

DIÁLOGOS PARA UNA MEJOR COOPERACIÓN INTERNACIONAL EN LA LUCHA CONTRA LA TRATA Y EL TRÁFICO DE PERSONAS

Jueves 15 de Noviembre de 2018

Aula Europa. Sede de las instituciones europeas en Barcelona, Passeig de Gràcia 90, 08008 Barcelona

PROGRAMA (castellano)
Jueves 15 de Noviembre de 2018
Aula Europa

9:00h. Bienvenida
Sr. Mark Jeffrey
Director de Comunicación. Representación de la Comisión Europea en Barcelona.

Presentación de la Jornada
Dra. Claudia Amérez
Investigadora principal - Proyecto CIMCETT

9:30h. Panel I: Cooperación internacional: cuestiones generales
Sr. Elia Tronero, IOMD
Sr. Paul Voss, Frontex
Sr. Corina Boyanica, IOM
Sr. Valeria Ballo, UNODC

Mediador: Dra. Claudia Amérez
10:00 - 11:00h. Pausa café

11:00h. Panel II: Cooperación Internacional en la gestión de casos
Sr. Álvaro Rodríguez Goya, Eurojust
Sr. Joana Whitaker, UNODC
Sr. Belen Ruiz Mateo, GDFI

Mediador: Dra. Ana Ayuso
11:00-11:30h. Debate y clausura

PROGRAMME (English)
Thursday, 15th November, 2018
Aula Europa

9:00h. Welcome
Mr. Mark Jeffrey
Head of Communication, Representation of the European Commission in Barcelona.

Presentation of the Congress
Dr. Claudia Amérez
Main researcher - CIMCETT Research Project

11:00h. Panel II: International cooperation in prosecution
Mr. Álvaro Rodríguez Goya, Eurojust
Ms. Joana Whitaker, UNODC
Ms. Belen Ruiz Mateo, GDFI

Chair: Dr. Ana Ayuso
11:00-11:30h. Debate and closing remarks

Relations between networks and programs

1.1 Coordination of networks and initiatives: A balance of joint networks and initiatives (both regional and by thematic areas). Is there a plan or harmonizing logic behind these projects or their coexistence is down merely to chance?

The main network relating to trafficking in human being should probably be ICAT network. 23 agencies (not only in the UN family) participate in ICAT and it is currently under the UNODC presidency. Its main function is to elaborate guidelines and a common speech, which may be useful to set up the agendas of the agencies belonging to it. It is a positive forum of dialog.

Apart from this general purpose network, we can find in a smaller scale other attempts to harmonize in a smaller the different policies related to trafficking and smuggling. It is for instance GLO.ACT, (*Global Action against trafficking in persons and the Smuggling of Migrants*)¹. Four agencies (UNODC; UNICEF, IOM, European Union) take part in this project aimed at assisting the participating states in elaborating and implementing a national strategy to fight against both trafficking and smuggling of people. That allows for fostering a common approach to the three main lines: prevention, protection and prosecution. However, the Project has faced some troubles when developing its potential, due to the difficulties in implementing the intended measures practically in the field.

Although all the agencies on their guidelines shared the same perspective, when putting it into practice has brought to light the fact that setting up the project at local level highly depends on each national office and their agenda and priorities. That is the reason why not always all the agencies take part in all countries.

The IOM representative confirmed such idea. Her experience in Libya revealed that the different priorities of the different actors makes it difficult to reach a higher harmonisation. During field operations, each mission has autonomy depending, on one hand, on the needs and possibilities of the territory where it is acting and, on the other hand, depending on the priorities set by the agency. For instance, the IOM's priority in Libya are the victims

¹ For further information please see: <https://www.unodc.org/unodc/en/human-trafficking/glo-act/index.html> [Electronic source , visited last time on 23th November 2018].

Therefore, the agency is devoted to give assistance to the victims, providing its expertise in “individual cases management”, helping in their identification and sometimes even in their return process.

