal business. But this has not always been the case. For example, smugglers in the Netherlands who helped Jewish refugees escape the Nazi regime were usually perceived as heroes. Nevertheless, human smuggling has been penalised in the Netherlands since 1993, when the offence was inserted in article 197a of the Criminal Code (Law of 24 February 1993, *Staatsblad* 1993, 141). In 1996, the country then saw an increase of the sanctions on human smuggling. The Minister of Justice was of the opinion that the only way to deter smuggling was by punishing smugglers more severely (Kamerstukken, II 1994-1995, 24 269, no. 3, p. 2). As of 1 January 2005, the assistance of any illegal entry into the Netherlands was also criminalised, even in circumstances when no profit or gain might be involved. An argument for removing the profit contingency was that proving whether a profit was in fact made could be difficult. But not only is citing difficulty of proof as a reason to change the penal code questionable, more importantly, this revision of the law contributes to criminalising all sorts of assistance, including humanitarian aid.

Most academic research dealing with human smuggling today also takes the one-sided perspective that views smuggling as a crime. The majority of studies on smuggling have their base in criminology and focus on the organisations behind the criminal business. Raised are questions such as: how do smugglers work together? What is their modus operandi? Moreover, there is often a link drawn between smuggling and well-organised criminal gangs that rule the market and exploit their clients. Thinking in terms of such criminal organisations not only constrains the way smuggling is studied, but also has an impact on how theory is

constructed. Theoretical perspectives on human smuggling have largely been based on economics. Salt and Stein (1997) describe human smuggling as the ‘illegal’ side of the migration ‘business’. This economic model explains all decisions—that of migrants as well as smugglers—on the basis of economic gain and loss. What is ignored is the possibility that non-economic considerations may also play a role in a migrant contacting a smuggler, or conversely, a smuggler offering services to a migrant.

When social perceptions are taken into account, however, human smuggling is seen from a totally different perspective, particularly considering the fact that states may—and often do—define human smuggling as something ‘illegal’ or criminal. With the understanding that migrants’ realities can be very different from the state’s perceptions of them, *Navigating Borders* follows an alternative approach. The description of human smuggling here used is more sociological in nature:

“... every act whereby an immigrant is assisted in crossing international borders and this crossing is not endorsed by the government of the receiving state, neither implicitly nor explicitly” (Doomernik 2001: 10-11).

This definition makes a clear distinction between the state’s reality and a migrant’s reality, while leaving room for the existence of other types of human smuggling besides that which is well organised and profit-oriented. Recognising this distinction is a necessary prerequisite for the design of accurate policies.

Effects of the one-sided perspective

Treating smuggling as a highly organised criminal business may help states justify the tough measures taken to combat human smuggling. Sanctions on smuggling raised in the Netherlands, for example, were warranted by the alleged purpose of combating criminal organisations (Kamerstukken, II 1994-1995, 24 269, no. 3, p. 2). However, such a focus on the ‘big cases’, as often observed in organised crime, may lose sight of smuggling that is organised in other ways.

What’s more, combating smuggling may not necessarily be the most effective way to deal with irregular migration. Often the thought is that the business will disappear if combated in the right way. The past decade’s increased crackdown on ‘illegal’ migration, however, has not reduced the number of irregular entries. Instead, what we see is that the involvement of human smugglers has been on the rise, that restrictive migration policies have driven prices up, and that there has been an increase in the personal dangers involved in smuggling. Many people are presently dying at the borders of Europe, as they try to enter via what they believe are the continent’s least controlled borders. The link between restrictive migration policies and the production of undesired consequences—including, not least, migrant deaths—is often overlooked, yet should be given far more attention.

