Hardship suffered by smuggled and trafficked victims law european essay

Law

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\n[/toc]\n \nGCC Gulf Cooperation Council

CESA Community of European Shipyards Associations

TCN Third Country Nationals

UNHCR United Nations High Commission for Refugees

UK United KingdomFRONTEX European Agency for the Management of Operational Cooperation at theExternal Borders of the Member States of the European UnionChapter Two:

2. 1 Defining Migration

The UN defines international migrants as persons who stay outside their usual country of residence for at least a year.[1]Human mobility is caused by globalised economy, politics and culture. However, the violation of human rights and armed conflict also bring about massive mobility. There are four types of migration namely Labour migration, Chain migration, Non-Immigration and Economic migration, which are stimulated by various push

factors. Migration can be either voluntary or forced. Examples of voluntary migration are labour migration, chain migration, Non-Immigration, and Betterment Migration. Push factors, leading to labour migration are joblessness, bad working conditions and bad pay, while those leading Chain migration are family, ties and separation. Study and research, special qualification abroad and jobs related foreign assignments are push factors related to Non-Immigration. Sinking living standards and poverty lead to economic migration. On the other hand, new work/job, better conditions and pay are pull factors related to labour migration, and family reunification is a pull factor linked to Chain Migration. Special conditions for study/research are pull factors, which are linked to economic migration while social stability and offence lead to economic migration.[2]Political refugee, Refugees (Political/Civil) war refugees, environmental refugees and economic refugees are types of forced migration. Push factors leading to the political refugee type is political persecution, while religious ethnic conflicts persecution, xenophobia and human rights violation have to do with Political/Civil war refugees/ war and mortal danger and push factors for the war refugees. Types of push factors that are closely related to environmental refugees are heavy environmental damage, drought, while endangered basic needs and poverty are the push factors linked to the economic type refugees.[3]The pull factors involved in Political refugee type of migration are freedom and survival, while safety and freedom from persecution, human rights abuse or violent conflicts are pull factors that lead to Political/Civil War refugees. A safe haven and survival pull towards war refugees. Security of nourishments and health are pull factors associated with environmental refugees, while

social stability and securing survival are pull factors linked with economic refugees.[4]Forced mobility brings hardships on migrants and effect societies in several senses. The economy, security, governance and development of societies are heavily impacted by mobility.[5]On the other hand, many migrants tend to be dynamic and entrepreneurial and give an immense contribution to the world economy growth and cultural enrichment. Migrants from developing countries send back money back home to their families. Besides whole economic sectors and many public sectors in a member of developed countries are highly dependent on migrant workers. Socialisation with migrants and their different ways of life, customs and religions[6]have enriched local cultures.

2. 2 – Hardship suffered by Smuggled and Trafficked Victims.

The number of attempted illegal crossings at EU member states' land and sea border rose by 20% between 2007 and 2008[7]and around 350 were intercepted every week between 2000 and 2005 using Mediterranean routes to enter Europe.[8]About 1200 people trying to enter Spain drowned between 1995-2005. This human tragedy has triggered debate about " push factors", " pull factors", people smuggling and human trafficking.[9]Irregular migration refers to crossing borders without proper authority or by violating regulations for entering another country.[10]Irregular migrants are those whose wish to migrate cannot be realised due to restrictions on legal movements in intended destinations. They enter a country without the proper authorisations who are moved by human traffickers or migrant smugglers, or who abuse the asylum system. Those from non-EU member

states, who go to EU member states, are easily identified, but those who move from one part of Africa to another are not. There are those who are regular migrants who stay often the expiry of their visa and so their status is changed from regular to irregular.[11]Although Illegal migration amounts to small proportion of the total migration and the consideration of illegal migrants as criminals and carriers of infectious diseases is unfounded, it is often considered as a threat to state sovereignty or even as source of terrorism. Such wrong assumptions divert attention from those who are migrants' smugglers and human traffickers. Competing for control of the labours of arrived migrants is a complex matter as irregular immigrants can be seen as helpless victims of rootless human traffickers or as people paying smugglers to help them achieve their objectives.[12]It also brings to mind global irregularities together with environmental and conflict disasters.