For its part, Frontex, pointed that there are some areas with a higher coordination in between the different European agencies, for example in matters of victims identification through the PEDRA program, which is shared with Europol or in cooperation with Eurojust. However, this cooperation is limited just to the issues that are within its mandate, which are operational in nature, as it is the agency itself.

Finally, it has to be pointed out the efforts made to achieve a certain consensus, in December 2018 in Marrakesh, in the commitments included in the Global Compact on Migration. The importance of this Conference can be appreciated, precisely in the strong opposition it received from some states, despite not being a document with binding legal effects.

1.2 Overlaps. What is being done to avoid overlaps between networks and organizations?

Certainly, there are overlaps between networks and organizations, this is evidenced by the existence of more than 150 guidebooks on victims’ identifications. The match in the mandates (all of them related to human rights and security) makes these overlaps roughly unavoidable. Nevertheless, that fact does not mean a correspondence between perspectives to approach the issues, and in addition to this, there are the priorities of the member states that found each project. By instance on Libya case, the states are founding projects of different agencies relating human trafficking and smuggling, ranging from training Libyan personnel (including coastguard and police officers) to give assistance to immigrants, how are victims of such officers. Clearly it results in roughly unavoidable overlaps, given the different perspectives from which they are addressed. On the other hand, it may happen the opposite situation, that is, the priorities of the agencies may result in certain situations not being covered meanwhile others are being covered twice.

At European level, it is also pointed that there are already some overlaps between Frontex and Europol, which should be avoided. Probably, if each agency took part on the meetings of other agency management board, it would help to avoid such overlaps.

1.3 Problems related with databases. Its reliability, harmonisation, use of others database and a specific question related with the divergences in the different databases: Would you say that the existing divergence is a problem of different data or different concepts?

It is clear that there are a lot of databases on very similar issues, but its usefulness is not so clear for different reasons:

1) The heterogeneity of the data and its sources. Databases are built on information provided by the states, but such information does not come from the same sources; by instance, information providing from the judiciary cannot be statistically analysed together with information provided by the police, though it is performed in some ONUDD databases. Other times, as it happens with the OIM, statistics are preformed from estimates based on the work in the field experience of the organisations.

2) The information is set out without following any harmonized criteria. It withdraws any possibility to use the information to elaborate prospective studies and foresights. This is especially relevant when the information is presented in percentages without showing a number value. One court conviction may represent a 100%, giving a wrong image of judiciary action in that country regarding the analysed topic.

On the other hand, some efforts have been made to harmonise at least the indicators. For this purpose, a platform to host harmonised data at European level was designed in Portugal with founding from the European Union, but unfortunately it has not been kept up to date. To all this it is necessary to add the specificity of the problem regarding the personal data databases under the persecution perspective, which will be analysed in the second part.

2. Cooperation in the Persecution

2.1. Why does persecution offer such a low level of success? Up to what point do the different “visions” of the governments impede greater efficiency?

All the panellists agree on the idea of the need (and lack) of mutual trust. When there is mutual trust, there are achievements. Accordingly, the Spanish Public Prosecutor mentioned as an example her own personal experience in cooperating with Eurojust and in collaborating with other EU states to achieve court convictions.

However, in general, the lack of mutual trust makes, indeed, that each state or body launches their own initiatives or actions which usually are overlapped with actions from other states or institutions.

That lack of coordination is reflected, for example, in the large number of about 500 liaison officers from the different EU the member states that are in third countries reporting to their own countries without any global coordination mechanism among them, something that should be essential when persecuting transnational organised gangs.

In addition to the need of mutual trust, the representatives of Frontex and Europol brought in also the specific problem of the personal databases. Regarding this kind of information related to the persecution of human trafficking and smuggling offences, both representatives highlighted the presence of different databases (e.g. Europol has record of more than 90,000 suspects.) which contrast with the lack of a single database for all the European Union, although there are attempts to achieve the interoperability of all the existing databases. In that regard, the representatives pointed the fact that the states (and the agencies themselves) are leery to share their information (even at national level), so then it is very difficult to systematize it, especially considering that the EU agencies have access to information collected by other agencies or governments, which have their own data protection systems. In short, a useful platform is not enough (although it is at least desirable), as it is basic also to build up a trust relationship between all the actors involves based on a proper use of the collected data.

