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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

PROPOSAL FOR FUTURE ACTIVITIES BY THE CDPC

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Criminality and Migration

- *...Migration in Europe is often criminalized and has severe implications for human rights*" - Thorbjurn Jagland,

State of Democracy, Human Rights and the Rule of law in Europe - A shared responsibility for democratic security in Europe. Report by the Secretary General of the COE, 2015.

Introduction

The recent upsurge of irregular migration in Europe poses real challenges not only to front line states with respect to border control, security, and sustainability but also to the migrants themselves who often find themselves exposed to insecurity and vulnerability.

Given the sheer quantities of human migration into Europe, front line states have found it hard to control or effectively manage this constant flow of displaced persons. Immediate prospects of a sudden reversal of the present trend or a substantial reduction in the number of arrivals remain bleak.

States have the right to control their borders but even the recognition of such a sovereign right can lead to divergent viewpoints. Marked contrasts are known to exist between the interests and policies of the various stakeholders. One major divergence lies between the interests of migrants and states trying to control their entry. Irregular migrants most often enter a country without obtaining any prior authority. In other words, they seek entry in a clandestine way either with fraudulent documents or with no documents whatsoever.

Irregular Migrants and Asylum Seekers

It is important to keep distinct the right to asylum from the broader debate on irregular migration. Unfortunately, the dividing line between irregular or so-called economic migration the one hand, and asylum seekers or refugees on the other, has become increasingly blurred insofar as the media and general public opinion are concerned. One of the known causes for the confusion is due to the fact that people who do not qualify as refugees, and therefore do not enjoy international protection, frequently turn to asylum channels in the hope of obtaining a "legal" entry into the country concerned.

Equally bad, if not worse, asylum seekers and refugees may seek help from migrant smugglers and thereby introduce another form of criminality to the problem.

Human Smuggling

Human smuggling, and in particular, the smuggling of migrants involves the procurement for financial or other material benefit of illegal entry of a persons or groups persons into a state of which that person/s not a national or a resident.

The phenomenon has increasingly become a global concern assuming dramatic proportions in terms of numbers and people losing their lives in the process, especially in southern Europe with migrants leaving North African shores. This upsurge is undermining the integrity of countries and entire communities and aside from human rights issues there is also a criminal dimension to the problem involving organized crime;

Human smuggling is not the same as human trafficking, although there are some similarities between them. For example, there are significant statutory differences in the expectations and treatment of persons being smuggled and the victims of human trafficking. Also, human smuggling is generally undertaken with the consent of the person(s) being smuggled, who often pay substantial sums of money.

Smuggled persons may become victims of other crimes. In addition to being subjected to unsafe conditions while in transit, smuggled people may be subjected to physical violence. Recent cases of human smuggling in the Mediterranean area witnessed the overloading of unseaworthy boats or inflatable dinghies that were the result of thousands of people perishing by drowning.

COE Contribution in Response to MIGRATION CRISIS

The COE was always there to resist push-back policies, monitor detention centres, and condemn human rights violations of detained persons on the part the receiving state whenever this was found to be the case. But beyond treating the phenomenon from a narrow human rights' perspective, there are other aspects where the COE can do more by way of contributing to ease the problem through shared responsibility and targeting human smuggling. In other words, limiting the Council's policies to integration alone is simply inadequate by way of addressing the problem.

As stated by PACE President Mme. Anne Brasseur,

“Migration is not only a domestic problem of the member states that are affected. It concerns Europe as a whole”.

It is more that evident that the Council of Europe cannot remain passive to these recent appeals from within the Organization itself.

Four areas where action by the COE can be realized concern the following:

- COE- EU Coordination
- Targeting human smuggling by legal instruments
- Beefing up the fight against organized crime with regard to smuggling activity
- Neighbourhood policies

Criminality Aspects to Migration Crisis

The aim of this Paper is to highlight those areas where the COE can take action concerning aspects of a criminal nature to the problem of irregular migration.

With regard to coordinating efforts with the EU, reference is made to an excerpt from Mme. Mogherini, EU Commission Vice-President to the UN General Assembly in May 2015 on the issue of Migration, namely that,

“It is not only a humanitarian emergency but also a security crisis since smuggling network are linked to and, in some case, finance terrorist activities, which contributes to instability in a region that is already unstable enough”.

In his 2015 Report on the State of Democracy, Human Rights and the Rule of Law in Europe, COE Secretary General Thorbjurn Jagland (p. 82) remarks that

“...migration in Europe is often criminalized and has severe implications for human rights”.

There are two areas that can be taken up by the COE by way of action, namely by:

- Targeting human smuggling from a criminal law aspect and
- Beef up the area concerning the fight against organized crime

Reference is made to the Opinion of the European Committee on Crime Problems (CDPC) regarding the Parliamentary Assembly Recommendation 2047 (2014) on *“The large-scale arrival of mixed migratory flows on Italian shores”*.

In this Opinion, the CDPC stated inter alia that,

“...the CDPC considers that launching of activities to elaborate a convention on this subject-matter is not necessary to address such a hideous crime”.

It added however that *“...the CDPC remains ready to contribute, if invited to do so, to the future activities on this topic by making available its expertise in the criminal law field so as to clarify what is already covered by legislation of its member States of the Council of Europe”.*

Since this Opinion was given, human smuggling continued to increase with catastrophic results in terms of loss of lives. The need has long been felt to take a good look at existing instruments and see what can be done to curb this ugly phenomenon. Pointing fingers at other Organizations like the European Union or the United Nations by way of doing more is not enough.

For this purpose, it is suggested that committees within the COE structure like the European Committee on Crime Problems (CDPC) should be tasked with examining the two aspects abovementioned and provide a comprehensive study report with a view to drawing up an appropriate legal instrument to counter in a proper and more effective and direct way the criminal side to the Migration problem with particular reference to Human Smuggling and the fight against organized crime.