

# *Irregular Migration, Identity and the State – the Challenge for Criminology*

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## **Introduction**

This article makes the case for a new, critical discourse on the phenomenon of human smuggling/trafficking. It develops some of the themes of an earlier article (Green & Grewcock 2002) and, while concentrating on the experience of the European Union, addresses issues of immediate relevance in Australia.

Challenging the official smuggling/trafficking discourse, with its focus on law enforcement as the core element of border protection, is a difficult task. There is a paucity of critical analysis or alternative material; and limited interest shown by criminologists.<sup>1</sup> This is especially so in relation to the linked processes of criminalisation and identity formation, in which state and European institutions play a crucial role.

Human smuggling/trafficking<sup>2</sup> constitutes a significant component of the official discourse on irregular migration. Within this discourse, smuggling/trafficking is constructed as a menacing facet of transnational organised crime, threatening to undermine European security and identity.

The discourse reflects the development of a European Security Zone in which the issues of national security and immigration policy are fused. The development of this zone increasingly dominates the European project, with a focus on border enforcement a unifying point of agreement between member states. A range of institutions and multilateral agreements between member states are driven by this security agenda in which those acting as agents in smuggling/trafficking enterprises are labelled as criminal and/or deviant, deserving of punishments reserved for the most serious categories of violent crime<sup>3</sup>.

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- 1 An indication that this might be changing can be found in Volume 14 No 1 of this journal (July 2002). a special issue on refugee issues and criminology.
- 2 The term 'human smuggling/trafficking' is used throughout this article to describe the general process of facilitating irregular migration.
- 3 For example, the *Nationality, Immigration and Asylum Bill* 2001, introduced two new offences of facilitating illegal entry into the UK. Each carries a maximum sentence of 14 years imprisonment, compared with a maximum sentence of 6 months for the former offence of harbouring abolished by the Bill.

Irregular migrants are excluded and criminalised by the development of the security zone. Moreover, those who have little choice but to engage the services of smugglers/traffickers as a result of restrictive immigration and asylum policies, are subject to further exclusion from Europe by the measures put in place to prevent smuggling/trafficking.

The use of smugglers/traffickers exposes irregular migrants to additional risks of abuse and exploitation. The main critical response is to argue that European institutions should embrace fully a human rights agenda as part of a law enforcement strategy, which continues to target smugglers/traffickers and maintain border controls. However, such an agenda fails to address the exclusionary nature of the European project and the impact further measures against smugglers/traffickers will have on irregular migrants. This contradiction can only be resolved effectively by challenging the sanctity of border controls, and thereby the whole enforcement agenda of the European Union.

Instead of directing attention to the perceived need to suppress smuggling/trafficking, understanding the social dynamics of migration and developing forms of analysis which embrace the right to free movement should become a priority within the migration studies agenda.

The focus of new research and theoretical endeavour ought to be on analysing the basis on which smuggling/trafficking is seen to constitute a threat; understanding the wider processes of irregular migration and how the policies of governments in the developed world contribute to it; and putting in place social and economic arrangements which undermine the necessity of migrants to avail themselves of informal or illicit networks.

Although an inter-disciplinary approach is required, criminology can provide valuable interpretive tools for such a project. These include drawing on and developing paradigms of state crime (Green & Ward 2000); extending analyses of state sanctioned wars of enforcement (Green 1998); and engaging in a direct and critical way with the enforcement agenda of the transnational crime discourse.

## **The Construction of the Threat of the Smuggler/Trafficker**

The popular image of the smuggler/trafficker merges with the menacing, otherworldly persona of the organised criminal. Formed in the murky miasma of organised crime, the smuggler/trafficker is identified as a fearsome outsider, a predator and a danger to western institutions. While the scruples of smugglers/traffickers may be limited (Harding 2000:19–21), the threat of the smuggler/trafficker is a social construction emanating from the way in which the state defines the smuggler/trafficker as illegal and uses that illegality to justify a complex array of punitive sanctions.

Following the Cold War, combating transnational organised crime emerged as an important component of the national security agenda of the major western powers. Presented by the western security establishment as part of a matrix of threats, it brought together issues of domestic law enforcement and national security (Naylor 1995; Friman & Andreas 1999).

The notion of a war against organised crime was first popularised in the United States during the period of prohibition in 1920s. During the 1970s and 1980s, it re-emerged in the form of the 'war against drugs' prosecuted by the United States and various European governments (Andreas 2000; Green 1998; Nevins 2002; Parenti 1999). This involved a fusion of national security and domestic policing issues, laying the basis for a more generalised war against transnational organised crime.

This war has been legitimised and embraced by European Union (EU) member states at a national and pan-European level as one of the defining aspects of the European project. This is in the context of an expanding European Union, where the incorporation of eastern European states has focused on their capacity to enforce a common law and order and border control policy. With asylum policy increasingly dominating the domestic and European agenda of the member states, and the emergence of the far-right pushing that agenda further in an exclusionary direction, the extent to which irregular migrants and refugees are prevented from entering Europe is an official barometer of the success of European integration.<sup>4</sup>

Smuggling/ trafficking has emerged as a focus of enforcement efforts because of its relationship to immigration and the loosely defined phenomenon of organised crime. The way in which smuggling/ trafficking is constructed within the dominant law enforcement discourse makes it threatening by definition — it is illegal, clandestine, well-organised, beyond official scrutiny and control. It has a shadowy and dangerous character and the capacity to threaten national security, social integration and racial harmony.<sup>5</sup>

The smuggler/trafficker is the vehicle by which irregular migrants ‘crash official borders’ (Kaplan 1994:10–11), threatening a European identity increasingly formulated in terms of cultural difference (Huntington 1998; Marfleet 2002).

Within this perspective, cultural incompatibility has replaced Communism as the basis for fortifying the West. A new ‘Other’ is being constructed, with Europe’s borders increasingly defined ‘in opposition to the Muslim world and Third World’ (Delanty 1995). As the boundaries formally separating Eastern and Western Europe have changed, so too have the official rationales for foreign policy, military strategy and national security. Individual European states can implement their own policies, while uniting and claiming a shared identity through the identification of common enemies and threats.

Asylum seekers particularly are targeted, as the sanctions aimed at the smuggler/trafficker are equally aimed at them (Harding 2000; Morrison & Crosland 2000). However, existing immigrant communities are also affected. Those who were once welcome can quickly be stigmatised as the ‘enemy within’, as a ‘bridgehead’ to an influx from the Third World or as a source of ‘hostile culture’ (Lueg 1995).

