

Powerless Refugees – a far too Powerful Network?

The Construction of “Smuggling of Human Beings” Before and After 9.11.2001

(2005)

April 2005, the French-Spanish border: More than 200 Indian and Pakistani nationals without papers were arrested on the most important escape route of the 20th century. They came from Germany and Italy and their goal: the legalisation that is presently possible in Spain. Subsequent to their deportation from France, they admitted that they did not understand any European language and were being released back into illegality.

No interpreter was made available before the custodial judge. Muhammed, 31 years old: “It is a disgrace – since ten years in Europe and still no papers!”¹ Imprisonment of up to 15 years served to helpers of clandestine border crossings, by law enforcement agencies in industrial countries, is as yet a relatively new offence.² At the time of the block confrontation, refugee helpers were regarded as appropriate facilitators through whom the freedom of movement and human rights, under universal goals, could be expanded. However, the governments of industrial nations then proceeded to explain this practice as an embodiment of global criminality, as it had begun to threaten the particular assets of these countries. Since the beginning of the 1990s, these countries have been coming together to define an outer border and to equip the same such that it serves as a barrier against the unwanted migration movement. Thereby, they have also created an increasing need for assistance in clandestine border crossings. In the face of such a need, a commercial and humanitarian service evolved, the magnitude of which remains as much in the dark as the extent of this clandestine immigration itself. It is this “grey” service sector that the law enforcement authorities, the political class and the media allocate the war cry: “trade of facilitating human smuggling”. This scandalous image of the enemy is brought very lightly to the forefront of public reality. The basic social realities of migration disappear completely behind this image. They have been mentioned here briefly, precisely to bring into perspective what is meant by the assistance tended to refugees or to the trade of facilitating human smuggling.

Today, the people who cross borders without the necessary papers and seek help for the same are from traditional transmigration countries close to the EU periphery. Besides, since the late 1980s, immigrants from industrial regions of the so-called third world, as well as refugees from poor and war beaten areas make it to Western Europe. If they do not belong to the highly qualified group being courted, then their legal entry is blocked. Despite the installation of elaborate surveillance equipment on the outer borders and the immigration constraints becoming bigger, it does not appear to scare migrants and asylum seekers away from their intentions. They take huge risks: As boat people in the Mediterranean they have to be prepared to drown. On the illegal land route, they can expect violent assault. In the border areas, where they are unfamiliar, they may end up being too deeply and personally dependent on the commercial refugee helpers. And later, even if they manage to legalise their stay halfway, there is a large possibility that they will be deported. When we talk about the migration movement today, we need to consider the enormous amount of violence that goes with it, but also the determination and the daringness with which these people leave their countries. Visa restrictions are not only hindrances in cases of migration due to poverty, but also for those seeking education and for the ambitious elite in the commercial field throughout the world. Even members of these groups may not be able to fulfill the enormous financial prerequisites of a visa application. Furthermore, it may happen that a visa application is rejected without explanation. This would result in the person being denied access to the entire European Union. At the rate at which elites are assigned trips and sojourns to industrial countries, they may also have to resort to the services of agents who would facilitate their entry. The investments in this sector, in respect of the expected long-term income, could turn out to be considerable. Those who can afford it will come by plane and with a professionally faked passport. Since a number of years, we at the Forschungsgesellschaft Flucht und Migration FFM Berlin (Research Association Flight and Migration) have been researching the transit situation of those who are called the “Refugees in Orbit”. In Warsaw, Bucharest and Kiev, we spoke to numerous refugees in order to find out the chief hindrances in the path to European fortification. Thereby, the existing commercial influx of refugees was rarely the focus of our interest. More important to us was the question whether other immigration possibilities would open up from Western Europe to the outside: Our aim was to make the transit situation

known to numerous groups and networks in West Europe, so that new support and start-up structures could be put into place. When we visited Polish deportation centres, we came across refugees and migrants predominantly from Pakistan, India and Bangladesh. At that time, they had been illegally detained and were set free subsequent to our investigations. The series of publications *Against the European Fortress* emerged through the course of the FFM research.