Another effect of a one-sided view to smuggling is non-attention to a migrant’s sense of self-agency. It is often assumed that smuggled migrants are passive actors who have little or nothing to say in the smuggling process. The fact that irregular migrants have less ‘state-recognised autonomy’ than regular migrants does not mean, however, that they do not exert any power at all. Complex stories

behind smuggling processes are too quickly simplified and therefore not accurately understood. A correlation between ‘illegal’ and illegitimate migration, for example, is often made too quickly. Illegal migration is not a singular, clear-cut type of migration: one can leave, transit or enter a country in an illegal or a legal way, and what states consider ‘illegal’ can differ from site to site, as well as change over time. Conflating different types of illegal migration into one category may produce a number of misperceptions. In general, little attention is devoted to what smuggling means for the migrants involved. When all the recently reduced options for legal migration and the increased controls on mobility are taken into account, it does not seem appropriate to conflate people who enter a country unlawfully with those who do not have ‘legitimate’ reasons to migrate. For instance, smuggled asylum seekers may in some instances have the right to protection after having entered the Netherlands via ‘illegal’ routes.

The importance of looking at the whole picture

Not only is most attention devoted to the highly organised type of smuggling, but when human smuggling or irregular migration is discussed, great emphasis is placed on the last stage of the irregular migration process. *Navigating Borders* argues that when researchers and policymakers in the field of irregular migration only concentrate on moments of border-crossing and focus on criminal organisation behind smuggling, they frequently fail to see integral parts of the picture. Paradoxically, restrictive migration policies and the high costs involved in migrating with a smuggler have also made it more difficult for migrants to return to their home countries, something which has undoubtedly interfered with the dynamics of migration processes. When policies are designed merely to ‘combat’ smuggling, the contexts in which migrants have made the decision to migrate with a smuggler are often overlooked. In some instances this may not only violate human rights, but actually be counterproductive to migration management. As the opening line of Massey, Durand and Malone’s book *Beyond Smoke and Mirrors* states: ‘If one does not understand how a complicated piece of machinery works, one should not try to fix it’ (2002: 1).

By describing each migrant’s travel journey in detail, *Navigating Borders* clearly demonstrates that smuggling can differ considerably from region to region. For example, Kurds from North Iraq experience difficulty obtaining an exit visa, a fact that has fuelled the smuggling industry considerably. Nearly no migrant interviewed for the study had left Iraq without the assistance of a smuggler. Such incidentals index the need to study the entire smuggling process, from beginning to end. From the Horn of Africa, most interviewees came to Europe by plane, travelling on forged documents. Since 1991, no passports—let alone visas—have been issued in Somalia, therefore making it impossible to migrate in a legal way from the country, and consequently escalating pressure on the smuggling market. By contrast, in the former Soviet Union, it is relatively easy to obtain a visa, either by altering one’s background or through use of the various ‘bastard’ institutions that arrange documents for those who wish to travel to Western Europe.

Smugglers, though they are risky and costly investments for migrants, also give direction to migration processes. As this study’s fieldwork has shown, the different ways smugglers can affect migration processes paints a multi-hued

picture. It is hardly always the case that migrants have lost complete control in the smuggling process. Rather, they are often proactive, endeavouring to orient themselves along the way and minimise risk-taking as much as possible. Also of significance in the process is the moment when a migrant contacts a smuggler; the farther from home, the more dangerous it usually becomes for the itinerant. This study's inside perspective helps reveal the underlying dynamics of irregular migration processes, particularly as they merit being studied in, and understood for, their total complexity.

When smuggling turns into trafficking

Close inspection of how smuggled migrants go about surviving after their arrival to the Netherlands, as well as upon confronting the Dutch migration and asylum systems, reveals that smuggling can sometimes transmogrify into what would in fact be considered trafficking. For example, if rejected asylum seekers stay in a country because they can not, or will not, return to their nation of origin, they may end up working in the informal economy and thus run the risk of being exploited. Now that EU legislation concerning trafficking of human beings has been widened to incorporate exploitation in other sectors besides prostitution, an even more complex space exists in which the positions of smuggled and/or trafficked persons may be blurred.

Works Cited:

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