Within this schema, organised crime is targeted because of its association with ‘alien conspiracies’ or as a link between migration and crime (Melossi 2000; Ruggiero 2000). For smugglers/traffickers, their nationality or identity can be as significant as their cross border enterprises in defining their deviancy. Russian, Turkish or Chinese gangs can be external as well as internal threats; whole communities can be put under suspicion.

Within the official discourse, the smuggler/trafficker helps define and justify the European Security Zone ensuring that law enforcement against smugglers/traffickers and smuggled/trafficked migrants is built into European institutions. Those who engage in any aspect of the smuggling/trafficking process are not just criminalised because they have broken the law, but because they challenge the basis of national and European identity.

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4 The European Council meeting at Tampere in October 1999 introduced a scoreboard system, ranking the efforts of member states in moving towards a common asylum policy overwhelmingly directed at preventing asylum seekers reaching the European Union.

5 These were the main themes of the recent UK Government white paper (Home Office 2002).

Despite the consensus at a mainstream policy level that human smuggling/trafficking constitutes a serious threat to national security, there is an absence of reliable statistical data (Ghosh 1998:29; Salt 2000:37) — smuggling/trafficking is dangerous for what it represents, rather than its prevalence.

The pursuit of statistics at an official level is conditioned by the requirements of policing the smugglers/traffickers. Increasing levels of secrecy make it difficult for independent researchers to gain access to basic enforcement data<sup>6</sup>, while the impact of the enforcement agenda ensures that empirical studies of refugee or irregular migrant communities are very difficult to conduct (Koser 2001).

The available material is therefore heavily reliant upon police statistics, which are uncheckable and often self-serving (Salt 2000:38–41). Even within enforcement organisations, there might be significant variations in apprehension rates (Salt & Hogarth 2000).

While enforcement agencies may choose to cite burgeoning numbers of irregular migrants in support of claims for more resources and greater powers, the main value of such variable and open-ended statistics within the enforcement discourse is that they can be attached to a threat of smuggling/trafficking to instil a general sense of urgency and fear. This is in the context of irregular migration being analysed as the product of an imbalance between push and pull factors, conjuring images of one way human traffic from the developing world to the West.

When legal migration channels do not exist, locating smuggling/trafficking within a mechanical push/pull relationship deters an examination of the complex dynamics of migration (Harding 2000:100). Instead, it focuses attention on the actual structures of the smuggling/trafficking organisations. Thus, in 1994, the International Organisation for Migration (IOM) proposed that in order to identify and understand trafficking, emphasis should be placed 'on the nature of the trafficking organisation per se' (Salt & Hogarth 2000).

Such analyses focus on the steps involved in 'breaching the border' or such 'key elements of the smuggling enterprise' as 'recruitment', 'transportation', 'corrupted officials', 'guides', 'support services', 'debt collection' and 'management' (Budapest Group 1999:33–35).<sup>7</sup> Organised crime is thus broken down into individual, constituent,

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6 For example, the Schengen annual report, containing summaries of the information channelled through the reporting and surveillance systems, SIS and SIRENE, has not been made public since 1998 (see <[www.statewatch.org/news/2001/mar/07accountab.htm](http://www.statewatch.org/news/2001/mar/07accountab.htm)>.) Morrison and Crosland were also denied access to key data stored for the exclusive use of CIREFI (Morrison & Crosland 2001:16). For explanations of the Schengen process, SIS and SIRENE, see 'The Area of Freedom, Security and Justice' below. For an explanation of CIREFI, see 'The European Security Zone' below.

7 The 'Budapest Process' operates under the auspices of the International Centre for Migration Policy Development. It describes itself as follows:  
The Budapest process is a consultative forum of more than 40 Governments (Ministries of Interior) and 10 international organisations, aiming at preventing irregular migration and establishing sustainable systems for orderly migration in the European region. It was initiated by Germany in 1991...and gained momentum in 1996, when the EU Member States and the European Commission recognised that the informal and flexible character of the process made it an excellent instrument for promoting the EU principles on immigration control in the wider European region. This led to a third Ministerial Conference in 1997, which promoted 55 recommendations relating to legal harmonisation (eg. as regards the punishment of smugglers of migrants), visa policy harmonisation, readmission agreements, return to countries of origin, information exchange on illegal migration, financial and technical assistance and general fight against organised crime. (See <[www.icmpd.org](http://www.icmpd.org)>).

criminal parts, each of which can be the target of a law enforcement process. This highlights the multiplicity of the criminality and helps sustain an acceptance of smugglers/traffickers as a threat.

By such means, the discourse of enforcement is maintained by separating smuggling/trafficking from its operational context, and attributing blame to the agent. This process is refined by the formal distinctions made between smuggling and trafficking.

## The Smuggling/Trafficking Distinction

According to the U.K. Government,

**People smuggling** is the facilitation of illegal entry...Those who are smuggled are invariably complicit and are effectively customers availing themselves of the smugglers' services...

**People trafficking** is transporting people in order to exploit them, using deception, intimidation or coercion. Those who can truly be described as trafficking victims have usually been treated as little more than a commodity... (Home Office 2002:76).

These definitions adopt a distinction increasingly made by policy makers, enforcement agencies and NGOs. While there is still debate about the legal niceties of the distinction<sup>8</sup>, smugglers are criminals because they breach border controls, while traffickers set out to exploit the migrant for criminal purposes (Budapest Group 1999:23–24).

The protocols attached to the 2000 United Nations Convention against Transnational Organised Crime — the Protocol Against the Smuggling of Migrants by Land, Sea and Air; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>9</sup> — formalise the distinction at the broadest international level. They also illustrate how concern for the victims of trafficking can be used as a rationale for enhancing immigration controls, rather than encouraging the free movement of migrants.

The Trafficking Protocol takes an unambiguous, punitive approach. It emphasises strengthening co-operation between 'source' and 'receiver' states with signatories required to:

- Criminalise trafficking and related conduct as well as impose appropriate penalties;
- Facilitate and accept the return of their trafficked nationals and permanent residents with due regard for their safety;
- Exchange information aimed at identifying perpetrators or victims of trafficking, as well as methods and means employed by traffickers; and
- Strengthen border controls as necessary to prevent and detect trafficking.

