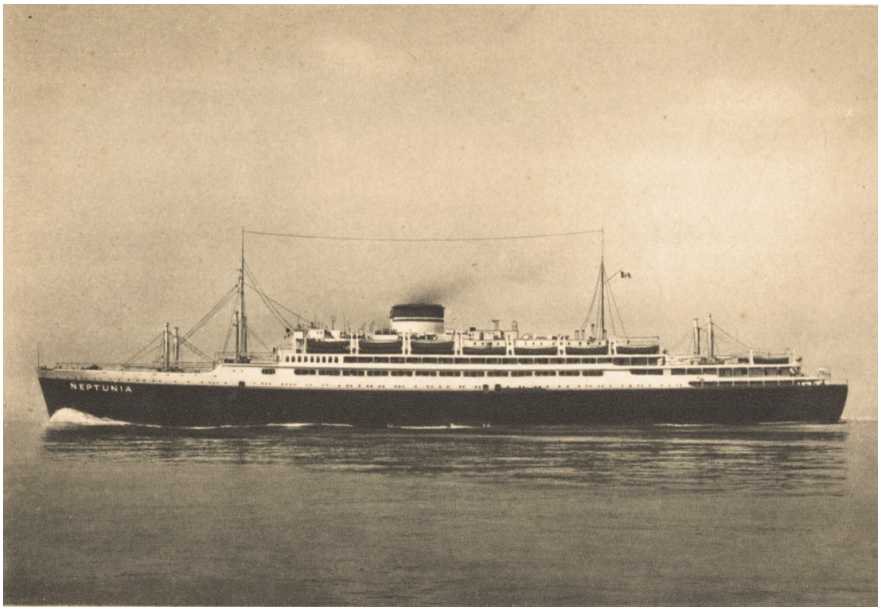
PAIX ET SÉCURITÉ INTERNATIONALES

07
2019



JOURNAL OF INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

Editorial UCA

ISSN 2341-0868
DOI: http://dx.doi.org/10.25267/Paix_secur_Int.2019.i7

PAIX ET SÉCURITÉ INTERNATIONALES
Journal of International Law and International Relations
Num 7, janvier-décembre 2019 | ISSN 2341-0868
DOI http://dx.doi.org/10.25267/Paix_secur_int.2019.i7.12

Citation: JIMÉNEZ CORTÉS, C.; PI LLORENS, M.: «Diffusion of Research Results 'Research Projects on Immigration and Human Rights: CIMCETT Project'», *Paix et Sécurité Internationales*, num. 7, 2019, pp. 351-360
Received: 26 July 2019
Accepted: 08 September 2019

DIFFUSION OF RESEARCH RESULTS 'RESEARCH PROJECTS ON IMMIGRATION AND HUMAN RIGHTS: CIMCETT PROJECT'

(http://www.cimcett.es/en/)

Claudia JIMÉNEZ CORTÉS[1]
Montserrat PI LLORENS[2]

I. THE PROJECT

The project "International cooperation as an essential means to combat trafficking and smuggling of human beings: the role of the EU and other international organizations" (CIMCETT) is financed by the Ministry of Economy and Competitiveness of the Spanish Government for the years 2017 to 2019. Its main interest lies in assessing international cooperation in the fight against the smuggling and trafficking of human beings from both legal and institutional perspectives.

To accomplish this aim, and to contribute to the state of play of the regulatory framework on combating human smuggling and trafficking and to identify the existing shortcomings in terms of laws, structures and working methods, the research project has focused on three specific objectives:

1. Systematize the existing international and European legal instruments. Based on this analysis, the research team has classified the current measures according to their typology.
2. Systematize the existing structures and their coordination in order to identify dualities and deficiencies. This systematization seeks to de-

[1] Associate Professor (Profesora Titular), Universitat Autònoma de Barcelona (UAB), IP of project "International cooperation as an essential means to combat trafficking in human beings: the role of the EU and other international organizations" (CIMCETT).

