

CommHR(2024)38

2nd INTERNATIONAL CONFERENCE ON MIGRANT SMUGGLING

Speech by Michael O'Flaherty

Council of Europe Commissioner for Human Rights

Council of Europe, Strasbourg, 10-11 September 2024

Chairperson, Secretary General, Special Representative on Migration and Refugees, Colleagues,

I thank the European Committee on Crime Problems and the Special Representative for organizing this conference. I appreciate the opportunity to discuss smuggling from a human rights perspective.

Smuggling is high on the radar of policy makers, as highlighted by the inclusion of a reference to it in the Reykjavik Declaration. However, debates on this issue are often so politically charged that they hinder reliable policy development. This makes it crucial to maintain a level-headed approach, ensuring decisions are based on a clear understanding of the links between migration and smuggling and of the counterintuitive human rights impacts that anti-smuggling policies can have.

But let me begin by expressing my sorrow and outrage for the lives lost last week in the two shipwrecks in the English Channel and in the central Mediterranean. I express my strongest condemnation for the heinous crimes so often committed by groups involved in the smuggling of people. I recall that whenever women, men and children are ill-treated, exploited or deliberately put in danger, states are under the obligation to investigate and prosecute those crimes and punish those responsible. Crimes committed by 'users of human lives', who make fortunes out of the suffering of other humans, should be countered with the full force of the law. Victims have that right to justice.

In honouring these obligations, member states already have many tools. Indeed, in recent years this has been evidenced by investigations, prosecutions and trials against suspected smugglers.

That said, it should be possible to improve cooperation and coordination, to enhance exchanges of information, to increase the available expertise, including on the financial dimension of the smugglers' criminal activities, and to strengthen procedures for the collection of evidence. Specific actions could also be taken to provide people who are the victims of crimes perpetrated by smugglers with adequate protection, even more so when they become witnesses in legal proceedings. Work in this direction is to be welcomed.

Colleagues, we must also consider the risks we face when we address wider migration-related issues through the deployment of anti-smuggling tools. Today I highlight four of these risks.

The first risk is that we concentrate so much on the *fever* – the smuggling – that we forget to treat the *infection* – the absence of mobility opportunities. Some governments present the fight on smuggling as a way to tackle irregular migration. But we must acknowledge that smugglers are not *creating* irregular migration, but rather offering illicit services that continue to be in high demand because people on the move lack alternatives.

CNN recently reported the story of a young woman, an officer of the Afghan National Army, who tried three times to flee from Afghanistan. She was shot at by Iranian border guards, kidnapped and assaulted by smugglers, and arrested and beaten by the Taliban. Yet, she only now enjoys relative safety because, despite all that she had suffered, she hired smugglers again, and managed to escape.

As long as situations of persecution, conflict and human rights violations exist, people will flee. And as long as people have no other viable option to reach a country where they can seek and receive adequate protection, they will resort to smugglers. In this situation, a strategy predominantly based on border control, law enforcement and criminal justice can only promise limited results. Indeed, even if the imposition of ever-more-restrictive border control measures is often presented as a way to ‘break the business model of smugglers’, in reality this approach may result exactly in the opposite, as it may contribute to conditions for smuggling to flourish.

In this regard, we observe how smugglers often adapt their tactics to new legal landscapes, and what is more, stricter border controls can also lead to more dangerous routes or methods. For example, many smugglers have stopped piloting boats to avoid arrest, leaving untrained passengers to steer them. We must therefore be cautious with our assumptions: increasing pressure on smugglers through stronger border controls, investigations, and prosecutions will not necessarily lead to greater security or to greater protection of those suffering at our borders.

To tackle smuggling, it is necessary then, and as I have said, to work towards removing the reasons for its demand, through the provision of safe and legal routes. Member states can, among other initiatives, expand opportunities for: resettlement, humanitarian visas, sponsorship schemes, and family reunification. In this regard I acknowledge, of course, that safe and legal routes are by no means a magic bullet: situations will continue to exist in which people resort to irregular means. But at least reducing the need to resort to smugglers can save lives.

A second risk is that, in pursuing smugglers, some states may apply laws in a way that leads to human rights violations.

In recent years, we have observed how accusations were made, and criminal prosecutions initiated, against those providing humanitarian assistance to people in danger at land and sea borders. Then, after lengthy investigations, these cases were so often dismissed. These situations can violate the rights of those targeted, drain their resources and energy, and ultimately deter humanitarian actions.

Prosecution of humanitarian actors and human rights defenders also raises issues of how smuggling is defined. The prosecution of people who had done nothing wrong has been enabled by loose definitions of smuggling, that do not include as elements of the crime such matters as financial or other material gain. Keep in mind that these elements are a central feature of the definition of smuggling provided by the Palermo Protocol. It is a matter of concern that they are absent from the domestic legislation of many states. As regards the EU, I am aware that it is engaged in the reform of its own legislation and I hope this opportunity will be used to address the current lack of such elements of crime in its own rules.

The third risk relates to anti-smuggling cooperation activities with other countries, including outside Europe.

In some cases, international cooperation – ostensibly aimed at targeting smugglers or saving lives – actually exposes people to greater danger. This may be the case when member states collaborate with non-Council of Europe countries that have problematic human rights records.

Consider what is happening in Libya, where authorities have received speedboats, coordination centres, training, and other assistance from Council of Europe member states and from the EU. I am not alone in observing how, as a result of European support as well as information sharing, thousands of people are intercepted at sea by Libyan coastguards each year, only to be disembarked in Libya and sent to detention centres. There, as documented by the United Nations, migrants and refugees face arbitrary detention, torture, sexual violence, and other abuses.

The fourth and final risk is that the reliance on services provided by smugglers may be used to delegitimise people's claims to protection.

We increasingly hear reference to refugees, asylum seekers and migrants arriving irregularly as 'queue jumpers', or we encounter generalisations according to which people who have paid smugglers must be 'economic migrants' who have no claim to asylum. Once again, these unhelpful narratives feed into such unacceptable practices as pushbacks. They also contribute to alarming levels of hatred and of violence against migrants and refugees that we increasingly see in our societies across Europe.

Such narratives must not distract us from the legal duty to protect people arriving on our shores regardless of how they get here.

Dear colleagues, with these few words I have raised some concerns and recalled why we should be cautious. However, allow me to reassure you that we have a common desire – to ensure an adequate and principled functioning of European borders.

Through the Reykjavik Declaration, the member states have committed to intensify efforts against trafficking and smuggling, and to do so "while continuing to protect the victims and respect the human rights of migrants and refugees".

In this spirit, I appreciate efforts to harmonise legislation and strengthen international cooperation. I urge that these efforts both strengthen the combat of smuggling and honour the dignity of smuggled people and of those who save their lives and defend their rights.

Thank you.