There are a number of optional measures states can take in order to protect victims of trafficking but these are limited to 'consideration of adopting legislative or other measures permitting victims of trafficking to remain in their territories temporarily or permanently in appropriate cases with consideration being given to humanitarian and compassionate factors' (Article 7).<sup>10</sup>

8 For a history of how the distinction developed, see Salt & Hogarth (2000).

9 Passed by the UN General Assembly and ratified by 120 countries in November 2000.

10 Which the UK Government did not do in the *Nationality, Immigration and Asylum Bill 2001*.

The Smuggling Protocol is less complex. It emphasises strengthening border controls and, while there is a prohibition on an individual from being prosecuted for the simple fact of being smuggled, this does not alter the fact that illegal entry remains a criminal offence in all European states and in most, legal justification for indefinite administrative detention.

Both at an official and NGO level, the discourse on trafficking has focused increasingly on trafficking for the purposes of sexual and labour exploitation. Within this framework, targeting trafficking is posed as an urgent exercise in defending human rights.<sup>11</sup> In turn, the violation of these rights provides a justification for a punitive border enforcement regime, which generally includes the return of the trafficked migrant to the country of transit or origin.

Moreover, in practice, the legal distinction normally excludes refugees and asylum seekers from the orbit of trafficking, mainly on the basis that they enter into a voluntary agreement to cross borders illegally. This ignores or denies that refugees are vulnerable through 'political, economic and social insecurity' (Koser 2001:67), and that 'much migrant smuggling operates in an ambiguous area that is neither purely voluntary nor involuntary from the perspective of the migrant' (Kyle & Koslowski 2001:9).<sup>12</sup>

This process of separation and classification sets up a hierarchy of legitimacy, with those who voluntarily break the rules portrayed as the least deserving and most deviant. It draws attention away from the complex causes of irregular migration by attributing varying degrees of blame to the migrant, while still legitimising the migrant's expulsion or return.

It also provides a 'human rights' justification for the processes of border enforcement as they relate to the expansion of the European Union. For example, within the border and buffer states of the EU, the Organisation for Security and Co-operation in Europe (OSCE)<sup>13</sup> plays an important role in the development of legal and institutional mechanisms for combating trafficking as part of its wider remit of developing political, judicial and policing mechanisms compatible with membership of the Union. The imposition of an anti-trafficking regime thus becomes an instrumental exercise in solidifying the institutions of the European Security Zone.

## The European Security Zone

A European Security Zone, comprising the European Union and its buffer states, has developed since the 1970s. Increasingly, this zone is characterised by the fusion of immigration and asylum policy with issues of national security; and uniform and exclusionary policies towards irregular migrants. Within the zone, smugglers/traffickers are targeted as manifestations of transnational organised crime.

The formation of the Trevi group<sup>14</sup> in December 1975 marked the first phase in the development of pan-European institutions devoted to law enforcement and coincided with the virtual cessation of formal migration programmes across Europe (Hayter 2000). The Group comprised ministerial representatives of the 12 member states of the European

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11 For example, a leading IOM official recently described the trafficking in women and children as 'a phenomenon of extreme concern to all humanity' (Gramegna 2001:98).

12 See also Morrison & Crosland (2001:8).

13 In particular, through the Office for Democratic Institutions and Human Rights. See <[www.osce.org/odihr/democratization/trafficking/](http://www.osce.org/odihr/democratization/trafficking/)>.

14 Named after the Trevi fountains in Rome, where the 1975 Council meeting was held.

Community (EC), senior police officers and government officials. The informal way in which it operated<sup>15</sup> set the tone for how agreement around security issues would be reached, and decisions implemented, at an institutional level.

While the Trevi Group focused on developing mechanisms for the exchange of information, its main functions were to link formally the issues of terrorism and border controls, and legitimise the concept of a pan-European police force (Benyon et al 1994:56–57; Santiago 2000:39).

Following a German proposal, the 1992 Maastricht Treaty on the European Union, established a framework for a 'Union-wide system for exchanging information within a European Police Office' (Benyon et al 1994:61). Initially known as the Europol Drugs Unit, the new agency's remit was extended to include 'illegal immigrant smuggling' in 1994 (Anderson et al 1995:64); and 'the international trafficking in human beings, and the sexual exploitation of children' in 1997 (Santiago 2000:58), before becoming Europol in 1998.

The Schengen process also played an important role in this. The 1985 Schengen Agreement<sup>16</sup> laid the basis for cross-border police co-operation by committing the signatory states to 'improve co-operation between customs and police authorities and to co-ordinate the fight against the illegal trade in drugs, serious international crime and illegal immigration' (Anderson et al 1995:57), with a view to strengthening controls along common external borders (Mathiesen 2000:167).

The Agreement and the subsequent 1990 Schengen Convention, formalised the most ambitious degree of law enforcement co-operation between European states up to that point (Anderson et al 1995:59–61). In addition to the initial participants, the Schengen Convention was ratified by Italy, Spain, Portugal, Greece, Austria, Finland, Sweden and Denmark; Norway and Iceland<sup>17</sup> have signed agreements to collaborate; and Britain and Ireland have signed up to the provisions relating to law enforcement.

In 1986, the Ad Hoc Group on Immigration<sup>18</sup> was established 'to examine the measures to be taken to reach a common policy to put an end to the abusive use of the right to asylum' (Joly 1996:49). This complemented the Schengen process and reflected the degree to which asylum was emerging as a dominant political issue within the major European states. The Group's self-proclaimed focus was to co-ordinate visa policy and national rules regarding asylum and refugees<sup>19</sup> (Vink 2001). It formulated proposals to facilitate the implementation of the Schengen Convention and was instrumental in drafting the 1990 Dublin Convention<sup>20</sup> and the Convention on the Crossing of External Frontiers.<sup>21</sup> It also helped establish the Centre for Information, Reflection and Exchange on Asylum (CIREA) and the

15 The first official reference to its activities made by the British Government was in a written answer to a Parliamentary question in June 1990 (Santiago 2000:42). See also Benyon et al (1994:59–61) and Bunyan (1993:38–39).

16 Signed by Belgium, France, Luxembourg, the Netherlands and Germany.

17 Neither of which are members of the European Union.

18 Consisting of the 'Ministers of the Interior' (the Home Secretary in Britain's case) of each of the member states.

19 It was divided into six sub-groups on admission and expulsion, visas, false documents, asylum, external borders and refugees.

20 The 'Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities'. Its main aim was to limit the number of asylum applications which could be made within the EC to one, and thereby end 'asylum shopping'.

21 Which has not come into operation, partly because of the ongoing dispute between Britain and Spain over the status of Gibraltar.