The observations and discussions, held within the framework of the social research project on European fortification, refer for the most part to the following facts: The refugees and immigrants who consider the services of a commercial refugee helper, generally know what they are doing and getting into. My point of departure was therefore as follows: The primary subjects of this exercise are the refugees and immigrants themselves, even though they may place themselves in the hands of others, for a limited amount of time and a spatial horizon. They are positive and continue despite adversity in their path. They aim for a future within a society, namely a world where they can find their own place. They participate in the worldwide social discussions that appear as big questions, such as whether the zoning of wealth and poverty can be transcended through geographic mobility.

The smugglers of human beings (on demand and in person), the facilitators of escape and refugee helpers are secondary phenomenon. Their business takes place to some extent on the periphery. There is dirty trade and fair trade; there is trade with risks involved and trade with guarantees. Often the case is that a clear distinction between refugee helpers and the refugees themselves cannot be made. Refugees develop a certain expertise on a country and the prevalent border relations when they are stranded in the transit country. As refugee helpers they earn a small income until they can travel further. In such cases, facilitation of escape is a part of the migration movement itself.

A completely different understanding of the process of migration is exhibited through the programmatic of the governments of industrial countries who have criminalised the refugee help process. Therefore, it is assumed that the “criminal trade of facilitating human smuggling” controls the migration movement completely. If one could break it up, the migration movement would be essentially mastered. The working hypothesis, which forms the basis of every approach, allows the following summary: The smugglers of human beings and the facilitators of escape are the players; the refugees on the other hand are only powerless victims.

Thus, governments and law enforcement authorities mechanically compartmentalise the migration process: into the super rich criminals who are unbelievable and the powerless have-nots who threaten the population to the extent that they are socially excluded if they have not already been warded off at the border. The all too powerful gangs harm the economy of the country as some who are smuggled in resort to illegal employment or have to be looked after by the state. Thus, the danger of migration becomes a two-faced monstrosity. Due to this compartmentalised demonising, immigrants and refugees disappear from the social context and become figures that appear to be excluded from all societies.

I will try to decode the social mechanics used by the authorities as a defence against migration. What practices result through this threatened vision? How do the police, the lawyers and the judges of the migration process, which, after all, functions diffusely and horizontally, construct hierarchical organisational structures and powerless masses – the bad gangs on the top and the victims at the bottom? How do they unhinge criminal gangs from the migration nets and then bring them to justice? How do they conjure away the social content of the migration movement? And finally: What has changed in the pursuit of humans in the face of the global anti-terrorism war?

Definition, Authorities, Figures

In 1990, the German Act for Foreigners declared “illegal entry” a criminal act. A significant intensification of illegal border crossing took place in 1994 with the amendment of this Act, which falls within the framework of the so-called Act on Combating Crime, thus under the cover of combating organised crime. Since then, these offences are punishable with imprisonment from three to ten years. The duration of imprisonment for the crime of abetting “illegal entry” exceeds the sentence served by the illegal entrants themselves. This rarely results in imprisonment but receives punishment in the form of deportation. The respective paragraphs of the Act for Foreigners and the new Residential Act states, in summarized form, that it is a punishable offence to support non-EU citizens entering the EU without the required papers and further it is also an offence to support their stay in the country. If this occurs in an organised manner, then the punishment is intensified. The definition of the

offence focuses on the gain that comes along with the abetment of the illegal crossing of the border and not the relationship of dependence of the smuggled on the smugglers. Gain can, for example, mean to host and feed travellers at home in exchange for a small fee. The law enforcement authorities believe that it is about making money that is skimmed off and centralised and thus reaches astronomical figures. Only the big, diversified companies would be capable of laundering this money and reinvesting it. Thus, for the authorities, the trade of facilitating human being smuggling serves as a possibility through which the so-called organised crime expands its base within West Europe. Thereby, the offence of smuggling people is based on a phantom world that in no way corresponds to empirical studies.

Under the omen of fear in the face of the dangers of organised crime, the government has established a new area of activity for law enforcement authorities, i.e. to combat the trade of illegal human smuggling. It also directs the Federal Border Guard (FBG) to enforce these new tasks. The most visible step was the shift of the big units of the Federal Border Guard to the new East German border. Less visible was the nationwide centralisation of tracing groups. At the head office of the Federal Border Guard, a central point for combating illegal entry by foreigners has been put in place by the Home Office. This unit works together with different authorities and maintains a central computer with data on the subject. The groups set up by the FBG and the police for the purpose of tracing commercial refugee helpers are closely connected to the units who have their focus on organised crime. Besides the patrolling of border areas, the same methods are applied in tracing commercial refugee helpers and organised criminals: These consist mainly of tapping transnational telephone conversations of selected communities as well as through the monitoring of money flow between industrial countries and the peripheries.