[2] Associate Professor (Profesora Titular), Universitat Autònoma de Barcelona (UAB), researcher of project "International cooperation as an essential means to combat trafficking in human beings: the role of the EU and other international organizations" (CIMCETT).

velop a possible strategic plan aiming at improving the coordination between EU agencies and international organizations.

3. Identify the existing measures related to the victims of the smuggling and trafficking of human beings. It will lead to the creation of a classification of measures according to their typology and it will suggest potential mechanisms for improvement.

II. DEVELOPMENT

To achieve the objectives, the research team has been working with primary and secondary sources. The analysis of the first ones (primary sources) has been useful for the elaboration of charts with which both instruments and international structures have been systematized, placing special emphasis on the three "p's": prevention, persecution and protection. The second ones (secondary sources) have been used by the team members for the analysis of the lack of cooperation in the fight against trafficking and smuggling of human beings that has culminated in participation in congresses and seminars, as well as the preparation of monographs, articles and presentations on specific aspects related to the objectives of the project, all of which are included on the research group web page: http://www.cimcett.es/en/dissemination-activities/.

In addition to the publications and conferences cited, the project's theme has led several components of the research group to develop specific studies, some of which have been the subject of funding. Such is the case, for example, of the R-ICIP 2017 project "The response of the international community to the crisis of the immigrants trapped in Libya", as well as the participation in a H2020 Project "ITFLOWS- tools and methods for managing migration flows" funded by the EU.

In relation with the work with primary sources, and more specifically, with regard to the preparation of maps, it is worth highlighting:

1. Chart of measures

The design of this chart seeks to illustrate the normative measures adopted by the states and international organizations in the field of human trafficking and smuggling. Particularly, it assesses the degree of formal interstate cooperation in each of the measures enacted in the fight against human tra-

Paix et Securité Internationales
ISSN 2341-0868, Num. 7, janvier-décembre 2019, pp. 351-360
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2019.i7.12

fficking and migrant smuggling. Despite the disparity of instruments examined (universal-European scope; smuggling- trafficking areas, general; specific purposes) the chart offers a classification that shows whether there is a high or low degree of homogeneity when such laws are implemented and enforced to combat human trafficking and migrant smuggling.

The choice for the different categories of the chart was based on two delimiting criteria: 1. They had to be international instruments (of universal or European scope) and have a normative nature.

2. They had to be "measures", that is, actions that pursue the fight against human trafficking and / or migrant smuggling, falling under at least one of the three main categories: a) prevention; b) persecution (divided between measures of substantive law and measures of a procedural nature) and c) protection of victims.

Within this scope, the measures included in the chart have been systematized according to their nature and their degree of precision.

The result of this sistematization can be found on the research team website http://www.cimcett.es/docs/chart-measures.pdf.

2. Chart of structures and chart of networks

The design of these charts seeks to illustrate the degree of coordination as well as overlaps between the different intergovernmental structures in the field of human trafficking and smuggling. The reason is that, in order to limit the object of study, the research has focused on the analysis of international cooperation in its intergovernmental and formalized dimension, either through intergovernmental organizations, or through agencies which specialized in issues related to human trafficking and smuggling.

In this case and unlike the instrument map, the research team has chosen to separate the structures and the networks within them as this allows for a better systematization since the organizations under analysis reflect in themselves international cooperation of the first level while the networks represent a second level coordination. Hence, in the delimitation of the networks, it was decided as a criteria to analyse networks of a formal nature and those integrated by agencies and / or intergovernmental organizations that deal with a relevant aspect of the problem of human trafficking and smuggling, either exclusively or predominantly. Therefore, informal networks have been discar-

ded, as well as those composed eminently by states and / or non-governmental organizations.

2.A) Structures chart. Within the chart of the agencies, attention has focused mainly on three aspects: 1) the partnership in specific projects that are not networks; 2) the actions systematized around the three main axes of prevention, persecution and protection of the victims and 3) the direct outputs emanating from them, with special attention to databases. The comparison between agencies aims to give visibility to the degree of coordination and the overlaps between them.