[13]The protocols supplementing the EU Convention on Transnational Organised Crime (UN A/55/383) which the UN General Assembly adopted on 15th November 2000, defines smuggling as the ' procurement, in order to obtain, directly or indirectly a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or permanent resident', and trafficking as, ' recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power of position of vulnerability of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'.[14]Whereas smuggling violates the states' right, human trafficking violates human rights. Human trafficking contrasts with

smuggling because it is a repulsive business from which the traffickers make profit by smuggling people coercively and abusing them at the destination, a blatant violation of human rights.[15]When laws of immigration are very strict the criminality used in human trafficking is more violent and evil because of the ' aggressive extension of market values on the bodies of the vulnerable',[16]corruption of state officials plays an important role. [17]Victims of Smuggling often have to do menial informal jobs, have their human rights abused and are exposed to HIV/Aids. They tend to be exploited by employers and do not dare to seek redress from authorities, and are denied services available to citizens and regular migrants[18]and face discrimination and prejudice. Salt and Stein (1997)[19]developed the idea ' Migration Industry' or business describing it as " a system of institutionalized networks with complex profit and loss accounts". (Pg468) However many migrants make a conscious deliberate decision to seek a better life by using irregular routes and smuggling networks have been set out to meet the demand. There is a relationship between smuggling networks and law enforcement.[20]Dangerous long distance journeys are prompted by a growing human security disparity in different parts of the world, improved transport, communication and information technology, transnational social networks and the smuggling industry.[21]The exporting scheme is a chain commenced by small local entrepreneurs.[22]A network of locals paved a way for smugglers who than transport the migrants according to the political economy approach, people are considered commodities. Their illegal movement renders profit to smugglers and serve recipient states to fill gaps in the employment structure with cheap labour, and help migrants earn

more money than they did at home. Irregular migrants move in the hope of a more profitable employment and improved quality of life. However, they are often deprived of legal protection and have their human rights violated. [23]They are often given poor wages, live in overcrowded places, hardly have any health care services, and have to accept poor working conditions. A number of parents may send their children unaccompanied to a targeted country hoping that they will obtain asylum because of their children. However, several of the children never meet their parents and become prostitutes and domestic slaves. In France unaccompanied young immigrants disappear from official records.[24]The same happened in Sweden where children were brought from North Iraq, Somalia, Serbia and Afghanistan by profit seeking ethnic networks and smuggling rackets. [25]The EU Council adopted a framework decision on combatting trafficking in human beings in 2002 which has however been kept to a minimum of ' effective, proportionate and dissuasive penalties'. Lenient penalties have encouraged human trafficking since drug trafficking carries higher penalties. [26]

2. 3 Illegal Migration Patterns and Smuggling routes

Morocco, Libya, Tunisia, Lebanon and Turkey have become countries of transit illegal migration. Most irregular migrants departed from Libya (80%) and Algeria (20%),[27]and headed from Sicily and Malta. In 2002, there were seventeen hundred apprehensions in Malta, four thousand seven hundred and fifty in Cyprus, fourteen thousand in Italy, eleven thousand in Spain, and four thousand in Greece.[28]Turkey has become similarly involved[29]but its role has dwindled since 2000 as a result of more policing and cooperation

with EU agencies.[30]The Northern Mediterranean countries, policies regarding migration from the South have been characterized by an ambivalent attitude.[31]In spite of the exclusionary vision of the EU, irregular migrants and workers are still flowing into South European countries attracted by their large informal economies.[32]The exodus of highly skilled professionals from Morocco and Algeria in the last twenty years led to a brain drain, which had to be countered with a large number of foreign experts, which are very costly.[33]Today, the Maghreb countries are gateways for Europe as desperate Sub-Saharan Africans, many of whom remain stranded in North Africa. Low educational levels, low labour force, participation and lack of intent of nationals to work in the private sector together with the ill revenues and economic development has led to massive foreign labour in the GCC states; Bahrain, Kuwait, Omen, Qatar, South Arabia, and United Arab Emirates in the 1970s. Less skilled Asians when the oil prices fell in the 1980s and early 90s substituted these Arab workers, causing the repatriation of great numbers of Arabs. Expulsion of supporters of Iraq after the Second Gulf War, brought down the Arabs in the GCC states to 25-29% by 2002. [34]As regards the Mashrek countries, Egypt is a country of net immigration with as many as five million refugees[35]nine million Egyptians have immigrated to other Arab countries and nearly one million elsewhere mostly to North America and Europe. In Jordan, a massive number of highly skilled Jordanians migrated in the mid-90s.[36]Jordan imports mostly unskilled workers from Mashrek countries. Economic growth is hampered by brain drain. In Syria there are an estimated of ten thousand to fifteen thousand foreign domestic workers[37]there are about two million Syrians working