Centre for Information, Reflection and Exchange on Frontiers and Immigration (CIREFI), both of which monitor 'immigration flows and asylum applications, forged documents, illegal immigration and related issues' as well as promoting 'the exchange of information and intelligence' (Benyon 1996).

The period between the formation of the Trevi group and the signing of the Maastricht Treaty represents the first phase in the contemporary pan-European security discourse. During this period, immigration and asylum policy became enmeshed at an institutional level with internal security concerns (Anderson et al 1995). This was far from an even process but it was sufficient for a general trend to be established. An 'internal security continuum' became the defining feature of pan-European co-operation and nascent institutional arrangements (Anderson et al 1995). Security increasingly came to dominate the official European discourse and to determine what types of European institution were developed or proposed. Keeping out 'aliens' was becoming synonymous with protecting Europe.

### The 'Area of Freedom, Security and Justice'

The Maastricht Treaty sought to formalise free movement within the European Union for nationals of the member states but entrench strict external border controls enforced through Europe-wide co-operation.<sup>22</sup> Informal working groups such as Trevi and the Ad Hoc Group on Immigration were absorbed into official EU structures<sup>23</sup> established to consider 'matters of common interest', including asylum policy; external border controls and combating irregular migration.<sup>24</sup>

For those who advocated this shift, the new security framework was 'the way to guarantee the social legitimacy so badly needed by the Union' (den Boer 1996:5). While member states still retained substantial, over-riding powers (Vink 2001:16), the concept of Europe as a security zone, dedicated to keeping out criminals and irregular migrants, was consolidating. This accelerated with the signing of the 1997 Amsterdam Treaty<sup>25</sup>, which emphasised 'security through European co-operation' and re-defined the aim of the European Union as the creation of the 'Area of Freedom, Security and Justice'.

The Treaty enabled EU institutions to play a more direct role in the areas external border control, asylum, immigration and the rights of third country nationals. It also provided for the Schengen arrangements, including the reporting and surveillance systems, SIS and SIRENE, to be absorbed into the machinery of the Union. These systems, allegedly in place to monitor violent organised crime, already were being used almost solely to target 'aliens' (Mathiesen 2000:174).<sup>26</sup> Their incorporation into the EU made them less accountable, while generalising their use by the police forces within all the member states (Mathiesen 2000:176).

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22 Title VI, the 'Third Pillar' formalised EU co-operation in the field of Justice and Home Affairs.

23 Formed under Article K.4 of the Treaty.

24 See Articles K.1 (1) to (3).

25 Which became operational in May 1999.

26 In 1995, 86 percent of the 2.3 million SIS entries made by Germany concerned 'aliens' reported for the purposes of being refused entry. See also footnote 6 above



Security and border enforcement increasingly dominated the European agenda. In December 1998, the European Council adopted a 51 point 'Action Plan' (the Vienna Plan) to facilitate the implementation of the Area of Freedom, Security and Justice.<sup>27</sup> It called for 'solidarity among member states and between European institutions', in the face of 'the transnational challenges presented by organised crime and migration movements'.<sup>28</sup>

A special meeting of the European Council at Tampere (the Tampere Summit) in October 1999 set out the elements for a Common EU Asylum and Migration Policy, confirming its commitment 'to reinforcing the fight against serious organised and transnational crime'.<sup>29</sup>

The integration of justice and home affairs concerns with other Union policies and activities was emphasised, with law enforcement presented as a binding element of EU policy, both internally between the member states and in its relations with countries and regions bordering the union, particularly the Baltic Sea region and the Balkans.

In May 2000, the European Union published a Strategy for the Prevention of Organised Crime (European Council 2000) in response to the Vienna Plan. The Strategy embraced the 'Tampere milestones' and called for a:

more proactive intelligence-led approach...(to) detect and interrupt organised criminal activities, apprehend the offenders, demolish the criminal networks, and seize and confiscate the proceeds of crime (European Council 2000:C124/5).

It also targeted organised crime as a security threat emanating from within the European Union (European Council 2000:C124/3) and urged member states to implement a range of preventative and punitive measures with a view to 'mobilising all segments of society ... to prevent the infiltration of organised crime into society' (European Council 2000:C124/9). This was a clear attempt to establish the legitimacy of the European project on the basis of the security agenda.

Against this background, the Council of the European Union published a 'Proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union' in February 2002 (European Council 2002). This proposal places the 'prevention of and fight against illegal immigration (as) essential parts of the common asylum and immigration policy of the European Union' and is based on the premise that 'facilitation of illegal immigration involves, in most cases, organised criminal networks operating at an international level' (European Council 2002:3).

It calls for the 'swift ratification' of the UN Convention Against Transnational Organised Crime and the Protocols on Trafficking and Smuggling and sets out measures and actions to be adopted which include the development of a European visa identification system and the introduction of 'a central register of aliens resident in Europe (European Council 2002: 12)'. Europol may also amend and add to the records on this system.

The dominant themes of this complicated array of proposals are the criminality of smuggling/trafficking enterprises; the primary responsibility these bear for 'illegal immigration'; the need for a much more sophisticated and extensive Europe wide-surveillance apparatus; the need for uniform systems of registration defining who is and is not European; and the need for increasing levels of policing co-operation, particularly with respect to the border states.

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27 The full text can be found at <[www.statewatch.pipal.net/semdoc/docbin/13844-98.html](http://www.statewatch.pipal.net/semdoc/docbin/13844-98.html)>.

28 Par. 24 (iii).

29 See Finnish Presidency version of Tampere Summit Conclusions, <[www.statewatch.org/semdoc/file/NEW/tamp.html](http://www.statewatch.org/semdoc/file/NEW/tamp.html)>.

Many of these proposed measures are a long way from implementation but, as a set of aspirations, they represent the consolidation of Europe as a security zone, in which an emphasis on law enforcement in relation to irregular movement overshadows other considerations. In place of the informal processes exemplified by the workings of the Trevi Group, there is a growing number of formal European instruments and institutions shaping the policies and practices of individual states. Winning popular support for these requires acceptance of a Europe wide fight against organised crime as a legitimate political agenda. It also opens up a process of defining who is European, based partly on whether an individual can be labelled as 'alien' or 'criminal'.

## **Smugglers, Traffickers and Border Enforcement**

The processes of European enlargement and the consolidation of a European security zone have several implications for the states bordering the European Union. In relation to the fused issues of national security and immigration control, two key assumptions dominate the official discourse.