2.B) Networks chart. For its part, the network chart focuses on the participating agencies, the degree of formalization and again the actions and outputs in the same line of the previous chart. In this case, in addition to the visibility of the coordination and overlaps at this second level, an attempt was made to reflect the impact of these networks on the strategies and work plans of the different agencies that integrate them.

III. MAIN RESULTS SO FAR

1. First Objective

In relation to the first objective, the designed map shows that, in general, the formal regulatory instruments designed by the states are very taxative, as can be seen in the scarce presence of self-executing clauses. And this, obviously, is more accentuated in the rules of universal scope than in the European ones. This leads us to question its meaning and its usefulness. In this sense the team has come to the conclusion that, for instance, in the case of the Palermo protocol and its role, at least in the persecution of trafficking and smuggling, it has to be pointed out that it has been and still is a useful tool if it is fairly adjusted into the context of a multilateral international law/rule, which means positive in the long term but slow in regard to impact. There is no doubt that the presence of protocols is an improvement on the former situation, because a certain level of harmonisation is being achieved with them. Furthermore, judiciary and police actions have increased in those countries where the protocol was implemented. That said, as it was mentioned, the international dimension of the protocol cannot be ignored and therefore the objectives to be achieved though those mechanisms require some preliminary stages: the first one is

Paix et Securité Internationales
ISSN 2341-0868, Num. 7, janvier-décembre 2019, pp. 351-360
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2019.i7.12

to obtain their ratification (171 states). Only once the commitment has been taken, can the second stage be activated. This second stage is to promote their implementation and application within the different domestic jurisdictions. To do that, the formal act of commitment is not enough, but also an integrated propositional action, that means including the protocol in their regulatory frameworks to give the judicial and police structures the necessary capacities to achieve an effective application of the protocol. In fact, states have decided to create a committee responsible for following-up the protocol's application for this purpose, always with the voluntary submission of the parties and this mechanism generates certain expectations.

Having said that, the truth is that the practice shows that the main cooperation in persecution has been of a bilateral/restricted nature and normally through informal instruments like Memorandums of Understandings (MOU). For the authorities and operators MOUs are indeed useful instruments, to structure and formalize the cooperation between agencies or bodies and states as well as between the different agencies. In fact, MOUs are especially useful to provide the data exchange with a legal basis. In that sense it is important to see the recently agreement signed with Ameripol, or the agreement signed between Europol and the Sophia operation in 2017-2018. However, it is even more important to have a legislation or cooperation agreement with the diplomatic representations and private companies which are widely used by organised crime and, to that extent, have key data for the investigation a persecution of such organised crime in human trafficking. It refers, for example, to travel agencies, money transfer companies, airlines and even consulates. All that would be desirable, but there is still a long way ahead.

2. Second objective.

2.A. Coordination

In relation to the second objective, one of the main issues that the group has to investigate is the coordination between networks and initiatives. In this regard, the main one relating to trafficking in human being should probably be carried out by the ICAT network. Twenty-three agencies (not only in the UN family) participate in ICAT and it is currently under the UNODC presidency. Its main function is to elaborate guidelines and a common discourse, which may be useful to set up the agendas of those agencies belonging to it. In this sense it can be considered a positive forum for dialogue.

Apart from this general purpose network, we can find other attempts to harmonize different policies related to trafficking and smuggling on a smaller scale. That is the case, for instance of GLO.ACT, (*Global Action against trafficking in persons and the Smuggling of Migrants*)[3]. Four agencies (UNODC; UNICEF, IOM, European Union) take part in this project aimed at assisting the participating states in elaborating and implementing a national strategy to fight against both the trafficking and smuggling of human beings. That allows for fostering a common approach to the three main lines: prevention, protection and prosecution. However, the Project has faced some troubles when developing its potential, due to the difficulties in implementing the intended measures practically in the field.