abroad. The Syrian diaspora may well be about twenty million. The civil war (1975-1990), and the economic depression triggered a massive immigration from Lebanon. There were over four hundred thousand refugees and asylum seekers in Lebanon in 2002. In Yemen some eight hundred fifty thousand had to return home and live in great poverty and illegal immigration is likely to be high.[38]

2. 4 External Dimension of Immigrants in EU's outlook

Politicians often perceive illegal migration as a danger for a state integrity and a challenge to their sovereignty.[39]Many countries have set tight constraints through though immigration policies to stop potential migration and this opened the way to irregular migration.[40]Strict border control leads to new evasions and even stricter controls.[41]Intensification of control raises the cost of entry and therefore increases the profit for smugglers. The European Commission in its proper policy priorities in the fight against illegal immigration[42]made clear the EU response to irregular migration namely cooperation with non-EU countries. The emphasis is on border security and external dimension of migration policy. The EU tries to co-opt neighbouring states and regions into its migration making use of development aid and economic assistance in its negotiations like it did with Libya to encourage her regulate movement on land and at her sea borders. The difficult recovery process from the fiscal prices of 2007-9 has prompted many countries to launch investment programmes meant to build on their national and co-ethnics abroad. Since the diaspora, entrepreneurs can be helped in the building and sustaining economic growth in 2011. Ireland has set up a fourteen million dollar investment for their seventy million Irish diasporas.

The US department of state launched the international diaspora engagement alliance to set up the Latino idea partnership aimed to support Latin Americans entrepreneurs start up in Mexico and Central America, and the Caribbean idea market place to help collaboration between local entrepreneurs in the Caribbean and those in the global diaspora. Other examples are the Armenian three thousand five hundred programme, the Nigerian diaspora organization and the Jamaican embassy and Jamaican promotion, Corporation effort. Large numbers of highly skilled immigrants are returning home from the United States, and EU Member states, or seeking their fortune in fast growing regions like China, India or Brazil. In 2009-2010, EU Member states reported a third fewer detection of illegal border crossings than in 2008, and the number of detections of illegal states went down by 15% for 2009 to 2010, while the emigration from EU Member States has increased mostly due to the struggling economy and high unemployment austerity measures and post-recession debt crises. Immigration and emigration have followed the same pattern in the United States and Australia following the 2007-9 recessions. When immigration issues are discussed alongside trade aid and development then the external aspect of EU policy would stand a better chance of success. The EU has also realised this when the European Commission proposed in 2007 to sanction employee of irregular migrants.[43]Much is said about immigration but it remains too complex a matter from the political point of view and whereas South Europe has made a number of regulations, North Europe are against large-scale amnesties that Greece, Italy and Spain gave. However, the pressures arising from immigration are the same for all member states this is

called horizontal convergence. EU is intervening to create vertical convergence pressure. The idea that irregular migration is driven by intervention criminal organization does not hold water.[44]Carling, argues that besides criminal cartels there are ' fluid networks of individuals'. [45]Although EU is not responsible for implementation of migration policy adopted by Member states, it tries to coordinate member states' responses through the return directive and FRONTEX. FRONTEX carries out risk analysis, coordinates operation cooperation on external border management, offers training to national border guards and gives technical and operational assistance to Member States. It is evident that the Member States most vulnerable to illegal migration requires support and help from other EU Member states. EU's measures at external frontier were inevitably lead to new evasions. Controls lead to evasion, which in turn lead to new controls and new evasions.[46]This has brought about strong illegal migration, which has become a universal phenomenon. Taking tougher security measures at the border leaves out the aspect of complex forms of networks that facilitates migration. Admission policies make irregular migration likely. EU Member States can tolerate migration, regularize irregular migrants or expel irregular migrants. Between 1996-2008, around 4. 6 million migrants have had their status regularized. The global economic crisis in 2011 led to more restrictions immigration policies. Radical/Right parties relied on the apparent failures of multiculturalism to gain votes. The Netherlands made tougher regulations for Asylum seekers and require immigrants to sit for and succeed in civic and language tests. The Czech Republic also made tough legislation as regards immigrants although they do not have an immigration problem.