First, the new international borders in central and Eastern Europe are 'porous' and must be shored up against increasing levels of 'illegal immigration' and the prospect of 'a mass movement of people from east to west' (Anderson 2000:19). Second, 'organised crime' increasingly is responsible for 'illegal immigration', with the 'great majority of illegal migrants in Europe using the services of smugglers, who in about half of the cases, belong to organised criminal groups' (Budapest Group 1999:15). Moreover, 'the entry of Eastern organised crime into the international market has changed and increased the routes traditionally used' (Savona 1997:2).

In short, an urgent security problem has arisen as a result of the combination of organised crime and the new routes opening up in the East (Savona 1998:6). From this perspective, the situation is made bleaker by the expansionist and dangerous activities of organised criminals, taking advantage of a 'lenient' enforcement environment (Budapest Group 1999:15–16). Following this analysis, the solution seems straightforward, if not easily enacted — seal the borders and use all necessary state sanctions to eliminate organised crime.

However, the recent experience of the Germany/Poland border indicates smugglers/traffickers are not principally responsible irregular migration. Border policing was one of the major items on the domestic political agenda during the period of German reunification. In 1989, the ruling Christian Democratic Union (CDU) adopted the slogans 'We Are One People' and 'Unite the Fatherland' in an attempt to outflank the neo-nazi Republican Party (Atkinson 1993:157).

In 1991, the CDU opened the 'Asylum debate' at a time when taxation was being increased and public services cut back to finance the costs of reunification. This led to 'a flood of media claims...that Germany was about to be 'invaded'...by 'millions' of refugees...(Atkinson 1993:159)'. Increasingly provocative statements from conservative politicians accompanied such coverage, with one CDU parliamentarian comparing refugees with 'locusts who leave a desert in their wake' and demanding 'a total closure of Europe to all immigration from developing countries' (Atkinson 1993:160). The far-right made significant electoral gains during this period during which there was a sharp increase in attacks on 'foreigners' and refugees, culminating in the lethal arson attack on a refugee hostel in Rostock in August 1992 (Atkinson 1993:161–65; Heitmeyer 1993:18–20).

Within this environment, the German Government embarked on a two pronged strategy of targeting 'illegal immigration' across its eastern border by boosting policing along the shared border with Poland; and co-opting Poland into a proactive role as a buffer state, while insisting Poland's potential entry into the EU was contingent on its success in this role.<sup>30</sup> Smugglers/traffickers were constructed as a principal enemy within this strategy, both as a threat to border controls and German identity.

Germany's federal border police (the BGS) tripled in size between 1993 and 1998 (Andreas 2000:119), with only limited effect. One study reveals that 'smuggled immigrants' increased from 1,794 to 6,656; 'smugglers' from 847 to 2,323; and 'cases of alien smuggling' from 598 to 1,700 (Lederer Survey, quoted in Salt & Hogarth 2000). In 1998, 'some 10,000 persons were returned to Poland under readmission agreements, and Poland in its turn returned 6,500 people to neighbouring countries' (Vachudova 2000:161).

However, despite the increased numbers of police, arrests and deportations, the BGS estimates 'only one in five clandestine entrants are apprehended' (Andreas 2000:120). This has led to police demand for more resources, with the Polish Government spending five times more on its border force in 1999 than 1998. Nevertheless, the Polish Government estimated 'that up to 200,000 illegal immigrants were living in Poland in 1999' (Andreas 2000:125).

The Germany/Poland experience suggests there is a symbiotic relationship between stricter border enforcement and organised criminal involvement in irregular migration and that in its own terms, much of the border enforcement is self-defeating. Andreas quotes BGS border guards complaining that,

Each year, we are finding [that] more and more illegal entrants have been getting help from professional smugglers ... We create the business for the smuggler. We remove 100 aliens, and the smugglers bring 100 back in (Andreas 2000:120).

Moreover, the increase in policing is leading to more sophisticated methods on the part of the smugglers, with small scale, informal operations being replaced by larger, organised criminal arrangements (Andreas 2000:120; Ghosh 1998:25). This is emphasised by the Budapest Group, which warns that Poland hosts major migration routes from Moscow and the Balkans (Budapest Group 1999:37).

These routes reflect a wider economic and social dynamic. The concentration on border policing operates alongside a significant expansion in German/Polish trade and legal cross-border activity. Between 1990 and 1994, the number of people legally crossing the German/Polish border increased by 250 percent (Andreas 2000:121). The economic activity is extensive — in 1998, 'neighbouring foreigners contributed an estimated \$4 billion to the Polish economy, while Poles spent almost \$1 billion in neighbouring countries' (Jesien 2000:192).

The processes of economic growth and integration of the German and Polish economies are creating an infrastructure facilitating and encouraging illicit cross-border activity. Polish nationals are not formally permitted to work in Germany, but despite extensive internal controls, 'growing numbers ... are employed throughout the German economy, particularly in such industries as construction and the service sector' (Andreas 2000:126).

The social networks created by this are likely to be mirrored within Poland where significant numbers of the estimated 200,000 'illegal immigrants' are presumably working in order to sustain themselves and their families and providing low paid labour in similar

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30 Poland applied for membership of the EU in 1994. All applicants for membership of the EU must be able to implement the Schengen acquis.

service areas to Germany. Such networks have the effect of consolidating communities, tying them into the larger social fabric of the host or transit society and incorporating or establishing ongoing relationships with smugglers/traffickers. They are a product of the forces of economic development, rather than organised crime.

The Germany/Poland relationship illustrates the contradictions of European border enforcement and the limitations of the official discourse on smugglers/traffickers. For the Polish elite, integration with the major European economies through membership of the European Union is the primary economic and political goal, making high profile attempts to enforce borders a strict political imperative. Constructing a border for the Area of Freedom, Security and Justice therefore provides a material incentive and inexorable logic for the war against traffickers and smugglers, as Poland seeks to move into the Western Club.

From within the European Union, the pressure is outwards as the member states, individually and collectively, seek to create a buffer zone as the frontline of the immigration enforcement apparatus, with the ultimate aim of reducing the need for internal controls and any impediments these might constitute to economic development.

In either context, the targeting of smugglers/traffickers and the creation of the border apparatus, are as important an exercise in proving European credentials, as in actual border crime prevention. However, with Europe developing as a security zone, the imagery of the walls being breached by organised criminals takes on a sharper ideological significance.

## **The State, Irregular Migrants and Human Rights**

Analyses which view smuggling/trafficking from the perspective of the subject or victim tend to focus on three related categories of irregular migrant — asylum seekers/refugees; women and children trafficked for the purposes of sexual exploitation; and illicit workers.