During the study, the group has found that, although all the agencies in their guidelines shared the same perspective, when putting it into practice it has done to light the fact that setting up the project at local level highly depends on each national office and their agenda and priorities. That is the reason why not always all agencies take part in all countries. The IOM experience in Libya confirmed such idea: the different priorities of the different actors makes it difficult to reach a greater harmonisation. During field operations, each mission has a certain autonomy depending, on one hand, on the needs and possibilities of the territory where it is acting and, on the other hand, depending on the priorities set by the agency. For instance, the IOM's priority in Libya are the victims where the agency is devoted to giving them assistance, providing its expertise in "individual case management", helping in their identification and sometimes even in the process of returning them.

At a European level it can be said that there are some areas with a higher coordination between the different European agencies, for example in matters of victim identification through the PEDRA program, which is shared between Frontex and Europol or in cooperation with Eurojust. However, this cooperation is limited to the issues that are within each agency's mandate.

Finally, the efforts made to achieve a certain consensus, in December 2018 in Marrakesh, in the commitments included in the Global Compact on Migration should be pointed out. The importance of this Conference can be appre-

[3] For further information please see: <https://www.unodc.org/unodc/en/human-trafficking/glo-act/index.html> [Electronic source , visited last time on 23th November 2018].

Paix et Securité Internationales
ISSN 2341-0868, Num. 7, janvier-décembre 2019, pp. 351-360
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2019.i7.12

ciated, precisely in the strong opposition it received from some states, despite not being a document with binding legal effects.

2.B Databases

Another issue that the group was concerned about are the overlaps between networks and organizations, which is especially important in the case of databases. Certainly, there are overlaps between networks and organizations, which is evidenced by the existence of more than 150 guidebooks on victims' identifications. The match in the mandates (all of them related to human rights and security) makes these overlaps largely unavoidable. Nevertheless, that fact does not lead to a correspondence between perspectives when approaching these issues, and in addition to this, there are the priorities of the member states that each project found. For instance in the Libya case, the states are founding projects of different agencies relating to human trafficking and smuggling, ranging from training Libyan personnel (including coastguard and police officers) to giving assistance to immigrants, which are victims of such officers. Clearly it results in roughly unavoidable overlaps, given the different perspectives from which they are addressed. On the other hand, the opposite situation may happen, that is, the priorities of the agencies may result in certain situations not being covered while others may be covered twice. And this problem is still unsolved and causes misuse of resources. This is especially relevant in the case of databases where there are a lot of them on very similar issues but its usefulness is not so clear for different reasons:

1) The heterogeneity of the data and its sources. Databases are built on information provided by the states, but such information does not come from the same sources; by instance, information providing from the judiciary cannot be statistically analysed together with information provided by the police, though it is performed in some ONUDD databases. On other occasions, as happens with the OIM, statistics are preformed from estimates based on the work in the field experience of the organisations.

2) The information is set out without following any harmonized criteria. It withdraws any possibility of using the information to elaborate prospective studies and foresights. This is especially relevant when the information is presented in percentages without showing a number value. One court conviction may represent a 100%, giving a wrong image of judiciary action in that country regarding the analysed topic.

Although some efforts have been made to harmonise at least the indicators (at least at European level with the platform to host harmonised data designed in Portugal) unfortunately they have not been successful. To all this it is necessary to add the specificity of the problem regarding the personal data databases under the persecution perspective. In this case, at a European level, there are different databases (e.g. Europol has a record of more than 90,000 suspects.) which contrast with the lack of a single database for all of the European Union, although attempts are being made to achieve the interoperability of all the existing databases. In that regard, the fact that the states (and the agencies themselves) are reluctant to share their information (even at national level) makes it very difficult to systematize it, especially considering that the EU agencies have access to information collected by other agencies or governments, which have their own data protection systems. In short, a useful platform is not enough (although it is at least desirable), as it is basic for building up a relationship of trust between all the actors involved based on a proper use of the collected data.