The United Kingdom has proposed stricter policies. South Eastern Mediterranean States are striving for more support in watching over borders and dealing with irregular immigrants. In 2011 the European Parliament approved a massive five million euro increase to strengthen FRONTEX, although the number of immigrants has decreased and the EU designed a smart border strategy, deportation in the CESA was 53% higher in 2010 than in 2005. The anti-immigrant sentiment is also evident. In bans against Muslim, face veils against France and Belgium, Italy and Switzerland in 2011, and in workplace and highering discrimination in Germany against Turkish immigrants.

2. 5 EU's reaction to Arab Spring

During the Civil war in Libya, hundreds of thousands of North Africans and Sub-Saharan migrant labourers fled from Libya, most of them heading home or Tunisia or Egypt. Over seventy-six thousands TCNs were repatriated by the help of the International Organization for Migration, while one hundred fifty seven thousand were repatriated through the UNHCR.[47]The migrants fleeing Libya included refugees from Sub-Saharan African countries, asylum seekers who were on their way to Europe and those trying to find economic opportunities besides Libyans. These migrants met with little assistance in Tunisian transit camps and a rigid migration response in Europe, which gave them the minimum basic services, while Libyans were given refugee protection, migrants who were escaping from torture in detention or from being prosecuted as foreigners were considered as ' third country nationals' and therefore ineligible for the same type of protection in Southern Europe and neighbouring countries.[48]The 1951 Convention relating to the Status

of Refugees provides protection for displaced persons but those who fled the revolution in Libya will probably be ineligible because they would not be able to link the risk of harm with the grounds of persecution enlisted in the Convention. Besides third country, nationals are excluded, as their fear is not linked to their country of nationality. However, the 1969 Organisation of African Unity Convention, concerning the specific aspects of refugee problems covers third party nationals in African states. Yet this does not protect the forty five thousand migrant who fled to Europe. More recently, the principle of non-refoulement has been included in the EU ' subsidiary protection' regime and has become binding on all states the problem remains in distinguishing between forced and economic (voluntary) migration.[49]In 2011, tens of thousands Tunisians landed in Lampedusa. Detention facilities became overcrowded and many migrants slept on the streets. Other countries protested when Italy responded by issuing temporary residence permits. Thousand five hundred came to Malta. Libyan asylum seekers were provided with housing, taken to mainland and as asylum seekers, claims were registered for those who requested protection. [50]Responses to arrivals in Europe show that the EU is hesitant to put in place appropriate responses mechanisms and resources to help Member States under migrant pressure.[51]Although the waves of immigrants into EU member states expected after the Arab Spring did not materialize but still, there were a lot of mobility and boatloads of Tunisians and Sub-Saharan Africans crossed the Mediterranean mainly landing in Lampedusa. In 2011, EU spoke favourably of democracy in North Africa but then showed anxiety about the potential exodus of North Africans due to political instability and

economic insecurity in these countries.[52]On one hand the EU's Global Approach to Migration talked about facilitating regular mobility, reducing or preventing irregular migration, maximising development impact and enhancing the external dimension of asylum seekers,[53]and on the other hand there is still the deadlock between ' legal' and ' illegal' migration, and control on migration has been strengthened with €8. 7 million being invested in FRONTEX. Prior to the revolutions agreements between Libya and Italy, Tunisia and France, Morocco and Spain. Increased border controls made migration more expensive items and money and of lives, and rendered immigrants more vulnerable to exploitation.[54]