Furthermore, an added problem to take in account is the fact that third countries cooperation also must be considered. In this area, the actions are diverse and uneven, since to obtain information from their part it is necessary the mediation of a member state with

strong link with the specific third country. As an example, we have Nigeria and United Kingdom whose cooperation is very effective. Senegal and Spain cooperation could be pointed as a similar situation. However, there are other situations with third countries in where such an efficient level of cooperation has not been achieved yet. This is the case, for instance, of China and Morocco. Both countries are being contacted and some operational agreements are being promoted with them, although we cannot talk about any big successes.

In the speakers' opinion there is a problem of over bureaucratization and mutual trust which slows down all these procedures and consequently they are not very effective, relating to many countries.

2.2. What role have the Palermo Protocols played in the persecution of people trafficking and smuggling?

The ONUDD representative pointed that the Protocol is a useful tool, but it has to be fairly adjusted into the context of a multilateral international law/rule, that means a long term positive but slow impact. In her opinion, the presence of protocols means an improvement on the former situation, because a certain level of harmonisation is being achieved with those protocols. Furthermore, judiciary and police actions have increased in those countries where the protocol was implemented. That said, as it was mentioned, the international dimension of the protocol cannot be ignored and therefore the objectives to be achieved through those mechanisms require some preliminary stages: the first one is just to get their ratification (171 states). Only once the commitment has been taken, the second stage is activated. This second stage is to promote their implementation and application within the different domestic jurisdictions. To do that, the formal act of commitment is not enough, but also an integrated propositional action, that means including the protocol in their regulatory frameworks to give the judicial and police structures the necessary capacities to achieve an effective application of the protocol. In fact, states have decided to create a committee responsible for follow-up to the protocol's application for this purpose, always with the voluntary submission of the parties.

Finally, we cannot ignore the role of the protocol in cooperation matters, which is necessary to fight against such offences, as it was already mentioned.

2.3. There is a proliferation of MOUs and interagency agreements for cooperation in the fields of THB and MS. Has the formalization of this cooperation through these MOUs brought effective help in the persecution of crime. If so, what do they bring?

According to the Europol's representative MOUs are indeed useful instruments, to structure and formalize the cooperation between agencies or bodies and states as well as between the different agencies. In fact, MOUs are especially useful to provide the data exchange with a legal basis. In that sense it is important to see the recently agreement signed with Ameripol, or the agreement signed between Europol and the Sophia operation in 2017-2018

However, it is even more important to have a legislation or cooperation agreement with the diplomatic representations and private companies which are widely used by the organised crime and, to that extend, have key data for the investigation a persecution of such organised crime in human trafficking. It refers, for example, to travel agencies, money transfer companies, airlines and even consulates. All that would be desirable, but there is still a long way ahead.

3. Victims

3.1 Problems in victims' identification. Bearing in mind the wave of immigrants reaching Europe in subhuman conditions after having been victims of mafia, why are so few victims of THB identified?

Regarding victims, who are the most stricken, all the speakers agreed that a serious problem is their identification, which comes from different reasons:

One reason is the difficulty of distinguish between victims of trafficking in persons and smuggled migrants. Although in the legal theoretical sphere the difference is clear, in practice it is not, because most of them are controlled by mafias and organized crime. This implies that a large number of people start by searching or allowing a third-party involvement to be able to cross borders but during the long journey to their final destination they end up being trafficking victims. That is especially appalling when it refers to women and unaccompanied minors who are systematically deceived and subject to inhumane treatment. In the same way, the IOM representative in Libya said that in that hub to Europe all the migrants were victims of human trafficking, consequently the difference between one and another form is totally blurred. From the scope of the protection, that is why IOM and generally of all the institutions engaged in assisting victims in that area do not make such a difference and just assist them equally, independently of the kind of abuse they had been victims of (rape, sexual slavery, abduction, forced labour, torture, etc..)