In general, the victim discourse does not challenge the right of the state to regulate its borders or the legitimacy of targeting traffickers.<sup>31</sup> Rather, the emphasis is on developing a role for the state in protecting individual human rights. The key question is whether in the context of the European Union, a balance can be struck between a law enforcement agenda and the protection of the rights of those crossing borders with the assistance of smugglers/traffickers.

### ***'The End Game in European Asylum Policy'?***

'Bogus asylum seekers' bear the brunt of the official response to irregular migration, routinely acquiring such labels as 'illegal' and 'clandestine'. The smuggling/trafficking discourse relies heavily on the construction of the asylum seeker as fraudulent. Therefore, any measure legitimising the state's right to control its borders deserves careful scrutiny.

Morrison (1998) and Morrison and Crosland (2001) argue persuasively that enforcement measures against smugglers/traffickers threaten to close off the only remaining mechanisms allowing refugees to enter Europe and claim asylum, thus producing the 'end-game' in European asylum policy. Their analysis relies on human rights concepts enshrined in international law, in particular, the principle of non-refoulement, which prevents a host country returning a refugee to a country where his/her safety would be endangered. They develop this by employing the term, 'presumptive re-foulement' to describe 'the effect of

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31 Morrison and Crosland reveal how most of the agencies involved concentrate on the consequences of trafficking, rather than the motives of the refugees for seeking entry (Morrison & Crosland 2001:4).

those border enforcement and anti-trafficking measures that deny refugees the right of ever leaving their country of origin in the first place and so maintain their exposure to persecution without giving an option to flee' (Morrison & Crosland 2001:8–9).

The policy contradiction they confront is how the European Union's formal commitment to human rights (in particular, the right of refugees to enter Europe and claim asylum) can be reconciled with the restrictive enforcement agenda consolidated at the Tampere Summit.<sup>32</sup> For example, while acknowledging a principle of justifiable access for refugees, the Summit committed the EU to developing common policies on asylum and immigration and confirmed the European Council's resolve 'to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants' (Presidential Conclusions:para 3).

The intention of tackling illegal immigration at source by targeting traffickers is to prevent refugees leaving crisis zones and being able to even attempt to enter Europe. This was made clear in the Asylum and Migration Action Plans for five significant 'source countries' published days before the Tampere Summit, and making no reference to access to European territory (Morrison & Crosland 2001:24).

Morrison and Crosland suggest this 'speaks to the largely unvoiced reality of European asylum policy: that it lies in direct contradiction to the strong political imperative to be seen to be managing and controlling migration effectively and rigorously' (Morrison & Crosland 2001:24–25). Their fundamental point is valid — border enforcement takes precedence over the right to asylum, with potentially perilous consequences for refugees. Apart from persecution at home and exposure to risk during flight, there is exclusion and the criminalisation at an international level of the 'process of unregulated migration itself' (Morrison & Crosland 2001:48).<sup>33</sup>

However, it is questionable whether the reality is 'unvoiced' or the policy is simply a response to public pressure, as opposed to a conscious strategy driven from the top. The development of the European Security Zone indicates that stopping asylum seekers and 'illegal' migrants is central to the European ideal. In practice, as already described, the elaborate surveillance systems, such as SIS and SIRENE, put in place to combat organised crime overwhelmingly are used to target 'aliens' (Mathiesen 2000:174).

Morrison and Crosland seek to locate the solution to the policy contradiction by utilising a human rights approach posing its own dilemma — 'how to ensure that the abusive forms of trafficking and to a lesser extent smuggling are eliminated without depriving refugees of their means of flight' (Morrison & Crosland 2001:48–49).

They argue this could be achieved without 'the creation of new international human rights norms, merely respect for existing ones' (Morrison & Crosland 2001:64), but leave open the question of how these would be policed.

Likewise, Koser poses three related 'policy dilemmas':

how to balance the rights of refugees while controlling the smuggling of other migrants; ... how to break out of the current vicious cycle, whereby smugglers consistently find new responses to new policies; (and) ... how to disaggregate the smuggling process, so that smuggling into Western Europe can be controlled but smuggling out of some countries can still be recognised as being necessary for those being persecuted or denied fundamental human rights (Koser 2001:71–72).

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32 See footnotes 6 and 26 above.

33 See also Gallagher (2002).

Koser does not seek to answer the questions posed in his article, but his own research into the vulnerability of refugees and the difficulties in separating smuggling/trafficking, shows the difficulty in disaggregating the smuggling process. Moreover, by implying that some smugglers should be targeted and others not, he seems to be suggesting that some countries of origin are deemed safe, thereby ensuring the state has control in advance of which categories of irregular migrant it is willing to contemplate as potentially legitimate.

Nadig illustrates the dilemma by seeking 'alternative approaches in the interests of both the receiving state and refugee protection' (Nadig 2002:2). She suggests that the member states of the EU 'need to remove irregular migration and human smuggling from their national security agendas' and embrace 'pluralism'. This would facilitate the development of a common asylum policy, based on the principle of 'burden-sharing' and the introduction of quotas, and thereby reduce the need for smugglers by providing more entry points (Nadig 2002:20–23).

This assumes the 'supply' of refugees can effectively be regulated and is not too far removed from the policy implemented in Australia, with the enthusiastic interest of the British Government (Mares 2001:185–186). It assumes a degree of benevolence not apparent in the current practices of the European states, and certainly not of the Australian state, which detains and imprisons both refugees who seek entry outside the quota<sup>34</sup> and smugglers/traffickers (Mares 2001; McMaster 2002).

These writers seem to agree that the right to travel and seek safety ought to be guaranteed; that mechanisms should be put in place to allow asylum seekers to enter Europe; that their claims should be dealt with fairly and without the stigma of criminal or alien attached; and that international law over-rides national or regional considerations.

However, none of these frameworks appears to question whether the state could accommodate both the enforcement and human rights agenda. The processes I have attempted to outline in this article suggest very strongly that the exclusion of asylum seekers and irregular migrants is built into the fabric of European institutions. Targeting smugglers/traffickers and enforcing border controls are essential and defining features of the security zone. If the state's right to enforce border controls is conceded, can it be expected to treat refugees fairly? Are the member states capable of this level of neutrality given their declared aim of protecting the closed and defined Area of Freedom, Security and Justice?