These conclusions are confirmed if one attends legal proceedings and goes through the bills of indictment.

The incriminating material is generally on CDs: Recorded telephone conversations of proportions that completely exceed the imagination of the simple visitor to such proceedings. Lawyers generally present only select translations and transcribed passages. Some smuggled entrants were summoned to the proceedings as witnesses for the prosecution. They had been stopped and questioned by the police before they managed to reach their final destination. Many realise only once they receive summons to the proceedings the precise purpose of police questioning and this itself contradicts police protocol. The proceedings that we visited as FFM always began as indictments against alleged parts of the organised crime structures. In the course of the proceedings, it always emerged that the so-identified organised criminal gangs abroad are nebulously conjured and in reality they are constructed out of often repeated, not identifiable names through the tapping of telephone lines. While observing these proceedings, the following becomes evident: the migration movement in question and also the border crossing process were, in reality highly fragmented and improvised. The main criminal element is the complaisance with which hosts are reimbursed out of pocket expenses. Since in the said paragraphs of the Act for Foreigners even assistance provided with respect to secret accommodation is punishable, the judges concentrate on the reproaches to accommodation and assistance in their further inland travel.

What qualitative clues can one obtain from police statistics on the “criminal trade of people smuggling”? The statistics are based on the “capture” of illegal entrants by the border police. If one converts the number of illegal entrants, the smuggled and the facilitators of human smuggling, by the border police on a yearly average, the following picture is obtained: Every year 25,000 persons are arrested as illegal immigrants, of which 5,000 are presumed to have been smuggled in. 1,800 refugee helpers are reported to have participated in these operations. In 1998, these numbers reached their all time high of over 30,000 arrests of illegal immigrants and since then they have sunk to below 20,000. At the beginning, the focus area of “arrests” was the German-Polish border and then the German-Czech border. In the meantime, it has been detected that there are more illegal immigrants on the German border to Austria, France and the Benelux countries than on the East German border. From point of view of the border police, it has become quieter on the German-Polish border. This may also be attributed to the fact that the federal government shifted the intensity of control to other border regions and thereby Saxony and Bavaria had more illegal immigrants and smuggling.

Who will be arrested as a human smuggler? The ultra large majority live directly in the German-Polish or German-Czech border area. 15% to 35% are Germans and Poles respectively. Czech citizens form the majority. From the observations of individual proceedings and from the evaluation of the judgements, it is known that many persons with scarce earning or the jobless come under the category of the facilitators of human smuggling. Their organisational contribution is relatively simple. Germans are fined by the court; Poles and Czechs receive a few months of imprisonment. Beside this rather diffusive social spectrum, towards the end of the 1990s, all taxi drivers in the East German border area came under the purview of the tracing teams. In some cities, the FBG had initiated proceedings against more than one third of all taxi drivers with the charge of human smuggling. They

were not blamed for getting people across the border but rather for the passengers, without immigration papers, who they had driven inland.³