3. Third objective

Finally, in relation to the third objective –the victims- there is a consensus that their identification is a serious problem that is still not resolved for various reasons:

One reason is the difficulty of distinguishing between victims of trafficking in persons and smuggled migrants. Although in the legal theoretical sphere the difference is clear, in practice it is not, because most of them are controlled by mafias and organized crime. This implies that a large number of people start by searching or allowing a third-party involvement to be able to cross borders but during the long journey to their final destination they end up being trafficking victims. This is especially appalling when it refers to women and unaccompanied minors who are systematically deceived and subject to inhumane treatment. It is well known that in hubs to Europe like Libya all the migrants were victims of human trafficking, consequently the difference between one and another form is totally blurred. From the scope of protection, that is why IOM and generally all the institutions engaged in assisting victims in that area do not make such a difference and assist them in the same way, independently of the kind of abuse of which they had been victims (rape, sexual slavery, abduction, forced labour, torture, etc..).

Paix et Securité Internationales
ISSN 2341-0868, Num. 7, janvier-décembre 2019, pp. 351-360
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2019.i7.12

Accordingly, another argument to point out the difficulties in identifying victims of people trafficking and migrant smuggling is that people trafficking is a phenomenon that, in most cases, is hidden behind other criminal behaviours like prostitution or illegal labour. This situation makes victims feel especially vulnerable and extremely wary of the authorities, so victims rarely cooperate with authorities. Victims' fear is founded and increases because of the possible retaliations they may suffer for cooperating with authorities. Therefore, the role of the NGOs is crucial.

Together with these two reasons an aspect that cannot be set aside is the cultural differences between states and society on the perception of irregular immigration situation according to their origin. From authorities – such as coastguards or detention centres' officers- to all other citizens their sympathy or hostility towards immigrant people depends on the origin of the immigrant and consequently their perception as "victims". Are women victims of trafficking or prostitutes? Is minors' mistreatment; education or abuse? This becomes particularly noticeable at detention centres in transit areas and in countries of destination.

So, how to face this problem? In the group's opinion there are two work lines from national and international bodies.

The first one is the development of performance indicators to harmonize and for a better identification of possible victims. Accordingly, among the more than 150 handbooks mentioned before two stand out: one recently developed by the General Council of the Judiciary of Spain and one developed by Frontex. There are also similar efforts at ONUDD, among others.

The second work line is related to training. The multiple actions developed by agencies through different training programmes must insist in this aspect and the perception of migrants not as criminals but as "victims".

IV. KEY IDEAS SO FAR:

1) From the study of the three objectives one idea is present in all of them: the need to achieve a higher level of mutual trust. The lack of it, leads each state or body to launch their own initiatives or actions which usually are overlapped with actions from other states or institutions. That is reflected, for example, in the large number of about 500 liaison officers from the different EU member states that are in third party countries reporting to their own

countries without any global coordination mechanisms among them, something that should be essential when persecuting translational organised gangs. However, that could be solved not by launching more actions and plans but by starting to coordinate the already existing action plans and improve their follow-up in order to avoid fraud which create misgivings instead.

2) In relation to the persecution of the offences of trafficking and smuggling of people, in order to succeed, it is essential, on the basis of mutual trust, to achieve a better and higher level of harmonisation of the existing databases, as well as the provision of better legal instruments of cooperation with both public and private agents.

3) In relation with victims, despite the vast amount of support material to assist with victims' identification, it is still one of the main outstanding tasks in the fight against trafficking and smuggling. The reasons for this situation are from the distortion entailed by the organized crime on the distinction between both crimes, to the cultural problems on the perception of people who are hostages of the mafias as victims. Accordingly, the NGOs work is essential because of their presence in the field. From this point of view, maybe the most relevant aspects here is the NGO's proximity to the victims, which is really useful or even essential for the international organizations and states to carry out their actions. For example, the victims' trust in those NGOs allows access to information about their personal situation and obtain data that otherwise not even the police neither state agencies would be able to obtain. Having said that, they are essential but not enough. A structural (sensitivity) transformation on authorities and society for improvement in that area is also necessary.