### *Trafficking for the Purpose of Sexual Exploitation*

Similar contradictions emerge within the discourse on the trafficking of women and children for the purpose of sexual exploitation. Here, there is an important overlap between the work of activists, NGOs and official institutions, with the enforcement agenda utilising a concern for the vulnerability of the smuggled/trafficked person.

Within the EU, a number of state and NGO-run institutions<sup>35</sup> have been formed specifically to prevent trafficking of this type. Such programmes operate as an adjunct to the wider fight against organised crime outlined above. However, research suggests that

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34 Since 1992, the Australian Government has exercised a policy of mandatory detention of all illegal entrants. Overwhelmingly, these are asylum seekers who have used smugglers/traffickers to reach the Australian coastline. They are branded as 'queue jumpers' on the basis that they have not entered under the refugee quota.

35 Particularly the STOP and Daphne Programmes which are designed to provide co-ordination between different agencies; information exchange; and public information programmes. See Kelly & Regan (2000:11–13); Turnbull (1997:205–207).

traffickers are not principally responsible for this form of irregular migration. For example, there are compelling material reasons and issues of personal safety explaining why women from eastern Europe willingly engage with traffickers (Caldwell et al 1997:50). Moreover, even within the limited interpretations applied by European states, some of these women would qualify as refugees, given that many of them come from refugee-producing crisis zones (Kelly & Regan 2000:19–20; Koslowski 2001:349–350).

Nevertheless, it is believed there are extensive illicit networks bringing women and girls<sup>36</sup> into Western Europe from Africa, Latin America, South-East Asia and Central and Eastern Europe (Ghosh 1998: 25–26). This highlights a need to have a broader conception of irregular and forced migration, focusing on the complex reasons people migrate, rather than the means by which they do it. The alternative is to rely on a state apparatus developed to play a key role in their exclusion. Law enforcement measures against traffickers, pimps or clients do not, in general, protect the migration rights of those who are abused and/or exploited for sexual purposes.

Instead, the specific measures against trafficking are utilised as justification for removing ‘illegal immigrants’ on the basis of upholding human rights norms allegedly established to protect the interests of the victim.

### ***‘The Modern Slave Trade’***

While there is an overlap between the general dialogue on trafficking and the specific issue of the sexual exploitation of its victims, many of those entering Europe using traffickers do so in order to work in the formal economy. In effect, the traffickers act as labour agents alongside a range of official and semi-official agencies (Koslowski 2001; Ruggiero 1997). The degree of free will exercised by the migrant varies, making the smuggling/trafficking distinction hard to maintain. Some may be moving as participants in existing social networks, or as pioneers taking part in global forms of movement, opened in part by traffickers. Others may be the victims of deceit and intimidation from the outset, and subject to indefinite bondage and abuse at the point of destination.

Organisations like Anti-Slavery International highlight the extent of forced labour internationally, the cruel and abusive treatment of the migrant (particularly children), and the role of traffickers in facilitating this<sup>37</sup>. Western multinationals are often directly complicit in these arrangements (Ruggiero 1997; Seabrook 2001) but this tends not to be the focus of the official policy dialogue in the West.

Instead, the major western states use the evident abuses of human rights in parts of the Third World to deflect blame onto producing countries, rather than acknowledge any role played by uneven economic relations or restrictive immigration controls. Failing to police smugglers/traffickers becomes a rationale for the West punishing the developing world. Thus, the United States Government recently threatened economic sanctions against a ‘blacklist’ of 19 almost exclusively Third World countries who are ‘not doing enough to stop an appalling assault on people around the world’ (BBC News, 5 June 2002).<sup>38</sup>

Many smuggled/trafficked migrants work illegally in formal sectors of the economy<sup>39</sup> where exploitation in the form of lower wages, poor working conditions and general intimidation can be greater than for those legally employed. It is their availability and

36 There is also a minority of males, especially children, caught up in this process.

37 In November 2001, a 2 year campaign against human trafficking was launched with the aims of protecting the human rights of trafficked persons; penalising the traffickers; and addressing the root causes of trafficking. See <[www.antislavery.org](http://www.antislavery.org)>.

vulnerability, rather than the exact circumstances under which the migrant illegally entered the country, which is the source of the abuse from employers. Additional abuse from the trafficker in the form of debt repayment, for example, is contingent on the employer/employee relationship.

Moreover, the trafficker may be utilising networks established during times of formal migration and, in effect, fulfilling the role played traditionally by the labour agent. Such networks have a dynamic of their own but are not created or sustained by chance. There is a deliberate process of recruitment by an employer, agent or 'some kind of broker linking demand and supply'; and it is highly organised, with the agent playing a vital role, often arranging not only the job 'but also the loan required to sustain the migrant' (Harris 1998:133;134).

The 'immigration stops' imposed by the European states from the mid-1970s onwards were intended to close down formal migration routes but could not simply switch off the social networks created during the post war period. Some official mechanisms, such as family reunion, served to replenish existing migrant stocks, but it seems likely the processes of economic development have sustained and developed new social networks in which the smuggler/trafficker is playing a facilitating role.

A range of material factors ensures these mechanisms work both ways. The significance of remittances in maintaining the local economy in the country of origin can be as important as long-term labour shortages in Europe in propagating illicit labour arrangements (Harris 1998; Tapinos & Delauney 2000).

The example of Germany and Poland illustrates how a relatively modest degree of economic growth generated extensive, new cross-border traffic. Likewise, small increases in the disposable income of workers in source countries can be sufficient to constitute 'migration capital' payable to smugglers/traffickers if no other mechanism of travel is available (Kyle & Kowalski 2001:359). These factors help explain the relatively informal nature of many smuggling/trafficking networks, many of which incorporate participants, such as travel agents, who were or remain part of, official migration structures.

In relation to the smuggler/trafficker, the same contradiction arises in relation to labour migrants as for refugees. Will punishing the smuggler/trafficker assist irregular migrants who have little choice but to use their services? Can anti-smuggling/trafficking measures, which do not reinforce the agenda of immigration controls underpinning the construction of the smuggler/trafficker as a threat, be put in place?

The prospect of substantial profits ensures that official or semi official agencies, criminal groups or joint ventures of these, have a vested interest in maintaining the apparatus of control at the expense of the migrant (Harding 2000:20; Ruggiero 1997:241). The source of the smuggler/trafficker's control over the migrant is the power exercised by the state over both the smuggler/trafficker and the migrant. This, combined with the intersecting processes of forced migration and social networks accounting for the movements of

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38 Under federal legislation passed in 2000, the US Government has the right to impose sanctions on countries not showing compliance with the 2000 UN Convention on Transnational Crime Anti-Trafficking protocol. Given that the countries on the list include Afghanistan and some close allies in the 'War Against Terror', realpolitik suggests that sanctions will not be imposed. Nevertheless, there is a significant ideological component to the blacklist, which is consistent with the EU passing the burden of enforcement onto the 'buffer states'.