Accordingly, another argument to point out the difficulties in identifying victims of people trafficking and migrants smuggling is that people trafficking is a phenomenon that, in most cases, is hidden behind other criminal behaviours like prostitution or illegal work. This situation makes victims feel especially vulnerable and extremely wary of the authorities, so victim rarely cooperate with authorities. Victims' fear is founded and increases because of the possible retaliations they may suffer for cooperating with authorities. Therefore, NGOs role is crucial.

Another reason mentioned during the session was the cultural differences between states and society on the perception of irregular immigration situation according to their origin. From authorities – like coastguards or detention centres' officers- to all other citizens their sympathy or hostility towards immigrant people depends on the origin of the immigrant and consequently their perception as "victims". Are women victims of trafficking or prostitutes? Is minors' mistreatment; education or abuse?

This becomes particularly noticeable at detention centres in transit areas and in countries of destination. Regarding such centres, both Europol and Frontex, highlighted that states and not agencies have sole competence to act in those centres, making their operational capacity difficult.

3.2 Has any significant progress in identification matters been made?

About this topic, it can be concluded that there are two work lines from national and international bodies.

The first one is the development of performance indicators to harmonize and for a better identification of possible victims. Accordingly, among the more than 150 handbooks mentioned in the first panel two stand out: the recently developed by the General Council of the Judiciary of Spain and the one developed by Frontex. There are also similar efforts at ONUDD, among others.

The second work line is related to training. Frontex representative mentioned that the agency conducts different training programmes and activities mainly for coastguards of the member states.

3.3 The role of the NGOs. What role do you think NGOs play in the field of international cooperation in the fight against THB and migrant smuggling?

All panellists agreed on the important role that the NGOs play in fighting against people trafficking and smuggling, basically because their presence in field. From this point of view, maybe the most relevant is the NGO's nearness to the victims, which is really useful or even essential for the international organizations and states to carry out their actions. For example, the victims' trust in those NGOs allows access to information about their personal situation and obtain data that otherwise not even the police neither state agencies would be able to obtain. That is the reason why there are attempts to set up channels of communication, more or less formalized, and to include them in the discussion about strategies and campaign in field. However, the existence of big differences between NGOs cannot be ignored. That designation includes too many actors, and they are not always comparable.

Key Ideas by way of conclusion:

1) It is essential to deepen in cooperation between agencies and between agencies and states, but it is necessary to achieve a higher level of mutual trust. However, that could be solved not by launching more cations and plans but by starting to coordinate the already existing actions plans and improve its follow-up in order to avoid fraud which create misgivings, instead.

2) In order to succeed in the persecution of the offences of trafficking and smuggling of people it is essential, on the basis of mutual trust, to achieve a better and higher level of harmonisation of the existing databases, as well as the provision of better legal instruments of cooperation with both public and private agents

3) Despite the vast amount of support material to assist on victims' identification, it is still one of the main outstanding task on the fight against trafficking and smuggling. The reasons for this situation are from the distortion entailed by the organized crime on the distinction between both crimes, to the cultural problems on the perception of people who are hostages of the mafias as victims. Accordingly, the NGOs work is essential but not enough. It is necessary a structural (sensitivity) transformation on authorities and society to improve in that area.

4) Apart from the persecution and aid for victims, fighting against trafficking and smuggling of people requires to be more effective regarding the third pillar (which is, in fact, the first one); Prevention. People trafficking and smuggling is not only related with the organized crim but also with poverty, underdevelopment and conflicts. Therefore, in order to achieve an effective policy to fight against such crimes it is essential to offer dignified life opportunities to potential victims on their origin, which discourage them from starting their journey to horror.