Thus, to the main question that should be asked on the data: Who are these arrested illegal entrants? In the statistics, they are mentioned according to their nationality. According to the FBG-Annual Report, since 1996, foremost are persons from (ex-)Yugoslavia, Afghanistan and Iraq who have been coming to Germany. As of 1998, there are statistics on illegal immigrants in all industrial nations and here as well, names of the same countries come up most often. Following the wars by NATO or USA and its allies in Kosovo (1999), Afghanistan (2001/02) and in Iraq (2003), the number of clandestine entrants and those smuggled in has reduced by almost half. On the other hand, more and more Russian citizens are being entered into the statistics. Here we refer to the refugees of the war in Chechnya. Refugees from these countries have been heading the asylum statistics worldwide for quite some time, in respect of the filing of applications as well as with regard to the acceptance of their status. Before the most powerful nations of the world started wars in their countries, these people practically could not be deported even if their application for asylum was rejected. Thus, they embody the perfect type of “unwanted” persons. But one should not forget that they represent only a diminishing part of the total immigration number listed by the industrial countries from year to year. Therefore it can be concluded that penal action against the “trade of facilitating human smuggling” aims, to a considerable extent, at denying access to the securing of a refugees’ status in Germany and in Western Europe. In December 1998, the authorities responsible for asylum decisions estimated that half of the asylum applicants in Germany had been smuggled into the country. Have law enforcement authorities tried to trace refugees and immigrants from Yugoslavia/Kosovo, Afghanistan, and from Iraq/Kurdistan with particular eagerness? Aren’t the so-called bands of people smugglers constructed and identified with extraordinary effort, whereas the migration network from Ukraine or Moscow remains rather unhindered? A point to note is that since four or five years, there has been a discussion on the liberalisation of the visa restrictions in the EU – vis-à-vis central and Eastern Europe, vis-à-vis Ukraine and Russia. In strategy plans, it has been put down that the new neighbours have to be treated with “friendliness”. It has been recommended that a multiple visa, obtainable easily at the border, should be made possible in the near future, a visa that the bearer can use as a cheque card. Although countries on the southern Mediterranean coast as well as the eastern European countries will introduce new passports on biometric basis, for people from the South there is no hope for an easing of visa regulations, rather the contrary. In the so-called countries “with high migration risk”, international organisation brings in, along with the stereotype “unscrupulous trade of facilitating human smuggling”, information campaigns aimed at stopping refugees and immigrants before they leave their home country. This works as a preventive instrument in controlling migration. In the 1998 strategy document of the EU on Migration and Asylum politics it was mentioned that, “It appears that the assumption is not too vague, to expect that a large part of all illegal immigrants would have refrained from fleeing, had they, before they began their travel, received an appropriate picture of the reality that awaited them.” The first information campaigns were carried out in Romania and Albania in 1990 by the International Organisation for Migration (IOM) under contract by the industrial countries. An example from the recent past: The IOM distributed 30,000 radios across Afghanistan before the US attack and aired a daily radio programme which was aimed at averting masses of fleeing people during the US bombing. At that time, it was preferable to get help from a refugee helper if one wished to get out of the country as the border area in Afghanistan was extremely dangerous for refugees.⁴

Upheavals in the Path of the Global Anti-Terrorism War In the early 1990s, at the centre point of the tracing of facilitators of human smuggling were communities from eastern and southern Europe, who were freely connected to the so-called organised crime networks. The changing face of war preparations brought people from Kosovo, the Kurds from Iraq and Afghanistan into the vision of those combating the trade of human smuggling. Then what does this have to do with the proclaimed image of the enemy attributed to organised criminality? Maybe there was really a certain connection between these two elements of the tracing, based on Yugoslavian/Kosovar nationality. The predominant presumption has been that the Balkan route was formed as a result of all worldly dangers – weapons, drugs and of course also people – were smuggled.

The Iraqi-Kurdish and Afghan immigrant groups exhibit hardly any enterprise in the black economy. Even in terms of numbers, illegal immigrants from these countries are hardly that significant when compared to immigrants from the ex-Soviet Union. Such was the effort put in by the Ministry of the Interior to trace the helpers of refugees from Iraq, an unprecedented effort at an international level and in historical comparisons of the 1990s. Manfred Kanther, the then Minister of the Interior, coined the term in late 1997, “migration movement organised by criminals”, referring to the fleeing Iraqis. The Ministry of the Interior was obsessed, at that time, with setting an example by cutting off the route of the Iraqis. In January 1998, the Advisory Committee of the EU adopted, under German influence, its first refugee policy action plan under the title, Influx of migrants from Iraq and neighbouring regions. In October 1999, the EU Advisory Committee agreed upon

further refugee policy action plans in the same manner, this time with reference to Kosovo/Albania and Afghanistan.

An impression forces itself in the face of this huge political-policing operation against the Iraqi Kurds and Afghans: These measures have nothing to do with tracing organised crime networks. However, the same methods and techniques were used by the police tracing units for organised crime and for the war against the trade of facilitating the smuggling of people. In other respects, it is clearly false labelling. As a matter of fact, the BKA has been reducing posts of its organised crime units. Whether this development is at the national level and whether similar changes are occurring within the EU is to be researched. It is certain that at the same time, new police security measures are in place and that too under the tag of anti-terrorism. Even here, the monitoring of transnational money flow and tapping of telephone lines plays a significant role. Therefore, it is not surprising that of late unwanted refugees and immigrants are associated less with organised criminality from the East/South East, but more and more with “terrorist” dangers from the South. The EU Ministers of the Interior at conferences seem to presume, in all seriousness, that the same networks used by the Islamist terrorists and their periphery in Europe, smuggle in boat people from the Mediterranean. They recently set up tracing teams that are meant to fight the trans-Mediterranean trade of facilitating people smuggling as well as Islamist terrorism.