4) Apart from the persecution and aid for victims, fighting against trafficking and smuggling of people needs to be more effective regarding the third pillar (which is, in fact, the first one): Prevention. People trafficking and smuggling is not only related to organized crime but also to poverty, underdevelopment and conflicts. Therefore, in order to achieve an effective policy to fight against such crimes it is essential to offer dignified life opportunities to potential victims at their origin, which discourage them from starting their journey to horror.

Paix et Securité Internationales
ISSN 2341-0868, Num. 7, janvier-décembre 2019, pp. 351-360
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2019.i7.12

PAIX ET SÉCURITÉ INTERNATIONALES

07
2019

JOURNAL OF INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

SOMMAIRE / Janvier -Décembre 2019 / Nº 7

ÉTUDES

Mar CAMPINS ERITJA
Transboundary Water Resources in Central Asia and its Impact in the Emergency of Conflicts Affecting Regional Stability

Eric TREMOLADA ALVAREZ
The Land and Maritime Delimitation of the Court of The Hague in the Affairs of Costa Rica v. Nicaragua, in Light of Their Proposals (February 2, 2018)

Karouma OMAR
Mutualisaton des Puissances et Sécurité en Afrique: pour une approche néopragmatiste du rôle du droit

Alejandro del VALLE GÁLVEZ
The Refugee Crisis and Migration at the Gates of Europe. Deterritoriality, Extraterritoriality and the Externalization of Border Migration Controls

Maria NAGORE CASAS
The Instruments of Pre-border Control in the EU: A New Source of Vulnerability for Asylum Seekers?

NOTES

Inmaculada GONZÁLEZ GARCÍA
Immigration in Spain: Migratory Routes, Cooperation with Third Countries and Human Rights in Return Procedures

Mohamed REDA NOUR
Géopolitique de l'Intélligence Artificielle : Les enjeux de la rivalité sino-americaine

Diego BOZA – Dévika PÉREZ
New Migrant Detention Strategies in Spain: Short-Term Assistance Centres and Internment Centres for Foreign Nationals

Ahmed IRAQI
L'investissement direct étranger en tant que facteur géopolitique du Soft Power marocain en Afrique : réflexion interprétative

Angeles JIMENEZ GARCIA-CARRIAZO
Small Island, Big Issue: Malta and its Search and Rescue Region – SAR

Javier BORDON
The European Union and the Egyptian Neighbour: Assesing the Characterization of Resilience as and External Action Priority

AGORA

Claudia JIMÉNEZ CORTÉS – Montserrat PI LLORENS
Diffusion of Research Results 'Research Projects on Inmigration and Human Rights : CIMCETT PROJECT'

Luis ROMERO BARTUMEUS
¿Sobrevivirá el Plan Mares al Plan Integral de Seguridad Marítima? La falta de doctrina estratégica española hacia el área del Estrecho de Gibraltar

DOCUMENTATION

Lorena CALVO MARISCAL
Relación de Tratados, Acuerdos no Normativos, Memorandos de Entendimiento y Comunicados Conjuntos España-Marruecos, 2018-2019

BIBLIOGRAPHIE CRITIQUE

DIAZ PERALTA, E., El matrimonio infantil y forzado en el Derecho Internacional. Un enfoque de género y derechos humanos, ed. Tirant Lo Blanch, Valencia, 2019. Par Marta REINA GRAU

OANTA, G. (Coord.), El Derecho del mar y las personas y grupos vulnerables, Bosch Editor, Barcelona, 2018. Par Annina BÜRGIN

TABLEAU D'EQUIVALENCE DES POSTES UNIVERSITAIRES

Tableau d'equivalence des postes Universitaires – Tabla de equivalencia de cargos académicos – Academic Ranks