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TRAFFICKING AND SMUGGLING IN HUMAN BEINGS: THE BRITISH PERSPECTIVE

1. INTRODUCTION

Irregular migration, trafficking and smuggling in human beings represent major challenges for policy makers at national, European Union and international levels. However, these phenomena are often viewed as external and objective challenges facing states. Little attention is paid to the relation between the growth of ‘the migration industry’, on the one hand, and law-enforcement and restrictive approaches to international migration, on the other. This is because states’ interest in deterring irregular migration is taken for granted and the overriding policy objective remains the enhancement of the ‘governmentality’ of migration control by tightening external border controls and increasing internal surveillance.

The White Paper, Secure Borders, Safe Haven: Integration with Diversity in Modern Britain (7 February 2002), which culminated in the Nationality, Immigration and Asylum Bill 2002 and the Nationality, Immigration and Asylum Act 2002, is a good case in point. Although this legislative initiative represented a unique opportunity for designing a comprehensive and credible asylum and migration policy, in reality, it reflected the governmental priorities of migration control and deterrence of asylum seekers. While it accepted the economic reality of labour shortages and the need for the UK economy to remain competitive, it perpetuated the political rhetoric of restrictionism that limits the number of economically least desirable migrants to the UK, thereby reinforcing the widespread perception of migration as a problem. More importantly, although the White Paper highlighted the Government’s intention to tackle ‘illegal’ entry, irregular employment and human smuggling and trafficking, it failed to unravel the links between the growth of the latter phenomena and the existing regulation

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of all forms of migration. After all, irregular migration is, by definition, a by-product of the laws made to control migration and of labour market exigencies.\textsuperscript{1} In this respect, the design and implementation of any effective policy response to trafficking and smuggling in human beings must entail a reflexive assessment of existing restrictive policies of migration control.

At the international level, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol)\textsuperscript{2} has been accompanied by a few ‘soft law’ instruments. These include the UN General Assembly Resolution on Trafficking in Women and Girls (11 October 2002), the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the United Nations High Commissioner for Human Rights and the Resolution on Traffic in Women and Girls adopted by the UN Commission on Human Rights (16 April 2002).\textsuperscript{3} These instruments do not only call upon states to criminalise all forms of trafficking and to penalise traffickers, but they also highlight the abuse of human rights that trafficking entails and prompt governments to ‘protect the vulnerable’.\textsuperscript{4}

In the European Union, co-ordinated action in this field is both desirable and necessary.\textsuperscript{5} However, progress has been hindered, thus far, by two factors; namely, the prevailing one-dimensional approach which priorities law enforcement action in line with the dominant discourse of the securitisation of migration and, in procedural terms, the intergovernmental character of co-operation in post-Maastricht Europe. The latter explains the relative absence of binding legislative output in the post-Maastricht era, even though the remit of Third Pillar co-operation included ‘combating unauthorised immigration’ (K3(1)(c) TEU) and ‘police co-operation for the purposes of preventing and combating serious forms of international crime’ (K3(9)). Whereas the European Parliament

\textsuperscript{1} As the JCWI observed, it failed ‘to consider the reasons why these problems have become widespread in recent years’; <http://www.jcwi.org.uk/whitepaper/jcwire-response.html> visited on 15/03/02.

\textsuperscript{2} A/AC.254/4 Rev. 9; (2001) 40 International Legal Materials 377. The UN committee had been assigned the task of formulating a convention against transnational organised crime by the UN General Assembly in 1998; General Assembly Resolution 53/111 of 9 December 1998.

\textsuperscript{3} The Recommended Principles were adopted in July 2002; E/2002/68/Add.1

\textsuperscript{4} Principle No 2 of the Recommended Principles states: ‘states have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons’. But in so doing, they must respect the human rights of the trafficked persons and to address their needs with sensitivity (see Principle No 1). Compare also S. Drew, ‘Human Trafficking: A Modern From of Slavery’, (2002) 4 European Human Rights Law Review 481.

\textsuperscript{5} The absence of both common definitions and sanctions in the Member States’ criminal legislation has been acknowledged to be a serious obstacle.