39 See Ruggiero (1997:234-236) for a range of examples from across Europe, including the UK.



irregular migrants, suggests strongly that allowing all migrants the right to move freely and enter the European Union, is the only comprehensive mechanism for protecting the migrant's human rights.

## **The Instrumental Purpose of the 'War' on Smuggling/Trafficking**

The war on smuggling/trafficking is rooted in the material reality of the European Union. While other key zones in the West — most notably north America and Australia — practise similar exclusionary policies in relation to irregular migration and have their own domestic agendas against smugglers/traffickers, the way in which smuggling/trafficking is constructed as a threat cannot be separated from the development of European institutions over the past 25 years.

The smuggler/trafficker has been created by immigration controls, is destined to be the subject of law enforcement efforts and acquires an unconditionally deviant identity because of the way in which immigration controls and national security now constitute the main structural dimension of the European Union. With immigration controls a dominant area of consensus amongst the member states, targeting the smuggler/trafficker forms part of national political agendas and serves as a rationale for wider European concepts of enforcement.

Within the Area of Freedom, Security, and Justice, targeting the smuggler/trafficker serves as an affirmation of the concept of a secure European space. States acquire border, buffer and transit status less for their geographical location, than their part in the immigration control and smuggler/trafficking policing apparatus. They acquire membership status, or at least aspire to do so, largely on the basis of illustrating their willingness to comply with the border control regime. They have a vested interest in targeting smuggling/trafficking because of the perceived material benefits of economic integration.

At a local level, border enforcement agencies owe their existence, status and funding to the war against cross-border crime which, perversely, their activities help sustain. Regionally, a growing number of inter-agency arrangements and new institutions such as Europol and Eurojust, represent the beginnings of a European enforcement apparatus, legitimated significantly by the fight against organised immigration crime.

There is therefore a substantial structural dynamic to the war against smugglers/traffickers, which will not easily be undone. This is partly due to the vested interest a range of enforcement agencies have in maintaining their existence. More fundamentally, it is because the European Security Zone is a product of fortification against the 'alien'.

The development of migration controls is inextricably linked to the dialogue on European identity. The construction of the smuggler/trafficker as an outsider, operating outside legal norms and having an 'alien' identity, mirrors the way in which asylum seekers and illicit workers are identified and serves an important instrumental purpose for the European elites.

There is a direct connection between immigration controls, nationalism and national identity. The European agenda rests on these concepts, which percolate through the enforcement apparatus. Measures directed against smugglers/traffickers help reinforce concepts of national and European identity and can be used to justify the exclusion of certain categories of migrant on the basis of nationality or identity.

## Conclusion

The separation of irregular migrants into discrete categories can obscure complex social processes. However, irregular migrants cannot be pigeon-holed neatly. Instead, there is a range of forces underpinning irregular migration, although these operate within a continuum rather than in accordance with a mechanical push/pull analysis. The smuggler/trafficker discourse serves to conceal the dynamics of this by attributing disproportionate blame to the agent for generating this movement, when the economic and social reality of migration is that much of it takes place regardless of immigration controls.

Rather than distinguishing migrants by narrow legal categories, we need to develop an inclusive concept of irregular migration. This would incorporate all those who cross borders illegally and focus on the economic and social mechanisms generating and assisting their movement. Within this framework, an inclusive concept of the illicit agent should also be developed on the basis that the smuggler/trafficker is no more responsible for irregular migration, than the travel agent for tourism. Only when this is done, can we deconstruct decisively the various complexities of assisting irregular migration, with a view to critically assessing the legitimacy of criminalising all those associated with such activity.

Developing such a paradigm would inevitably give rise to questions about the nature of the smuggler/trafficker discourse the role of the state in developing it and the legitimacy of border controls. It would require an examination of the extent to which border controls and the migrant's need to move are the contradictory but reinforcing concepts on which the construction of the smuggler/trafficker rests.

The continued legitimacy of restricted borders transforms all critical dialogues addressing smuggling/trafficking into an exercise in self-defeating *realpolitik* — smugglers/traffickers exist because of borders; borders cannot be removed; therefore police smugglers/traffickers using mechanisms which will reinforce borders. However, the border controls now shaping the immigration discourse in the developed world were only put in place during the latter part of the twentieth century. They reflect an institutional response, legitimised by specific concepts of national interest, during times of economic and political uncertainty. They illustrate the capacity of the state to define legitimacy — increasingly with reference to legality — in a single sweep, as migrants are transformed from welcome sources of economic and cultural advance into unwanted aliens. Within the European Security Zone, border controls are an imperative, representing a virtual state of denial that immigrant labour was ever encouraged.

Given the growth of communication networks and the potential ease of travel, it is noticeable how few writers contemplate seriously the prospect of opening Europe's borders. One exception is Harris<sup>40</sup>, who argues the 'old state' is being 'weakened before global markets' and that 'an antiquated national political system is being dragged along by a world economy' (Harris 1998:227–228); in effect, the obstacle of border controls is under mounting pressure from the continued development of capitalism.

However, I suggest the dissolution of the state is an unlikely consequence of the development of market forces alone. Instead, the European Union is an illustration of the way in which an important regional bloc within the world economy has solidified itself and developed new pan-state institutions by utilising, and reinforcing, nationalist traditions and mechanisms; not least of which is defining new external enemies in the form of irregular immigrants and organised crime.

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40 See also Hayter (2000).

In this context, immigration controls are not obsolete to the requirements of the dominant forces in world capitalism. They are crucial to the concept of the European Union and serve the purpose of maintaining ideologies of competition and difference in every aspect of human life. The smuggler/trafficker could easily be subsumed by this wider picture, but giving serious consideration to the transition to open borders, provides the basis for unravelling the many contradictions in the smuggler/trafficker phenomenon.

To be worthwhile, a critical discourse must locate smuggling/trafficking as a manifestation of state control, rather than a justification for state sanctions; and elevate the rights of the migrant above the illusory permanence of border controls. Suggesting these controls should be abolished — and therefore removing the state's capacity to criminalise all those connected with irregular migration — might be unthinkable within the mainstream (Harris 2001), but it offers a route through all the contradictions to which the smuggler/trafficker discourse gives rise.

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