What consequences will this lead to? Will the same methods that seem legitimate against Islamist terrorists, be applicable to trans-Mediterranean migration? Tony Blair, Otto Schily, Giuseppe Pisanu and other politicians of the EU countries have suggested exterritorial and extralegal EU refugee camps to be constructed across EU borders. A new generation of control technology will be introduced through the anti-terrorist campaigns and at the same time, they will be tested in the battle against the facilitation of human smuggling and irregular migration. Even more troublesome is the predominant “preventive” thinking that is emerging with regard to the migration movement. As in the strategy applied in Enduring Freedom, the US Anti-terrorism war strategy, there is a downright fanatical conviction that industrial countries can intervene in advance through early warning systems and through the predicted damage caused by outbreak of tensions at crucial places. The unwanted migration movement – as also the presumed terrorists – can be stopped at their place of origin or far away in transit.

With the shift in focus from the fight against organised crime to anti-terrorism, the fencing of refugees from the East/South East has also moved to fencing in the South. Of course we must move carefully with this assumption: It is not the human race that lets itself be divided along geopolitical functions but border regimes. In reality, it is really so that the East European EU border is crossed not only by people from Ukraine and Russia but also by people from Chechnya, India, Pakistan, Bangladesh and even African countries. In the Polish deportation centres, we came across only very specific parts of the clandestine transit migration. And in the future, it will have to consider that European migration politics will no longer differentiate between legal and illegal, but rather select within the groups of undocumented people, those who are more and less “unwanted”. Thereby a new racist impulse threatens, as the tracing of people will be based more strongly on criteria such as physiognomy and colouring.

The assumption that the all-powerful transnational criminal gangs had the migration business in their control is something that even the law enforcement authorities cannot argue so correctly anymore. In the face of refugees who, for example, on the southern Mediterranean coast simply buy a wooden boat so that they get across to Italy or Spain, it makes no sense to talk about powerless victims of the human trafficking system anymore. That they place their life and limb at risk for their future – that is what makes people afraid in Europe. It is also the determination and knowledge of the accessibility of other continents that led in recent years, at many places to a strengthening of the bargaining position of refugees with refugee helpers. In fact, the cost of boats, human smuggling and other services, which refugees fall back on in case of emergency or based on their need, has reduced.

In view of human rights and civil society, there is always a long-term hope: to strengthen the rights and empower refugees and immigrants. If they obtain access to secure ship travel, if they do not have to fear the various hurdles in their path, if the sealed off borders are reopened, then the unscrupulous as well as fair business of commercial refugee helpers will lose meaning.

Translation: *Rubaica Jaliwala*

Footnotes

1 EFE/Expatica, "Last dash across border for desperate refugees" Expatica, 26 April 2005, http://www.expatica.com/source/site_article.asp?subchannel_id=81&story_id=19478&name=Last+dash+across+border+for+desperate+refugees.

2 Seen historically, the moulding of this offence began in the 80s and 90s of the 19th century. At that time, the German Reich had started criminalising certain aspects of the East and Transit Migration on its Eastern border, which is relevant even today with respect to the complexity of the offence of facilitating border crossing. The combat of the East Jewish migration to the West as well as the flight out of Nazi Germany depict further cornerstones in the historical development of this offence.

3 FFM (Forschungsgesellschaft Flucht und Migration), Die Grenze. Flüchtlingsjagd in Schengenland, FFM (ed.); Flüchtlingsrat Niedersachsen; pro asyl, (Hildesheim 2003), p. 101 et sqq. See also FFM (Forschungsgesellschaft Flucht und Migration), Ukraine. Vor den Toren der Festung Europa. Die Vorverlagerung der Abschottungspolitik, publications of FFM 5, (Berlin 2003).

4 Helmut Dietrich, "Im Windschatten der Bomber. Kriegsziel Flüchtlingsbekämpfung: Kosovo, Afghanistan und Irak", Fantômas. Magazin für linke Debatte und Praxis. Sonderbeilage zu ak – analyse und kritik 3, (2003), p. 13-17.

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